

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 30, 2024

+ + + + +

The Public Hearing of the District of Columbia Board of Zoning Adjustment convened via teleconference, pursuant to notice at 9:37 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson  
LORNA L. JOHN, Vice Chairperson  
CARL H. BLAKE, Commissioner  
CHRISHAUN SMITH, Commissioner  
ROBERT E. MILLER, Vice Chairperson, Zoning Commission  
TAMMY STIDHAM, Commissioner, Zoning Commission

BOARD OF ZONING ADJUSTMENT STAFF:

KEARA MEHLERT, Data Specialist  
PAUL YOUNG, Data Specialist

The transcript constitutes the minutes from the Regular Public Hearing held on October 30, 2024

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

2 (9:37 a.m.)

3 CHAIRPERSON HILL: Thank you. Good morning, ladies and  
4 gentlemen. The Board of Zoning Adjustment. Today is October 30.  
5 The public hearing will please come to order.

6 My name is Fred Hill, Chairman of District of Columbia  
7 Board of Zoning Adjustment. Joining me today are Lorna John,  
8 Carl Blake and Chrishaun Smith, Zoning Commissioners Tammy  
9 Stidham and Rob Miller.

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

19 If you're experiencing difficulty accessing Webex or  
20 with your telephone call-in, then please call our OZ hotline  
21 number at (202) 727-5471. At the conclusion -- it's also on the  
22 screen.

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

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

7                   In today's hearing session, everyone who's listening  
8 on Webex or by telephone will be muted during the hearing and  
9 only persons who have signed up to participate or testify will  
10 be unmuted at the appropriate time.

11                  Please state your name and home address before  
12 providing oral testimony or your presentation. Oral presentation  
13 should be limited to a summary of your most important points.  
14 When you're finished speaking, please mute your audio so that  
15 your microphone is no longer picking up sound or background noise.

16                  All persons planning to testify, either in favor or in  
17 opposition, should have signed up in advance. They'll be called  
18 by name to testify. If it's an appeal, only parties are allowed  
19 to testify. By signing up to testify, all participants agree to  
20 the oath or affirmation as required by Y 408.7.

21                  Requests to enter evidence at the time of an online  
22 virtual hearing, such as expert testimony or additional  
23 supporting documents other than live video, which may not be  
24 presented as part of the testimony, may be allowed pursuant to Y  
25 103.13, provided that the persons making the request to enter an

1 exhibit explain A, how the proposed exhibit is relevant; B, the  
2 good cause that justifies allowing the exhibit into the record,  
3 including the explanation of why the requester did not file the  
4 exhibit prior to the hearing, pursuant to Y 206; and C, how the  
5 proposed exhibit would not unreasonably prejudice any parties.

6 The order of special exceptions and variances are in  
7 Subtitle 409. The order of appeal is in Subtitle Y 507. I think,  
8 in conclusion of each case, an individual who is unable to testify  
9 because of technical issues may file a request for leave to file  
10 a written version of the planned testimony to the record within  
11 24 hours following conclusion of public testimony hearing.

12 If additional written testimony is accepted, then  
13 parties will be allowed a reasonable time to respond, as  
14 determined by the Board. The Board will then make its decision  
15 at its next meeting session, but no earlier than 48 hours after  
16 the hearing. Moreover, the Board may request additional specific  
17 information to complete the record. The Board and its staff will  
18 specify at the end of the hearing exactly what is expected and  
19 the date the person must submit the evidence to the Office of  
20 Zoning, and no other information shall be accepted by the Board.

21 Finally, District of Columbia District Representative  
22 Procedures Act requires that a public hearing on each case be  
23 held in the open, before the public. However, pursuant to Section  
24 405(b) and 406 of that act, the Board may, consistent with its  
25 rules and procedures and the act, enter into a closed meeting on

1 a case for purposes of seeking legal counsel on a case pursuant  
2 to D.C. Official Code Section 2-575(b)(4) and/or deliberate on a  
3 case pursuant to D.C. Official Code Section 2-575(b)(13). But  
4 only after finding the certain (indiscernible) in the case of  
5 emergency closed meeting after taking a roll call.

6 Madam Secretary, do we have any preliminary matters?

7 MS. MEHLERT: Good morning, Mr. Chairman and Members  
8 of the Board. Today's schedule: Application No. 21149 of James  
9 B. Briley Sr., Trustee, and Dila Construction, LLC, has been  
10 postponed to January 22nd, 2025.

11 Also, in regards to late filings, the Chairman has  
12 reviewed and granted waivers to allow late filings into the  
13 applicable case record, which is pursuant to Subtitle Y, Section  
14 206.7 and Section 103.13. Any other late filings during the  
15 course of today's light hearing should be presented before the  
16 Board by the Applicant, parties, or witnesses after the case is  
17 called. Any other preliminary matters will be noted when the  
18 case is called.

19 CHAIRPERSON HILL: Okay. Just give me, all, one sec  
20 please.

21 (Pause.)

22 CHAIRPERSON HILL: All right. Sorry, guys. I'm just  
23 having, like, technical issues here with this computer today.

24 Okay. Do you want to -- well, good morning, everybody.  
25 Nice to see everybody.

1            Could you go ahead and call our first case, which I  
2 believe is the appeal.

3            MS. MEHLERT: Yes, the first case is Appeal No. 21107  
4 of DeLorean 88, LLC. This is an appeal pursuant to Subtitle X,  
5 Section 1100, from a decision made on November 9th, 2023, by the  
6 Director of the Office of Zoning, regarding the location of a  
7 zone boundary line at the property located at square of 1244, Lot  
8 854, with addresses: 3219 O Street NW and 3246 P Street NW.

9            This is regarding a medical campus retailer at 1432  
10 Wisconsin Avenue. This hearing began on September 25th and was  
11 continued to today. And participating: Mr. Chairman Hill, Mr.  
12 Smith and Commissioner Stidham.

13            CHAIRPERSON HILL: Great. Okay. If the Appellant  
14 could hear me, can they introduce themselves for the record?

15            MR. MUSOLINO: Yes. Good morning, Mr. Chairman. This  
16 is Phil Musolino, M-U-S-O-L-I-N-O, counsel for DeLorean, the  
17 Appellant. With me in my conference room is Leo Harris,  
18 H-A-R-R-I-S, from my office, and Sanjeev -- Sonny Preet  
19 (phonetic), who is a representative of the Appellant.

20            CHAIRPERSON HILL: Great. Thank you, Mr. Musolino.

21            Go ahead, Mr. Blake.

22            COMMISSIONER BLAKE: I just wanted to let you know that  
23 I read into the case so will be participating and am prepared to  
24 participate today.

25            CHAIRPERSON HILL: Oh, great. Thank you, Mr. Blake.

1           Okay. Let's see. Who else is here from the Office of  
2 Zoning?

3           MS. LOVICK: Me, Hillary Lovick, for the Office of  
4 Zoning.

5           CHAIRPERSON HILL: Oh, hello, Ms. Lovick.

6           MS. LOVICK: Hello.

7           CHAIRPERSON HILL: Nice to see you.

8           MS. LOVICK: Nice to see you, too.

9           CHAIRPERSON HILL: Is there anyone else with you, Ms.  
10 Lovick?

11          MS. LOVICK: Director Bardin will be here with me today.

12          CHAIRPERSON HILL: Okay. Okay. We'll make it clear.

13          MS. MEHLERT: I've just got to --

14          CHAIRPERSON HILL: Okay. Director Bardin, will you  
15 introduce yourself for the record?

16          MS. BARDIN: Sure. My name is Sara Bardin, and I'm the  
17 director of the Office of Zoning.

18          CHAIRPERSON HILL: Good morning, Director Bardin.

19          MS. BARDIN: Good morning.

20          CHAIRPERSON HILL: Okay. Mr. Musolino, and so I  
21 appreciate your slide deck is now a little more concise. And so  
22 what I'm going to go ahead and let you do is just kind of walk  
23 us through why you believe, again, what -- what we're here for  
24 again is that sliver on the lot, right? You know, trying to  
25 figure out the -- how you believe that the director did not

1 properly know where the borders are for the lot. And I'll let  
2 you begin whenever you'd like.

3 MR. MUSOLINO: Sure. So, I don't actually disagree  
4 with one thing, which is that if -- and if you can look at our  
5 slideshow, in the first slide, it will orient everyone -- the  
6 director's view was that the -- there you go, that's it -- and  
7 so if you can -- thank you very much. Go to that page.

8 If you look at this, it'll orient you and you will see  
9 that this -- our issue, which is an ABCA issue arises out of the  
10 zoning status at square 1244 where the Hyde-Addison Elementary  
11 School is. You see the star there? And you see the second star  
12 off to the right where the facility would be, a DeLorean 88, LLC.

13 What you'll also see here is in YP eastern alley  
14 (phonetic). The eastern alley is highlighted here because it was  
15 the basis for the decision by Office of Zoning -- I'll call it  
16 decision -- the email by the Office of Zoning as to how we  
17 identify where the location of the zoning line is.

18 And so, if you look at the left side of the eastern  
19 alley, then follow it along the line to where the red line is,  
20 you'll see it says, "Zoning line". And you'll see the blue line,  
21 which is the property line, which Mr. Chairman has identified as  
22 a sliver. That is the controversy, if you will, of what the  
23 zoning status is of Hyde-Addison Elementary School on square  
24 1244. That -- if you follow the line down, you'll see that there  
25 are further slivers, and if we were to zoom out further on the

1 zoning map, the digital zoning map -- and we'll get to this  
2 later -- you'll see that there are additional slivers affecting  
3 other parties who -- and other property owners who are not here.

4 So, as we say in our slide here, the DeLorean operates  
5 a retail shop in Wisconsin, along with several other properties.  
6 The school enjoyed split-zoning, which just, as you know, means  
7 dual zoning within the same square lot, including commercial or  
8 MU-4. For many here, the short version is, that was the zoning  
9 that existed at the time of my client's application to the ABCA.  
10 And if that zoning -- and under that zoning 300-foot exception  
11 to the licensing application wouldn't have been applicable.

12 So, if we could go to the second -- to the next slide,  
13 which would be 3 on this presentation.

14 Next, so the eastern alley and the zoning line. These  
15 are not digitized maps. These are the actual maps, and they were  
16 generated by the Office of Zoning to explain where the actual  
17 property line is with respect to the eastern alley. And as we  
18 say here, the eastern alley has historically been the starting  
19 point for the measurement of the MU-4 zoning line for the lot.

20 According to the Office of Zoning's presentation, the  
21 distance from the eastern alley to the MU-4 zoning line is 78  
22 feet. Not approximately 78 feet, which is the phrase that's used  
23 in the presentation, but exactly 78 feet. And you can see that  
24 that was the measurement in -- going back as far as 1958, 1966,  
25 1975, 1984, 1996, and the last one in 2003. And these numbers

1 also come from the Office of Zoning's presentation.

2                   And in the Office of Zoning's presentation, and this  
3 is the first part of the issue, they identify 77.24 feet as the  
4 exact distance from the eastern alley to the property line for  
5 the school and for its adjoining property, which means -- in  
6 which the Office of Zoning acknowledges there is and has always  
7 been at least an encroachment, if you will. Their words. But  
8 it -- actually what it means is there has been at least a sliver  
9 of MU-4 zoning or commercial zoning or industrial zoning existent  
10 on the school property really, it's going to turn out, since the  
11 beginning of and prior to zoning.

12                   So they use the word "encroach", we're talking about,  
13 at least, a half a foot, at the best, from our point of view,  
14 ends up being 6 feet, but for purposes, the Office of Zoning  
15 acknowledges that under the actual hand-drawn maps, not any  
16 digitized maps, that there was an MU-4 sliver existing on the  
17 school's property going back, at least, to the 1958 map, and as  
18 we're going to show, historically, before that.

19                   So, if you could go to the next slide, please.

20                   All right. So, we're now going back to 1921, which was  
21 before the first zoning map and so what we have is a history of  
22 zoning on the lot from the Board of Trade, which was probably  
23 and arguably one of the first authoritative zoning map, if not  
24 official zoning map. And it marked as commercial, as you can  
25 see from this 1921 map, the lot and square that we're talking

1 about. And you can see on the left in the actual map, colored  
2 map, and black and white on the right.

3 So, if you could go to the next slide, please.

4 Commissioner Mathews, who I think could fairly be  
5 described as my client's antagonist in this proceeding, blogs  
6 frequently on the subject, and he at one point in his blog, which  
7 we identified below, describes the same history, noting that the  
8 black-colored blocks are the commercial blocks, the light-colored  
9 blocks are residential. And he notes that M and Wisconsin were  
10 historically zoned commercial, as he says, from the start of  
11 system with what the previous map showed.

12 And this map allowed for a substantial amount of  
13 commercial into the residential neighborhood, including P Street,  
14 west of Wisconsin, which he says was historically zoned almost  
15 entirely commercial. And he says it wasn't a coincidence it was  
16 zoned commercial because it was commercial, and as you all know,  
17 the initiation of the zoning map and the zoning process was  
18 originally designed not to change the status of the neighborhoods  
19 in Georgetown, but to memorialize them in the creation of the  
20 zoning map.

21 If you could go on to the next slide, please.

22 1924, the zoning map. You can see the key on the left  
23 and you can see the map on the right. And in 1924, generated  
24 the zoning map -- excuse me, the black in the first commercial  
25 district, white indicating residential. So, the lot in 1924 was

1 both. But the date of -- by the date of this map, all of the  
2 three schools that ended up on the property had been constructed.  
3 And we can't find the existence of residential properties ever  
4 on this lot, going back to the creation of the zoning map in the  
5 1920s.

6                   Excuse me. If you go to the next -- all right.

7                   So, this is a 1928 Baist, B-A-I-S-T real estate atlas  
8 used by zoning at the time and which was the basis for the other  
9 maps we've already seen. There are three colors on this map that  
10 we've highlighted. You can find a lot more of them if you want  
11 to go through all of the individual maps. What this map shows  
12 is the 78-foot measurement between the eastern alley and what  
13 is -- what the Office of Zoning says is the zoning line, which  
14 necessarily -- it spills over into the square and spills the MU-  
15 4 zoning or the commercial zoning onto the school's lot in 1958.

16                   We are showing you this map for other reasons. As you  
17 can see in the yellow and the purple, yellow are the numerous  
18 measurements, when the map wanted to, they -- that it would carry  
19 out the measurement into the nearest hundredth of an inch. We've  
20 identified, I believe, seven -- there're probably dozens more,  
21 as you can see. And in purple, you can see when the map wanted  
22 to -- when the measurement was an exact measurement in feet  
23 without any inches, it did the same thing.

24                   So our point with the 1958 map, which we think is the  
25 key, is that the measurement, the 78-foot measurement, which was

1 the Office of Zoning's measurement last year when it sent out the  
2 email, is an exact measurement, not an approximate measurement,  
3 and since the Office of Zoning calculates that the property line,  
4 which as everyone can see, the Office of Zoning cannot move, is  
5 then 78 feet from the eastern alley, that once again establishes  
6 historically now, from the 1920s to 1958, that there was something  
7 other than residential zoning on the school's lot forever.

8           If you could go back to the -- if you go to the next  
9 slide, please.

10           All right. As a consequence of the Office of Zoning's  
11 public presentation of the zoning maps -- this was a decision  
12 that was reached with respect to 1438 Wisconsin. We've laid out  
13 the text for you. I won't repeat it here. But the bottom line  
14 is that in 2021, ABCA made a decision different from the decision  
15 made with respect to my client, now the basis of its  
16 investigator's research into the property lines, including the  
17 MU-4 zoning line. If this decision were applied to my client's  
18 decision at the ABCA, which I get is not within your purview,  
19 our license application would have been approved, and of course,  
20 you would never be hearing from us. But that's not what happened,  
21 as you'll see when we go on to the next slide.

22           So, if you go to the next slide.

23           All right. This is just for a sort of broader  
24 background. So, if you go to the next page after the heading,  
25 this will give you an idea that split zoning is not uncommon in

1 this area. And so, if you go -- if we go down the individual  
2 properties, you'll see that split zoning in various ways existed  
3 all along Wisconsin and all the way down below where our original  
4 map shows. So, the first property, 1415 Wisconsin, you can see  
5 split zoning there.

6 You go to the next slide.

7 1403 Wisconsin, you can see split zoning there.

8 Go to the next slide.

9 1310 Wisconsin. Go to -- okay, can we go to the next  
10 slide? There we go. 1310 Wisconsin. Split zoning there.

11 Go to the next slide.

12 3233 N Street. Split zoning there.

13 Go to the next slide.

14 3224 N Street. The zoning there is -- the -- when you  
15 look at the third -- and I get that those aren't slivers,  
16 necessarily, in every case. I just want you to see that, along  
17 this zoning line, split zoning was more common than uncommon.

18 If you look at the 3233 N Street slide, which is one  
19 slide before, which is also a school, you'll note the zoning  
20 district is the S -- MU-4 and RF3-GT, just like ours was at the  
21 time of our application. It's the Barber-Caperton School, B-A-  
22 R-B-E-R C-A-P-E-R-T-O-N House. In theory, their split zoning  
23 disappears if the same decision is applied up and down the  
24 allegedly digitized error that was the basis for the Office of  
25 Zoning's conclusion.

1           Here, I need that back. Thank you.

2           Now, if you turn to the next slide, which should have  
3 as its caption, "Other D.C. Agency's Designations of Lot 854",  
4 you can see that the 3219 O Street, which is one of the two  
5 addresses for the school, the other being 3246 P Street, then you  
6 can see a non-residential commercial zoning there.

7           If you go to the next slide.

8           This discusses the OZ investigation in particular. So  
9 let me talk about this a little. You can see that the OZ  
10 conceded -- in its investigation, OZ did find that the distance  
11 between the property's northeastern lot line and the alley is  
12 approximately 77.42 based on authoritative GIS real property lot  
13 line data provided by the Office of Tax and Revenue and the Office  
14 of the Chief Technology Officer. And all he says is it's his  
15 position is the zoning boundary runs coincident with the  
16 property's -- with the property line.

17           But it can't, and it can't because OZ didn't have the  
18 authority to make the change and it certainly didn't have the  
19 authority to make a six-foot change, as we're going to get to in  
20 a minute. And it had absolutely no authority to change the 78-  
21 foot measurement.

22           So summary of my argument -- I'll get to the  
23 explanation in a minute -- is it may be that there is a regulation  
24 that talks about the authority of the Office of Zoning without  
25 describing the procedures to, if you will, snap together two

1 lines that would be close enough, namely within one foot, that  
2 you could infer that the lines are supposed to be, quote,  
3 "coincident." That may be and we're going to discuss that in a  
4 second. But not where the distance is six feet on the digital  
5 map, and certainly not where there's a measurement of 78 feet.

6 That is to say, it's one thing to look at a map and  
7 look at two lines and say, they're close, it looks like some sort  
8 of IT error. It's another thing to say, the 78-foot measurement  
9 that's existed since 1958 and before is off. It should be 77.42  
10 to match the property line. One, because the director not only  
11 never said that the 78-foot line should be 77.42, but actually  
12 emphasized that the 78-foot measurement was the right  
13 measurement. So, the Office of Zoning's theory that it can now  
14 change the non-digitized 78-foot line into a 77.42 line because  
15 it matches where the undisputed property line is, is unsupported.  
16 And it's not what the director did, all right?

17 So, where they write, "however OZ's position is that  
18 the zoning boundary line is coincident, even if the 78-foot line  
19 measured from the alley encroaches slightly" -- and this was the  
20 presentation -- is an acknowledgement that the hard copy property  
21 line that the director relied on was 78 feet. What it doesn't  
22 say is, what we're really doing now is moving that line from 1958  
23 at 78 feet to 77.42, and our only rationale for doing it is that  
24 it must have been intended to run coincident with the property  
25 line, right? That would be arguable if, in fact, the 78-foot

1 measurement wasn't already on the maps. Its own maps. Its own  
2 pre-digitized hard maps.

3 All right. Go to the next slide, please.

4 Now, the OZ concedes that it's not just a .58 distance  
5 that had to be, if you will, adjusted. OZ acknowledges that by  
6 the time the digitized maps were done, the actual distance was  
7 6.87 feet, right? So -- and that's the digitized map. That's  
8 the map that OZ said we can fix under our regulations because  
9 it's a digital map, it's not the official map, and when -- we  
10 can, when we think there's an error in the digitization process,  
11 we can correct it without going through any process, right? And  
12 they rely on a regulation that we have re-quoted below that says,  
13 "Dimension zone boundaries showing on the zoning map are intended  
14 to coincide generally with lot lines." That's the OZ's position.  
15 When the maps are close enough, we operate under the assumption  
16 they're actually meant to be coincident.

17 And they give the OZ a certain amount of discretion.  
18 "Where a dimensional boundary line coincides within one foot or  
19 less with the lot line of record, the boundary line shall be  
20 construed to be the lot line." Doesn't say six feet. It says  
21 one foot. And the only assumption you draw from this regulation  
22 is the authority that was granted by the city council to the  
23 Office of Zoning was limited to a one-foot adjustment.

24 This six-foot line isn't the 78-foot line that's in the  
25 hard copy maps we showed you earlier. It's the result of the

1 2002 -- when the OZ says it's the 2002 digitization of the maps  
2 and was an error, presumably, is OZ's position -- and then wasn't  
3 caught in the quality control that followed it. And it wasn't  
4 caught in the 2016 creation of the map.

5 So, three times, at least, OZ and its experts  
6 incorporated the sliver, didn't make the change. And only when  
7 the ANC commissioner sends an email off to the Office of Zoning  
8 does anyone look at it and say, we think there's a digitization  
9 error, we're going to fix it. All right. So even under their  
10 own regulations, the one OZ cites, they didn't have the authority  
11 to make the change, the six-foot -- of the six feet. And even  
12 if they could say well, one foot isn't our limitation, we can do  
13 what we have to do to correct our digitized maps without notice  
14 to anyone, they couldn't move it past the 78-foot mark that's  
15 existed since at least 1958 on the hard maps.

16 In other words, there's no way that the 78-foot  
17 measurement that's existed since 1958 -- and was adopted by the  
18 Office of Zoning in its email -- there's no way that it could  
19 have been the result of a digitization error since there was no  
20 such thing as digitization in 1958 and the OZ calculates that the  
21 digitization occurred in 2002.

22 Go to the next slide, please. Oh, sorry, you didn't  
23 hear me. If you could go to the next slide.

24 All right. And this is an example, and I don't know  
25 because there's nothing in the record about how the digitization

1 process worked in 2002, but by way of example, you can see that  
2 most digitization processes or systems have a feature called  
3 snapping, which enables the user of the application to match up,  
4 snap together, two lines which appear to be -- which appear to  
5 be close enough that they might require an adjustment and you  
6 could -- operating on the assumption that they're spaced apart,  
7 that is to say that there's a sliver as a result of a digitization  
8 feature and not as a result of the actual zoning line.

9                   So we offer this just to show that, likely, though  
10 there is nothing in the record -- and there should be, but there  
11 isn't -- but there's nothing in the record about the digitization  
12 process upon which the Office of Zoning relied -- there was  
13 nothing in the record at the time last year when the decision  
14 was made -- that the likelihood that there was an accidental  
15 sliver created in the district of -- in the digitization process  
16 is low. Plus, it's likely that the application that was used  
17 would have caught the error and corrected it automatically  
18 through this snapping process, which didn't happen in 2002.  
19 Didn't happen, as they said, whenever the quality control process  
20 followed it, and didn't happen in 2016 when the new maps were  
21 created.

22                   If you go to the next slide, please? Okay. And this  
23 is what actually happened. These are the decisions that were,  
24 as you can see, very informal, were the result of emails between  
25 the ANC commissioner and the director, and work took place in a

1 matter of between two and three hours, and an hour.

2 And so, what happens here, as you can see, is that the  
3 director emphasizes that the 78-foot -- there is a clear -- it  
4 says here below -- there is a clear 78-foot line from the edge  
5 of the alley ROW, which presumably means right of way, on this  
6 square. This measurement, the director writes, correctly, is  
7 shown on maps up to 2003. And then, referring to the attached  
8 drawing, the pink line in the second screenshot, is a 78-foot  
9 line we made in GIS to simulate where the line should be.

10 So, the director's position, so far as I know  
11 correctly, isn't that the 78-foot measurement was wrong or was  
12 an approximation. The director's position is -- the absolute,  
13 if you will, the Bible -- is that the distance from the eastern  
14 alley, which is our starting point, to the beginning of the --  
15 to the end of the MU4 zoning, if you will, is 78 feet. And since  
16 the property line is 77.42, even at the time of the director's  
17 decision, the 78-foot measurement was, from the Office of  
18 Zoning's perspective, sacrosanct.

19 So, if the property line, as the OC concedes in its  
20 application, is 77.42, even at the time that the director sent  
21 off this email in November of 2023, which triggered the ABCA  
22 decision-making process, the 78-foot line was still the basis for  
23 her decision, right?

24 And since there's no dispute that this led to at least  
25 a half a foot of encroachment of MU4 zoning in the school and

1 therefore split zoning -- and let me just emphasize, there's  
2 nothing anywhere I could find that says that in order to take  
3 advantage of split zoning, you have to have a certain minimum  
4 percentage of your lot with each zone. It doesn't say that.

5 So, the fact that any of the school's property was  
6 zoned MU4 at the time would have led to a decision by the Office  
7 of Zoning that at least some portion of the school was MU4, and --  
8 as I said, though, this is an ABCA issue, not a BZA issue --  
9 would have presumably resulted in the grant of the license  
10 application.

11 All right. So, my point here is that the Office of  
12 Zoning's position last year wasn't that the 78-foot line had to  
13 be moved to match up to the property line in conformity with the  
14 one-foot regulation. It was that the 78-foot property line was  
15 the correct measurement from the eastern alley.

16 And if that's the case, right? If that's the case,  
17 that the 78-foot line is in fact the distance from the eastern  
18 alley to the end of the MU4 zoning, and if in fact it's the case,  
19 as OZ says in its presentation, that the property line is at  
20 77.42, then the director's decision at the time in November had  
21 to be that there was still a sliver of MU4 zoning.

22 And while the director may have been of the view that  
23 she could move the digital line, which was now six feet further  
24 in the school, right, is neither here nor there anymore, because  
25 the 78-foot line stays where it stays. So, the director may or

1 may not have had authority to move the digitized line from 6.8 --  
2 whatever it was -- feet back, closer to the back -- closer to the  
3 eastern alley. But it could not move it beyond the 78-foot  
4 measurement, which the OZ concedes is where the zoning line is  
5 anyway. So, there would still have been a sliver of MU4 zoning  
6 based on the director's thought process on the maps, right?

7           If you turn to the -- I'm going to move off of that.  
8 But if you look at the top, you can see that the inquiry was  
9 triggered by Commissioner Mathews.

10           All right. So, on Commissioner Mathews' blog, he talks  
11 about the process. And he points out that he's familiar with  
12 this particular Applicant, and he had another issue with the  
13 Applicant on another property. He says, unfortunately, zoning  
14 map for the school's lot was, in his words, screwed up. Pardon  
15 my language. The school lot was mistakenly identified as being  
16 partially commercial, and schools on lots zoned commercial are  
17 not counted for these purposes, meaning the 300-foot exclusion  
18 for applications.

19           And then he says the reason for the map error was due  
20 to a glitch when the maps were digitized, and he has a little  
21 drawing next to it, showing that it -- what appears to be the  
22 two digital lines from our second slide. But as I pointed out  
23 before, the 78-foot line existed in 1958, which by my count is  
24 44 years before the digitization process began.

25           So, you can change the digital map all you want, and

1 say I have the authority to correct the digital map no matter  
2 how bad it is, and I can do it without notice, or without  
3 involving the participants. But what you can't change is the  
4 official atlas, and what the director said she wasn't changing  
5 was -- in fact, she was relying on -- it was the 78-foot distance,  
6 right, between the eastern alley and the zoning line.

7 All right. So, could you -- and if you could go on to  
8 the next slide, please? All right.

9 This is just the rest of his blog, and as you can see,  
10 he's explaining what the process was. And he says, unfortunately,  
11 the attorneys at ABCA shrugged their shoulders and said there was  
12 nothing they could do. And this is not pertinent to your  
13 decision, but it's background.

14 So, he says, so I got on the horn with the Office of  
15 Zoning and was soon speaking with the director herself, Sara  
16 Bardin. She was immensely helpful and immediately recognized the  
17 issue. She had her team look into it, and within an hour the  
18 map was fixed, meaning the digital map was fixed, which she says  
19 later, as you'll see in a second.

20 My point here is these are not decisions -- moving the  
21 78-foot line -- are not decisions that should or could be made  
22 under either the APA or under our own zoning statutes, in an hour  
23 on the basis of a telephone call. And they certainly shouldn't  
24 be made without an opportunity for the various property owners  
25 and others who would be affected by the decision to at least

1 chime in, have an opportunity to comment before this decision was  
2 made.

3 And let me add something else, that we've noted our  
4 appeal, because we believe this falls under the decision category  
5 that is subject to an appeal. But I'm not sure that the decision  
6 that Office of Zoning was making was being treated as the kind  
7 of formal decision that it ended up being interpreted as by ABCA.

8 It was an email. It was an email that was not sent to  
9 us, was not sent to the school, and in particular wasn't sent to  
10 ABCA or its counsel. It was a response to Commissioner Mathews.  
11 And perhaps if there were a broader dissemination by Commissioner  
12 Mathews of his inquiry, there might have been an opportunity for  
13 all of this information to have been presented with all parties  
14 who had an interest taking -- providing information to the office  
15 that might have led to a different result.

16 And I say that because in a meeting with Mr. Freed, the  
17 Office of Zoning did say if you go out and remeasure, I'm  
18 certainly prepared to rethink what our decision was. And we have  
19 that in a later slide, which we'll get to. But I don't want to  
20 leave this one for a second.

21 So, we now have the new information, and new  
22 information comes from the Office of Zoning itself, that the  
23 measure of the property line wasn't 78 feet; the measure of the  
24 property line was 77.42. And if the 78-foot measurement that the  
25 commissioner relied on is the correct measurement -- and it has

1 to be, because that's the measurement on all of the maps, all of  
2 them by zoning, zone presentation -- then there was no -- you  
3 certainly can't move the property line from 77.42 to 78. And  
4 there was no basis nor intent to at the time in November last  
5 year, to change the 78-foot measurement to 78.42(sic) -- or some  
6 number less than 78.42.

7 So go to the next slide, please. This is just so you  
8 can see the one-foot rule.

9 Our argument is the fact that authority was given to  
10 change a one-foot measurement to presumptively match the property  
11 line is inapplicable for two reasons. One, OZ acknowledges that  
12 the digital line at the time was 6.8 feet, so when the digital  
13 zoning line was changed, it was changed by more than one foot by  
14 OZ's own calculations.

15 Second thing is this rule cannot mean to apply to those  
16 circumstances where the actual measurements are included in the  
17 map. When the real numbers that have existed for 44 years, this  
18 time -- 78 feet, not 78.4 or 77.4, but exactly 78 feet -- are  
19 already on the map, the purpose of this particular regulation  
20 becomes inapplicable, because you're not just moving digital  
21 lines to match up to other digital lines on the theory that the  
22 digital application program was flawed, or the application of the  
23 digital application program was flawed. You're now changing the  
24 actual number on the 1958 map from 78 to 77.42. And it's been  
25 pointed out in the Baist map earlier, when the map wanted to

1 carry out the measurements beyond the feet into inches, it did  
2 it to the hundredth of an inch when it wanted to, but it didn't  
3 here, or in any of them.

4 So, if you could go to the next slide? All right.

5 So, this is the disclaimer that's included on the web  
6 page. And all I'll say about this is you cannot create rights  
7 on your web page. The Office of Zoning cannot, on its web page,  
8 say we're going to give ourselves more authority than the City  
9 council gave us to move the digital maps, and the City council  
10 only gave them the authority to move it by one foot. And by  
11 their own acknowledgment, they moved it by 6.8 feet.

12 Let me be clear. This disclaimer is not a right  
13 creation vehicle. What it is -- and I fairly -- is notice to  
14 the people who might want access and might use the publicly  
15 disseminated Office of Zoning maps, its notice to them that there  
16 may be digitized errors on the maps which are subject to change.  
17 It is not a right creation vehicle. What it says to people using  
18 the maps are, be cautious.

19 Now, you may or may not know that the ABCA regulations  
20 require -- resort to the official atlas, and not to the digitized  
21 maps. Tracking down the official atlases is sometimes a harder  
22 task than you might think, but for our purposes, the 78-foot  
23 measurement is the hard paper, long-term existing measurement  
24 here. And there's nothing in this zoning disclaimer that suggests  
25 that the official atlas can be changed, as you might say, at the

1 discretion of the Office of Zoning, without going through the  
2 process that you see we describe in the column on the right.

3 So could you go to the -- there is, as you all know, a  
4 formal zoning amendment process, which requires notice, and  
5 opportunity to be heard, and hearings. There is an Administrative  
6 Procedures Act process for both contested cases and rulemaking.  
7 I don't think anyone's contested that either of these processes  
8 were followed.

9 But let me point out what's happened here. What's  
10 happened here is -- set aside what's happened to my client, who  
11 relied on the zoning map, spent a fortune to try and get his  
12 application in before ABCA, only to be told after the fact that  
13 the zoning had been changed, or adjusted, or recalculated, or  
14 recalibrated, or whatever measure we want to use. What happens  
15 here is the school has lost its MU4 zoning. We have no use for  
16 it, might have a use for it, might not have a use for it now,  
17 might have a use for it 10 years from now.

18 To this day, so far as I know, the school is yet to  
19 participate or even been apprised of what happened. So to the  
20 extent that we're talking about process, by which I mean due  
21 process, if we were to analyze it from 10,000 feet, we would look  
22 at it and say, well, the process that allows zoning to be stripped  
23 away from a property owner, whether it's the District in this  
24 case, or the school, or someone else, can't be due process if  
25 the parties affected by it never have an opportunity to

1 participate in the change before it happens, right?

2                   So, if you could go to the next one? All right. And  
3 this is what I was talking about before, where the Office of  
4 Zoning, I think, correctly said, look, if the numbers turn out  
5 to be different, let us know and we'll reconsider. Well, the  
6 numbers have turned out to be different, because the assumption  
7 of the Office of Zoning, I think, was that the 78-foot line is  
8 where the property lines were. Coincident, if you will -- not  
9 coincident, coincident with each other -- when their own  
10 measurements now say 77.42, right?

11                  So let me make a sort of a broader appeal here, is to  
12 me, the Office of Zoning ought to recalculate with all the  
13 information given. You know, clarify its decision, look at the  
14 new information that's been provided by the Office of Zoning and  
15 by the resources to which it looked, and so that we have, if  
16 nothing else, a cleaner record, right?

17                  I mean, I can say, let me go to the Court of Appeals,  
18 because I think this is a bad record, and I'm going to win. But  
19 I mean, for everyone's -- for efficiency purposes, it seems to  
20 me that if the office could look at this again, and provide a  
21 decision that appears to take into account information that was  
22 not available to it in the one hour or two hour order to respond  
23 to Commissioner Matthew's inquiry, and say this on a broader  
24 issue, that this has nothing to do with you except for background.

25                  When ABCA issued its denial, it made no mention of the

1 exchange between Commissioner Mathews and the Office of Zoning.  
2 None. The only way we knew about it is that I requested a copy  
3 of the file, because I was entitled to request a copy to file  
4 under the regulations, and that's where we saw the emails. So,  
5 to me, that's a problem, but it's not your problem.

6 Similarly with the ANC, right? You've denied my  
7 motion, and I'm not going to belabor the point, but it was clear  
8 that the ANC made its decision before you ever heard any public  
9 comments at all, which I think is in violation of the  
10 Constitution, which was the basis for my motion. And we've filed  
11 yesterday, and asked for leave to file it just to complete the  
12 record, my September 10 letter, 2024 to the ANC, laying out what  
13 I understood happened.

14 What I know happened was that the ANC commissioners --  
15 again, not your problem, except to the extent you want to give  
16 the ANC's opinion weight -- had made up their -- made up their  
17 mind long before, or at least before they conducted the public  
18 meeting, and therefore, from my view, violated the statute which  
19 requires them to take into account the views of the citizens who  
20 take the trouble after a hard day's work to show up for these  
21 public meetings.

22 And third, of course, is that the decision that was  
23 made, which I believe was an informal exchange of emails without  
24 sufficient time to do a complete review, was made without  
25 providing the interested parties an opportunity to -- either at

1 the ABCA level or at the OZ level -- an opportunity to sort of  
2 figure out what the facts are.

3 And I know you can say, well, you know, look, what are  
4 we talking about, a half a foot? It doesn't make any difference,  
5 right? It doesn't make any difference. And you all know that  
6 there are times when a half a foot on a property or a zoning line  
7 means nothing. Absolutely nothing.

8 And there are other times when that half a foot means  
9 the building has to be torn down, or a fence has to be moved, or  
10 a pipe has to be -- in this case, that sliver is everything.  
11 Because that sliver, consistent with the history of zoning on  
12 this lot, which was commercial and was never actual residential  
13 use, was the history on which my client relied to spend a lot of  
14 money on lawyers and other things to file a simple application  
15 for a license, right?

16 So, there are two issues. And you had mentioned last  
17 time that the principal issue is what's the actual zoning, and  
18 the sub issue of maybe what was it, and when is the applicable  
19 time period, when is the pertinent time period, is the relevant  
20 zoning of the day of application, is the relevant zoning at the  
21 day of the zoning map, is the relevant zoning the moment after  
22 the digital map was moved? All issues we addressed elsewhere,  
23 and you don't need to hear about it now.

24 But there is a procedural issue that is more than a  
25 hyper-technical issue, which is you don't really have the

1 authority to move a digital zoning line, which isn't the  
2 controlling line anyway, according to the Office of Zoning, by  
3 more than a foot. But you moved it seven feet. And when you  
4 take the position in your decision that the 78-foot measurement  
5 is the right measurement, and when it's clear that you can't move  
6 the property line measurement at all, right, then you can't say  
7 before BZA, well, you know, the 78-foot should be moved to match  
8 77.42. Because that's not what the Office of Zoning did last  
9 November.

10 All right. So, do you have any questions? I'm happy  
11 to answer them. I think I've summarized, and I appreciate the  
12 guidance from our initial exchange last time. But my view, Mr.  
13 Chairman, is what happened here was just wrong, and BZA can fix  
14 it. And we all have trust in the Office of Zoning that if it  
15 has all the facts before it, it'll do its best to reach the right  
16 decision. But it didn't this time. And so, we're asking the  
17 board to conclude that the BZA neither had the authority to do  
18 it, the basis for moving the zoning line to match the property  
19 line, and therefore eliminate the MU4 zoning.

20 And let me say, the consequences of the decision do  
21 reach beyond my client, because you can see, if you trace that  
22 digital zoning line, and you see the sliver from the school, the  
23 same slivers exist everywhere. And if the Office of Zoning has  
24 the right, it presumably has the duty to make the corrections  
25 everywhere else, too. If it really believes that these zoning

1 lines were the result of digitization errors in 2002 -- although  
2 which, as you know, as I said over and over again, doesn't affect  
3 the 1958 map -- then this ruling is going to have repercussions  
4 or should have repercussions well beyond my client.

5 So, thank you for indulging me. If there are any  
6 questions, if I've been unclear, which I'm sure is the case, I'd  
7 be happy to answer any questions you might have.

8 I would ask that my September 10 letter be added to the  
9 record, and the last thing I would add in this is a side issue  
10 with respect to ANC is, as you know, ANC issues resolutions and  
11 provides them to BZA all the time. And on September 5, 2024, in  
12 a matter you're all familiar with, when it issued its resolution  
13 by an 8-0 vote in BZA Number 21157, referring to the BZA for the  
14 special exception -- blah blah, blah blah, sorry -- the ANC  
15 acknowledged it has no zoning expertise at all. And I think  
16 that's a fair statement.

17 So, to the extent that the board intends to rely on the  
18 ANC's sort of zoning opinion in this matter, I would suggest that  
19 the ANC has consistently taken the position that it lacks zoning  
20 expertise, and properly defers to BZA. And therefore, BZA should  
21 look straight to the position of Office of Zoning.

22 If there are any questions, happy to answer them.

23 CHAIRPERSON HILL: Okay. Thank you, Mr. Musolino.  
24 Thank you for your presentation. Let's see. I'm going to see  
25 first if my fellow board members have any questions at this point.

1      Or from me, I think I'm going to have to hear from the Office of  
2      Zoning also before I'm able to kind of articulate any questions  
3      I might have.

4              However, do my fellow board members have any questions  
5      of Mr. Musolino at this time?    Okay.    Oh, sure.    Go ahead,  
6      Commissioner Stidman.

7              ZC COMMISSIONER STIDMAN:    So, I just had one question,  
8      and I think it's slide 7, when you're referring to the 1958 Baist  
9      real estate maps, where you're showing the red arrow that I  
10     believe is pointing to the zoning line on the base map that is  
11     in red.    That seems to be coincident with the property line.    Is  
12     that what you are stating here?

13              MR. MUSOLINO:    Well, no.    If you look at where the red  
14     circle is, that's the 78-foot measurement that we're talking  
15     about.

16              ZC COMMISSIONER STIDMAN:    Correct.    I understand the  
17     78 --

18              MR. MUSOLINO:    All right.

19              ZC COMMISSIONER STIDMAN:    -- and I see the arrows that  
20     point to the property line on either side.    So, I'm asking, the  
21     red arrow that you have pointing to the property line that looks  
22     coincident with the red line, that I believe is the zoning line?

23              MR. MUSOLINO:    Right.    So, we regard that as not  
24     coincident.    But you can see that's --

25              ZC COMMISSIONER STIDMAN:    How are -- how are you

1 | regarding that, then?

2 |                   MR. MUSOLINO: Just because the lines are close, but  
3 | we don't believe they're coincident.

4 |                   ZC COMMISSIONER STIDMAN: Well, how close do you think  
5 | the lines are?

6 |                   MR. MUSOLINO: Well, we're talking about six inches.  
7 | We're talking about the difference between 77.42 and 78.

8 |                   ZC COMMISSIONER STIDMAN: Okay. So not talking about  
9 | distance. I'm asking you about the coincident of the property  
10 | line. If 1958 was the map that was used for zoning, taking out  
11 | all the error that is -- can occur with digitization, this 1958  
12 | map looks as though they are coincident, as much as a line that's  
13 | hand drawn over top of a map can be coincident.

14 |                   MR. MUSOLINO: Or not coincident, since the 78-foot  
15 | measurement is an absolute measurement. You see, that's my whole  
16 | point. My whole point is you have to change that 78-foot number  
17 | in order to make them coincident. So, unless you say that --  
18 | and the Office of Zoning didn't say the 78-foot measurement was  
19 | wrong. It actually said the 78-foot measurement was right.

20 |                   So if the property line, which you have to accept on  
21 | the basis of the Office of Zoning is 77.42 -- right, that's what  
22 | they say, according to all the information they got from their  
23 | technology office -- then this line may be an approximate line  
24 | that looks like it's close to or on the zoning line, but the  
25 | actual measurement, the 78-foot number, establishes that there's

1 a six-inch disparity. Approximately six inches; a 0.58 of a foot  
2 disparity, right?

3 So, either someone has to say that we are making fact-  
4 finding that since 1958, that 78-foot number was wrong, and what  
5 we actually were doing was rounding up from 77.42 instead of  
6 rounding down to 78. As we point out in this map, when they want  
7 to do digits, when they want to do hundredths of a foot, they do  
8 hundredths of a foot.

9 Then it's in -- then the end result is the BZA has to  
10 say the director was wrong when she concluded that the distance  
11 from the alley to the property line was 78-foot. And what the  
12 director should have but did not do was say that I'm moving the  
13 line from 78 feet -- I'm changing the number 78 to 77.42, right?

14 You can't just -- I think it's fair to say, looking at  
15 the Baist map, that the numbers are more important than the hand-  
16 drawn line, because when they want to, they're drawn to a  
17 hundredth of an inch, as are yellow. And when they don't want  
18 to, they have the exact measurement.

19 So, from the point of view of the process here -- and  
20 I hate to focus on it, I just think that more information might  
21 have led to a different result, and more time might have led to  
22 a different result, and more participation might have led to a  
23 different result. And that's what the director invited my client  
24 to do in the end. Because we're not talking about a formal  
25 decision by the office, we're talking about an email generated

1 within -- according to Mr. Mathews, within an hour of his getting  
2 on the horn.

3                   What I'm saying is that if the end result is what the  
4 Office of Zoning is now proposing that we want to change the  
5 handwritten baseline, to answer your question, to match what it  
6 maybe looks like, the red line here on the map, you have to change  
7 the 78-foot number, which the director did not do.

8                   In fact, she affirmatively did the opposite. This is  
9 not a simple, hyper-technical, oh, we caught you, you made a  
10 mistake. This is, as we point out, what the history of the  
11 property was since 1921, right? So, I --

12                  CHAIRPERSON HILL: Mr. Musolino, give my board member  
13 a minute. Commissioner, did you get your question answered?

14                  ZC COMMISSIONER STIDMAN: Sort of. Not completely. In  
15 your opinion, from your basis in the 1958 map, you believe that  
16 it's split zone? Even in 1958, you believe it was split zoned?

17                  MR. MUSOLINO: Yes. Yes. Just like it had been for --

18                  ZC COMMISSIONER STIDMAN: I think it is by six inches.

19                  MR. MUSOLINO: By six inches, according to the Office  
20 of Zoning's measurement. I didn't have access to what their  
21 Office of Technology said, but I'll accept that number for  
22 purposes of this appeal. But six inches is everything in this  
23 case. And as I said, it's not as if when the 19 --

24                  CHAIRPERSON HILL: Mr. Musolino? Mr. Musolino?

25                  MR. MUSOLINO: Yes?

1 CHAIRPERSON HILL: Give me a second. Let us process a  
2 minute.

3 MR. MUSOLINO: Okay.

4 CHAIRPERSON HILL: So, Commissioner Stidham, is your  
5 question answered, okay?

6 ZC COMMISSIONER STIDMAN: Yeah, for now. Yes, I  
7 believe --

8 CHAIRPERSON HILL: Okay.

9 ZC COMMISSIONER STIDMAN: -- for now it's answered.

10 CHAIRPERSON HILL: Okay. All right. Does anybody have  
11 any other questions of Mr. Musolino? The board? Okay. Okay.  
12 Go ahead, Vice Chair John.

13 VICE CHAIR JOHN: Thank you, Mr. Chairman. I just want  
14 to say I have read into the record, but I have a question about  
15 slide 17 in the presentation. And if you could just explain the  
16 arrow? I'm trying to get to it. Yeah. The 84.29 foot  
17 measurement, what are you trying to show there?

18 MR. MUSOLINO: Let me pull up the slide here.

19 VICE CHAIR JOHN: Yeah. 17.

20 MR. MUSOLINO: Oh. All right. So, this is from OZ's  
21 position. And so, it's the difference between changing the  
22 digital map and changing what would be referred to at ANC as the  
23 atlas, right, which we interpret to mean the actual hard copy  
24 maps. The position of OZ is that the actual digital line that  
25 needed to be corrected wasn't just six inches off, it was 6.87

1 feet off. So, it's just the GAS zoning map prior to the November  
2 2023 correction had a dimension of 84.29, which is more than 6.87  
3 feet more than the 78-foot dimension featured in every zoning map  
4 since 1958. That's OZ's position.

5 VICE CHAIR JOHN: Okay.

6 MR. MUSOLINO: So -- so.

7 VICE CHAIR JOHN: You're -- you're only contesting --  
8 you're only contesting the difference between 77.42 and 78. And  
9 your position is that that small difference created a mixed-use  
10 zone.

11 MR. MUSOLINO: Correct. We're not actually -- we're  
12 not actually contesting those two numbers; we're agreeing with  
13 them. But -- but you're correct, the conclusion is --

14 VICE CHAIR JOHN: The same, yes.

15 MR. MUSOLINO: Yeah.

16 VICE CHAIR JOHN: Your argument is that that sliver  
17 converts -- or has created a mixed-use zone.

18 MR. MUSOLINO: Yeah. Although I would say historically  
19 it was mixed use as we show here, and it just confirmed -- it  
20 confirms the mixed use, yes.

21 VICE CHAIR JOHN: I'm just trying to understand your  
22 argument. So --

23 MR. MUSOLINO: Okay.

24 VICE CHAIR JOHN: Thank you, that's helpful.

25 CHAIRPERSON HILL: Okay, great. All right. So --

1 well, what I'd like to do is -- so I didn't get -- have an  
2 opportunity to introduce the commissioner. I'm sorry, I didn't  
3 realize the commissioner was here.

4 Commissioner, could you introduce yourself for the  
5 record, please, when you have a moment?

6 MR. MAYSAK: Commissioner for 2E-03.

7 CHAIRPERSON HILL: Okay. Commissioner, welcome. All  
8 right. I think let's go ahead and have the presentations from  
9 everybody, and then I'll let everybody ask questions of  
10 everybody, okay. Because I want to hear -- the Office of Zoning  
11 might be able to help me understand this a little bit better as  
12 well. So, I think the Office of Zoning has a presentation,  
13 correct? And Ms. Lovick, you're going to be giving that.

14 MS. LOVICK: Yes, that's correct.

15 CHAIRPERSON HILL: Great. Mr. Young, do you want to  
16 pull up their presentation?

17 MS. LOVICK: I think it's Exhibit 18.

18 (Pause.)

19 MS. LOVICK: Sorry, I didn't realize you were -- had  
20 it pulled up, apologies. Okay.

21 Hello, my name is Hillary Lovick, and I will be  
22 representing the Office of Zoning today, and you're already on  
23 the introduction slide of our presentation. I just want to note  
24 that during this presentation today, I may refer to the Office  
25 of Zoning as OZ at certain points.

1                   The Office of Zoning respectfully requests that the  
2 board deny this appeal. During this presentation, we'll go over  
3 several things, but the main reasons to summarize why the Office  
4 of Zoning's correction of a digitization error on the zoning map  
5 should be upheld are:

6                   One, the Office of Zoning acted within its authority  
7 to maintain the zoning map under Subtitle A, Section 205.1 of the  
8 Zoning Regulations when it corrected the misdrawn zone boundary  
9 line at issue in this case. The Office of Zoning's authority to  
10 maintain the zoning map includes the right to make corrections  
11 to the map whenever there is an error, which is exactly what  
12 happened here. And to be clear, the Office of Zoning's  
13 determination was not a map amendment, and it was not a  
14 determination that the property was not split zoned.

15                  In the testimony today, you will hear how the Office  
16 of Zoning was contacted in November of last year about a  
17 potentially misdrawn zone boundary line, and how OZ made a  
18 determination that the zone boundary line was misdrawn due to  
19 human error when the zoning map was converted from physical paper  
20 maps to digital in around 2002.

21                  And second, you will hear how the Office of Zoning's  
22 correction of the zone boundary line digitization error was  
23 justified because OZ staff investigated the issue by reviewing  
24 the Baist's Atlas map of the property and multiple historical  
25 zoning maps. And they all show that the property's zoned boundary

1 line is approximately 78 feet west of the public alley to the  
2 east of the property and runs coincident with the lot line of  
3 the property, which is also the approximate 78-foot measurement.  
4 However, based on the Appellant's testimony, the Office of Zoning  
5 will concede that the zone boundary line is the 77.42 measurement,  
6 and the property lot line is the 78-foot measurement.

7 We will show you the Baist's Atlas map and the  
8 historical zoning maps in our presentation. And we note language  
9 under Subtitle A, Section 206.3 of the Zoning Regulations, which  
10 states that dimensioned zoned boundaries are intended to coincide  
11 generally with lot lines, and where a dimensional boundary line  
12 coincides within one foot or less with a lot line of a lot of  
13 record, May 12th, 1958, that boundary line shall be construed to  
14 be the lot line at that location.

15 I note that this language has nothing to do with the  
16 Office of Zoning's specific authority to maintain the zoning map,  
17 which included the correction of the digitization error that is  
18 at issue in this case. And before we get into our presentation,  
19 I would like to note that OZ acknowledges the equitable remedy  
20 arguments invoked by the Applicant, and -- I'm sorry, the  
21 Appellant -- and arguments of the Appellant about how the  
22 Alcohol, Beverage and Cannabis Administration improperly denied  
23 it a license.

24 However, these arguments are beyond the Board's  
25 purview, as its authority is limited under Subtitle A, Section

1 206.7 of the Zoning Regulations to determining the exact location  
2 of a disputed zoning boundary line. And for this reason, OZ has  
3 limited its presentation to the zoning boundary line in dispute.

4 Now, I'd now like to introduce Sarah Bardin, who is the  
5 director of the Office of Zoning, and she already introduced  
6 herself previously. She will be providing testimony as we go  
7 through the presentation.

8 So, Ms. Bardin, will you please just introduce yourself  
9 again and can we please move to the next slide, which is the  
10 issue?

11 MS. BARDIN: And I am the director of the Office of  
12 Zoning.

13 MS. LOVICK: Good morning, Director Bardin.

14 MS. BARDIN: Good morning.

15 MS. LOVICK: Would you please tell us what happened on  
16 November 9th, 2023, after you received an email from ANC 2E  
17 Commissioner Mathews?

18 MS. BARDIN: Yes. So, on November 9th, I received an  
19 email from Commissioner Mathews about a potential issue on the  
20 zoning map. And so, I asked him to call me so that we could  
21 discuss it further.

22 MS. LOVICK: And when you spoke with him on the phone,  
23 what was the nature of the issue on the zoning map that he pointed  
24 out to you?

25 MS. BARDIN: He explained that on lot 854, there was a

1 line that was cutting through the lot on our map and asked if  
2 the mapping was correct. I told him I would look into it and  
3 get back to him.

4 MS. LOVICK: Can we please move to the next slide, the  
5 determination.

6 So, after you spoke with Commissioner Mathews, what did  
7 you ask your staff to do?

8 MS. BARDIN: I asked staff to go and to research this  
9 issue as I would any other time with a request like that.

10 MS. LOVICK: And what were your conclusions about what  
11 happened to the zoning boundary line in question?

12 MS. BARDIN: So, the staff showed me copies of the  
13 historical maps and explained how they came to the conclusion  
14 that it was a mapping error. I directed them to go ahead and  
15 fix the map.

16 So, in this slide, you see that the red line is previous  
17 to November 9th and the blue line shows how we corrected it.

18 MS. LOVICK: Can we please move to the next slide,  
19 background.

20 So, can you tell us what caused the zoning boundary  
21 line to be misdrawn on the zoning map?

22 MS. BARDIN: Sure. So, in approximately 2002, we began  
23 the process of digitizing our paper maps. And this process  
24 involves scanning the paper maps and then stretching them out  
25 over the DC vector property map. This process involved

1 technicians trying to ensure that every line lined up properly.  
2 And even though we conducted some quality control exercises, we  
3 did not pick up everything. And so, in this case, it's a -- it's  
4 human error. 3-6

5 MS. LOVICK: And has your office encountered  
6 digitization errors like this one before?

7 MS. BARDIN: Yes. In the beginning there were quite a  
8 few, but in recent times they're few and far between.

9 MS. LOVICK: Could we please move to the next slide,  
10 disclaimer.

11 So, given that errors did happen during the -- the  
12 process of the conversion from physical paper to digital, what  
13 does the zoning map say about the accuracy of the zoning boundary  
14 lines that are shown on the map?

15 MS. BARDIN: So, we have a disclaimer on the zoning map  
16 that states that we are committed to providing accurate  
17 information, but information should be considered approximate and  
18 that we reserve the right to make technical corrections without  
19 prior notice.

20 MS. LOVICK: Could we please move to the next slide,  
21 the investigation.

22 So, after you resolved the issue with the zoning map  
23 that was brought up by ANC Commissioner Mathews, did you then  
24 meet with the Appellant's representative, Mr. Sanjeev Preet?

25 MS. BARDIN: Yes. Mr. Preet requested a meeting on

1       January 9th to talk about the change that we had made on the map.

2           MS. LOVICK: And at that meeting, what did Mr. Preet  
3 claim about the zoning boundary line that your office had  
4 corrected?

5           MS. BARDIN: So, during that meeting, Mr. Preet told  
6 us about his concerns and how the change we had made was affecting  
7 a case he had before the Alcoholic Beverage and Cannabis  
8 Administration. And we explained to him how we came to the  
9 determination and that our processes are separate from ABCA, and  
10 that when we find an error on the map, we're obligated to fix  
11 it.

12          He then asked us if we could -- if he could provide  
13 evidence to refute our determination that it was a mapping error,  
14 would I consider it? And so, I told him that if the information  
15 came from an official source, I may consider it.

16          MS. LOVICK: And was the evidence that he presented  
17 compelling enough for you to consider your -- to reconsider your  
18 determination about the location of the zoning boundary line?

19          MS. BARDIN: No, it was not.

20          MS. LOVICK: And what would have been compelling  
21 evidence?

22          MS. BARDIN: A good example of compelling evidence  
23 might have been a map amendment order showing that there was a  
24 split zone change.

25          MS. LOVICK: Can we please move to the next slide,

1 Baist's Atlas.

2 So, Director Bardin, could you tell us which map is  
3 shown on this slide.

4 MS. BARDIN: This is the Baist's Atlas.

5 MS. LOVICK: And what is the Baist's Atlas?

6 MS. BARDIN: The Baist's Atlas is a series of historical  
7 real estate surveys that show property lines, buildings, and  
8 other important real estate information with a high level of  
9 detail. These surveys show recorded record lots created by the  
10 original subdivisions of the District, as well as tax lots,  
11 parcels, and federal reservations.

12 Before digital maps, zoning staff used these surveys  
13 to maintain zoning boundaries at the lot level. Because of the  
14 historical information on the atlas, it is source material for  
15 the modern GIS database that we now maintain.

16 MS. LOVICK: And in the screenshot on this slide, what  
17 does the number 78 on the upper right-hand corner signify?

18 MS. BARDIN: 78 is the distance between the public  
19 alley and the zoning -- and the lot line and the zoning line.

20 MS. LOVICK: And in the screenshot, how is the zoning  
21 boundary line represented on the Baist's Atlas?

22 MS. BARDIN: It is a really faint red line that you can  
23 see. There's an arrow pointing to it that runs coincident with  
24 the lot line.

25 MS. LOVICK: And where is the zoning boundary line

1 drawn in relation to the lot line?

2 MS. BARDIN: They're coincident.

3 MS. LOVICK: Can we please move to the next slide,  
4 zoning maps 1958 to 2003.

5 So, besides the Baist's Atlas, what other historic  
6 zoning maps did your staff consult in its investigation of this  
7 issue?

8 MS. BARDIN: We consulted the '58 map, the '66 map, the  
9 '74 map, the '84 map, the 1996 map, and the 2003 map.

10 MS. LOVICK: And what did all of these other zoning  
11 maps show regarding the location of the zoning boundary line?

12 MS. BARDIN: That it was coincident with the property  
13 line at that 78-foot dimension.

14 MS. LOVICK: Can we please move to the next slide, GIS  
15 dimensions?

16 So how far away way from the alley was the zoning  
17 boundary line before it was corrected?

18 MS. BARDIN: Approximately 84.3 feet.

19 MS. LOVICK: And approximately how far away is it now  
20 since it has been corrected?

21 MS. BARDIN: Approximately 77.4 feet.

22 MS. LOVICK: And what is the reason for the slight  
23 variation between the 77.42-foot measurement and the 78-foot  
24 measurement that's shown on the older zoning maps?

25 MS. BARDIN: So, it's the information that's in the

1      GIS, and it's based on data from the Office of the Chief  
2      Technology Officer and the Office of Tax and Revenue. And it's  
3      the most accurate and authoritative data on property lines. So,  
4      this data is more robust than the paper maps, the zoning line is  
5      supposed to be coincident with the lot line, and the 77.42  
6      measurement is based on that better data.

7                    MS. LOVICK: And how do you account for the approximate  
8      seven-inch differential? I guess it's exactly 6.3 inches, it's  
9      a 6.3-inch differential.

10                  MS. BARDIN: Because it's de minimis. Pursuant to  
11     Subtitle A, 206.3, the intent is to generally follow lot lines  
12     prior -- I'm sorry, the intent is generally to follow the lot  
13     lines and prior to us fixing it, it was off by about seven feet.  
14     And now approximately it's seven inches.

15                  I'm not determining the zoning. I'm fixing the zoning  
16     line to match the lot line, as it shows in all of the previous  
17     historical maps, and we would not be here today if not for the  
18     digitization error, because all of the previous maps clearly show  
19     the zoning line is coincident with that lot line.

20                  MS. LOVICK: Could we please move to the next slide,  
21     map Amendment Certificate of Occupancy.

22                  So, in your further research into this matter, what did  
23     your office find regarding the school property's zoning as  
24     indicated on its Certificate of Occupancy?

25                  MS. BARDIN: Yes. The Certificate of Occupancy that

1 we obtained by the Department of Buildings shows a single zone,  
2 which is R-20, which is now R-3/GT since the reorganization and  
3 renaming of certain zones in 2023.

4 MS. LOVICK: And is there any evidence to support the  
5 argument that the property was ever split zoned?

6 MS. BARDIN: There is no evidence at all.

7 MS. LOVICK: And can we please move to the next slide,  
8 which shows all of the content of Subtitle A, Section 206.

9 Is it -- can I go ahead and do my closing statement  
10 now, or do I wait to do that until after the cross-examination  
11 occurs? I'm not sure.

12 CHAIRPERSON HILL: Um --

13 MS. LOVICK: I'll just go ahead and --

14 CHAIRPERSON HILL: You can go ahead and give it now.

15 MS. LOVICK: Okay. I'll just do it now. Okay.

16 So, I mean, in closing to this presentation, I'd like  
17 to reiterate that the Office of Zoning's determination to correct  
18 the zone boundary line was within its authority under the zoning  
19 regulations. And the corrected zone boundary line runs  
20 coincident with the property lot line, and they are within one  
21 foot, both at approximately 78 feet, which is also consistent  
22 with the zoning regulations.

23 Based on the facts and evidence that have been  
24 presented today, the Office of Zoning believes that the board can  
25 conclude that the correction OZ made to the zone boundary line

1 is justified because of the language in the zoning regulations,  
2 specifically, Subtitle A, Section 206.3, which is included on  
3 this slide, and the results of OZ's investigation of this issue  
4 that were presented to you today and confirm that OZ's correction  
5 is supported by the Baist's Atlas map of the property and  
6 historical zoning maps.

7                   And to be clear, the Appellant comments about  
8 digitization errors are not accurate. The error in question was  
9 not a sliver. There was no typology error; the zoning polygons  
10 had no overlap or gaps. The conversion from physical paper maps  
11 to digital is manual, and it relies on a user to accurately  
12 position the scanned physical paper maps in geographic space and  
13 create polygons accurate to that positioning. So, the  
14 positioning of the physical paper maps was not done correctly,  
15 and that resulted in an error. Digital cannot snap to physical  
16 paper maps.

17                   For all of these reasons, OZ respectfully request that  
18 the board deny this appeal and uphold its determination to correct  
19 a digitization error on the zoning map. And this concludes our  
20 testimony and presentation, and we are available for any  
21 questions that you may have.

22                   CHAIRPERSON HILL: Great. Thank you, Ms. Lovick, thank  
23 you for your presentation. I think this is going to require a  
24 lot of study on my part after the fact, so I'm not going to have  
25 a decision today for sure.

1           But let me go ahead and see if my fellow board members  
2 have any questions of the Office of Zoning. Not yet, okay.

3           You guys can think about it. Sure. Go ahead, Mr.  
4 Chair.

5           COMMISSIONER BLAKE: Ms. Bardin, in looking at this  
6 data, it seems to me, as we look at each of these lots, there  
7 was a difference between -- and I think the Appellant argued that  
8 there was a great deal of specificity in some measurements on the  
9 Atlas, and others were more broad. When they wanted -- he  
10 indicated when they wanted it to be specific, they were, and in  
11 this instance, they were more broad.

12           Could you just explain, if I were to look at the other  
13 lots in this measurement, could there be differences between what  
14 the GIS data comes back with and what the Atlas would have  
15 produced, even if I just look at the lots that preceded this  
16 towards Wisconsin.

17           MS. BARDIN: I would say, you know, without, you know,  
18 being authoritative -- without knowing specifically, yes. I  
19 mean, we didn't measure any of these other lot lines and if we  
20 do it with the GIS, perhaps they would be different. I couldn't  
21 tell you. We just specifically looked at this issue.

22           COMMISSIONER BLAKE: I understand. I guess -- and not  
23 to their office, but to the extent that we looked at general  
24 data, would we find differences of this type of measurements  
25 between GIS and the Atlas and in general, would you see these

1 types of differences?

2 MS. BARDIN: I can only speculate and guess and say,  
3 yes, we would see these differences.

4 COMMISSIONER BLAKE: Okay. Thank you.

5 CHAIRPERSON HILL: Okay. Thanks. Commissioner, can  
6 you hear me?

7 MR. MAYSAK: I can.

8 CHAIRPERSON HILL: Great. Would you like to give any  
9 testimony from the ANC for the board?

10 MR. MAYSAK: Let me see. I was trying to go and get --  
11 yeah, there we go. Actually, not really. You know, I think that  
12 I would affirm that I'm not an expert in zoning. You know, that  
13 was presented to me. I forwarded an email to Topher, and we look  
14 to you guys to make the determination, which is strictly, you  
15 know, it's way above my pay grade or knowledge.

16 CHAIRPERSON HILL: Okay. All right. All right. So,  
17 let's see, I'm going to work backwards then.

18 Commissioner, do you have any questions for either the  
19 Appellant or the Office of Zoning? Commissioner. Commissioner  
20 Maysak, can you hear me?

21 MR. MAYSAK: I'm sorry, can you just restate the  
22 question?

23 CHAIRPERSON HILL: Yeah. Do you have any questions for  
24 either the Office of Zoning or the Appellant?

25 MR. MAYSAK: No, I don't, actually.

1 CHAIRPERSON HILL: Okay, great. Let's see. Is --

2 UNIDENTIFIED SPEAKER: Ms. Chair, I'm going to  
3 (indiscernible) --

4 COMMISSIONER BLAKE: In -- in measuring these things,  
5 is there any possibility that the measuring point would have been  
6 different between the Atlas measurement and the GIS -- that is,  
7 from the edge of the alley?

8 MS. BARDIN: Again, it would be me speculating, but all  
9 I have to say is that the GIS is just a more robust way of  
10 measuring it. So, it's possible that, you know, something --  
11 when they measured it back in -- prior to '58, that there was a  
12 different starting point, but I can't know that.

13 COMMISSIONER BLAKE: It doesn't require it to be the  
14 exact same starting point? It just is what it is?

15 MS. BARDIN: Oh, that rule. Actually, I'm -- I don't  
16 know the answer to that. I don't know the answer to that  
17 question.

18 COMMISSIONER BLAKE: Okay.

19 MS. BARDIN: But you know.

20 COMMISSIONER BLAKE: Okay. All right, thank you.

21 CHAIRPERSON HILL: Okay.

22 COMMISSIONER BLAKE: One more thing. One more thing.

23 CHAIRPERSON HILL: Sure. Go ahead, Mr. Blake.

24 COMMISSIONER BLAKE: Could something have happened to  
25 the alley that would have made the measurement point slightly

1 different? For example, I suspect the alley may have been paved  
2 since 1958. When they did the analysis of from the edge of the  
3 alley, could there have been some discrepancy that was picked up  
4 by GIS that would not have been -- and for example, also, is the  
5 alley exactly 10 feet or is it 10 point -- what is the -- yeah,  
6 is there something there that could be different today than from  
7 1958 that could have -- and this is speculative, I understand --  
8 could there be something different?

9 MS. BARDIN: Possibly. Possibly.

10 COMMISSIONER BLAKE: Okay, thanks.

11 CHAIRPERSON HILL: Okay. Oh, sure, go ahead,  
12 Commissioner, sorry.

13 Commissioner Stidham.

14 ZC COMMISSIONER STIDHAM: This is actually along the  
15 same lines as Mr. Blake. Was there any on-the-ground survey work  
16 that could substantiate the actual distance on the ground?

17 MS. BARDIN: I know that Mr. Preet did a survey. But  
18 what we take are official surveys from the Office of the Surveyor,  
19 for instance. And we don't -- in this case, we didn't ask for  
20 one. I'm not sure if Mr. Preet asked for one, but we would only  
21 take something from the Surveyor's Office.

22 ZC COMMISSIONER STIDHAM: Understood. I don't know,  
23 Chairman Hill, if I can ask Mr. Musolino any further questions?

24 CHAIRPERSON HILL: Sure, of course. You can ask anybody  
25 anything you want.

1                   ZC COMMISSIONER STIDHAM: Mr. Musolino, did your client  
2 do a proper survey by a licensed surveyor to further confirm the  
3 distances that you're alleging?

4                   MR. MUSOLINO: No, Mr. Preet's survey, which he and a  
5 relative of his did, was just a straight, you know, wheel  
6 measurement survey.

7                   ZC COMMISSIONER STIDHAM: Okay.

8                   MR. MUSOLINO: So, we have certainly talked to  
9 surveyors subsequently, but you know, the door seems to have been  
10 closed to us on that particular process. But the survey did --  
11 if you're talking about when he went out and met with Ms. Bardin  
12 and his measurement was his -- was his own measurement. Yeah,  
13 no, it was not done by a licensed surveyor.

14                   ZC COMMISSIONER STIDHAM: Okay. Thank you.

15                   CHAIRPERSON HILL: Okay. Thank you.

16                   MR. MUSOLINO: I -- I would add in -- no, I leave it  
17 to you. I was going to comment on the possible changes in the  
18 sort of the alley as a starting point for the measurement, but  
19 everyone agrees that there's a certain amount of speculation  
20 involved in that process. So, I don't -- I would be doing the  
21 same thing.

22                   CHAIRPERSON HILL: Okay. Does the Office of Zoning  
23 have any questions for the Appellant?

24                   MS. LOVICK: Yes, I just have a couple of questions.  
25 I just am wondering: is the Greater Washington Board of Trade a

1 DC government agency?

2 MR. MUSOLINO: Either one. And it's back -- it's back  
3 in 1921.

4 MS. LOVICK: Well, just in general.

5 MR. MUSOLINO: I -- excuse me. I don't know the answer  
6 to that, but I can give you the answer to that later today if  
7 you want. I don't really know. I think it was I think  
8 historically the government looked to it for information, but I  
9 can't tell you whether there was an official governmental  
10 position associated with it. But I'd be happy to send something  
11 this afternoon with an answer to that question, if that would  
12 work for you.

13 MS. LOVICK: Well, I mean, it just -- it leads into my  
14 follow up question, which is does their map from 1921, does it  
15 have any binding authority over the zoning maps that were adopted  
16 in 1958?

17 MR. MUSOLINO: I think it's fair to say that it was the  
18 only map that existed at the time. And remember, this is prior  
19 to the creation of the official -- the first zoning map.

20 So, there was no zoning. In fact, there was no zoning  
21 law until the 1920's. So, if you're saying does it have a -- is  
22 it more persuasive than the 1958 map, I would say no, but it's  
23 certainly more persuasive about what the then-existing use of the  
24 properties was in 1921.

25 And remember the concept -- the whole zoning regime was

1 designed not to change the use, but to memorialize the then-  
2 existing uses for the property, so that if a property was being  
3 used commercially in 1921, according to this map, the zoning map  
4 that was created in 1924, I believe was supposed to memorialize  
5 that, not change it.

6 Now, of course, that --

7 MS. LOVICK: No, I'm sorry, go ahead.

8 MR. MUSOLINO: That has, of course, changed over time,  
9 as -- as -- as zoning laws have been refined and changes and  
10 amendments to the maps are permitted pursuant to the statutory  
11 process. But I would say that it was looked to in 1924, in  
12 Zoning's initial map to determine what the commercial view -- the  
13 nongovernmental view was of the uses of Georgetown and throughout  
14 the city.

15 MS. LOVICK: And you included a property record card  
16 from the Office of Tax and Revenue --

17 MS. LOVICK: knew that shift there --

18 MR. MUSOLINO: Right.

19 MS. LOVICK: -- OTR designating the tax class of the  
20 property as commercial.

21 MR. MUSOLINO: Right.

22 MS. LOVICK: What's your understanding of what tax  
23 class is?

24 MR. MUSOLINO: Well, very broad --

25 MS. LOVICK: Right. Well, I mean --

1                   MR. MUSOLINO: And --

2                   MS. LOVICK: I'm just asking it because I know tax  
3 class sets tax rate. So, I just want to understand --

4                   MR. MUSOLINO: Right.

5                   MS. LOVICK: What do you see as being the connection  
6 or the relationship between the tax rate for a property and  
7 zoning?

8                   MR. MUSOLINO: Yeah, I agree with you. I agree the tax  
9 rate's different depending on the use of the property and  
10 commercial tax rates are higher than residential tax rates. I  
11 agree with that. And I certainly agree that the records  
12 maintained by other agencies, while they may be enlightening in  
13 some respects, they're certainly not on an equal level with the  
14 actual zoning records. It does raise questions about the meaning  
15 at ABCA of the word atlas versus sort of the modern use of  
16 digitized maps by the Office of Zoning, at least as it relates  
17 to its public records.

18                   So -- but still, just as the certificate of occupancy  
19 may be of interest depending on who filled out the form for what  
20 purposes, the classification by the tax authorities of the Office  
21 of -- the OTA may be of some interest, but it's not -- I wouldn't  
22 call it binding. We presented it and OZ presented the errors, I  
23 think, just to show that other agencies at least have an interest  
24 in how things are classified. I think you're right and I think  
25 it's fair to say that commercial tax rates are universally higher

1 than residential tax rates for -- which is of interest to  
2 taxpayers in the city.

3 MS. LOVICK: Right. And tax rate is based on use --  
4 based on the use of the property.

5 MR. MUSOLINO: Yeah.

6 MS. LOVICK: Plus, this property is exempt from taxes.  
7 I noticed that on the property, that the Office regards it as a  
8 school.

9 MR. MUSOLINO: Right. Well, as we -- I agree with that  
10 too. I was saying, as we discussed at the last meeting, there  
11 was an interest in sort of the historical treatment of this  
12 property, so that's why we went all the way back to -- I don't  
13 want to say the beginning of time -- I'll say the beginning of  
14 zoning time -- and traced it to 1921. And so --

15 MS. LOVICK: Well, thank you. I just wanted to  
16 understand what the - what your rationale was in providing that  
17 data, and you've answered my question. Thank you for that.

18 MR. MUSOLINO: Okay. Great.

19 MS. LOVICK: Great. I don't have any -- I have no  
20 further questions.

21 CHAIRPERSON HILL: Okay. Thank you. Does the Appellant  
22 have any questions for the Office of Zoning?

23 MR. MUSOLINO: Can I answer the question, if I can,  
24 about the Board of Trade? And I'm just referring to an article  
25 that we included in our original presentation, if you don't mind.

1 This might answer the questions about the role of the Board of  
2 Trade in 1920. At page 1087, there was an article called  
3 Midwinter Dinner, by the Washington Board of Trade in 1925. And  
4 it says, "In 1920, the District enacted its first zoning  
5 regulations. While this legislation was in development, the  
6 Board of Trade formed a zoning commission -- small z, small c. --  
7 which persuaded lawmakers to extend industrial areas and increase  
8 building height limitations. And if you look at page 1088,  
9 there's a document called Zoning Commission Area Map, District  
10 of Columbia, from 1921. And then it goes on to talk about the  
11 Board of Trade in the 1920s.

12 CHAIRPERSON HILL: Okay.

13 MR. MUSOLINO: So, in those documents, at least you can  
14 find the Board of Trade's view of its relationship with the  
15 municipal government at the time, for whatever that's worth.

16 CHAIRPERSON HILL: Okay. Mr. Musolino, do you have any  
17 questions of the Office of Zoning?

18 MR. MUSOLINO: Can I ask Ms. Bardin a couple of  
19 questions, just for clarification?

20 CHAIRPERSON HILL: Sure.

21 MR. MUSOLINO: All right. So Ms. Bardin, your email  
22 back to Commissioner Mathews, as I understand, your statement was  
23 not an attempt to re-classify zoning for the school. Is that a  
24 correct statement?

25 MS. BARDIN: Correcting the zoning line.

1                   MR. MUSOLINO: Okay. And were you correcting the  
2 digital zoning map or all of the zoning maps?

3                   MS. BARDIN: I don't understand why you keep referring  
4 it as though that there's a paper zoning map and a separate  
5 digital zoning map. There's a zoning map and it's digital.

6                   MR. MUSOLINO: Well, what -- can I ask and get --

7                   MS. BARDIN: No, sorry, I'm just trying to clarify that  
8 question.

9                   MR. MUSOLINO: Yeah. Well, let me ask that. I'd be  
10 happy to ask that question. As I understand it, for years and  
11 years and decades and decades, the zoning map was in fact a paper  
12 document, correct?

13                   MS. BARDIN: Correct.

14                   MR. MUSOLINO: And that paper document -- well, let me  
15 try it this way. In the ABCA regulations, they refer to an  
16 atlas -- A-T-L-A-S. In your experience, prior to digitization  
17 in 2002 and thereafter, was there a document maintained by the  
18 Office of Zoning that it regarded as an atlas, using that term  
19 itself?

20                   MS. BARDIN: Other than the Baist's Atlas?

21                   MR. MUSOLINO: Right.

22                   MS. BARDIN: I'm still confused.

23                   MR. MUSOLINO: Yeah. Let me try my question again,  
24 okay?

25                   MS. BARDIN: Yesh.

1                   MR. MUSOLINO: I'm only using the word atlas because  
2 that's the word that's used in the regulations for ABCA. That's  
3 the only reason I'm using that word. So, my question to you is,  
4 is prior to digitization, there was a paper zoning map, right?

5                   MS. BARDIN: Um-hum.

6                   MR. MUSOLINO: Okay. And that paper zoning map had the  
7 zoning lines drawn on it, I suppose, at one point, by hand, right?

8                   MS. BARDIN: The Baist's Atlas, yes.

9                   MR. MUSOLINO: Okay. Would you have considered the  
10 Baist's Atlas -- or maybe you never even had to make the  
11 connection -- the zoning atlas in 1958 for purposes of anyone's  
12 questions about what the zoning lines were?

13                  MS. BARDIN: We go back and look at all of the prior  
14 maps, including the Baist map.

15                  MR. MUSOLINO: Okay. Fair enough. All right. So,  
16 when digitization commenced in 2002, did the Office of Zoning  
17 take the position that the digitized maps replaced what you just  
18 discussed -- all of the maps that had existed previously? Did  
19 they replace it? Did they supplement it? Did they approximate  
20 it?

21                  MS. BARDIN: We always say as amended by, like, so --

22                  MR. MUSOLINO: Okay.

23                  MS. BARDIN: Does that make sense?

24                  MR. MUSOLINO: Yeah. So, when you amended the zoning  
25 line, you certainly -- well, when you -- I'm trying to use a non-

1 adversarial word. When you --

2 MS. BARDIN: Corrected.

3 MR. MUSOLINO: Corrected the zoning line. You  
4 certainly corrected the digital zoning line, right?

5 MS. BARDIN: Yes.

6 MR. MUSOLINO: Okay. But no one went back to the old  
7 maps and sort of redrew the 58-foot line that we have six copies  
8 of here, right? No one did that physically?

9 MS. BARDIN: No. Because these were correct. They are  
10 correct on the map -- on the paper map.

11 MR. MUSOLINO: Okay. And okay. So, at the time -- all  
12 right. And at the time, you made your -- you responded to the  
13 commissioner -- your assumption was the distance from - now I'm  
14 going to incorporate some of these other questions -- some point  
15 on the eastern alley to some point on the property line, was 78  
16 feet. That was the basis for your decision, right?

17 MS. BARDIN: The basis of my decision was to correct  
18 the map to be coincident with the zoning lot line, as it shows  
19 on all the previous zoning maps and the Baist's Atlas. That was  
20 the one.

21 MR. MUSOLINO: But you expressly included in your email  
22 that that distance was 78 feet from the alley to the zoning line,  
23 correct?

24 MS. BARDIN: If that's what my email says.

25 MR. MUSOLINO: Okay. And you didn't have in front of

1 you at the time the 77.42 measurement that's now in the Office  
2 of Zoning presentation, right?

3 MS. BARDIN: Probably not.

4 MR. MUSOLINO: Okay. And you didn't have at the time  
5 any official survey along the lines that you mentioned and one  
6 of the board members mentioned to influence your decision,  
7 correct?

8 MS. BARDIN: No, because it wouldn't -- that's not  
9 something I would look at. I would look at -- I look at zoning  
10 orders, I look at previous maps. Those are the things that I --  
11 that we research in-house to fix lines that were digitized  
12 incorrectly with the digitization project that we had.

13 MR. MUSOLINO: I got you. But you said to Mr. Preet  
14 that if he went out and got some information from an official  
15 source, you might reconsider your email, right?

16 MS. BARDIN: That I may reconsider it, yeah.

17 MR. MUSOLINO: You may reconsider, fair enough. And  
18 the information he provided to you was information that was not  
19 an official source, if I understand your testimony, right?

20 MS. BARDIN: Right. It was him using the wheel to  
21 make --

22 MR. MUSOLINO: Right. Exactly. And he concedes that.  
23 All right. Did -- can you tell me whether -- if you know whether  
24 the school itself has ever been notified of the change that you  
25 made in your -- as you reflected in your email?

1 MS. BARDIN: No. And as we showed in the presentation,  
2 their ZFO shows the single zone, so I'm not sure that they ever  
3 knew that it was incorrectly shown on the map as a split zone.

4 MR. MUSOLINO: All right. With all ZFOs, we don't know  
5 who filled it out and who knew what when they filled it out. We  
6 don't know that, right? I mean, we know -- okay. All right.  
7 And if we would've traced the zoning line, are we correct when  
8 we say, Appellants, that there are other slivers created by the  
9 same zoning line as you followed down from the school and go  
10 south?

11 MS. BARDIN: I don't know what you're referring to.  
12 All I know is that we fixed the line to be coincident with the  
13 lot lines shown on the map.

14 MR. MUSOLINO: Right. In just the one - that one spot,  
15 right?

16 MS. BARDIN: In the case that was brought to us from  
17 Commissioner Mathews, we changed it, yes.

18 MR. MUSOLINO: Okay. And --

19 CHAIRPERSON HILL: Mr. Musolino, how many questions do  
20 you have?

21 MR. MUSOLINO: Last question.

22 CHAIRPERSON HILL: Okay.

23 MR. MUSOLINO: Did you - is it correct to say that the  
24 decision that you made in November was made within an hour or  
25 two of the time that the request was made by Commissioner Mathews?

1 MS. BARDIN: I would have to go back and check. I do  
2 not remember it being that fast.

3 MR. MUSOLINO: Okay.

4 MS. BARDIN: Because I had multiple people looking at  
5 it. I don't remember it being that fast.

6 MR. MUSOLINO: Okay.

7 MS. BARDIN: But even if it was that fast, my staff  
8 researches everything very thoroughly.

9 MR. MUSOLINO: Well, I'm certain they just didn't have  
10 the information from the technology that the Office -- that the  
11 Office of Zoning has now, right?

12 MS. BARDIN: No, that's not true.

13 MR. MUSOLINO: Did they have --

14 MS. BARDIN: They would've had all of that information  
15 before. Just because I didn't write it in the email, it doesn't  
16 mean that my staff member didn't have it. I was responding to  
17 Commissioner Mathews.

18 MR. MUSOLINO: Did you know whether at the time that  
19 you responded to Commissioner Mathews you had the 77.42 number?

20 MS. BARDIN: I already told you that I don't -- I didn't  
21 have it myself. It does not mean my staff didn't have it.

22 MR. MUSOLINO: So -- well, you don't know whether your  
23 staff had it, right?

24 MS. BARDIN: No.

25 MR. MUSOLINO: Okay. I'm sorry. I went two questions

1 long.

2 MS. BARDIN: I'm sure he would've -- actually he  
3 would've, if he had done his --

4 CHAIRPERSON HILL: That's okay. That's okay. I mean,  
5 Mr. Musolino, what's I'm trying to get to is, like, I know this  
6 is going to take a lot of processing for me, and so I'm trying  
7 to get to where I'm going to have an opportunity to kind of look  
8 over all this a little bit more thoroughly. Do you have any  
9 rebuttal, Mr. Musolino?

10 MR. MUSOLINO: I do not have any rebuttal.

11 CHAIRPERSON HILL: Okay. Great.

12 MR. MUSOLINO: And you've heard my opening argument  
13 already, and I would just repeat it. But I -- my short version  
14 would be that I believe the Office of Zoning has conceded the  
15 error.

16 CHAIRPERSON HILL: Okay.

17 MR. MUSOLINO: That's my rebuttal. In two sentences,  
18 because Ms. Bardin based her ruling on the 78-foot measurement,  
19 and the Office of Zoning is now saying that number is wrong, and  
20 I think that alone requires us to go back to square one, because  
21 that was never the basis for the decision.

22 CHAIRPERSON HILL: Mr. Musolino, give me a second.  
23 Another board member has a question. Commission Stidham, do you  
24 have a question?

25 ZC COMMISSIONER STIDHAM: Ms. Bardin, just a clarifying

1 question about the research her staff did, if that's all right?

2 CHAIRPERSON HILL: Yeah. Go ahead.

3 ZC COMMISSIONER STIDHAM: In your staff's research, of  
4 all the previous maps, was the zoning line and the property line  
5 coincident in all cases?

6 MS. BARDIN: Yes.

7 ZC COMMISSIONER STIDHAM: Okay. Thank you. That is --  
8 nothing further, Chairman.

9 CHAIRPERSON HILL: Okay. Thank you, Commissioner.  
10 Okay. Mr. Musolino, do you have any conclusion?

11 MR. MUSOLINO: The same as my opening. I don't think  
12 there's anything my office -- can I do it now? I'll do it in  
13 five minutes.

14 CHAIRPERSON HILL: Yeah, go ahead.

15 MR. MUSOLINO: Our position all along has been: if the  
16 78-foot line -- if the 78-foot line was absolute, which is what  
17 Ms. Bardin's position was when she issued her decision -- and if  
18 the Office of Zoning is not changing its 77.42 number -- right,  
19 it's not -- then there's no doubt that the encroachment that the  
20 Office of Zoning concedes -- that's its word in its  
21 presentation -- existed at the time and was not subject to the  
22 one-foot regulatory change under any circumstances because the  
23 78-foot number is controlled. So for the Office of Zoning to  
24 come here and say now that what Ms. Bardin did without saying it  
25 is that she moved the 78-foot number to 77.42, and the only basis

1 for doing it is because she assumed that the lines should match,  
2 without any basis for why the lines should match in this  
3 particular case, when we actually have the controlling  
4 information. 78-foot means either that Ms. Bardin disagrees with  
5 the Office of Zoning now and something needs to be corrected, or  
6 up until the time this argument has been made, 78-foot, 78-foot,  
7 78-foot, the Office of Zoning has changed its position and there  
8 needs to be some additional exploration of the issue.

9 I'd say it's a practical matter. Mr. Chairman, the  
10 only way we can do this in a clean way and get a clean record to  
11 the Court of Appeals is have the process done in a proper way in  
12 front of the Office of Zoning. The Office of Zoning can issue  
13 an opinion, and if it comes out the same way, then that's what  
14 I'd take up to the Court of Appeals if my client wants to go  
15 there. My hope is that the Office of Zoning will be able to work  
16 on a larger record with more time and hearing from both sides.  
17 And then the Board will have a decision that isn't subject to so  
18 much -- to borrow the word of many of the members -- subject to  
19 so much speculation. Including, of course, the possibility of  
20 an actual measurement by an actual surveyor. But you've heard  
21 me say all that before and I appreciate everyone's indulgence and  
22 patience with our argument.

23 CHAIRPERSON HILL: Okay. Great. All right. So, I'm  
24 looking at my fellow board members. Do you want -- do you think  
25 next week would be a good time for a decision? Okay. All right.

1 At least I got one -- okay. Go ahead, Ms. John.

2 VICE CHAIR JOHN: So, Ms. Lovick, one last question.

3 On A206.3, can you clarify how OZ interprets that provision one  
4 more time?

5 MS. LOVICK: Yeah. I mean, the language in the  
6 provision is specific to the zone boundary line being coincident  
7 with the lot line, and the lot line is at the 78-foot measurement.  
8 And so, what the Office of Zoning did here is they made the  
9 correction to be coincident with that 78-foot measurement. The  
10 zone boundary line we've conceded because of more robust GIS data  
11 is actually the 77.42-foot measurement, but all of the language  
12 under subtitle A, section 206.3 refers to the lot line, which is  
13 the 78-foot measurement. And so, the 1-foot rule clearly applies  
14 between the differential of 78 feet and 77.42 feet.

15 And I would also say, just in response to Mr. Musolino's  
16 comments about there needing to be some further investigation by  
17 the Office of Zoning, I would just refer to the language under  
18 subtitle A, section 206.7. It is clear that there is a dispute  
19 about where the zone boundary is and the regulations specifically  
20 state that it is within the Board's authority to make a  
21 determination about where the exact location of the zone boundary  
22 line is, and so the Office of Zoning will defer to the Board to  
23 make that decision based on all of the evidence that has been  
24 presented to you today.

25 CHAIRPERSON HILL: Ms. John, did you get your question

1 answered?

2 VICE CHAIR JOHN: Yes, Mr. Chairman. Thank you.

3 CHAIRPERSON HILL: Okay. Great. Okay. All right.

4 So, is next week -- my fellow board members, is next week fine  
5 with the decision? And I had one person nod yes? Okay. Good.

6 VICE CHAIR JOHN: Yes. Yes.

7 CHAIRPERSON HILL: So, then I really thank everyone for  
8 all their testimony. This has gone, I think -- you know, we've  
9 gone two hours now. So, I think we've had a very thorough hearing  
10 and have a lot of information to digest. And I appreciate, Mr.  
11 Musolino, your testimony. And Ms. Lovick as well. And Director  
12 Bardin. And also, Commissioner Maysack, so I'm glad that you're  
13 all here. So, I'm going to go ahead and close the hearing and  
14 the record, and we'll come back for a decision next week. Hope  
15 you all have a nice day.

16 You too.

17 MS. BARDIN: Thanks.

18 CHAIRPERSON HILL: Okay. Let's take a quick break, if  
19 we could.

20 UNIDENTIFIED SPEAKER: Yes, please.

21 (Pause.)

22 MS. MEHLERT: The Board is back from a quick break, and  
23 the next app case is Application No. 21177 of the DC Department  
24 of General Services. This is a self-certified application  
25 pursuant to subtitle X, section 901.2 for a special exception

1 under subtitle X, section 900.3, to allow an extension or  
2 enlargement of the use that was originally permitted and lawfully  
3 established as a matter of right for which the zoning regulations  
4 now require a special exception approval under subtitle I,  
5 section 303.1(c). It is the enlargement of an existing large-  
6 scale government use in an existing structure to serve as a  
7 temporary location for the DC Department of Corrections' central  
8 cell block pending renovation of its current location. It's  
9 located in the D4R zone, 501 New York Avenue Northwest, square  
10 482 S., lot 800.

11           This hearing began on October 9th. The Board requested  
12 additional information from the Applicant. And participating are  
13 Chairman Hill, Vice Chair John, Mr. Smith, Commissioner Miller,  
14 and I believe Mr. Blake has come into the record.

15           And then there's two -- a couple of preliminary  
16 matters. First, the ANC filed a couple presentation slides  
17 earlier this morning, if you would like to allow those into the  
18 record? And then the ANC also submitted a motion to late-file  
19 an additional witness.

20           CHAIRPERSON HILL: Okay. Let's see. I'll remember  
21 that Ms. Mehlert. Mr. Blake?

22           COMMISSIONER BLAKE: Sure. I just want to affirm Ms.  
23 Mehlert's comment. I have read into the case, and I will be  
24 participating.

25           CHAIRPERSON HILL: Great. Thank you. If the Applicant

1 could hear me -- if they could please introduce themselves?

2 (Pause.)

3 CHAIRPERSON HILL: Ms. Moldenhauer, are you trying to  
4 figure it out?

5 MS. MOLDENHAUER: We're also looking for Director  
6 Faust.

7 CHAIRPERSON HILL: Okay. Mr. Young, if you could look  
8 for a Director Faust.

9 MS. MOLDENHAUER: And we're looking for the  
10 Commissioner as well.

11 CHAIRPERSON HILL: Okay. And then we're looking for  
12 the ANC Commissioner?

13 Is he here, the Commissioner? Or is he Director Faust?

14 Okay. Ms. Moldenhauer, you want to introduce yourself  
15 for the record?

16 MS. MOLDENHAUER: Thank you very much, Chairman Hill.  
17 Meredith Moldenhauer, from the law firm of Cozen O'Connor, here  
18 on behalf of the Applicant.

19 CHAIRPERSON HILL: Great. Ms. Themak, you want to  
20 introduce yourself?

21 MS. THEMAK: Yes. Tracy Themak, I'm here on behalf of  
22 the ANC 2G.

23 CHAIRPERSON HILL: Great. Commissioner Nigro, you want  
24 to introduce yourself for the record?

25 MS. NIGRO: ANC Chair of 2G.

1                   CHAIRPERSON HILL: Great, thank you. Ms. Moldenhauer,  
2 who is with you today? Is this --

3                   MS. MOLDENHAUER: Yes. I have Director Tom Faust. I  
4 have Agyei Hargrove on behalf of the Department of General  
5 Services. I have Dana Foerster on behalf of the architectural  
6 team, DLR. And then I also have Erwin Andres from Gross Slate &  
7 Associates.

8                   CHAIRPERSON HILL: Okay. Great. So, what we're doing  
9 here today, again, is that we are having a limited scope hearing  
10 based on the information that we -- the Board -- had asked for.  
11 And I'm going to let you, Ms. Moldenhauer, go ahead and just walk  
12 us through your presentation, because basically, it reviews all  
13 of the things that the Board asked for, so you can kind of, like,  
14 let us know what has happened since the last time we were here.

15                  And also, Ms. Moldenhauer, I'm going to clarify  
16 something that I said earlier about my whole thing about  
17 objections. Like, you can go ahead and object. I'm learning  
18 how to deal with it properly, so I'm kind of saying a sorry. Go  
19 ahead and you know, you defend your client the way you need to.

20                  And Ms. Themak, you can object as much as you want  
21 also. It's like, you know, I will try to process them. I'm just  
22 not a judge or necessarily good at it, so I'm trying to do my  
23 best, but I want to clarify that everybody should do whatever  
24 they need to do. And so, with that being said --

25                  MS. MOLDENHAUER: Being said, I'll start us off on that

1 question of objections. There was something entered into the  
2 record by Ms. Themak that requested a motion to late file, which  
3 was a testimony from an Amy De Young, and I think that that's a  
4 preliminary matter for the Board that has to make a decision on  
5 whether that late filing would be accepted into the record. And  
6 we would just note that as stated in the statement, that Ms. De  
7 Young has not worked at the CCB. She worked at a location, even  
8 in her testimony, in Hill East, which we all know is many, many  
9 blocks and very far away from this site, and so we just don't  
10 believe it's relevant, given that she's not talking about the  
11 CCB. She's talking about the DOC's CTF buildings, and so we  
12 would just object. We can provide more testimony as to how it  
13 is not relevant, but if the Board admits it, it will provide that  
14 testimony, if necessary.

15 CHAIRPERSON HILL: That's fine. I mean, what's usually  
16 been on our process is that we take in all the information we  
17 can, and so the Board is going to be able to determine what is  
18 and isn't relevant. And so, Ms. Themak, you know, I'm going to  
19 go -- unless the Board has some other issues -- and you can raise  
20 your hands, my fellow Board members -- I'm going to go ahead and  
21 allow the late filing. And then also I did read the testimony,  
22 and so we will have to determine what is and isn't pertinent.  
23 But again, what I'm here for, or what I wanted to be here for,  
24 was, again, the issues that the Board had asked for clarification  
25 on and what happened since the last time. So, I am going to at

1 least mention this to everybody. We're not here to relitigate  
2 or do the four hours that we did before, right? We're here just  
3 to talk about the things that the Board asked for. I don't want  
4 to go down any road that we've already been down. Okay?

5 So, Ms. Moldenhauer, if you want to go ahead and give  
6 us your testimony on what the Board had asked for from its  
7 previous meeting, and then we'll go from there.

8 MS. MOLDENHAUER: Right. Mr. Young could bring up our  
9 presentation. We have a very brief -- I think 15-minute  
10 presentation.

11 MS. MEHLERT: If I -- I'm sorry.

12 CHAIRPERSON HILL: Go ahead, Ms. Mehlert.

13 MS. MEHLERT: The other preliminary matter that we were  
14 hoping is just the two slides for our presentation.

15 CHAIRPERSON HILL: Oh, sorry, yeah. I'm sorry. Go  
16 ahead, Ms. Mehlert. If you could go ahead and put that in the  
17 record, also? I didn't see that in the record yet, so maybe it  
18 hasn't come in yet.

19 MS. MEHLERT: We'll put it in right now, right.

20 CHAIRPERSON HILL: Good.

21 MS. MEHLERT: Also, I just want to note that Director  
22 Faust and Commissioner Nigro did not sign up to testify, so they  
23 would have to be given the oath.

24 CHAIRPERSON HILL: Okay. Great. Commissioner Faust --  
25 I'm sorry. Director Faust and Commissioner Nigro, could you

1 please raise your right hand, and Ms. Mehlert's going to give the  
2 oath. Director Faust, are you there? Great. Perfect.

3 Thank you. Go ahead, Ms. Mehlert.

4 MS. MEHLERT: All right. Do you swear or affirm the  
5 testimony you will give today is true?

6 MR. FAUST: I do.

7 CHAIRPERSON HILL: Okay. Great. Perfect.

8 MS. MEHLERT: Great.

9 CHAIRPERSON HILL: Thank you, Ms. Mehlert.

10 Okay, Ms. Moldenhauser. Mr. Young, will you pull up  
11 that PowerPoint?

12 MS. MOLDENHAUER: Thank you, Mr. Young. Next slide?  
13 Next slide?

14 So, the Board is obviously aware we're here today to  
15 provide an update on the parking site plan and staging and  
16 labeling. We responded to the traffic questions. We provided  
17 additional information on the detainee processing. We provided  
18 additional information on the window dimensions and privacy  
19 measures as well as the noise abatement measures. And we also  
20 provided an explanation regarding the post-CCB use of the  
21 property. Next slide?

22 We'll now turn it over to Mr. Erwin Andres.

23 MR. ANDRES: Members of the Board, for the record, my  
24 name's Erwin Andres, with Gross Slate & Associates. My testimony  
25 is going to be focused on providing additional background related

1 to the proposed parking and staging at the proposed CCB facility.  
2 As shown on the slide, the parking plan has been labelled to show  
3 23 on-street parking spaces with five specific on-site staging  
4 spaces, and one -- that includes one space in a sally port, which  
5 would meet the demand of the proposed facility.

6 So, I've previously testified, the proposed CCB  
7 employee parking demand is associated with the proposed employee  
8 population, considering that there would be no visitors that  
9 would be allowed to visit the detainees. The proposed staff of  
10 nine employees per shift means that when the shift changed during  
11 the day -- and there are three shifts -- nine employees will be  
12 parked on street -- and that's a maximum, you know, we were  
13 conservative in that we would -- we assumed that all would be  
14 driving. That means when the shift changed during the day, nine  
15 employees will be parked. And as the nine new employees are  
16 arriving for the next shift, there's an overlap of about 30  
17 minutes when you have 18 employees on site until the original  
18 nine that were there leave. So, there's a -- there's a there's  
19 a peak when there's an overlap, and then it flattens back down  
20 to nine spaces. So, it's important that as we go through the  
21 total number of on-street spaces, we've identified 23. 22 are  
22 currently existing. So, if you were to go out there today, 22  
23 are currently existing on street spaces on New York Avenue, L  
24 Street, and 6th Street.

25 As I testified before, three of those spaces on 6th

1 Street actually go away because DDOT is proposing an intersection  
2 improved plan. But we are actually adding four more on-street  
3 spaces because we are reducing the existing curb cut widths along  
4 L Street and New York Avenue, as per our discussions with DDOT.  
5 So, with that, we end up with the 23 that we've identified as  
6 viable spaces for the CCB.

7 In addition to those 23 spaces, our staging plan which  
8 is up on the screen has five on-site staging spaces. As I've  
9 also testified before, the CCB operations consist of pre-arrival  
10 coordination of MPD and other authorized government agencies to  
11 announce their pre-arrival so that they can be scheduled and  
12 spaced out to minimize the need for vehicle staging onsite. The  
13 five onsite staging spaces exceeds what DOC expects to arrive at  
14 any one time and has designated these out of abundance of caution.  
15 And there are specific signs located on the graphic that show  
16 where those signs are onsite that designate those phases.

17 Next slide. In addition to the information requested  
18 by the board at the last hearing, we're also responding to some  
19 ANC filings that have identified that there is a 25-foot clearance  
20 from the nearest crosswalks in DDOT's design and engineering  
21 manual. Our parking supply, those 23 spaces, includes spaces  
22 that are within that clearance, but it's important to note that  
23 there are existing conditions in and around the site, as well as  
24 in the entire Shaw neighborhood where vehicles are legally  
25 allowed to park close to the existing stop bars and crosswalks.

1           What you see in the graphic is the intersection of 6th  
2 and L, which is essentially the northwest corner of our site.  
3 And if you notice the three legs that are in this graphic, where  
4 this is a graphic essentially facing southwest on 6th Street, you  
5 have that blue SUV that's relatively close to the stop bar on L  
6 Street. You have that red vehicle that's relatively close to the  
7 stop bar. And then also on 6th Street, on the other side of the  
8 intersection, there's also a sedan relatively close to the stop  
9 bar. And these are -- all three of these vehicles are legally  
10 parked.

11           And -- and so in that respect, given that this site is  
12 not a raise and rebuild, as opposed to some of these newer  
13 developments, where the entire buildings get taken down and  
14 redeveloped, we are reoccupying the site and we are utilizing the  
15 existing infrastructure around the site. So, in that respect,  
16 in our coordination with DDOT, DDOT did not require us to provide  
17 this clearance, consistent with a lot of other re-occupancy and  
18 reutilization applications that we've worked on.

19           So, with that, we are available for questions.

20           MS. MOLDENHAUER: Next slide. And we'll turn it over  
21 to Director Faust.

22           MR. FAUST: Good afternoon, Chairperson Hill and  
23 members of the Board. Again, I'm Thomas Faust, director of the  
24 DC Department of Corrections. Thank you, again, for the  
25 opportunity to return before the Board to testify about the

1 proposed CCB at 501 New York Avenue. At the board's request, we  
2 submitted a supplemental statement, which provides a detailed  
3 overview of the process of detainee arrival at the property,  
4 processing and detainment at the property, and transport to the  
5 DC Superior Court. I have reviewed the AMC'S filing and submit  
6 to you that this temporary facility can be operated with no  
7 adverse impact on the neighborhood.

8 We serve the city as a whole and the need for this  
9 temporary CCB use will allow for necessary repairs to be made at  
10 the daily building. To improve the facility and its function is  
11 critical to the criminal justice process. As we will outline  
12 later in this presentation, we have proffered a proposed  
13 condition that no detainees will be released at the property. We  
14 hope that this has addressed any remaining community and Board  
15 concerns.

16 On behalf of the Department of Corrections, thank you  
17 for the opportunity to testify and bring this BZA case before  
18 you, before the Board. I am available to answer questions at  
19 the end of our presentation. And I'll now turn to Dana Foerster  
20 to continue with the presentation. Next slide please. Thank  
21 you.

22 CHAIRPERSON HILL: Thank you, Director Faust.

23 Ms. Moldenhauer, the information that director Faust  
24 had put in, is that in your supplementals in Exhibit 152?

25 MS. MOLDENHAUER: Yes, it is.

1                   CHAIRPERSON HILL: Okay, great. I just wanted to  
2 clarify. Okay. Please continue.

3                   MR. FOERSTER: Chairperson Hill and members of the  
4 Board, my name is Dana Foerster. I'm an architect with DLR Group.  
5 Today I will walk through the dimensions of the windows, privacy  
6 measures, and noise abatement for the project. What you see  
7 here, the five windows along L Street façade, are 2 feet, 2 inches  
8 off the ground and measure 11 feet 9 inches in height. And about  
9 5 feet 5 inches in width.

10                  Next slide, please. The existing conditions shows the  
11 interview of the existing windows on the L Street façade, which  
12 as you can see are small, predominantly wired-plate glass panes  
13 that are translucent. A small number of these original panes  
14 have been replaced over time with clear glass panes.

15                  Next slide, please. All of the existing small panes  
16 of glass, both original and new, will have a translucent film or  
17 film frosting applied, as you can see on the image on the right,  
18 to further screen visibility between the interior and exterior.

19                  Next slide, please. These images show the interior  
20 view of the windows from the cell Tier 2 level, which as you can  
21 see is partially obstructed by ducts that run the length of the  
22 walkway between the cells and the exterior wall. The existing  
23 ducts substantially limit visibility on the second tier from the  
24 outside.

25                  Next slide, please. As outlined in the Applicant's

1 supplemental statement, any potential noise impacts would be  
2 mitigated in various ways. First, the proposed metal fencing,  
3 which will serve as a barrier between the public space and CCB  
4 operations, will be 7 feet in height. The fence will be set back  
5 from the street curb about 8 and a half feet. On the other side  
6 of the fence, the building is set back more than 13 feet from  
7 the proposed brick masonry and metal fencing. Further, the first  
8 floor holding cells will be set back almost 6 feet from the  
9 windows and exterior of the building. The 28-foot set back  
10 between the holding cells and the public right-of-way, with a 7  
11 foot high fence in between, would limit any noise impacts.  
12 Additional noise dampening measures would be implemented inside  
13 the building. Acoustic ceiling and wall panels would be installed  
14 on the first-floor level. These high-performance acoustic panels  
15 are designed to absorb a minimum of 85 percent of the sound they  
16 encounter and reduce reverberant noise.

17 Thank you for the opportunity to testify. I am  
18 available to answer any architectural questions at the end of the  
19 presentation. I would like to turn it over to Agyei Hargrove to  
20 continue. Next slide please. Thank you.

21 MR. HARGROVE: Good afternoon, Chairman Hill and  
22 members of --

23 CHAIRPERSON HILL: Mr. Hargrove, I'm sorry, I don't  
24 think I can hear you or you cut out there. I heard in the  
25 beginning. Now, I heard you in the beginning.

1                   MR. HARGROVE: Can you hear me?

2                   CHAIRPERSON HILL: Now yes, thank you.

3                   MR. HARGROVE: Okay. I change the settings. Okay.  
4 I'll start over.

5                   Good morning, Chairman Hill and members of the Board.  
6 I'm Agyei Hargrove, executive program manager for the Department  
7 of General Services, Capital Construction Services division.  
8 Thank you for the opportunity to testify about the proposed  
9 temporary use of 501 New York Avenue.

10                  I'm here today to discuss the post-CCB use of the  
11 property. At the conclusion of the eight-year use term, the  
12 property will be renovated to return to its existing condition  
13 as a large-scale government-use with no more than 19 holding  
14 cells, as is the standing standard operating procedure for DGS  
15 regarding swing space in the District. Although the long-term  
16 use of the property has not yet been determined, DGS believes  
17 that this would be a great opportunity for community input in the  
18 decision-making process. Therefore, we propose to convene the  
19 community advisory team composed of various representatives from  
20 the community to meet to discuss and provide recommendations on  
21 future proposed uses as a government building at the property.

22                  The District has no intent to dispose or relinquish  
23 this government building as a private -- for private uses. On  
24 behalf of the mayor and the Department of General Services team,  
25 thank you for the opportunity to testify. We appreciate your time

1 and consideration. I'm available for answers -- to answer  
2 questions at the end of the presentation. And we'll now turn it  
3 back over to Ms. Moldenhauer. Next slide, please.

4 MS. MOLDENHAUER: Thank you, Mr. Hargrove.

5 Next slide. So, we believe that we've satisfied the  
6 requirements for the special exception standard and provided  
7 additional supplemental information requested by the Board.

8 Next slide. To summarize, we have, in connection with  
9 our supplemental filing, outlined a number of proffered  
10 conditions. One, that the approval for the special exception use  
11 would expire in eight years from the effective date of the order.  
12 Two, the Applicant will work with all necessary agencies to ensure  
13 that the policy and practice should be that no detainees are  
14 released from the property. Three, that the Applicant agrees to  
15 erect staging signage that will designate the five staging spaces  
16 as CCB staging area only. Additionally, the Applicant will  
17 install no loitering, no solicitation signage on the property as  
18 well. The Applicant also has agreed to identify a representative  
19 who would act as the liaison between DGS and DOC. The liaison  
20 would then attend quarterly ANC meetings at ANC-2G and 6E to  
21 review construction and updates and operational questions.

22 Next slide. We have two other offered conditions. We  
23 also would have a proffered condition that the Applicant agrees  
24 to identify a representative who will act as a transportation  
25 liaison to the ANC. The transportation liaison will be available

1 to answer questions and respond to questions, while the use in  
2 is in operation.

3                   And lastly, as Mr. Hargrove identified, the Applicant  
4 will develop and engage with a Community Advisory committee. The  
5 goal of this committee would be to submit recommendations to the  
6 Applicant that will be taken into consideration to evaluate the  
7 future use of the property. This committee will provide  
8 feedback -- will provide feedback, suggestions, and disseminate  
9 information with the property's future use to the committee  
10 members, peers, and constituents. The committee members will be  
11 selected by the Applicant, to include the ANC bid, residents, and  
12 adjacent developers. The committee will be activated in the  
13 fourth year of the use of the term and will complete -- be  
14 completed at least three meetings in order to provide all  
15 recommendations to the Applicant by the fifth year of the use  
16 term.

17                   That concludes our presentation and we are open for  
18 questions. Thank you very much.

19                   CHAIRPERSON HILL: Okay. Thank you. Ms. Moldenhauer,  
20 can you clarify again for me, what's the total number of cells  
21 that you guys are going to put there, or try to put there?

22                   MS. MOLDENHAUER: Our total number is -- let me make  
23 sure that I'm saying this correctly. Mr. Hargrove, can you  
24 confirm? I just want to make sure I'm having the right number.

25                   MR. HARGROVE: Yes, I'm checking my notes. I believe

1 the total number is 46 cells.

2 CHAIRPERSON HILL: Okay.

3 MR. FAUST: 46 cells for a total of 88 beds.

4 CHAIRPERSON HILL: Okay, great. Thanks, Director  
5 Faust.

6 Okay. Let's see. All right. Before I get to  
7 questions, if -- oh, sorry -- before I get to questions, if it's  
8 okay with the Board, I'm going to let everybody do their  
9 presentation. And then we'll all go for questions, unless I  
10 see -- Mr. Blake's hand up.

11 Go ahead, Mr. Blake.

12 COMMISSIONER BLAKE: Yeah, Mr. Chair. I just have a  
13 few questions that I think would be helpful for me just to kind  
14 of get clarification on now, because they're very specific to  
15 kind of where the facilities and the process is. The first --  
16 the first thing I'd like to do is understand a little bit better  
17 about how the interior space will be used inside the fence. In  
18 the Exhibit 152, there's a good description of how the processing  
19 and detainment will take place. But there's something I didn't  
20 understand. They said there's a gate on the property on L Street  
21 and that it will open at the same time as the sally port to allow  
22 the transport vehicle into the sally port and also the staging  
23 area. And also, the team will be waiting there as well to be  
24 dropped off. And also, the gate will be closed at times when  
25 the vehicles are not entering areas of the property.

1           When I looked at the diagram, I did not see a gate.  
2 And if you could just please help me a little bit with that?  
3 Because without a gate, anybody could walk across the property.  
4 I don't see how this would be effective. So could you -- I just  
5 want to go back first. I understand how the interior would work  
6 is the difference between staging and queueing. And if you'll  
7 have -- what exactly would take place in those staging areas?  
8 Are those vans that are just parked and waiting, or are they  
9 going to be detaining some, maybe resident for a moment, waiting  
10 for their turn at the sally port? And also, again, with the  
11 gate, is --is -- is there a gate to go with the fence?

12           MS. MOLDENHAUER: I'm just trying to find the -- our  
13 prior presentation exhibit number. I think it was exhibit 122.  
14 So, I don't know if that's helpful to pull up exhibit 122, which  
15 is our prior presentation. And then we can look at the --

16           CHAIRPERSON HILL: Mr. Young, if you want to try to  
17 pull up Number 122.

18           And then Ms. Moldenhauer, which slide are you sending  
19 us this?

20           MS. MOLDENHAUER: I'm scrolling through it right now  
21 to make sure I have the right slide number for Mr. Young. So,  
22 it would be slide 21. So, I'll just start describing it and then  
23 obviously, -- oh, here it is. Okay.

24           Mr. Young, I don't know if you can zoom in by any chance  
25 on this image. I think that might be helpful.

1               Okay. So, the -- the red images here are -- the red  
2 lines are the fence that are being proposed. And then, by the  
3 curb cut, you -- there is a double line there. That is where  
4 the fence is a -- it's a moving fence that would move. And then  
5 the sally port is the building adjacent to that area where the  
6 fence would open and close. And then the same is true --

7               COMMISSIONER BLAKE: Yeah, similar configuration.

8               MS. MOLDENHAUER: But the -- and similar configuration  
9 on New York Avenue, where there's a -- you can see the line in  
10 front of those two parked cars. The sally port is on the right-  
11 most car of those two parked cars. And so, the sally port door  
12 would open, the car -- that one car that's inside the red box  
13 area -- again, that would be secured -- would then be there. The  
14 gate would open, which is that kind of darker red line there.  
15 And then that one car would leave and exit as it -- from New York  
16 Ave.

17               So therefore the -- the area surrounding the sally port  
18 and surrounding the buildings, you have the façade of the building  
19 facing New York Avenue. You can then see it, it is fully gated  
20 around the structure to the sally port and then around the front  
21 of the building, again, with doors that would swing open and  
22 closed. Only when obviously a police or agency vehicle approaches  
23 the sally port, the vehicle would come in off of L Street, be  
24 brought into the sally port, the gate would close. The sally  
25 port door would close. The detainee would be processed inside

1 the sally port. And then when that vehicle was ready to leave,  
2 obviously with the detainee not -- no longer in its car, it would  
3 then pull out, the gate would open, it would leave, and the gate  
4 would then close.

5 COMMISSIONER BLAKE: Excellent. Thank you. And for  
6 the use of the staging area, exactly what -- what type -- which  
7 cars would be parked there in those four or five spaces? Would  
8 it be detainees coming in or would that be a basically a parking  
9 lot for the morning pickups?

10 MR. HARGROVE: Mr. Blake, so the intent is in the event  
11 that there are -- more than one vehicle shows up at the sally  
12 port, then the latter one would be directed to park in those --  
13 in that area. If -- do you see those four vehicles that are  
14 essentially parked across -- adjacent to the fence line? Those  
15 are the spaces that are designated for vehicles that  
16 inadvertently show up when they're not supposed to. Because they  
17 are -- as I mentioned before, they're coordinated so that they  
18 don't show up at the same time. But in the event that they do,  
19 there -- there's an opportunity for them to store them on site.

20 COMMISSIONER BLAKE: So, they come into the facility  
21 and wait in the staging area to then reenter to the sally port  
22 when their space is available for them?

23 MR. HARGROVE: Yes, that's correct.

24 COMMISSIONER BLAKE: Okay, great, perfect. And  
25 would -- also how would that process work in the morning? And

1 what cars would be there most of the time during the day? Would  
2 it just be the vans -- or the ten -- the ten passenger vans or  
3 what would be there?

4 MR. HARGROVE: So, there are -- so we want to maximize  
5 the -- the stacking for those vehicles that show up with nobody  
6 in them -- excuse me, with -- with detainees in the vehicle. So,  
7 there's a priority for the staging and phasing of those vehicles  
8 holding detainees on site. The transfer vans, or the vans that  
9 would transfer the detainees from this facility to the courts,  
10 the intent is to park them off site in order to provide that  
11 flexibility on site.

12 COMMISSIONER BLAKE: At any point, would a -- an  
13 arriving detainee be queued outside of the perimeter of the  
14 building?

15 MR. HARGROVE: If they are, they would be directed to  
16 those staging areas. If you see on that graphic the four  
17 vehicles, that's where they would be directed to wait.

18 COMMISSIONER BLAKE: Assuming there was overflow, would  
19 you then have them not arrive by, you know, kind of timing it,  
20 or do -- they would then end up in which parking area because  
21 you potentially have someone waiting to enter the facility?

22 MS. MOLDENHAUER: Mr. Blake, again the -- the intent  
23 is that these will be coordinated so that way they're -- the  
24 intent would be that obviously we would not have a situation  
25 where we have more than, you know, five different precincts or

1 groups or agencies coming at the same time. And so obviously  
2 the overflow of the four, we believe is more than enough that  
3 way there -- we do not anticipate having a larger overflow than  
4 that.

5 COMMISSIONER BLAKE: Excellent. Thank you very much.  
6 That answered all my questions for now.

7 COMMISSIONER SMITH: Is that a follow-up question,  
8 Chairman?

9 CHAIRPERSON HILL: Sure, go ahead. We'll do -- we'll  
10 do questions from everybody now.

11 COMMISSIONER SMITH: Sure. So, I mean, to that last  
12 point that Mr. Blake raised -- and I think the -- at least my  
13 intent was the last time we talked about this -- and thank you  
14 for providing the signage. It was that queuing shall occur within  
15 that parking lot. And I understand, Ms. Moldenhauer, you're  
16 saying that the cars going to the site, wouldn't -- they shall  
17 be staged in a way that there shouldn't be any more than five at  
18 any particular time. But is your client amendable to a condition  
19 that says that all queuing shall occur onsite at all times?

20 MS. MOLDENHAUER: One, I think that it's obviously  
21 there's a question of kind of onsite because you know the --

22 COMMISSIONER SMITH: Not in the street.

23 MS. MOLDENHAUER: Not in the public street. Let me --  
24 let me think about that. I think the question is, obviously,  
25 you know we -- we feel as though we're providing more than enough.

1 And I don't know if, you know, indicating kind of how -- how  
2 would -- my question is, given the fact that these vehicles come  
3 in police cars, how would it be enforced? Given -- you know,  
4 if -- if a police car is driving by, you know, is that going to  
5 then be viewed as a violation of that condition?

6 I just -- my concern would be enforceability of it. We  
7 think that having these labeled as the -- the staging area, and  
8 that is obviously our intent. But I would not want to agree to  
9 a condition that would lead to confusion down the road, given the  
10 fact that these individuals do come in MPD vehicles and obviously  
11 it may be difficult to identify whether they're an MPD vehicle  
12 that is just driving around the street or is actually coming to  
13 the CCB with the detainee.

14 COMMISSIONER SMITH: Okay. That -- that's a fair  
15 point. If you could commensurate with your client regarding  
16 that. Also -- and maybe you've had stated it, would these --  
17 because I'm not seeing it on the image and the image is kind of  
18 cut off on -- on the screen here. Would there be a gate or would  
19 there not be a gate into the fenced area at both the L street  
20 entrance and the New York Avenue.

21 MS. MOLDENHAUER: There's only a gate into the sally  
22 port. There is no gate into the staging area.

23 COMMISSIONER SMITH: Okay. Was there -- was there a  
24 reason why there wasn't a gate proposed for either one -- either  
25 entrance?

1 MS. MOLDENHAUER: I believe that the intent was to  
2 provide the security around the sally port and the structure and  
3 not having an additional gate for the parking.

4 COMMISSIONER SMITH: Oh, okay.

5 COMMISSIONER BLAKE: And I'm sorry, Mr. -- I don't  
6 understand that because if -- how would you get to -- if you had  
7 a person that came in, how would -- where -- how would they get  
8 to the parking area if there was overflow like that, unless you --  
9 you'd have to come and be able to get to that, right?

10 MS. MOLDENHAUER: That's why there's no -- there's no  
11 gate to get to the staging area. So, if I -- I don't have a  
12 cursor. But the -- the gate is -- the red line is kind of in  
13 the -- if you're looking on L Street, the gate ends at the edge  
14 of the building. There's an opening between that and the curb,  
15 so there's no gate. The fencing, then, kind of goes around, but  
16 there's an opening, obviously, for the curb cut. So, the gate  
17 secures the sally port and the structure, and then there is an  
18 opening, there's no gate to access the staging area, but there  
19 is a fence that surrounds it to provide separation.

20 COMMISSIONER BLAKE: Sorry. When you -- when you -- I  
21 just -- my understanding was you said that when someone entered,  
22 if they were an extra, the sally port was occupied, someone  
23 arrived, they would then go and park in the staging area. But  
24 you're now telling me there's no access to the staging area unless  
25 you go through the Sally Port.

1 MS. MOLDENHAUER: No, no. I'm saying there's no gate.  
2 There's no need. They can drive straight in. There's no need  
3 for them to wait for a gate to open. They can just drive straight  
4 and there's no -- does that makes sense?

5 COMMISSIONER BLAKE: So, there's no gate that opens to  
6 the staging area at all?

7 MS. MOLDENHAUER: Correct.

8 COMMISSIONER BLAKE: Okay. But you might have  
9 detainees in cars in the staging area, but there's no gates on  
10 them? There's a fence, but no gate? So, it's not -- it's not  
11 closed off?

12 MS. MOLDENHAUER: Yes, that is correct.

13 COMMISSIONER BLAKE: Thank you.

14 COMMISSIONER SMITH: If -- if -- if the Board wanted a  
15 gate put on there, how would they do that, or how would you do  
16 that? Is that something that is allowed?

17 MS. MOLDENHAUER: I'd have to defer with my client. We  
18 can answer it, maybe, in -- later on in the proceeding.

19 COMMISSIONER SMITH: Okay.

20 CHAIRPERSON HILL: All right, do you want to drop --  
21 oh, so go ahead, Mr. Blake.

22 COMMISSIONER BLAKE: So -- so then -- so then I thought  
23 my initial supposition was right. So, I could, as a pedestrian  
24 walk from L Street to New York Avenue through the parking lot?

25 MS. MOLDENHAUER: Yes, as it's currently designed.

1                   COMMISSIONER BLAKE: Okay. All right. Thank you.

2                   CHAIRPERSON HILL: Okay. Does the Board currently have  
3 any more questions of the Applicant? Okay.

4                   Okay. Go ahead, Ms. John.

5                   VICE CHAIR JOHN: Just a comment. I'm thankful for  
6 the -- for that discussion because I misunderstood. I thought  
7 there would have been a gate on the L Street side at least, but  
8 the more I think about it, I think I would have a question about  
9 not having any gates. So that's -- that's my comment. My earlier  
10 question was answered. I think I also -- I am not clear why, if  
11 we can direct aircraft to land in precision and there's the  
12 technology, why we couldn't have proper queuing so that there  
13 aren't too many cars in the staging area. So that would be a  
14 question I would have, because these detainees are coming from  
15 satellite stations, so they're not -- my assumption is that  
16 they're not being -- you know, people are not being picked up on  
17 the street and brought to this location. So, if I could have  
18 someone discuss that a little more for me, because I would like  
19 to know why the queuing can't be tighter. Yeah. So that's my  
20 question.

21                   CHAIRPERSON HILL: Okay. Ms. Moldenhauer, you can --  
22 you can get in touch with your client, maybe, or think about that  
23 while we go through this process, I guess, about the queuing  
24 question and then also the gate question. Let's see. Anybody  
25 else from my board? Oh, go ahead, Commissioner Miller.

1                   ZC VICE CHAIR MILLER: I was going to wait till the  
2 end, but since we've delved into this a little bit. Thank you,  
3 Mr. Chairman. Thank you, Ms. Moldenhauer and -- and Director  
4 Faust for your responsiveness to the board's request for further  
5 information on the site plan; labeling the parking, queuing, and  
6 staging areas; the information -- additional information on  
7 detainee processing and staging; the response to the concerns  
8 about traffic impacts; the window glazing proposal as a  
9 mitigation to privacy and a neighborhood pedestrian walking by,  
10 I guess, and privacy of the inmates, as well; soundproofing and  
11 managing noise mitigation efforts; the future plans in short-term  
12 use, temporary use; and the proffered conditions that were  
13 intended to try to memorialize some of those mitigations.

14                   Let me ask you just quickly a couple questions on your  
15 Exhibit 152 submission that I was just referring to that had all  
16 that information, you say that the -- there will be enough --  
17 there are twenty-three on-street parking spaces, and you say  
18 that's sufficient for the employees that will be at the facility.  
19 How many employees will be at the facility at any one time? How  
20 many staff will be at the facility?

21                   MR. ANDRES: So, Commissioner Miller, so there's nine  
22 staff per shift for a total of twenty-seven throughout the day.  
23 There's an overlap of nine -- and the incoming -- the outgoing  
24 nine and the incoming nine are onsite at the same time. So, the  
25 peak is actually eighteen for about half an hour. There's a half

1 hour overlap where the new shift is ready to start their shift,  
2 and the existing shift is ready to leave their shift. So, over  
3 a half hour period, there's roughly about eighteen -- eighteen  
4 employees on site, and then it drops down to nine after the  
5 previous shift goes home.

6 ZC VICE CHAIR MILLER: Thank you for that response.  
7 That -- those numbers might answer my what was going to be my  
8 next question, which will be my next question, which is that on  
9 page 4, when you're discussing at the top that the detainee  
10 transport to the Superior Court every morning, that prior to  
11 departure from CCB at 501 New York Avenue, two ten-passenger vans  
12 will be waiting in the on-street parking area. So, I guess you're  
13 saying that there's sufficient on-street parking beyond the  
14 employees and the shift changes to accommodate the two passenger  
15 vans on-street that would be waiting in the on-street parking  
16 area? Why are they waiting there rather than the staging area?

17 MR. ANDRES: Well, we -- we wanted -- you know, so  
18 these vans are essentially empty when they're waiting for  
19 detainees. So, you know, we wanted to have the flexibility to  
20 provide all of the vehicles that are -- that might be potentially  
21 holding detainees, not on a -- not out on the street, but in a  
22 more secure facility, being on site.

23 ZC VICE CHAIR MILLER: Okay. Let me think about that.  
24 The -- let me ask you about the windows, the information you  
25 provided on the window glazing, frosting, and the noise

1 mitigation efforts. Did you proffer any conditions that would  
2 memorialize those, or at least reference them beyond the exhibit  
3 that's in the record? At least reference the exhibit, or do you  
4 have any objection to a specific reference to those mitigations  
5 that you're proposing to be included within the zoning commission  
6 order if we get to that point -- the BZA order, if we get to that  
7 point?

8 MS. MOLDENHAUER: Originally, they're part of our  
9 architectural plans and part of the filing. We would be fine if  
10 those are also part of the condition. Typically, the BZA orders  
11 are conditioned on the plans that are filed in the record, so  
12 either -- either way, we would be fine.

13 ZC VICE CHAIR MILLER: Yes. Because you -- you do  
14 propose some language for the signage, for example, but then in  
15 reference back to the -- to the exhibit to show where it is, and  
16 that would provide more specificity as to which signs go where.  
17 Does your -- does your exhibit indicate which signs go where?

18 MS. MOLDENHAUER: Yes, it does.

19 ZC VICE CHAIR MILLER: Okay. All right. Well, thank  
20 you for that response. That's all I have at this time, Mr.  
21 Chairman. I'm anxious to hear the other testimony that we may  
22 receive today. Thank you.

23 CHAIRPERSON HILL: Thank you, Commissioner Miller.

24 MS. MOLDENHAUER: We have responses to those prior  
25 questions if you would allow us to respond?

1 CHAIRPERSON HILL: Sure. Go ahead.

2 MS. MOLDENHAUER: Sure. So, I'll first turn to Director  
3 Faust to address the question about kind of queueing and providing  
4 a tight system.

5 MR. FAUST: Yes. I believe it might have been  
6 Commissioner Smith that was asking about queuing, and would there  
7 be any queuing out on the streets or something to that effect?  
8 No, there would not be, and again, this is why we've had, you  
9 know, extensive planning and coordination with MPD and other  
10 agencies. So again, the -- the four spots that would be inside  
11 the fenced area, that would be, as was explained, if there is  
12 already a vehicle in the sally port, there are those four spots  
13 where the vehicles could wait. However, if you're talking about  
14 any other vehicles beyond that, that again, as we explained  
15 somewhat in the first meeting, in terms of processing, some  
16 agencies self-process, and all the arrestees that would come from  
17 MPD they process at MPD districts first.

18 So, it is -- will be -- what our operation will be, and  
19 it's a fairly easy thing to accomplish, is before those  
20 individuals or those vehicles come from those MPD districts, we  
21 have a coordinated plan so that there won't be, you know,  
22 whatever, eight vehicles, and you know, they're sitting out on  
23 New York Avenue or whatever. So, through the -- the coordination  
24 of coordinated drop-off, and we've collaborated with other  
25 agencies and collaborated with MPD, there would be a very

1       structured plan in terms of vehicle staging. So, there would not  
2       be an instance where vehicles beyond those four spaces that are  
3       already shown internal to that fencing would be waiting. If they  
4       were waiting, they'd be waiting at an MPD district or some -- you  
5       know, some other location.

6                   COMMISSIONER SMITH: Thank you for the clarification.  
7       So, does that mean you would be open to a condition that says  
8       that all staging shall occur onsite?

9                   MR. FAUST: I'm not sure. When you say all staging  
10      will occur onsite, some of the staging may be at a MPD District,  
11      or I might be -- I might be misunderstanding your question.

12                  COMMISSIONER SMITH: What I'm trying to ensure, and --  
13      and we can craft the condition that in your coordination plan,  
14      when you --

15                  MR. FAUST: There won't be any staging done on the  
16      streets.

17                  COMMISSIONER SMITH: Okay. I think that answers my  
18      question. Vehicles that have been coordinated with your office  
19      to arrive at the CCB will not stage in the street.

20                  MR. FAUST: That's correct. They will either be staged  
21      elsewhere, i.e., a police district. In other words, they'll wait  
22      there until we can accept them, and/or they -- if they're onsite,  
23      they're going to be within those designated spots that you see  
24      that's inside the -- the fenced area.

25                  COMMISSIONER SMITH: Okay. So, you're amen -- you're

1 okay with a condition that speaks to that?

2 MR. FAUST: I would be okay with some -- again, I have  
3 to see what the wording, but yeah --

4 COMMISSIONER SMITH: Right.

5 MR. FAUST: -- in general, yes.

6 COMMISSIONER SMITH: Okay. All right. Thank you.  
7 That was the only question that I had.

8 MS. MOLDENHAUER: I believe there was a question about  
9 the gate, and so Mr. Hargrove, can you address that?

10 MR. HARGROVE: Commissioner Blake and Commissioner  
11 Smith asked about the gates on L and New York, and so we -- we  
12 can and will install gates that will not allow pedestrian traffic  
13 to walk through. They will be operable and only operable when a  
14 vehicle is ready to enter the site.

15 MS. MOLDENHAUER: And then at that point --

16 COMMISSIONER BLAKE: As well as the sally port?

17 MR. HARGROVE: Say that one more time.

18 COMMISSIONER BLAKE: That would be to the parking area  
19 as well as the sally port?

20 MR. HARGROVE: Yes.

21 COMMISSIONER BLAKE: So, there'll be two separate  
22 gates?

23 MR. HARGROVE: It may -- it may be two separate gates,  
24 or maybe one large gate, but if you want --

25 COMMISSIONER BLAKE: Okay. So but that's not reflected

1 on the plans at this point, but I do think that that would be --  
2 I certainly would be comforted by seeing the whole thing closed  
3 off and everything taking place within that -- literally  
4 that block would be great, as opposed to -- even to have the  
5 pedestrians walk through the parking lot doesn't seem to be  
6 particularly attractive from my perspective.

7 MR. HARGROVE: We do -- we do not want that.

8 MS. MOLDENHAUER: We will update the plans and be filing  
9 that in the record if the board allows us to do that after the  
10 conclusion of this hearing.

11 CHAIRPERSON HILL: Well, see -- I mean, yeah. I mean,  
12 I'm sure -- I think -- I think we'll want to see that. So that  
13 might take a minute. Okay. Let's see. All right. Is there  
14 anything else from my board? Okay. And y'all can come back in  
15 and ask questions, also. Ms. Themak, do you have any questions  
16 of the Applicant? I can't hear you. I'm sorry, Ms. Themak.

17 MS. THEMAK: No.

18 CHAIRPERSON HILL: Okay. All right. Okay. Let's see  
19 then. If that's the case, then go ahead, Ms. Themak, and you  
20 can give your presentation.

21 MS. THEMAK: Great. Mr. Young could pull up -- we only  
22 have two PowerPoint slides, so I basically wanted to go through  
23 a summary of the arguments that the ANC lays out in their response  
24 to the Applicant's supplemental filing. Even as of today, we've  
25 observed several outstanding issues that need resolution before

1 any decision should be made on this, and I'll go through the six  
2 points that were in the -- in the memorandum from the board from  
3 the earlier hearing.

4                   In regards to the parking and queuing, there's been  
5 some discussion about the 40-foot, 25-foot distance requirement  
6 from the crosswalks. We have confirmed with DDOT that they will  
7 be having to reach out to DGS again because they are not in  
8 compliance. Just because the existing conditions are as they are  
9 does not mean that any or all of them are in compliance, and we  
10 just recently sought confirmation from Christophe Wassmer, a  
11 community engagement specialist from Ward 2 and the Office of the  
12 Director, that they will be reengaging with the Applicant to fix  
13 this problem because this code section 18 D.C.MR 2405.2 does, in  
14 fact apply, and the current parking and queuing and staging scheme  
15 does not incorporate that rule.

16                   When this rule is incorporated, the amount of spaces  
17 onsite are not, in fact, 23. There's only 14, which significantly  
18 reduces what we've talked about with employees and the need for  
19 staging. If we're looking at possibly using additional offsite  
20 parking, there's two-hour parking in the area, and Commissioner  
21 Nigro can speak to this in her testimony, but there is currently  
22 a resident-only initiative for the other areas of this  
23 neighborhood. So additional offsite parking further from the  
24 site would not be possible.

25                   The spaces, as provided, you can see from some of

1 the queuing plan diagrams, are not even large enough for the vans  
2 or for the staging area itself. There's a -- there is a strategic  
3 problem with the left turn that the vans exiting the site will  
4 need to make when they take a left turn. I believe the  
5 Applicant's submission describes a left turn for the vans exiting  
6 on New York Avenue. These vans will have to exit the gate, wait  
7 for any oncoming traffic, and if there's traffic at that traffic  
8 light, two or three cars will cause a significant traffic problem  
9 across this double yellow line.

10           In terms of the detainee processing, this issue remains  
11 unresolved. The U.S. Marshal's office has said that they won't  
12 transport until after the no paper determination is made because  
13 they don't want to transport detainees unnecessarily. That  
14 necessarily means that they are technically out of the custody  
15 while still at the CCB. So, this question hasn't been determined.

16           The no loitering signs that the Applicant has proffered  
17 are essentially useless. There's no no-loitering law currently  
18 in DC. So, detainees, their family, friends, anybody who's  
19 waiting for them to be released can remain in the public space  
20 at will, regardless of any signage that is posted it there. We  
21 still believe that DGS is underestimating the number of trips  
22 that are going to be made to and from the site.

23           In terms of the windows, again, we confirmed with HPO  
24 staff that the original drawings that were submitted for permit  
25 and review by HPO did not include the film, and that they will

1 be required to go back through Historic Preservation Review with  
2 that film on. So, the drawings as presented here are not finally  
3 approved either by DDOT or by HPO. I believe Vice Chair John  
4 had a question about the height of the windows, and I think  
5 we're -- we are predominantly concerned about the windows on the  
6 first floor. They are at eye level. So, it does offer detainees  
7 the possibility of attempting to communicate with those on the  
8 outside.

9                   In regard to noise, there was discussion at the earlier  
10 hearing about the kind of protests and demonstrations that occur  
11 at the Daly Building currently. I know Director Faust wasn't  
12 aware of any, but we submitted multiple examples that we hope the  
13 board got a chance to review. So, these type -- this type of  
14 activity is documented. It's happened, and it is very likely to  
15 happen again when this is relocated into this neighborhood. We  
16 did reach out to MPD about protests and use of megaphones and  
17 things of that nature that you might have seen in the photos,  
18 and their response was that they would only intervene in those  
19 kind of demonstrations if it was in violation of the Residential  
20 Tranquility Act. Unfortunately, that proposed act only applies  
21 to demonstrations outside of residences. So, this would not be  
22 considered a violation, and therefore, preempt the intervention  
23 of MPD.

24                   I guess, in terms of future use, we've heard about an  
25 eight-year limit on the special exception use. We've heard about

1 a committee. I -- we remain dubious as to the likelihood that  
2 this will be renovated to undo the investment by the government  
3 of \$10 million. So, I'll leave it at that.

4 Could you -- Mr. Young, could you bring me to the next  
5 slide, please?

6 I think the Applicant concluded by saying that the  
7 standards have been met, and I think -- I think the ANC has  
8 demonstrated that there are not only remaining questions that  
9 need to be answered here, but there are several significant and  
10 adverse impacts that require the special exception be denied, and  
11 I think the chair and the vice chair, both, essentially, and I'm  
12 paraphrasing, but these are the direct quotes from the transcript  
13 of the last hearing. The neighborhood really shouldn't know it's  
14 here if this is accomplished correctly, and I think our submission  
15 and the testimony of the witnesses and some of the witnesses that  
16 you'll hear from today demonstrate that it's quite the opposite.  
17 This is going to be a very felt presence in the neighborhood.  
18 The noise outside, security issues, all of the points that we've  
19 gone through today.

20 At this time, I would turn it over to our witnesses,  
21 if that's possible, unless there are questions, and I'd also like  
22 to take the opportunity to respond. I know Ms. Moldenhauer  
23 objected to our witness of Amy DeYoung, but -- and I appreciate  
24 her being let -- allowed to testify. I think before she does  
25 so, the purpose is really to have somebody who deals not

1 specifically with the CCB, but in areas and in environments very  
2 closely aligned. So, our two witnesses today would be Amy DeYoung  
3 and Commissioner Nigro, but happy to take questions before that  
4 happens.

5 CHAIRPERSON HILL: Let's go ahead, Ms. Themak, and have  
6 your witnesses present, and then we'll see what questions we may  
7 or may not have.

8 MS. THEMAK: Okay. Then I think at this time, I  
9 think -- and Ms. DeYoung might have had to step out. So, I will  
10 have Commissioner Nigro testify first, and in the instance that  
11 Ms. DeYoung is not able to join us, you do have her written  
12 testimony, which I would ask you to -- to review.

13 CHAIRPERSON HILL: Great. Okay. Commissioner Nigro?

14 MS. NIGRO: Mr. Young to put up that first slide of our  
15 presentation. Just the first slide, do you mind? Thank you.

16 So, I just want to be very brief, because I know we  
17 have been at this for a very long time, and for myself, it has  
18 been 586 days. So, I just wanted to make some very clear points  
19 to the -- to our -- what Ms. Themak has said. So, as we know,  
20 DDOT has clarified with the parking situation around 501 New York  
21 avenue, and so it is concerning to the Commission that if there's  
22 going to only be fourteen spaces, where would all of these cars  
23 go? They would not be able to go into the neighborhood. Okay.  
24 There is currently two-hour parking available for -- if you're  
25 residents or they have their parking pass and there's two-hour

1 parking for visitors. There is initiative that's already -- we  
2 have a resolution out that we are going for residential only  
3 parking on one side of the street, so there's going to be even  
4 less parking for visitors. Right. So, this is terribly -- there  
5 is no room for these Department of Corrections, MPD vehicles, if  
6 it's going to be only fourteen spaces. Okay. It just -- just  
7 can't happen.

8 So, in addition, as we pointed out with the left turn  
9 across New York Avenue, it is a terribly dangerous intersection.  
10 I cannot overstate that. Right? And so it has previously been  
11 stated that the cars won't use their sirens, and all this. To  
12 be honest with you, for anyone to get on to New York Avenue and  
13 take a left, first of all, they're probably not going to let you  
14 in. Right? Because they -- they're -- it's rush hour or whatever  
15 time. It's crowded all the time, and they're going to have to  
16 use their sirens. I mean, this is just -- this is just a reality  
17 point. Okay. So those -- those two points.

18 Now, as far as detainee processing, we have -- we were  
19 not standing down from that. We say that they're going to be  
20 released from there.

21 Now, with the no loitering, as we said, there is no  
22 loitering law. So I'm not sure if they meant for the inside the  
23 area, outside the area, but anyone can stand outside of 501 New  
24 York Avenue, 24/7, whether they're visiting people, not --  
25 whoever. No loitering. You can do it. Right? Go right ahead.

1 You can do it now. You can do it if this thing comes. Go right  
2 ahead. So again, we say there's going to be many trips  
3 underestimated that we know there's going to be a lot of traffic  
4 added to the already traffic that is around 501 New York Avenue.

5 And as far as the windows go, right, this film, that  
6 has not been approved by HPRB, someone can stand on the outside  
7 of that L Street side window and use a flashlight to communicate  
8 with the people inside. This is obvious, and clearly the windows  
9 are not going to be replaced so anyone can stand on the outside,  
10 use a flashlight, use a megaphone and try and communicate with  
11 detainees in there. Right? So it's -- it's fine that they're  
12 using noise mitigation inside the building, but you will have  
13 people standing on the L Street side on the other side of those  
14 windows trying to communicate. I guarantee it. Okay. So --  
15 and it's -- and it's also a bit distressing for me because I  
16 represent a historic area, and my constituents have to follow  
17 HPRB regulations, and if apparently the government doesn't have  
18 to, that will be a shame. Right? So they have to always follow  
19 the -- the window regulations.

20 Noise, the demonstrations are going to happen. You  
21 know, maybe Director Faust is not aware of those previous  
22 demonstrations, but they're going to happen around 501 New York  
23 Avenue, and it's going to be very attractive for those  
24 demonstrators, because there's a lot of public space and they'll  
25 want to close down New York Avenue.

1           We live in Washington, DC.     This is where  
2 demonstrations happen, right?   So to say that it's not going to  
3 happen if the central cell block comes to 501 New York Avenue is  
4 just naive.   It's going to be very attractive for protesters  
5 to -- either they're going to be someone famous or they're going  
6 to go see the other protesters there.   All around, whether it's  
7 Fifth Street, Sixth Street, New York Avenue, or L Street, it is  
8 surrounded by public space and is the opportunity for protest or  
9 demonstrations, and they can use bullhorns, drums, their voices,  
10 you name it, and no one is going to stop them because they can't,  
11 only at late at night.   Right?   And unfortunately, the future  
12 use, those conditions, it seems to me a little bit like now it's  
13 we're having to come together with the community.   All this 586  
14 days that I have experienced this, the government has no desire  
15 to come together with the community, and I stand by my words.  
16 Okay.   Thank you.

17           CHAIRPERSON HILL:    Okay.    Thank you, Commissioner  
18 Nigro.   All right.   Ms. Themak, is there anything else?   You're  
19 on mute, Ms. Themak.

20           MS. THEMAK:   I don't think Ms. DeYoung is able to join,  
21 so we'll just rely on her written testimony.

22           CHAIRPERSON HILL:   Great.   Thank you.

23           MS. THEMAK:   Thank you.

24           CHAIRPERSON HILL:   All right.   Does the board have any  
25 questions of the opposition?   Okay.   Ms. Moldenhauer, do you have

1 any questions of the opposition?

2 MS. MOLDENHAUER: No questions, but just one or two  
3 rebuttal points when it's my turn.

4 CHAIRPERSON HILL: Sure. No problem.

5 All right. We got the Office of Planning here again.  
6 So if we could have the Office of Planning please introduce  
7 themselves.

8 MR. JESICK: Thank you, Mr. Chairman and members of the  
9 board. My name is Matt Jesick.

10 CHAIRPERSON HILL: Does -- Mr. Jesick, I mean, you gave  
11 your testimony the last time. The Office of Planning doesn't  
12 have a supplemental report. Do you have anything additional to  
13 add?

14 MR. JESICK: No, Mr. Chairman. We reviewed the  
15 information in Exhibit 152 and did not find any information that  
16 would alter our recommendations. So we continue to recommend  
17 approval.

18 CHAIRPERSON HILL: Okay. Great. Does the board have  
19 any questions of the Office of Planning? All right. Ms.  
20 Moldenhauer, do you have any questions of the Office of Planning?

21 ZC VICE CHAIR MILLER: Question of Office of --

22 CHAIRPERSON HILL: Oh, sure. Go ahead, Commissioner  
23 Miller.

24 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. Mr.  
25 Jesick, thank you for being here. Can you just respond to the

1 window glazing issue having to go before HPO, that there would  
2 be an additional process that would be required for further review  
3 of that proposed mitigation that's being offered here?

4 MR. JESICK: Yeah, I'd say that's not unusual for a BZA  
5 case to have, you know, need BZA relief and need to go before  
6 HP. That happens all the time. If they need -- if that results  
7 in a change in the design, they would likely need to come back  
8 before you to modify the approved plans. So your approval or  
9 action today, or whenever you take action, would not necessarily  
10 determine an outcome at HP and vice versa. They need to get all  
11 appropriate approvals, including HP.

12 ZC VICE CHAIR MILLER: Okay. Thank you very much.

13 CHAIRPERSON HILL: Okay. Ms. Moldenhauer, did you have  
14 any questions of the Office of Planning?

15 MS. MOLDENHAUER: If -- based on what you heard today  
16 from the ANC, you know, does that at all change your opinion on  
17 the record in regards to your support of the relief?

18 MR. JESICK: Based on all the information in the record,  
19 including written submissions and verbal testimony, we continue  
20 to recommend approval of the application.

21 CHAIRPERSON HILL: Okay. Ms. Themak, do you have any  
22 questions of the Office of Planning?

23 MS. THEMAK: No. Commissioner Nigro did make me aware  
24 she did have a question for the Applicant. I don't know if that's  
25 possible at this time or if you could allow her to ask that

1 question.

2 CHAIRPERSON HILL: Sure. Go ahead, Commissioner Nigro,  
3 what's your question?

4 MS. NIGRO: So we're aware that the cars will not fit  
5 around 501 New York Avenue due to DDOT standards. My question  
6 is for -- is it Mr. Andres? Is that Mr. Andres? Mr. Andres,  
7 where would the cars go?

8 MR. ANDRES: So a couple of things. One, the  
9 application of the DCMR statute that you have identified,  
10 identified 40 feet -- it's not from the crosswalk, but 40 feet  
11 from the edge of the nearest curb. So that 40-foot length, which  
12 you might have used to calculate those numbers, are likely  
13 inaccurate if you used 40 feet. The -- in terms of the 25 feet  
14 from the clearance of the intersections, you know, let's start  
15 off with the requirement. The zoning requirement is zero. in  
16 the downtown zone, the zoning requirement is zero.

17 So what -- you know, in order to be a good neighbor,  
18 the DOC and the team has looked to see what we can do to  
19 accommodate as much parking as we can to support the mission. If  
20 you were to look at the aerials, even one today, you will see  
21 historical photos showing vehicles parked where we have presented  
22 them to be parked, and those vehicles are law enforcement  
23 vehicles. These law enforcement vehicles are driven by trained  
24 professional law enforcement personnel.

25 CHAIRPERSON HILL: Mr. Andres -- Mr. Andres.

1                   MR. ANDRES: Yeah.

2                   CHAIRPERSON HILL: I'm just trying to get -- sorry. So  
3 your answer is that -- and this is where, Commissioner, we're  
4 going to figure this out also, but your answer is that your number  
5 is accurate, correct? The 23?

6                   MR. ANDRES: That the 23 is accurate, that the 14 that  
7 they've identified does not -- does not comply with that DCMR --

8                   CHAIRPERSON HILL: Yes. And then you further point out  
9 which is also accurate, that you're not here for zoning relief  
10 from parking. So that's what we -- we do know that, and so,  
11 but -- so Commissioner, he is giving his testimony saying that  
12 the 23 spots are actually going to happen. So what other  
13 questions do you have?

14                  MS. NIGRO: I have a question -- a question for Director  
15 Faust. I guess it would be for Director Faust. So Director  
16 Faust, when you're talking about these -- these no loitering  
17 signs, who are those for? Since there's no loitering law in this  
18 city.

19                  MS. MOLDENHAUER: Since the point of those signs is to  
20 provide, you know, a general encouragement around the site, it  
21 was a response to questions from the board. Obviously, the board,  
22 in any order that they issue, has to comply with all the laws of  
23 the District of Columbia. However, we were locating those in  
24 order to try to provide a -- reduce any potential mitigation  
25 factors.

1 MS. NIGRO: Okay. So stop wasting taxpayer money.  
2 There's no loitering law. No one will care about those loitering  
3 signs because they -- they are allowed to loiter around --

4 CHAIRPERSON HILL: Commissioner Nigro. Commissioner  
5 Nigro, we don't need to talk about wasting taxpayer money, just  
6 want to point out, I'm here also a taxpayer of the District of  
7 Columbia, and I'm here with my time doing this. Right? So what  
8 other questions do you have?

9 MS. NIGRO: Oh, I do. I have it for OP.

10 CHAIRPERSON HILL: Okay.

11 MS. NIGRO: Should I go on?

12 CHAIRPERSON HILL: Yeah.

13 MS. NIGRO: Hi. So concerning the film that the  
14 Applicant wants to put on the historic windows, if my constituents  
15 would want something like that, it would be a whole procedure.  
16 Why is it that the government doesn't have to do that?

17 MR. JESICK: That the government doesn't have to do  
18 that -- I think they would need --

19 MS. NIGRO: So -- so --

20 CHAIRPERSON HILL: Commissioner Nigro, what the Office  
21 of Planning said, was that if we need -- if they need to go to  
22 HPO to get the film approved, they would have to go to HPO to  
23 get the film approved, and then if that changed the design, they'd  
24 have to come back to the BZA because the design would have been  
25 changed. So they're still going to go through whatever process

1       they'd have to go through, and then if it got changed, they'd  
2       come back to us.

3            MS. NIGRO: I do have a question for Director Faust,  
4       if he's still on there. Director Faust?

5            CHAIRPERSON HILL: Well, let's see. What's your  
6       question?

7            MS. NIGRO: So the question is to go back. We're  
8       talking about the staging and different cars coming, and Director  
9       Faust had mentioned that well, you know, everyone comes from the  
10      District houses, right? And I get that part, but they -- from  
11      the other agencies, meaning WMATA, Secret Service, the Capitol  
12      Police, and the Park Police. It might be rare, but it can happen  
13      that those agencies will go directly to the central cell block.

14           CHAIRPERSON HILL: What's your question? Will they --

15           MS. NIGRO: That's fine. So he's -- the -- you know,  
16      it will -- this whole staging discussion might not apply for some  
17      instances where they are brought directly to the central cell  
18      block, and it might be rare, but it does happen; is that correct,  
19      Director Faust?

20           MR. FAUST: The staging process will be coordinated,  
21      and we have spoken to and will coordinate with any federal  
22      agencies. As I mentioned before, including Capitol Police as an  
23      example, or Metro Transit Police, they self-process. So any of  
24      those individuals, we would have -- would still apply to the same  
25      staging process, and again, I think it's important to look at

1 what we're talking about. On average, we average about around  
2 15 vehicles daily, and that's spread out throughout. So you  
3 know, I think it's important to put it in context that somehow  
4 that there's going to be 50 vehicles all coming, you know, that  
5 are looking. We're talking about, on average, around 15 vehicles  
6 over a full day period. So again the four -- the four spaces  
7 for vehicles that are within the fenced-in area will meet all  
8 normal operational needs in terms of any type of staging -- and  
9 again, for anything beyond that, we will in fact and do in fact  
10 will have staging protocols, both for MPD and for other agencies.

11                   And then finally, I would just say that to kind of add  
12 on to that in terms of context, for you know, extremely large  
13 events, you know, some big protest or something like that, MPD  
14 does and always has, they -- they set up separate remote locations  
15 for processing, for citations being issued, things such as that.  
16 For example, they might set up the armory as a staging point. So  
17 they, in -- even in those kind of cases, those individuals do not  
18 come to CCB. So again, with the four spaces that we have  
19 available and our ability to work with the necessary agencies for  
20 the staging, it -- it meets our operational needs.

21                   MS. NIGRO: And I have one more question for you,  
22 Director Faust. So as you know, you weren't aware of the previous  
23 protests and demonstrations at the current central cellblock,  
24 which is fine, right, but is it your belief that it will not  
25 happen if the central cellblock moves to 501 New York Avenue,

1 that protests and demonstrations will not happen on the  
2 surrounding public space, which will adversely affect my  
3 constituents and the surrounding streets, businesses, and  
4 residences?

5 MR. FAUST: Well, I looked at the photos that I guess  
6 were submitted as part of the package. So a couple of things.  
7 Yes, I was not aware because I see those photos were dated from  
8 2020, at which time I was residing in Los Angeles, California,  
9 but beyond that, in looking at those photos, they were taking  
10 place in and around the courthouse. The courthouse is easily in  
11 view. I saw there were some other areas that were -- seem to be  
12 common space areas that were near the Department of Labor  
13 building. So my assumption is whatever protests may or may not  
14 have been going on, that they had something to do with either  
15 some action of the Court, like, I don't think there was a protest  
16 of the CCB going on. Again, I don't have any knowledge of what  
17 that protest was, but it was in -- in and about the area of the  
18 courthouse. So if there's a protest that's going to go on  
19 protesting some decision of the Court or -- or whatever, I would  
20 assume those protests would continue to be done down in the  
21 courthouse area.

22 MS. NIGRO: So Director, I don't mean to correct --

23 CHAIRPERSON HILL: Commissioner Nigro. Commissioner  
24 Nigro, how many questions do you have?

25 MS. NIGRO: I just one more statement, if you don't

1 mind. Though --

2 CHAIRPERSON HILL: I want to ask, how many questions  
3 do you have?

4 MS. NIGRO: That's it. This is the last one, if I may  
5 say this.

6 CHAIRPERSON HILL: Go ahead.

7 MS. NIGRO: Director Faust, and I -- and I get it. I  
8 respect your opinion, but those pictures were of the entrance,  
9 the driveway to the central cell block. Those were very specific  
10 pictures. So nonetheless, there it is, that their protest will  
11 come to 501 if this happens. So.

12 CHAIRPERSON HILL: Okay. Let me just see if there's  
13 any public testimony that needs to be taken on these issues that  
14 we've asked from the board. Mr. Young, is there here anyone  
15 wishing to speak? Okay. Great. Can you give me their names,  
16 please?

17 MR. YOUNG: Yes. The first two are calling in by phone,  
18 and that is Avi Bublek and Katherine Ollinger (phonetic). Then  
19 we have Richard Finkelstein (phonetic), and the last one is  
20 Katerina Semyonova (phonetic).

21 CHAIRPERSON HILL: Okay.

22 MR. YOUNG: And we may have one more that they signed  
23 up, and staff is reaching out to them because they are not on  
24 right now.

25 CHAIRPERSON HILL: Okay. Great. Ms. Semyonova, can

1 you hear me?

2 MS. SEMYONOVA: Yes.

3 CHAIRPERSON HILL: Great. Could you please give us  
4 your name and address? And then you'll have three minutes as a  
5 member of the public to give us your testimony, and you can begin  
6 whenever you like.

7 MS. SEMYONOVA: Thank you. I'm actually testifying on  
8 behalf of an organization. So I'm testifying on behalf of the  
9 Public Defender Service for the District of Columbia.

10 CHAIRPERSON HILL: You're testifying on behalf of the  
11 public -- on behalf of whom?

12 MS. SEMYONOVA: Of an organization. So I looked at the  
13 rules, and I thought that was five minutes. So I'm testifying  
14 on behalf of the Public Defender Service for the District of  
15 Columbia.

16 CHAIRPERSON HILL: Public Defender Service. You'll get  
17 five minutes. I'm just trying to understand what the organization  
18 is.

19 MS. SEMYONOVA: My testimony will explain it. I can  
20 explain it now.

21 COMMISSIONER SMITH: Chairman Hill, really quickly,  
22 they -- they submitted a letter into the record this morning.

23 CHAIRPERSON HILL: Okay. Got it.

24 COMMISSIONER SMITH: Just for reference.

25 VICE CHAIR JOHN: What -- what exhibit is that?

1 CHAIRPERSON HILL: I think it's 156. Is that it?

2 COMMISSIONER SMITH: Let's see.

3 VICE CHAIR JOHN: Oh, yes, I see it. Public Defender  
4 Service. Thank you.

5 CHAIRPERSON HILL: Okay. Great. Okay. All right.  
6 Thank you, Mr. Smith. Okay. Go ahead, Ms. Semyonova, and thank  
7 you for your testimony.

8 MS. SEMYONOVA: Thank you. Chairman Hill and members  
9 of the board, good afternoon. I'm Katerina Semyonova. I'm  
10 special counsel on policy and legislation at the Public Defender  
11 Service. As part of the application for the temporary relocation  
12 of the District central cellblock to 501 New York Avenue  
13 Northwest, the Department of Corrections has promised that,  
14 "There will be no detainees released from CCB at 501 New York  
15 Avenue." This was in exhibit 152. The Public Defender Service  
16 objects to any limitation on individuals being released from 501  
17 York Avenue, Northwest. The Public Defender Service for the  
18 District of Columbia represents individuals who are charged with  
19 criminal offenses in D.C. Superior Court. PDS also represents  
20 young people, individuals who are in the juvenile system and  
21 individuals in the mental health system, as well as having a  
22 civil legal practice related to this representation.

23 Nearly all PDS clients who are charged in criminal  
24 cases spend time at CCB. For years, it has been known that CCB  
25 is vile and unsanitary and is a terrible place to spend even a

1 few hours. In 2018, a group of pastors who spent six hours at  
2 CCB following their arrest for civil disobedience described  
3 roaches were walking all over the metal shelf that served as a  
4 bed, as well as the ceiling and on the walls and on the floors.  
5 Protesters who came through CCB in 2023 described insufferable  
6 heat and despicable conditions. A district resident died while  
7 at CCB in 2023. More than six years ago now -- now-City  
8 Administrator Kevin Donahue conceded that CCB was in a building  
9 that needed a full scale renovation. There's absolutely no  
10 question that if the District continues to detain people prior  
11 to their court hearings, it needs to do so at a location that  
12 does not violate their rights and upholds their Constitutional --  
13 and upholds Constitutional and community standards for conditions  
14 of detention. The current CCB does not meet those standards.

15 Therefore, if the District continues to detain people,  
16 it must make a plan to renovate the existing CCB. Importantly,  
17 any renovation plan must respect the Constitutional rights of  
18 people to be released. The current plan does not respect the  
19 right to be released from detention. Under current practice,  
20 individuals who are arrested are brought to police districts  
21 around the City. They are then transported from police districts  
22 to CCB. Individuals are then transported from CCB to the U.S.  
23 Marshals' cellblock inside of D.C. Superior Court. The  
24 prosecuting authorities, the United States Attorney's Office, and  
25 the Office of the Attorney General review arrest paperwork and

1 make charging decisions throughout this process.

2 Prosecutors can review cases long before individuals  
3 are brought from CCB to the United States Marshal cellblock in  
4 Superior Court. This is because the location of the individual  
5 has nothing to do with the prosecutor's decision about whether  
6 to charge them. Under current practice, when the prosecutor  
7 decides not to formally charge the arrested person, the  
8 individual can be released from wherever they are detained,  
9 whether that detention location is CCB or the United States  
10 Marshal cellblock in Superior Court.

11 The Department of Corrections Zoning Adjustment  
12 Application forecloses release from CCB, thereby creating the  
13 risk that individuals will be held in confinement despite a  
14 decision not to prosecute them. It also creates the risk that a  
15 decision not to prosecute will be needlessly, but intentionally  
16 delayed so that people are not released from 501 New York Avenue  
17 Northwest, but are instead transported to Superior Court only to  
18 effectuate a release that could have and should have been done  
19 earlier.

20 People should be released as soon as a determination  
21 is made not to charge them. All across the District of Columbia,  
22 people are released from police districts when the police decide  
23 not to formally arrest them, or when police decide to terminate  
24 an arrest with a citation or a post and forfeit procedure. People  
25 are also released directly from D.C. jail when they are ordered

1 to be released by the Court, or when they finish serving a  
2 sentence. Releasing people into neighborhoods, which seems to  
3 be a primary objection to this BZA application, is exactly what  
4 should happen. People should be released from detention as soon  
5 as possible. People who have been detained and who are not only  
6 presumed innocent, but were not even charged with a criminal  
7 offense, should not -- should be allowed to return to their lives,  
8 families, and jobs as soon as possible.

9 It seems to be lost in this discussion that the  
10 residents who would not be released into the neighborhood are  
11 people who have the right to access any public space and streets  
12 in this city. They are neighbors and residents, and if they are  
13 not charged, they should be freed from New York Avenue, rather  
14 than being required to board a van, drive ten blocks and enter  
15 another public building, only to be released from there. A  
16 process that prolongs detention for uncharged individuals  
17 subjects them to more traumatizing and humiliating physical  
18 restraints, potentially including handcuffs, waist chains, and  
19 leg irons, and prolongs the time that they do not have the  
20 adequate nutrition and prescription medication that they need.

21 Prolonging detention is an unacceptable way to address  
22 a problem that does not exist, about people accessing  
23 neighborhoods that they have every right to access. For  
24 individuals whose cases are papered, and who will have to appear  
25 before a judge, moving CCB will require more time and

1 transportation and will potentially create a greater burden on  
2 them. PDS is concerned about these burdens and about the  
3 conditions that individuals will experience at CCB and during  
4 transport, but PDS will address those concerns with the  
5 Department of Corrections and others. With respect to this BZA  
6 application, because PDS understands the need to renovate CCB in  
7 order to respect the dignity of the individuals who are required  
8 to pass through there, PDS simply objects to this application  
9 including a condition that would prohibit release of innocent and  
10 uncharged individuals from the temporary CCB site at 501 New York  
11 Avenue Northwest. Thank you.

12 CHAIRPERSON HILL: Thank you, Ms. Semyonova. Okay.  
13 Does the board have any questions of this witness? Go ahead,  
14 Ms. John.

15 VICE CHAIR JOHN: Yes. I'm a little confused. So  
16 detainees are sometimes no-papered while they're at Superior  
17 Court, right?

18 MS. SEMYONOVA: Before they ever reach Superior Court,  
19 they are sometimes no -- their cases are sometimes no-papered by  
20 the prosecuting attorneys.

21 VICE CHAIR JOHN: But there are times when -- when they  
22 are done at Superior Court --

23 MS. SEMYONOVA: Correct.

24 VICE CHAIR JOHN: -- is that incorrect?

25 MS. SEMYONOVA: No, that is correct. They -- cases --

1 individuals can't -- a no-paper decision can occur at any point  
2 in the process.

3 VICE CHAIR JOHN: Okay. And so what time are these  
4 decisions made?

5 MS. SEMYONOVA: I -- there are decisions that are made  
6 before -- before individuals go to the U.S. Marshal cellblock.  
7 There are times when the decisions are made after they are at  
8 the U.S. Marshal cellblock. We don't have complete transparency  
9 on when those decisions are made, but they can be made at any  
10 time that prosecutors -- I think they -- we're not the  
11 prosecuting office, obviously, so -- but they are made at any  
12 point, I believe, when prosecutors talk with police officers and  
13 make decisions about the case or talk with -- review the paperwork  
14 themselves and make a decision about the case.

15 VICE CHAIR JOHN: So it's possible, since there is no  
16 law prohibiting what time these decisions are made, that there  
17 could be a process that would achieve the objective of not keeping  
18 the detainee unnecessarily in custody, right? That's something  
19 that could be worked out with the marshal's office, right?

20 MS. SEMYONOVA: Our position is that as soon as a  
21 decision is made that an individual should not be prosecuted,  
22 that individual should be free to leave custody once the -- once  
23 that process is completed, which now occurs from both CCB and  
24 from the U.S. Marshal cellblock in Superior Court. So now  
25 individuals are transported from the Daly Building CCB to the

1 U.S. Marshal Service cellblock, and that decision can be made at  
2 either of those locations.

3 VICE CHAIR JOHN: Okay.

4 MS. SEMYONOVA: A decision can be made earlier as well  
5 at a police district. So at any point when -- when a prosecuting  
6 authority or police decide not to prosecute a case or not to  
7 proceed with a formal arrest, then an individual can be released  
8 from that -- that charge that is not going to happen.

9 VICE CHAIR JOHN: Thanks. But it's a process, right?  
10 It's not a -- it's not a law that's involved. So that can be  
11 corrected. During this entire process, let's say the board  
12 approves the application with conditions. There is a process.  
13 I don't know what it is, but there could be a process that would  
14 allow that charging decision to be made earlier or maybe before  
15 the detainee gets to the -- the CCB at New York Avenue.

16 MS. SEMYONOVA: Sure. So a decision can be made even  
17 earlier, and that would be better for the individual who is  
18 charged. It could be made at the police district level. So  
19 before individuals leave the police district, it could be  
20 required that a decision be made about processing, and so all --  
21 all individuals who will not be -- whose cases will not be papered  
22 could be released at that point.

23 VICE CHAIR JOHN: Okay. So what time do the U.S.  
24 attorneys get -- get to work?

25 MS. SEMYONOVA: It -- early, but they would have to

1 tell you. It's also the Office of the Attorney General, and I  
2 believe the Office of the Attorney General has a sort of a  
3 constant communication line with MPD, but I don't want to speak  
4 about their processes.

5 VICE CHAIR JOHN: Right. Right. And I believe there's  
6 something in the file from the -- the U.S. attorney general. I  
7 was trying to find it, but I couldn't. So that's -- that's the  
8 point I wanted -- I wanted to make. So I have no other questions.

9 CHAIRPERSON HILL: Let's see. Ms. -- how do you say  
10 your name? Semyonova?

11 MS. SEMYONOVA: Semyonova.

12 CHAIRPERSON HILL: Semyonova. Ms. Semyonova. Ms.  
13 Semyonova, how did you guys hear about -- I mean, I'm just curious  
14 how you guys heard about this?

15 MS. SEMYONOVA: We have heard -- I've heard about it  
16 in various ways, but most recently ANC Commissioner Nigro reached  
17 out to me.

18 CHAIRPERSON HILL: Got it. And then the -- oh. So  
19 then you guys are in objection to this application, correct?

20 MS. SEMYONOVA: I don't -- I obviously -- maybe not  
21 obviously. I've never testified before this board, and so our  
22 concern is the condition that could potentially delay or prevent  
23 a release process. It's not an objection to the location. We  
24 very much understand and have heard testimony at the D.C. Council  
25 about the conditions that individuals suffer in CCB, and so

1 that -- that's not the issue for us. The issue is a potential  
2 delay of -- of the release decision, which could -- which based  
3 on an application that forecloses release at CCB, creates a real  
4 risk that that would happen.

5 CHAIRPERSON HILL: No, no. Okay. I'm just trying to  
6 figure it out because they're trying to fix the CCB, right?  
7 And -- and in order to fix the CCB, they got to put them  
8 somewhere, right? Do they have to -- this service has to be done  
9 somewhere, right? And so I guess I'm trying to figure out just  
10 your organization, right, you're opposed to the condition?

11 MS. SEMYONOVA: Correct. Exactly. We are -- we are  
12 opposed to that condition, and across the City, individuals are  
13 released to police districts every day. If they are arrested and  
14 there's a post and forfeit procedure where an individual  
15 essentially pays a bond and is released, or if there's a citation  
16 release procedure where an individual is arrested then comes  
17 through and the MPD determines that they can be released with a  
18 citation to come back to court later. So the idea that  
19 individuals are released from a detention, an area of detention  
20 in the District, is not a new idea. Individuals are released  
21 from the D.C. jail. And so that -- it -- essentially, we're  
22 concerned about anything that would prevent individuals from  
23 being released.

24 And I appreciate the question about moving the release  
25 decision up earlier and perhaps that could be done, but if an --

1 if in instances where the decision is made and the person happens  
2 to be at CCB, they should not -- release should not be further  
3 delayed because they happen to be at CCB at the time that the  
4 prosecuting authority decides that they have finally got in touch  
5 with the relevant police officer and decided that no, there is  
6 no evidence of a crime being committed and so it's time to -- to  
7 no-paper the case. So it should not be delayed if -- if by  
8 circumstances the individual happens to be at CCB rather than at  
9 the District at that point.

10 CHAIRPERSON HILL: Okay. Okay. Does -- oh, yeah. Go  
11 ahead, Commissioner Miller.

12 ZC VICE CHAIR MILLER: Thank you, Ms. Semyonova -- if  
13 I pronounced your name incorrectly, I apologize -- for your  
14 testimony and being here today, and I appreciate what you're --  
15 what you're saying. Let me ask you this question. Do you know  
16 what percentage of the detainees who've been arrested, what  
17 percentage of detainees are currently, on average, released when  
18 they are in the central cellblock as opposed to in the courtroom  
19 or in the U.S. Marshal cellblock, which I'm not sure I know where  
20 that's located. I also would like to know that, just out of  
21 curiosity. But do you know what percentage are actually currently  
22 released -- of detainees are currently released from --

23 MS. SEMYONOVA: I do not know. DOC would be in a good  
24 position to answer that question, and the U.S. Marshal cellblock  
25 is within the D.C. Superior Court on the -- in the bottom of the

1 courthouse.

2 ZC VICE CHAIR MILLER: Correct. Right. And so is  
3 CCB -- I mean, CCB is very close by. We know that, but okay.  
4 Thank you very much.

5 CHAIRPERSON HILL: Okay. All right. Let's see. Ms.  
6 Themak, do you have any questions for the witness? Okay. Ms.  
7 Moldenhauer, do you have any questions for the witness?

8 MS. MOLDENHAUER: Yes, I do. So I think this goes also  
9 to the question that Commissioner Hill was getting at. I  
10 understand that you are objecting to the no-release detainee  
11 question. However, are you supportive of the City temporarily  
12 locating the CCB in this location at 501 New York Avenue?

13 MS. SEMYONOVA: That -- and I, you know, honestly, this  
14 is -- it's just sort of -- I don't -- I have not researched the  
15 full scope of the potential solutions to this problem or the  
16 potential locations or anything else to be able to offer a  
17 complete opinion of support for this particular plan. Have not  
18 seen it, have not -- so I do not want to state that, but PDS is  
19 firm in our belief that CCB as it exists now is not an  
20 acceptable -- does not present acceptable conditions for the  
21 individuals who are confined there.

22 MS. MOLDENHAUER: And you would be supportive of the  
23 need of the City to obviously take steps to renovate those  
24 conditions?

25 MS. SEMYONOVA: To -- to not use that facility in its

1 current state to detain people who the City chooses to detain  
2 there. And I think the record is clear from -- from newspaper  
3 articles, protests, counsel testimony about the horrific  
4 conditions people have experienced there.

5 MS. MOLDENHAUER: And are you aware of the pre-COVID  
6 release process?

7 MS. SEMYONOVA: Yes.

8 MS. MOLDENHAUER: And do you believe that what we're  
9 proposing is similar to what was pre-COVID release process  
10 procedures?

11 MS. SEMYONOVA: You know, yes and no. I really would  
12 have to look at it more closely. I think one of the things that  
13 happened pre-COVID is that people moved much earlier to the  
14 Marshal cellblock, and so I'm not sure that it's exactly square  
15 there, and -- and frankly, I'm just sort of going on my  
16 recollection of the pre-COVID process. So I could look at it  
17 and get back to you with a more complete answer, but I'm not  
18 sure.

19 MS. MOLDENHAUER: Your answer has been sufficient.  
20 Thank you very much. Have a good day.

21 CHAIRPERSON HILL: Thank you. All right. Let's see.  
22 Ms. Semyonova, I'm going to just leave you there for a minute,  
23 if that's okay. Mr. Finkelstein, can you hear me?

24 MR. FINKELSTEIN: Yes.

25 CHAIRPERSON HILL: Could you go ahead and intro --

1                   MR. FINKELSTEIN: Am I unmuted?

2                   CHAIRPERSON HILL: Yeah. You're unmuted.

3                   MR. FINKELSTEIN: Okay. Thanks. I appreciate your  
4 willingness to have me testify, Mr. Chairman, and everybody else  
5 on the board, and --

6                   CHAIRPERSON HILL: I just want to -- I just want to  
7 interrupt you one second.

8                   MR. FINKELSTEIN: Sure.

9                   CHAIRPERSON HILL: If you could just introduce yourself  
10 and give your address, and then you'll have three minutes as a  
11 member of the public, and you can begin whenever you like.

12                  MR. FINKELSTEIN: That's great. Thanks. Richard  
13 Finkelstein. I'm at 436 M Street Northwest. So about two blocks  
14 from the proposed cellblock, and I couldn't support enough the  
15 idea that a new cellblock is needed, for many of the reasons just  
16 cited, but I believe very strongly that 501 New York Avenue is  
17 the wrong place for a variety of reasons, but given the limited  
18 time that I have, I'd just like to focus on the nature of traffic  
19 and the circulation of streets just in that area. No one has  
20 noted, really, what a complex traffic environment that that is.  
21 In fact, I was kind of almost amused to see in the slides that  
22 it showed a few cars on New York Avenue and a couple on Sixth  
23 Street. I walk by that area at least a couple of times a day at  
24 all times of the day, and New York Avenue is very crowded, and  
25 of course, at rush hour, the traffic extends from the entrance

1 to 395, which is roughly at Fourth Street, all the way down at  
2 least past -- at least to the convention center, if not beyond.  
3 So the addition of any cars, let alone upwards of fifteen vehicles  
4 a day entering New York Avenue and especially if they're trying  
5 to make a left, will really just be impossible.

6 In addition, it wasn't, I think, particularly clear  
7 from the slides how complicated the arrangement of streets is  
8 there. L Street splits, So a piece of it runs in front of  
9 Safeway. The rest of it runs in front of -- I guess, behind the  
10 cellblock, and behind the cellblock, that part of L Street is  
11 what people enter from New York Avenue when they're headed west  
12 during rush hour. So it's actually quite heavily trafficked: L  
13 Street, not just, of course, New York Avenue.

14 Someone was recently killed at the intersection by --  
15 by a motor vehicle at the intersection of Sixth and New York  
16 Avenue because Sixth is a very busy street and a very, very fast  
17 moving street, and people swoop around to make a left onto New  
18 York Avenue. So again, if you -- if you take a look at it, you'll  
19 see what a complicated interchange it is, and in fact, at one  
20 point I was talking to somebody at DDOT who was explaining that  
21 because it's so complicated, it isn't possible for pedestrians  
22 to cross New York Avenue -- at least on Fifth Street -- to cross  
23 New York Avenue just on one light, on one set of walk signs,  
24 because it's such a wide and extremely busy intersection. So I  
25 guess what I'd like to emphasize is that it's just a very

1 dangerous location for additional traffic.

2                   One last point or maybe question that I have is I was  
3 surprised to see on the plans that were shown that it looks like  
4 the plans are for vertical parking along L Street, is that right,  
5 not -- not parallel parking? And if that's the case, if I'm  
6 reading that correctly, again, I'm very surprised because L  
7 Street between Fifth and Sixth is very narrow, in addition, and  
8 of course it's also a residential street. So the idea that during  
9 rush hour, cars would be able to come down L Street, a narrowed  
10 L street that's narrowed because of parking and that's also going  
11 to have vans parked.

12                   CHAIRPERSON HILL: Okay. Mr. Finkelstein, I'm sorry.  
13 You're running out of time if you want to --

14                   MR. FINKELSTEIN: I had about -- I had about two more  
15 words, so the timing is good. Thank you. So anyhow, that traffic  
16 coming down a narrowed L Street with vans coming in and out or  
17 parked and other things, it just doesn't seem doable. Thank you  
18 very much for allowing me to speak.

19                   CHAIRPERSON HILL: Thank you, Mr. Finkelstein. Let's  
20 see. Is it Ms. Ollinger or Katie Ollinger? Ms. Ollinger? Mr.  
21 Young, am I saying that right?

22                   MR. YOUNG: I believe so.

23                   CHAIRPERSON HILL: Okay.

24                   MR. YOUNG: She just needs to unmute from the phone.  
25 There she goes.

1 CHAIRPERSON HILL: Oh, great.

2 MS. OLLINGER: Yeah, sorry. I used the unmute button  
3 instead of the \*6.

4 CHAIRPERSON HILL: That's okay. Ms. Ollinger, if you  
5 could introduce yourself for the record, and then you'll have  
6 three minutes to give your testimony.

7 MS. OLLINGER: Yeah. My name is Katherine Ollinger.  
8 I live at 437 New York Avenue, so about a block away, and I am  
9 opposed to that location being used as a central cellblock. I'm,  
10 in fact, a longtime resident of this neighborhood, coming up  
11 on -- this Thanksgiving on fifteen years, and I remark on that,  
12 because what has happened in the time I'm there is that I've  
13 watched the neighborhood actually really become a thriving,  
14 prospering residential neighborhood with community. I've watched  
15 businesses come in and grow, you know, and the small businesses  
16 that serve the community have created really this fabric of  
17 community there and fostered this residential neighborhood. And  
18 I think that the potential jail there really could negatively  
19 impact that situation and negatively impact the economic, also,  
20 ability of the neighborhood to contribute to the District of  
21 Columbia. And so I really want to emphasize some of those same  
22 issues that keep coming up from folks in terms of, as Mr.  
23 Finkelstein just said, you know, that it really -- there is that  
24 element of dangerous traffic. It is crowded and it is complex,  
25 and the neighborhood has really sought to create a good situation

1 and the influx of traffic, that increased traffic, potentially  
2 dangerous application of traffic during especially rush hour, the  
3 noise and disruptions that others have touched on, the impact  
4 potentially of the release of detainees, the clearly unresolved  
5 parking concerns that have been mentioned, congestion within this  
6 neighborhood that has really become this residential neighborhood  
7 and community. All of those are reasons I'm really concerned  
8 about the impact this will have.

9 I also think there's longer term impacts, in terms of  
10 what we've built in this community and the neighborhood, that if  
11 this starts to affect in those ways that negative impact, that  
12 could start to affect some of those businesses that are there.  
13 It could affect property values. It could affect and upset the  
14 fabric of the community, the resources that have come there that  
15 support it and make it thriving, and so you know, for those  
16 reasons, I strongly oppose the central cellblock jail being  
17 located at 501 New York Avenue. Thank you.

18 CHAIRPERSON HILL: Thank you. Thank you for your  
19 testimony. Is it Ms. [Boo-bly] or Mr. [Boo-bly]? I'm sorry if  
20 I'm pronouncing or not pronouncing that right. [Boo-bly]? Is  
21 that how you spelled it, Mr. Young?

22 MR. YOUNG: I believe it's [Boo-blik].

23 MR. BUBLEK: It's Bublek, Avi Bublek.

24 CHAIRPERSON HILL: Oh, Bublek. Okay. Mr. Bublek, if  
25 you could introduce yourself for the record, and then you'll also

1 have three minutes to give your testimony, and you can begin  
2 whenever you like.

3 MR. BUBLEK: Yeah. Avi Bublek, 450 K Street. I rent  
4 an apartment there. I want to express first, thanks to everyone  
5 for presenting this and taking time to do all your parts on this  
6 hearing. However, I want to express my clear opposition to --  
7 to this wing project. I think in totality of this, with all  
8 these different hearings, it's been demonstrated that the  
9 government clearly has had to play catchup to make changes this  
10 way or that way to accommodate not just the community, but also  
11 the Board, and one thing that I have never heard and the  
12 government refuses to address, claiming it's irrelevant, is  
13 consideration of other locations for this wing and the ANC has  
14 highlighted a couple of locations, including one across the  
15 street from the courthouse, and -- that can be also an opportunity  
16 to address the issue that the public defender's office addressed  
17 about not holding people in confinement for more than is  
18 necessary. You know, and I think that might be something for  
19 the Board to consider. You know, that could potentially be  
20 another problem legally with this.

21 Furthermore, the effect on the community are -- can --  
22 are going to be significant: traffic, potential protests that  
23 could occur, you know, differences. This is going to be a open  
24 area. It's not hidden underground like the current central  
25 cellblock, and that poses different risks than you would for a --

1 a more restricted area, and I think this committee is obligated  
2 to provide great weight to the ANC's opinion on this, and so my  
3 ask is that the ANC give that great weight and not succumb to  
4 what appears to be smugness by the D.C. government that seems to  
5 be trying to strongarm the -- this Board and the residents to  
6 push this on them, and what I've heard is them talking about,  
7 oh, the police are going to be able to park on the street and do  
8 their own thing, and they're trained, and you know, screw the  
9 parking lot regulations, that when push comes to shove, police  
10 have -- you know, they're not -- if there's these so-called  
11 rules, they're not going to be, you know, enforced when in  
12 emergency situations, and that's just a fact.

13 So again, I appreciate everyone's time, and I humbly  
14 request that this request be denied and force the government to  
15 reevaluate its choices when there's clearly other options. Thank  
16 you.

17 CHAIRPERSON HILL: Thank you. Mr. Young, was there  
18 anyone else wishing to speak?

19 MR. YOUNG: Let me check one more time. No, that's it.

20 CHAIRPERSON HILL: Okay. Ms. Themak, you had your hand  
21 up.

22 MS. THEMAK: Yeah. Our former witness, the Ms. DeYoung  
23 has been able to join. Can she provide her testimony?

24 CHAIRPERSON HILL: Where is Ms. DeYoung?

25 MS. THEMAK: Her name is Amy DeYoung. I believe she's

1 in the attendee list.

2 CHAIRPERSON HILL: Okay. Let me -- let me -- oh. Go  
3 ahead, Ms. Moldenhauer.

4 MS. MOLDENHAUER: Oh. Erwin Andres was pushed out of  
5 the panelist group and has been waiting to come back in, but I  
6 was waiting. I didn't want to interrupt before, but --

7 CHAIRPERSON HILL: Yes. Mr. Young, if you can bring  
8 back Mr. Andres. Okay. I'm going to let everybody go, in terms  
9 of the witnesses, unless anybody had anything they needed from  
10 the witnesses, and if so, raise your hand. Okay.

11 Ms. Semyonova, I'm sorry. I know you're getting put  
12 in kind of a weird spot here, but I'm just kind of trying to  
13 clarify, like -- and just because it's my real kind of curiosity.  
14 I mean, we've done a lot of this now. It's not, like, but like  
15 delaying this process is keeping more people at that location.

16 MS. SEMYONOVA: We're not asking for a delay. We're --  
17 what we're objecting to is a condition that precludes release of  
18 individuals who are determined to be eligible for release because  
19 they don't have any pending charges. They do not have --

20 CHAIRPERSON HILL: No, I got it. I'm sorry.

21 MS. SEMYONOVA: The DA's office hasn't -- so that --  
22 that is -- it's a narrow point within -- within this application  
23 to which we take issue.

24 CHAIRPERSON HILL: Right. And I guess my comment is  
25 if this happens to, like, five people over, you know, a number

1 of whatever time it is, is that worth, you know, keeping this  
2 other facility in -- in business, you know, and that's what I'm  
3 also kind of confused about, I suppose. It was just a comment,  
4 Ms. Semyonova, I don't -- you know, you can -- you can respond,  
5 but it was -- it was -- I don't even think it was a question in  
6 there.

7 MS. SEMYONOVA: I think it's unacceptable for five  
8 people to be placed involuntarily on busses, shackled, and taken  
9 to a location where they do not need to be when they are -- when  
10 they are not charged with a criminal offense, but I do think --  
11 Chairman Hill, you did not receive an answer to the question of  
12 how many people this would apply to, and so perhaps the concerns  
13 about how many people are released from CCB are just overstated,  
14 and what could be -- what should be included is a provision that  
15 allows release from CCB, and the way to address release from CCB  
16 would be to ensure that people have adequate clothing, adequate  
17 transportation, to leave CCB freely, and to continue with their  
18 lives, as they should be permitted to do when they are not  
19 detained in any other district.

20 CHAIRPERSON HILL: Ms. Semyonova, I don't think you're  
21 having any pushback from our Board in terms of what -- you know,  
22 how people should be treated or when people should be released.  
23 It was more of a comment that, like, the current situation is --  
24 is bad, right? That's what the District is trying to figure out,  
25 I guess, and so -- but anyway, whatever. That's okay. So does

1 anybody have any questions before I let go of the witnesses?

2 Go ahead, Ms. Moldenhauer.

3 MS. MOLDENHAUER: Sorry. Ms. Semyonova, do you believe  
4 it would be an adverse impact to the neighborhood to allow  
5 detainees to be released?

6 MS. SEMYONOVA: As the Public Defender Service, do we  
7 think so? These are individuals who are not charged with any  
8 criminal offense, were presumed to be innocent of the offense of  
9 which they were charged, and have now not been charged with an  
10 offense. They should certainly be free to leave, and they should  
11 be certainly free to leave any location at which they were held  
12 or where they were, and they should be able to leave. I do think  
13 that DOC should work better on making sure that people have  
14 transportation, have money to leave, because often police take  
15 property, and so that is a -- that's a situation that that DOC  
16 can address, but certainly there's -- these are individuals who  
17 are arrested, released, and not charged should be free everywhere  
18 in the City.

19 MS. MOLDENHAUER: The question is just, would it be an  
20 adverse impact to the neighborhood?

21 MS. SEMYONOVA: No.

22 MS. MOLDENHAUER: Thank you.

23 CHAIRPERSON HILL: Okay. All right. I'm going to let  
24 the -- okay. Go ahead, Ms. Themak.

25 MS. THEMAK: Then I have one more question for her as

1 well. Again, I don't think there's any argument about the need,  
2 Ms. Semyonova. Do you believe that there could be a better space  
3 for this location?

4 MS. SEMYONOVA: I do not know.

5 MS. THEMAK: Okay. Thank you.

6 CHAIRPERSON HILL: Okay. Thank you. I will let all  
7 of our witnesses go, please. Thank you. Number 1? Okay. Now,  
8 I know we have somebody who has rejoined us: Ms. DeYoung, and  
9 so Ms. DeYoung, I mean, I see your testimony in there, right  
10 in -- in the record, but go ahead and give us your testimony.

11 MS. DEYOUNG: Really appreciate you giving me the  
12 opportunity to do that. For the record, my name is Amy DeYoung.  
13 I'm a Shaw resident and a licensed professional counselor in the  
14 District of Columbia. The reason my professional career is  
15 relevant is that I was previously employed by the Department of  
16 Corrections as a mental health specialist, providing counseling  
17 services to residents housed at both the jail and CTF.

18 Having worked at the Department of Corrections, I have  
19 serious concerns about D.C.'s decision to move central cellblock  
20 into a neighborhood. I feel that DOC's primary focus has been  
21 on logistics without really considering the mental and physical  
22 health of detainees, nor of the community who will undoubtedly  
23 be affected by the relocation to 501 New York Avenue. While  
24 working at the jail, I was exposed daily to unhealthy noise levels  
25 from inmates kicking doors, yelling, screaming. At times the

1 noise -- the noise was just deafening and had a negative impact  
2 on everyone in the facility. You know, research shows that noise  
3 pollution --

4 CHAIRPERSON HILL: Ms. DeYoung, Ms. DeYoung?

5 MS. DEYOUNG: Yeah?

6 CHAIRPERSON HILL: I'm sorry. Are you just reading  
7 your testimony?

8 MS. DEYOUNG: Yeah. I mean, I'm -- I'm going to give  
9 a summary. I mean, is that okay if I read from it?

10 CHAIRPERSON HILL: I mean, we have the -- I -- it's a  
11 pretty long -- it's a pretty long letter, actually, that we've  
12 all read through. If you're just going to read it, I can read.  
13 So you know.

14 MS. DEYOUNG: Well, then I'm -- I'm happy to give a  
15 summary if everybody's read it. You know, my concern is really,  
16 having heard some of the testimony, I feel like the transportation  
17 issues, the -- you know, it's really going to have an impact on  
18 the community. I -- working at the jail, I could not get Ubers.  
19 I could not get Lyfts. I could not get people to pick me up.  
20 That story is not going to change when we get to when rideshare  
21 drivers start seeing that this is a place where inmates or  
22 detainees are released. They don't care whether or not these  
23 people are safe or have ever been charged of a crime. There's a  
24 bias out there about people that have been previously detained,  
25 and we can't pretend that that's not going to be an issue for

1 residents and businesses.

2 I had to walk, you know, it would be dark out. I'd  
3 have to walk into the neighborhood several blocks away from where  
4 I was starting, where I felt safe and have to wait for Ubers and  
5 Lyfts, and sometimes I would just have to give up, right? You  
6 know, and the -- the noise from the facility, the officers arguing  
7 in the parking lots over parking spaces, you know, not adequately  
8 providing enough parking for staff or all of the visitors. I  
9 know they're saying that visitors aren't coming to the facility,  
10 but they're going to have to have attorneys. They're going to  
11 have to have a lot of people going in and out of this building.  
12 It's not just going to be the officers, and I'm just concerned,  
13 based on DOC's history of not providing ample parking and not  
14 giving a whole lot of care to the staff, the officers, and the  
15 community.

16 I don't think that people really realize the breadth  
17 of the issue. In order to maintain the safety of the facility,  
18 they're going to have to double up officers or everybody on duty  
19 while the shift change happens, and with this already being a  
20 24/7 operation, we're not going to be able to control, right,  
21 what the noise looks like, what the daily events look like,  
22 because it's going to be pretty much, you know, just -- whenever  
23 people are coming and going, and I think that that inability for  
24 people to plan their lives, to plan around noise, to plan around  
25 traffic and congestion, I think is going to have a really negative

1 impact on the community.

2                   And you know, while I am a Shaw resident, this is not  
3 about not allowing a facility to go at 501 New York Avenue. This  
4 is about it shouldn't be in a neighborhood at all. It is going  
5 to change. We're going to have kids. We're going to have  
6 families being exposed to officers and the foul language and the  
7 fighting and the potential for weapons being drawn over fighting  
8 for parking spaces that I personally have seen, and I just think  
9 if it was just a facility that was relatively quiet and we were  
10 just releasing people that are not a harm into the neighborhood,  
11 fine, but we can't pretend that that's what it is.

12                  This is going to have catastrophic issues on the  
13 health, mental health, physical health, and wellbeing of  
14 residents, and I also want to -- you know, I've looked at some  
15 of these plans, and I have grave concerns that they're just going  
16 to recreate the same toxic environment for detainees with this  
17 facility as they did at CCB, or they have at, you know, the jail.  
18 These facilities are not humane, and I just want to make sure  
19 that if it does come to fruition, that we do it in a way that is  
20 going to be healthy for everyone.

21                  CHAIRPERSON HILL: Okay. Thanks, Ms. DeYoung.

22                  MS. DEYOUNG: Uh-huh.

23                  CHAIRPERSON HILL: All right. Does the Board have any  
24 questions of Ms. DeYoung? Okay. Ms. Moldenhauer, do you have  
25 any questions of Ms. DeYoung?

1 MS. MOLDENHAUER: Yes, I do. Can you state the location  
2 that you worked at?

3 MS. DEYOUNG: I worked at DC -- at the jail and at CTF.

4 MS. MOLDENHAUER: Those are not the central cellblock;  
5 is that correct?

6 MS. DEYOUNG: That is correct.

7 MS. MOLDENHAUER: So your understanding of how the  
8 central cellblock -- you have no understanding of how the central  
9 cellblock is operated?

10 MS. DEYOUNG: I mean, I never worked there.

11 MS. MOLDENHAUER: Do you have personal experience with  
12 how the central cellblock was operated, having not worked there?

13 MS. DEYOUNG: Other than talking to officers and staff  
14 and people on a daily basis that did work there, that would be  
15 it.

16 MS. MOLDENHAUER: Do you personally have any?

17 MS. DEYOUNG: No.

18 MS. MOLDENHAUER: Thank you. No other questions.

19 CHAIRPERSON HILL: Okay. All right. Thanks, Ms.  
20 DeYoung.

21 MS. DEYOUNG: You're welcome.

22 CHAIRPERSON HILL: Okay. Let me think. Okay. Yeah.  
23 Mr. Young, you got -- you got everybody, right? Okay. Great.  
24 All right. Can we take a quick break? Right? If that's okay?  
25 Because I just -- sorry. Just take a quick break. Let's take

1 ten minutes, ten, fifteen minutes, whatever, however long you  
2 need. Just take a quick break, and we'll come back at 2:00.  
3 Okay? Thank you.

4 (Off the record)

5 MS. MEHLERT: Quick break and returning to application  
6 number 21177 of the District Department of General Services.

7 CHAIRPERSON HILL: Great. Thank you. So I want to  
8 just mention a couple of things. I think that -- I don't know  
9 exactly how this is going to go just yet, meaning that like, I  
10 know that -- some of us are going to have to have lunch, and so  
11 that may or may not happen. Hopefully, it happens after this  
12 hearing and before we continue on with the rest of our day.

13 In order to get to that place, I want to mention again,  
14 this is a -- this is/was a limited scope hearing that we wanted  
15 to kind of figure out whether there was going to be conditions,  
16 could be conditions, and whether we thought those conditions  
17 would or wouldn't mitigate any issues with the -- the special  
18 exception, and so that being said, I know that my Board members  
19 are going to have more questions about the conditions, and --  
20 however, I'd like to get through the hearing before I get to my  
21 Board members' detailed questions, probably, about the  
22 conditions, and I might even want to have a emergency closed  
23 meeting with counsel about some items. So that all being said,  
24 Ms. Moldenhauer, do you have rebuttal?

25 MS. MOLDENHAUER: Thank you, Chairman Hill. We just

1 have three brief issues that we wanted to bring up on rebuttal.

2 CHAIRPERSON HILL: Okay. Just before you do -- just  
3 before you do, again -- and Ms. Themak, I know you know this,  
4 but like, we're going to have questions on rebuttal. So the  
5 questions are just about the rebuttal. So go ahead, Ms.  
6 Moldenhauer.

7 MS. MOLDENHAUER: I just -- I'll first ask Erwin if you  
8 can provide testimony. You heard statements made in the  
9 opposition's statement in chief, if you can provide responses on  
10 the traffic and parking issues that were misstated. Thank you.

11 MR. ANDRES: So in terms of -- there were statements  
12 about left turns out onto New York Avenue. I think there's  
13 opportunities for left turns. All of our exhibits do not show  
14 left turns onto New York Avenue. The opportunity to get down to  
15 the Court from the CCB facility is -- is relatively easy. You  
16 turn right out of the site, turn left onto Sixth Street, and  
17 Sixth Street can take you all the way down to the courts. So I  
18 think that circulation pattern is relatively simple and easy to  
19 understand. So there's that point.

20 There's the point that was asked of me regarding  
21 Commissioner Nigro's comment about the 25-foot and 40-foot  
22 clearances from the crosswalk. I think I've already clarified  
23 those. There was a comment on the slides about the spaces not  
24 being big enough for passenger vans. Your typical 10- to  
25 15-person passenger van is anywhere between 18 and 22 feet. In

1 my testimony, I've identified that they would be -- that they  
2 would be parked on street where, you know, that is not an issue.

3 There's also been testimony and talk about the amount  
4 of traffic, and I think it was clear, very clear in our last  
5 hearing that the proposed use is actually less intense than the  
6 preexisting use when the site was used as a MPD Traffic Division,  
7 traffic services facility. So those are the main points I wanted  
8 to bring up, and I'm available for questions.

9 CHAIRPERSON HILL: Ms. Moldenhauer?

10 MS. MOLDENHAUER: Thank you very much. And then if Mr.  
11 Foerster could address the questions regarding the frosting on  
12 the windows, please?

13 MR. FOERSTER: Yes. I think the Board understands  
14 that, you know, Commissioner Hill mentioned that, obviously, if  
15 we proceed with applying a translucent film to the windows, that  
16 would have to go back in for permit review, and they would --  
17 you know, if it were denied, it would have to go back in front  
18 of this Board again, but looking at the existing windows as shown  
19 in the exhibits presented earlier, the original windows appear  
20 to be translucent already. So those translucent small panes that  
21 have broken over time have been replaced with clear panes of  
22 glass, and so I'm pretty confident that if we do apply this  
23 translucent film to the interior of the windows, it would create  
24 a more cohesive appearance and would not be unmatched to the  
25 original characteristics of the windows. So happy to present

1 that when we need to resubmit for permit and if it comes up for  
2 review with the historic review board.

3 MS. MOLDENHAUER: Thank you very much. And then the  
4 last rebuttal would be Director Faust. If you could provide a  
5 brief statement regarding -- or in response to -- rebuttal to Ms.  
6 DeYoung's testimony, please?

7 MR. FAUST: Just in terms of the testimony there's  
8 really no relationship or relevance to what she was speaking to.  
9 She, again, as she said in her testimony, she was speaking to  
10 experiencing -- experiences she's alleging at CDF and CTF, which  
11 are located at 1901 D Street Southeast, far removed from the CCB,  
12 and she left employment in 2021, but during that time she was  
13 never assigned to the CCB, and I think, more importantly, just  
14 the issues are really apples and oranges. The facilities where  
15 she was speaking about are facilities -- CTF has a capacity for  
16 up to 1,000 individuals. CDF has a capacity for up to 2,100  
17 individuals. We currently have a -- a jail population of over  
18 2,000. Also, the staffing in those facilities, a normal staffing  
19 for a normal shift, like during the daytime, is about 200, and  
20 that would include both uniformed staff and civilian staff and  
21 contractors, such as medical staff, food service staff, et  
22 cetera. So there really is no comparison in terms of issues that  
23 she might be referring to at the CDF or CTF and in operation at  
24 the CCB.

25 MS. MOLDENHAUER: Thank you for providing that very

1 detailed explanation of the difference and why that testimony is  
2 not relevant. That is all of our rebuttal, Chairman Hill. So  
3 we are happy to rest, answer any questions about conditions, and  
4 then provide a brief closing.

5 CHAIRPERSON HILL: Okay. Do -- Ms. Themak, do you have  
6 any questions about the rebuttal testimony? I can't hear you,  
7 Ms. Themak. I'm sorry.

8 MS. THEMAK: Yes, I do. I have three, and I believe  
9 that Commissioner Nigro has one or two.

10 CHAIRPERSON HILL: Okay.

11 MS. THEMAK: My first one is for Mr. Andres. When you  
12 were talking about the transport to the court, I think maybe it  
13 was unclear. When we were providing the testimony about the  
14 left-hand turn onto New York Avenue, that was from your -- the  
15 Applicant's statement at page 3 that described: once the sally  
16 port is available, the vehicle containing the detainees will exit  
17 left onto New York Avenue and circle back to L Street. Are you  
18 familiar with that statement?

19 MR. ANDRES: That statement? You know, the -- if there  
20 is a vehicle that needs to go and circulate to get back onto L  
21 Street, they would turn -- if the opportunity is available for  
22 them, they can turn left out, but if not, they all have to --  
23 all they have to do is turn left at Sixth Street where there's a  
24 signal. So there's options there, that there's optionality there  
25 depending on time of day.

1 MS. THEMAK: Then perhaps can -- Ms. Moldenhauer, can  
2 you give some explanation as to why that was included in the  
3 statement on page 3? What is -- what -- what process? I guess,  
4 I'm getting at, why was that included, that specific direction  
5 about the sally port and the processing on page 3 provided if  
6 it's not going to be a routine part of the -- the staging and  
7 queuing?

8 MS. MOLDENHAUER: I think we've already answered that  
9 question. It's an option, but obviously we would be recommending  
10 and preferring the reality of them going right out.

11 MS. THEMAK: Okay. I guess I'm confused. If you look  
12 at that schematic, I'm trying to figure out how -- what is the  
13 alternative to getting back to the sally port, because it seems  
14 like that statement describes: you turn left out of New York  
15 Avenue, go down Fifth, back to L Street, which is one way to get  
16 to the sally port. So what is the alternative to -- to doing  
17 what you suggest in the statement?

18 MR. ANDRES: So then if -- if the gaps aren't available,  
19 as you have mentioned, they have the opportunity to turn right,  
20 turn left at Sixth Street, and if they're going to the courts,  
21 then they can continue south. Otherwise, they turn -- they turn  
22 left on Sixth, turn left on K, and then turn left on Fifth.  
23 They're essentially going around the block.

24 MS. THEMAK: Okay. So -- and was that included in your  
25 statement, the likely need for that kind of transportation, or

1 no?

2 MR. ANDRES: I -- you know, it's -- it's the  
3 opportunity for that is available.

4 MS. MOLDENHAUER: It's in testimony right now.

5 MS. THEMAK: It's your testimony right now? Okay.  
6 Secondly, I guess, I still have a question. Were you -- Mr.  
7 Andres, were you unaware of the -- of the 40-foot and 25-foot  
8 requirement for distances, or are you -- is it your testimony  
9 that they simply do not apply and that DDOT is wrong, that they  
10 don't apply here?

11 MR. ANDRES: I'm not saying DDOT is wrong. There's  
12 no -- you know, we -- we've coordinated, consistent with all of  
13 the hundreds of projects that I've worked on in the District, we  
14 coordinate with DDOT, DDOT reviews our application, and they  
15 provide a review letter. In their review letter, there was no  
16 mention of the 25-foot clearance. Understanding that there is a  
17 25-foot guideline, it's -- it's not universally applied, as shown  
18 by the visual submittal that I provided. If the ANC is asserting  
19 that this should be applied, then yes. You know, if DDOT says  
20 we have to provide that, we will have to provide that, but we  
21 did not get that, and --

22 MS. MOLDENHAUER: And as the -- sorry. Go ahead.

23 MR. ANDRES: And in addition to that, as I mentioned  
24 before, you know, our parking requirement is zero. We're  
25 providing the parking that's required to meet the demand of the

1 facility. The preexisting use -- and all you have to do is look  
2 at an existing aerial to show law enforcement vehicles parked the  
3 way we showed it on our graphic.

4 MS. THEMAK: Okay. So if it is -- just to -- to  
5 confirm, it is your testimony that if -- and we think it's when  
6 DDOT contacts the Applicant about correcting that, that you will,  
7 if -- if they determine that you need to, as they've told us you  
8 do, need to put those 40-foot and 25-foot distances in, the  
9 parking and staging plan will be amended to reflect that?

10 MS. MOLDENHAUER: Chairman Hill, I'm just going to  
11 object here. One, asked and answered. Two, there's testimony  
12 by, you know, Ms. Nigro and now by counsel that you know -- about  
13 comments made not in the record about DDOT. There is a DDOT  
14 report in the record. That is what the Board has to give weight  
15 to, and so I just want to ensure that obviously, that those  
16 objections are made, and I believe that this question has been  
17 asked and answered.

18 MS. THEMAK: In that case, could we submit the email  
19 from DDOT into the record that reflects this requirement?

20 CHAIRPERSON HILL: The -- let me think. Give me --  
21 give me a second. So Ms. Themak was asking Mr. Andres, if you  
22 all have to -- not -- if you guys don't have -- if you're not  
23 allowed the twenty-three spots, but you're only allowed the  
24 fourteen, right, is your staging plan going to change? And I  
25 don't think it changes, right? You just don't have any more

1 parking spaces, correct? Mr. Andres?

2 MR. ANDRES: So the short answer is not necessarily,  
3 because if you look at the -- the plan, we've built in some  
4 flexibility into where the -- if you look at the plan, there's --  
5 there's four staging spaces on site, and if you notice in and  
6 around kind of --

7 CHAIRPERSON HILL: It's okay. It's okay, Mr. Andres.  
8 I'm just trying to also get the question answered. The -- the  
9 spaces that you would lose are the parking spaces, if this  
10 actually happened, and that's -- I think the question was you  
11 would lose those parking spaces and so you would lose those  
12 parking spaces, correct?

13 MR. ANDRES: So in that case, they would be spaces that  
14 would not be -- would not be legal spaces. Correct.

15 CHAIRPERSON HILL: Thank you.

16 MR. ANDRES: However, we did build flexibility into --  
17 if you look at the site plan, there are -- there is the potential  
18 to actually add two additional spaces on site that we did not  
19 stripe out. We wanted to provide additional flexibility, some  
20 flex space in there, if we can --

21 CHAIRPERSON HILL: That's okay. Mr. Andres, I'm sorry  
22 to interrupt you. I think the Board is going to have a lot of  
23 questions about the conditions anyway.

24 MR. ANDRES: Okay.

25 CHAIRPERSON HILL: So I just wanted to get Ms. Themak's

1 questions answered. Ms. Themak, do you have any more?

2 MS. THEMAK: No, that's it for me, and I wanted to see  
3 if Commissioner Nigro had any.

4 CHAIRPERSON HILL: Okay. Commissioner Nigro, do you  
5 have questions about the rebuttal?

6 MS. NIGRO: To the -- my question is for Mr. Andres  
7 again. When DDOT corrects the Department of General Services  
8 because they are wrong, where will those other nine cars go? I  
9 have -- we have an email from DDOT that says the Department of  
10 General Services is wrong.

11 CHAIRPERSON HILL: That's fine. So I guess -- so the  
12 answer again -- or sorry, the question again, Mr. Andres, is if  
13 you have to get rid of those spots, I guess you get rid of those  
14 spots, correct?

15 MR. ANDRES: So yes, and the other thing that I want  
16 to understand is where that fourteen number comes from. You  
17 know, as I mentioned before, they -- they are -- they are citing  
18 a 40-foot clearance, which can take out a lot of space, but it's  
19 not 40 feet from the crosswalk, it's 40 feet from the edge of  
20 curb. So it's not, you know -- so you know, I just want to make  
21 it clear.

22 CHAIRPERSON HILL: Go -- go ahead, Mr. Smith.

23 COMMISSIONER SMITH: I think we're -- we're debating  
24 semantics here. We cannot regulate with -- anything within the  
25 street as far as parking. This property does have a parking

1 requirement. So this conversation, per this Board's  
2 determination, is an irrelevant conversation. So we need to move  
3 on.

4 CHAIRPERSON HILL: Okay. Ms. Nigro, do you have another  
5 question?

6 MS. NIGRO: So I do have a question. I'm not sure why  
7 it is considered irrelevant when these cars, whether they're  
8 employees or police or whoever, will have an adverse effect on  
9 the area. This parking is a huge concern. It will impact our  
10 area. It is relevant.

11 COMMISSIONER SMITH: Ms. Nigro, we cannot regulate  
12 anything within the street, and this is something that we have  
13 regularly said to Applicants for other applications regarding  
14 parking within the street, residential parking permits, or  
15 regulating anything within the public right-of-way. This is not  
16 something that is before this Board for us to determine. I do  
17 recognize that it may be an impact, but it's not something that  
18 we can regulate.

19 CHAIRPERSON HILL: Okay. Commissioner Nigro, how many  
20 questions do you have left?

21 MS. NIGRO: Actually, that's -- that's it.

22 CHAIRPERSON HILL: Okay.

23 MS. NIGRO: And can -- can Ms. Themak put the email in.  
24 What's it called, Ms. Themak?

25 MS. THEMAK: Into the record.

1 MS. NIGRO: Yes, yes.

2 CHAIRPERSON HILL: The DDOT thing. You can go ahead  
3 and put that in there. Does the Board have any issues with that?  
4 So if you can get that to us -- oh, actually, we're going to  
5 get -- we're going to need something else anyway. So you can go  
6 ahead and put that in the record. Then the Applicant can respond  
7 to that one because I think we're going to need -- definitely, I  
8 know for one thing we're going to have to look at what this gate's  
9 going to look like. So that's one thing.

10 Okay. So we've done that. I do want to talk to counsel  
11 for one minute. I'm sorry, you guys. I got to talk to counsel  
12 for just one minute, then we'll come back, and I don't know what  
13 we're going to do. We might have lunch, or we might sum up. So  
14 let me just do the emergency meeting real quick, and then we can  
15 come back.

16 ZC VICE CHAIR MILLER: Are we going to have an  
17 opportunity to ask questions of the Applicant or no, if that's  
18 over?

19 CHAIRPERSON HILL: Of course.

20 COMISSIONER MILLER: Okay. I'm going to the -- of  
21 the -- of the -- Ms. Moldenhauer and her team.

22 CHAIRPERSON HILL: Can I do the meeting first real  
23 quick, Commissioner?

24 ZC VICE CHAIR MILLER: Yes, sure. I just -- I just  
25 wanted to make sure I didn't miss my opportunity.

1 CHAIRPERSON HILL: No, no, Commissioner, you can do  
2 whatever you want. All right. Okay. As chairperson of the  
3 Board of Zoning Adjustment of the District of Columbia, and in  
4 accordance with 407 of the District of Columbia Administrative  
5 Procedure Act, I move that the Board of Zoning Adjustment hold a  
6 closed emergency meeting on 10/30/2024 to seek legal advice from  
7 our counsel on case number 21177, deliberate but not vote on case  
8 21177, for reasons cited in D.C. Official Code 2-57-5(b)(13). Is  
9 there a second, Ms. John?

10 Thank you. Madam Secretary, could you take a roll  
11 call, please?

12 MS. MEHLERT: Please respond to the Chair's motion.  
13 Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MS. MEHLERT: Vice Chair John?

16 VICE CHAIR JOHN: Yes.

17 MS. MEHLERT: Mr. Smith? Mr. Blake?

18 COMMISSIONER BLAKE: Yes.

19 MS. MEHLERT: Commissioner Miller?

20 ZC VICE CHAIR MILLER: Yes.

21 MS. MEHLERT: Staff record the vote as five to zero to  
22 zero to hold an emergency closed meeting on the motion made by  
23 Chairman Hill and seconded by Vice Chair John.

24 CHAIRPERSON HILL: Okay. Thank you. Okay. Guys,  
25 we'll be right back. Okay. Thank you.

1 | (Off the record)

2 MS. MEHLERT: The Board has returned from an emergency  
3 closed meeting with legal to application number 21177 of the  
4 District Department of General Services.

5 CHAIRPERSON HILL: Okay. Thanks. Commissioner Miller,  
6 you had some questions.

7 ZC VICE CHAIR MILLER: Yes, quickly. Thank you, Mr.  
8 Chairman. Mr. -- Ms. Moldenhauer or -- or your team. Mr. Andres,  
9 I guess, can you just address the -- I think it was Mr.  
10 Finkelstein's testimony that the vertical parking on L Street  
11 creates a problem. You're not going to be able to get, what is  
12 it, sixteen cars up there because of the narrowness at L Street,  
13 that if you're not parallel parking to the street. Can you just  
14 quickly address that?

15 MR. ANDRES: So it did -- so the dimension from curb  
16 to curb is about 45 feet. In order to accommodate perpendicular  
17 parking, which is existing, which is currently happening out  
18 there, and the ability to turn in those spaces, you need 18 foot  
19 for the space itself and 20-foot clearance to be able to make  
20 those turns in one movement. So 38 is obviously less than 45.  
21 So we do have ample room to make those movements, and it -- you  
22 know, with preexisting use, it happened all the time.

23                   ZC VICE CHAIR MILLER: Okay. Thank you. And Mr. -- I  
24 don't know if Director Faust is still here or how relevant this  
25 is, but Ms. Moldenhauer, if you know -- happen to know -- if he

1 happens to know how many cells are in the U.S. Marshal's cellblock  
2 at the courthouse and how many detainees they -- they keep and  
3 they are able to house at any one time, if you just happen -- if  
4 you happen to know that.

5 MR. FAUST: This is Director Faust. Thank you. They  
6 don't have individual cells, so they're -- they're like large --  
7 large holding rooms. So you can kind of put in as few or as many  
8 as needed, in essence, but there aren't -- there aren't  
9 individual cells. So it's not like there's room for twelve or  
10 there's room for twenty. There's several large kind of gang  
11 holding areas, if that makes sense.

12 ZC VICE CHAIR MILLER: Okay. Thank you very much.  
13 Thank you, Mr. Chairman. That's it.

14 CHAIRPERSON HILL: Okay. Thank you. Does anybody have  
15 any questions of the Applicant? Go ahead, Ms. John. You're on  
16 mute, Ms. John.

17 VICE CHAIR JOHN: So sorry. So Ms. Moldenhauer, there's  
18 a letter from the U.S. Attorney's Office signed by the Deputy  
19 Chief, Supreme Court Division, saying that the U.S. Attorney's  
20 Office has no objection to returning to pre-COVID protocols. Can  
21 you address that? Or maybe Director Faust would like to address  
22 that, what -- please clarify again, what are the pre-COVID  
23 protocols?

24 MS. MOLDENHAUER: I also think if you can address that,  
25 that'd be great.

1                   MR. FAUST: Sure. I'd be glad to address that. So  
2 again on pre-COVID, what -- and there was a comment early this  
3 morning, I believe from Ms. Themak, about the marshal saying they  
4 do not -- that the marshals will not transport. So a couple of  
5 things I need to clarify. Number one, the -- the marshals do  
6 not transport. The Department of Corrections transports. The  
7 pre-COVID would be -- and again, as PDS mentioned, where she  
8 said, well, they thought it was earlier. That's, essentially,  
9 exactly it. We, as DOC, our responsibility is to present people,  
10 to get people to the courthouse.

11                  During COVID, there was essentially an agreement  
12 because of COVID and the -- the issues with people who, you know,  
13 might have COVID or et cetera to delay the delivery of some of  
14 those individuals. We are no longer going to do that.

15                  In other words, every morning, we are delivering those  
16 individuals to the court, to the courthouse. Those individuals  
17 then await the papering or no-papering at the courthouse or at  
18 the marshal's lockup. That's the way it had been done in the  
19 past and going forward.

20                  So in other words -- and I would comment just on your  
21 question, too. There was a letter I saw in the record from  
22 attorney -- Mr. Baldwin (phonetic), that talked about, well, they  
23 may be waiting for no-papering during the day, and the decision  
24 might not be made till 3:00 in the afternoon or whatever,  
25 something of that sort. Again, my point is they will be awaiting

1 those decisions at the courthouse, at the -- at the lockup.  
2 Department of Corrections will present those individuals to the  
3 U.S. marshals. The U.S. marshals will be holding those  
4 individuals until such time they either go take them up into the  
5 courtroom or they get a no-paper while they're waiting.

6 VICE CHAIR JOHN: So that's my recollection about how  
7 the system worked, that there were these cells for women and men  
8 behind the courtroom waiting for the no-paper decision to be --  
9 to be made. I think you're saying that during COVID that was  
10 not done; did I get that correctly?

11 MR. FAUST: For -- for the most part, yes, for the most  
12 part. So I guess the -- in trying to answer it directly, first  
13 thing in the morning, individuals will be transported to the  
14 courthouse. They will then await the decision for papering or --  
15 or no-papering, and that's where the U.S. Attorney's Office said  
16 they do not object to that. Again, I can't speak for them, but  
17 they're not really concerned about the -- the process of exchange  
18 between the Department of Corrections and the U.S. Marshal's  
19 office. They're simply making a statement that they do not object  
20 to returning to what we had in place pre-COVID, which was all  
21 those individuals were transported to the court, at which time  
22 then the no-papering decisions from the U.S. Attorney's Office  
23 were then relayed to the Court, and that is the process that we  
24 would be -- will be returning to.

25 VICE CHAIR JOHN: Okay. That's my recollection. I --

1 but you know, things change. So the statement that the marshals  
2 will not transport the detainees -- I don't know how -- I don't  
3 know what that was about.

4 MR. FAUST: I don't know. The marshals, again, they  
5 don't transport. The only other thing, and this is only a guess,  
6 if they're saying -- well, but it doesn't sound like a transport.  
7 If they're saying they're not going to transport them up into the  
8 court, well, no. Again, those no-papering decisions, if they're  
9 made while that individual is being held in the court holding  
10 cell, then the marshals would escort that person on out of the  
11 building. They would never go into the court, but the marshals  
12 themselves don't make the transports. The Department of  
13 Corrections does.

14 VICE CHAIR JOHN: Okay. And so the detainees would go  
15 to the individual lockups behind each -- each courtroom?

16 MR. FAUST: I mean, where -- once we drop them off,  
17 where they would go to would be up to the marshals.

18 VICE CHAIR JOHN: Okay. Okay. So they could either  
19 stay in a central location or go to the individual courtrooms?

20 MR. FAUST: Yeah. And that would be the marshals in  
21 terms of where they place people.

22 VICE CHAIR JOHN: Okay. All right. Thank you.

23 CHAIRPERSON HILL: Okay. Does anybody have any  
24 questions of the Applicant, any of my fellow board members? Okay.  
25 Let's see, did I have any questions? So it's more a comment, I

1 guess, to the Applicant, like I -- I know that we're not going  
2 to get to do a bench decision today. We're going to sit down  
3 and -- and think about this, and that some of the conditions, I  
4 think, are not necessarily things that the Board might be able  
5 to do, meaning if the order is -- has expired, then we wouldn't  
6 be able to necessarily tell the Applicant what to do. That's  
7 like, again, on the demolition of these additional units, if this  
8 were to actually happen, but I know that I'm going to have to  
9 take a hard look at the conditions to see what I think of it all,  
10 and I guess that's it. I don't have anything else to mention.

11           Oh, I did have one question. So the Applicant had  
12 stated that there was -- you know, one of the potential conditions  
13 was a liaison, like who is the liaison? Is there -- is there  
14 somebody that's kind of planned for, like who's the liaison and  
15 how would they have any kind of authority or weight?

16           MS. MOLDENHAUER: So we obviously indicated that they  
17 would be -- that would be coordinated between DOC and DGS. They  
18 would be selected, obviously, down the road. We have not  
19 identified exactly who that would be, and they would be an  
20 individual that would be up to date, understand the project,  
21 understand the -- you know, whether it's -- if it's a  
22 construction phase, they would be aware of what's happening  
23 during construction and be able to report to the ANCs about status  
24 and have that information.

25           CHAIRPERSON HILL: Who do they report to over at DGS

1 and DOC?

2 MS. MOLDENHAUER: They report to the project manager --

3 CHAIRPERSON HILL: Okay. Okay.

4 MS. MOLDENHAUER: -- who would either -- either be  
5 reporting obviously to Mr. Hargrove or to the other DGS  
6 representative who was here at our last meeting, Mr. Allam  
7 Al-Alami.

8 CHAIRPERSON HILL: Okay. So I'm just trying to  
9 understand if, like -- so Mr. Hargrove and or then Director Faust  
10 would actually get the information at some -- at some point in  
11 time?

12 MS. MOLDENHAUER: Yes, it would be relayed up to  
13 different agencies. So during construction, it would be somebody  
14 from DGS and then post-construction for operations, it would be  
15 coordination with someone at DOC.

16 CHAIRPERSON HILL: Okay. Okay. Ms. Themak, do you  
17 have a conclusion? Oh, sorry. Mr. Smith had his hand up. Mr.  
18 Smith -- not Mr. Smith. Mr. Blake, you had your hand up.

19 COMMISSIONER BLAKE: Just along those lines, too,  
20 the -- there's also a transportation liaison. How would that --  
21 can you reconcile how that would work? It sounds like -- that  
22 sounds like an operating person. Why is it particularly called  
23 transportation, and how would that work?

24 MS. MOLDENHAUER: It was an opportunity to be  
25 responsive to the community's concerns. We've heard many hours

1 of testimony. Many of that have been revolving around concerns  
2 about the parking, about the staging of these vehicles, and so  
3 the point would be that there would be somebody that would be  
4 able to -- that would obviously be someone from DOC, not DGS,  
5 because this would be a question more for DOC -- that would be  
6 available to report back to the ANC about how things are going,  
7 to attend meetings, hear questions and concerns, and then report  
8 back to, you know, the CCB leadership and staff to ensure that  
9 if there was any follow-up, that that was being relayed and  
10 communicated.

11 COMMISSIONER BLAKE: So how would that person differ  
12 from the liaison in -- for post-construction?

13 MS. MOLDENHAUER: It could be combined. We were --  
14 again, we were just trying to be comprehensive and responsive to  
15 the community.

16 COMMISSIONER BLAKE: Thank you.

17 CHAIRPERSON HILL: Commissioner Miller, did you have  
18 your hand up?

19 ZC VICE CHAIR MILLER: Sure. I have one other question.  
20 Since we're on these quick things with regard to the loitering  
21 issue. Ms. Moldenhauer, are there some other -- I mean, we talked  
22 about the viability or the enforceability of loitering signs. We  
23 don't have exact locations of where those signs might be placed  
24 if you did erect them. The second question I had was, are there  
25 other measures that have been taken that you might just articulate

1 now that will address the loitering issue?

2 MS. MOLDENHAUER: No, there are not other measures  
3 that, you know, have been taken.

4 ZC VICE CHAIR MILLER: In the context of the program,  
5 however, and the things that you've done process-wise, I suspect  
6 some things will impact loitering, the risk of loitering, such  
7 as cameras, maybe, or the no-release policy, things of that sort?

8 MS. MOLDENHAUER: Yes. I mean -- the fact that there  
9 would be no releases from the facility, the fact that there are  
10 no individuals coming to collect personal belongings at the  
11 facility, you know, all of those, I think -- and the fact that  
12 you obviously would be released from the court and any final  
13 decisions would be occurring at the court, you know, most activity  
14 would occur at the court where it does, and so we don't believe  
15 that there would be a need for any additional information. Again,  
16 I think we were recommending the no loitering signs as a good  
17 faith measure for general, you know, encouraging of kind of  
18 reducing individuals in the front of the property, but there  
19 obviously -- there is a -- the front door will be locked and only  
20 staff would be able to come into that front door, and there would  
21 be a camera there.

22 ZC VICE CHAIR MILLER: Are there -- where would the  
23 placement of those signs be? Would they be in public space, or  
24 would they be along the perimeter of the fence?

25 MS. MOLDENHAUER: It would be -- it would have to be

1 in public space, because at the end of the day, the property  
2 lines -- I'm just looking at the property lines -- well, actually  
3 it could be in private property. So we could -- we would -- we  
4 would probably want to locate it on private property within --  
5 within the property line. That way we did not -- we would not  
6 have to worry about going to a DDOT for public space and getting  
7 authorization. So they would be most likely located -- the stairs  
8 up to the front of the building on New York Avenue are in private  
9 property, so they would most likely be located on maybe either  
10 side of the stair.

11 ZC VICE CHAIR MILLER: And along L Street, they'd be  
12 along on the fence line?

13 MS. MOLDENHAUER: Along L Street, they could be on the  
14 fence line, but along L Street, the -- the fence is -- that  
15 there's -- it's all -- there's no way for anyone to loiter in  
16 other than being on the sidewalk, and so you know, obviously,  
17 there really is no place to locate that.

18 ZC VICE CHAIR MILLER: Thank you.

19 CHAIRPERSON HILL: Ms. Moldenhauer, I know that we're  
20 going to want to see the gate or the fence proposal for the both  
21 the L Street and the New York Avenue, and then also, if you could  
22 mention something about whatever the -- you know, the policy  
23 might be for that gate's use, like when it will be open, when it  
24 will be closed, how -- you know, making sure that -- I'd be  
25 curious to hear from your client how that gate might be used and

1 how their policy would be when it would be opened and when it  
2 would be closed.

3 MS. MOLDENHAUER: Sure. I mean, I think, you know,  
4 we'd prefer to provide any testimony about the gate now, that  
5 way, you know, we can just simply have one document into the  
6 record and we can close the record today, as this has been a  
7 quite voluminous hearing, but the policy would be that the gate  
8 would be closed at all times except for when a vehicle comes to  
9 the gate for staging, the gate would be opened.

10 CHAIRPERSON HILL: I got you. Mr. Moldenhauer, just  
11 go ahead and write it down. Like I'm going to want to see the  
12 gate, like I'm not -- we don't have -- we don't get to see what  
13 the gate looks like right now. So I do want to see something  
14 about what the gate looks like.

15 MS. MOLDENHAUER: Are you asking for like, a gate  
16 detail, because right now, we don't even show -- we're just  
17 showing you the red line for the gate by the -- by the -- by the  
18 sally port. We were just planning on showing the same --

19 CHAIRPERSON HILL: You had a fence, right?

20 MS. MOLDENHAUER: Yes.

21 CHAIRPERSON HILL: Or you had something that -- so I  
22 just want to -- I just want to understand how the whole thing is  
23 going to look with the gate.

24 MS. MOLDENHAUER: Okay.

25 CHAIRPERSON HILL: Okay. Anybody else want anything

1 from the Applicant? Okay. Everybody's shaking their heads.  
2 Okay. Ms. Themak, do you have a conclusion?

3 MS. THEMAK: Yes.

4 CHAIRPERSON HILL: Okay.

5 MS. THEMAK: I think the bottom line here is we're  
6 not -- the ANC is not arguing that this is about need. We know  
7 there's a need. This is about the impacts at this particular  
8 site that is being asked to be reviewed under the special  
9 exception standards, and the Board and the Applicant recognize  
10 this. I mean the, the question of the detainee processing, we've  
11 gone round and round about it. I don't think there's a definitive  
12 answer. We have the testimony of Katerina Semyonova and also  
13 Todd Baldwin that is in the record, and these are two people that  
14 play an inherent role in this every day as part of their careers,  
15 and both of them have testified that the detainee release can  
16 happen from CCB as it is now. Any proposal to change that process  
17 could happen, but any artificial delay of holding them longer so  
18 that they have to be brought to court also raises  
19 constitutionality issues. So as a result, we are looking at  
20 potential detainee release here. We are looking at a lot of  
21 changes to the entire process, given that their belongings would  
22 have to be there. They would have to be brought with them. Rides  
23 or trip numbers to the site are going to be increased by that.

24 So I think that coupled with the other lack of answers  
25 to questions we have here about loitering, about DDOT review,

1 about HPO review say that this isn't -- clearly isn't ripe for a  
2 decision today, and there's so many questions that still need to  
3 be answered.

4                   I also need to reiterate that when we're looking at  
5 parking, we're very clear that there isn't a parking requirement.  
6 What we're looking at it from the perspective of the impacts that  
7 inadequate facility here will have on the traffic and the  
8 surrounding neighborhoods. We're looking at it from an impact  
9 standpoint.

10                  And I guess I would close by saying this doesn't have  
11 to be an evaluation of the lesser of two evils: keeping detainees  
12 at the current CCB where conditions are deplorable or moving it  
13 here. I think the -- the broader question is there's a place  
14 for this that meets the standard -- the special exception  
15 standards. This clearly doesn't, because we have demonstrated  
16 countless impacts that are both significant and adverse. So I --  
17 I challenge the -- the question of, well, let's do this and move  
18 this through because we need a solution to the existing site. We  
19 do need a solution. Nobody's arguing that. The solution just  
20 isn't here. So I would close with that, and I would ask you to  
21 give Commissioner Nigro a minute if I have missed anything.

22                  CHAIRPERSON HILL: Okay. Commissioner Nigro. Okay.  
23 Go ahead. You'd like to give us a conclusion?

24                  MS. NIGRO: Very brief is that, you know, what we have  
25 all stated through these variety of hearings and testimony and

1 letters to the Board, and we are grateful for the Board to have  
2 us come before you. Don't -- I don't want to underestimate that,  
3 but we are clear that all these things that we have talked about  
4 will have an adverse impact. All the people that wrote you  
5 letters, all the people that testified, they feel very strong  
6 about this, otherwise they would not have done it. Thank you.

7 CHAIRPERSON HILL: Thank you, Commissioner. Okay. Ms.  
8 Moldenhauer, do you have a conclusion?

9 MS. MOLDENHAUER: Yes. Thank you. We are here today  
10 for special exception relief. Special exception relief should  
11 be -- you know, so long as we can satisfy that we've met the  
12 standards, is deemed to be appropriate and should be granted  
13 based on D.C. Court of Appeals case law. We believe that we've  
14 satisfied those standards based on having expert testimony from  
15 Gorove Slade regarding the limited impact this would have on  
16 traffic and the ability to mitigate any concerns of traffic with  
17 proposed conditions, labeling and providing much detail regarding  
18 the staging; and testimony from Director Faust regarding the fact  
19 that this will be coordinated and well-implemented amongst the  
20 agencies and MPD to ensure that there will not be an overwhelming  
21 number of individuals beyond the four spaces for staging that we  
22 have provided.

23 In addition to that, we have had professional testimony  
24 from Mr. Foerster, from the -- as an architect, that we have  
25 taken all necessary precautions in regarding -- all needed

1      precautions in regards to noise and visual reduction for  
2      mitigating any visibility into the building, as well as any noise  
3      abatement from inside the building, as well. We have provided  
4      information in the record regarding the release process. We  
5      believe that it is extraordinarily clear to the board, and there  
6      are no questions outstanding that we are proposing to go back to  
7      the pre-COVID process, that individuals will be transported to  
8      the courthouse and then given authority to the U.S. Marshal's  
9      office. The U.S. Marshal's office will then be the agency that  
10     manages and maintains them from a release there -- from there on,  
11     that we are only talking about the operations on the CCB and DOC,  
12     and we believe that at the end of the day this is a question  
13     about special exception relief.

14                There is no parking requirement, and there is no  
15     loading requirement on this site, but the additional conditions  
16     we have offered, we believe, more than adequately mitigate those  
17     concerns, as well as some of the modifications that we've made  
18     through this, you know, public and evolving process where we have  
19     provided additional information regarding the fence. We have  
20     provided additional information regarding pulling back the  
21     property from the crosswalk along Fifth Street, and we think that  
22     at the end of the day, you know, this will allow for the much  
23     needed renovations of the Daly Building and that this is only a  
24     temporary swing space here, and at the end of the day, after the  
25     eight-year term, potentially this would be returned to the

1 existing condition with obviously the improvements that were  
2 done, minus the new D.C. cells.

3 With that being said we ask the Board to support the  
4 application. Thank you.

5 CHAIRPERSON HILL: Okay. Thank you. All right. Thank  
6 you, everybody, for your time, and I know that this -- you know,  
7 this started actually as -- as an appeal that I was -- and  
8 Commissioner Miller, all of us were on, or at least most of us  
9 were on. Commissioner Miller was also on there, as well, and so  
10 this is what brought us to this particular process.

11 Let's see. Oh, when can you get us this diagram --  
12 this fence thing, and the proposal about how the fence will be  
13 used, Ms. Moldenhauer?

14 MS. MOLDENHAUER: We can get that to you by Friday. We  
15 would obviously be looking for you to potentially rule on this  
16 as soon as you could. Thank you.

17 CHAIRPERSON HILL: Let's see. So if you get it on  
18 Friday, then we can have responses by the 8th. Okay? And I  
19 think, Madam Secretary, I'll let you do whatever you're going to  
20 do here, and then I think the 13th. Why do I want to say there's  
21 a lot of stuff going on, on the 13th, Madam Secretary? Oh, no.  
22 I know what's happening on the 13th. Okay. Never mind. So,  
23 okay. Commissioner Miller, you're not back on the 13th with us,  
24 right?

25 ZC VICE CHAIR MILLER: No. My schedule, but I'll --

1 I'll be back when you're back for this case.

2 MS. MEHLERT: Mr. Miller does have a case on the 13th  
3 that's continued.

4 CHAIRPERSON HILL: Okay. All right. Great. So then  
5 let's go ahead and have a decision on the 13th. You go ahead  
6 and submit your -- I'll let the secretary tell us, because I've  
7 forgotten dates, please.

8 MS. MEHLERT: So the -- the Applicant could file their  
9 submissions by this Friday, and responses from the ANC by next  
10 Friday, November 8th, and then you would have a -- sounds like a  
11 decision on November 13th, and I just want to add the -- the ANC  
12 did submit the email from DDOT that was mentioned. So I would  
13 just want to clarify if you'd like that added to the record, and  
14 if you'd like the Applicant to have an opportunity to respond to  
15 that.

16 CHAIRPERSON HILL: Exactly. So that's the other thing  
17 I forgot. Thanks. So you're going to go ahead and put that into  
18 the record. Then the Applicant has a chance to respond to that,  
19 right? And so that response could also be by the 8th, I guess,  
20 correct?

21 MS. MOLDENHAUER: Yeah, so whenever you want the  
22 response to be.

23 CHAIRPERSON HILL: Thanks, I'm just trying to keep the  
24 date straight. Madam Secretary, is that correct or no?

25 MS. MEHLERT: Yeah. I mean, you could -- you could ask

1 for the Applicant's response to that by next week or if they're  
2 able to include it in their submission by Friday. I don't --  
3 whatever.

4 CHAIRPERSON HILL: Okay. That's -- actually, that's  
5 better. If Ms. Moldenhauer, you can get the response to whatever  
6 they just put into the record by Friday also?

7 MS. MOLDENHAUER: Yes, we can.

8 CHAIRPERSON HILL: Okay. Great. All right. Well, to  
9 let you all know, we still have a full day ahead of us. So I'm  
10 going to let you all -- I'm going to close the hearing in the  
11 record, except for the one items that we talked about. I  
12 appreciate all the time and effort that's gone into this, and  
13 y'all have a nice day.

14 MS. MOLDENHAUER: Thank you for your time.

15 (Off the record)

16 CHAIRPERSON HILL: So call us back in and call the next  
17 case.

18 MS. MEHLERT: The Board has returned from its lunch  
19 break and is back to its hearing session. The next case is  
20 application number 20768 of District Properties.com, Inc., as  
21 finally amended. This is a self-certified application pursuant  
22 to subtitle X, section 901.2 for special exceptions under  
23 subtitle D, section 5201 for the side yard requirements of  
24 subtitle D, section 208.2 and under subtitle C, section 1102.4,  
25 to allow residential use in a one hundred-year floodplain. This

1 is for a new two-story detached principal dwelling on an  
2 unimproved, substandard lot, located in the R-1B zone at 4337  
3 Douglas Street, Northeast, square 5115, lot 59.

4                   This hearing began on June 5th, after being postponed  
5 several times since 2022, and was continued to allow additional  
6 testimony, and then on July 24th, the Board granted ANC 7D's  
7 motion to postpone and participating are Vice Chair John, Mr.  
8 Blake, Mr. Smith, and Commissioner Miller, and I believe Chairman  
9 Hill has read into the record. And I'll just note that an updated  
10 ANC 7D report in support was submitted on Monday in Exhibit 92.

11                  CHAIRPERSON HILL: Okay. Great. Yeah. And I've read  
12 in on this case. If the Applicant can hear me, if they can please  
13 introduce themselves for the record.

14                  MR. SECK: Chairman Hill, members of the Board, my name  
15 is Omour Seck, representing the Rupsha for this case.

16                  CHAIRPERSON HILL: Okay. Okay. Okay. All right. Mr.  
17 Seck, if you want to go ahead and walk us through your application  
18 and why you believe you're meeting the criteria for us to grant  
19 the relief requested, I'm going to put fifteen minutes on the  
20 clock so I know where we are, and also, you just tell us what  
21 has happened since the last time you were with us, and you can  
22 begin whenever you like.

23                  MR. SECK: Yes. Thank you, Chairman Hill. Thank you  
24 for the opportunity. Again, this case have gone before the Board  
25 a couple of times, and we had requested postponement a few times.

1 The last time was by the ANC. This is a special exception for  
2 side yard variance from eight feet required to three feet on both  
3 sides. These are infill lot with no access to the back with  
4 unimproved alley or street, and we went back to the July 8th --  
5 the October 8th, I'm sorry -- ANC meeting after doing outreach  
6 to the community and also getting together with our commissioner  
7 of the SMD, Mr. Siraj Hussain (phonetic), and we worked  
8 extensively on the case because the previous ANC meetings, he  
9 could not be present due to some travel, and he took up the case,  
10 and we had the hearing, and he pleaded for our support, and I  
11 see no objection to the case.

12 And as far as the -- what I was required for by the ANC  
13 and as well as some of the Board members to do community outreach,  
14 we did that and obtained a letter of support on the house on the  
15 left side of -- which is the west side of this -- this particular  
16 lot, as we share common trees that we need to remove, we have  
17 the permits on hand. She signed a letter of consent, and we went  
18 out also to a previous commissioner named Mr. Solomon, who's  
19 further down on the 4500 block. We have a house upcoming next  
20 to him and have an agreement signed on hand that we will build  
21 the house with a shared fence and initially, was -- had some  
22 concern for the project. That was also a previous BZA. Those  
23 things were worked out, and I reached out to a lady who had been  
24 present to the ANC a few times and needed more information, such  
25 as plans and explanation, which I shared and was open to meet

1 with them for any questions, but never got a response back, and  
2 I reached out a couple of times, but so far that's what happened.

3                   And the chairman -- not chairman, the SMD  
4 commissioner -- again, sees no adverse reaction or effect to  
5 either property on the side or in the community, and we do have  
6 the DOEE support as we address the flood issue for the  
7 construction of this house and also Office of Planning and DDOT,  
8 those still stand. And we would like to -- the Board to grant  
9 the relief.

10                  CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Seck.  
11 All right. Does the Board have any questions of the Applicant?  
12 Okay. I'm going to turn to the Office of Planning.

13                  MS. THOMAS: Yes. Good afternoon, Mr. Chair and members  
14 of the Board. Karen Thomas sitting in for Maxine Brown-Roberts  
15 this afternoon, and we are in support of this application  
16 regarding the side yard. The properties are nonconforming to the  
17 lot area and the lot width, and the required lot of eight feet  
18 on each side would limit the house to nine feet. So as outlined  
19 in our report, the proposal meets requirements of section 56 --  
20 5201, sorry, and special exception requirements of subtitle X,  
21 901.2, and it wouldn't be inconsistent with the R-1B zone.

22                  Similarly, with respect to the building in the  
23 floodplain, the entire property is within the one hundred-year  
24 floodplain, and the Homeland Security Emergency Management Agency  
25 responded that they had no issues with the proposed structure,

1 and DOEE stated that the preliminary information provided had met  
2 the requirements, but additional information would be required  
3 at permitting stage. So therefore, we are recommending approval  
4 of the requested special exceptions. Thank you.

5 CHAIRPERSON HILL: Thank you, Ms. Thomas. Does the  
6 Board have any questions of the Office of Planning? Mr. Young,  
7 is there anyone here wishing to speak? Okay. I don't have a  
8 lot of questions. Mr. Seck, do you have anything you'd like to  
9 add at the end?

10 MR. SECK: No, Chairman. Thank you.

11 CHAIRPERSON HILL: Okay. All right. I'm going to  
12 close the hearing on the record. I'm probably going to see Mr.  
13 Seck again in a minute, but if you go look -- excuse everybody,  
14 Mr. Young. Okay. You know, I've reviewed the file, and I  
15 didn't -- I thought it was actually kind of relatively  
16 straightforward. I mean, I think the Office of Planning report  
17 is thorough. And also, you know, the fact that it would be a  
18 nine-foot house if this wasn't something that got approved is not  
19 really reasonable, and I also think that they're meeting the  
20 special exception criteria for the side yard and the hundred-year  
21 floodplain. So I'm going to be voting in favor. Mr. Smith, do  
22 you have anything you'd like to add?

23 COMMISSIONER SMITH: Chairman Hill, I agree with your  
24 assessment of this case. We continued this case to hear  
25 additional feedback from the neighborhood, and we did receive

1 feedback. Fortunately, it wasn't a quorum, yay or nay, but we  
2 did receive feedback. Otherwise, I agree with you. This is  
3 fairly straightforward. If this wasn't granted, it'll be  
4 extremely difficult to build anything of, you know, a usable home  
5 on the property. So I agree with your assessment and the Office  
6 of Planning and will support, as well.

7 CHAIRPERSON HILL: Thank you. Mr. Blake?

8 COMMISSIONER BLAKE: Yes, Mr. Chair, I agree with the  
9 assessment of you and Board Member Smith. I believe the Applicant  
10 has met the burden of proof to be granted both the side yard  
11 relief, as well as the floodplain relief. I think that this was  
12 a challenging application only because we haven't seen floodplain  
13 properties, and I do think that we've had the appropriate agencies  
14 weigh in on this, and I'm comfortable supporting the application  
15 at this point.

16 CHAIRPERSON HILL: Thank you. Vice Chair John?

17 VICE CHAIR JOHN: I agree with all of the comments so  
18 far. I'm sorry I lost my video for a while, but I was listening.

19 CHAIRPERSON HILL: All right. Vice Chair Miller?

20 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. Yes.  
21 I share your and others' comments, and I'm prepared to support  
22 the application, appreciate the ANC providing us with a letter  
23 this week -- earlier this week, I guess, saying that they voted  
24 three to zero to four with -- in favor of it, four abstentions,  
25 but three in favor and zero opposed. So I'm supportive of the

1 application. Thank you.

2 CHAIRPERSON HILL: Thank you. All right. I'm -- I'm  
3 going to make a motion to approve application number 20 -- oh,  
4 yeah -- 20768 as captured by Madam Secretary and ask for a second.  
5 Ms. John?

6 VICE CHAIR JOHN: Second.

7 CHAIRPERSON HILL: Motion made and seconded. Ms.  
8 Mehlert, you can take a roll call.

9 MS. MEHLERT: There's motion to approve the  
10 application, Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MS. MEHLERT: Vice Chair John? Mr. Smith?

13 COMMISSIONER SMITH: Yes.

14 MS. MEHLERT: Blake?

15 COMMISSIONER BLAKE: Yes.

16 MS. MEHLERT: Commissioner Miller? Staff would record  
17 the vote as five to zero to zero to approve application 20768 on  
18 the motion made by Chairman Hill and seconded by Vice Chair John.

19 CHAIRPERSON HILL: Thank you. Madam Secretary, could  
20 you call our next one?

21 MS. MEHLERT: Next is application number 20769 of  
22 District Properties.com, as amended. This is a self-certified  
23 application, pursuant to subtitle X, section 901.2 for special  
24 exceptions under subtitle D, section 5201 from the side yard  
25 requirements of subtitle D, section 208.2, and under subtitle C,

1 Section 1102.4, to allow residential use in a one hundred-year  
2 floodplain. This is for a new two-story detached principal  
3 dwelling on an unimproved substandard lot, located in R-1B zone  
4 at 4533 Douglas Street Northeast, square 5115, lot 15.

5 Again, this hearing began on June 5th and was continued  
6 to allow additional testimony, and one was -- it was postponed  
7 on July 24th, in response to ANC 7D's motion, and participating  
8 are Vice Chair John, Mr. Blake, Mr. Smith, and Commissioner  
9 Miller, and Chairman Hill can confirm that he's read into the  
10 record.

11 CHAIRPERSON HILL: Thank you. I can confirm I've read  
12 into the record. Let's see. If the Applicant could hear me, if  
13 they could introduce themselves for the record.

14 MR. SECK: Yes. Good afternoon, Chairman Hill. My  
15 name is Omour Seck, representing District Properties for this  
16 case.

17 CHAIRPERSON HILL: Okay. Great. Mr. Seck if you want  
18 to go ahead and walk us through your application, what happened  
19 since the last time you were here, and why you believe you're  
20 meeting the criteria for us to grant the relief, and you can  
21 begin whenever you like.

22 MR. SECK: Thank you again, Chairman Hill. Good  
23 afternoon, member of the Board. This case basically goes in  
24 parallel with the previous one you just heard. Similar property,  
25 similar lot size, special exception for side yard variance and

1 also floodplain relief. As The Office of Planning stated, this  
2 three-feet lot -- three-feet side yard will allow us to build at  
3 least a decent house at nineteen feet wide, versus eight feet,  
4 which would reduce it to nine feet house, extremely difficult and  
5 probably uninhabitable.

6 We had gone back to the ANC after a few presentations,  
7 requiring community outreach and also the fact that at the last  
8 time our SMD commissioner was not present. It's still Mr. Siraj  
9 Hussain for this property as well, and when he came back, he took  
10 over the case and we worked together closely and were able to  
11 obtain the support of the ANC.

12 The property next to this house is basically has a  
13 structure further away. So there is no adverse reaction or effect  
14 to that house, and also we've done some shadow studies, et cetera,  
15 that did not -- should reveal any negative effects to either  
16 upcoming property or the current property. So the floodplain has  
17 stated -- the agencies involved in floodplain construction have  
18 given their approval, or if you will, support to the way we  
19 presented the construction, and at the time of permitting, of  
20 course, more document would be presented for permit issuance. We  
21 have addressed that case, as well, and would like to request the  
22 Board for approval of this case. I thank you for the time.

23 CHAIRPERSON HILL: Thank you, Mr. Seck. Does the Board  
24 have any questions for the Applicant? Can I turn to the Office  
25 of Planning?

1 MS. THOMAS: Good afternoon, again, Mr. Chair. Karen  
2 Thomas sitting in for Maxine Brown-Roberts, and we are  
3 recommending approval of this application as well. Similarly,  
4 regarding the side yard, the properties are nonconforming lot.  
5 The lot area and to lot width, and it would -- application of  
6 the side yards would create an uninhabitable structure, and with  
7 respect to the building within the floodplain, we have a small  
8 portion of the property within the 100-year floodplain and a  
9 larger portion within the 500-year floodplain, but the Applicant  
10 has complied with the requirements of -- of the Homeland Security  
11 Emergency Management Agency, and they have no issue with the  
12 proposed structure, and DOEE, as well, has stated that the  
13 preliminary information provided have met the requirements. So  
14 with that, we are recommending approval of the application and  
15 send in the record of our report. Thank you.

16 CHAIRPERSON HILL: Thank you. Does anyone have any  
17 questions for the Office of Planning? Mr. Young, is there anyone  
18 here wishing to speak?

19 MR. YOUNG: We do not.

20 CHAIRPERSON HILL: Mr. Seck, is there anything you'd  
21 like to add at the end? Okay. Okay. I'm going to close the  
22 hearing in the record, and please excuse everyone, Mr. Young.

23 Okay. Thank you. As with the previous case, I thought  
24 that this was relatively straightforward in that the house would  
25 basically be unusable if they don't get the side yard, and we

1 went through the process of the one hundred-year floodplain, and  
2 I'm comfortable with they meeting -- they have met the criteria  
3 concerning that one hundred-year floodplain, and so I'm going to  
4 again agree with the Office of Planning and vote in favor. I  
5 did see that the ANC again submitted some information for us that  
6 I also appreciate, and I have nothing else to add. Mr. Smith,  
7 do you have anything you'd like to add?

8 COMMISSIONER SMITH: No.

9 CHAIRPERSON HILL: Mr. Blake?

10 COMMISSIONER BLAKE: I'm in support, Mr. Chairman. I'm  
11 in agreement with the comments that you made.

12 CHAIRPERSON HILL: Thank you. Vice Chair John?

13 VICE CHAIR JOHN: I am also in support, Mr. Chairman.  
14 I think it's fairly straightforward now.

15 CHAIRPERSON HILL: Vice Chair Miller?

16 ZC VICE CHAIR MILLER: I concur with your comments and  
17 with those of others, and appreciate the Office of Planning going  
18 back and getting recommendations from Energy Environment and  
19 Homeland Security and Emergency Management Agency. And  
20 appreciate the ANCs weighing in on this as well in support. Thank  
21 you.

22 CHAIRPERSON HILL: Thank you.

23 All right. Then, I'm going to make a motion to approve  
24 Application No. 20769 as captioned and read by our secretary.  
25 I'd ask for a second.

1 Ms. John?

2 VICE CHAIR JOHN: Second.

3 CHAIRPERSON HILL: Motion made and seconded. Madam  
4 Secretary, if you could take a roll call, please?

5 MS. MEHLERT: Please respond to the Chair's motion to  
6 approve the application.

7 Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MS. MEHLERT: Vice-Chair John?

10 VICE CHAIR JOHN: Yes.

11 MS. MEHLERT: Mr. Smith?

12 COMMISSIONER SMITH: Yes.

13 COMMISSIONER BLAKE: Yes.

14 MS. MEHLERT: And Commissioner Miller?

15 ZC VICE CHAIR MILLER: I do.

16 MS. MEHLERT: So I will record the vote as 5 to 0 to 0  
17 to approve Application No. 20769 on the motion made by Chairman  
18 Hill and seconded by Vice-Chair John.

19 CHAIRPERSON HILL: Okay. All right. You may call our  
20 next one when you have a chance, please.

21 MS. MEHLERT: Next is Application No. 21182 of 2021  
22 Project H SPV, LLC. This is a self-certified application pursuant  
23 to Subtitle X, Section 901, for special exceptions under Subtitle  
24 D, Section 5201 from the side-yard requirements of Subtitle D,  
25 Section 208.2; and the lot occupancy requirements of Subtitle D,

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1 Section 210.1; and from the previous surface requirements of  
2 Subtitle D, Section 211.1.

3 This is to construct front and side additions to an  
4 existing three-story detached principal dwelling located in the  
5 RNB-1 Zone at 25255 Belmont Road NW, Square 2501, Lot 30.

6 CHAIRPERSON HILL: Thank you.

7 If the Applicant can hear me, if they could please  
8 introduce themselves for the record. You're on mute, sir.

9 MR. FOWLKES: Excuse me. My name is V.W. Fowlkes. I'm  
10 the architect and agent for the owner.

11 CHAIRPERSON HILL: Okay, great. Mr. Fowlkes, if you  
12 want to walk us through your client's application and why you  
13 believe they're meeting the criteria for us to grant the relief  
14 requested. I'm going to put 15 minutes on the clock, just so I  
15 know where we are. And you can begin whenever you like.

16 MR. FOWLKES: Okay. Might I ask the Commission to pull  
17 up the presentation that I uploaded, called BZA presentation?

18 Okay. I think I can be pretty quick. This is an image  
19 of the front of the house just to orient you.

20 You can go ahead up and you can flip to the next page.

21 The house is situated wedged into Rock Creek Park so  
22 it's park -- national park land behind the house and to the  
23 northeast, as you see from this image. So there are no neighbors  
24 to the rear or no neighbors to the side, or at least to that  
25 side.

1           If you could switch to the next image, please.

2           Again, in addition to the front of the house, you see  
3 images here from the rear that -- this is taken from parkland,  
4 and the side.

5           Next image, please.

6           So here's a rendering of what the proposed structure  
7 will look like. You'll see that the changes are a very small  
8 front porch, like a portico, as -- over the front door. It's  
9 about 24 square feet. It's within the property line. The house  
10 is -- as it stands, it's nonconforming from an allowed occupancy  
11 standpoint, so anything we do to the front -- anything we do to  
12 the first floor requires BZA relief.

13           The other addition is to the side. To the right side  
14 of this image, you'll see kind of a glassy sunroom. So that is  
15 another addition, one-story addition, that further creates a  
16 nonconformity from a lot occupancy standpoint and also it  
17 limits -- and basically it also creates a side yard -- a  
18 nonconformity there.

19           You can go to the next page, please.

20           Here's just a view from the back. You see, there's no  
21 change to the first-floor level, except you see that sunroom on  
22 the left side of the house.

23           There's also an addition on the third floor, that is  
24 kind of that -- it's actually greenish. It's set back and that  
25 does not require any kind of zoning relief, so I'm not talking

1 about that today.

2 You can go to the next page.

3 So I -- this is the existing site plan. That gray line  
4 represents the footprint of the house.

5 And if you go to the next slide you'll see that much  
6 of the lot is currently covered by a terrace.

7 So we're in a nonconforming condition from a lot --  
8 from a previous surface standpoint already. Our side addition  
9 is on the right side of that -- on top of that gray surface. And  
10 our front addition is on top of the existing stairs. So we're  
11 asking for relief from a previous surface standpoint, although  
12 our additions are not creating any additional impervious surface.  
13 We are creating an additional imperviousness because of some  
14 terracing on the front.

15 And also, if you notice the very top of the page, there  
16 are three air conditioning condensers, one of which is in the --  
17 in the Park Service land, and those are just sitting in the grass.

18 If you go to the next page, we're moving those  
19 condensers to the left side of the swimming pool and they will  
20 be at grade but they require a concrete pad to sit on, so that  
21 is also increasing our impervious surface. We're trying to --  
22 yeah.

23 If you go to the next page, the little yellow cone  
24 shows the extent of the front and side addition.

25 We have -- I think that probably is the last slide I

1 wanted to show. Is there anything more on this sheet? There  
2 might be just -- you can flip to the next, just to see. Yeah.  
3 So we don't need to look through our plans, unless the Board  
4 wants to see them. So you can flip back.

5 I just wanted to say that we've contacted neighbors  
6 across the street and the neighbor next door on the -- sort of  
7 to the left. None of them have any objection. And we've got --  
8 the ANC supported the project unanimously. And I hope you will,  
9 too.

10 CHAIRPERSON HILL: Thank you, Mr. Fowlkes.

11 Does the Board have any questions of the Applicant?  
12 Okay.

13 Can I hear from the Office of Planning?

14 MR. BEAMON: Just for the record, this is Shepard Beamon  
15 with the Office of Planning. We reviewed the application for the  
16 special exception relief for the requested side yard, lot  
17 occupancy, and impervious surfaces in the RNB Zone, and we  
18 recommend that the Board approve this request to special  
19 exceptions, as we find the request to have no undue impact -- or  
20 should have no undue impact on the neighboring properties, and  
21 meet the criteria for Subtitles D and X. We stand on the record.  
22 And I'm available for any questions.

23 CHAIRPERSON HILL: Thank you.

24 Does the Board have any questions for the Office of  
25 Planning?

1                   Mr. Fowlkes, I just wanted to clarify something. The  
2 plans that you have in your PowerPoint, those are the final plans;  
3 is that correct? Because they're more detailed, it looks like,  
4 than the other plans.

5                   MR. FOWLKES: The footprint of the -- they represent  
6 the final design from a footprint standpoint. The interior layout  
7 of rooms is a -- is still getting a little -- is getting refined.  
8 And of course, there's a lot more detail that will be going into  
9 it between now and when we go to permit.

10                  CHAIRPERSON HILL: Okay. But the ones in the PowerPoint  
11 are your most up to date?

12                  MR. FOWLKES: They are the most up to date.

13                  CHAIRPERSON HILL: Okay. Okay. All right. Let's see.  
14 Mr. Young, is there anyone here wishing to speak? Okay.

15                  All right. Mr. Fowlkes, do you have anything you'd  
16 like to add at the end?

17                  MR. FOWLKES: No, thank you.

18                  CHAIRPERSON HILL: Okay. I'm going to go ahead and  
19 close the record, and the hearing. Thank you all very much.  
20 Thank you, Mr. Folks.

21                  Okay. I didn't really have any issues with the  
22 application. I was a little bit confused about the side yard,  
23 but now I understand it a little bit better. And then, I would  
24 agree with the analysis the Office of Planning has put forward.  
25 And also, I appreciate that the ANC took the time to review this

1 and vote on this. And I will also be voting in favor of this  
2 application.

3 Mr. Smith, do you have anything you'd like to add?

4 COMMISSIONER SMITH: We'll vote to support as well.

5 CHAIRPERSON HILL: Okay, great. Thanks.

6 Okay. Mr. Blake?

7 COMMISSIONER BLAKE: Yes. Ms. John, I agree with your  
8 analysis and I'll be voting in favor of the application.

9 CHAIRPERSON HILL: Thank you.

10 Vice-Chair John?

11 VICE CHAIR JOHN: I am also in agreement, Mr. Chairman.  
12 It's fairly straightforward.

13 CHAIRPERSON HILL: Okay. Vice-Chair Miller?

14 ZC VICE CHAIR MILLER: I concur with my colleagues.

15 CHAIRPERSON HILL: Okay. Then I make a motion to  
16 approve Application No. 21182, as captioned and read by the  
17 secretary, and ask for a second.

18 Ms. John?

19 VICE CHAIR JOHN: Second.

20 CHAIRPERSON HILL: Motion made and seconded.

21 Madam Secretary, take a roll call, please.

22 MS. MEHLERT: Please respond to the Chair's motion to  
23 approve the application.

24 Chairman Hill?

25 CHAIRPERSON HILL: Yes.

1 MS. MEHLERT: Vice-Chair John?

2 VICE CHAIR JOHN: Yes.

3 MS. MEHLERT: Mr. Smith?

4 COMMISSIONER SMITH: Yes.

5 MS. MEHLERT: Mr. Blake?

6 COMMISSIONER BLAKE: Yes.

7 MS. MEHLERT: Commissioner Miller?

8 ZC VICE CHAIR MILLER: (No verbal response.)

9 MS. MEHLERT: The vote is 5 to 0 to 0 to approve  
10 Applications 21182 on the motion made by Chairman Hill and  
11 seconded by Vice-Chair John.

12 CHAIRPERSON HILL: Great. All right. We'll call our  
13 next one when you get a chance, Madam Secretary.

14 MS. MEHLERT: Next case is Application No. 21183 of 933  
15 N Street NW, LLC. This is a self-certified application pursuant  
16 to Subtitle X, Section 901.2, for special exceptions under  
17 Subtitle E, Section 5201 from side-yard requirements of Subtitle  
18 E, Section 208.4 to allow the elimination of a conforming side  
19 yard; and from the closed port width requirements of Subtitle E,  
20 Section 209.1; and pursuant to Subtitle X, Section 1002, for area  
21 variances from the rear yard requirements of Subtitle E, Section  
22 207.1; the rear wall requirements of Subtitle E, Section 207.4  
23 to allow the rear wall of a rural building to extend farther than  
24 ten feet beyond the farthest rear wall of an adjoining principal  
25 residential building of an adjacent property; and the lot

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1 occupancy requirements of Subtitle E, Section 210.1.

2                   This is the subdivision of a lot into two new record  
3 lots with a new three-story attached building on one lot and an  
4 existing 39-unit apartment house on the other lot. It's located  
5 in the R-1 Zone at 933 N Street NW, Square 367, Lot 81.

6                   CHAIRPERSON HILL: Okay. Thank you.

7                   If the Applicant can hear me, if they could introduce  
8 themselves for the record.

9                   MR. DEBEAR: Hi, Chair Hill. My name's Eric DeBear.  
10 I'm the in-house counsel for Cozen O'Connor on behalf of the  
11 Applicant and also the architect, who may introduce herself as  
12 well.

13                   MS. TANYERI: My name's Gozde Tanyeri from AVG Plus GR  
14 Architects. I'm here to testify for 933 N Street.

15                   CHAIRPERSON HILL: Okay, great. Let's see, so Mr.  
16 Bear, I think, I was talking to the Office of Zoning and looking  
17 through your application, and it appears as though, you know, if  
18 you would agree to an amended application and now ask for, I  
19 guess, an area variance from Subtitle E 208.4, and Subtitle E  
20 209.1, because as a special exception under 5201, it needs to be  
21 an addition. So there's not actually any addition happening to  
22 the building on the apartment house side. And so, is that  
23 something that you think you might be able to, if you will,  
24 understand on the fly or do you need more time?

25                   MR. DEBEAR: No, we don't need more time. And I did

1 have a conversation with the Office of Zoning about it, Chair.  
2 I mean, I think the way the special exception is written, the  
3 language, it certainly doesn't account for a subdivision. I  
4 would certainly say it's analogous -- the word "addition" to a  
5 residential building is analogous to what we're doing here, which  
6 is essentially dividing the lot in two and making the lot with  
7 the existing multi-family building smaller.

8 So I think it's in keeping with the intent of that  
9 language. And I did some reading on the background of when that  
10 language was enacted, and it was actually enacted to account for  
11 nonconforming structures and where you had to request relief for  
12 those, and this is not necessarily an existing nonconforming  
13 structure.

14 So you know, I mean, we can amend if that's the way the  
15 Board wants to go, but I would certainly argue that it's correct  
16 as special exceptions.

17 CHAIRPERSON HILL: Well, to make my life easier, Mr.  
18 DeBear, just go ahead and amend the way that I just was mentioning  
19 to you, and make your argument in that regard, if you're able to  
20 do so.

21 MR. DEBEAR: Okay. Fair enough.

22 CHAIRPERSON HILL: And for the record -- and I'm  
23 laughing -- this thing's around the corner from me. And so,  
24 like, I'm just, like, this is going to be very intriguing  
25 presentation.

1           Okay. Mr. DeBear, you can bring up the PowerPoint and  
2 explain to us why your client is meeting the criteria to grant.

3           MR. DEBEAR: Okay. Great. Thank you, Mr. Young.

4           Next slide, please.

5           The property is located in the RF-1 Zone. It is half  
6 a block from the 9th Street corridor and Shaw. It is about a  
7 block and a half from the convention center, so it is certainly  
8 smack dab in the middle of the Shaw neighborhood and -- with all  
9 the various uses and, certainly, densities around it.

10           Next slide, please.

11           Here's some images of the existing conditions of the  
12 property. The property is currently improved with a 39-unit  
13 Henrietta Building. It's a contributing structure in two  
14 historic districts, both the Blagden Alley/Naylor Court Historic  
15 District as well as the Shaw Historic District. And really, the  
16 subject of this application is the property in its entirety, but  
17 really we're focusing on the existing side yard to that Henrietta  
18 apartment building. The side yard has in recent times fallen  
19 into disrepair, it is unused, and it's become -- my understanding  
20 from speaking with the ANC and other individuals in the community,  
21 it's become a bit of a nuisance property that we are trying to  
22 alleviate by connection with this project.

23           The other item that I will note is, historically -- and  
24 you see an image on the bottom right historic Baist map.  
25 Historically, these properties were two separate lots. So we are

1 seeking to return it to its historic alignment as two separate  
2 lots. At some point around the 1980s, based on my research of  
3 land records, those two lots were combined. I don't know exactly  
4 when, but for many, many decades, including certainly when the  
5 Henrietta was originally built, they were two separate lots.

6 Next slide, please.

7 Again, the side yard I mentioned. This is really the  
8 subject of the new project. You can see that it is unused, gated,  
9 and it travels from N Street all the way to Naylor Court and  
10 back, beyond the Henrietta.

11 Next slide.

12 The proposal is to subdivide that existing lot with  
13 both the Henrietta and that open side yard and essentially  
14 separate them. So the Henrietta will remain, and as part of my  
15 client's purchase of the property, they have undertaken a large-  
16 scale renovation of that historic structure. They are doing  
17 extensive interior and exterior renovations. The second lot,  
18 once subdivided, would be improved with a new two-unit row home.  
19 The way it's been designed -- and Ms. Tanyeri will go through the  
20 architecture -- is one unit essentially will be facing N Street  
21 and the second unit will be facing Naylor Court with a open  
22 courtyard in between them and a one-story meaningful connection.

23 And in addition to that, I wanted to note that in May  
24 2024, HBRE approved concept review for the subdivision.

25 Next slide, please.

1           In terms of community outreach, we have the unanimous  
2 support of ANC 2G. They also supported the HBRE case and then  
3 the Office of Planning is recommending approval of all areas of  
4 relief.

5           Next slide, please.

6           Now I'll turn it over to Ms. Tanyeri to walk through  
7 the site plan and then the architecture. Oh, previous --

8           MS. TANYERI: Yes, the previous slide, please. On the  
9 left side here, you see the existing site plan. Henrietta has  
10 absorbed, as a side yard, the previous Baist map. And throughout  
11 the years, up until probably 1980, this single-family or RF-1  
12 Zone lot was vacant. They absorbed it into their lot lines, and  
13 today what we're proposing is to subdivide that by being sensitive  
14 about today's zoning rules about the court and the setbacks from  
15 the building and its lot occupancy.

16           Next slide, please.

17           The design is -- to the left side is N Street NW and  
18 to the right side of the section is the Naylor Court. Per  
19 historic guidelines and, you know, their request, we've had quite  
20 a number of outreach to the neighborhood as well. It is in the  
21 Naylor Court and Blagden Alley guidelines to design a -- the  
22 alley back again to its original standards of 20 feet maximum  
23 garage structures in the historic guidelines of the alleys.

24           Therefore, they asked us to actually design not only a  
25 one-story garage, but also a two-story structure at the back.

1 Per that design, you know, to fit two units, to the left side,  
2 in pink, you see a four-level structure. That is one of the  
3 residences, and then, the blue indicates the second residence.  
4 These two residences will be connected by a connector of one  
5 story, and the garage will serve whichever property is going to  
6 be holding that garage space.

7 Next slide, please.

8 The front elevation on the left side, as you see on N  
9 Street, it is -- we have a setback from the street side, anchored  
10 by two apartment buildings on the left side. There is Atlantic  
11 at the corner of the street, apartment building. And to our  
12 right side and immediately adjacent to us is Henrietta. We have  
13 set back this row home to align with the two other row homes on  
14 the street, to create that nice little effect of setback  
15 residences cornered -- anchored by two apartment buildings on  
16 each side.

17 We've decided to keep the front façade on N Street, not  
18 with historic attributes but also be respectful for the cornice  
19 of the 937 structure to our immediate left side of this image.  
20 Their cornice adjusts towards our property and towards the 939  
21 property. One of the things that historic has asked us is to be  
22 respectful to that, so we were in the consent calendar of the  
23 historic board meeting once we met all those standards.

24 The rear side is, you see the setback on the back of  
25 the four -- no -- three-story structure, but on the alley side

1 you'll see a garage entrance. It's kind of like, you know, the  
2 two-story, 20 feet height structure with a living room above the  
3 garage.

4 Next slide, please.

5 Here in this image, you see a sign elevation just to  
6 indicate the courtyard. This courtyard also serves as a little  
7 bit more relief space to Henrietta, to the residents of the newly  
8 renovated apartments. It doesn't really block that -- their view  
9 into their -- that courtyard at the moment.

10 Next slide, please.

11 This is a prospective image with the 937 N Street  
12 property and Henrietta on our right side. And there is a  
13 transformer in the middle of our property that serves the  
14 entire -- either entire neighborhood or just Henrietta. We don't  
15 know. It just requires a lot of investigation. But that will  
16 be as an easement -- kept as an easement to the property. That's  
17 one of the reasons that we set back the property as well.

18 Next slide, please.

19 Here you see a little prospective image of the alley.  
20 It resembles like the carriage structures of what they -- what  
21 the historic wants to maintain on those walls.

22 Next slide.

23 Here's a more rendered image of Henrietta and this  
24 property on the left side of it, a little clearer image of what  
25 is going on in that street. The idea is to fill in this missing

1 space in the entire historic street façade. That was one of the  
2 things that HPO staff and us, you know, we worked together on  
3 the heights and the relationship with the buildings -- buildings  
4 to the other side of the street.

5 We feel like this is a contribution to that  
6 neighborhood. You know, there's a problem with that lot. Well,  
7 not -- not a separate lot, but as a side yard, it has been a  
8 drug-infested location with quite a number of police calls to  
9 that area. And the whole neighborhood, as we met with the entire  
10 ANC, they've always complained about the noise and the  
11 congregation in that side lot of people during evenings. So we  
12 believe that's going to alleviate all those neighborhood issues  
13 once this site is actually filled in with a single-family on the  
14 front and -- and one in the back, property design.

15 Next slide, please.

16 I think that's it, yeah. Here's another view of the  
17 side. Henrietta kind of pushes forward. This lot will be not  
18 as visible from this view. I think that's it, we have, right?

19 MR. DEBEAR: That is.

20 MS. TANYERI: Yes. Um-hum.

21 MR. DEBEAR: Yeah, if you could move to the next slide,  
22 Mr. Young, I'm going to talk a little about the zoning relief.

23 So we're obviously, based on our conversation at the  
24 beginning of this hearing, we are now seeking area variances from  
25 four different standards. That would be the side yard. We are

1     eliminating the Henrietta's existing side yard. That's Subtitle  
2     E 208.4 The port width that is being created for the Henrietta  
3     is substandard. It is required to be 13 feet, but it is between  
4     9 feet, 10 inches and 12 feet, 3 inches.

5                 The lot occupancy for the Henrietta's lot would go from  
6     the existing 59 percent, above the maximum of 60 percent to 80  
7     percent. Obviously, as we mentioned, we are not changing the  
8     Henrietta structure itself. We are just reducing the size of the  
9     lot on which the Henrietta sits. And then, the rear yard of the  
10    new building. There would be no rear yard, as Ms. Tanyeri spoke  
11    about, due to her -- in part, due to the historic guidelines  
12    indicating that ideally we'd create this new property with a  
13    presence on Naylor Court under that historic district's  
14    particular guidelines as an alley-based historic district.

15                In a related matter, we are looking for a variance to  
16    go 10 feet beyond that rear wall at 937 N Street, which is the  
17    property to our left.

18                Next slide, please.

19                So this is obviously now a special exception relief,  
20    but I did want to note a few things on the side yard in the court.  
21    If you see the site plan on the right-hand side. I wanted to  
22    note that in the RF-1 Zone there is no side yard requirement,  
23    however 208.4 restricts you from eliminating an existing side  
24    yard. So by subdividing this lot, we'd obviously be removing the  
25    Henrietta side yard that is currently there.

1           I also wanted to note, and we've outlined this in the  
2 application, the HPO report found that it would be a fundamental  
3 improvement to fill in this long-vacant gap. And again, it is  
4 only a modest amount of relief that we need from the court. With  
5 that being said, we do not believe this is creating any adverse  
6 impact for the variances that would be a substantial detriment  
7 to the public good. The neighboring property to the west does  
8 not have windows along that shared lot line. They do have a dog  
9 leg, and there are windows along that dog leg, however there  
10 would remain space between the new structure and that property,  
11 937 N.

12           I would also note that the portion of our structure  
13 that would abut the rear of their structure is open. And you  
14 saw that with the one-story meaningful connection in the  
15 courtyard. So even though our structure does extend all the way  
16 to the alley, again, when you're talking about the side yard  
17 relief, there is a limited impact on the wind in terms of aligning  
18 with that neighboring structure. And of course, the courts are  
19 interior to the project, so the only impact to the court would  
20 be to the Applicant's own property, and obviously, we see no  
21 impact there.

22           Next slide, please.

23           So in terms of the variance test, and this would  
24 apply -- these exceptional conditions would apply to all four  
25 areas of relief that we're seeking, again, having a large, unused

1 side yard in -- in particular, densely populated Shaw  
2 neighborhood is unique. It is -- the amount of open side yard  
3 that the Henrietta has that is approximately 3,250 square feet.  
4 That's obviously well above the 1,800 square feet you would need  
5 for a new dwelling lot, almost twice as much, few, if any  
6 properties in the neighborhood of existing structures with  
7 sufficient unused land to subdivide. Again, this is unique to  
8 this particular neighborhood, not necessarily to the entire city,  
9 but that is the variance test and how it's generally applied.

10 The historic alignment of this property as two separate  
11 lots also makes it unique. Again, dating back to 1900 when the  
12 Henrietta was built, this was always two separate lots, and at  
13 some point it was subdivided for reasons that are unclear, but,  
14 you know, that side yard has remained unused for many, many years  
15 now. And then the existence, not in any historic district, but  
16 in this particular historic district, makes this property unique.  
17 Again, that, specifically, goes toward the rear yard at issue.

18 As Ms. Tanyeri testified, it's a critical piece of the  
19 Blagdon Alley/Naylor Court historic district and, in fact, the  
20 only historic district in our city that is specifically  
21 designated due to its alley history and architecture. So creating  
22 a new presence on that alley was really critical, and HPO was  
23 extremely positive about our ability to do that.

24 Also, Ms. Tanyeri mentioned the electrical transformer.  
25 That pushes -- again, this is a confluence of these many factors,

1 but that pushes the front façade, in addition to historic  
2 guidelines, it pushes the front façade back, which then would,  
3 you know, limit our ability to move the rear of that property  
4 away from the rear lot line.

5 And then finally, you know, the Applicant, although  
6 he's not making any structural changes to the Henrietta, they are  
7 doing a wholesale renovation and bringing that property back to  
8 life. It was purchased last year and was in very poor condition.  
9 It is now vacant and being renovated. And so that is important  
10 in terms of understanding the depth of which it takes to renovate  
11 that sort of property and how that ties into, again, the need to  
12 subdivide and create the separate lots.

13 So next slide, please.

14 In terms of practical difficulty when talking about  
15 both the lot occupancy, the side yard, and the court, you cannot  
16 subdivide the property without relief from those standards. As  
17 I mentioned with the side yard, you're not allowed to eliminate  
18 a side yard. So any subdivision would eliminate the Henrietta  
19 side yard. Same goes for lot occupancy. Again, subdividing  
20 with -- the Henrietta's at 59 percent currently. The minute you  
21 subdivide, obviously, it's going to go over that 60 percent  
22 maximum. So strict application of both side yard and lot  
23 occupancy and the court requirements would make it practically  
24 difficult to achieve this subdivision.

25 The project, as I mentioned, involves, you know -- it

1 was purchased as one lot with the Henrietta on it, and the project  
2 is simply not feasible without creating the new lot. And this  
3 goes more toward the fact that the Henrietta is a historically  
4 contributing structure with very unique needs in terms of  
5 renovation. Those needs increase the labor and material costs  
6 associated with renovating that building. So to counterbalance  
7 those increased costs, this project was only feasible if that  
8 large, unused side yard could be subdivided for a new building.

9           One item that we noted and outlined in our pre-hearing  
10 statement, and this would apply to, again, all forms of relief  
11 relating to the lot occupancy, the side yard, and the courts,  
12 this -- the Henrietta and, in particular that side yard, cannot  
13 be developed in any other way that would require variance relief.  
14 So to go through some of the scenarios, if we were, at least, to  
15 maintain the -- be below the 70 percent lot occupancy threshold  
16 and maintain that side yard, the remaining lot would be  
17 substandard in the RF-1 zone. In other words, we would not have  
18 enough remaining lot area to subdivide and create a separate lot.  
19 It would only be 1,382 square feet.

20           As an addition, the Henrietta is an existing  
21 nonconforming apartment. So while you are allowed to continue  
22 with those uses, you do need, if you are going to expand 900  
23 square feet of land area per unit, the Henrietta is already at  
24 226 square feet per unit, so any structural expansion, either  
25 expanding existing units or adding new units on that side yard,

1 would also require variance relief.

2 There's also, you know, significant challenges on a  
3 historically contributing building to adding a new structure in  
4 the side yard, and then also structural challenges with  
5 integrating a new addition in that historic structure.

6 Alternatively, reducing the Henrietta footprint leads  
7 to the same challenges in terms of getting approval to demolish  
8 an historically contributing building. And then we are not  
9 permitted in the RF-1 zone to have separate structures on a  
10 single-record lot. So we can't cede the lot as-is and build an  
11 independent structure separately.

12 And finally, again, as a practical difficulty, we would  
13 not be allowed -- be permitted to return the property to its  
14 historic alignment as two separate lots.

15 Next slide, please.

16 In terms of the rear yard, again, this is also variance  
17 relief, and I think we touched on, really, the practical  
18 difficulty without the rear yard relief. If we were to provide  
19 the required 20-feet setback from the rear yard, we would be  
20 unable, obviously, to create a presence on that alley. Now, this  
21 is a critical role of this particular historical district, and  
22 again, the only historic district in our city that has alley-  
23 related history, but it's -- that's mainly because of that  
24 history. Again, the project would be unlikely to receive historic  
25 approval with zero setback, but just some quotes from the HPO

1 report -- and Ms. Tanyeri can speak further to this if the Board  
2 has questions, but the HPO noted that it -- the zero setback is  
3 "critical to the character and scale of the" historic district  
4 and "important enough...that it should be a condition of approval."  
5 So any sort of setback would be very challenging from a historic  
6 approval prospective.

7 And finally, the practical difficulty, if we were to  
8 provide a compliant rear yard and also apply the 10-foot rule,  
9 again, this structure would shrink significantly. We cannot move  
10 it forward toward N Street, even though that is on the property,  
11 again, both from the historic perspective, but also that existing  
12 transformer would be practically difficult to move. I think that  
13 more information will be uncovered as -- on that as to whether  
14 it serves the Henrietta or more structures on N Street. But  
15 either way, it cannot be moved, and it, indeed, is envisioned to  
16 remain at the front of that property. So again, we can't move  
17 it off, moving it back also would not work, obviously, so we are  
18 stuck where we are in creating, you know, two units, you know,  
19 lends itself to pushing all the way back to the alley.

20 Next slide, please.

21 On my final slide, just in terms of substantial  
22 detriment, I already talked a little bit about the side yard and  
23 the court and how we feel as though those do not contribute to  
24 any adverse impact or substantial detriment. The lot occupancy,  
25 again, the Henrietta's not changing, so there would be no impact

1 to light, air, privacy, or noise.

2 As we talked about, the lot occupancy allows the  
3 subdivision, which then removes a nuisance portion of the  
4 property, the unused side yard. And it also contributes to the  
5 character of the historic district, which has been found to be a  
6 public good in past cases.

7 With the rear yard, the rear portion is only two  
8 stories, so it's limited in terms of massing in the rear as  
9 compared to the three stories plus the cellar in the front. There  
10 are no windows facing the property to the west, 937 N Street.  
11 The interior courtyard that I mentioned minimizes any impact of  
12 this extension. Again, the massing is both in front of and behind  
13 the rear of that property. So they would feel limited impacts.  
14 And again, we talked about the importance of this relief in terms  
15 of improving the character of that Blagdon Alley/Naylor Court  
16 Historic District.

17 Next slide.

18 With that, I will close our presentation in chief. I  
19 appreciate the Board's patience on this one. It's a lot of areas  
20 of relief. I understand it's been a long day, but we are happy  
21 to answer any questions.

22 CHAIRPERSON HILL: Okay. Thank you, Mr. DeBear.

23 What is your client doing with the Henrietta?

24 MR. DEBEAR: They are renovating it. Gozde can speak  
25 a little to that. It's part of this application, but they're

1 not changing the structure; they are just bringing it back to  
2 life, so to speak.

3 CHAIRPERSON HILL: All right. How many units are going  
4 in there?

5 MR. DEBEAR: 39, I mean it will remain 39, the way --

6 CHAIRPERSON HILL: Yes, 39 before, 39 after. And  
7 they're going to be rental units?

8 MS. TANYERI: So at the -- they're going to be -- at  
9 the moment, with the changing marketplace, at the moment the  
10 thought is condos. They were condos before, and so keep as  
11 condos, but obviously, the market is kind of shaky. How that  
12 goes is, at this point, I don't know. But either market --  
13 they're not going to be Section 8 or affordable dwellings, if  
14 that's what you're asking.

15 CHAIRPERSON HILL: No, it's literally -- I can look  
16 at -- I mean, it's a -- I was just curious. So --

17 MS. TANYERI: I mean, the problem there was, I think,  
18 for the neighborhood. We had intensive meetings with the  
19 neighborhood and ANC reports, you would see that, as well. A  
20 lot of community outreach, meeting at the coffee shops and other  
21 things. The complaint -- the major complaint was not about this  
22 yard. They wanted to close the yard because of congregation and  
23 a lot of drug activity, and that and other issues. But also the  
24 other part was that the tenants in Henrietta was causing some of  
25 this problem with the side yard.

1                   So once we started meeting with the neighborhood, you  
2 know, you'll probably read that, but they were pretty much open  
3 to this, you know, let's just please go ahead and get this done,  
4 because this is just becoming a problem.

5                   CHAIRPERSON HILL: Okay. Great. Thank you.

6                   All right. Let me just hear from the Office of Planning  
7 first, and then I'll ask my Board if they have any questions.

8                   MS. MEYERS: Crystal Meyers with the Office of  
9 Planning. The Office of Planning is in support of this  
10 application. I will -- well, we can stand on the record with  
11 the staff report, but in light of the additional variance relief,  
12 I do want to say a little more on that.

13                   So for the side yard and the court width, that being  
14 an area variance, Office of Planning can be in support of that  
15 for the same reasons we're in support of the area variance relief  
16 for the Henrietta's lot occupancy. And the primary reasons are  
17 the relief allows for the building to renovated, and as the  
18 Applicant has discussed, it is in need of repairs, and so we  
19 construed that to be an exceptional situation. So the court  
20 width and side yard, which was previously special exception,  
21 would be similar situations for the variance. So we would be  
22 able to support in that regard, as well as the historic aspect  
23 of the building, and this -- the relief would allow for it to be  
24 returned to the historic alignment -- the two lots being returned  
25 to their historic alignment.

1           So those were the primary reasons why Office of  
2 Planning is in support of the area variances on the Henrietta  
3 lot.

4           And again, I can stand on the record, the staff report,  
5 but of course I'm here for questions.

6           CHAIRPERSON HILL: Thank you. Does the Board have any  
7 questions for the Applicant and/or the Office of Planning?

8           (No audible response.)

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

11           MR. YOUNG: We do not.

12           CHAIRPERSON HILL: Mr. Miller, did you have your hand  
13 up for something?

14           ZC VICE CHAIR MILLER: Thank you to Mr. DeBear and Ms.  
15 Tanyeri for the Applicant's presentation and Ms. Meyers for the  
16 Office of Planning report.

17           Just a quick question, Ms. Meyers. so for this  
18 substantial renovation of 39 units -- "wholesale renovation" as  
19 described by the Applicant, inclusionary zoning would not apply  
20 to the newly created units, or would it?

21           MS. MEYERS: We're actually not sure. It may, I know  
22 it would be a requirement if it is, so we didn't really look into  
23 it, but it may.

24           ZC VICE CHAIR MILLER: Mr. DeBear, do you have anything  
25 about that? I assume you do.

1                   MR. DEBEAR: I don't know, to be honest, Mr. Miller, I  
2 really don't. Are you talking about the two new units? I mean,  
3 those would be on a separate --

4                   ZC VICE CHAIR MILLER: No, no.

5                   MR. DEBEAR: -- you mean the existing units in the  
6 Henrietta?

7                   ZC VICE CHAIR MILLER: The existing units in the  
8 Henrietta that are being, not expanded because the -- in terms  
9 of number of units, because the footprint isn't being expanded --  
10 structure isn't being -- this historic contributing structure  
11 isn't expanding. We certainly want to renovate it if it was in  
12 such dilapidated, poor quality condition. But I guess I just was  
13 curious as to whether IZ would apply to the 39 new units, even  
14 though it's in the same footprint.

15                  MS. TANYERI: Yeah. So may I answer, because it -- we  
16 looked into it.

17                  ZC VICE CHAIR MILLER: Yes, please.

18                  MS. TANYERI: Yes. So the 39 exiting units in Henrietta  
19 we've permitted, but IZ does not apply, because there are 39  
20 units, and we kept them as 39 units. We can't, actually, in this  
21 zone, increase the number of units. We can just keep the number  
22 of units.

23                  The IZ regulations don't apply, but the units are  
24 fairly small size units, so the affordability of the units are  
25 much less than other units in the -- probably, the residences in

1 this area. So that's one, because of the size factor.

2 But the two units that we're adding are not addition  
3 to the building, so the building itself is not increasing in  
4 size, mass, or any gross square footage for the Henrietta itself.  
5 So none of the IZ mandatory regulations apply for us for that.

6 ZC VICE CHAIR MILLER: Thank you. And the -- you said  
7 the building is currently vacant, or was it vacant when you bought  
8 it last year?

9 MS. TANYERI: The Applicant -- yes. Our client has  
10 bought the property as vacant. I don't know when it became  
11 vacant. I can't speak for exact timing for that, but the  
12 construction has started, because permit has been obtained and  
13 construction has been going on.

14 ZC VICE CHAIR MILLER: Okay. Thank you for that  
15 response, and you did anticipate my next question, so I appreciate  
16 you for volunteering that information.

17 Thank you, Mr. Chairman.

18 CHAIRPERSON HILL: Thank you, Mr. Miller.

19 Anyone else have any questions?

20 (No audible response.)

21 CHAIRPERSON HILL: Mr. Young, I'm sorry. Did I ask  
22 whether anyone was here to speak? I see Ms. John.

23 MR. YOUNG: We do not.

24 CHAIRPERSON HILL: Okay. Ms. John?

25 VICE CHAIR JOHN: This is for Ms. Meyers. So do I

1 understand that one of your main reasons for approving the  
2 variance is that this is an opportunity to reconfigure the lot  
3 so that it would be reconfigured to the -- to underlying record  
4 lots?

5 MS. MEYERS: Yeah. Our -- for the Henrietta lot, we  
6 have two primary reasons, the main one being the ability to  
7 renovate the building, to bring -- to improve it, but the second  
8 one is it would allow for the historic alignment of those lots.  
9 I mean, as the Applicant has explained, there is a long history  
10 of them being two separate lots, and I believe in the '80s is  
11 when they were combined. And so this would allow for them to be  
12 brought back to two separate lots. But like I mentioned earlier,  
13 our primary reason for the Henrietta lot support is because it  
14 will allow for this historic building to be renovated.

15 VICE CHAIR JOHN: Okay. Thank you.

16 CHAIRPERSON HILL: Okay. Anyone else?

17 (No audible response.)

18 CHAIRPERSON HILL: Okay. Mr. DeBear, anything at the  
19 end?

20 MR. DEBEAR: I don't want to make this more difficult  
21 than it needs to be, and I'd love for the Board to, certainly,  
22 deliberate today. You know, with the new relief, I don't know  
23 if we do need to, technically, submit a revised self  
24 certification. I just want to make sure this is being done  
25 correctly so that we don't have any issues when we go to get

1 permits. And my client won't be thrilled with waiting, but I  
2 want to make sure it's done right.

3 CHAIRPERSON HILL: I believe -- well, like in, maybe  
4 somebody in -- I believe you do need to submit a revised self  
5 cert. I think we can deliberate today, and then keep the record  
6 open for the revised self cert.

7 Madam Secretary, is that correct?

8 MS. MEHLERT: So you want to deliberate and take a vote  
9 today?

10 CHAIRPERSON HILL: I was going to, but now I have -- I  
11 can talk to legal, if I need to.

12 MS. MEHLERT: I would recommend taking a vote until  
13 after the self certification is -- has been received.

14 CHAIRPERSON HILL: Okay. When do you think, Mr. DeBear,  
15 you can self cert -- provide a self cert?

16 MR. DEBEAR: It's -- I mean, I could get it filed  
17 right now. I don't want to prolong the Board's day today, but  
18 if it has to be another week, then I can get it filed literally  
19 as soon as possible.

20 CHAIRPERSON HILL: If, Ms. Mehlert, this gets filed --  
21 we have -- I have another case. All right, Mr. DeBear. If you  
22 can file a revised self cert, we can come back and deliberate on  
23 this at the end of the day.

24 MR. DEBEAR: That would be wonderful. I will do that  
25 right now.

1                   CHAIRPERSON HILL: All right. That concludes the  
2 hearing --

3                   MR. DEBEAR: I can email it, and CC Ms. Mehlert.

4                   CHAIRPERSON HILL: Okay. I am going to, let's look,  
5 close the hearing on the record except for the material asked by  
6 the Board, and we'll come back and revisit this at the end of  
7 the day for a decision. Okay? Okay.

8                   Thank you. Closing the hearing on the record except  
9 for what I said. Let's see. Okay.

10                  It has been a long day.

11                  (Pause.)

12                  CHAIRPERSON HILL: All right. Let's take a quick five  
13 minutes, if we could, and we'll spend, maybe, five or ten minutes.  
14 Okay. Thank you.

15                  (Pause.)

16                  CHAIRPERSON HILL: So Madam Secretary, if you want to  
17 call our next case.

18                  MS. MEHLERT: Sure. The next case is Application No.  
19 21187 of 3309 12th Street Holdings, LLC. This is a self-certified  
20 application pursuant to Subtitle X, Section 901.2 for special  
21 exceptions under Subtitle C, Section 703.2, from the minimum  
22 parking requirements of Subtitle C, Section 701.5, and under  
23 Subtitle G, Section 207.14 from the rear yard requirements of  
24 Subtitle G, Section 207.5.

25                  This is for a two-story addition to an existing one-

1 story building for use as a 14-unit apartment house. It's located  
2 in the MU-3A zone, 3309 12th Street NE, Square 3930, Lot 44. And  
3 I'll just note there were new filings to the record that were  
4 added this morning, including a new letter of authorization,  
5 updated plans, as well as a letter in support from the adjacent  
6 neighbor.

7 CHAIRPERSON HILL: Okay. Great. If the Applicant can  
8 hear me, if they could please introduce themselves for the record.

9 MR. SULLIVAN: Thank you, Mr. Chairman. Marty Sullivan  
10 with Sullivan and Barros here on behalf of the Applicant.

11 CHAIRPERSON HILL: Mr. Sullivan, it just wouldn't be  
12 the same not seeing you on a Wednesday. I got to say. I do. It  
13 just made me smile. It was like, "Oh, there's Mr. Sullivan.  
14 He's still with us."

15 MR. SULLIVAN: I feel the same way. After I retire,  
16 we'll have to keep it up somehow.

17 CHAIRPERSON HILL: That's all right.

18 MR. SULLIVAN: If I ever get to do that.

19 CHAIRPERSON HILL: I think we'll all pass on that one.

20 All right. If you want to also -- even -- actually,  
21 this is, kind of like old school week. I got -- even faces that  
22 I'm seeing on my little screen today. So welcome everyone.

23 Mr. Sullivan, if you want to walk us through your  
24 client's application and why you believe they're meeting the  
25 criteria for us to grant the relief requested. I'm going to put

1 15 minutes on the clock so just I know where we are, and you can  
2 begin whenever you like.

3 MR. SULLIVAN: Well, thank you, Mr. Chair and Board  
4 Members. And with me also is Brian Aphey (phonetic) with --  
5 principal with the property owner, and Michael Cross will be  
6 presenting with me. He's the architect. I believe we have a  
7 PowerPoint presentation.

8 Next slide, please.

9 So the property is located in the MU-3A zone, and it's  
10 improved with just a one-story building right now, most recently  
11 used as a store. And the Applicant's proposing to construct an  
12 addition and convert the building to a two-story, 14-unit IZ  
13 multi-family residential building. It requires IZ and meets the  
14 IZ allocation.

15 The Applicant's unable to provide parking spaces where  
16 two are required, therefore asking special exception relief from  
17 the minimum parking requirement. Also the existing nonconforming  
18 rear yard, which is 18 feet in that, two feet short of the 20-  
19 foot requirement, will remain the same and be built up on that  
20 level. And so we're asking also for two feet of rear yard relief,  
21 as well.

22 Next slide, please.

23 We have the support of the Office of Planning and DDOT.  
24 Regarding the ANC, because we don't -- you'll notice we don't  
25 have an ANC letter, we reached out to the ANC numerous times as

1 we do from the beginning, and originally -- Mr. Cross initially  
2 filed this, and their office reached out to the ANC on a regular  
3 basis.

4 We did finally get to the ANC at their most recent  
5 meeting, just a couple weeks ago. We were hoping to get there  
6 sooner than that so that we could address any issues. And so  
7 they passed on voting on the application based on the fact that  
8 there were no neighbors there, and they weren't sure or couldn't  
9 be sure -- they said that we had notified everybody, and so they  
10 were concerned about that. They didn't tell us they were going  
11 to ask for a postponement, they just gave the impression that  
12 they were going to stay out of it for that reason.

13 So we have -- regarding neighbors, we have done a lot  
14 of work reaching out to the neighbors, and Mr. Aphey can talk  
15 about that, as well. We sent out certified letters to the  
16 neighbors that we -- the adjacent neighbors that we didn't hear  
17 from, and Mr. Aphey and his organization have had several  
18 discussions with the neighbor to the south at 3301 and the  
19 neighbor to the north at 3311. And he can talk about that. We  
20 did get a support letter from the neighbor at 3301.

21 So, actually, Brian, if you want to talk about that now  
22 regarding your --

23 MR. APHEY: Sure, I'm --

24 MR. SULLIVAN: -- interactions with those two  
25 neighbors.

1                   MR. APHEY: I'm happy to. I spoke with Mr. Epstein  
2 earlier this week. We've been trying to get in touch with the  
3 neighbors for quite some time and had some success this week.  
4 And Mr. Epstein, we just talked about the project, and, you know,  
5 as he said in his letter of support, you know, he's supportive  
6 of it. You know, he's owned the -- in this location, he's owned  
7 the building that has an Indian restaurant in it for some time,  
8 and he is fully in support of it and sent over the letter.

9                   The neighbor -- we talked to the other neighbor, and  
10 his concerns, really, were, "Hey, I have a church, you know,  
11 parking. If there are 14 units, and there's no parking, you  
12 know, where are people going to park?" And then, you know, the  
13 other thing that he noted was just, like, the sort of typical  
14 constructability stuff like, you know, what's going to happen,  
15 coordination, and he had mentioned something about, you know,  
16 perception of an additional load on his wall, which Mr. Cross  
17 could speak to, isn't going to happen, when we'd obviously meet  
18 with him prior to construction, like we do with all neighbors,  
19 and they are very good, you know, sort of the construction  
20 coordination aspects of it.

21                   But that's really, you know, all I have. We've tried  
22 to contact the other neighbors that abut in the rear with no  
23 success, you know, several phone calls and that sort of thing,  
24 but that's -- I don't really have anything else to add to that  
25 other than to say that I've spoken -- either me or my team has

1 spoken to both neighbors this week, direct neighbors.

2 MR. SULLIVAN: All right. Thank you, Brian.

3 And we sent the neighbors to the back, that Mr. Aphey  
4 said that we hadn't managed to hear back from yet, we did send  
5 certified mail notice to them as well to make sure that they were  
6 informed, in addition to the public notice.

7 So with that, I'll turn it over to Mr. Cross, and he  
8 can take you through the project. Michael.

9 MR. CROSS: So this is an image of the property today.  
10 The subject property is on the right. The adjacent church is  
11 not part of this application. This property is located on the  
12 east side of the block between Lawrence Street NE, and Kearney  
13 Street NE.

14 Next slide, please.

15 As stated before, the proposed project is located in  
16 the MU-3A zone. Again, we are seeking just two areas of special  
17 exception relief: the first one for rear yard relief, the second  
18 one for minimum parking requirement relief. Otherwise, the  
19 proposed two-story project with a penthouse is conforming with  
20 all other aspects of the zoning code, including height, number  
21 of stories, lot occupancy, FAR, et cetera.

22 Next slide, please.

23 This is an existing site plan. The first area for  
24 relief we are requesting is to maintain the existing rear yard,  
25 which is currently nonconforming as seen here. The current rear

1      yard is 18 feet, 2 inches, which is slightly less than the 20  
2      feet that is required.

3              The project proposes to maintain that existing rear  
4      wall, or at least the majority of it. We will be opening up the  
5      rear yard to a new side yard, and we will not be encroaching any  
6      further into the existing rear yard.

7              Next slide, please.

8              This is a proposed site plan. The second area of relief  
9      being proposed is the minimum parking requirements. This  
10     property does not have access to a rear alley. Furthermore, it's  
11     DDOT's preference to have a curb cut closed for pedestrian safety,  
12     and so, subsequently, we are asking for relief from the parking  
13     requirement noting that the property is directly on the 12th  
14     Street corridor and within a half mile of the Brookland/Catholic  
15     University Metro station, as well as a number of bus routes.

16              With that, I'll turn it back over to Mr. Sullivan for  
17     our compliance with Subtitle X, et cetera.

18              MR. SULLIVAN: Thank you, Michael.

19              So the general requirements of Subtitle 901.2, the  
20     granting relief will be in harmony with the purpose and intent  
21     of the zoning regulations and maps. The MU-3A zone is intended  
22     to provide facilities for housing, shopping, and business needs,  
23     including residential, office, service, and employment centers,  
24     and multiple-dwelling residential development at varying  
25     densities.

1           And also granting relief will not tend to affect,  
2 adversely, the use of neighboring property. It shall not  
3 adversely affect the use of neighboring properties as the  
4 proposed relief is for just two parking spaces and the two feet  
5 of rear yard, existing rear yard being, currently, 18 feet 2  
6 inches, and that's proposed to remain the same. Again, it's just  
7 the two-story building, the FAR limit in MU-3A is very low at  
8 1.0. It's 1.2 with the IZ units. And the parking relief, two  
9 spaces, and provides 14 new dwelling units.

10           Next slide, please.

11           There are specific requirements for the rear yard  
12 relief, and the main requirement is that there not be a building  
13 within 40 feet directly in front of any windows in the rear yard.

14           I'm sorry. I jumped to -- I thought we were doing rear  
15 yard first.

16           Can we go ahead a slide, please?

17           So the existing rear wall is to remain. There is no  
18 structure within 40 feet directly in front of the rear wall. So  
19 we meet the specific criteria for that.

20           And then can we go back a slide, please, to the parking  
21 specific requirements.

22           DDOT has recommended removing the curb cut in their  
23 report, and the property is not wide enough or large enough to  
24 make a driveway that would provide two parking spaces in the back  
25 work. And so removal of the curb cut also will add two to three

1 parking spaces on the street. So it's a net increase or at least  
2 the same.

3 And the use of the structure is particularly well  
4 served by mass transit. This location is actually both within a  
5 half mile of the Metro station and within a quarter mile of a  
6 priority bus route. So it meets two of the requirements for  
7 reducing the parking requirement from four spaces to two spaces.

8 And I won't go through the long explanation of (h), but  
9 it's similar to (a), in that it doesn't have access to an open  
10 public alley and can't get a curb cut. So the site doesn't have  
11 access to the alley, and DDOT has recommended the closing of the  
12 existing cut.

13 Next slide please.

14 So I think that's -- that is it for us. If the Board  
15 has any questions? Thank you.

16 CHAIRPERSON HILL: Thank you. Before I turn to my  
17 Board, if I can turn to the Office of Planning.

18 MR. BARRON: Good evening, Commissioners, and for the  
19 record, my name is Ron Barron, the D.C. Office of Planning.

20 Office of Planning recommends approval of the requested  
21 special exceptions. Relief from the rear yard and parking  
22 requirements would not be inconsistent with the general purpose  
23 and intent of the MU-3A zone and would be unlikely to affect  
24 adversely the use and privacy of neighboring properties. OP is  
25 happy to stand on our report, submitted on the record at Exhibit

1 24, and I'm available to answer any questions you may have.

2 Thank you.

3 CHAIRPERSON HILL: Thank you. Does the Board have any  
4 questions for the Applicant or the Office of Planning?

5 (No audible response.)

6 CHAIRPERSON HILL: Sure, go ahead Commissioner Miller.

7 ZC VICE CHAIR MILLER: And thank you, Mr. Sullivan and  
8 Brian, I forget your last name, but thank you for your  
9 presentation. Okay. Mr. Barron, thank you for your presentation  
10 and work on this case.

11 The DDOT report indicates that -- which is at Exhibit  
12 25, indicates that although a TDM, a transportation demand  
13 management plan, is not required in this case, they indicate  
14 that, on page 2, that the -- there needs to be a bike plan.  
15 Did -- I don't know if you saw that or if the Applicant has any  
16 response to -- did DDOT say -- recommend that the Applicant must  
17 add secure long-term bicycle parking within the building and  
18 short-term bicycle parking and public space along 12th Street NE?  
19 Is there a bicycle plan in the record, Mr. Sullivan or -- and  
20 Mr. Barron?

21 MR. SULLIVAN: I believe there is now, and I think it  
22 was not complete when we saw that comment, but I think it's been  
23 updated. So I'll ask Mr. Cross to weigh in on it.

24 MR. CROSS: Okay. There's always been long-term bike  
25 storage in the cellar of the proposed unit. We are proposing

1 three stacked units which will accommodate six total bikes in a  
2 space that's six feet wide there in the cellar. And we are --  
3 have added a short-term bicycle parking space in the materials  
4 within the record within 125 feet of the entrance, conforming  
5 with all zoning regs. DDOT has suggested that they may prefer  
6 to have that in public space. We're not sure if that is something  
7 we can do without going to this public space committee, but we  
8 will try to accommodate their request.

9 MR. SULLIVAN: And that was in Exhibit 30-A, which was  
10 filed yesterday, the updated plans. And Michael what -- on what  
11 page would the --

12 MR. CROSS: Yeah. So the -- it's on the proposed site  
13 plan, which, I believe, is going to be BZA-04 --

14 MR. SULLIVAN: Yeah.

15 MR. CROSS: -- is the added short-term spot. The long-  
16 term spots are in the cellar on any of the floor plans.

17 MR. SULLIVAN: Thank you.

18 VICE CHAIR MILLER: Okay. Thank you for that response.  
19 I was just looking at the exhibit as you were talking. Thank  
20 you.

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

23 MR. YOUNG: We do not.

24 CHAIRPERSON HILL: Okay. All right. Does anybody have  
25 any final questions?

1 | (No audible response.)

2 CHAIRPERSON HILL: Mr. Sullivan, anything you'd like  
3 to add at the end?

4 MR. SULLIVAN: (No audible response.)

5 CHAIRPERSON HILL: Okay. I'm going to close the hearing  
6 on the record.

7               Okay. I don't have any issues with the minimum parking  
8 requirements, because of the items that were mentioned. Also, I  
9 don't see how they could do it. And then also that they got rid  
10 of the curb cut or they're removing the curb cut, and it should  
11 add more parking. So I never -- I'm not sure how they figure  
12 out how much parking those things add, but -- and then also  
13 concerning the rear yard, I thought that it was kind of de minimis  
14 at this point, so I didn't have any issues with that. I would  
15 also agree with the Office of Planning's analysis, and I do  
16 appreciate that the Applicant had reached out the neighbors and  
17 the ANC and really done their best. And I think there is some  
18 testimony as to what did happen at those meetings, and I'm  
19 comfortable with the public outreach that's been done.

20 And I'm going to be voting in favor of this application.

21 Mr. Smith, do you have anything you'd like to add?

22 COMMISSIONER SMITH: I have nothing to add, Chairman  
23 Hill. I agree with your assessment of this case, as well as the  
24 Office of Planning's assessment, and I will support the  
25 application.

1 CHAIRPERSON HILL: Thank you. Mr. Blake?

2 COMMISSIONER BLAKE: Mr. Chairman, I'll be voting in  
3 favor of the application, and I want to concur with the comments  
4 you made, and the (indiscernible) to the Office of Planning's  
5 report as recommendation, as well.

6 CHAIRPERSON HILL: Great. Thank you. Vice-Chair  
7 Miller?

8 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. I also  
9 agree with your comments and those of my colleagues.

10 CHAIRPERSON HILL: Okay. Thank you. I'm going to make  
11 a motion to approve Application No. 21187 as captioned and read  
12 by the secretary and ask for a second, Mr. Blake.

13 COMMISSIONER BLAKE: Second.

14 CHAIRPERSON HILL: Motion made and seconded. Madam  
15 Secretary, could you take a roll call, please.

16 MS. MEHLERT: Motion to approve the application.  
17 Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MS. MEHLERT: Mr. Smith?

20 COMMISSIONER SMITH: Yes.

21 MS. MEHLERT: Mr. Blake?

22 COMMISSIONER BLAKE: Yes.

23 MS. MEHLERT: And Commissioner Miller?

24 ZC VICE CHAIR MILLER: Yes.

25 MS. MEHLERT: So I'll record the vote as 4-0-1 to

1 approve Application 21187 on the motion made by Chairman Hill and  
2 seconded by Board Member Blake with Board Member John not  
3 participating.

4 CHAIRPERSON HILL: Okay. Okay, I got it. Okay. All  
5 right.

6 I did open up -- if you want to call back for a  
7 decision, 21183, Madam Secretary, and I did note that the revised  
8 self cert is in the record.

9 MS. MEHLERT: Sure. This is Application No. 21183 of  
10 933 N Street, NW, LLC. This is a self-certified application  
11 pursuant to Subtitle X, Section 1002 for area variances from the  
12 side yard requirements of Subtitle E, Section 208.4; and the  
13 closed court width requirements of Subtitle E, Section 209.1; the  
14 rear yard requirements of Subtitle E, Section 207.1; the rear  
15 wall requirements of Subtitle E, Section 207.4; and the lot  
16 occupancy requirements of Subtitle E, Section 207.1; the  
17 subdivision of the lot into two new record lots with a new 3-  
18 story attached building on one lot and an existing 39-unit  
19 apartment house on the other lot. It's located in an RF-1 zone  
20 at 933 N Street, NW, square 367, Lot 81.

21 CHAIRPERSON HILL: Okay. Thank you.

22 We just turned this, and we were waiting for the revised  
23 self-cert, which is now in the record. I thought that I  
24 understand why they need all the variance relief given that that  
25 building is already there and the contributing factor of the

1 Naylor Court area. And then also I understand why they would  
2 try to return it to two lots from where that side yard -- it  
3 currently is.

4 I will agree with the arguments that the Applicant is  
5 making concerning all the different area variance relief that is  
6 necessary. I also note that the ANC has been -- has weighed in  
7 on this, and they're also comfortable with the relief that's  
8 being requested and also the HPO -- Historic Preservation is  
9 satisfied with how this will affect the Naylor Court area.

10 So I am going to be voting in favor of this Application,  
11 and I ask Mr. Smith if he has anything else to add.

12 COMMISSIONER SMITH: No, I have nothing to add,  
13 Chairman Hill. I agree with your assessment of this case and  
14 will vote to support, as well.

15 CHAIRPERSON HILL: Thank you. Mr. Blake?

16 COMMISSIONER BLAKE: Yeah, I'm in support of the  
17 application.

18 CHAIRPERSON HILL: Thank you. Vice Chair Miller?

19 ZC VICE CHAIR MILLER: Yes, I'm in support of the  
20 application.

21 CHAIRPERSON HILL: Thank you. All right. I'm going  
22 to make a motion to approve Application No. 21183, which was read  
23 by the Secretary, and ask for a second, Mr. Blake.

24 COMMISSIONER BLAKE: Second.

25 CHAIRPERSON HILL: Motion made and seconded. Madam

1      Secretary, would you take roll call?

2            MS. MEHLERT: The Chair's motion to approve the  
3 application, as amended, Chairman Hill?

4            CHAIRPERSON HILL: Yes.

5            MS. MEHLERT: Mr. Smith?

6            COMMISSIONER SMITH: Yes.

7            MS. MEHLERT: Mr. Blake?

8            COMMISSIONER BLAKE: Yes.

9            MS. MEHLERT: Commissioner Miller?

10           ZC VICE CHAIR MILLER: (No audible response.)

11           MS. MEHLERT: Staff will record the vote as 4-0-1 to  
12 approve Application No. 21183 on the motion made by Chairman Hill  
13 and seconded by Mr. Blake with Board Member John not  
14 participating.

15           CHAIRPERSON HILL: Thank you. Madam Secretary, is  
16 there anything else before the Board today?

17           MS. MEHLERT: There is not.

18           CHAIRPERSON HILL: Thank you. Well, everybody, I get  
19 to see you again all next week in a whole week, okay, except for  
20 Mr. Miller.

21           All right. You all have a good one. We are adjourned.

22           (Whereupon, the above-entitled matter went off the  
23 record at 5:31 p.m.)

24

25

1 C E R T I F I C A T I O N  
23 This is to certify that the foregoing transcript  
45 In the matter of: Public Hearing  
67 Before: DCBZA  
89 Date: 10-30-24  
1011 Place: Webex Videoconference  
1213 was duly recorded and accurately transcribed under my  
14 direction; further, that said transcript is a true and accurate  
15 record of the proceedings.16  
17   
18 \_\_\_\_\_  
19 Erin Roski  
20  
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