

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

DECEMBER 11, 2024

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The Public Hearing of the District of Columbia Board of Zoning Adjustment convened via teleconference, pursuant to notice at 9:42 a.m., EDT, Frederick D. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

Frederick D. Hill, Chairperson
Lorna John, Vice Chairperson
Chrishaun Smith, Commissioner
Carl Blake, Commissioner
Anthony Hood, Chairperson, Zoning Commission
Rob Miller, Vice Chairperson, Zoning Commission

OFFICE OF ZONING ADJUSTMENT STAFF:

Keara Mehlert, Secretary
Paul Young, Data Specialist

The transcript constitutes the minutes from the regular public hearing held on December 11, 2024.

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(9:46 A.M.)

CHAIRPERSON HILL: Morning, ladies and gentlemen. The Board of Zoning Adjustment's December 11th public hearing will please come to order. My name is Fred Hill, Chairman of the District of Columbia Board of Zoning Adjustment. Joining me today are Board Members Carl Blake, Lorna John, Chrishaun Smith and Anthony Hood and Rob Miller from the Zoning Commission. Chairman Hood and Vice Chair Rob Miller.

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

At the conclusion of the decision meeting session, I shall in consultation with the Office of Zoning determine whether a full or summary order may be issued. A full order is effective when, I'm sorry, a full order is required when the decision it

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

6 In today's hearing session everyone who is listening
7 on Webex or by telephone will be muted during the hearing and
8 only persons who are signed up to participate or testify will be
9 unmuted at the appropriate time. Please state your name and home
10 address before providing oral testimony or presentation. Oral
11 presentations should be limited to a summary of your most
12 important points. When you're finished speaking, please mute
13 your audio so that your microphone is no longer picking up sound
14 or background noise.

15 All persons planning to testify either in favor or in
16 opposition should have signed up to testify in advance. They'll
17 be called by name to testify. If this is an appeal, only parties
18 are allowed to testify. By signing up to testify all participants
19 complete the oath or affirmation as required in Y-408. Requests
20 to enter evidence at the time of an online virtual hearing such
21 as written testimony or additional supporting documents other
22 than live video which may not be presented as part of your
23 testimony may be allowed pursuant to Y-102.13 provided that the
24 persons making the request to enter exhibits explains, a) how the
25 proceeding is relevant, b) the good cause that justifies allowing

1 the exhibit into the record including the explanation of why the
2 requester did not file an exhibit prior to the hearing pursuant
3 to Y-206, and how the proposed exhibit would not unreasonably
4 prejudice any parties.

5 The order of procedures for special exceptions and
6 variances are in Y-409. At the conclusion of each case, an
7 individual who is unable to testify because of technical issues
8 may file a request for leave to file a written version of the
9 planned testimony to the record within 24 hours following the
10 conclusion of public testimony in the hearing. If additional
11 written testimony is accepted, then parties will be allowed a
12 reasonable time to respond as determined by the Board. The Board
13 will then make its decision at its next meeting session but no
14 earlier than 48 hours after the hearing. Moreover, the Board may
15 request additional specific information to complete the record.
16 The Board and the staff will specify at the end of the hearing
17 exactly what's expected, and the date when persons must submit
18 the evidence to the Office of Zoning. No other information shall
19 be accepted by the Board.

20 Finally, the District of Columbia Administrative
21 Procedures Act requires that the public hearing on each case be
22 held in the open before the public. However, pursuant to 405(b)
23 and 406 of that Act, the Board may, consistent with its rules
24 and procedures and the Act, enter into a closed meeting on a case
25 for purposes of seeking legal counsel on a case pursuant to D.C.

1 Official Code, Section 2-575(b)(4) and/or deliberate on a case
2 pursuant to D.C. Official Code, Section 2-575(b)(13), but only
3 after providing the necessary public notice in the case of an
4 emergency closed meeting after taking a roll call vote.

5 Madam Secretary, do we have any preliminary matters?

6 MS. MEHLERT: Good morning. There are a couple of
7 schedule changes for today. Appeal No. 21057 of ANC 6C has been
8 postponed to March 12th, 2025. Application No. 21151 of Dinesh
9 Tandon and Nidhi Tandon has been postponed to March 19th, 2025
10 and Application No. 20417-A of Narayanswarup, Inc., has been
11 withdrawn. Also, a number of late filings the Chairman has
12 reviewed and granted waivers to allow a late filing since the
13 Applicant's record pursuant to Subtitle Y, Section 206.7 and
14 Section 103.13. Any other late filings during the
15 (indiscernible) live hearing should be presented before the Board
16 by the Applicant parties or the witnesses after the case is
17 called. Any other preliminary matters will be noted when the
18 case is called.

19 CHAIRPERSON HILL: Thank you. Okay. Good morning
20 everyone. I'm a little sick today so hopefully you guys can hear
21 me all right. Okay.

22 Madam Secretary, could you call our first case, please?

23 VICE CHAIRPERSON JOHN: Good morning, Mr. Chairman. I
24 don't believe I'm on that first case which is 20280?

25 CHAIRPERSON HILL: I think, no. I think, Vice Chair

1 John, I think we're doing 21164.

2 VICE CHAIRPERSON JOHN: Okay. Thank you.

3 CHAIRPERSON HILL: Are you on that one? I don't know.

4 VICE CHAIRPERSON JOHN: I don't know either. I'll
5 check.

6 CHAIRPERSON JOHN: Okay. Okay, thank you.

7 COMMISSIONER SMITH: Yeah. She's on, I believe Lorna's
8 on it.

9 CHAIRPERSON HILL: Okay. Great.

10 VICE CHAIRPERSON JOHN: Okay. Thank you.

11 MS. MEHLERT: So the first case in the Board's meeting
12 session is Application No. 21164 of Christopher Mak, as amended.
13 This is a self-certified application for an area variance
14 pursuant to Subtitle X, Section 1002 from the rear yard
15 requirements of Subtitle F, Section 207.1 and special exceptions
16 pursuant to Subtitle X, Section 901.2, under Subtitle U, Section
17 421 to allow a new residential development, under Subtitle C,
18 Section 305.1 for approval of a theoretical subdivision and under
19 Subtitle F, Section 201.4 to allow an increase in floor area
20 ratio for a voluntary inclusionary development.

21 This is a theoretical subdivision to allow two
22 buildings on a single record lot. Theoretical lot 1 will have
23 an existing apartment house with five units and theoretical lot
24 2 is for a new six unit apartment house. It's located in the
25 RA-1 zone at 113 Wayne Place, SE, Square 6117, Lot 52.

1 This case was previously heard on July 31st, October
2 2nd, October 23rd and November 13th. The Board closed the record
3 except for requests for permissions and scheduled for a decision.
4 Participating are Chairman Hill, Vice Chair John, Board Member
5 Blake, Board Member Smith and Commissioner Miller.

6 There are a couple of preliminary matters. First, the
7 Applicant has requested a postponement of the decision. Also,
8 the Applicant has amended their application in the most recent
9 submissions and since these materials weren't requested nor did
10 the Applicant request to amend their application, it's up to the
11 Board whether to accept the revised application.

12 CHAIRPERSON HILL: Okay. Thank you, Madam Secretary.

13 So we've heard this several times and the Board asked
14 for additional information and then we put this on for a decision
15 today. Then, while we were waiting for a decision the Applicant,
16 I don't even know if they actually technically asked to amend
17 their application but they've somehow amended their application
18 and have put forth or tried to put forth different areas of relief
19 and a different way that they thought maybe they could do this.

20 I wanted, you know, originally I wanted, and the way
21 the secretary read this was from how we heard this from 11/13,
22 so November of, you know, 13th, and I propose that we discuss
23 and deliberate this on the merits from everything we heard from
24 that point, meaning November 13th. I'm not interested in
25 postponing this. I mean I think, and the reason really why is,

1 | like, I don't really think that there is any more of an argument
2 | with some of the things that they've put forward even though, you
3 | know, we'd have to have another hearing, we'd have to, like, this
4 | would probably have to be noticed. So I would suggest to the
5 | Applicant that they just come back and try in a different way if
6 | this fails currently the way they've put it forward.

7 | Personally, I don't think that they have made an
8 | argument to me how this particular piece of property meets the
9 | variance standard. I think that, you know, what they could
10 | possibly do, again, you know, there might be a little bit of area
11 | in the side yard if they were trying to do a meaningful
12 | connection. I mean, I think the project, you know, is nice if
13 | we can somehow make it happen but it just doesn't fit within the
14 | regulations or make the, you know, the building a little smaller
15 | or something that they could do that would get them away from
16 | this variance standard because I don't think they need it.

17 | So I will not be in favor of this particular application
18 | and I think that, again, I would be looking at this from the way
19 | it was proposed earlier and the way we've heard the hearings. So
20 | I can make all the different motions about the they asked for a
21 | postponement, they tried to or I don't know if they, again, as
22 | the Secretary mentioned technically asked to amend their
23 | application. But that's kind of where I am with this.

24 | I'm going to turn to Mr. Smith next, if I could, to
25 | hear your thoughts. Mr. Smith.

1 COMMISSIONER SMITH: Sure, Chairman Hill. I agree with
2 you. I'm not necessarily inclined to evaluate the new
3 submissions. I don't think the new submissions will change my
4 opinion because honestly the new submissions are, you know,
5 additional variance requests and I, like you, believe that the
6 really haven't made a strong case regarding the variance as it
7 is now.

8 So, you know, I'm comfortable with moving forward with
9 an evaluation based off of what we heard at the last hearings.
10 So what we heard at the last hearing was an area variance to the
11 rear yard requirements to reduce the rear yard on one of the
12 theoretical lots, the western most theoretical lot, from 15 feet
13 to 13 feet and three special exceptions, one for the theoretical
14 lot, another for a new development on the westernmost theoretical
15 lot and lastly one for an increase in FAR I believe for the IZ
16 unit.

17 So I'll first take up that area variance request.
18 Again, since this project was first presented I have struggled
19 with the question of how the zoning regulations present a peculiar
20 and exceptional situation for the Applicant, for the property
21 owner. To me, the exceptional situation is entirely predicated
22 on the Applicant's own building design and placement. The
23 variance request is only necessitated by the size and dimensions
24 of the proposed building that they propose to construct on the
25 westernmost lot, not the dimensions of the lot itself.

1 The Applicant has not presented at all a strong
2 argument for the reason why they are unable to comply with the
3 setback requirements if they were to reduce or redesign the
4 proposed building. Therefore, I do not believe that the Applicant
5 has met the burden of proof for that first prong.

6 Lastly, weighing the rear yard setback requirements for
7 such to me in an arbitrary manner I believe would be detrimental
8 itself to the public good given the proposed zone plan for the
9 RA-1 zone is I believe a building at that proposed setback is
10 incompatible with the development pattern of buildings within the
11 larger RA-1 neighborhood along Wayne Place, Southeast.

12 Also, as the building's proposed setback and bulk would
13 be contrary to the described R-1 zoning regulations to permit the
14 orderly development of moderate density residential uses and I
15 believe that the request is also contrary to the intent of the
16 Zoning Regulations.

17 Next, taking up the matter of special exception for the
18 theoretical lot and analyzing whether the theoretical lot is
19 appropriate, I looked to Section C-305.5 and C-305.6 and analyzed
20 the appropriateness of said theoretical lot. In analyzing the
21 theoretical lot, and specifically the westernmost theoretical
22 lot, I disagree with the Office of Planning and believe it does
23 not meet the criteria in Section 305.5 due to the primary access
24 of this building would be along a narrow 15 foot alley that is
25 not a double loaded alley and I believe would have an adverse

1 impact as it relates to public safety for emergency vehicles to
2 access the site and the scale of parking, loading and traffic as
3 accessing this particular building at this scale of density.

4 I also believe that the proposed theoretical lot will
5 have an adverse impact on the present character of the surrounding
6 neighborhood, increasing scale and density above what currently
7 exists for buildings in the RA-1 zone or properties along Wayne
8 Place as well as increasing additional density includes a
9 proximity to the lower density R-3 properties that abut the
10 westernmost theoretical lot to the south. So I'll not be in
11 support of granting the special exception for the theoretical lot
12 as I do not believe it meets the criteria.

13 With that, I believe without the area variance and
14 without the theoretical lot special exception, while this
15 property does meet the very limited standards for us to evaluate
16 the special exception for new residential development and the
17 increase in FAR, I do not believe that this can go forward with
18 just those two special exceptions so I am inclined to not support
19 none of the three special exceptions nor the area variance
20 request.

21 I do believe that, you know, and this has come up
22 before. Chairman Hill, you just stated this. I think this
23 question about creating some form of a meaningful connection is
24 an interesting approach and I think it's something that could be
25 pursued by the Applicant, but I do not believe that we need to

1 defer this any longer. You know, I'm not really comfortable with
2 totally (phonetic) deferring these projects to give the Applicant
3 an opportunity to redesign it to make it appropriate for us to
4 approve it. I believe that we should, you know, act on what's
5 before us and if the Applicant decides they want to substantially
6 redesign this project that does not necessitate an area variance
7 and if they want to redesign it where they have a meaningful
8 connection that does not necessitate any additional relief or
9 different types of relief, they are welcome to come back before
10 this Board and we can decide and make a decision on a redesigned
11 project that may have a meaningful connection at that particular
12 point in time.

13 So, and, you know, I give the Applicant credit for
14 attempting to meet the criteria that was before them or that they
15 discussed with the Office of Planning and also in trying to meet
16 some of the standards that we put on them, the different requests
17 that was asked of them by this Board, but at this point in time
18 I do not believe that they have met the burden of proof for us
19 to approve it and they are more than welcome to submit additional
20 application in the future for future consideration.

21 CHAIRPERSON HILL: Thank you, Mr. Smith. Thank you for
22 taking the time to review this in such specificity. Mr. Blake?

23 COMMISSIONER BLAKE: Yes. Thank you, Mr. Chair.

24 I totally agree with Board Member Smith. With regard
25 to the variance I don't believe the Applicant has met the first

1 | prong of the test and I also think that the Applicant, having
2 | not demonstrated an extraordinary exceptional condition or a
3 | situation associated with the property that results in a peculiar
4 | or exceptional practical difficulty to the owner.

5 | Without the variance and special exceptions, the
6 | project would not be plausible. So for that reason I would vote
7 | to deny the application in its entirety. I have nothing else to
8 | add.

9 | CHAIRPERSON HILL: Thank you, Mr. Blake. Vice Chair
10 | John?

11 | VICE CHAIRPERSON JOHN: Thank you, Mr. Chairman.

12 | I am not in support of the application, primarily
13 | because I don't believe there's a strong case for a variance
14 | because, as Mr. Blake said, the Applicant didn't really
15 | demonstrate what the exceptional condition was. I also agree
16 | with Board Member Smith's analysis of the variance. I think that
17 | perhaps a smaller building would not need the rear yard relief
18 | but that that case has not been presented to the Board.

19 | In terms of the theoretical lot subdivision, I really
20 | did not have enough information to evaluate because the documents
21 | didn't describe for me sufficiently how the lots, you know, the
22 | proper dimensions of the building on the lot and where the project
23 | would meet the developmental standards.

24 | So I agree that the Applicant should take another look
25 | at this project. Because there's a need for housing in the

1 District of Columbia I would like to see the Applicant develop
2 something that would work on the lot. I don't agree that the
3 meaningful connection is the best way to go because there was
4 testimony that the Applicant would lose, I believe, an apartment
5 because of the condition on the western wall I believe it was,
6 and really the meaningful connection would just be, you know,
7 technically to meet the criteria of the regulations and there's
8 nothing wrong with that. But anyway that's a business decision
9 for the Applicant.

10 So having said all of that, I am not in support of the
11 application as it is presented to us without looking at the new
12 information because we gave the Applicant several tries to, you
13 know, demonstrate that the application met the criteria for
14 relief. So based on all of that, I am not in support at this
15 time.

16 CHAIRPERSON HILL: Thank you, Vice Chair John.

17 And also I want to clarify. Like, I also don't think
18 that I'm necessarily recommending to the Applicant they try to
19 do a meaningful connection or anything like that because, again,
20 they have to make a business decision as to whether or not it
21 works and also, you know, losing that unit that we have all talked
22 about during the hearing, you know, I'm not necessarily saying
23 that's the right way to proceed.

24 And so, you know, but I do think that this is not going
25 to work for me in terms of the way they're meeting the

1 regulations. Vice Chair Miller?

2 ZONING COMMISSIONER MILLER: Thank you, Mr. Chairman,
3 and thank each of my Board Members for their very cogent and
4 persuasive arguments.

5 I was originally inclined to be in favor of postponing
6 the decision to a hearing to consider the new amended application
7 and the other working, they wanted the time to work out the
8 concerns that the Office of Planning had with the latest
9 iteration. But I found each of my Board Members, fellow Board
10 Members' arguments very persuasive. Thank you, Board Member
11 Smith, for that very detailed analysis, but I am, I really have
12 nothing to add. I will go along with turning down this
13 application.

14 I do share Vice Chair John's, and others concerns, that
15 a meaningful connection amendment is not necessarily the way to
16 go because it's not meaningful. It really isn't, it technically,
17 as Vice Chair John said, would meet the regulations and avoid
18 that particular area of relief. But there's really no purpose
19 to, other purpose to have that there. So I'm prepared to go
20 along with the Board's and the Chairman's recommendation in this
21 case.

22 Thank you.

23 CHAIRPERSON HILL: Thank you, Vice Chair Miller.

24 And I really just want to kind of speak to this in
25 terms of the Applicant. Like, you know, I would -- had I thought

1 that there was a way that I thought the Board might be in favor
2 of this application I would have postponed, you know, give them
3 an opportunity to come back but I don't, you know, I don't think
4 it's necessarily going to go this particular way. And so, you
5 know, if the Applicant could somehow do something, matter-of-
6 right, I don't know. Like, you know, again, we all agree with
7 the need for housing. We all agree for, you know, the need for
8 inclusionary zoning-type housing and so I wish the best for the
9 Applicant but this is just not something that I think that this
10 Board has now said they could do in terms of how they're meeting
11 this particular, the regulations for this particular application.

12 So I'm going to go ahead and make a motion to deny the
13 Application of 21164 as captioned and read by the secretary from
14 when everything was presented to us on 11/13 and also deny the
15 motion for the request to postpone and I don't think, again,
16 there was a technical request to change the application but if I
17 neglected to see that, so on the record I will also deny that
18 motion and ask for a second. Ms. John?

19 VICE CHAIRPERSON JOHN: Second.

20 CHAIRPERSON HILL: The motion made and seconded. Madam
21 Secretary, if you could take a roll call, please.

22 MS. MEHLERT: Please respond to the Chair's motion to
23 deny the Applicant's request for a postponement and deny the
24 application. Chairman Hill?

25 CHAIRPERSON HILL: Yes.

1 MS. MEHLERT: Vice Chair John?
2 VICE CHAIRPERSON JOHN: Yes.
3 MS. MEHLERT: Mr. Smith?
4 COMMISSIONER SMITH: Yes.
5 MS. MEHLERT: Mr. Blake?
6 COMMISSIONER BLAKE: Yes to deny.
7 MS. MEHLERT: Commissioner Miller?
8 ZONING COMMISSIONER MILLER: Yes.
9 MS. MEHLERT: Staff would record the vote as five to
10 zero to zero to deny Application 21164 and the request for
11 postponement on the motion made by Chairman Hill and seconded by
12 Vice Chair John.
13 CHAIRPERSON HILL: Thank you.
14 Vice Chair Miller, is that it for you today?
15 ZONING COMMISSIONER MILLER: That's it, so you guys
16 have a great day.
17 CHAIRPERSON HILL: Thank you. You as well.
18 ZONING COMMISSIONER MILLER: Thank you.
19 CHAIRPERSON HILL: Okay. Great. Thank you. Chairman
20 Hood, nice to see you. Welcome.
21 ZONING COMMISSIONER HOOD: Thank you. Good morning
22 everyone.
23 CHAIRPERSON HILL: Good morning.
24 VICE CHAIRPERSON JOHN: Good morning.
25 CHAIRPERSON HILL: Madam Secretary, you may call our

1 next issue when you have an opportunity.

2 MS. MEHLERT: Next is a motion before the Board in
3 Application No. 20280-A of Nathaniel Lewis, as amended. This is
4 a self-certified request pursuant to Subtitle Y, Section 704 for
5 a modification in this hearing to modify the order issued on July
6 15th, 2022 to add an area variance pursuant to Subtitle X, Section
7 1002 from the street frontage requirements of Subtitle C, Section
8 303.4 for the enlargement of an existing residential building and
9 conversion to a three-unit apartment house on a new record lot.
10 It's located in the RF-1 zone at 622 I Street, NE, Square 857,
11 Lots 32 and 113.

12 The public hearing was on November 6th. The Board
13 requested additional permissions and it's currently scheduled for
14 a decision next week on December 18th. Participating are Chairman
15 Hill, Mr. Blake, Mr. Smith and Chairman Hood, and today before
16 the Board is a Motion to Strike Exhibits 32 and 32A submitted by
17 ANC 6C. The ANC has also requested an extension of the deadline
18 for their response to the Applicant's submissions and I'll note
19 the Applicant responded in opposition to the motion in Exhibit
20 36.

21 CHAIRPERSON HILL: Okay. Thank you, Madam Secretary.
22 One moment, please, while I pull this up.

23 (Pause.)

24 CHAIRPERSON HILL: Okay. So before us right now is a
25 Motion to Strike and I'm just looking on a few items that I guess

1 | just came in that I can see. And so, concerning the Motion to
2 | Strike, I mean I think in this particular instance I would, I
3 | guess I could go either way I suppose. But I just think that at
4 | this particular time since we've heard, we've had the hearing,
5 | we've taken testimony, we've all reviewed the record, that I
6 | think it's not necessary to strike this.

7 | We got information from the Applicant that may or may
8 | not be things that we asked for but I think that the Board is
9 | able to determine what is or isn't pertinent at this particular
10 | time. So I would just lean towards leaving everything in the
11 | record, however I do understand that the ANC would like a little
12 | bit more time to understand what to respond to given their request
13 | today, and I would then go ahead and leave the record open to
14 | the December 16th date that the ANC had requested for and just
15 | let the ANC know that they don't have to respond to things that
16 | they think are irrelevant. They could just cite they think that
17 | it's irrelevant, you know, any items that they think are
18 | irrelevant they don't even need to respond to. They can just
19 | say they think it's irrelevant and I would probably agree with
20 | whatever they think is irrelevant. So they don't have to
21 | necessarily take the time to respond to those issues within the
22 | record that they are trying to have us strike.

23 | So I would be in favor of denying the Motion to Strike,
24 | however I would give the ANC the extension that they requested
25 | which is up until Monday, December 16th and then we can still

1 have a decision on the 18th of December.

2 Mr. Smith, what are your thoughts?

3 COMMISSIONER SMITH: Okay. Let me see. No, I agree
4 wholeheartedly with what you stated, Chairman Hill. You know, I
5 guess I can go either way but I don't see any harm in just keeping
6 the information that was presented in the record and the Board,
7 as we've done in previous cases, we, you know, will deliberate
8 and make our decision based on the information at hand. But I
9 do agree with you and I am inclined to give the ANC a little bit
10 more time, so I'm in favor of your approach.

11 CHAIRPERSON HILL: Thank you. Mr. Blake?

12 COMMISSIONER BLAKE: I agree, Mr. Chair. I have one
13 question to clarify. Would the record be open for any other
14 comments beyond the ANC's comments?

15 CHAIRPERSON HILL: I guess, thank you for asking that,
16 Mr. Blake. Madam Secretary, I'm not really sure on the timing
17 of things. Like, I would be happy to leave the record open also
18 for the Applicant to submit some response. I'm not sure how the
19 back and forth kind of works, Madam Secretary. Do you have an
20 opinion?

21 MS. MEHLERT: I mean, the ANC is just asking for an
22 extension to respond to what the Applicant has already submitted.
23 Originally, the Board did not ask for any responses to responses,
24 so I would say just extend the deadline for the ANC and keep the
25 record closed. That's what I'd recommend. But it's up to you.

1 CHAIRPERSON HILL: Sure. Well, I appreciate that, your
2 thoughts. Mr. Blake, I would lean towards that way.

3 COMMISSIONER BLAKE: All right. Thank you. I
4 appreciate it. That's what I would prefer as well.

5 CHAIRPERSON HILL: Thank you. Chairman Hood?

6 ZONING COMMISSIONER HOOD: Thank you, Mr. Chairman.

7 I would agree with the way we're going. I think one
8 of the things that they want to strike is something that we asked
9 for, so I'm definitely not in favor of making sure, I'm definitely
10 in favor of making sure it stays in the record.

11 So thank you. Thank you, Mr. Chairman.

12 CHAIRPERSON HILL: Thank you, Chairman Hood.

13 All right. I'm going to make a motion then to deny the
14 Motion to Strike in Application 20280-A, however, extend the
15 deadline to the ANC for December 16th as they have requested and
16 ask for a second. Mr. Blake.

17 COMMISSIONER BLAKE: Second.

18 CHAIRPERSON HILL: Motion made and seconded. Madam
19 Secretary, take a roll call, please.

20 MS. MEHLERT: Please respond to the Chair's motion to
21 deny the ANC's Motion to Strike and extend the response deadline
22 to the ANC to December 16th.

23 Chairman Hill?

24 CHAIRPERSON HILL: Yes.

25 MS. MEHLERT: Mr. Smith?

1 COMMISSIONER SMITH: Yes.

2 MS. MEHLERT: Mr. Blake?

3 COMMISSIONER BLAKE: (Response not audible.)

4 MS. MEHLERT: And Commissioner Hood?

5 ZONING COMMISSIONER HOOD: Yes.

6 MS. MEHLERT: Staff would record the vote as four to
7 zero to one to deny the ANC's motion in Application 20280-A on
8 the motion made by Chairman Hill and seconded by Board Member
9 Blake, with Vice Chair John not participating.

10 CHAIRPERSON HILL: Thank you. Mr. Blake, did you, did
11 you say yes?

12 COMMISSIONER BLAKE: Yes.

13 CHAIRPERSON HILL: Okay. Sorry, I didn't hear you.
14 Okay. Thank you.

15 Madam Secretary, you may call our next case.

16 MS. MEHLERT: Next is in the Board's hearing session.
17 This is Application No. 21205 of Andria Matrone and Brian Miller.
18 This is a self-certified application pursuant to Subtitle X,
19 Section 901.2 for special exceptions under Subtitle D, Section
20 5201 from the rear yard requirements of Subtitle D, Section 207.1
21 and from the lot occupancy requirements of Subtitle D, Section
22 210.1. This is for a rear deck addition to an existing two-story
23 semi-detached principal dwelling. Located in the R-2 zone at
24 3730 Windom Place, NW, Square 1892, Lot 36.

25 This application was removed from the November 20th

1 expedited review calendar and scheduled for a hearing. The Board
2 also granted party status in opposition to Sarita Frattaroli on
3 November 20th.

4 CHAIRPERSON HILL: Great. Thank you.

5 If the Applicant can hear me, if they could please
6 introduce themselves for the record.

7 MR. SULLIVAN: Thank you, Mr. Chairman and Members of
8 the Board. Marty Sullivan with Sullivan & Barros here on behalf
9 of the Applicant.

10 CHAIRPERSON HILL: Thank you.

11 And the party in opposition, could you introduce
12 yourself, please.

13 MS. FRATTAROLI: Hi there. I'm Sarita Frattaroli. I
14 live in the attached property to the Applicant's home.

15 CHAIRPERSON HILL: Great. Thanks, Ms. Frattaroli?
16 Frattaroli?

17 MS. FRATTAROLI: Frattaroli. That's right.

18 CHAIRPERSON HILL: Okay. Great. Thank you. Thank you
19 for joining us.

20 Okay. Mr. Sullivan, if you could go ahead and present
21 your case for your client as to how you believe they're meeting
22 the criteria for us to grant the relief that's being requested.
23 I'm going to put 15 minutes on the clock so I know where we are
24 and you can begin whenever you like.

25 MS. FRATTAROLI: Excuse me, Mr. Hill. I did have a

1 motion before we got started.

2 CHAIRPERSON HILL: What is that motion?

3 MS. FRATTAROLI: So the Applicant modified the
4 application and we received this modified application after close
5 of business yesterday, so the testimony we prepared was in
6 response to the application that was submitted more than 30 days
7 before this hearing date. So we kindly ask a motion for the
8 Board to continue the hearing so that we can review the updated
9 application and adjust our materials so that they're responsive
10 to the current one.

11 CHAIRPERSON HILL: Okay. I appreciate that, Ms.
12 Frattaroli. I'll look to my Board Members in terms of this
13 particular request. I mean, in my opinion I don't think it
14 changes necessarily your argument a whole lot and so I don't see,
15 I mean I appreciate what you're saying in terms of if that's
16 something that the Board can take into consideration as you're
17 giving your testimony.

18 I see, again, the PowerPoint that you put together but
19 I, again, do think that the points are all still the same and
20 relevant so I don't think that continuing it necessarily does any
21 help the Board. So I would be in denial of continuing that, but
22 I will go around my fellow Board Members and see what they have
23 to say. Mr. Smith?

24 COMMISSIONER SMITH: I agree. I don't think that it
25 will materially change the party in opposition's argument, so I'd

1 be inclined to move forward and not continue this.

2 CHAIRPERSON HILL: Thank you. Mr. Blake?

3 COMMISSIONER BLAKE: I agree with that.

4 CHAIRPERSON HILL: Thank you. Vice Chair John?

5 VICE CHAIRPERSON JOHN: I am in substantial agreement
6 with that, but I'd like to hear from the Applicant as to the
7 change between the first, you know, submission and this one.

8 CHAIRPERSON HILL: Okay. I will get to the Applicant
9 in one moment. Chairman Hood?

10 ZONING COMMISSIONER HOOD: I would echo what my
11 colleagues said, especially Vice Chair John. Thank you, Mr.
12 Chairman.

13 CHAIRPERSON HILL: Thank you. Mr. Sullivan, could you
14 respond to Vice Chair John's question?

15 MR. SULLIVAN: Yes. Thank you.

16 So there's no change in the application, no change in
17 the plans. It's a clarification that we submitted last night in
18 response to when the neighbor opponent filed their late
19 submission which they didn't serve us, when we found about that
20 we realized there was some confusion about the existing lot
21 occupancy of the building and so I just thought I'd clarify.

22 On form 135 I changed the existing lot occupancy number
23 to 40.1 percent which represents the building itself without the
24 deck. Initially, we included the existing deck and stairs in the
25 existing lot occupancy which would be 44 percent. I think

1 technically it's more correct to say that our existing number is
2 40, it's just the building because the deck's being demolished.
3 Sometimes we include what's being demolished in the existing
4 number if it's being completely replaced, sometimes we don't and
5 so I realize that caused some confusion. So just wanted to
6 clarify the building. It's exactly 40.1 percent. It's materially
7 compliant and the relief is just for the deck. So I just wanted
8 to clarify that.

9 CHAIRPERSON HILL: Okay.

10 MR. SULLIVAN: Thank you.

11 CHAIRPERSON HILL: Thanks, Mr. Sullivan. And, again,
12 I saw your filings. Like, so you are .1 percent over then,
13 correct?

14 MR. SULLIVAN: Yes. It's a tenth of a percent which
15 would be about three feet. I think the importance of that is
16 there's, the neighbor opponent has claimed that we need to prove
17 that it was built lawfully, the addition. The previous addition,
18 that was about 20 years ago under a previous owner. I think the
19 fact that it's 40.1 percent shows that it was likely built with
20 approvals and it was built compliant, .1 amounts to about three
21 square feet.

22 CHAIRPERSON HILL: Okay. All right. All right. Okay.

23 Madam, sorry, Vice Chair John, does that answer your
24 question?

25 VICE CHAIRPERSON JOHN: Yes.

1 CHAIRPERSON HILL: Okay. Thank you.

2 MS. FRATTAROLI: Can I say one thing quickly, Mr. Hill,
3 or Chairperson Hill?

4 CHAIRPERSON HILL: What is that that you'd like to say?

5 MS. FRATTAROLI: Just in response to the Applicant's
6 statement that we filed late. We filed 32 hours before the
7 hearing and also this issue about the 44 percent was originally
8 raised in our November 5th party status request, so we've been
9 struggling with this for a while and trying to interpret it. So
10 just to point out that we had, we did give notice about that a
11 while ago and it is imposing a burden to have this change happen
12 the night before.

13 Thank you.

14 CHAIRPERSON HILL: Okay. No problem. Thank you, Ms.
15 Frattaroli.

16 All right. So, all right. So it's not technically I
17 guess a motion that's been in the record and everything so I'm
18 going to deny postponing this and so, Mr. Sullivan, if you want
19 to go ahead and, Ms. Frattaroli, I think I explained this when
20 you got party status, but so what's going to happen is they're
21 going to give their testimony as to how they think they're meeting
22 the regulations. Then you'll have an opportunity to give your
23 testimony as to what your thoughts are I suppose, right? And
24 then the Office of Planning will give their testimony. You will,
25 the way I normally do this is I like to hear from the Applicant,

1 I like to hear from the parties in opposition, I like to hear
2 from the Office of Planning, and then everyone will have an
3 opportunity to ask questions of everyone, right? We're all going
4 to have an opportunity to ask questions of the Applicant and also
5 the Office of Planning, meaning the party status. I know you
6 don't do this, Ms. Frattaroli, on a regular basis and so just to
7 outline how this process might go. Okay? Okay. Great. Thank
8 you.

9 Mr. Sullivan, you want to begin whenever you get a
10 chance?

11 MR. SULLIVAN: Thank you, Mr. Chairman. If we could
12 load the PowerPoint, please, and I'd like to note as well that
13 the project architect, Michelle Vassallo, is online as well if
14 you have any questions for her and as is the property owner, Ms.
15 Matrone, and I don't think we need their direct testimony. I'll
16 just go through the presentation myself but if you have any
17 questions for them, they're available. Thank you. Next slide,
18 please.

19 So the property is in the R-2 zone, the semi-detached
20 zone. It's improved with a two-story semi-detached single family
21 dwelling. The Applicant's proposing construction of a first
22 floor rear deck providing access to the rear from the home's main
23 level and the proposed deck will extend 13 feet off the rear of
24 the building and the resulting rear yard setback will be 15 feet
25 to .25 inches so that requires special exception relief from the

1 20 foot requirement, and also lot occupancy will increase. In
2 this case if you take out the existence of the previous deck from
3 40 percent, 40.1 to 49.5 percent and, again, the proposed lot
4 occupancy, the deck itself has never changed from the beginning
5 of the application.

6 I'd also like to point out that nothing was ever
7 proposed to be enclosed with the deck. It's an open deck, both
8 on top of it and underneath it. I realize there may have been
9 some confusion with the previous plan set and so we fixed that
10 in a filing done some time ago. Next slide, please.

11 The Office of Planning has recommended approval. The
12 Office of Planning specifically I'll point out noted on privacy
13 that they didn't think there would be a significant impact on
14 privacy, even before the privacy screening, but they noted that
15 the privacy screening made it especially no impact regarding the
16 privacy, and then on regarding substantial visual intrusion, they
17 noted that several homes along the alleyway have first story rear
18 decks. As such the addition of a first story deck should not
19 have a significant impact on the visual character of houses along
20 the alleyway.

21 Regarding the ANC, I'll note that they submitted a very
22 detailed resolution. They, we had a site visit meeting with the
23 SMD, myself and the neighbor and the Applicant and they noted,
24 specifically on visual intrusion, that the proposed addition does
25 not appear to be out of character with the neighborhood. That's

1 in the ANC resolution. They also noted that after spending
2 considerable time hearing and assessing the neighbor's objections
3 and working with the parties to seek compromise, the ANC must do
4 its best to determine whether to support or oppose the application
5 and then they voted unanimously to support the application. Next
6 slide, please.

7 There's an overhead view of the property, existing
8 building. Next slide, please.

9 There's a rear view. The subject property is in front
10 of us. The neighbor opponent's property is to the left. I
11 believe they are constructing a screened-in porch. Next slide,
12 please.

13 Next slide, please.

14 Similar. Next slide, please.

15 Here's another view. That's the existing deck. The
16 deck and, again, the stairs were counted in the lot occupancy.
17 That will be completely removed. Neighbors mentioned a retaining
18 wall. There's already a retaining wall there because there's a
19 falling elevation as you go down the block and so, yes, a
20 retaining wall of 12 to 18 inches will be constructed, but that
21 doesn't have anything to do with the BZA application. Next slide,
22 please.

23 And there's a view back from the house back across the
24 alley. Next slide, please.

25 There's the plat. You know, it may be hard to see but

1 the deck goes the width of the house and 13 feet back. One of
2 the changes that was made from what was originally proposed before
3 we filed the application, the stairway which currently exists on
4 the right side of this plat has been moved to the left and that
5 allowed for a little more separation from the extended portion
6 of the deck and the neighbor opponent's property line. Next
7 slide, please.

8 This is, the proposed elevation is on the left showing
9 the proposed deck. Next slide, please.

10 We did a shadow study which we don't normally do for a
11 ground level deck, but as you might expect the shadow study shows
12 virtually no impact from the deck. There's a little bit there
13 at the bottom. We've highlighted in red so you can see where
14 it's impacted. Next slide, please.

15 Next slide, please.

16 And the next slide, please.

17 This is a side elevation looking from the west. So in
18 the foreground you see the neighbor opponent's under construction
19 screened porch and the deck in the background over the fence
20 between the two properties. Next slide, please.

21 This is where we're proposing the privacy screen. We
22 think it's ideally placed to mitigate any privacy concerns and
23 later on we show the material that's contemplated for this. Next
24 slide, please.

25 That's the material. So this would also let some light

1 through but it would disrupt the vision, so it would protect or
2 mitigate any privacy concerns. Next slide, please.

3 The Applicant meets the, the application meets the
4 general special exception requirements. The property is in the
5 R-2 zone for semi-detached single family homes. The use isn't
6 changing and granting of the exception will not tend to affect
7 adversely the use of neighboring property. Next slide, please.

8 So the proposed deck extends 13 feet beyond the home
9 requiring rear yard relief of under five feet, lot occupancy
10 relief of 9.5 percent. The maximum permitted is ten percent
11 under the special exception criteria and as noted, the proposal
12 includes a four foot plus stairway on the west side which gives
13 a little more space from the edge of the extended portion of the
14 deck between the deck and the neighbor's property line and the
15 shadow study shows there's clearly no impact on light and air.

16 The privacy screen we think settles the issue of
17 whether or not there's any privacy concerns on the deck and
18 regarding character scale and pattern, the proposed deck of
19 course is not visible from Windom Place and it's not incompatible
20 with other structures in the alley. The Office of Planning has
21 mentioned that there are other first story rear decks. There's
22 also a lot of accessory buildings. There's still a 15 foot rear
23 yard and for these reasons we don't think it substantially
24 visually intrudes on character, scale and pattern as viewed from
25 the alley.

1 And I think that's it, so if the Board has any questions
2 for myself or the architect or the property owner.

3 Thank you.

4 CHAIRPERSON HILL: Okay. Thanks, Mr. Sullivan.

5 All right. Before I turn to questions I guess, Ms.
6 Frattaroli, are you there?

7 MS. FRATTAROLI: I am, yes.

8 CHAIRPERSON HILL: Okay. Great. Would you like to go
9 ahead and give us your testimony?

10 MS. FRATTAROLI: Oh, sure. If we can bring up the
11 PowerPoint I can go ahead. Next slide, please.

12 So hey, everyone. I'm Sarita Frattaroli. My husband
13 and son, we live at 3732 Windom Place, Northwest which is attached
14 to the Applicant's property. In terms of at a high level what
15 I'll go through, I think just generally the existing addition and
16 structure at the Applicant's property just already is very
17 imposing on us.

18 Apparently it's a little bit over the lot occupancy
19 limit for the addition itself and the deck appears to be 4 percent
20 over the lot occupancy limit and as I'll demonstrate in the
21 exhibits, the property really is an outlier compared to
22 neighboring homes which don't exceed the lot occupancy and rear
23 setback limits for their property, and we're concerned that this
24 proposed project will further exacerbate the boxed-in impact of
25 this property and because the deck will come so far out it will

1 | reduce our privacy because it just provides a clear view into our
2 | home.

3 | And then more generally we are talking in this deck
4 | about the existing addition and property exceeding the lot
5 | occupancy limit and because it does and that isn't addressed and
6 | can't proceed as drafted. Next slide, please.

7 | So as the Applicant's explained, the current property
8 | has an addition that extends about 12 feet from the back of our
9 | house and it's about 20 feet wide, and that addition eliminated
10 | the dog leg between the properties which the other neighboring
11 | properties still have. So this addition was built directly along
12 | our property line and because it eliminated the dog leg in this
13 | unusual way and goes so far back, it really restricts light into
14 | our dining room and also just creates a very strong wall effect
15 | and boxed-in feel to our home.

16 | So the proposed project would add a garage door
17 | underneath the house to accommodate parking for a second car. It
18 | would expand the width and length of the existing elevated deck
19 | to allow parking underneath for a third car and would increase
20 | the elevated deck size to a total of 13 x 24 feet and 4 inches
21 | and as the Applicant noted, the retaining wall that currently
22 | exists would be demolished and then the retaining wall would be
23 | moved to run directly along our fence.

24 | So under this design the floor, railing and users of
25 | the structure would rise above the standard fence line of seven

1 feet, and then we also note that the existing property has a
2 total lot occupancy of 44 percent. The application seeks a lot
3 occupancy of 49.5 in a rear setback of 15.2. Next slide, please.

4 So here I just went through the long burden of proof
5 standard including for when a property exceeds, is already non-
6 conforming, then the analysis of the special exception needs to
7 apply to the entire non-conformance and not just the
8 modification, and just generally, you know, we do not believe
9 that allocation meets the procedural or substantive burden for
10 the requested special exceptions. Next slide, please.

11 So I think when we drafted this based on the application
12 that was submitted at least 30 days before the public hearing
13 date as is required under the regulations, so the current property
14 has a lot occupancy of 44 percent and the application as of close
15 of business yesterday had no information about why the existing
16 structure is over the lot occupancy limit, whether when the
17 structure was granted relief from the limit or otherwise
18 establishing that the special exception provision can apply.

19 And then I talked a bit about how it would be a mistake
20 of law and policy to apply the provision without having
21 information about why the property exceeds the lot occupancy. We
22 brought this up in our party status letter that there was no
23 information about this in the application and it was also
24 discussed at length at the ANC meeting. Next slide, please.

25 So relatedly it does appear, I'm sorry, the slide

1 before. Yes. So just in general it appears that the Code
2 requires if the property was lawfully established that the
3 special exception apply to the entire non-compliant property
4 rather than just to the extension or enlargement. I think this
5 is still relevant to this application, both because it does appear
6 to be still over the lot occupancy of the addition itself and
7 then the elevated deck, the fact that it's non-compliant and
8 already exists is being used in the current application to justify
9 extending it more. So I can talk about that later in the slides.
10 Next slide, please.

11 So here is the visual use generating the D.C. Zoning
12 Tool. So this image doesn't show the Applicant's current deck
13 but it does show an orange line of about a 13 foot extension from
14 the current property and you can see how the setback and visual
15 impact of the property compares to the neighborhood and that no
16 other properties in the neighborhood have decks or additions
17 approaching the rear setback or lot occupancy of this structure.
18 Next slide, please.

19 So we also don't believe that the Applicants have met
20 their burden to demonstrate that the structure would not unduly
21 affect our abutting dwelling including light and air available
22 and privacy of use and enjoyment. So we estimate that the
23 outermost portion of the deck which would face the alley and go
24 into the rear setback is about 12 feet high including the railing.
25 We don't have a precise height measurement. It wasn't provided

1 | in the application and we haven't been able to obtain that. But
2 | that's our estimate based on what's available and the total height
3 | we estimate would be nine feet high without the railing, not
4 | including the railing, and given that the maximum residential
5 | fence height in D.C. is seven feet this shows that, you know,
6 | the floor, the railing, the users, will all be above the fence
7 | line.

8 | And then because the elevated deck is so high and
9 | potentially enclosed on the sides and the Applicant included that
10 | there's now no intent to include enclosure, even though that was
11 | in the original images so maybe that's no longer the case and it
12 | extends toward the back and side edges of the lot. It would
13 | unduly affect the experience of light and air in our yard in a
14 | matter similar to an addition.

15 | We also note because of the impact of any potential
16 | enclosure, and we noted this in our written testimony, that if
17 | the Board decides to proceed with this application, we would
18 | request that any order would state that no enclosure could be
19 | added, like, because that would be a substantial change then and
20 | would provide material impact.

21 | We also add that this boxed-in feel would result from
22 | most of the yard being built out with elevated structures. So
23 | the current property covers 44 percent of the lot and has an
24 | addition that extends about 12 feet from the back of our home,
25 | and then the application states that the proposed addition would

1 | increase lot coverage to a total of 49.5 with a 15.2 rear yard
2 | setback, so most of the yard would be covered by some sort of
3 | elevated structure. Next slide, please.

4 | Finally, the Applicants have not met their burden to
5 | demonstrate that the structure would not unduly affect our
6 | abutting dwelling including light and air available and privacy
7 | of use and enjoyment. So in response to their burden for
8 | addressing the privacy implications of the project, the
9 | Applicant's statement in Exhibit 9 has a two sentence response
10 | and that response states, "The proposed addition is an expansion
11 | of what currently exists. Accordingly, the addition will not
12 | unduly compromise the privacy of use and enjoyment of neighboring
13 | properties."

14 | So we find this reasoning problematic as it would mean
15 | that no expansion of our property can have a negative privacy
16 | impact and also it's incorrect as a matter of law because, as
17 | the Applicants noted, the current elevated deck that they're
18 | seeking to expand violates the lot occupancy limit and pushes it
19 | into 44 percent. So under the regulations, a application for a
20 | special exception cannot rely on a non-compliant structure to
21 | justify further non-compliance. So this response alone we think
22 | is enough to not allow the application to move forward because
23 | it is a mistake of law to have this response here for their
24 | burden.

25 | Then more generally we, you know, because the elevated

1 | deck is so high and protrudes towards the back of the lot it
2 | would provide direct unobstructed and closed lines of sight into
3 | the back of our home which we consider a substantial adverse
4 | effect. Next slide, please.

5 | So using the zoning tool for line of sight from the
6 | Department of Buildings we were able to generate a line of sight
7 | that starts a few feet over from the property line and, as you
8 | can see, there clearly would be line of sight into the back of
9 | our home based on the zoning tool and we also don't believe a
10 | privacy screen would address our concerns because then it would
11 | effectively exacerbate the walls in effect from the large
12 | addition that eliminated the dog leg and, you know, the stairs
13 | would still be there and someone could still see from the stairs
14 | and see directly into the home. So we don't find this to address
15 | our concerns about the project. Next slide, please.

16 | So in conclusion, you know, we're just concerned that
17 | this existing property is unusually over-sized and imposing on
18 | our home and is an outlier for the neighborhood and the proposed
19 | structure would further extend and exacerbate these negative
20 | impacts that are on us, and we don't think the current application
21 | sufficiently addresses why the current structure exceeds lot
22 | occupancy limits and we believe allowing this application to move
23 | forward as drafted would be a mistake of law and policy as it
24 | would, you know, reward property owners who don't address whether
25 | the Zoning Code and BZA application requirements were complied

1 with.

2 And thank you for considering this testimony. That's
3 all.

4 CHAIRPERSON HILL: Thank you, Ms. Frattaroli. Let's
5 see.

6 Before I turn to my Board Members for any kind of
7 questions and then have an opportunity for all parties to have
8 questions, can I hear from the Office of Planning?

9 MR. JURKOVIC: Good morning Chairman and Members of the
10 Board. This is Michael Jurkovic, Development Review Specialist
11 with the Office of Planning.

12 OP recommends approval of the requested relief to rear
13 yard and lot occupancy development requirements. We stand on the
14 record of our report and I'm here for any questions.

15 Thank you.

16 CHAIRPERSON HILL: Thank you, Mr. Jurkovic.

17 All right. I'm going to turn to my fellow Board
18 Members. Do you all have questions for anyone at this point?
19 Mr. Blake, did you have your hand up?

20 COMMISSIONER BLAKE: Yeah. I want to just get this
21 application first on the measurements from Mr. Sullivan. In this
22 particular instance, you measured it at 40 percent lot occupancy,
23 a little over 40 percent what I think and then with the deck was
24 44 percent. In the event that this application cannot approve,
25 excuse me, the deck would still remain. It would not be removed,

1 correct? The existing deck would not be removed, it would still
2 be there?

3 MR. SULLIVAN: Well, it actually needs to be removed
4 because it's failing structurally.

5 COMMISSIONER BLAKE: Okay.

6 MR. SULLIVAN: And it, but it couldn't be rebuilt as a
7 matter-of-right.

8 COMMISSIONER BLAKE: Okay.

9 MR. SULLIVAN: You're correct.

10 COMMISSIONER BLAKE: Okay. Okay. But the, so the
11 property measurements though would be 44 percent in terms of lot
12 occupancy because that's what it is today, and also my question
13 is, based on that, is the comparison in the shadow studies while
14 they may be meaningful or not should be with the matter-of-right,
15 not necessarily with the existing if the existing is not matter-
16 of-right, correct?

17 MR. SULLIVAN: It is.

18 COMMISSIONER BLAKE: So we (indiscernible) --

19 MR. SULLIVAN: It is. Yeah, the shadow study just, the
20 shadow study --

21 COMMISSIONER BLAKE: (Indiscernible) level existing.

22 MR. SULLIVAN: It does not consider the existing. The
23 shadow study is just the deck which represents the entire relief
24 request. So the deck is 9.5 percent lot occupancy. So the shadow
25 study is with a deck, without a deck.

1 COMMISSIONER BLAKE: Okay. But it's labeled existing,
2 that's why I was confused by that.

3 MR. SULLIVAN: Yeah. The deck was existing. I mean,
4 if you take it, like, chronologically when we file a building
5 permit application it'll be demolished and then there'll be a
6 starting point of the 40.1 and then it'll go from 40.1 to 9.5.
7 So if you're taking it step --

8 COMMISSIONER BLAKE: (Indiscernible.) Is the shadow
9 study looking at the 40.1 versus the proposed?

10 MR. SULLIVAN: Yes.

11 COMMISSIONER BLAKE: Okay. Thank you very much.

12 COMMISSIONER SMITH: I have a question.

13 CHAIRPERSON HILL: Go ahead, Mr. Smith.

14 COMMISSIONER SMITH: My question is, Mr. Sullivan,
15 again, does the privacy screen that you're proposing it's lattice
16 work? Yeah. Wouldn't lattice work, if you're proposing, what's
17 the height of it?

18 MR. SULLIVAN: I'll see on the plans if I can see. I'm
19 not sure if we put a height on it.

20 COMMISSIONER SMITH: Yeah, I didn't see it either.
21 While you're looking for that, is the proposal for the lattice
22 work to have plants growing up the lattice work to be in effect
23 the screen or it's just lattice work --

24 MR. SULLIVAN: I think that is the plan and I can ask
25 Ms. Matrone about that. I know the client intends to do, has

1 done significant gardening and intends to use the deck for that
2 in part as well. So I think they intend to put some greenery on
3 the screen as well. I mean, we can do whatever the --

4 COMMISSIONER SMITH: You can do whatever you want. I
5 just was wondering if it's, will it be essentially open in the
6 manner that's presented now?

7 MR. SULLIVAN: No. I think there would be greenery on
8 it. The idea would be to keep it not a wall which we think isn't
9 ideal, but an opening to let air through but also to have some
10 greenery and some vines on it.

11 COMMISSIONER SMITH: And honestly with some light to
12 some degree, so there'll be some light that could penetrate
13 through the lattice work?

14 MR. SULLIVAN: Yes. There'd be some light and remember
15 the neighbor's proposed addition, or under construction addition
16 right now goes past and is higher than, because they're building
17 about a foot and a half, two feet higher than this building as
18 the block goes down in elevation. They have a screen porch
19 addition which comes out a couple of feet past the existing rear
20 line in the area where the screening is going to be as well.

21 COMMISSIONER SMITH: Thank you for that. You actually,
22 you know, actually I was going to, you know, ask you my question
23 that I was going to ask Ms. Frattaroli, I was going to ask her
24 that same question. This proposed addition that you're proposing
25 (indiscernible) is that in line with the rear of your neighbor's

1 building now?

2 MR. SULLIVAN: Well, it's under construction. No, the
3 matter-of-right addition that was done we suspect 20 years ago
4 was past the rear line of their building. Now their building is
5 (indiscernible).

6 COMMISSIONER SMITH: I'm talking about now.

7 MS. VASSALLO: (Indiscernible).

8 MR. SULLIVAN: Yes. It will go past --

9 MS. VASSALLO: The screened-in porch currently --

10 MR. SULLIVAN: Sorry.

11 MS. VASSALLO: -- the screened-in porch that
12 (indiscernible) --

13 CHAIRPERSON HILL: Give me a second. Give me a second.
14 Give me a second.

15 VICE CHAIRPERSON JOHN: Who is speaking, speaking? One
16 person at a time --

17 MR. SULLIVAN: Michelle, if you could introduce
18 yourself first.

19 VICE CHAIRPERSON JOHN: Who is speaking, please?

20 CHAIRPERSON HILL: Give me a second. Yeah. Is the
21 architect, I think is that who Ms. [Mitchell] is?

22 MS. VASSALLO: Yeah. Michelle.

23 CHAIRPERSON HILL: Michelle.

24 MS. VASSALLO: Yes.

25 CHAIRPERSON HILL: Ms. Michelle, I'm sorry. What's

1 your last name? Could you introduce yourself for the record.

2 MS. VASSALLO: Sorry. Yes. My name's Michelle
3 Vassallo. I'm the owner of MV Architects. So, you know, my firm
4 produced the drawings. The --

5 CHAIRPERSON HILL: Actually, I'm sorry. Could you all
6 give me just one quick, can you all give me, like, five minutes
7 real quick. I'm sorry, there's somebody at my door. Can you
8 all just give me like five minutes, okay? I'll come right back.
9 Thank you.

10 (Whereupon, there was a brief recess.)

11 CHAIRPERSON HILL: Madam Secretary, if you could call
12 us back in again and thank you all for your patience.

13 MS. MEHLERT: The Board is returning from a quick break
14 to Application No. 21205 of Andria Matrone and Brian Miller.

15 CHAIRPERSON HILL: All right. Now, I apologize. Was
16 someone answering a question at that time? Was it Mr. Smith?

17 COMMISSIONER SMITH: Yes, it was me but I figure I
18 might answer the, it looks like Ms. Frattaroli's addition that
19 she's constructing, now I get it's not part of this case, does
20 extend further than the building, the Applicant's building. But
21 Mr. Sullivan, I did have a question about height of the screen.

22 MR. SULLIVAN: I don't think we specified a height. I
23 would suggest six feet is appropriate to still let enough light
24 and air over it but still block almost anybody's view. I would
25 note that on Ms. Frattaroli's site line study, the screening

1 | would seem to be right there where all that is, so I think it
2 | would address it.

3 | But I defer to the Board if they think it should go
4 | higher, but I would suggest six feet and the width, covering the
5 | width all the way to where the stairs start because at that point
6 | then the deck is set back a little more than four feet from the
7 | property line. So we think that would cover it.

8 | COMMISSIONER SMITH: Okay. Thank you.

9 | MR. SULLIVAN: And I would also defer to your opinion,
10 | Board Member Smith, on the greenery or not because the Applicant
11 | said that they could do either way. They do do gardening so they
12 | would maintain it, but if you think it's better left open that
13 | they would agree to that as well.

14 | COMMISSIONER SMITH: Okay. Thank you. I'm not inclined
15 | to specify. I would just specify a six foot screen.

16 | MR. SULLIVAN: So we would, we could submit more
17 | specificity on that and revise the plan and submit a revised plan
18 | to show the height of the screen.

19 | COMMISSIONER SMITH: I don't think you have to. We
20 | would just condition it.

21 | CHAIRPERSON HILL: Okay. Do any of my fellow Board
22 | Members have further questions? Madam, Vice Chair John?

23 | VICE CHAIRPERSON JOHN: Thank you.

24 | So, Mr. Sullivan, I'm still confused about the relative
25 | size of both decks. So let me go over what I think I understand.

1 So the current deck has not been demolished and it's structurally
2 unsound and has to be rebuilt, and it cannot be rebuilt as a
3 matter-of-right. Have I got that right? Did I?

4 MR. SULLIVAN: That's correct. Unless we were to
5 discover that there was some history that approved it in the past
6 if we could submit a building permit, but it was -- we don't know
7 when it was built. It was built before, that and the addition
8 were all built before either of these parties lived on these
9 properties.

10 VICE CHAIRPERSON JOHN: Okay. So as the deck currently
11 exists, is the neighbor's proposed deck going to be in line with
12 that existing deck or will your, will the Applicant's deck extend
13 beyond the proposed deck of the neighbor?

14 MR. SULLIVAN: The Applicant's proposed deck will
15 extend beyond the rear line of the neighbor's addition, yes.

16 VICE CHAIRPERSON JOHN: There's an enclosed deck or an
17 addition?

18 MR. SULLIVAN: I understand it to be a screened porch.

19 VICE CHAIRPERSON JOHN: Porch? Okay.

20 MR. SULLIVAN: Yes.

21 VICE CHAIRPERSON JOHN: And the Applicant's deck will
22 be how many feet beyond that proposed screen porch?

23 MR. SULLIVAN: I think I'd like to bring in in Ms.
24 Vassallo --

25 VICE CHAIRPERSON JOHN: Okay.

1 MR. SULLIVAN: -- on that and I don't know that we have
2 an exact measurement or if it's just an estimate, and there's a
3 photo that might be helpful that was in the presentation.

4 VICE CHAIRPERSON JOHN: And that's why I'm asking
5 because I didn't quite get it.

6 MS. VASSALLO: I believe it's about ten feet or eleven
7 feet. Our deck would extend beyond the adjacent neighbor's
8 screened-in porch. Currently the neighbor's screened-in porch
9 goes beyond the back wall of my client's house, so her screened
10 porch is actually maybe two feet into our deck so she can see
11 right on to our deck and when we demolish our deck and rebuild
12 it, we would be coming about ten or eleven feet beyond the wall
13 of her screened porch. Is that clear? Can we open the plan up
14 maybe?

15 VICE CHAIRPERSON JOHN: Yes. And if you could show me
16 where the -- when you say rear wall, so for zoning purposes in
17 terms of extensions we measure from the enclosed portion. So the
18 rear wall of the building as an existing building as opposed to
19 the rear wall of the enclosed porch.

20 MS. VASSALLO: Could someone open the plan?

21 CHAIRPERSON HILL: Which exhibit are you looking for,
22 Ms. Vassallo, [Vassello]?

23 MS. VASSALLO: Vassallo. It's fine. Everyone messes
24 it up.

25 MR. SULLIVAN: I think the PowerPoint --

1 CHAIRPERSON HILL: Michelle, the only one I got, your
2 little thing just says Michelle on it so that's why I don't know.

3 MS. VASSALLO: Oh, okay. Yes. Vassallo.

4 CHAIRPERSON HILL: So, Mr. Sullivan, you were trying
5 to indicate which exhibit?

6 MR. SULLIVAN: The PowerPoint presentation might help
7 between --

8 MS. VASSALLO: Yes.

9 MR. SULLIVAN: -- we have a site elevation and a photo.
10 I'm not sure if we have the best photo, so let me look. I'll
11 look in the case file too to see if there's something that's --

12 CHAIRPERSON HILL: Your slide, your slide thing doesn't
13 necessarily show what I think Vice Chair John is looking for.

14 VICE CHAIRPERSON JOHN: Yeah. I didn't see it because
15 I'm having difficulty --

16 MR. SULLIVAN: Oh.

17 VICE CHAIRPERSON JOHN: -- proportion-wise.

18 MR. SULLIVAN: I got it.

19 VICE CHAIRPERSON JOHN: I mean, I get that right now
20 the neighbor can look in the Applicant's, look on to the
21 Applicant's deck so there really is no privacy right now.

22 MS. VASSALLO: Right.

23 VICE CHAIRPERSON JOHN: Am I correct, Ms.? Yes. Okay.
24 Thank you.

25 MR. SULLIVAN: So if you look at Exhibit 20A and the

1 second photo in that exhibit is the most flush angle from the --

2 CHAIRPERSON HILL: Actually, Mr. Young, could you bring
3 up the PowerPoint again because now I actually I think I see one
4 that might be helpful to me, and I think it's slide 7. No, it's
5 slide 8. Yes.

6 MS. VASSALLO: Yes.

7 CHAIRPERSON HILL: So, Mr. Sullivan, just, and I'm not
8 (indiscernible) Ms. John, I don't know. So are those things
9 currently flush? You're saying that the screened-in porch is
10 coming two feet out past that current deck or no, Ms. Vassallo?

11 MR. SULLIVAN: Past the house.

12 MS. VASSALLO: Past the house.

13 MR. SULLIVAN: That's the building.

14 MS. VASSALLO: (Indiscernible).

15 CHAIRPERSON HILL: Currently, their existing deck is
16 flush with the screened-in porch that the party in opposition is
17 constructing, correct?

18 MR. SULLIVAN: I would say it's, the deck is more than,
19 it's probably a foot or two past.

20 CHAIRPERSON HILL: Which deck?

21 MR. SULLIVAN: The existing deck of the Applicant.
22 It's probably a foot or two past.

23 CHAIRPERSON HILL: A foot or two past --

24 MR. SULLIVAN: Yes. Because that's the --

25 CHAIRPERSON HILL: -- the screened-in porch that they're

1 building?

2 MR. SULLIVAN: Yeah, and the addition is probably two
3 or three feet. Again, 20A second photo is, like, right lined up
4 so you get a really good --

5 VICE CHAIRPERSON JOHN: And, Mr. Sullivan, what's the
6 size or the length of your existing deck now? Or --

7 MR. SULLIVAN: I'll turn to Michelle on that. I think
8 it's about four feet.

9 VICE CHAIRPERSON JOHN: Oh, so it's a narrow deck?

10 MS. VASSALLO: Yes. So you can't really use it for
11 very much --

12 VICE CHAIRPERSON JOHN: Uh-huh.

13 MS. VASSALLO: -- which is why we're requesting 13 feet
14 so they could have a table outside. But, so just to be clear,
15 the screened-in porch that's being built next door extends beyond
16 the back space of my client's house. Our existing deck, which
17 you can see here which is rotting so structurally not sound, is
18 maybe a foot or two beyond her screened porch and we're asking
19 for about ten feet additional deck. So her screened porch is
20 always going to be beyond, you know, it's going to extend to a
21 portion of my client's deck. She can already see directly on to
22 our deck.

23 VICE CHAIRPERSON JOHN: Exactly. That's my point. So
24 did you all consider less than 13 feet?

25 MR. SULLIVAN: Well, they found that to be, to go

1 through the effort of doing this, to be not worth it and we don't
2 think that a deck, this deck as shown doesn't have any impact on
3 light and air or privacy, so in the context of a special exception
4 criteria privacy solved, light and air is not an issue and neither
5 does it substantially visually intrude. So we don't think a
6 change from 13, the existing 13 to less would have any difference
7 in that special exception criteria of course which is not based
8 on need or desire, but the privacy and light and air.

9 VICE CHAIRPERSON JOHN: Okay. Thank you.

10 MR. SULLIVAN: So no, that's what -- they wanted the
11 full 13 because of the things they want to use it for, in part
12 gardening and also to have a usable deck in addition to that.

13 VICE CHAIRPERSON JOHN: And, Mr. Sullivan, the land
14 slopes to the alley and to the side; that's correct?

15 MR. SULLIVAN: It slopes a little to the alley, yes,
16 and it slopes from left to right as you view it from the alley
17 or from neighbor's property down to Applicant's property.

18 VICE CHAIRPERSON JOHN: Right. And both properties
19 share that same feature. And there's a garage underneath the
20 deck which will remain?

21 MR. SULLIVAN: There's a garage.

22 VICE CHAIRPERSON JOHN: The existing garage.

23 MR. SULLIVAN: Yes.

24 VICE CHAIRPERSON JOHN: So they'll be able to drive in
25 to that garage and that's just a feature of the topography?

1 MR. SULLIVAN: Yes.

2 MS. VASSALLO: Yes.

3 VICE CHAIRPERSON JOHN: Okay. Thank you.

4 CHAIRPERSON HILL: All right, Mr. Young. If you want
5 to drop that.

6 ZONING COMMISSIONER HOOD: No. Leave it up, Mr.
7 Chairman.

8 CHAIRPERSON HILL: Oh, sorry. Mr. Young, could you put
9 it back? Chairman Hood, please go ahead.

10 ZONING COMMISSIONER HOOD: Thank you.

11 I just have a, well not that one exactly. I'm looking
12 at another photo, I don't even know where it is. But, anyway,
13 I'm trying to understand, how far is the deck going to the
14 outside? There are three windows. Does that, does it extend or
15 does it fall short as you begin the three windows that I'm looking
16 at? I mean, does -- I'm talking about the Applicant's deck.
17 Does it extend, Mr. Sullivan, or does it stop short of the
18 beginning of the three windows? There's actually an evergreen
19 tree I believe that's blocking my view. I can't see it and maybe
20 I'm (indiscernible).

21 MR. SULLIVAN: It extends almost the width of the
22 building.

23 ZONING COMMISSIONER HOOD: Okay. So it goes on, I just
24 don't see. Okay. Okay. So it's the same size as the house. It
25 extends all the way across?

1 MR. SULLIVAN: Yes.

2 ZONING COMMISSIONER HOOD: So if I'm sitting on the
3 deck I can stand up on that deck and look in those three windows?

4 MR. SULLIVAN: Three windows, which three windows?

5 ZONING COMMISSIONER HOOD: There's three windows there.
6 If you're facing the property according to one of the pictures
7 you have, I don't know, Exhibit 20A, Exhibit No. 20A, if you look
8 at --

9 CHAIRPERSON HILL: Mr. Young, if you could please pull
10 Exhibit 20A and Chairman Hood, are you on, like, slide 6?

11 COMMISSIONER BLAKE: Chairman Hill, if you look at
12 Exhibit 4 on the slide deck, it gives you an aerial view which
13 pretty much shows the approaches you're talking about and it's
14 consistent with my thought that that is a landing and not a deck
15 actually. But please take a look at that from the aerial view
16 of slide 4 of the slide deck.

17 MS. VASSALLO: There's also a rear elevation in there.

18 CHAIRPERSON HILL: Hold on, hold on, hold on. So --

19 ZONING COMMISSIONER HOOD: There's quite a bit going
20 on here (indiscernible).

21 CHAIRPERSON HILL: Which, all right. So, first, now I
22 don't know if that's what Chairman Hood --

23 COMMISSIONER BLAKE: Zoom in on that, Mr. --

24 CHAIRPERSON HILL: Right. But this is before the
25 enclosed porch.

1 ZONING COMMISSIONER HOOD: But I think Board Member
2 Blake is trying to get me there but unfortunately, even with my
3 glasses Board Member Blake I think, oh, I see it. I think I see
4 it. Are those steps? Well, you know, I wear glasses, still
5 can't see, so. I got to find another view. See, I'm just trying
6 to see does that deck extend. That's what I mean right there.
7 Does that deck, Mr. Sullivan, extend to where those three, I
8 don't see anything there. It looks like it's just open area?

9 MR. SULLIVAN: I'm not sure. Which photo are you
10 looking at now?

11 ZONING COMMISSIONER HOOD: The one that's on the --

12 CHAIRPERSON HILL: I think Chairman Hood, I think
13 Chairman Hood's asking is there a landing? Currently the way the
14 thing is, does it go all the way to those three windows of the
15 Applicant's home and there's a stair that comes down from those
16 three windows. Is that correct?

17 MR. SULLIVAN: Yes. There's like a double back
18 stairway --

19 ZONING COMMISSIONER HOOD: Okay, okay.

20 MR. SULLIVAN: -- in that area.

21 ZONING COMMISSIONER HOOD: So it goes up so, and I
22 think Board Member Blake helps me even I couldn't see it, it goes
23 all the way across and it comes down, the steps come down. Okay.
24 That's all I needed.

25 MR. SULLIVAN: Correct. Yes.

1 ZONING COMMISSIONER HOOD: All right. Thank you.

2 CHAIRPERSON HILL: Okay. Thank you, Chairman Hood.

3 Mr. Young, if you could drop that. Okay. Do my Board
4 Members have any further questions?

5 (Pause.)

6 CHAIRPERSON HILL: Okay. Ms. Frattaroli, do you have
7 any questions of the Applicant or the Office of Planning?

8 MS. FRATTAROLI: No, I don't have any further
9 questions. I do, I would ask for the underlying calculations.
10 Maybe that would be best submitted as a written motion. I don't
11 know if you have any preference, Chairperson Hill.

12 CHAIRPERSON HILL: When you say the underlying
13 calculations, I don't understand. I'm sorry.

14 MS. FRATTAROLI: For, it's just the self-certification
15 form, it's just, it's still a bit confusing, like, whether the
16 original one had the deck included apparently in the lot occupancy
17 but not the rear yard setback and now it maybe isn't in either
18 and it's just difficult to sort out what is being included in
19 the self-certification form.

20 CHAIRPERSON HILL: Okay. Mr. Sullivan, can you help
21 us clarify? The 40.1 percent does not include the deck, correct?

22 MR. SULLIVAN: Correct.

23 CHAIRPERSON HILL: Right. It doesn't even include the
24 deck that's existing, correct?

25 MR. SULLIVAN: Correct.

1 CHAIRPERSON HILL: Okay. Mr. Blake, you had your hand
2 up.

3 COMMISSIONER BLAKE: Yeah. Because it's important to
4 think about this. If that's a landing it shouldn't count in the
5 occupancy anyway, at least to the staircase and it looks like,
6 is there recreational space up there? It doesn't look like it
7 to me. It looks like it leads to those doors. So to accept
8 that, the 40.1 would be the correct calculation because that
9 staircase and landing would not necessarily count towards lot
10 occupancy.

11 MR. SULLIVAN: They shouldn't count but frankly the
12 architect counted them at the beginning of this, the stairs. As
13 far as landings go, we've been getting very narrow
14 interpretations of what satisfies or what qualifies as a landing
15 and I usually assume that it's almost nothing, like a 4 x 4 is,
16 and if it's more than that then I don't count anything -- I don't
17 exclude anything but the stairs in that case. But that's all
18 the existing. I mean, that's not relevant to what, the proposed
19 is that that's gone, assume that's gone. Whether it was built
20 legally or not doesn't matter. What we're proposing now is the
21 new deck.

22 CHAIRPERSON HILL: Okay. So, Ms. Frattaroli, it's 40.1
23 percent is what's the current lot occupancy. Okay?

24 MS. FRATTAROLI: And then does the rear yard setback
25 that's listed as an existing condition on the form include the

1 current deck or does that not include the deck?

2 CHAIRPERSON HILL: Mr. Sullivan?

3 MR. SULLIVAN: One second, please.

4 CHAIRPERSON HILL: Sure. Ms. Frattaroli --

5 MR. SULLIVAN: I don't know if Michelle knows offhand.

6 CHAIRPERSON HILL: Ms. Frattaroli, while they're, Ms.
7 Vassallo, I'm sorry. Does the rear yard setback include the deck
8 or not? The existing deck.

9 MS. VASSALLO: I would need to open up the files and
10 confirm.

11 CHAIRPERSON HILL: Okay.

12 MS. VASSALLO: I --

13 MR. SULLIVAN: Again, I don't know why it matters but
14 it's the --

15 MS. VASSALLO: Yeah.

16 CHAIRPERSON HILL: Yeah, Mr. Sullivan. I'm just trying
17 to answer questions. It's okay. The Board's going to determine
18 what is or isn't relevant.

19 MR. SULLIVAN: So we --

20 CHAIRPERSON HILL: Ms. Frattaroli is asking a question.
21 Do you know the answer or no?

22 MR. SULLIVAN: It was 28.14. That 28.14 does not
23 include the existing deck.

24 CHAIRPERSON HILL: Okay. Ms. Frattaroli, do you have
25 another question?

1 MS. FRATTAROLI: One last question. Is there a plat
2 on the record that shows the current existing deck?

3 CHAIRPERSON HILL: I don't know. Mr. Sullivan, do you
4 know that answer?

5 MR. SULLIVAN: I have no idea.

6 VICE CHAIRPERSON JOHN: Where's the -- let's look at
7 the plat that was submitted and see what the dimension are because
8 that's what the permit will be based on. So maybe we can pull
9 up that exhibit, Mr. Sullivan.

10 MR. SULLIVAN: It's in the PowerPoint and it's Exhibit
11 27A is the surveyor's plat.

12 VICE CHAIRPERSON JOHN: Mr. Young, can you pull that
13 up?

14 MR. SULLIVAN: But it doesn't include the existing. It
15 just shows the proposed.

16 VICE CHAIRPERSON JOHN: But the proposed is with the
17 new deck.

18 MR. SULLIVAN: Yes.

19 VICE CHAIRPERSON JOHN: So we can extrapolate what it
20 would be. The new deck is 13 feet deep, right?

21 MR. SULLIVAN: Yes.

22 VICE CHAIRPERSON JOHN: Okay.

23 CHAIRPERSON HILL: Mr. Young, if you feel like, not
24 feel like, if you could pull up that exhibit and then zoom in.
25 No, I don't think that's the one. It's 27A, 27A and then it's

1 the first exhibit and if you zoom in and scroll down then you
2 can see what is being proposed on the plat.

3 VICE CHAIRPERSON JOHN: Can you zoom in?

4 (Pause.)

5 CHAIRPERSON HILL: Vice Chair John, is that, does that
6 work for you?

7 VICE CHAIRPERSON JOHN: I don't have a question.

8 CHAIRPERSON HILL: Oh, okay. All right. Ms.
9 Frattaroli, do you see what we're looking at?

10 MS. FRATTAROLI: Yes. So this looks like it's for the
11 proposed property. So there's no plat for the existing property
12 I guess on the record?

13 CHAIRPERSON HILL: Correct.

14 MS. FRATTAROLI: Okay.

15 CHAIRPERSON HILL: Okay?

16 MS. FRATTAROLI: Yeah. I mean, it would be helpful to
17 have that just because it's, you know, trying to sort out these
18 setback calculations and the lot occupancy I think --

19 CHAIRPERSON HILL: It's okay, Ms. Frattaroli.

20 MS. FRATTAROLI: Yes.

21 CHAIRPERSON HILL: Meaning I understand but like it's
22 really what the Board deems necessary, but I'm just saying this
23 is what's there now. Okay.

24 Do you have any questions for the Office of Planning,
25 Ms. Frattaroli? Mr. Young, could you drop this slide?

1 MS. FRATTAROLI: No, I do not.

2 CHAIRPERSON HILL: Okay. Let's see now. Mr. Young,
3 is there anyone here wishing to speak?

4 (Pause.)

5 CHAIRPERSON HILL: Mr. Young?

6 (Pause.)

7 CHAIRPERSON HILL: Can you all hear me? Okay. Great.
8 Mr. Young, is there anyone here wishing to speak?

9 MR. YOUNG: No, we do not.

10 CHAIRPERSON HILL: Okay. Great. Thank you.

11 Let's see. Mr. Sullivan, do you have any questions for
12 anyone?

13 MR. SULLIVAN: No, I do not. Thank you.

14 CHAIRPERSON HILL: Okay. Do you have any rebuttal, Mr.
15 Sullivan, and if so then there will be questions on rebuttal, Mr.
16 Sullivan.

17 MR. SULLIVAN: The only thing, one small point in
18 rebuttal. The neighbor opponent showed a 3D zoning map. I don't
19 think it includes decks. Like, for instance, well it didn't
20 include their addition but the deck to the east of the property
21 is shown in some of the photos. It's not shown on the map and
22 then I would also note that the ANC and the Office of Planning
23 both mentioned that this is not incompatible with other
24 structures on this block. Thanks. That's the only rebuttal.

25 CHAIRPERSON HILL: Okay. Okay. Does anybody have any

1 | questions about the statement that Mr. Sullivan just made on
2 | rebuttal?

3 | (Pause.)

4 | CHAIRPERSON HILL: Okay. All right.

5 | Do my fellow Board Members have any questions at all?

6 | (Pause.)

7 | CHAIRPERSON HILL: Okay. All right. Then I'm going
8 | to go ahead and close the hearing and the record if we all don't
9 | have any questions. Oh, no, wait. I did have a question. I'm
10 | sorry.

11 | So, Mr. Sullivan, do you know, I actually don't know,
12 | if -- and actually whether or not I think this is pertinent to
13 | this particular case I'm not sure because my colleagues would
14 | help me with it -- but do you know can you do a screening down
15 | the stairs and not have to ask for additional relief? Like, I
16 | don't, I never know. Like, can you do six feet screening down
17 | the stairs?

18 | MR. SULLIVAN: I don't see why not. I don't think
19 | it's, it's not a fence, but I don't know that that would, I mean
20 | we would do whatever the Board deems necessary but I think the
21 | screening where it goes to the stairs kind of covers everything
22 | because even if you're on the far side of the deck at that point,
23 | you're not going to see. If you're looking past the stairway,
24 | you're not going to see the --

25 | CHAIRPERSON HILL: Okay. No, I appreciate --

1 MR. SULLIVAN: -- neighbor opponent's property.

2 CHAIRPERSON HILL: Actually, I don't know if Mr.
3 [Jurkovich], Jurkovic, I'm sorry. I always have trouble with it.
4 Office of Planning.

5 Just for a different, like, a different question for
6 me, not even necessarily for this case but I always, I'm never
7 clear as to can one put screening down the stairs and it doesn't
8 require further relief?

9 MR. JURKOVIC: I'm not entirely sure but I would say
10 they likely could.

11 CHAIRPERSON HILL: Okay.

12 MR. SULLIVAN: Mr. Chair? I'm sorry. Are you asking
13 that if we just, if the Board just approved the screening this
14 way and then there was further discussion or negotiation, would
15 we be required to come back to the Board for modification if we
16 expanded the screening? Is that the question?

17 CHAIRPERSON HILL: I'm asking a couple of questions,
18 Mr. Sullivan.

19 MR. SULLIVAN: Okay.

20 CHAIRPERSON HILL: The first question is whether or not
21 the Board thinks, I'm actually trying to understand something for
22 even further cases. It's okay. Nobody seems to have an answer
23 for me right now. That's all right. I just wanted to know
24 whether or not if that screening continues down the stairs, if
25 it requires further zoning relief and, Mr. Jurkovic, you're not

1 | sure?

2 | MR. JURKOVIC: Yeah. Definitely not sure. It would
3 | ultimately come down to --

4 | CHAIRPERSON HILL: Ultimately comes down to?

5 | MR. JURKOVIC: It would be an interpretation of what
6 | is or is not enclosed.

7 | CHAIRPERSON HILL: Okay.

8 | VICE CHAIRPERSON JOHN: I think it would be if it's a
9 | structure or a fence. I think that's where the decision might --

10 | CHAIRPERSON HILL: It's okay, Ms. Michelle. I don't
11 | need a number.

12 | VICE CHAIRPERSON JOHN: And I don't know if we need to
13 | spitball about what would happen, Mr. Chairman.

14 | CHAIRPERSON HILL: It's all right. It's fine. Okay.
15 | All right. If my Board Members don't have any further questions,
16 | I'm going to close the hearing and the record. Thank you all
17 | very much.

18 | MS. FRATTAROLI: Excuse me, Chairperson Hill, can I
19 | move to keep the record open so that we can respond to the filing
20 | from yesterday?

21 | CHAIRPERSON HILL: You can ask but currently I don't
22 | think the Board needs anything, so I would not be in favor of
23 | keeping the record open. Mr. Blake?

24 | COMMISSIONER BLAKE: I have one last quick question, I
25 | apologize, on that deck. Is that serving the main floor of the

1 subject property as it exists?

2 MR. SULLIVAN: Yes.

3 COMMISSIONER BLAKE: Okay. Thank you.

4 CHAIRPERSON HILL: Okay. Great. All right.

5 Okay. Well thank you all very much for coming. I'm
6 going to close the hearing and the record. Mr. Young, if you
7 could excuse everyone, please?

8 (Pause.)

9 CHAIRPERSON HILL: Okay. By the way, I'm going to let
10 somebody else talk first. I'm tired. So y'all, like, think
11 about it for a minute because somebody talks next.

12 VICE CHAIRPERSON JOHN: Okay. I'm going to start. I
13 have two comments.

14 CHAIRPERSON HILL: Okay.

15 VICE CHAIRPERSON JOHN: In terms of privacy, I don't
16 believe there's going to be any greater loss of privacy especially
17 with the mitigation with the screens, because right now the
18 neighbor is able to see into the Applicant's deck and so looking
19 strictly at the regulation and what it requires, I am going to
20 support the application.

21 So the increase is from 40 percent without the deck and
22 the lot occupancy increase and with the deck it's from 44 percent
23 to 49.5 percent which is not, in my view, a significant increase.
24 But I will leave it to the others, other Board Members, to
25 comment. But for me the crucial point is the loss of privacy

1 and I don't believe there is any more significant loss of privacy
2 between what is existing and what is proposed based on the
3 potential mitigation of the screen. And in terms of light and
4 air, it's an open deck. There is no loss of light and air and
5 so that would be my suggestion.

6 CHAIRPERSON HILL: Okay. Thank you, Vice Chair John,
7 for going first. I appreciate it. Mr. Smith?

8 COMMISSIONER SMITH: Yeah. We had a robust discussion
9 about this question about this deck. I agree with Ms. John. You
10 know, the question here just looking at the regulations of
11 granting special exception relief for this type of construction
12 and also, you know, it falls along the lines of, and we've done
13 this, you know, a lot of times, light, air, privacy. This is an
14 open air deck so, and the way that it's designed it would not
15 have a substantial adverse impact on any light and air.

16 It is, on this question of privacy, and I understand
17 the neighbor's concerns, but, you know, this question of privacy
18 it can be tricky especially given that this is a duplex. This
19 is a, you know, this is an attached home as many homes in the
20 District are. So I think there is some consideration that needs
21 to be given to the fact that we live in an urban environment.
22 But, as Ms. John stated, the neighbor can see the deck of the
23 Applicant and I believe that they are, you know, correct in some
24 of the issues or trying to, probably from the issues regarding
25 privacy with this additional addition and questions about

1 shadowing with this addition.

2 The Applicant I do believe has attempted to mitigate
3 some of those concerns regarding privacy by opposing this type
4 of screening. I am not inclined to require them to screen it
5 more, make it more opaque. I'm not inclined to put in some kind
6 of condition that they have some vegetation. I do believe that
7 as proposed it does the job of providing some level of screening
8 and also one of the complaints that the party in opposition stated
9 was regarding light.

10 So they need a new middle ground by providing some
11 level of screening. I am inclined to require it to be at least
12 six feet, but they're attempting to address privacy concerns as
13 well as address lighting concerns. So I believe that they have
14 done what they materially can do to address any adverse impact.
15 I do not believe denying this, I don't believe in denying this.
16 I believe that they've met the standard for us to approve it.

17 So with that, I would be in support with the condition
18 that the privacy screen would be six feet in height, minimum.

19 CHAIRPERSON HILL: Thank you. Mr. Blake.

20 COMMISSIONER BLAKE: Thank you, Mr. Chair.

21 First of all, I'm in support of the application. I
22 believe the Applicant has met the burden of proof to be granted
23 relief. My first concern was with the issue of the existing
24 deck. I do believe that is actually a landing and I appreciate
25 Mr. Sullivan's conservative approach to it, but I reviewed the

1 definition of it and I do believe this is a landing which would
2 not be counted as part of the lot occupancy. So I think the 40.1
3 is the correct number.

4 I think that this is an open deck that we're proposing
5 and it would not result in a significant loss of light and air.
6 I think the loss of privacy is a legitimate concern. The question
7 of course would be to the extent that it's undue, I think in a
8 house that's connected like this you're going to have some issues
9 with, you know, proximity which I think Board Member Smith pointed
10 out. But I think that the loss of privacy is a legitimate
11 concern. I do think that a six foot screening would largely
12 mitigate that although, as the opposition party indicated, it
13 would be a little bit, it would kind of darken things a little
14 bit but I do not think that's an open -- the proposed screening
15 is relatively open and it does address the biggest concerns which
16 would be the privacy issue.

17 I think that the recreational, also looking at the
18 construction of this thing it's a staircase that goes up. It's
19 temporary. You move past it and you enter the building. The
20 main recreational space on this deck is to the far side of the
21 space, so I do think that the six foot screening would be
22 sufficient as I know I couldn't see over it from that distance
23 and if the opposition put some similar screening, they'll totally
24 be (indiscernible). It's not for us to say here or there.

25 I believe the issue is the degree of detriment. I do

1 think the screening is sufficient. I think that I'm in favor of
2 the application and I will be voting in favor.

3 CHAIRPERSON HILL: Thank you. Chairman Hood?

4 ZONING COMMISSIONER HOOD: Thank you, Mr. Chairman.

5 I would agree with everything I heard. I'm not going
6 to repeat, be repetitive. The only thing that concerns me is I
7 kept hearing Ms. Frattaroli say she needed the hearing to respond
8 and I wanted to make sure that we were not prejudicing her for
9 some information that even though we think it's de minimis.

10 But other than I think this is a pretty straightforward
11 case. I'm not sure what else would help make me change my mind
12 other than making sure that we dot that I, because she has
13 mentioned that more than one time. But I would agree, I think
14 as far as impacts I think that the screening, as one of my
15 colleagues mentioned about living in the City, I think those kind
16 of things happen and as you mentioned I think that screening and,
17 again, Board Member Blake, they both put screening up and if they
18 can. I'll just leave it at that.

19 So I'll be voting in support but I just want to make
20 sure we have covered all our bases with making sure that she had
21 ample opportunity to be able to respond to what was submitted.

22 Thank you, Mr. Chairman.

23 CHAIRPERSON HILL: Okay. Thank you, Chairman Hood.

24 I personally don't need any further information. So
25 if the Board, other members, think that they need further

1 information, please let me know. In terms of the regulations and
2 what we're looking at, I mean I think that, you know, under 5201.4
3 I do not think there is an issue with the light and air being
4 unduly affected.

5 In terms of the privacy issue, I mean I think that the
6 screening does help alleviate any undue impact that might take
7 place. I do think that it is interesting that the way it is now
8 the party in opposition's enclosed deck extends farther than --
9 they're able to look in the neighbor's property now and so as we
10 all know because we all live in the City and have neighbors, you
11 can look into everybody's back yard and so that's something that,
12 you know, is what comes from living, again, in an urban
13 environment. So per the regulations whether this is undue or
14 not, I don't believe it is and I will look again to the Office
15 of Planning's report as I'm looking at it currently, and would
16 agree with what is in the record concerning their
17 recommendations.

18 I would further point out that what the Applicant had
19 said is that the ANC actually went out and did a site visit it
20 sounds like and it sounds like they took a tremendous amount of
21 time to try and understand what is happening there in their
22 neighborhood, and they voted unanimously to support this
23 application after taking extensive time to look at this
24 application.

25 So I'm going to vote in favor of this application and

1 | if anybody needs anything, please let me know.

2 | VICE CHAIRPERSON JOHN: Mr. Chairman, just to go back
3 | to the issue of the motion to leave the record open for the
4 | submission of a response, the Applicant is allowed to clarify the
5 | application during the hearing and the Applicant adequately
6 | explained why the certification was stated as it was. So I don't
7 | think the Board needs any additional information and it is clear
8 | that the 40 percent does not include the existing deck because
9 | the deck will be demolished. Whether you call it a deck or a
10 | landing, it will be gone and so the increase, as I understand it
11 | and looking at the Office of Planning's report as well, there's
12 | an increase to 49.5 percent with a 15.14 foot rear yard which
13 | does not meet the 20 foot minimum.

14 | So based on this information which is in the record
15 | that, in my view, is the basis of the Board's decision.

16 | CHAIRPERSON HILL: Okay. Thank you, Vice Chair John.

17 | All right. I'm going to make a motion. Okay. The
18 | other thing.

19 | The ANC had requested a rain barrel and I don't think
20 | that this has anything to do with pervious surface relief and so,
21 | I mean, if the Applicant would like to put in a rain barrel I
22 | think in order to adhere to what the ANC had put forward and that
23 | the ANC has spent all the time that they had doing, so going on
24 | site, looking at this application very heavily, that if they put
25 | in a rain barrel that'd be great for them just to be a good

1 neighbor if you will, but I do not think it's something that is
2 required by the Board.

3 I will agree again with the six foot fence as indicated.
4 I think the plans as shown indicate where the fence, the privacy
5 screening, will be put and I think that the six feet would address
6 the issues as put forward by the Board.

7 So I'm going to make a motion to approve Application
8 No. 21205 as captioned and read by the secretary including the
9 condition concerning a six feet privacy fence as indicated on the
10 plans, and ask for a second. Ms. John.

11 VICE CHAIRPERSON JOHN: Second.

12 CHAIRPERSON HILL: Motion made and seconded. Madam
13 Secretary, if you could take a roll call, please.

14 MS. MEHLERT: Please respond to the Chair's motion to
15 approve the application with the six foot privacy fence
16 condition.

17 Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MS. MEHLERT: Vice Chair John?

20 VICE CHAIRPERSON JOHN: Yes.

21 MS. MEHLERT: Mr. Smith?

22 COMMISSIONER SMITH: Yes.

23 MS. MEHLERT: Mr. Blake?

24 COMMISSIONER BLAKE: Yes.

25 MS. MEHLERT: Chairman Hood?

1 ZONING COMMISSIONER HOOD: Yes.

2 MS. MEHLERT: Staff would record the vote as five to
3 zero to zero to approve Application 21205, with the condition on
4 the motion made by Chairman Hill and seconded by Vice Chair John.

5 CHAIRPERSON HILL: Thank you.

6 Okay, you guys. I don't know about y'all. Like, it
7 just started to rain, like, crazy right here at the house. Like,
8 I'm just like, it's, like, freaking me out. Let's take a, can
9 we just take a quick little break if y'all don't mind. Let's
10 do, I don't have to water my plants, let's do 15 minutes. Okay?
11 Thank you.

12 (Whereupon, there was a brief recess.)

13 CHAIRPERSON HILL: Madam Secretary, could you call us
14 back, please?

15 MS. MEHLERT: The Board has returned from a quick break
16 and is returning to its hearing session. Would you like me to
17 call the next case?

18 CHAIRPERSON HILL: Yes, please. Thank you.

19 MS. MEHLERT: Next is Application No. 21202 of
20 Carbarjal Properties, LLC. This is an application pursuant to
21 Subtitle X, Section 901.2 for a special exception under Subtitle
22 D, Section 207.5 to allow the rear wall of a row building to
23 extend farther than ten feet beyond the farthest rear wall of any
24 adjoining principal residential on any adjacent property. This
25 is for a new third story and rear addition to an existing two-

1 story attached principal dwelling. It's located in the R3/GT
2 zone at 3719 S Street, NW, Square 1308, Lot 63.

3 CHAIRPERSON HILL: Great. Thank you.

4 If the Applicant can hear me if they could please
5 introduce themselves for the record.

6 MR. SULLIVAN: Thank you, Mr. Chairman and Board
7 Members. Marty Sullivan with Sullivan & Barros on behalf of the
8 Applicant.

9 CHAIRPERSON HILL: Okay. Thank you, Mr. Sullivan.

10 Mr. Sullivan, if you could please walk us through your
11 client's application and why you believe they're meeting the
12 criteria for us to grant the relief requested. I'm going to put
13 15 minutes on the clock so I know where we are, and you can begin
14 whenever you like.

15 MR. SULLIVAN: Thank you, Mr. Chairman. If we could
16 load the PowerPoint, please.

17 This is 3719 S Street, Northwest. Next slide, please.

18 In the Burleith section of town. So the property is
19 in the R3/GT zone. It's improved with a two-story single family
20 row dwelling including a cellar. It's two above ground levels.
21 The Applicant, so for some background the Applicant obtained a
22 building permit to construct the addition to the existing
23 building. They built the addition, completed it 100 percent. It
24 was approved. Zoning approved it. They got a building permit
25 and after it was done, they actually even got an approved wall

1 check, but after it was done DOB came back and said we made a
2 mistake and you made a mistake and you need relief for an
3 additional 3.9 feet beyond the ten foot rule on one side.

4 And so we're here requesting that relief. The proposal
5 meets the ten foot rule criteria, as the Applicant will
6 demonstrate, and it meets all other development standards. The
7 Office of Planning recommending approval. We attended the ANC
8 2E's meeting on December 2nd. The ANC decided to not take a
9 position, decided not to vote at all. I can give the Board some
10 background on why I think that happened but unless I don't know
11 if they're here or the SMD is here or not but I can explain my
12 perception of what that was.

13 The neighbor on one side, the side where we're asking
14 for the 3.9 feet of relief was initially concerned about impact
15 on their solar panels and as part of the permit process, the
16 solar analysis was done and that showed that there wasn't a more
17 than 5 percent impact on the solar panels. They have solar panels
18 on a large accessory building in their back yard and this wasn't
19 shown to impact that. They did have concerns, that neighbor. My
20 client reached out to them but did not have direct contact with
21 them, however we communicated through the SMD, Commissioner Putta
22 and Commissioner Putta spoke to this neighbor and what he related
23 to me was that they weren't happy about it but he didn't think
24 that they were going to oppose. I don't know if they're here or
25 not. And so that's why the ANC thought they would just not have

1 a position at all. Next slide, please.

2 There's a map showing the property. Next slide,
3 please.

4 Next slide, please.

5 That's the front. Next slide, please.

6 There's the existing property before the construction.
7 Next slide, please.

8 This is also before the construction. The subject
9 property is there on the left. The accessory building has gone
10 away. Next slide, please.

11 Next slide, please.

12 So from this plat, and I'm not sure if you can zoom in
13 or not, but the, on the left side the furthest rear wall of the
14 addition goes ten feet past the furthest rear wall of the property
15 to the left. The property to the right, it goes ten feet past
16 the furthest rear wall and then it goes in five or six feet with
17 a court. And so, then it goes back out. That's the 3.9 feet.
18 So, and it's also set back a little bit on the top story.

19 So the area of the relief, and next slide please. This
20 is probably a better drawing here. If you look at the roof plan
21 on the left, you'll see where it goes ten feet past and then it
22 goes up and in and that is, that 3.9 foot extension is where the
23 relief is requested. It's set back from there and you can see
24 from the site elevation it's also set back a little bit on the
25 third floor as well. Next slide, please.

1 And here's just, this is the same elevation. It's a
2 little larger because it's just this on the page and you can see
3 in relationship to the building to the left as you face it, and
4 then on the top elevation the one to the right. Next slide,
5 please.

6 So the proposed addition's within other bulk and
7 density requirements of this zone. It still has a 44 foot rear
8 yard setback and where 20 is required. The height is about two
9 feet under the limit and safely meets lot occupancy requirements.
10 Thirty-nine percent is the proposed lot occupancy where sixty is
11 permitted. Next slide, please.

12 The addition shall not unduly affect light and air
13 available to neighboring properties. The proposed addition just
14 extends the additional 3.9 feet past the permitted ten feet and
15 the rear yard safely meets the requirements of the zone, as
16 mentioned before, and also the 3 foot 9 section setback from the
17 east property line and setback on the top story as well.

18 Now the proposed addition will not unduly compromise
19 the privacy of use and enjoyment of neighboring properties as the
20 Applicant is not proposing windows on that side facing the
21 adjacent property. And the request for ten foot rule relief has
22 been made in relation to the rear addition. As demonstrated in
23 the photos the existing foliage (phonetic) and accessory
24 structures abutting the alley make it so that the view of the
25 rear addition is either obscured or barely visible. Even were

1 | it visible, the additional 3.9 feet should not be perceptible
2 | from the alley given that the proposal maintains a 44 foot rear
3 | yard and so there's no, it doesn't substantially visually intrude
4 | on character, scale and pattern as viewed from the alley. Next
5 | slide, please, and I think that's it.

6 | So if the Board has any questions. Thank you.

7 | CHAIRPERSON HILL: Thank you, Mr. Sullivan. Let me
8 | see. Before I turn to my fellow Board Members, may I hear from
9 | the Office of Planning?

10 | MR. BEAMON: Good afternoon. For the record, Shepard
11 | Beamon with the Office of Planning.

12 | We reviewed the application for the requested special
13 | exception relief from the rear extension and find the request
14 | meets the criteria for Subtitles D and X, therefore we recommend
15 | approval and I can take any questions.

16 | CHAIRPERSON HILL: Thank you. Does the Board have any
17 | questions for either the Applicant or the Office of Planning?

18 | (Pause.)

19 | CHAIRPERSON HILL: Mr. Young, is there anyone here
20 | wishing to speak?

21 | MR. YOUNG: We do not.

22 | CHAIRPERSON HILL: Okay. Mr. Sullivan, do you have
23 | anything at the end?

24 | MR. SULLIVAN: I do not. Thank you, Mr. Chairman,
25 | Board Members.

1 CHAIRPERSON HILL: Thank you. Thank you. All right.
2 I'm going to go ahead and close the hearing and the record. Mr.
3 Young, if you could please excuse everyone.

4 (Pause.)

5 CHAIRPERSON HILL: I mean to me, again, it seems like
6 a very modest extension. I mean, it is what it is, meaning it
7 came to us even though it got permitted and built. But I don't
8 have any issues with this particular application and also do
9 appreciate that there aren't any proposed windows on that could
10 possibly affect privacy, and I'm going to be voting in favor of
11 this application and appreciate the analysis and the report that
12 the Office of Planning has provided and will also rest on that
13 recommendation.

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

15 COMMISSIONER SMITH: I have nothing to add. I agree
16 with your assessment in this particular case that it's a fairly
17 straightforward one and will support the application.

18 CHAIRPERSON HILL: Thank you. Mr. Blake?

19 COMMISSIONER BLAKE: Yes, Mr. Chairman. I'm in support
20 of the application. I believe that the Applicant has met the
21 criteria for approval. I am comfortable with the comments made
22 by Mr. Sullivan with regard to ANC 2E. Though there's nothing
23 to give great weight to, I'm comfortable that the Applicant has
24 reached out sufficiently to the community. I'll be voting in
25 favor.

1 CHAIRPERSON HILL: Thank you. Vice Chair John?

2 VICE CHAIRPERSON JOHN: I agree with the comments so
3 far, Mr. Chairman, and I'm in support of the application.

4 CHAIRPERSON HILL: Thank you. Chairman Hood?

5 ZONING COMMISSIONER HOOD: I have nothing to add. I'll
6 be voting in support. Thank you, Mr. Chairman.

7 CHAIRPERSON HILL: Thank you.

8 All right. I'm going to make a motion to approve
9 Application No. 21202 as captioned and read the by the secretary
10 and ask for a second. Ms. John?

11 VICE CHAIRPERSON JOHN: Second.

12 CHAIRPERSON HILL: The motion is made and seconded.
13 Madam Secretary, if you could please take a roll call.

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

16 Chairman Hill?

17 CHAIRPERSON HILL: Yes.

18 MS. MEHLERT: Vice Chair John?

19 VICE CHAIRPERSON JOHN: Yes.

20 MS. MEHLERT: Mr. Smith?

21 COMMISSIONER SMITH: Yes.

22 MS. MEHLERT: Mr. Blake?

23 COMMISSIONER BLAKE: Yes.

24 MS. MEHLERT: Chairman Hood?

25 ZONING COMMISSIONER HOOD: Yes.

1 MS. MEHLERT: Staff would record the vote as five to
2 zero to zero to approve Application 21202 on the motion made by
3 Chairman Hill and seconded by Vice Chair John.

4 CHAIRPERSON HILL: Madam Secretary, you can call our
5 next case when you have an opportunity.

6 MS. MEHLERT: Next is Application No. 21203 of Jay and
7 Amy Hariani. This is a self-certified application pursuant to
8 Subtitle X, Section 901.2 for special exceptions under Subtitle
9 C, Section 711.11 from Subtitle C, Section 711.7 to allow parking
10 spaces in a structure with vehicular entrance and exit less than
11 ten feet in height and setback less than twelve feet from the
12 centerline of an adjacent alley, and under Subtitle D, Section
13 5201 in the accessory building location requirements of Subtitle
14 D, Section 5004.1(a) to allow an accessory building within a
15 required rear yard and Subtitle D, Section 5005.1 to allow an
16 accessory building in a side yard without a required setback.

17 This is for a new two-story accessory building in a
18 rear yard of an existing two-story detached principal dwelling.
19 Located in the R1-B zone at 3800 Harrison Street, NW, Square
20 1851, Lot 67, and as a preliminary matter there was a letter of
21 support that was filed late this morning, if the Board would like
22 to add that to the record.

23 CHAIRPERSON HILL: Yes. Madam Secretary, would you
24 please add that to the record. I'd like to take a look. Let's
25 see.

1 If the Applicant can hear me, if they could please
2 introduce themselves for the record.

3 MR. SULLIVAN: Yes. Thank you, Mr. Chair and Board
4 Members. Marty Sullivan with Sullivan & Barros on behalf of the
5 Applicant.

6 CHAIRPERSON HILL: Thank you.

7 Mr. Sullivan, if you could go ahead and walk through
8 your client's application and point out to the Board how you
9 believe they're meeting the criteria for us to grant the relief.
10 I'm going to put 15 minutes on the clock so I know where we are,
11 and you can begin whenever you like.

12 MR. SULLIVAN: Thank you. If we could load the
13 PowerPoint presentation, please. And, again, I'll be doing the
14 presentation but Albert Hopper, the architect, is available if
15 the Board has any questions. Next slide, please.

16 Property is in the R1-B zone. It's improved with a
17 detached two-story single family dwelling and a two-story
18 accessory building garage. The project includes a matter-of-
19 right addition to the principal building and a new accessory
20 building and so to complete this project, the Applicant requires
21 a few areas of relief. First is having an accessory building in
22 a side yard of the principal building. So there's no side yard
23 requirement per se for an accessory building but if it is in the
24 side yard of the principal building, if those homes intersect on
25 that plane, then there's an eight foot setback requirement both

1 from the principal building and from the side property line. So
2 we're asking for relief for that.

3 And then we have an accessory building in the required
4 rear yard and also asking for relief from the required setback
5 under 711.7 which requires that if you have a building with
6 parking in it, the entrance to that parking needs to be 12 feet
7 from the center line of the alley. We have a 16 foot wide alley,
8 so we need four feet of relief. But you'll see going forward
9 that the large, the majority of the entrance to the garage is on
10 the wide part of the alley at the turn. So I'll explain that
11 when we get there. Also there's the garage I think that we asked
12 for too when we're asking for other relief. Next slide, please.

13 The Office of Planning is recommending approval. ANC
14 3E voted unanimously in support with letters of support from the
15 adjacent neighbor to the west and also a diagonal neighbor and
16 today we also believe we got the property to the south. I'll
17 show you on the map when we get to that. DDOT has no objection.
18 Next slide, please.

19 Next slide, please.

20 So on this photo or on the photo on the right you can
21 see the existing accessory building. It's adjacent to the house
22 which doesn't have much of a rear yard setback at 3801 Gramercy.
23 That's the neighbor that we got a letter from this morning.
24 They've been working with that neighbor all along and they never
25 intended to object but they just wanted to send in a letter saying

1 that they didn't object. I believe that's what the letter
2 reflects. Next slide, please.

3 That's the front of the house. The photo top right,
4 you're looking at the existing accessory building from the
5 east/west alley and then at that point it turns left. Next slide,
6 please.

7 I realize I should have done the map first. So this
8 is a depiction of where the required rear yard is in the colored
9 area there. It will be further back now because of the addition
10 to the principal building and it shows that the accessory building
11 is both technically in the side yard for the principal building
12 as well as in the required rear yard. Next slide, please.

13 That's a floor plan for the two-story proposed
14 accessory building. Next slide, please.

15 These are the general special exception criteria. It's
16 R1-B zone. It's a single family house, will remain so. Also
17 the granting of this will not tend to adversely affect the use
18 of the neighboring properties, as described in the next slide.
19 Next slide, please.

20 So the special exception criteria for the first two
21 areas of relief. For the accessory building in the side yard
22 and in the required rear yard is the light and air, privacy and
23 substantial visual intrusion. The proposal, any of the impacts
24 are really internal to the property. There's no setback
25 requirement from the rear line. There's the four foot setback

1 requirement from the alley line.

2 So it's just essentially a spacing requirement between
3 the principal building and the accessory building and although
4 the accessory building is in the side yard, it abuts an alley so
5 that's where the alley is in this case, on the side yard. There's
6 no roof decks proposed on the accessory building. No windows
7 face to the south, the 3801 Gramercy, so there's no privacy impact
8 and the accessory building will not be materially visible from
9 Harrison Street and there's already an existing garage here.
10 Also I'd note that the accessory building as proposed is within
11 the building area requirement and height requirement for an
12 accessory building. So the building itself complies with the
13 zoning limits. Next slide, please.

14 On 711.11 and I'm sorry I don't have, if you go to the
15 next slide, please. I thought I had a better description. The
16 alley, there's a north/south alley that comes from the front of
17 the property that you saw in one of the photos and then there's
18 an east/west alley. The garage door opening we're asking for the
19 four feet of relief, almost all of it is on the long end of the
20 alley, meaning it has 100 feet of alley from the opening of that.
21 So there's really no issue of getting into the garage for that
22 reason and then on the height requirement, again, we asked for
23 this relief. I don't think DOB actually enforces it. There's a
24 ten foot minimum height requirement for garage height which
25 nobody would ever comply with, but we include the relief when

1 we ask for any other relief in our BZA cases. So that's included
2 here as well. Next slide, please.

3 And that's it. Thank you.

4 CHAIRPERSON HILL: Okay. Great. Thank you, Mr.
5 Sullivan.

6 Before I turn to the Board, can I hear from the Office
7 of Planning?

8 (Pause.)

9 MR. BRADFORD: Good afternoon, Chairman Hill, Members
10 of the Board. For the record, my name is Philip Bradford,
11 Development Review Specialist with the Office of Planning.

12 The Office of Planning recommends approval of the
13 requested special exception relief and finds that it meets the
14 criteria in Subtitles C, D and X and we stand on the record of
15 the report, and I'm available for any questions.

16 CHAIRPERSON HILL: Okay. Thank you.

17 I'm reviewing the report here again. Does anybody have
18 any questions for the Office of Planning or the Applicant?

19 (Pause.)

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

22 MR. YOUNG: We do not.

23 CHAIRPERSON HILL: Okay. Mr. Sullivan, is there
24 anything you would like to add?

25 MR. SULLIVAN: No. Thank you, Mr. Chairman and Board

1 Members.

2 CHAIRPERSON HILL: Okay. All right. I'm going to go
3 ahead and close the hearing and the record. Mr. Young, if you
4 could please excuse everyone.

5 (Pause.)

6 CHAIRPERSON HILL: Okay. I thought this was relatively
7 straightforward again. I didn't have any issues with it. I
8 thought there's not a whole lot of possible concerns I think to
9 any privacy, due to the whole alley that is currently there. I
10 think that I would agree with the analysis the Office of Planning
11 has put forward and also I do appreciate the Applicant in terms
12 of the outreach that they have provided to the ANC and their
13 neighbors.

14 I think this is the one, again, where the ANC was asking
15 for a rain barrel and I didn't think that it was something that
16 was necessarily affecting the zoning issues, and so I would not
17 be in favor of putting a condition on it as a rain barrel because
18 I don't think there's a lot of permeable space that is being --
19 they're not asking for relief from that.

20 So however, again, as I mentioned in the one before,
21 if the Applicant has put that forward and has agreed to it with
22 the ANC, I'm sure in terms of fulfilling what they had said they
23 would do they'll put in a rain barrel. But I don't think it's
24 something that the Board should put forward as a condition.

25 I will be voting in favor. Mr. Smith, do you have

1 anything you'd like to add?

2 COMMISSIONER SMITH: I have nothing to add. I agree
3 with your assessment and will support.

4 CHAIRPERSON HILL: Thank you. Mr. Blake?

5 COMMISSIONER BLAKE: I'm in support.

6 CHAIRPERSON HILL: Thank you. Vice Chair John?

7 VICE CHAIRPERSON JOHN: I'm in support of the
8 application and I agree with your analysis. Thank you.

9 CHAIRPERSON HILL: Thank you. Chairman Hood?

10 ZONING COMMISSIONER HOOD: I would agree with
11 everything I heard, especially the ANC issue that they brought
12 up. I'm sure that the Applicant will follow through if they made
13 a promise to the ANC, so I will be voting in support.

14 Thank you.

15 CHAIRPERSON HILL: Thank you.

16 All right. I'm going to make a motion to approve
17 Application No. 21203 as captioned and read by the secretary, and
18 ask for a second. Ms. John?

19 VICE CHAIRPERSON JOHN: Second.

20 CHAIRPERSON HILL: Motion made and seconded. Madam
21 Secretary, if you could 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 CHAIRPERSON JOHN: Yes.

3 MS. MEHLERT: Mr. Smith?

4 COMMISSIONER SMITH: Yes.

5 MS. MEHLERT: Mr. Blake?

6 COMMISSIONER BLAKE: Yes.

7 MS. MEHLERT: Chairman Hood?

8 ZONING COMMISSIONER HOOD: Yes.

9 MS. MEHLERT: Staff would record the vote as five to
10 zero to zero to approve Application No. 21203 on the motion made
11 by Chairman Hill and seconded by Vice Chair John.

12 CHAIRPERSON HILL: Thank you. All right. Madam
13 Secretary, if you could call our last case, please.

14 MS. MEHLERT: Last case is Application No. 21206 of
15 Rebecca Latorraca. This is an application pursuant to Subtitle
16 X, Section 1002 for a use variance from Subtitle U, Section 401.1
17 to allow an accessory apartment in the cellar of an existing
18 attached principal dwelling. This is for the use of an existing
19 two-story with cellar row building as a principal dwelling of an
20 accessory apartment. It's located in the RA-2 zone at 2302
21 Ontario Road, NW, Square 2562, Lot 76.

22 CHAIRPERSON HILL: Very good. Thank you. One second,
23 please.

24 All right. If the Applicant can hear me, if they could
25 please introduce themselves for the record.

1 MS. ELKHITAM: Hello everyone. I'm Yusra Elkhitam.
2 I'm partnering with Curbio representing the owners and the
3 Applicant.

4 CHAIRPERSON HILL: Okay. Great.

5 Ms. Elkhitam, Elkhitam?

6 MS. ELKHITAM: Yes.

7 CHAIRPERSON HILL: Ms. Elkhitam, I think, I'm going to
8 go ahead and let you put forward your argument the way you're
9 asking for the relief. I think there has been some thought that
10 maybe you don't need this relief and so we're going to kind of
11 walk through that probably together, and I'm going to look to my
12 fellow Board Members to help with some of that as I pull up the
13 regulations that we're thinking about.

14 But go ahead and give us your presentation, Ms.
15 Elkhitam, and we'll see where we get. I've got 15 minutes on
16 the clock and you can begin whenever you like.

17 MS. ELKHITAM: Okay. Thank you to the Chairman and
18 Board Members.

19 So this property is located in the RA-2 zone and serves
20 as a principal dwelling with an accessory apartment. The
21 accessory apartment includes a kitchen existing when the property
22 was first purchased in 1996. We're requesting an approval of a
23 use variance under Subtitle X, Section 1002 to maintain the
24 existing kitchen and accessory apartment in compliance with D.C.
25 zoning regulations.

1 So just background on this property. The basement
2 kitchen predates the zoning laws and these accessory apartments
3 were commonly found in, you know, properties on Ontario Road,
4 Northwest at the time of construction. The ownership, so the
5 owners acquired the property in 1996, have since been occupying.
6 They are the sole occupants of the property currently and we
7 essentially just want to formalize this kitchen. We've gotten
8 community and agency support from ANC approval, ANC 1C07. We
9 reviewed the request in October and they ruled in favor of the
10 variance with three of a tiebreaking vote. We've gotten
11 neighborhood feedback where the neighbors have expressed support
12 for the variance emphasizing they need to resolve the vacancy-
13 related challenges and maintain neighborhood integrity.

14 I did submit a document yesterday, I don't know if it's
15 available, just kind of showing that there is one rear entrance
16 facing the rear of the property as well as the floor plan for
17 the accessory apartment occupying 34 percent of the gross floor
18 area and I think the allowable amount is 35 percent, so we meet
19 that qualification as well. We have gotten some feedback from
20 neighbors expressing vacancy issues as this property has been
21 sitting in lieu of trying to get approved for the zoning variance
22 request, and we are currently in compliance.

23 So in conclusion, we just want to benefit to the
24 community, stand in public good. It does, you know, kind of
25 align with the neighborhood character, and then we're requesting

1 variance for the accessory apartment in the basement.

2 CHAIRPERSON HILL: Okay. Thank you.

3 Before I turn to my Board, could I hear from the Office
4 of Planning, please?

5 MS. THOMAS: Yes. Good morning, Mr. Chair. Good
6 afternoon, members of the Board, Karen Thomas here.

7 We are in support of this application. We too were a
8 bit turned off by the fact that it is here, but so be it because
9 the Zoning Administrator determined that a use variance is
10 requested before they issued the permit and while we believe that
11 this is in error with zoning regulations, it is here and so we
12 are in support of the request.

13 In terms of it's extraordinary exceptional situation.
14 This has existed, this apartment has existed for quite some time.
15 It is in an apartment zone and we believe that it would be undue
16 hardship to the Applicant to, and a detriment, there is no
17 detriment to the public good.

18 So with that we will stay on the record of our report
19 and we would be happy to support whatever the Board decides.

20 CHAIRPERSON HILL: Okay. Thanks, Ms. Thomas.

21 I guess, why did, Ms. Thomas, do you know why the Zoning
22 Administrator didn't think this was a flat?

23 MS. THOMAS: Let me see what --

24 CHAIRPERSON HILL: And could this be, I think the way
25 we're going to, and I'm going to turn to my fellow Board Members

1 to help me with the regulations. Like, this could possibly be a
2 special exception under the accessory uses rather than a use
3 variance, if my fellow Board Members agree and if I have to go
4 to an emergency meeting with legal, I guess I can as well.

5 MS. THOMAS: I think to that question about whether it
6 was a flat, it is the fact that I believe it wasn't, and what
7 (indiscernible) Mr. Goldstein (phonetic) was saying was that it
8 was still connected by a stairway to the unit upstairs which is
9 typically not what a flat is. A flat is a separate unit entirely
10 and from the principal dwelling unit. So it is also a principal
11 dwelling unit, so it wasn't by itself. It was connected, it has
12 a stairway connected to the upper levels, so.

13 CHAIRPERSON HILL: Okay.

14 Before I turn to the Board, just one minute. Mr. Young,
15 is there anyone here wishing to speak?

16 MR. YOUNG: We do not.

17 CHAIRPERSON HILL: Okay. You guys, I'm just going to
18 do a quick emergency meeting, if that's okay.

19 VICE CHAIRPERSON JOHN: Could I ask a question?

20 CHAIRPERSON HILL: Yes, sure. Of course, Ms. John.

21 VICE CHAIRPERSON JOHN: Is there a front entrance to
22 the accessory dwelling, Ms. Thomas, or the Applicant?

23 MS. ELKHITAM: There is no front entrance. There's
24 solely a rear entrance and then a connecting stair from the main
25 level to the basement which is an accessory apartment.

1 VICE CHAIRPERSON JOHN: Okay. And, Ms. Thomas, where
2 is that requirement for removal of the stairs in the regulations?

3 MS. THOMAS: There's not, I think it's a
4 (indiscernible) Code issue.

5 VICE CHAIRPERSON JOHN: It's a Code issue?

6 MS. THOMAS: Yes. It's' a Code issue.

7 VICE CHAIRPERSON JOHN: Okay. All right. Thank you.
8 Thank you, Mr. Chairman. I don't have another question.

9 CHAIRPERSON HILL: Thanks, Vice Chair John. Anyone
10 else?

11 (Pause.)

12 CHAIRPERSON HILL: Okay. I'm going to do a fast, Ms.
13 Mehlert, can you just send me the reading again? I just sent
14 you a, for the emergency meeting. I just can't seem to find it.

15 (Pause.)

16 CHAIRPERSON HILL: Oh, I got it. I got it. I got it.
17 Okay.

18 As Chairperson of the Board of Zoning Adjustment for
19 the District of Columbia in accordance with Section 407 of the
20 District of Columbia Administrative Procedures Act, I move that
21 the Board of Zoning Adjustment hold a closed emergency meeting
22 on 12/11/24 for the purpose of seeking legal advice from Case
23 21206, to deliberate upon but not vote on Case 21206.

24 Is there a second? Ms. John?

25 VICE CHAIRPERSON JOHN: Second.

1 CHAIRPERSON HILL: Motion made and seconded. Madam
2 Secretary, take a roll call, please.

3 MS. MEHLERT: Please respond to the Chair's motion to
4 hold an emergency closed meeting.

5 Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MS. MEHLERT: Vice Chair John? Vice Chair John?

8 VICE CHAIRPERSON JOHN: Yes.

9 MS. MEHLERT: Mr. Smith?

10 COMMISSIONER SMITH: Yes.

11 MS. MEHLERT: Mr. Blake?

12 COMMISSIONER BLAKE: Yes.

13 MS. MEHLERT: Chairman Hood?

14 ZONING COMMISSIONER HOOD: Yes.

15 MS. MEHLERT: Staff would record the vote as five to
16 zero to zero to hold an emergency closed meeting with legal
17 counsel.

18 CHAIRPERSON HILL: Thank you. As it appears the motion
19 is passed, I hereby give notice to the Board of Zoning Adjustment
20 to recess this proceeding at 12/11/2024 at 12:28 p.m., to hold a
21 closed emergency meeting pursuant to District of Columbia
22 Administrative Procedures Act. A written copy of this notice
23 will be posted in the Jerrily R. Kress Memorial hearing room.

24 Thank you. See you all in a little bit. We're coming
25 right back.

1 (Whereupon, at 12:28 p.m., there was a recess for an
2 emergency closed meeting with legal counsel.)

3 CHAIRPERSON HILL: Madam Secretary, can you please call
4 us back in?

5 MS. MEHLERT: The Board is returning from it's closed
6 emergency meeting with legal counsel and is going back to
7 Application No. 21206.

8 CHAIRPERSON HILL: Thank you. Ms. Elkhitam, can you
9 hear me?

10 MS. ELKHITAM: Yes, I can.

11 CHAIRPERSON HILL: Okay. So we've had a discussion
12 with our legal counsel and I believe that you might not
13 necessarily need to be here, and so I'm going to make sure you
14 understand all this but I'm going to turn to Vice Chair John to
15 help me explain a little bit of it so that you can continue on
16 with your project.

17 Vice Chair John, may I turn this over to you?

18 VICE CHAIRPERSON JOHN: All right. Thank you, Mr.
19 Chairman.

20 So as the Chairman said, the Board reviewed the facts
21 during our discussion and looking at the law, the Board has
22 interpreted the regulations to require dismissal of the
23 application and you may or may not know that the Board does have
24 authority to interpret the regulations where there is some
25 ambiguity as there seems to be now.

1 So if this project was being done in the R zone
2 generally speaking, you would be able to have an accessory
3 apartment under the regulations, and so the way the regulations
4 are structured generally is if you're in the less restrictive
5 zone, which is the RA-2 zone in this case, you should be able to
6 do what you're allowed to do in the R zone.

7 So we do not agree with the interpretation that you're
8 not able to have an accessory dwelling, a legal accessory dwelling
9 in this structure. But what it means is that there are certain
10 restrictions for having an accessory dwelling instead of two
11 principal dwelling units. One of them is that the owner would
12 have to live in the principal residence and so even though the
13 Board is dismissing the application with respect to the two
14 principal dwelling units and interpreting the regulation to allow
15 an accessory structure, accessory apartment in the principal
16 dwelling unit, there are still some restrictions in the
17 regulations in terms of how you can use the accessory structure.

18 I hope that is clarifying and if the Board, any other
19 Board Member wants to add to what I've said, please feel free.
20 No, oh, I would just add that there might be Code requirements
21 that the Board is not, that are not within the jurisdiction of
22 the Board so that's something with respect to the flat or the
23 two units, dwellings, that would, you know, that the Department
24 of Buildings would have jurisdiction over. We don't address Code
25 issues, but what we are saying is that you can have a legal

1 accessory structure in this principal dwelling.

2 MS. ELKHITAM: Got it. So we're classifying that
3 accessory apartment as subordinate to the principal dwelling
4 and --

5 VICE CHAIR JOHN: Correct.

6 MS. ELKHITAM: -- because of that we're allowed to do
7 that considering it's in the current zone.

8 VICE CHAIRPERSON JOHN: Correct. And you meet the one
9 third square footage use for the accessory structure, accessory
10 dwelling. The accessory dwelling can only have a certain
11 percentage of lot occupancy and I believe, somebody correct me
12 if I'm incorrect, it's about 35 percent or less. But it's in
13 the regulations.

14 MS. ELKHITAM: Yes. I know it meets 34 percent. So
15 essentially we can consider continuing renovating the accessory
16 apartment but we may get Code requirements from the DOB after
17 this is coupled with the permit application?

18 VICE CHAIRPERSON JOHN: You have to meet Code
19 requirements for the accessory dwelling and you will get a permit
20 and you must meet those conditions.

21 MS. ELKHITAM: Got it.

22 VICE CHAIRPERSON JOHN: But in order to have, as I
23 believe the Office of Planning explained and we've seen it before
24 this Board, in order to have two principal dwelling units where
25 you don't, or the owner does not have to live in one, then there

1 are those Code requirements which I believe say that the second
2 unit has to be completely separated from the other unit. So you
3 can't have stairs. You have to close off the stairs.

4 MS. ELKHITAM: Yes.

5 VICE CHAIRPERSON JOHN: And I don't know about the, I
6 don't believe there's a requirement for a street entrance. So
7 if you wanted to have a flat or two principal dwelling units in
8 this structure, you'd have to, according to Department of
9 Buildings, close off those stairs.

10 MS. ELKHITAM: Okay.

11 VICE CHAIRPERSON JOHN: Okay? And people do that all
12 the time because then there is no restriction on the owner living
13 in one of the units.

14 MS. ELKHITAM: Got it.

15 VICE CHAIRPERSON JOHN: Okay? But as to the application
16 that's in front of the Board, the Board is dismissing it.

17 CHAIRPERSON HILL: Okay. So thank you very much, Vice
18 Chair John.

19 So, Ms. Elkhitam, I think you can move forward with
20 your project and Department of Buildings should now help you move
21 forward now that we've dismissed this need.

22 MS. ELKHITAM: Will there be documentation for the
23 dismissal?

24 VICE CHAIRPERSON JOHN: Yes. You'll get a summary
25 order. I don't know when it will be issued, but so I think you

1 | would just go back to the -- I don't know how this works
2 | mechanically. You can probably speak to the Office of Planning
3 | but there is an order today which will be issued as a summary
4 | order and we're doing them very quickly now, but as to the exact
5 | timing I don't know.

6 | CHAIRPERSON HILL: Yeah. You might want to reach back
7 | out, Ms. Elkhitam, to our office and they can provide some
8 | clarification. I did ask legal. Department of Buildings might
9 | not even ask. This is where I'm sorry, I don't know the mechanics
10 | either but DOB might not even need the order apparently.

11 | So I'll let my, the staff here, the secretary, Ms.
12 | Mehlert, if you can just help us help Ms. Elkhitam, that would
13 | be helpful. Okay?

14 | MS. MEHLERT: Yes.

15 | CHAIRPERSON HILL: Okay. Great.

16 | All right. So I'm going to make, even though Ms. John
17 | did all of the hard work, I'm going to make a motion to dismiss
18 | Application No. 21206 as clarified, and thank you very much from
19 | Vice Chair John, and ask her for a second.

20 | VICE CHAIRPERSON JOHN: Second.

21 | CHAIRPERSON HILL: Thank you.

22 | Madam Secretary, could you take a roll call, please.

23 | MS. MEHLERT: Please respond to the Chair's motion to
24 | dismiss the application.

25 | Chairman Hill?

1 CHAIRPERSON HILL: Yes.
2 MS. MEHLERT: Vice Chair John?
3 VICE CHAIRPERSON JOHN: Yes.
4 MS. MEHLERT: Mr. Smith?
5 COMMISSIONER SMITH: Yes.
6 MS. MEHLERT: Mr. Blake?
7 COMMISSIONER BLAKE: Yes.
8 MS. MEHLERT: Chairman Hood?
9 ZONING COMMISSIONER HOOD: Yes.
10 MS. MEHLERT: Staff would record the vote as five to
11 zero to zero to dismiss Application 21206 on the motion made by
12 Chairman Hill and seconded by Vice Chair John.
13 CHAIRPERSON HILL: Thank you, and for the record I had
14 closed the hearing and the record.
15 Ms. Elkhitam, you have a nice day.
16 MS. ELKHITAM: Thank you so much, Board.
17 VICE CHAIRPERSON JOHN: Thank you.
18 CHAIRPERSON HILL: Okay. Vice Chair John, thank you
19 so much. I am just so not feeling well today.
20 VICE CHAIRPERSON JOHN: Feel better, Mr. Chairman.
21 CHAIRPERSON HILL: Thank you.
22 Do we need anything else, Ms. Mehlert?
23 MS. MEHLERT: No, there is nothing from the staff.
24 CHAIRPERSON HILL: Okay. You all have a lovely day.
25 We've got one more left. Bye. Meaning we have one more hearing

1 left and that's the end of the year.

2 VICE CHAIRPERSON JOHN: Oh.

3 CHAIRPERSON HILL: Oh, Chairman Hood, we won't see you
4 again, right?

5 ZONING COMMISSIONER HOOD: I don't think I have
6 anything but if not you all have a great holiday.

7 CHAIRPERSON HILL: Thank you. You have a nice holiday.

8 VICE CHAIRPERSON JOHN: Have a great holiday, Mr.
9 Chairman.

10 ZONING COMMISSIONER HOOD: You too.

11 CHAIRPERSON HILL: Happy New Year.

12 VICE CHAIRPERSON JOHN: Bye.

13 CHAIRPERSON HILL: Bye, bye.

14 (Whereupon, at 12:55 p.m., the above-entitled hearing
15 was adjourned.)

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C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DCBZA

Date: 12-11-24

Place: Webex videoconference

was duly recorded and accurately transcribed under my direction;
further, that said transcript is a true and accurate record of
the proceedings.



SUZY GEARING