

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

MARCH 5, 2025

+ + + + +

The Public Hearing of the District of Columbia Board of Zoning Adjustment convened via teleconference, pursuant to notice at 9:30 a.m. EDT, Carl Blake, Vice Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CARL BLAKE, Vice Chairperson  
LORNA JOHN, Commissioner  
CHRISHAUN SMITH, Commissioner  
ANTHONY J. HOOD, Zoning Commission Chairperson  
ROBERT MILLER, Zoning Commission Vice Chairperson

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

KEARA MEHLERT, Secretary  
PAUL YOUNG, A/V operations.

The transcript constitutes the minutes from the Regular Public Hearing held on March 5, 2025.

HUNT REPORTING COMPANY  
Court Reporting and Litigation Support  
Serving Maryland, Washington, and Virginia  
410-766-HUNT (4868)  
1-800-950-DEPO (3376)

## T A B L E O F C O N T E N T S

Case No. 18878-F Application of Alba 12th Street, LLC.....	6
Case No. 20832-A Application of 501 K Street Property Owner, LLC.....	9
Appeal No. 20944 Advisory Neighborhood Commission 3D and Rohit Kumar....	12
Case No. 21211 Application of 28th Street, Holdings, LLC.....	24
Case No. 18431-A Application of The Field School.....	34
Case No. 21230 Application of Washington Area Bicyclist Association.....	100
Case No. 21234 Application of the D.C. Department of General Services.....	122
Case No. 21235 Application of 5058 Central Ave Trust.....	139
Case No. 18431-A Application of The Field School.....	179

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

(9:30 a.m.)

VICE CHAIRPERSON BLAKE: Good morning ladies and gentlemen. The Board of Zoning Adjustment's March 5th, 2025 public hearing will please come to order. My name is Carl Blake, Vice Chair of the District of Columbia Board of Zoning Adjustment. Joining me today are Board members Lorna John and Chrishaun Smith and Zoning Commissioners Rob Miller and Anthony Hood.

Today's meeting and hearing agendas are available on the Office of Zoning's website. Please be advised that the proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. A video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everybody who is listening on Webex or by telephone will be muted during the hearing. If you experience difficulty accessing Webex or with your telephone call-in then please call our OZ hotline number at 202-727-5471 to receive Webex login or call-in instructions.

Today we'll begin with our decision meeting session followed by our hearing session. Please be advised that we do not take any public testimony in our meeting session. Public testimony will be taken during the hearing session, however only parties are allowed to testify in appeals. In today's hearing session everyone who is listening on Webex or by telephone will be muted during the hearing and only persons who have signed up

HUNT REPORTING COMPANY  
Court Reporting and Litigation Support  
Serving Maryland, Washington, and Virginia  
410-766-HUNT (4868)  
1-800-950-DEPO (3376)

1 to participate or testify will be unmuted at the appropriate  
2 time.

3 Please state your name and home address before  
4 providing oral testimony or your presentation. Oral  
5 presentations should be limited to a summary of your most  
6 important points. When you're finished speaking please mute your  
7 audio so that your microphone is no longer picking up sound or  
8 background noise.

9 All persons planning to testify either in favor or in  
10 opposition should have signed up in advance. They'll be called  
11 by name to testify. Again, in the case of appeals only parties  
12 are allowed to testify. By signing up to testify all parties  
13 completed the oath or affirmation as required by Subtitle Y,  
14 Section 408.7. Requests to enter evidence at the time of an  
15 online virtual hearing such as written testimony or additional  
16 supporting documents other than live video, which may not be  
17 presented as part of the testimony, may be allowed pursuant to  
18 Subtitle Y, Section 103.13.

19 The order of procedure for special exceptions and  
20 variances is pursuant to Subtitle Y, Section 409. The order of  
21 procedure for appeal applications pursuant to Subtitle Y, Section  
22 507. Time constraints for hearing testimony shall be maintained  
23 pursuant to Subtitle Y, Sections 408.2 and 408.3.

24 At the conclusion of each case, an individual who is  
25 unable to testify because of technical issues may file a request

1 to leave the record open to file a written version of the planned  
2 testimony to the record within 24 hours following the conclusion  
3 of the hearing. If additional written testimony is accepted,  
4 then parties will be allowed a reasonable time to respond as  
5 determined by the Board. The Board will then make its decision  
6 at the next meeting session but no later than 48 hours after the  
7 meeting.

8 At the conclusion of the Board's decision meeting  
9 session or hearing session, the Office of Zoning in consultation  
10 with the Chair will determine whether a full or summary order may  
11 be issued. A full order is required when the decision it contains  
12 is adverse to a party, including an affected ANC. A full order  
13 may also be needed if the Board's decision differs from the Office  
14 of Planning's recommendation. Although the Board favors the use  
15 of summary orders whenever possible, an applicant may not request  
16 the Board to issue such an order.

17 Finally, the District of Columbia Procedure Act  
18 requires that public meetings on each case be held in the open  
19 before the public. However, pursuant to Sections 405(b) and 406  
20 of that Act the Board may, consistent with its rules and procedure  
21 and the Act, enter into a closed meeting on a case for purposes  
22 of seeking legal counsel on a case pursuant to D.C. Official Code  
23 Section 2-575(b)(4) and/or deliberate on a case pursuant to D.C.  
24 Official Code Section 2-575(b)(13) but only after providing  
25 necessary public notice and, in the case of an emergency closed

1 meeting, after taking a roll call vote.

2 Madam Secretary, do we have any preliminary matters?

3 (Pause.)

4 VICE CHAIRPERSON BLAKE: Ms. Mehlert, I can't hear you.

5 MS. MEHLERT: Can you hear me okay?

6 COMMISSIONER JOHN: Yes.

7 ZC CHAIRPERSON HOOD: We can now, yes.

8 MS. MEHLERT: Okay.

9 In regards to late filings, the Vice Chair has reviewed  
10 and granted waivers to allow late filings into the applicable  
11 case record pursuant to Subtitle Y, Section 206.7 and Section  
12 103.13. Any other late filings during the course of today's live  
13 hearing should be presented before the Board by the applicant,  
14 parties or witnesses after the case is called. Any other  
15 preliminary matters will be noted when that case is called.

16 VICE CHAIRPERSON BLAKE: Okay.

17 Madam Secretary, if there's nothing else, why don't we  
18 call our first meeting session, please.

19 MS. MEHLERT: Yes. Starting with the Board's meeting  
20 session, the first case is Application No. 18878-F of Alba 12th  
21 Street, LLC. This is a request pursuant to Subtitle Y, Section  
22 705.2 for a two year time extension of the validity of the order  
23 in Application No. 18878 which approved variances from the ZR58  
24 requirements for a floor area ratio, rear yard and parking. The  
25 project is for a new nine-story office building located in the

1 D-4-R zone at 1017 12th Street, Northwest, Square 316, Lot 36.

2 VICE CHAIRPERSON BLAKE: Thank you.

3 This application is actually seeking a two-year time  
4 extension for the validity of the order in Application No. 18878.  
5 Now the original order became effective in 2015 but was  
6 subsequently vacated and remanded to the Board. The order  
7 (indiscernible) with an effective date of February 18, 2021 and  
8 it's been extended three times.

9 On a positive note the Applicant indicates that the  
10 owners marketed the property for sale. A potential buyer was  
11 interested in purchasing the site and developing the project  
12 pursuant to the BZA order and the requested extension would be  
13 needed to facilitate that sale and property development. The  
14 most recent time extension was granted in April, 2023 and extended  
15 the validity order until February 21st, 2025. So if granted,  
16 this two-year time extension would extend the validity of the  
17 order until February 21st, 2027.

18 Pursuant to Subtitle Y, Section 705 the BZA can approve  
19 extensions for up to two years for a good cause with proper  
20 notification to all the parties and a determination that there's  
21 been no change in any of the material facts on which the Board  
22 based its original approval.

23 In this case the appropriate notifications have been  
24 made to the parties. I've reviewed the application and I'll  
25 credit the Office of Planning's report in the determination that

1 | there have been no substantial changes in any of the material  
2 | facts on which the case was originally approved. The Applicant  
3 | has also demonstrated good cause in its ability to obtain  
4 | sufficient financing due to economic and market conditions beyond  
5 | the Applicant's control and that's consistent with the provisions  
6 | of Subtitle Y, Section 705.

7 |           So the Office of Planning recommends approval and I  
8 | believe the Applicant has met the burden and I'm prepared to  
9 | support granting the two-year extension.

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

11 |           COMMISSIONER SMITH: I have nothing to add. I agree  
12 | with your assessment of this case and will vote in support as  
13 | well.

14 |           VICE CHAIRPERSON BLAKE: Ms. John?

15 |           COMMISSIONER JOHN: Thank you, Mr. Vice Chair.

16 |           I have nothing to add and am in support of the  
17 | application.

18 |           VICE CHAIRPERSON BLAKE: Chairman Hood?

19 |           ZC CHAIRPERSON HOOD: Mr. Chairman, I ditto all  
20 | comments. Thank you.

21 |           VICE CHAIRPERSON BLAKE: Okay.

22 |           Having deliberated, I will make a motion to grant a  
23 | two-year time extension with a new period of validity ending  
24 | February 21st, 2027 and ask for a second. Ms. John?

25 |           COMMISSIONER JOHN: Second.



1 VICE CHAIRPERSON BLAKE: The motion has been made and  
2 seconded. Madam Secretary, would you please conduct a roll call  
3 vote?

4 MS. MEHLERT: Please respond to the Vice Chair's motion  
5 to approve the time extension application.

6 Vice Chair Blake?

7 VICE CHAIRPERSON BLAKE: Yes.

8 MS. MEHLERT: Ms. John?

9 COMMISSIONER JOHN: Yes.

10 MS. MEHLERT: Mr. Smith?

11 COMMISSIONER SMITH: Yes.

12 MS. MEHLERT: Chairman Hood?

13 ZC CHAIRPERSON HOOD: Yes.

14 MS. MEHLERT: Staff would record the vote as four to  
15 zero to one to approve Application 18878-F on the motion made by  
16 Vice Chair Blake and seconded by Ms. John.

17 VICE CHAIRPERSON BLAKE: All right. Ms. Mehlert, would  
18 you call our next case, please.

19 MS. MEHLERT: The next in the Board's meeting session  
20 is Application No. 20832-A of 501 K Street Property Owner, LLC.  
21 This is a request pursuant to Subtitle Y, Section 705.2 for a  
22 two-year time extension of the validity of the order in  
23 Application No. 20832.

24 This is for a new 14-story detached building with 550  
25 residential units, 42,000 square feet ground floor commercial

1 space, below grade parking and penthouse. It's located in the  
2 D-5-R zone at 1001 6th Street, Northwest, Square 483, Lot 9.

3 VICE CHAIRPERSON BLAKE: Thank you.

4 The Applicant is seeking a two-year time extension of  
5 validity of the order in Application No. 20832. The order became  
6 effective on December 28th, 2022. So if it's granted, this two-  
7 year time extension will extend the validity of the order until  
8 December 28th, 2026.

9 The Applicant is requesting extension in order to  
10 finalize the design and securing financing and pursuant to  
11 Section Y, Section 705 the Board is authorized to approve the  
12 extension for up to two years for good cause, again, with the  
13 proper notification to all the parties and a determination that  
14 there has been no change in any material facts upon which the  
15 Board based its original approval.

16 Again, in this case the notifications have been made  
17 to all parties. ANC 6C has filed a report in the record in  
18 support of the request with no reservation. There's also a report  
19 in the record from the adjacent ANC 2G in support of the project  
20 as well. And, again, I will credit the Office of Planning's  
21 report and their determinations. There have been no substantial  
22 changes in any of the material facts upon which the Board based  
23 its original approval and the Applicant of course has  
24 demonstrated its inability to obtain sufficient financing due to  
25 market conditions beyond the Applicant's control which is

1 consistent with the provisions of Subtitle Y, Section 705.

2 So I believe the Applicant has met the burden and I  
3 plan to vote in support of the request.

4 Mr. Smith, do you have anything to add?

5 COMMISSIONER SMITH: Nothing to add. I'm in support.

6 VICE CHAIRPERSON BLAKE: Thank you. Ms. John?

7 COMMISSIONER JOHN: I have nothing to add. I'm in  
8 support as well.

9 VICE CHAIRPERSON BLAKE: Okay. Chairman Hood?

10 ZC CHAIRPERSON HOOD: Mr. Chairman, I'm in support as  
11 well. Thank you.

12 VICE CHAIRPERSON BLAKE: Okay.

13 Having deliberated, I'll make a motion to grant the  
14 two-year time extension with a new period of validity ending  
15 December 28th, 2026, and ask for a second. Ms. John?

16 COMMISSIONER JOHN: Second.

17 VICE CHAIRPERSON BLAKE: The motion has been made and  
18 seconded. Madam Secretary, would you please take a roll call  
19 vote?

20 MS. MEHLERT: Please respond to the Vice Chair's motion  
21 to approve the time extension application.

22 Vice Chair Blake?

23 VICE CHAIRPERSON BLAKE: Yes.

24 MS. MEHLERT: Ms. John?

25 COMMISSIONER JOHN: Yes.

1 MS. MEHLERT: Mr. Smith?

2 COMMISSIONER SMITH: Yes.

3 MS. MEHLERT: Chairman Hood?

4 ZC CHAIRPERSON HOOD: Yes.

5 MS. MEHLERT: Staff would record the vote as four to  
6 zero to one to approve Application No. 20832-A on the motion made  
7 by Vice Chair Blake and seconded by Ms. John.

8 VICE CHAIRPERSON BLAKE: Great. Thank you.

9 Madam Secretary, would you please call in our first  
10 hearing session case.

11 MS. MEHLERT: Moving to the Board's hearing session,  
12 next is Appeal No. 20944 of Advisory Neighborhood Commission 3D  
13 and Rohit Kumar. As amended, this is an appeal pursuant to  
14 Subtitle X, Section 1100 from decisions made by the Department  
15 of Buildings to issue building permits to allow a detached  
16 principal dwelling. It's located in the R-1B zone at 5122  
17 Cathedral Avenue, Northwest, Square 1439, Lot 60.

18 This hearing began on October 4th, 2023 and it's been  
19 continued several times while waiting the issuance of the revised  
20 building permits. Participating today are Vice Chair Blake, Ms.  
21 John, Mr. Smith, and Commissioner Miller, and as a preliminary  
22 matter I believe the Appellant has filed another motion to  
23 postpone.

24 VICE CHAIRPERSON BLAKE: Okay.

25 Would the Appellants please introduce themselves,

1 | whoever's here?

2 |           MS. THEMAK: Chair Blake, Tracy Themak representing ANC  
3 | 3D and Rohit Kumar. Commissioner Tricia Duncan and Mr. Kumar are  
4 | also in attendance with me.

5 |           VICE CHAIRPERSON BLAKE: Okay.

6 |           Do we have any representative from the Department of  
7 | Buildings?

8 |           MR. HARESIGN: Good morning. Chris Haresign, assistant  
9 | general counsel on behalf of the Department of Buildings (audio  
10 | interference.)

11 |           VICE CHAIRPERSON BLAKE: Mr. Haresign, I can't quite  
12 | hear you. You may be a little bit muffled there.

13 |           MR. HARESIGN: Good morning. Chris Haresign, assistant  
14 | general counsel, Department of Buildings. I believe Ms. Beeton,  
15 | Zoning Administrator Beeton, is in the lobby as well.

16 |           VICE CHAIRPERSON BLAKE: Okay.

17 |           Is the ZA going to speak on this? Is she here? I  
18 | don't see her. Okay. Is there anyone else that will be speaking  
19 | either from the Appellant or the Appellee?

20 |           (Pause.)

21 |           VICE CHAIRPERSON BLAKE: Okay.

22 |           We received two submissions in the record, a status  
23 | report from the Department of Buildings and a motion from the  
24 | Appellants to postpone. I want to start with the Department of  
25 | Buildings and, first, Mr. Haresign, if we could just hear from

1 | you in terms of the status of the issuance of the new permit?

2 |           MR. HARESIGN: The new permit is still pending DOEE  
3 | approval, Department of Energy and the Environment, for the  
4 | stormwater management plan. The Department of Buildings has not  
5 | been notified of an approval. I believe it is still pending with  
6 | them, but at this time the permit will not issue until the DOEE  
7 | approval is transmitted. I would note that this is not a zoning  
8 | issue.

9 |           VICE CHAIRPERSON BLAKE: Okay.

10 |           That is actually good news. Do you have a sense of how  
11 | long it might be before the pending permit might be issued, or  
12 | when you might get something from the DOEE?

13 |           MR. HARESIGN: If the DOEE has comments and has  
14 | requested additional information, that would depend on the  
15 | Applicant. Again, you know, we were here basically in the same  
16 | posture in December. DOB's completed its reviews and its  
17 | disciplines including zoning, and we're waiting the stormwater  
18 | management review.

19 |           VICE CHAIRPERSON BLAKE: Okay.

20 |           Well, I actually think we're a little bit further along  
21 | than we were in December in that the Applicant has submitted the  
22 | materials, I believe. Is that confirmed, Ms. Themak?

23 |           MS. THEMAK: I feel at this point there's some concern,  
24 | especially because Mr. Kumar, one of the Appellants, is the rear  
25 | neighbor. I think the stormwater management issue is a huge one

1 | so the fact that that's still in play is still a concern and I'll  
2 | let both Mr. Kumar and the Commissioner speak to that.

3 |           I do think we're making progress. I think more time  
4 | will allow for that but with the sloping grade and the potential  
5 | impacts, especially to Mr. Kumar's property, I think we want to  
6 | know that the issued permit solves all the problems and one of  
7 | the major ones we need to know is that DOEE signs off as this is  
8 | an appropriate stormwater management plan. I defer to  
9 | Commissioner Duncan and Mr. Kumar to see if there's anything else  
10 | they would like to add.

11 |           VICE CHAIRPERSON BLAKE: All right, Commissioner  
12 | Duncan.

13 |           ANC COMMISSIONER DUNCAN: Thank you.

14 |           We actually are in the exact same position as we were  
15 | in December. DOB had signed off on their part of the plans and  
16 | we were waiting for DOEE then too. So from our standpoint nothing  
17 | has changed since December and we respectfully ask the Board to,  
18 | once again, rule that we can keep this on the docket until a  
19 | building permit is issued.

20 |           Thank you.

21 |           VICE CHAIRPERSON BLAKE: Mr. Kumar, do you have any  
22 | comments you wanted to make?

23 |           MR. KUMAR: No. I just second that. I am the downhill  
24 | property owner, so the stormwater management issue is directly  
25 | relevant to me and as Commissioner Duncan has said and Ms. Themak

1 has said we're just in the same place we were. I'm really hopeful  
2 and I know we've said this now, like, four or five times, but  
3 I'm really hopeful that we get another, you know, kick the can  
4 down the road for another two or three months, whatever it is,  
5 that between now and then we will reach a resolution on the issues  
6 and we'll be in a position to jointly request a dismissal. We're  
7 just, we're not there yet but we are, as Vice Chair Blake as you  
8 noted, we are further along than it feels like we were a couple  
9 of months ago, but we're just not all the way there but I really  
10 feel like we can see the finish line.

11 VICE CHAIRPERSON BLAKE: Okay. I think that's great.

12 So, Ms. Themak, let's go back to your request. The  
13 motion on the floor is for a 30 to 60 day postponement. What,  
14 realistically based on what we've heard just now, we're going to  
15 have to have enough time for the DOEE to come back if there's  
16 some comments from there, for the Department of Buildings to  
17 actually issue a permit and then for the review. What is a  
18 realistic time frame? Is 30 days, it sounds like 60 days is  
19 probably much more reasonable.

20 MS. THEMAK: I would agree.

21 VICE CHAIRPERSON BLAKE: You think so? Okay. How do  
22 you (indiscernible).

23 MS. THEMAK: I would agree. I would rather not put you  
24 through another meeting to just do this and have everybody attend,  
25 and I think given that the last one gave us roughly three months



1 and we didn't get it in that time frame, 60 days is even still  
2 optimistic but I'd like to give it a chance and see if we can  
3 urge DOEE to get us this final piece so that we can get an issued  
4 permit and get ANC and Mr. Kumar's review of it. So I would lean  
5 towards 60 days.

6 VICE CHAIRPERSON BLAKE: Okay.

7 Mr. Haresign, what's your thought on that? Is 60 days  
8 enough or do you think that's unrealistic?

9 MR. HARESIGN: And, Chair, but thank you very much.  
10 The, it's impossible to tell. You know, again, we were here last  
11 time in December with, the stormwater management plan required  
12 was not filed until the middle of last month. So it's entirely  
13 dependent on the Applicant. Again, the Department though, I'm  
14 not going to affirmatively object to a continuance. I do want  
15 to point out, again, we do have a pending motion to dismiss and  
16 the zoning issues have been addressed.

17 In this permit review process if there are zoning  
18 issues that the Appellants wish to raise with the proposed plan,  
19 I would like to hear them. I've requested that from Ms. Themak  
20 on a couple of occasions. This is not the Board of stormwater  
21 management adjustment.

22 VICE CHAIRPERSON BLAKE: Okay. I understand what  
23 you're saying, Mr. Haresign, I do. But the question was do you  
24 think that 60 days is enough time and you're saying maybe.

25 MR. HARESIGN: I would not hazard a guess. We would

1 have to ask the Applicant.

2 VICE CHAIRPERSON BLAKE: Okay.

3 Ms. Duncan, I think you had a comment about the timing  
4 for the ANC?

5 MS. DUNCAN: Sixty days, I would like to hear from the  
6 Applicant because he may have some ideas on --

7 VICE CHAIRPERSON BLAKE: I'm going to put that. Thank  
8 you. Mr. Agarwal, I will turn it over to you. Please give me  
9 your thoughts on this.

10 MR. AGARWAL: Well, the update is, I just want to  
11 correct the record here. We had submitted our first round of  
12 stormwater management plans back in early December. So it's  
13 incorrect to say that we only submitted last month. We submitted  
14 our second round last month and we've gotten some comments from  
15 stormwater management.

16 We then re-submitted our second round. We got back  
17 some comments last week. We are on, I think, just two or three  
18 remaining comments right now. Our engineering firm is in the  
19 process of responding to those two or three comments which are  
20 relatively minor and the rest of them have been accepted. So  
21 the comments now are, you know, just administrative corrections  
22 to the soil type and things like that.

23 So I assume we're going to be making a re-submission  
24 Friday end of day for the DOEE to review some time next week.  
25 DOEE's pretty much been turning around their reviews between five

1 to seven business days from the time we've been submitting it,  
2 at least that's what's happened in the last two instances. So I  
3 would like to assume that maybe two, you know, two to three weeks  
4 from now DOEE will probably transmit the approval to DOB. At  
5 least that is the update that I would like to share based on  
6 previous instances.

7           However, if I may also add and, you know, to second Mr.  
8 Haresign, this is, you know, the BZA case was to deal with  
9 specific zoning issues that have been dealt with. I've been here  
10 penalized for two years now and, you know, my property is sitting  
11 blighted. I'm not able to get back to work. I'm running up,  
12 you know, huge costs. I have a \$75,000 property tax bill on the  
13 property and I need to get back to work there.

14           And so, you know, I understand that the Appellants want  
15 to obviously get this permit in their hands and see it, but the  
16 point is that everyone has seen the new plans, the proposed plans.  
17 DOB and Zoning have confirmed that they have approved the plans  
18 that everyone is seeing. In the last couple of months I haven't  
19 heard a single zoning objection from anyone. So if we are no  
20 longer here for the purpose of zoning, then I believe we should  
21 no longer have to come back to this Board because the zoning  
22 issues have been --

23           VICE CHAIRPERSON BLAKE:     Okay, Mr. Argawal.     I  
24 understand. Thank you very much for the update.

25           Ms. Themak, Mr. Argawal indicated that he shared with

1 | you the plans as they currently exist. Has that taken place?

2 |           MS. THEMAK: We have the most recent set of plans, that  
3 | is correct. We are waiting to see, I don't believe, and  
4 | Commissioner and Mr. Kumar you can correct me if I'm wrong, we  
5 | haven't seen the stormwater management changes. We need to see  
6 | those and I guess I would reiterate we're waiting for final issued  
7 | approved building permit plans to know that all of the zoning  
8 | matters have been addressed. We really can't go on preliminary  
9 | plans. We need to know what is authorized and what is planned  
10 | to be built.

11 |           VICE CHAIRPERSON BLAKE: Okay.

12 |           MS. THEMAK: So the issue of zoning still remains.

13 |           VICE CHAIRPERSON BLAKE: It sounds like the Appellants  
14 | are at the ready and as soon as that information becomes available  
15 | then it will be positioned at. Given that, I will, I'm going to  
16 | turn to my Board now. We've heard a great deal of comments.

17 |           Board members if you'd like, I'd love to get your sense  
18 | on that. Obviously the issue is 30 or 60 days. I think 60 days  
19 | is the direction that seems to make the most sense. It'll take  
20 | time for them to get through this, but I'd love to get your sense  
21 | on this.

22 |           Mr. Smith?

23 |           COMMISSIONER SMITH: I agree. Of the two I think 60  
24 | days makes the most sense. It does take time for this to get  
25 | through DOEE, get a final permit through DOB. So I think even

1 60 days is aggressive. I would have said 90 to be completely  
2 honest. That would be my preference would be we come back to  
3 this in 90 days before we go on our recess. So I would put out  
4 90, not 30. I would say 90.

5 VICE CHAIRPERSON BLAKE: Okay.

6 Ms. John?

7 COMMISSIONER JOHN: So I'm in two minds. Part of me  
8 wants to think that we, the zoning issues are resolved so, you  
9 know, we can probably dismiss the case. But, on the other hand,  
10 since we are at this point we've granted a few continuances and  
11 I don't think an additional continuance of, I would say 90 days,  
12 should be too prejudicial to the property owner. So for that  
13 reason I would support 90 days and I hope that's the last  
14 continuance.

15 VICE CHAIRPERSON BLAKE: Vice Chair Miller?

16 ZC VICE CHAIRPERSON MILLER: Thank you, Mr. Chairman,  
17 and I agree with all the comments of (audio interference.) I'm  
18 not sure I'm getting (audio interference) but are you hearing an  
19 echo?

20 VICE CHAIRPERSON BLAKE: Yes.

21 ZC VICE CHAIRPERSON MILLER: Okay.

22 COMMISSIONER SMITH: But you're breaking up, you're  
23 breaking up slightly. It's not an echo.

24 ZC VICE CHAIRPERSON MILLER: Okay.

25 I agree with my fellow Board members and support the

1 | continuance of the hearing. I mean, we've delayed the, we've  
2 | continued it several times because there isn't a final approved  
3 | building permit and we wanted to keep this case alive so that  
4 | hopefully the issues would be resolved and the Appellant can just  
5 | withdraw the appeal. That's what they wanted all along.

6 |           So hopefully this will get resolved. But there isn't  
7 | a final issued building permit for us to enforce, so for us to  
8 | dismiss it would be counter-productive to what we've been trying  
9 | to accomplish throughout this process. We have not penalized the  
10 | building permit applicant. The building permit applicant has not  
11 | received a final approved building permit and we want to consider  
12 | that and the Appellant wants to look at that and so I support  
13 | the continuance and hopefully this case will go away within the  
14 | time period we're talking about.

15 |           VICE CHAIRPERSON BLAKE: Vice Chair Miller, what was  
16 | the time period that you felt most comfortable?

17 |           ZC VICE CHAIRPERSON MILLER: I support whatever my  
18 | fellow Board members support, 60 days, 90 days. It sounds like  
19 | it may be able to be accomplished within the 60 days. I'll defer  
20 | to you, Mr. Chairman.

21 |           VICE CHAIRPERSON BLAKE: Okay.

22 |           Then I think we have a consensus that we will postpone  
23 | and it sounds like we're leaning towards 90 days in which case  
24 | this will hopefully resolve itself.

25 |           So, Madam Secretary, I'd ask that you please look at

1 the Board's calendar and give us a date 90 days hence.

2 MS. MEHLERT: So that would put you sometime in June.  
3 I would recommend either right before or right after the July 4th  
4 recess, so July 2nd or July 16th.

5 VICE CHAIRPERSON BLAKE: Okay. Thank you. You said  
6 July what? 16th?

7 MS. MEHLERT: July 2nd or July 16th.

8 VICE CHAIRPERSON BLAKE: Okay. Let's put it on for  
9 July 2nd.

10 MS. MEHLERT: Okay.

11 VICE CHAIRPERSON BLAKE: Okay. Okay. Thank you.

12 So the motion to postpone is granted by a consensus and  
13 the appeal is scheduled for June 2nd.

14 MS. MEHLERT: July.

15 VICE CHAIRPERSON BLAKE: July 2nd. Thank you.

16 MS. THEMAK: Thank you.

17 VICE CHAIRPERSON BLAKE: Thank you. Thank you  
18 everybody. We will see you hopefully not at that time.

19 Vice Chair Miller, thank you very much for joining us.  
20 Have a great day.

21 MS. DUNCAN: Thank you all.

22 ZC VICE CHAIRPERSON MILLER: You have a great day too.  
23 Thank you.

24 VICE CHAIRPERSON BLAKE: Okay.

25 Ms., let's see. First of all, does anyone want to take

1 a quick coffee break or are we good to go? The answer is good  
2 to go. Okay. So we'll move to our next case in the hearing  
3 session, Ms. Mehlert. Thank you.

4 MS. MEHLERT: Next is Application No. 21211 of 28th  
5 Street, Holdings, LLC. As amended, this is a self-certified  
6 application pursuant to Subtitle X, Section 901.2 for special  
7 exception under Subtitle U, Section 421 to allow a new residential  
8 development. This project is a new third-story and three-story  
9 side and rear addition to an existing two-story detached building  
10 for use as a 19-unit apartment house.

11 Located in the RA-1 zone at 2826 28th Street,  
12 Southeast, Square 5729W, Lot 5. This was postponed from the  
13 January 22nd hearing at the Applicant's request and I'll also  
14 note there is a revised self-certification form in the record in  
15 Exhibit 32A.

16 VICE CHAIRPERSON BLAKE: Okay.

17 If the Applicants are here, would you please introduce  
18 yourself, Mr. Williams. I see you there.

19 MR. WILLIAMS: Good morning. My name's Zach Williams.  
20 I'm a land use attorney with Venable. I am representing the  
21 Applicant in this case. The Applicant is here as well, Mr. Matt  
22 Medvene and the architect, Ryan Petyak, is also online.

23 VICE CHAIRPERSON BLAKE: Okay.

24 Mr. Petyak and Mr., where is the architect? Mr.  
25 Medvene, would you please introduce yourselves for the record.



1 MR. MEDVENE: Good morning. Yes, my name is Matt  
2 Medvene. I am the Applicant.

3 MR. PETYAK: My name is Ryan Petyak. I'm the architect.

4 VICE CHAIRPERSON BLAKE: Okay.

5 Mr. Williams, we're going to proceed with your  
6 statements and if there's any, is anyone from the ANC here? I  
7 don't think so. And we have Ms. Myers. Okay.

8 I'm going to hear from the Applicant, then we're going  
9 to hear from the Office of Planning. I see Ms. Myers is here,  
10 and then we'll take any public testimony which I don't think  
11 there is any. So the members of the Board should feel free to  
12 ask questions at any time throughout and the Applicant  
13 (indiscernible) to ask questions of the ANC after they make their  
14 final remarks.

15 So, Mr. Williams, if you would please go ahead and tell  
16 us about your product and how your client's meeting the criteria  
17 for approval. I'll put 15 minutes on the clock and you can begin  
18 whenever you like.

19 MR. WILLIAMS: Great. Thank you. We do have a brief  
20 presentation, if Mr. Young could pull that up. Great. Thank  
21 you.

22 This is an application for an expansion of an apartment  
23 house at 2826 28th Street, Southeast. As I mentioned, I'm  
24 representing the Applicant. I'm a land use attorney with Venable,  
25 LLP. Next slide, please.

1           This is the zoning map for this case. As you can see  
2 here, this is a large corner lot. The existing structure is a  
3 fully detached existing apartment house with five units. This  
4 is an application to add 14 units to this structure for a total  
5 of 19 units in the RA-1 zone. Next slide, please.

6           Here you can see the existing survey, again showing the  
7 existing structure, a fully detached five unit apartment house.  
8 It's a two-story structure currently on the property. Again,  
9 this is a large corner lot as you can see here at the corner of  
10 Gainesville Street and 28th Street, Southeast. Next slide,  
11 please.

12           Here's some photographs of the current conditions of  
13 the house. On the left you're seeing the front of the house, of  
14 the apartment house I should say and you can see the rear of the  
15 apartment house on the right hand side of the screen. Next slide,  
16 please.

17           Increase the existing five unit apartment house to a  
18 total of 19 units, so we'll be adding 14 units including two  
19 inclusionary zoning units which are shown on the plans. This is,  
20 because this is an existing apartment house in the RA-1 zone, any  
21 addition of units requires special exception relief. Next slide,  
22 please.

23           So the relief we're requesting is simply to add the 14  
24 units, the existing apartment house. All of the work is by-right  
25 and permitted in the zone without any further zoning relief

1 necessary. Under Subtitle U, Section 421, any additional units  
2 in an existing apartment house in the RA-1 zone requires special  
3 exception relief, as I mentioned. Next slide, please.

4 I'm going to walk through the general special exception  
5 standards here and how this project is meeting those  
6 requirements. First, as we know the project must be in harmony  
7 with the general purpose and intent of the zoning regulations.  
8 Here, the RA-1 zone allows for low to moderate density development  
9 including detached dwellings, row houses and low rise apartments.  
10 This apartment house is existing. This block in fact contains  
11 almost all apartment houses so it's very typical and the  
12 neighborhood is zoned to see a project such as this.

13 As I mentioned, the project will meet all of the  
14 development standards in the RA-1 zone. We're not seeking any  
15 additional relief for this project. We'll also be adding solar  
16 panels on the roof of the new addition and those will be used to  
17 fully power the project once completed. Next slide, please.

18 The next standard for special exceptions is that the  
19 project should not adversely affect neighboring property and in  
20 instances such as this we typically think of light, air, privacy,  
21 noise, things like that that could impact neighbors. Here, the  
22 project will not impact those properties because for a number of  
23 reasons.

24 First, it will remain a fully detached structure as it  
25 is today. It will meet all of the yard requirements that are

1 required in the RA-1 zone. Because it's a corner lot we have  
2 two of the sides, side property lines are along roads rather than  
3 neighboring properties. As I mentioned the neighboring uses are  
4 also apartment and multi-family residential buildings and at the  
5 request of the community we did add another parking space. There  
6 was some concern about parking here. We're required to have  
7 three spaces, we initially had four, we now have five. So that  
8 was a change that we did make because there was some concern  
9 about that from neighbors. Next slide, please.

10           Here's some shadow studies again to show that there's  
11 very limited impact of this project. We are adding a third story.  
12 Initially we had a fourth story but we took that off to try to  
13 keep the massing and harmony with the neighborhood. As you can  
14 see here, really by virtue of the fact that this is a corner lot  
15 and a detached structure, the new shadows that will be cast have  
16 almost no impact on any neighboring properties, again satisfying  
17 that second major standard for a special exception. Next slide,  
18 please.

19           In terms of our ANC and community outreach, we started  
20 outreach right away with neighbors. We went around and knocked  
21 on doors of all of the neighboring properties on the block. We  
22 also met with the ANC 8B twice. We presented in December and  
23 then again in February. We are very happy to receive the support  
24 from the ANC at its February meeting. That took several months  
25 of working with the ANC and addressing concerns, making sure that

1 folks were comfortable. We also had a turnover of commissioners  
2 so we had to work through that and make sure that the community  
3 felt good about this project and we got to the point where we  
4 had unanimous support. So we're very proud of that and that  
5 letter should be in the record. Next slide. I think that might  
6 be my last one. Yeah, I think it is.

7 I'll also mention that, as you'll hear, the Office of  
8 Planning is in support and DDOT does not object to the  
9 application. We're here for any questions.

10 Thank you.

11 VICE CHAIRPERSON BLAKE: Thank you, Mr. Williams.

12 Do we have any questions from the Board for the  
13 Applicant?

14 (No response.)

15 VICE CHAIRPERSON BLAKE: Okay then, hearing none we'll  
16 turn it over to the Office of Planning.

17 Ms. Myers, please introduce yourself for the record.

18 MS. MYERS: For the record, Crystal Myers with the  
19 Office of Planning.

20 The Office of Planning is in support of this case and  
21 we can stand on the record of the staff report. Of course here  
22 for questions.

23 Thank you.

24 VICE CHAIRPERSON BLAKE: Okay. Thank you, Ms. Myers.

25 Does anyone from the Board have any questions for Ms.

1 Myers or the Applicant at this point?

2 (No response.)

3 VICE CHAIRPERSON BLAKE: Okay. Hearing no questions,  
4 do you have any last final remarks, Mr. Williams? Oh, I'm sorry.  
5 Is there anybody from the public that wishes to speak?

6 MR. YOUNG: No, we do not.

7 VICE CHAIRPERSON BLAKE: Okay. Just wanted to confirm  
8 that. So now having heard that --

9 COMMISSIONER JOHN: Mr. Vice Chair?

10 VICE CHAIRPERSON BLAKE: Yes, Ms. John.

11 COMMISSIONER JOHN: I have a quick question for Mr.  
12 Williams to clarify the owner of the property. Is it 28th  
13 Holdings or 28th Street SE, LLC?

14 MR. WILLIAMS: Yes, it's 28th Street Holdings, LLC.  
15 There was a purchase during the course of this application and  
16 so that's the current new owner.

17 COMMISSIONER JOHN: Okay.

18 MR. WILLIAMS: 28th Street Holdings, LLC.

19 COMMISSIONER JOHN: All right. Thank you.

20 VICE CHAIRPERSON BLAKE: Okay, Ms. John. Thank you  
21 very much for bringing that clarification. Okay.

22 Mr. Williams, do you have any other comments for  
23 closing?

24 MR. WILLIAMS: I do not. We appreciate the Office of  
25 Planning's support. Thank you.

1 VICE CHAIRPERSON BLAKE: Okay. Thank you very much.

2 I'll dismiss the witnesses at this point and I guess  
3 we can go into our deliberation session. I'll kick it off from  
4 this perspective.

5 The Applicant is seeking a special exception for the  
6 Subtitle U, Section 421. There's no other relief requested. The  
7 building itself conforms with the developmental standards of the  
8 zone, the RA-1 zone. Therefore, it's presumed that it should not  
9 adversely affect the use of the neighboring properties with  
10 regard to light, air or privacy. The use is also permitted in  
11 the zone by special exception and its design is in line with the  
12 apartments, buildings in the vicinity and it is compatible with  
13 the neighborhood.

14 So I would credit the analysis provided by the  
15 Applicant was very thorough and also credit the Office of  
16 Planning's analysis of how the Applicant has complied with the  
17 criteria and give great weight to its recommendation for  
18 approval.

19 I'd also want to commend the Applicant for working  
20 cognitively with the community and the ANC, and the Office of  
21 Planning to create a project that aligns with the zoning  
22 regulations and addresses the community concerns, for example,  
23 the parking. I'd also like to thank the ANC for working with  
24 the Applicant and community to reach an amicable resolution and  
25 I'll give great weight to the ANC's written report which is in

1 support of the application and states no issues or concerns.

2 I'll also note that DDOT is in support of the  
3 application but proposes a condition that I'd not be inclined to  
4 include that position in the Board's order. The application  
5 meets the needs the zoning requires with regards to bicycle and  
6 actually exceeds (indiscernible) with regard to vehicle parking  
7 and there's really no issues or concerns identified by DDOT that  
8 needs to be mitigated.

9 So that said, I'll be voting in support of the  
10 application and ask Mr. Smith if he has any additional questions  
11 or comments.

12 COMMISSIONER SMITH: No, Chairman Blake. I think you  
13 have thoroughly summarized the metrics of this case and the  
14 reasons why we should grant approval for this. I agree with  
15 everything that you stated and everything that was in OP's staff  
16 report that would support us approving this particular special  
17 exception, and I will vote in support as well.

18 VICE CHAIRPERSON BLAKE: Thank you. Ms. John?

19 COMMISSIONER JOHN: Thank you, Mr. Vice Chair.

20 I'm also in support of the application.

21 VICE CHAIRPERSON BLAKE: Thank you. Chairman Hood?

22 ZC CHAIRPERSON HOOD: I would agree with your  
23 compliance with Subtitle U. I think it warrants our approval as  
24 well as I want to commend this Applicant for the doubling  
25 community engagement. I think that's probably where we are with



1 | this case at this point.

2 |           Thank you, Mr. Chairman.

3 |           VICE CHAIRPERSON BLAKE:   Okay.   Thank you.

4 |           Having deliberated, I'll make a motion to approve the  
5 | application as read and captioned by the Secretary, and ask for  
6 | a second.   Ms. John?

7 |           COMMISSIONER JOHN:   Second.

8 |           VICE CHAIRPERSON BLAKE:   Okay.   The motion has been  
9 | made and seconded.   Madam Secretary, would you please take a roll  
10 | call vote.

11 |           MS. MEHLERT:   Please respond to the Vice Chair's motion  
12 | to approve the application.

13 |           Vice Chair Blake?

14 |           VICE CHAIRPERSON BLAKE:   Yes.

15 |           MS. MEHLERT:   Ms. John?

16 |           COMMISSIONER JOHN:   Yes.

17 |           MS. MEHLERT:   Mr. Smith?

18 |           COMMISSIONER SMITH:   Yes.

19 |           MS. MEHLERT:   And Chairman Hood?

20 |           ZC CHAIRPERSON HOOD:   Yes.

21 |           MS. MEHLERT:   Staff would record the vote as four to  
22 | zero to one to approve Application 21211 on the motion made by  
23 | Vice Chair Blake and seconded by Ms. John.

24 |           VICE CHAIRPERSON BLAKE:   All right.

25 |           Let's do this.   I know it would get, we seem to be

1 going at a pretty good pace here which I like. The next case  
2 may take a minute though so for that reason I'd like to take a  
3 ten minute break, fifteen minute break and then we'll get back  
4 here at 10:35, let's say, and we'll dig in. Okay? Thank you.

5 (Whereupon, there was a brief recess.)

6 MS. MEHLERT: The Board is back from a quick break and  
7 is returning to its hearing session.

8 The next case is Application No. 18431-A of The Field  
9 School. This is a self-certified request pursuant to Subtitle  
10 Y, Section 704 for a modification of a hearing to modify the  
11 order in Application No. 18431 with modifications of conditions,  
12 and approval of special exceptions under Subtitle U, Section  
13 203.1(m) to allow an addition to a building in an existing private  
14 school, Subtitle X, Section 104 to allow a modification of a  
15 private school plan and an application pursuant to Subtitle X,  
16 Section 901.2 for a special exception under Subtitle C, Section  
17 1402.1 from the maximum height requirements for retaining walls  
18 of Subtitle C, Section 1401.2.

19 This project involves changes to an existing private  
20 school use including modifications of conditions and approval to  
21 allow increasing enrollment from 400 students to 425, and  
22 increase in full time equivalent faculty and staff from 110 to  
23 120. Also the modification of a private school plan to allow a  
24 two-story addition, the reconfiguration of existing parking areas  
25 to create new practice field, the reconfiguration of an existing

1 surface parking lot and bus parking zone, and lastly there would  
2 be three new retaining walls. This is located in the R-1A and  
3 R-1A/WH zone at 2301 Foxhall Road, Northwest, Square 1341, Lots  
4 856, 861, 878 and 879.

5 VICE CHAIRPERSON BLAKE: Okay.

6 Could we have everyone introduce themselves. We'll  
7 start with the Applicant's agent and the Applicant.

8 MS. SHIKER: Yes. Good morning Vice Chair Blake and  
9 members of the Board. My name is Christine Shiker. I'm with  
10 the law firm of Holland & Knight representing the Applicant. We  
11 have a variety of people on the call but I think we're going to  
12 just start with introductions of a few of them and then we'll  
13 bring others up as needed if there are questions.

14 Lori, if you'd like to introduce yourself.

15 MS. STRAUSS: My name is Lori Strauss and I'm the head  
16 of school at Field.

17 MS. SHIKER: Nancy?

18 MS. GRIBELUK: Good morning. I am Nancy Gribeluk and  
19 I am the architect with Perkins & Will designing the school for  
20 The Field School.

21 MS. SHIKER: And Jami?

22 MS. MILANOVICH: Good morning. I'm Jami Milanovich  
23 with Wells & Associates, the transportation consultant for the  
24 project.

25 VICE CHAIRPERSON BLAKE: Okay. I see you have several

1 other people, I'll assume that they will be joining us as need  
2 be to answer questions. At that time we'll have them introduce  
3 themselves, et cetera. Okay? All right.

4 I want to just, Madam Secretary, are there any  
5 preliminary matters?

6 MS. MEHLERT: No. No preliminary matters.

7 VICE CHAIRPERSON BLAKE: Okay. Then we'll proceed.

8 What I'd like to do is just talk a little bit about the  
9 format. Really this is for the benefit of the public. I know  
10 the professionals here would probably be very comfortable with  
11 it. I want to talk a little bit about the format of the hearing  
12 and the burden of proof.

13 The hearing is going to be conducted consistent with  
14 the hearing session in Y-409, Section 409, for a special exception  
15 request. This is a unique hearing in that it contains a number  
16 of special exceptions that result in modifications to the  
17 conditions and then there's some conditions that are going to be  
18 modified that fall outside of that and there's some special  
19 exceptions that don't require it at all.

20 So it's a little bit of a differentiation. It's going  
21 to kind of blur together. But we will be conducting the special  
22 exception proceeding normally but because of the modification,  
23 the existing order which is pursuant to, the scope of the hearing  
24 will be limited to the requested modifications on the subject of  
25 the original application. The hearing will focus on the relevant

1 | evidentiary issues requested for the modifications and any  
2 | condition impacted by the modification. That's per Subtitle Y,  
3 | Section 704.

4 |           So regardless of today's outcome, since the special  
5 | exceptions for the existing private school use and the private  
6 | school use are already vested, if the modifications are granted  
7 | the existing provisions of the existing order will still apply.  
8 | So, in other words, if the Applicant gets a modification, it's  
9 | modified. If they don't, it maintains the way it is, status quo.  
10 | The school doesn't stop. We can't revisit the Act.

11 |           So I want to speak to Ms. Shiker about this. I've  
12 | looked over your presentation, your prepared slides, and I've  
13 | reviewed the proposed modifications. I think they're presented  
14 | in Exhibit 26B.

15 |           MS. SHIKER: The conditions are in Exhibit 26B and our  
16 | presentation is, I don't have the exhibit, 34 is where our  
17 | presentation is to go through all of the different modifications  
18 | and the newly requested special exception relief for the  
19 | retaining walls.

20 |           VICE CHAIRPERSON BLAKE: So what, as I can see there  
21 | are 38 conditions in the current order and you're looking to  
22 | modify or eliminate 22 or 23 of those conditions. That's a lot.

23 |           So, as you know, the Board's conditions in the orders  
24 | are designed to make a potentially adverse impact. So it would  
25 | be helpful to me if you could provide some additional detail on

1 the rationale for the proposed changes as the Board needs to  
2 really base its decision to remove or modify any conditions based  
3 on substantial evidence in the record.

4           So, you know, some things are definitely tied to the  
5 special exceptions. Some things are arcane. Some things are  
6 just out there. So I want to make sure that we have substantial  
7 evidence in the record to address that.

8           Now, so you can do that as, depending on how things go,  
9 we're going to go through all of those provisions individually  
10 to amend the order. So what we need to do, it would be very  
11 helpful if you could help us connect the dots over the course of  
12 your presentation or at the end actually going through the  
13 individual ones and kind of making sure we've got the rationale  
14 for the mitigations or not mitigations, do the issues still exist,  
15 et cetera, so we can work through that, and of course just help  
16 us connect the dots.

17           MS. SHIKER: Absolutely.

18           VICE CHAIRPERSON BLAKE: That's said, would you please  
19 proceed.

20           MS. SHIKER: Yes. Before we proceed we did request --  
21 I just wanted to note that both the architect and the  
22 transportation consultant are qualified experts in the book and  
23 we have provided them as expert witnesses for this testimony, and  
24 if I could have Mr. Young pull up our PowerPoint presentation,  
25 please.

1 (Pause.)

2 MS. SHIKER: Thank you. Thank you very much. And,  
3 again, Christine Shiker with the law firm of Holland & Knight  
4 representing the Applicant. Next slide, please.

5 So The Field School is located at 2301 Foxhall Road.  
6 That's between Foxhall Road and 44th Street which is on the west  
7 side of the Glover-Archbold Park. The property is comprised of  
8 four lots, the significant majority of which are zoned R1-A and  
9 the site around the school is generally residential but it also  
10 has institutional uses. Next slide, please.

11 The Field School was established on this site in 2000  
12 by virtue of BZA order No. 16559. There were some temporary  
13 amendments to that order but most recently in 2012 BZA order  
14 18431 allowed for an expansion of the campus and it's in this  
15 order that the current conditions were established including the  
16 number of students as well as the faculty and staff and, as was  
17 requested, we will go through those conditions and how they change  
18 with this proposed application. Next slide, please.

19 So the application requests approval of a modification  
20 to the private school plan. These modifications include the  
21 construction of the Innovation Center which is going to be an  
22 addition to the campus building. It incorporates minor upgrades  
23 to the existing athletic field including the addition of field  
24 lighting that we're going to talk about during this presentation,  
25 and the relocation and replacement of the score board.

1           It also includes a reconfiguration of the existing  
2 basketball court and northern parking area to allow for a new  
3 practice field. It reconfigures the existing surface parking lot  
4 and provides parking in excess of what is required by the zoning  
5 regulations and it results in modest increases to the student  
6 enrollment cap from 400 to 425 and from the faculty and staff  
7 cap from 110 to 120. Both of those increases are anticipated to  
8 happen gradually over the course of several years.

9           In addition, the application requests new relief which  
10 is a special exception to construct three over-height retaining  
11 walls. As you have seen in the pre-hearing submission, the  
12 application was modified since originally submitted due to  
13 changes in the athletic field. So originally we had significant  
14 revisions to the athletic field that resulted in retaining walls  
15 that were closer to adjacent neighbors.

16           Following work with the neighborhood and with the ANC,  
17 we revised the changes to the athletic field to eliminate the  
18 retaining walls that were causing concern. So therefore the only  
19 retaining walls that remain are the three more modest retaining  
20 walls in the center of the campus and the architect will walk  
21 through those during her testimony. Next slide, please.

22           Again the conditions are a very important part of any  
23 private school plan and the Applicant does propose to revise  
24 those conditions. At the end of our presentation we will pull  
25 up this comparative chart, walk through each of the revisions and



1 | how we have presented the testimony as requested. Most of the  
2 | changes are based on The Field School's work with the community  
3 | and many of these relate to the expanded use of the athletic  
4 | facilities and proposed field lighting. These conditions have  
5 | been worked (phonetic) closely with the community and I think  
6 | you'll see how those are connected when we walk through them.

7 |           We also included an updated construction management  
8 | plan to reflect construction of this addition versus a previous  
9 | addition, and in the work with DDOT we have substituted the entire  
10 | transportation demand management plan for a new updated plan that  
11 | reflects current standards. Next slide, please.

12 |           We are very pleased to have extensive support for this  
13 | application. OP has supported the application and has no issues  
14 | with the conditions. DDOT has no objection, subject to the  
15 | condition for the TDM plan. Please note there was a bit of a  
16 | clarification on which TDM plan and there's a submission in the  
17 | record that clarifies that, and Ms. Milanovich will also speak  
18 | about that in her testimony.

19 |           We're very please to have unanimous support from the  
20 | ANC on this application and this support follows significant work  
21 | with the community that began well before we filed this  
22 | application. The ANC report does reference six commitments that  
23 | the Applicant made. Each of those commitments is in those  
24 | conditions that we'll talk about at the end of the presentation.  
25 | There is other support from the Palisades Community Association

1 and the nearby neighbor, and there is no identified opposition  
2 to this application and that's always a great feat for a private  
3 school plan in an R1-A zone to come in with.

4           So what I'm going to do is I'm going to ask Ms. Strauss  
5 to talk a little bit about The Field School and the community  
6 work. The architect will then walk through the proposed  
7 improvements. Ms. Milanovich will talk about the transportation  
8 and then I'll walk through the compliance with the legal standard  
9 and the conditions.

10           So, Ms. Strauss, and next slide, please.

11           MS. STRAUSS: Good morning, again.

12           As you just heard Field moved to this campus in 2000  
13 and we opened our doors on Foxhall Road in 2002. Since that time  
14 our 6-12 program has really embraced inquiry driven and student  
15 centered education. I like to say that we are not only raising  
16 strong academics but also students who will be engaged neighbors,  
17 informed citizens and interesting dinner guests, and when you are  
18 raising students to be all three of those things, it's really  
19 important that you have adults and an institution that models  
20 those back to them.

21           And so a key part of where we are here in D.C., as you  
22 just heard, is that we are largely in a residential area with  
23 some other institutions surrounding us and so a priority of being  
24 here in this area is being a good neighbor and that is not just  
25 words, it's an actual ethos of the school. Part of this is our

1 size. We have fewer than 400 students on our ten acre campus  
2 and we have the space and natural buffers that allows us to make  
3 use of our indoor and outdoor campus facilities in a manner that  
4 doesn't disrupt the quality of life of our neighbors.

5 But a part of this really is our school culture. So  
6 neighbors are encouraged to share the use of our field and outdoor  
7 facilities, which they readily do whenever we are not using it,  
8 and we have a neighborhood gate from which they can access those  
9 outdoor facilities outside of school hours. If there is a rare  
10 event when an issue arises with a neighbor, we address it swiftly  
11 and directly and we take steps to really ensure that it doesn't  
12 occur again. As a result, what you'll hear and you have heard  
13 is that our relationship with the community is built on a  
14 foundation of trust and we are consistently working to maintain  
15 and foster those relationships, and it's why we come with such  
16 unanimous support.

17 In 2022 it was the 50th anniversary of our founding and  
18 we engaged in a large scale master planning process. It was a  
19 really thoughtful process to revitalize our facilities. Since  
20 then we have redone all of our science classrooms. We have  
21 actually also redone indoor spaces on our building to better  
22 ensure that all of our students can fit into our classrooms and,  
23 as you just heard, the next stage is proposing construction of a  
24 new innovation center which will be critical to enhancing and  
25 advancing the educational experience of our students.

1           It provides additional classrooms and community areas  
2 as well as studio and art gallery space and in addition to that  
3 Innovation Center is the repurposing of an asphalt area as a  
4 practice field, as well as enhancement of our current competition  
5 athletic field and adding lights to it. This was actually done  
6 at the encouragement and support of the ANC. There is a very  
7 high demand for high quality recreational space for youth sports  
8 and other schools in our area, and so we would really like to be  
9 a better neighbor and having those lights will allow us to  
10 actually have a process by which schools in the area and youth  
11 sports can utilize those outdoor athletic spaces.

12           These projects are really transformational for our  
13 school but they're also pretty low key, not disrupting the current  
14 aesthetic or really changing what anyone sees from here on campus  
15 or in the neighborhood. Our current student population is  
16 slightly below that cap of 400 and as part of this application  
17 we're asking for that modest increase to 425 as well as that  
18 modest increase in faculty and staff from 110 to 120. If you  
19 could go to the next slide.

20           As I was talking about at the beginning, a very  
21 significant part of the last few months has been our conversation  
22 with the community with individual neighbors at their homes, with  
23 two large scale meetings, one virtual and one in-person at the  
24 school as well as continuous conversation with all of the  
25 stakeholders to make sure that all the questions were answered

1 and issues were successfully resolved. They all have been, and  
2 this is a summary of those commitments that we have made to our  
3 neighbors. It is as a result of this really collaborative effort  
4 with our neighbors and the ANC that they did vote unanimously to  
5 support our application.

6 It's an incredibly exciting time here. I'm really  
7 happy to be head of school at this time and to be here before  
8 you with such support for our next step in our evolution and to  
9 really be the good neighbor and be the role models that we hope  
10 to be for all of our students.

11 So, Nancy, I think you're going to take it from here.

12 MS. GRIBELUK: Thank you. Thank you all. Next slide,  
13 please.

14 So I want to share with you the graphics that support  
15 what Christine and Lori were describing. What we have here is  
16 an existing time line. I want to go through a quick overview of  
17 the existing conditions of the school's (indiscernible). Right  
18 now the school has six interconnected buildings that you see  
19 numbered on the screen, two areas for bus parking on the north  
20 and the south side of the campus, a small basketball court on  
21 the north side. We have also a steep slope that goes down towards  
22 the soccer field from the existing building and this is controlled  
23 by a couple of retaining walls right now. The school also has  
24 an athletic field, a soccer field and as you see on the screen  
25 here there is an existing score board to the north property.

1 Next slide, please.

2           So here we want to share with you the proposed design  
3 and the site plan. The proposed design will mainly focus on the  
4 expansion that we talked about. It is labeled 7 in this plan  
5 and this expansion will be designed to meet all the school  
6 programmatic requirements. In terms of the site, the site  
7 improvements that we're including are the reconfiguration of the  
8 parking lot on the south side, to consolidate the bus parking  
9 that is now partially on the north and the south so we want to  
10 consolidate that area. We are also proposing only resurfacing  
11 the soccer field in its current location. We have relocated the  
12 score board from the north side of the field to the east side so  
13 it faces the school and not the neighbors. We have added four  
14 light poles for the field. We are upgrading the stormwater  
15 management plan and all the hab (phonetic) scape and landscape  
16 design that we're proposing will be developed mostly around the  
17 existing buildings and the new expansion creating social zones,  
18 bioretention areas and planting areas. Next, please.

19           So this rendering here that you see of the proposed  
20 expansion is, you can see here that the addition is placed within  
21 the existing building and it tries to blend with the rest of the  
22 campus. In terms for the design of this expansion has been to  
23 strategically locate it where it can connect to the adjacent  
24 buildings and at the same time to allow for a terraced accessible  
25 route to the field through ramps and social seating areas for the

1 students. Next, please.

2 Here we quickly want to show that the area in the blue  
3 is showing the expansion beyond the front elevation of the  
4 building. You can see here how we're trying to connect to the  
5 lower levels of the campus. Next, please.

6 So Lori briefly talked a little bit about the lighting  
7 that we are adding to the field. Right now it's a dark field.  
8 So the school is proposing to install four new lights around the  
9 perimeter of the existing field. The whole team, the school and  
10 the architects have been working closely with the neighbors to  
11 find the appropriate levels of lighting to satisfy both the school  
12 uses and the community. So basically the position of the poles,  
13 the height of those poles, the illumination levels, they were all  
14 carefully designed to control the light spill into the neighbors.  
15 Next, please.

16 The school has reduced the proposed field lighting  
17 levels to an average of 30 foot candles to make sure that it's  
18 low enough to satisfy the uses, as I said before, but control  
19 the spill. Next, please.

20 And in addition the new lighting will be directed  
21 downwards and result in minimal impact to the abutting neighbors.  
22 To further limit the impact of this light, the school is proposing  
23 a condition to limit the use of the lights to 9 p.m. Next,  
24 please.

25 So as I mentioned before, the expansion is located

1 strategically to moderate the slope while providing an accessible  
2 route to the field. The accessible route is shown here in a  
3 dashed line. You see how the students can come down to the field.  
4 We are accomplishing this through ramps and nicely landscaped  
5 seating areas. So, as you can see, in order to do this we had  
6 to relocate the existing retaining walls. We have three different  
7 conditions here shown in three different colors. If you move to  
8 the next slide. Thank you.

9 The first condition here shown in blue you see the  
10 existing retaining wall and the proposed retaining wall is at the  
11 edge of the athletic field. It slopes with a ramp and it varies  
12 from zero feet to 11 (audio interference).

13 The second relocated wall in the next slide is shown  
14 here in orange and it's integrated within the landscape and  
15 follows the accessible ramp.

16 Lastly, on the next slide, we have the third condition  
17 which is a wall that is needed to support the new practice field.  
18 And that kind of summarizes the retaining walls for the project.  
19 These are far away from the neighbors. They're within the campus  
20 so it doesn't make a big difference from what you can see before.  
21 Next slide. I think we have the traffic report. Jami?

22 VICE CHAIRPERSON BLAKE: Before you go there, could you  
23 talk a little bit about the alternatives that you've looked at.  
24 I think there was some other terrace structures or something that  
25 you considered. Could you just talk a little bit about and why



1 | that does or does not work?

2 |           MS. GRIBELUK: So the alternative options we looked at  
3 | were related to the retaining wall when we were doing the new  
4 | field and Christine talked a little bit about that, how we had a  
5 | gate to a wall next to the neighbors. So what we're trying to  
6 | study different solutions in order to mitigate the height of that  
7 | wall. After working with the neighbors, we abandoned that all  
8 | together and we just focused on being away from the school.

9 |           In terms of the ramps that you see here that we're  
10 | asking for relief, the studies have to do with how we come down  
11 | from the building to the field in a gracious manner that is  
12 | incorporated into the design of the landscape. So we landed in  
13 | a way with this configuration that, as you can see, blends in  
14 | within the context of the campus.

15 |           VICE CHAIRPERSON BLAKE: Okay. And had you looked at  
16 | one alternative that would have had an impact on the field size  
17 | or something?

18 |           MS. GRIBELUK: Yes. We looked at different locations  
19 | for the field to see if we can rotate it or move it straight,  
20 | but that was only in relation to that retaining wall that we were  
21 | trying to do. Since we abandoned that project as a whole, we're  
22 | now keeping with the existing field as is, we're just changing  
23 | the surface. So no modifications there.

24 |           VICE CHAIRPERSON BLAKE: Okay. Thanks.

25 |           MS. SHIKER: We did also provide in our plans which are

1 in Exhibit 26A, some projections of if we had terraced these  
2 three retaining walls as well. They're on 53 and pages 48 through  
3 53 which also shows the difficult, practical difficulties that  
4 we would encounter if we tried to terrace those. So we had had  
5 significant studies on the original field when we were looking  
6 to enlarge that field, but even for these smaller retaining walls  
7 we do show the problems that would be associated with  
8 accommodating the grade change from the higher to the lower and  
9 creating an accessible route and we've shown how it's not  
10 practical given that grade change. and, again, those are on page  
11 48 to 53 so if there's additional questions after the presentation  
12 we can pull those up.

13 VICE CHAIRPERSON BLAKE: Okay. That's what I'm looking  
14 for. Thank you very much.

15 MS. SHIKER: Thank you. So, Ms. Milanovich?

16 MS. MILANOVICH: Thank you.

17 So I wanted to take just a minute to clarify something  
18 in the DDOT report. We are happy to have their support. We  
19 worked closely with DDOT throughout the project. The DDOT report  
20 referenced our original TDM plan that was submitted in December  
21 of 2024, however we did meet with DDOT in January and during that  
22 meeting we requested flexibility as to the location of the  
23 proposed bicycle racks.

24 To be clear, we're not asking for flexibility on the  
25 number of bike racks, we're still going to be providing a total

1 of 24 bicycle parking spaces on campus but we wanted to have some  
2 flexibility to make sure we located those in the most appropriate  
3 locations where they would be most utilized. And so in that  
4 January meeting DDOT agreed with that, that requested that we  
5 modify our TDM plan. Specifically general strategy No. 5 in the  
6 TDM plan was updated to indicate that the bike racks would be  
7 located in the areas of highest activity where they would be most  
8 utilized by students and faculty and staff who would bike to  
9 work.

10 So that TDM plan unfortunately was not referenced in  
11 DDOT's report. We have referenced it in the record. It's Exhibit  
12 26C and that's under Attachment E in that exhibit. And then  
13 there's also an email exchange that I had with Erkin Ozberg at  
14 DDOT just correcting the TDM plan and documenting his agreement  
15 with that updated TDM plan and that can be found, that email  
16 exchange can be found in Exhibit 32A.

17 And with respect to the TDM plan, Vice Chair Blake, to  
18 your point earlier about the change in conditions, as Ms. Shiker  
19 said we wholistically replaced the traffic management conditions  
20 simply to update those to DDOT's current standards and that's  
21 reflected in the TDM plan. So we've added things like  
22 establishing a peak hour trip cap and monitoring plan to ensure  
23 that the school adheres to that trip cap. And so the new  
24 conditions, the modified conditions, reflect those changes in the  
25 TDM plan to bring those up to what DDOT currently expects for

1 | this type of application.

2 |           MS. SHIKER: Okay. Thank you.

3 |           So our next slide, please. So the next couple of slides  
4 | just go through how we meet the legal burden of proof. The  
5 | proposed application does meet the criteria for special  
6 | exception. That is 203.1 and not 213.1(m) and primarily a school  
7 | is not supposed to be objectionable to nearby neighbors. In this  
8 | case, our proposed modifications will not create any  
9 | objectionable conditions. As we've noted, the school has existed  
10 | here for close to 25 years and enjoys a very positive relationship  
11 | with the nearby community, and we have placed numerous conditions  
12 | to ensure that there's mitigation for any adverse impacts, for  
13 | example, limiting the time frames for when the lights can be on  
14 | on the field, providing for opportunities for continued work  
15 | between the neighbors and The Field School to address any  
16 | concerns.

17 |           Second, we do provide sufficient parking spaces to  
18 | accommodate the proposed increase as well as to comply with the  
19 | requirements of the zoning regulations. The zoning regulations  
20 | require 124 spaces based on the legal standard and we are  
21 | providing 129, and DDOT does not believe that we need additional  
22 | parking nor did our traffic analysis indicate that. Next slide,  
23 | please.

24 |           The proposed modifications to the private school plan  
25 | also meet the criteria in Subtitle X, Section 104. Again, the

1 use has been permitted and it remains in harmony with the existing  
2 uses nearby and there have been no opposition or objections to  
3 two of these proposed expansions and we have talked about how the  
4 conditions will mitigate that.

5 We also meet all of the standards of the R1-A zone with  
6 the limited exception of the retaining walls that we have been  
7 talking about and while not shown on this slide, the application  
8 is consistent with the general special exception standard as  
9 specifically the requested modification will be in harmony with  
10 the general purpose and intent of the zoning regulations which  
11 is to protect residential areas and promote a suitable  
12 environment for the surrounding school, excuse me, for the  
13 surrounding community. The school's use will continue the  
14 education use that's existed for decades and we believe that the  
15 conditions mitigate any adverse impacts. Next slide, please.

16 This is the legal standard for a special exception for  
17 an over-height retaining wall. You need to show that conditions  
18 relating to the site make compliance unduly restrictive or  
19 unreasonable. Next slide, please.

20 As we walked through in our presentation, the retaining  
21 walls cannot comply with the terracing or the height requirement  
22 and still provide an accessible pathway due to the significant  
23 grade change on the site, and, again that was further detailed  
24 in the different versions of the studies in the plans that I just  
25 mentioned. The retaining walls are located centrally within the

1 campus and will have no adverse impact on any nearby property,  
2 even in fact aren't visible from any nearby properties.  
3 Accordingly, this special exception will be in harmony with the  
4 zoning regulations as well which is to, you know, moderate any  
5 adverse impact from retaining walls.

6 And then what I'd like to do now, if Mr. Young, if you  
7 could please pull up Exhibit 26B I am going to walk through the  
8 conditions and talk to you about the ones that we are proposing  
9 to change and why and how they relate back to the evidence that  
10 we have put in the record.

11 (Pause.)

12 MS. SHIKER: I'm assuming that Mr. Young, you're just  
13 looking for it right now? Thank you. Okay. Thank you so much.

14 So what this chart shows is in the left hand column it  
15 shows the existing condition from the 2012 BZA order which is the  
16 order that created the conditions that the school is currently  
17 operating under. I'm going to go through each of the conditions  
18 and talk through them.

19 So the first condition is simply being changed to  
20 reference the new construction plans for the addition to the  
21 school and for the minor changes to the parking lot and the field.  
22 So that is what that change is.

23 Conditions two and three reflect the increase in the  
24 student enrollment and the faculty and staff, and we talked about  
25 that that is a modest increase intended to be instituted gradually

1 over time.

2 We do not propose any changes to Condition four or  
3 five.

4 Conditions six and seven are proposed to be deleted.  
5 This is because we have expanded the proposed usage of the  
6 athletic field in close consultation with the community and so  
7 therefore events will be able to start after 6 p.m., given that  
8 there will now be field lighting and we are going to allow, we  
9 are going to allow outdoor athletic events on Sunday especially  
10 with allowing the community to use the field. Next page, please.

11 All right. So Conditions 8 and 9 will also be not  
12 changed.

13 Condition 10 is proposed to be deleted and this is  
14 because we are trying to reflect the current operations of the  
15 site. Deliveries tend to occur during the school day for those  
16 that can be scheduled by the school. We do, the school tries to  
17 ensure that deliveries would not come during pick-up and drop-  
18 off, but there are deliveries such as Amazon deliveries that  
19 cannot be controlled by the school and so therefore we propose  
20 to delete this condition.

21 Similarly for 11, it is for the waste removal, for the  
22 trash. That happens based on when the trash company has put us  
23 on the schedule and for many years that has been between 5:30  
24 and 6 a.m., prior to any traffic on the roadways and prior to  
25 drop-off in the morning. We haven't received any complaints

1 about that so we are proposing to delete that condition to reflect  
2 current operations and, again, I'll note when we get to Condition  
3 38 we have put in a failsafe that if issues arise from any of  
4 our conditions, we have a commitment to work to address those  
5 issues. In the last decade we haven't had any issues with this  
6 so we don't anticipate it going forward but these changes are to  
7 reflect current operations.

8 VICE CHAIRPERSON BLAKE: In looking at No. 11, it could  
9 also be possible just to reflect your actual usage. So if you're  
10 saying the schedules aren't in the morning before that, would it  
11 be more appropriate to do that and is it possible that that would  
12 have an adverse impact on the neighbors, or you said the  
13 experience has been that it has not.

14 MS. SHIKER: Correct.

15 VICE CHAIRPERSON BLAKE: At least that's what you  
16 testified to. So would it be more, I have a hard time removing  
17 a waste removal requirement because it, you have to do it. You  
18 have to remove waste and it could make noise and disturb people.  
19 I do like the idea of conditioning the time so it's reflected  
20 that what you do. It just sounds like the time you do is different  
21 than what is on this paper, so that's your decision to change  
22 it. So I'd like maybe, would that have an, would that be  
23 difficult to do?

24 MS. SHIKER: So I think that we could propose a change  
25 to this condition to say that, you know, waste removal would take



1 place outside of pick-up and drop-off hours and that, you know,  
2 we could put in a commitment to continue to work with the  
3 community if there was any issues. There has been no issue raised  
4 about trash and, again, this is a change to reflect it. But we  
5 could put in there that the school shall schedule, you know,  
6 waste removal to take place prior to the morning rush and the  
7 drop-off and pick-up times for the school.

8 I think that was one of the concerns that we tend to  
9 see in private school plans but, again, this wasn't talked about  
10 at all and this has been proposed to be deleted throughout all  
11 of our work with the community and no one has raised any issue  
12 with it.

13 (Pause.)

14 MS. SHIKER: I'm sorry, I can't hear you.

15 VICE CHAIRPERSON BLAKE: I'm sorry. In the last  
16 modification this provision was actually put in to address  
17 concerns by a neighbor so that's why I'm trying to get a sense.  
18 Is that, that has been resolved at some level? I'm not sure.

19 MS. SHIKER: Lori, did you want to address that at all  
20 or?

21 MS. STRAUSS: I would say it has been resolved because  
22 there aren't any current issues, and so that's what I would say  
23 about that. You know, this is being done at the schedule that  
24 the District creates.

25 MS. SHIKER: So I think that it is that we have limited

1 control over at that time and that it is done prior to drop-off  
2 so that there is no adverse impacts to the transportation network  
3 and that we would, you know, we could include a condition that  
4 we would make sure that it does not occur during drop-off time  
5 because that would cause an issue because it could cause some  
6 transportation backups. So we could change that condition as  
7 such and then again when we get to Condition 38, you'll see that  
8 there is that failsafe that if there was an issue raised there  
9 would be the commitment to work to resolve it.

10 VICE CHAIRPERSON BLAKE: Okay. Let's go back to the  
11 (indiscernible) on the list. So, as you're saying now, what time  
12 are the actual pick-ups of the trash currently?

13 MS. SHIKER: My understanding, and Ms. Milanovich if  
14 you want to jump in, my understanding is it's between 5:30 and 6  
15 a.m., in general.

16 MS. MILANOVICH: Yeah. And I would just add it's part  
17 of a larger route. Like, the trash trucks are not just coming  
18 to the school for pick-up. They're making other stops and so I  
19 think --

20 VICE CHAIRPERSON BLAKE: It's --

21 MS. MILANOVICH: I'm sorry. Go ahead.

22 VICE CHAIRPERSON BLAKE: It's a private trash  
23 collection company, though. It's not a public service, right?

24 MS. MILANOVICH: That's my understanding, yes.

25 VICE CHAIRPERSON BLAKE: So it's a private trash

1 company that, they can't necessarily dictate the regulations.

2 But, okay. Thank you.

3 Let's move on to the next. Did you have a question  
4 about that? Okay.

5 ZC CHAIRPERSON HOOD: I just wanted to echo your  
6 comments.

7 But I do want to ask, Ms. Shiker, is there ever a  
8 possibility they could come in the afternoon? I'm just, you  
9 know, I don't want to muddy the waters but I'm just curious that  
10 we'll be putting in a problem. So I wonder, you say 5:30/6 which  
11 I think is early, but is there ever a chance they may, you know,  
12 something may fall through the cracks and they have to come in  
13 the afternoon and pick up the trash?

14 MS. SHIKER: So, Chairman Hood, this is one of the  
15 reasons why we did propose to delete the condition because it is  
16 outside of our control, given that it is an identified route and,  
17 again, also one of the reasons why we talked with the community  
18 about putting in that failsafe provision in Condition 38 which  
19 says that if any issues come up in the future, we commit to  
20 working together to resolve them.

21 Because sometimes things change over time and given  
22 this big, you know, this is our, the phased update) to the campus.  
23 We don't anticipate coming back to the Board for many, many more  
24 years and so we were trying to give ourselves as much flexibility  
25 and continue our very strong working relationship with the

1 community.

2           So it is our preference that we would delete this  
3 condition or provide language that says this is currently when  
4 it occurs and that we would, you know, that we would ensure that  
5 it did not happen during drop-off and pick-up because that would  
6 be the only adverse impact that really can occur is if you're  
7 having a lot of conflicts and creating back-ups on the  
8 transportation.

9           ZC CHAIRPERSON HOOD: Well, we got all that taken care  
10 of because Condition 38 is going to take care of everything that  
11 we have a problem with. So thank you.

12           Thank you, Ms. Shiker. Thank you, Mr. Chairman.

13           MS. SHIKER: So continuing on.

14           COMMISSIONER JOHN: Mr. Vice Chair, might I suggest  
15 that we put in a time when these, when the waste will be picked  
16 up. I would suggest that we put in language that states the  
17 waste removal will take place prior to pick-up and drop-off, if  
18 that's what the intention is. And then paragraph 38 will take  
19 care of anything that has to happen outside of those times.

20           But I'm not comfortable removing the provision all  
21 together. At least the community will know that these are the  
22 hours when there will be waste removal.

23           VICE CHAIRPERSON BLAKE: Okay.

24           I appreciate that. I appreciate that, Ms. John. I  
25 agree with you that that does make sense to have some provisions

1 around there for that. Okay.

2 MS. STRAUSS: And, if it's helpful, that the trash  
3 pick-up is actually not adjacent to any neighbors. The trash  
4 pick-up is actually over (audio interference).

5 VICE CHAIRPERSON BLAKE: Where is the trash pick-up  
6 exactly?

7 MS. STRAUSS: Trash pick-up is actually over by the  
8 Kreeger Museum part of our property and so it is not, currently  
9 it's not located, it would not be a noise issue that neighbors  
10 would be picking up on either.

11 MS. SHIKER: It's on the north side of the site which  
12 is only near institutional uses. There are no neighbors up on  
13 that side of the property. The neighbors are on the south and  
14 east side.

15 COMMISSIONER JOHN: So even if there are no neighbors  
16 I think we need to have a time frame and that time frame can be  
17 adjusted based on the flexibility of the paragraph you propose.  
18 That would be my suggestion.

19 MS. SHIKER: Okay. All right.

20 So we'll continue through the conditions. So Condition  
21 12, this, at the time of the 2012 order there was a lot of  
22 discussion about whether or not there was going to be outside use  
23 of the field and so there was kind of a situation or scenario  
24 put in place that if we could get support from a certain group  
25 of people, then it could happen. We did get that support at that

1 time so this condition is a bit outdated now.

2           However, in our further work during this process we  
3 have all come to agreement that youth sports and other community  
4 groups will be able to use the athletic field. This was strongly  
5 supported by the community, given the dearth of fields in this  
6 area of the District and the desire to provide more opportunities  
7 for students, not just at The Field School, to take advantage of  
8 these fields.

9           So what we propose to change this condition to  
10 specifically state that the school may allow youth sport and  
11 other community groups and we came to agreement with the ANC that  
12 information about the availability of the field and instructions  
13 for submitting the rental request would be provided on the  
14 school's website so that everyone in the community would  
15 understand what that process is. So that is what Condition 12  
16 does and, again, supported by, you see that has support letters  
17 in the record as well as from the ANC.

18           Condition 13 is proposed to be changed just to change  
19 those time frames.

20           VICE CHAIRPERSON BLAKE: Excuse me, Ms. Shiker.

21           I want to go back to just on that question there and  
22 not to nitpick, but when you describe other community groups,  
23 that's a little bit vague. So I just, it may be worth tightening  
24 up that language a little bit because it's not really clear what  
25 that might mean.

1 MS. SHIKER: I think the reason why it was left open  
2 is because, for example, The Field School might allow another  
3 school to use the fields for a home game. It may allow a, you  
4 know, a club sport that is, you know, recreation or a private  
5 club to use it. So we were trying to make sure that it was  
6 expansive enough to allow for the different groups that we might  
7 not know today who needs it or if there was some other type of  
8 community group that wanted to use the field. But then there's  
9 going to be instructions on the website about how you request the  
10 use of that field so that everyone is aware of how you can do  
11 it. So that's why we had put it that way is to allow a bit of  
12 flexibility going forward.

13 VICE CHAIRPERSON BLAKE: Now, in that case though, for  
14 example, you've got the, the school should not allow the athletic  
15 field to use for adult baseball. So if one of those community  
16 groups wanted to do that, that other condition would prohibit  
17 them from doing that?

18 MS. SHIKER: (Indiscernible).

19 VICE CHAIRPERSON BLAKE: And how would that be  
20 different than adult softball or adult soccer or any adult sport?

21 MS. SHIKER: So I'm not sure that we, I know that there  
22 was a concern about the adult baseball leagues but we, you know,  
23 we will continue to work with the community on the types of  
24 community groups. I think that the community wants these fields  
25 to be more accessible because of the limited number of fields in

1 the area and I know that Ms. Rutherford is on the phone and she,  
2 or excuse me, on the hearing and she has had significant  
3 discussions with the community about this. I'm not sure if  
4 there's anything else she wants to add to that.

5 MS. RUTHERFORD: No. Thanks for the opportunity.  
6 Again, Sherry Rutherford. Can you hear me? Okay. I just see  
7 Commissioner Blake speaking so I just don't know.

8 VICE CHAIRPERSON BLAKE: I need you just to introduce  
9 yourself for the record.

10 MS. RUTHERFORD: Sure. So my name is Sherry Rutherford.  
11 I worked with The Field School in connection with their community  
12 engagement with the ANC and nearby neighbors in connection with  
13 this effort.

14 So I've spent a lot of time with this ANC. I've worked  
15 extensively with this ANC for several years representing other  
16 schools and universities, so have a lot of, you know, experience  
17 in this particular neighborhood and other neighborhoods across  
18 the District as well and what I will say is I think, and you can  
19 hear this from the ANC Commissioners themselves, but there's been  
20 a real shift in the understanding of the need for access to high  
21 quality athletic facilities. For not just independent schools  
22 themselves but for them to, you know, for others in the  
23 neighborhood.

24 So it could be, you know, a neighborhood, you know,  
25 sort of a pick-up, you know, some frisbee game or things like



1 that where just an ad hoc meeting group gets together. They may  
2 want to use it for an event. It could be, you know, a soccer  
3 team. It could be, you know, again, another school like MacArthur  
4 High School has indicated, you know, a desire to play some soccer  
5 games there because they don't have their own field. So there  
6 is a very strong voice in the neighborhood for the types of events  
7 and types of activities that they really have encouraged and  
8 asked Field directly, you know, to be able to make those fields  
9 available.

10 Now, what Field is also doing though is managing that  
11 knowing that we have nearby neighbors that we don't want to be  
12 adversely impacted by it. So I think that's what these conditions  
13 are trying to, a balance is trying to be struck here, is that we  
14 want to make sure these fields are accessible and open to address  
15 the needs for this kind of activity, but at the same time give  
16 Field the opportunity to review these, you know, applications as  
17 they come in or these requests as they come in to make sure the  
18 type of activity isn't going to adversely impact those immediate  
19 neighbors.

20 And that's where we're striking that balance I think  
21 Field's done a great job with so far. It's just that now that  
22 with this expanded space of availability with nights with the  
23 lights, I think that's where, again, that's where we're headed  
24 with these conditions, if that's helpful.

25 VICE CHAIRPERSON BLAKE: Ms. John, do you have any

1 further questions? I think you do.

2 COMMISSIONER JOHN: I think so. I'm still not sure  
3 what community groups would be prohibited. So these groups would  
4 be using the fields solely for athletic purposes, not say, let's  
5 say somebody wanted to do a Mardi Gras with a lot of music and  
6 all the activity. Would that be allowed?

7 MS. SHIKER: Well, I don't think that was the intent  
8 of it, right?

9 MS. RUTHERFORD: So one of the things, and we  
10 specifically spoke to this about with the ANC. For instance, in  
11 the evenings to make sure that there were protections for those  
12 neighbors. So if something that draw, a) create a lot of noise  
13 or draw a lot of, you know, vehicles to the campus that could  
14 potentially create an adverse impact for those nearby neighbors,  
15 those are the types of things that we specifically spoke with the  
16 ANC and if you look at those additional considerations that we  
17 added when we, you know, to get the ANC support, that was exactly  
18 the type of thing and, again, I think Lori, Ms. Strauss, can  
19 speak to this, that we will take those types of events into  
20 consideration and making sure that we're not having those types  
21 of events occurring in those evening hours when, you know, people  
22 are having dinner or putting kids to bed.

23 So, you know, we don't want to have those types of  
24 events that are going to draw, you know, too many folks to campus  
25 or create those adverse impacts. So I think that's part of that

1 control.

2 COMMISSIONER JOHN: So if I could follow up with Ms.  
3 Shiker.

4 MS. SHIKER: Okay.

5 COMMISSIONER JOHN: Again, to my question because there  
6 has to be an educational purpose involved in the use of the  
7 athletic field, so would this be limited to youth sport and other  
8 athletic groups or for athletic purposes? I mean, this can't, I  
9 don't think this can be a free for all. It's a school after all,  
10 so.

11 MS. SHIKER: Correct, correct.

12 COMMISSIONER JOHN: We need to define what those  
13 community groups would be, and I realize that there's been  
14 agreement with the ANC, which is wonderful. I just think that  
15 that description of the groups can be fine tuned and perhaps as  
16 we go along you might think of something to suggest to remove  
17 any question as to what types of groups would be allowed.

18 And I realize that the school will provide guidance to  
19 the community on what's available and what times would those  
20 activities be available, but the order has to be a little more  
21 clear on what's allowed and we can move on, Vice Chair Blake.

22 MS. SHIKER: We will, we're thinking about that right  
23 now as we continue on. So I'll continue on with the conditions  
24 and then we can circle back to that one if we can, please?

25 COMMISSIONER JOHN: Yes. Thank you.

1 MS. SHIKER: Thank you.

2 So Condition 13 is to bring this, the use closer to 9  
3 p.m., versus the 8:30 p.m., which is consistent with what would  
4 be doing for the outside and it is to allow use on Sundays, and  
5 there was no issue with that with the community, given they were  
6 concerned about that before in 2012. But the community isn't  
7 concerned about use on Sunday. If you could go to the next page,  
8 please.

9 This phrase, "Provided that the same conditions that  
10 apply to the school use of the facilities and grounds shall apply  
11 to the public." It seemed to be duplicative so we took it out  
12 for that reason since the conditions now are applying to both the  
13 school and any outside school use of the athletic fields.

14 VICE CHAIRPERSON BLAKE: It's duplicative to which  
15 other condition?

16 MS. SHIKER: So it says, it suggests that there are  
17 different rules that could apply and what we're saying is that  
18 all the rules apply to both the community use and the school's  
19 use of the fields. So it didn't really provide any additional,  
20 it says, "Provided that the same conditions that apply to the  
21 school's use of the facilities and grounds shall apply to the  
22 public." We're now specifying what applies to the public and  
23 everything applies to the public and the school. There's no  
24 distinction. There's not something that applies just to the  
25 school and just to the public. We weren't sure where exactly

1 that condition had come from. All of the conditions apply to  
2 the same use. For example, the lights need to come off at 9  
3 p.m., whether or not it's MacArthur High School using the field  
4 or The Field School using the field.

5 VICE CHAIRPERSON BLAKE: Yes. It seemed to me that  
6 that's exactly what that provision was telling you to do, was to  
7 apply the same conditions as opposed to undo anything. I thought  
8 that's what, is actually saying that. So that, you know, all  
9 that stuff would have to happen, leave the field at a certain  
10 hour, not turn the lights on, et cetera, I think you're saying  
11 it's implicit as opposed to explicit (indiscernible). Is that  
12 right?

13 (Pause.)

14 VICE CHAIRPERSON BLAKE: Is that correct? It's  
15 implicit is what you're saying?

16 MS. SHIKER: That is correct. Can you hear me?

17 VICE CHAIRPERSON BLAKE: I can now.

18 MS. SHIKER: Okay. I'm sorry about that.

19 Okay. Yes, that is what I was saying is that it was  
20 implicit in that all of these conditions, it seemed to suggest  
21 that there was differentiation which is not what we were trying  
22 to do. We were trying to say that everything does apply. Again,  
23 we were simplifying the order for that provision.

24 So continuing on. We have the traffic management  
25 section is, as Ms. Milanovich testified to, is being replaced in

1 its entirety with the new TDM plan that was coordinated with DDOT  
2 and is in the record and identified in our submission. We did  
3 not propose any change to Condition 15 because it has always been  
4 very important to the community to ensure that only the southern  
5 gate is being used and that it is not necessarily talked about  
6 specifically in the TDM plan.

7 But Conditions 16, 17, 18, 19 and 20 were essentially  
8 the previous TDM plan for the school in 2012. DDOT has updated  
9 its standard policies and requests for TDM significantly in the  
10 last 13 years and so you can see at the end of this document we  
11 propose replacing the traffic management section completely with  
12 the new TDM plan that was supported by DDOT. So next page,  
13 please.

14 So for the parking and perimeter section, on Condition  
15 No. 21 the school originally had a maximum number of 128 parking  
16 spaces. With the restructuring of the parking lot that goes to  
17 129 parking spaces which is comprised of 124 regular and five ADA  
18 parking spaces which is what is shown on the plans.

19 Condition 22, we do not propose to change this  
20 condition. This is also one of the commitments that the ANC  
21 noted in its letter. And Condition 23, we --

22 VICE CHAIRPERSON BLAKE: On Condition 21 I have a  
23 question. The, it is and more. I understand this but it's a  
24 little bit different because it says no more than and it implies  
25 a maximum. More recently we focused on a minimum amount of

1 | parking spaces and then a maximum, there is maximum that's not  
2 | even 50 percent of. But what is the, can you talk a little bit  
3 | about the more than versus minimum number.

4 | MS. SHIKER: Sure.

5 | So in, when this condition was originally put on there  
6 | were concerns that the school would provide too many parking  
7 | spaces and create additional traffic impacts and so the previous  
8 | order put a maximum number of spaces for that reason. In this  
9 | case 124 parking spaces is what the zoning requirement is and the  
10 | lot will accommodate 129, again the 124 plus five. So we are  
11 | identifying that 124 since it is the minimum number and  
12 | identifying that we will have five ADA.

13 | But as we have historically done with this community,  
14 | we're identifying the maximum number of spaces so that we would  
15 | not add additional spaces that were not evaluated as part of our  
16 | transportation evaluation.

17 | VICE CHAIRPERSON BLAKE: Okay. And is there separate  
18 | parking for buses and things of that sort?

19 | MS. SHIKER: That is correct. There is a separate bus  
20 | parking area that has been relocated. It used to be broken up  
21 | on to two sections of the site. It is now being consolidated in  
22 | a single section. We could pull up a plan and show you that if  
23 | you would like, but it is part of the restructuring of, part of  
24 | the bus parking used to be located on the northern side. It's  
25 | now all located within the confines of the parking facility which

1 is to Condition No. 22, at least 100 feet away from the nearby  
2 neighbors.

3 VICE CHAIRPERSON BLAKE: Okay. But that was never the,  
4 the bus parking was never a condition of the order at any point?

5 MS. SHIKER: No, it was not.

6 VICE CHAIRPERSON BLAKE: Okay.

7 MS. SHIKER: And it is shown on the private school plan  
8 and so it's incorporated as part of the approved plans.

9 VICE CHAIRPERSON BLAKE: Thank you.

10 MS. SHIKER: So, again, 22 we do not plan to change.  
11 Twenty-three, we researched the history of this condition. It  
12 came from the original order in 2000 and in 2000 stormwater  
13 management and bioretention practice were significantly different  
14 than today. We plan to delete this condition because we will be  
15 incorporating stormwater management in accordance with best  
16 practices. In fact, our civil engineer has already met with DOEE  
17 to review the stormwater management in compliance with all DOEE  
18 conditions and so therefore porous pavement technology is not a  
19 best practice any longer. Instead there are much better practices  
20 and we will be complying with all the stormwater management  
21 requirements and working to meet all of DOEE's requirements.

22 Okay. There are no changes proposed to 24 or 25 and  
23 even though it references in 25 Exhibit 40 in the old record,  
24 that vegetative buffer has not changed since that time. So that  
25 is why we did not propose to change it.



1           No. 26. At the time there was a abandoned home that  
2 was owned by The Field School and so there was anticipation that  
3 if it was ever used, it would need to have parking provided on  
4 the campus. This site at 2207 Foxhall Road is not part of the  
5 campus. It is no longer owned by Field School and so therefore  
6 we propose to delete that condition since it's not part of the  
7 private school plan and, again, not owned by The Field School.

8           Continuing on to, next page please, 28 and 29 were  
9 improvements that were being constructed as part of the previous  
10 project. They have been installed and so therefore we propose  
11 to delete these conditions because they're no longer necessary.  
12 However, if they were maintained because there was any concern  
13 about taking them out, it just should say, you know, that the  
14 school previously, you know, did this. These are just no longer  
15 required because they've been done.

16           With respect to the lighting section as we've talked  
17 quite a bit about, lighting was prohibited under the previous  
18 order in 2012. In our work with the community and with the ANC,  
19 as we've mentioned, there was a desire to have lighting but to  
20 put sufficient guard rails on that lighting to ensure that there  
21 were no adverse impacts and so therefore we do not change  
22 Condition 30 which is about kind of the limited nature of the  
23 lighting in the parking lot, but with respect to 31 we would  
24 propose that the school can't have exterior event lighting on the  
25 athletic field in accordance with the plans that we've presented.

1 If you can go to the next page please you can see the rest of  
2 that condition.

3 And this goes on to the negotiated kind of the guard  
4 rails on the use of those lights. That the school shall turn  
5 off the exterior event lighting no later than 9 p.m. daily and  
6 that the school will manage activities on the athletic field in  
7 the evening hours to limit noise associated with competition or  
8 other events that would draw a large number of people. The school  
9 will respond to potential issues, if any, raised by neighbors as  
10 to the usage of the athletic field during the evening hours and  
11 work in good faith to address concerns.

12 And this language was discussed at length with the ANC  
13 Commissioners to ensure that if the use of these fields, if there  
14 is some type of use that is causing an adverse impact, that we  
15 will come together and that type of use won't continue on the  
16 athletic field. It is anticipated that The Field School's use  
17 will be primarily for longer practices. It won't be for, you  
18 know, large games or tournaments so we do not anticipate any  
19 adverse impacts from The Field School. However, we will make  
20 sure that any use by outside groups or youth sports or other  
21 schools also don't cause adverse impacts.

22 And then finally --

23 VICE CHAIRPERSON BLAKE: Mr. Smith, you have something  
24 to say on that?

25 COMMISSIONER SMITH: Yeah, I do about Condition 31.

1 VICE CHAIRPERSON BLAKE: Uh-huh.

2 COMMISSIONER SMITH: And to say nothing about a fair  
3 amount of these conditions, I don't even know if the District of  
4 Columbia can really fairly enforce honestly. I'll just leave it  
5 at that. I can't imagine that there's some type of zone inspector  
6 that can regulate half of this.

7 But setting that aside, 31, I think that's probably  
8 three conditions in one to be completely honest with you about  
9 this. I think probably the first two sentences is one condition  
10 that relates to the school turning off the exterior lighting.  
11 That directly relates to lighting.

12 Second is probably one condition the school will manage  
13 activities on the athletic field in the evening hours to limit  
14 noise. That's noise. That's not even related to lighting. So  
15 that's probably a stand alone condition by itself. And the last  
16 sentence, the school will respond to potential issues, if any,  
17 raised by neighbors as to the usage of the athletic field. I  
18 get the point of the condition. I understand that this has been  
19 discussed amongst the ANC and the surrounding neighborhood, but  
20 that particular sentence I think is probably redundant  
21 considering that you have a Condition 38 that speaks to those  
22 same concerns in some way.

23 So my recommendation is not to add redundancy into this  
24 large list of conditions. I would strike that last sentence  
25 because you already have it in essence. So would you be

1 comfortable with, and that would be my recommendation if we were  
2 to move forward with this approval, are you comfortable with  
3 those changes that I recommended?

4 MS. SHIKER: So with respect to the, well, separating  
5 the first two out, yes. The reason we have put in the second  
6 prong about managing activities for the noise for the evening  
7 hours is because the lights are the only reason we were allowed  
8 to come into the evening hours and we were trying to mitigate  
9 noise. But there is no issue with separating those into two  
10 separate conditions.

11 As to the removal of the third condition, that would  
12 be fine as long as we ensure that it's fully contained within  
13 the kind of failsafe condition of 38 just to ensure our  
14 commitments to the ANC continue to be made, and I think that that  
15 could be done without a problem.

16 COMMISSIONER SMITH: Thank you. So I guess we'll talk  
17 about that when we get down to 38. So thank you for that.

18 MS. SHIKER: And then within the lighting section, the  
19 final condition is about turning off the lights on the parking  
20 lot at 9 p.m. With now the addition of lighting on the field  
21 until 9 p.m., we cannot turn the parking lot lights off at 9 p.m.  
22 for safety reasons. We also, you know, have not had any issues  
23 for the last 13 years with those parking lot lights. They haven't  
24 raised any concerns and it's primarily because there is this 100  
25 foot very vegetative buffer between the nearest homes and the

1 | parking lot, and then the types of lights that are used in that  
2 | parking lot are very low scale lights that just provide safe  
3 | lighting. So therefore we are deleting that condition to ensure  
4 | that people can get safely out to their cars and so that is why  
5 | that condition was deleted. For --

6 |           VICE CHAIRPERSON BLAKE: Ms. Shiker, is it possible  
7 | just to extend that 30 minutes past the field hour or something  
8 | like that as opposed to completely deleting it? I mean, I don't  
9 | think the intention is for the lights to be on all night or  
10 | something like that but to strike it completely would basically  
11 | render that, would make that the case. So it wouldn't necessarily  
12 | be accomplishing the goal.

13 |           MS. SHIKER: We could, as a team, we could find out a  
14 | time, you know, is it 9:30 or is it 10 o'clock, what is the time  
15 | of safety to get everybody out of those fields and put that the  
16 | school shall turn off the lights to the parking lot at, you know,  
17 | at that time. I think that that is probably something fine. We  
18 | just need to, I just need to coordinate with my team and I could  
19 | respond on that one as well as we're not in the same room.

20 |           But we can, while I finish going through these I can  
21 | respond back on that one as well as I am about the community  
22 | groups and the trash. I have an ongoing list of the ones I said  
23 | I'll respond back on at the end of this discussion.

24 |           All right. So the construction management. As I  
25 | mentioned we had submitted an updated construction management

1 plan that would relate to the construction of this facility versus  
2 a past facility. We have included without change all of the  
3 previous commitments that the school committed to in 2012 when  
4 it was doing its construction, and those are incorporated in  
5 there and we're not proposing to change any of those. Next page,  
6 please.

7 COMMISSIONER JOHN: Mr. Chairman, Mr. Vice Chair,  
8 please.

9 VICE CHAIRPERSON BLAKE: Please, please.

10 COMMISSIONER JOHN: So are you asking us to incorporate  
11 the construction management plan? I don't know what I missed  
12 there.

13 MS. SHIKER: In the previous order, in the 2012 order,  
14 there was a construction management plan that was referenced in  
15 the order. We have updated the construction management plan to  
16 reflect, you know, the conditions for this construction which are  
17 different than the construction that occurred in 2012 and that  
18 is in the record at Exhibit 26D. So we were proposing that we  
19 would just update that condition to reference the newest  
20 construction management plan and then we maintained all of the  
21 specified conditions related to construction that were more  
22 general in the order without change.

23 COMMISSIONER JOHN: My proposal would be just to  
24 reference the construction management plan as opposed to  
25 incorporating it in the order because the Board cannot (audio

1 interference) management plan and I recognize that it might have  
2 been included as part of the previous order. So that would be  
3 my recommendation, Mr. Chairman.

4 And if I could just briefly go back to No. 31. The  
5 school will manage activities on the athletic field in the evening  
6 hours to limit noise associated with competitions or other  
7 events. I'm not sure how the school will do that? Ms. Shiker?

8 MS. SHIKER: So we will, I'm sorry, if you could ask  
9 your question again. I did not understand.

10 COMMISSIONER JOHN: My question was with respect to the  
11 noise provision in paragraph 31. How will the school manage the  
12 activities to limit noise?

13 MS. SHIKER: So, for example, if there were concerns  
14 that a certain type of activity was causing noise such as possibly  
15 we let another high school use it for several games and they were  
16 bringing too many people to the site that was creating noise, we  
17 would no longer allow that use to happen if it was creating  
18 additional noise.

19 As I said, The Field School's use of the fields will  
20 not be for competitions typically in the evenings, it will be  
21 just be for extended practice which has much lower noise and much  
22 lower attendance. It's not that you're bringing lots of people  
23 from an opposing team. So that is one of the examples that we  
24 talked about with the community since the community does want  
25 other schools to have opportunities to use the fields because of

1 the dearth of fields in this area.

2           So therefore, if there were concerns that that type of  
3 use was causing too much noise, we would not do that any longer.  
4 We are pretty confident that with a 9 p.m. shutoff and the  
5 vegetation that's around, that there aren't going to be any issues  
6 and I think that that's generally what the ANC feels as well. We  
7 actually had Commissioners talk about different fields that were  
8 near other people's homes and how they operated and I think  
9 overall no one is concerned but we were trying to put in some  
10 protections that if someone had an issue, how could The Field  
11 School respond to address that. And so that is how we, that's  
12 the language we put in as a result.

13           COMMISSIONER JOHN: Okay. Thank you.

14           And I wanted to go back to, since I'm thinking of it --

15           VICE CHAIRPERSON BLAKE: Ms. John, let me just chime  
16 in because I don't want to miss this point on point 31.

17           I think one of the issues too you might think about is  
18 to the extent that there may be, you're not going to use the  
19 fields for competition so now there's a situation where others  
20 may be using the fields for different reasons than you which,  
21 again, goes back to that other element which we didn't address  
22 where we said for the same purposes.

23           So this is a different purpose. The different purpose  
24 here now if it were a competition would, as you point out, attract  
25 different elements. So, for example, would they be accommodated



1 for spectators? Are there going to be stands for them? How  
2 would that work? How would the parking be facilitated for  
3 competitive events? Those sorts of things would also play a  
4 factor in allowing that type of activity, if you didn't prohibit  
5 it, from competitive things from other schools for that purpose?

6 MS. SHIKER: Well, if there were --

7 VICE CHAIRPERSON BLAKE: If (indiscernible).

8 MS. SHIKER: -- if another school was using the fields  
9 when The Field School was not using it, we do have, you know,  
10 the 124 parking spaces. We do have the bus parking spaces and  
11 that would end at 9 o'clock. So it, there is sufficient parking  
12 for other users of the athletic field and, again, because The  
13 Field School will be controlling who uses it, those types of  
14 factors can be taken into account.

15 MS. RUTHERFORD: And if I can make one comment. You  
16 know, in terms of the discretion and sort of The Field School  
17 managing this knowing their community and knowing what the  
18 concerns are, a normal, you know, even if it was a competition,  
19 a normal lacrosse game for instance, you may have a handful of  
20 spectators that really would have no adverse impact on the  
21 surrounding neighborhood. If it is like the city championship  
22 game where folks are coming in for, you know, a very high level  
23 competition, that's a different story.

24 So I think that's the type of event where just saying  
25 no competitive events it gets tricky because there could be a

1 very, you know, wide range of impacts and that's where The Field  
2 School's responsible for managing the events that can take place  
3 on campus understanding that your run of the mill lacrosse game  
4 would probably be absolutely fine, but you wouldn't want them to,  
5 again, bring an event that's going to have, you know, extensive  
6 spectators from across the city that are really going to cause  
7 an issue.

8           So that's where, you know, and again I don't want to  
9 speak for Ms. Strauss, but those are the types of things and the  
10 conversations we had with both the ANC Commissioners who are very  
11 interested in bringing these events to, you know, having access  
12 to these fields as well as our nearby neighbors which are of  
13 utmost importance to making sure that their quality of life is  
14 not diminished.

15           MS. STRAUSS: And that I would say, Sherry, also adding  
16 to that that nothing is changing in our management. We manage  
17 the field now so nothing is changing in how we're doing that.  
18 There are additional hours, but all of the systems that we have  
19 in place and all of this is the same way that we manage this now.

20           VICE CHAIRPERSON BLAKE: Is there a manual or guide  
21 that's written down that talks about the management of the field?  
22 So, in other words, are there some protocols that you have  
23 established that you could reference that would say we will, you  
24 know, execute this consistent with this protocol that we've  
25 established? Do you have something like that?

1 MS. STRAUSS: Yes. And so one of the things we've  
2 agreed here to and to talking with the community is also to  
3 actually put those on our website.

4 COMMISSIONER SMITH: Chairman Blake?

5 VICE CHAIRPERSON BLAKE: Go ahead. Go ahead, sir.

6 COMMISSIONER SMITH: You know, now that I think about  
7 this and I think Ms. John was alluding to this, so I'm glad we  
8 returned back to Condition 31 and, you know, I think I've kind  
9 of alluded to this or I've said this in other cases that yes, I  
10 understand the nature of why these conditions are created but if  
11 they are conditions, yes, The Field School has to abide by them  
12 but it is the task of the District of Columbia to enforce them.

13 So I am failing to understand how we can quantify what  
14 is objectionable noise? It is entirely relative based off of  
15 what all three of you guys just said, so how do you quantify  
16 that? How does the District of Columbia enforce that? If there's  
17 a resident out here regardless of what, it's a lacrosse game or  
18 some other citywide sport, if there is a complaint from a neighbor  
19 that it's loud and they complain to the District of Columbia, how  
20 does the enforcement agents quantify the noise being loud, and  
21 nobody is saying that to me.

22 MS. SHIKER: Board member Smith, if I could respond to  
23 that based on my decades of doing this now. The condition is  
24 actually that The Field School will work with the community and  
25 so if a person has come to complain to the District, typically

1 | what happens is that gets filed with the Zoning Administrator and  
2 | the Zoning Administrator's office takes it in, calls the Office  
3 | of Zoning and says, hey, Office of Zoning, somebody has complained  
4 | that a condition in a BZA order or Zoning Commission order has  
5 | not been complied with. And so in this case the complaints would  
6 | be is The Field School talking to the ANC or are they working  
7 | with the ANC? It's not taking an objective idea of whether or  
8 | not this is, the noise is adverse, because what we are saying is  
9 | that this condition mitigates any potential for noise under the  
10 | special exception standard.

11 | I do also just want to note that this is not even a  
12 | full size regulation field, so I, again, we believe --

13 | COMMISSIONER SMITH: Irrelevant.

14 | MS. SHIKER: -- the reason why the ANC was so  
15 | comfortable with this is because it really is just going to  
16 | provide opportunities for additional practice and game space in  
17 | the community that doesn't exist today and I think that possibly  
18 | getting to, as Board member John asked us to better define  
19 | community group which we're working on right now and have some  
20 | proposed language, maybe that helps us get to addressing some of  
21 | these concerns as well.

22 | MS. STRAUSS: And I would just add, again, that we are  
23 | currently managing this and we don't have complaints.

24 | COMMISSIONER SMITH: Okay. Then we don't need this  
25 | condition if you're currently managing it and if the nature of

1 the condition is to continue to have some mechanism for dialog  
2 between the community, I think you have that in some way, shape  
3 or form with Condition 38.

4 All due respect, Ms. Shiker, I completely, I respect  
5 your years of experience with these types of conditions. I was  
6 a zoning administrator in previous jurisdictions. I've seen  
7 these conditions and I understand on the government regulatory  
8 side the difficulty of enforcing the type of (audio  
9 interference). That's the reason why I raised this. So my  
10 recommendation is to strike that portion of the condition and  
11 rely on Condition 38 for some of these issues that you raise.

12 MS. SHIKER: And I don't think we have any issue with  
13 that because we believe that Condition 38 will provide the  
14 failsafe that the ANC had asked for.

15 COMMISSIONER SMITH: I'm sorry (audio interference).

16 MS. SHIKER: I said that we don't have any issue with  
17 deleting that element of Condition 31 because we believe  
18 Condition 38 provides the same protection to the neighborhood as  
19 we promised.

20 COMMISSIONER JOHN: Or if I might interject. Maybe you  
21 could say something like the school will implement procedures to  
22 limit adverse impacts from noise during competitions or other  
23 events. I would say maybe not authorize, but I'm just kind of  
24 thinking this through, but you get where I'm going.

25 In other words, what would be enforceable I think would

1 be the activities, I mean, you could identify what's the school's  
2 action should be. What is the school going to do? Does it have  
3 a process and if the school follows that process, then that might  
4 be a way of mitigating noise. I think that's what Ms. Shiker  
5 was referring to.

6           So I would just make it a little more specific that  
7 there will be something in place which I understand the school  
8 has to manage the activities on the field. So maybe something  
9 like that. The school will implement a procedure to limit  
10 activities that create adverse impacts due to excess noise during  
11 competitions or other events, and I don't know what that would  
12 draw a large number of people. I mean, that's not specific. I  
13 would say authorized by the school because the school would have  
14 a process to say what kinds of events and how large they will  
15 be, and I think there is another place where there's a limit on  
16 certain events in the gymnasium, which is different.

17           So that would be my suggestion for that paragraph, but  
18 I don't want to lose my comments on paragraph 14 because I don't  
19 think it's specific enough. It's really laudable that the local  
20 residents would be able to use the athletic field. So will that  
21 use be limited to the hours between 7 a.m. and 9 p.m. when the  
22 lights are off, or when?

23           MS. SHIKER: This is in Condition 14 where the school  
24 shall permit local residents --

25           COMMISSIONER JOHN: Yes.

1 MS. SHIKER: -- to use the athletic field or to walk or  
2 stroll on the campus grounds when these uses are not being used  
3 for school purposes?

4 COMMISSIONER JOHN: Yes.

5 MS. SHIKER: That condition would continue to apply.  
6 You know, people can walk through, it's a very wooded, pretty  
7 campus, is what the intent is.

8 COMMISSIONER JOHN: Yes.

9 MS. SHIKER: Or, you know, if a family was walking  
10 around on Sunday and wanted to play frisbee out there, there's  
11 no specific, like, process to request that. We are just allowing  
12 the community to come on to the campus.

13 COMMISSIONER JOHN: Right. But and they walk on after  
14 it 9 o'clock when the lights are off.

15 MS. SHIKER: Well, there's nothing that physically  
16 prohibits it but the lights won't be on so it would be quite dark  
17 and very difficult.

18 COMMISSIONER JOHN: Okay. So at any time of day or  
19 night, residents could use these facilities?

20 MS. SHIKER: They are not locked down, that's correct,  
21 yes.

22 COMMISSIONER JOHN: That's what you intend?

23 MS. SHIKER: Correct.

24 COMMISSIONER JOHN: Okay.

25 MS. SHIKER: And that's a continuation of the existing

1 use that's happened for the last, at least 13 years.

2 COMMISSIONER JOHN: Okay. That's fine. Some places  
3 limit access but you don't. So at any time of day or night,  
4 that's fine with me. Okay.

5 Thank you, Mr. Vice Chair. Thank you.

6 VICE CHAIRPERSON BLAKE: I want to go back to the  
7 construction management. Ms. John, what did you, where did you  
8 leave on that one, on the construction management?

9 COMMISSIONER JOHN: That it should be --

10 VICE CHAIRPERSON BLAKE: By reference is what you said?

11 COMMISSIONER JOHN: -- referenced in the order but not  
12 included as a specific condition. Because the Board can't enforce  
13 the construction management plan but it can state in the order  
14 that one exists.

15 VICE CHAIRPERSON BLAKE: All right. So, Ms. Shiker,  
16 would that be problematic for the ANC?

17 MS. SHIKER: The ANC didn't have any commitments talked  
18 about in their letter as to construction management. It's just  
19 something that we, The Field School, has always done whenever  
20 they've done construction given that they're in a community that  
21 has residential use. So we have put that in the record. I  
22 believe that, to Board member John's point, if it is referenced  
23 not necessarily as a condition, but that the Applicant proffered  
24 a construction management plan.

25 The community would have notice of that plan and prior



1 to construction, The Field School would be meeting with the  
2 community to let them know updates on the construction and we'll  
3 continue to abide by it even if it isn't a condition in the order.  
4 But it was not a requirement of any of the ANC. We just put it  
5 in because that's always been in.

6 COMMISSIONER JOHN: Thank you. And the lawyers can  
7 adjust the order accordingly, and so that would include Nos. 33,  
8 well 33 is fine. The lawyers would reword that to say the  
9 Applicants have proposed a construction management plan, you  
10 know, in exhibit so and so. But it would be referenced, it would  
11 not be enforceable under the order and so I assume that items  
12 34, 35, and 36 would be included in that construction management  
13 plan, except that 36 could be general I would think. No, no,  
14 that would include 34, 35 and 36.

15 MS. SHIKER: Those are, I'm looking at the construction  
16 management plan to ensure that they are in here.

17 COMMISSIONER JOHN: If they're not you can pull them  
18 out and put them back in in the construction management plan.

19 MS. SHIKER: Right.

20 COMMISSIONER JOHN: That was all I had, Mr. Chairman.  
21 Mr. Vice Chair.

22 VICE CHAIRPERSON BLAKE: Okay.

23 So just, I want to just do this really quickly. Back  
24 on point No. 14, I still think that that portion that has,  
25 "Provided the same conditions applied to the school's facilities

1 and grounds shall apply to the public," I do think that that  
2 particular phrase for some reason to me does capture what you're  
3 trying to do. So I would be somewhat, I would reference that to  
4 say in and we can certainly talk about that.

5 Where are we now on our list? We're almost done, I  
6 think.

7 COMMISSIONER JOHN: I was not suggesting that they  
8 remove it. I was just asking for clarification and the sentence  
9 is exactly what they intend so I have no (indiscernible).

10 VICE CHAIRPERSON BLAKE: No. They initially intended  
11 to remove it, so I was suggesting we keep it.

12 COMMISSIONER JOHN: Okay. I'm confused.  
13 (Indiscernible).

14 VICE CHAIRPERSON BLAKE: This is in 14.

15 COMMISSIONER JOHN: Yeah. So --

16 MS. SHIKER: Board member John, I believe it's our  
17 strikeout at the very end of Condition 14 that Vice Chair Blake  
18 is referring to.

19 COMMISSIONER JOHN: Yes. I don't have --

20 MS. SHIKER: Not the entirety of the condition.

21 COMMISSIONER JOHN: I don't have an issue either way.  
22 I was just concerned about what times would local residents have  
23 access to the field and the clarification was that they will  
24 have, their access was unrestricted. So I am fine with the first  
25 part of that provision and I have no objection to striking what's

1 left. I think that's implied but I also don't object to removing  
2 it. In other words, I'm neutral on that.

3 VICE CHAIRPERSON BLAKE: Okay. Okay. Thank you Ms.  
4 John. Mr. Smith, did you have a comment with regard to Condition  
5 31?

6 (Pause.)

7 VICE CHAIRPERSON BLAKE: Did he drop off?

8 COMMISSIONER SMITH: A comment beyond --

9 VICE CHAIRPERSON BLAKE: Where you are now. I want to  
10 make sure we are in the same place in terms of your  
11 recommendations and their understanding of that.

12 COMMISSIONER SMITH: My recommendation was to remove  
13 the portion of the condition that relates to noise, but if Ms.  
14 John has made a different recommendation in trying to craft a  
15 better way to be able to quantify that, I'm open to it. I think  
16 that was her recommendation. Am I right, Ms. John?

17 COMMISSIONER JOHN: Yes.

18 COMMISSIONER SMITH: Okay.

19 COMMISSIONER JOHN: Something, yes.

20 COMMISSIONER SMITH: Okay. So I guess we'll await Ms.  
21 Shiker making some recommendations to beat that up a little up.

22 VICE CHAIRPERSON BLAKE: Which, where, Ms. Shiker,  
23 where are we now on this list?

24 MS. SHIKER: We are at the final change in the  
25 conditions which is the change in 38 which talks about maintaining

1 the condition that says after completion of the construction,  
2 we'll continue to meet no less than once every six months to  
3 discuss and review objectionable conditions and then we've added  
4 language that has been requested that we will continue to respond  
5 to issues raised by the neighbors when they arise consistent with  
6 the school's past practice of demonstrating responsive and  
7 effective engagement with its neighbors, including addressing  
8 potential stormwater management concerns and this is where we  
9 could say and use of the field in the evening. This secondary  
10 sentence is really supporting what the condition is which is that  
11 we are going to meet on a regular basis to address concerns and  
12 this just describes what happens at those meetings.

13           So to Board member Smith's point, the condition is that  
14 we are continuing to meet no less than once every six months to  
15 discuss these conditions and our commitment to addressing these  
16 issues, as Field School has done in the past is what that second  
17 sentence really is doing, providing guidance as to what those  
18 meetings are about.

19           COMMISSIONER SMITH: Okay. So I, can I speak to the  
20 last part of No. 38 and it's also to Ms. John's point of why  
21 she's recommending to strike some of these conditions that relate  
22 to construction management.

23           Addressing potential stormwater management concerns,  
24 that's not necessarily a zoning issue so my recommendation is to  
25 remove everything beyond essentially in the sense at neighbors

1 and it also gives you additional flexibility to continue to  
2 outreach with the community in various different ways, whether  
3 that's the school, I mean the school field that you had just  
4 referenced or any other issues that may come up during the life  
5 of the special exception itself. So that would be my  
6 recommendation. I don't think (indiscernible) specificity.

7 MS. SHIKER: Yeah. The Applicant would have no issue  
8 to that.

9 COMMISSIONER SMITH: Okay.

10 MS. SHIKER: Thank you.

11 VICE CHAIRPERSON BLAKE: Ms. John, do you have any  
12 other comments or questions on that last one?

13 COMMISSIONER JOHN: No, I don't. No, I don't.

14 VICE CHAIRPERSON BLAKE: Okay.

15 Mr. Hood, I haven't heard from you.

16 ZC CHAIRPERSON HOOD: I want to make sure first of all,  
17 you know me, and I get where the Board is coming from. But when  
18 a community comes to an agreement I know some of this is not,  
19 and I would agree with Board member Smith, some of this is not  
20 in our jurisdiction. But one thing that I don't like to do is  
21 to undo what a whole community, and I'm sure you all have been  
22 around. Field School's cases have not been like this. They've  
23 spent more time with the Board than has been with probably the  
24 community.

25 But my issue is, I think what Field School is, and I

1 may be wrong Ms. Shiker, is that a lot of this was some issues  
2 you all were trying to address from the community to give them a  
3 comfort level as you move forward. But on the flip side of that  
4 I think what my colleagues have been saying is for me a lot of  
5 this is addressed in 38 and I would wholeheartedly hold 38 in  
6 high esteem because some of the things that my colleagues have  
7 mentioned and want to take away I think can be covered and give  
8 the community predictability in 38.

9           So, Mr. Chairman, and I'm going to call you Mr. Chairman  
10 today because that's what you are Mr. Chairman. I don't have a  
11 whole lot to say, I just want to make sure that we don't undo  
12 what the community and the Applicant have worked through because  
13 The Field School cases have not always been this easy. So I  
14 would just suggest that, again, 38 I want to hold that in high  
15 esteem and I'll leave it at that.

16           Thank you, Mr. Chairman.

17           VICE CHAIRPERSON BLAKE: Thank you very much, Chairman  
18 Hood.

19           I appreciate that and I agree with you there and I know  
20 that Board member Smith concurs, we don't want to undo a good  
21 thing. But we do want to make sure that we are at least doing  
22 things within the context of the regulations that are in our  
23 purview so that, and at least we create something that's a roughly  
24 enforceable document.

25           All right. We're going to, I think, are we done now

1 with these conditions? I think we are. Are you done with your  
2 presentation?

3 MS. SHIKER: We --

4 VICE CHAIRPERSON BLAKE: It took a lot longer than we  
5 ever expected but are you pretty much?

6 MS. SHIKER: We are done. I would just add that our  
7 team has been talking behind the scenes and I could offer, and  
8 I'm happy to do it in rebuttal if you'd prefer, responses to the  
9 three questions that came up with respect to the time frame for  
10 the waste.

11 That we would propose that we would say that the waste  
12 removal would be done outside the hours of 7:30 a.m. to 3:30  
13 p.m., which would take that waste removal outside of the times  
14 of pick-up and drop-off but provide flexibility in the future if  
15 that time shifted from what is currently there.

16 We would propose that the lighting in the parking lot  
17 go off by 11 p.m. to give sufficient time for safety and for  
18 exiting, and just for safety reasons as well. That lighting is  
19 very far from any adjacent neighbors and it's very, based on one  
20 of the conditions, it's low directed light, there are no adverse  
21 impacts. So if there was a condition to maintain the time the  
22 lighting went off on the parking lot, we would say 11 p.m.

23 And then to Board member John's question on community  
24 groups. We could identify it as schools, youth sports, community  
25 youth groups and other educational-based institutions to limit

1 | it to something more specific. We already have Condition 14, as  
2 | Board member John talked about, about the public, you know, who  
3 | might come out and play frisbee in the afternoon when the field's  
4 | not being used and we do want the community to be able to  
5 | experience the park-like setting of it when it's not in use, but  
6 | I believe that definition for community groups would provide a  
7 | bit more focus, as Board member John asked for.

8 |           And so those would be my final remarks on the  
9 | conditions, otherwise I believe we have discussed and addressed  
10 | most of the comments of the Board on that, and so with that I'll  
11 | pause and ask if there are any other questions for me.

12 |           VICE CHAIRPERSON BLAKE: Okay.

13 |           Are there any other questions for the Applicant at this  
14 | point? We still haven't gone to the Office of Planning yet  
15 | incidentally, but we're going to do that next. Is there any  
16 | questions we have right now any of the Board members on this?

17 |           (No response.)

18 |           VICE CHAIRPERSON BLAKE: Okay.

19 |           So just what I'd like to try to do is I want to hear  
20 | the report from the Office of Planning and I do not believe an  
21 | ANC person is here, and we'll see if there's anyone who wishes  
22 | to speak. What I'd like to do is if the Applicant could give us  
23 | a revision of those comments in some concise form, it would be  
24 | great if we could do it today or we could wait and do it in a  
25 | decision next week. But I think it would be nice if you could



1 write out, just give us a nice, because we have a little time.  
2 Worst case scenario we can, you know, hold off, close the hearing  
3 and hold off on a decision until after we finish our other cases  
4 today.

5 But it would be nice to get a nice, your understanding  
6 of what we've talked about because we, you know, we want to make  
7 sure we understand what we all agreed to or what we thought we  
8 said. So I think that would be very helpful if you could pull  
9 that together and submit that to the record.

10 Are my Board members okay with that? I see --

11 COMMISSIONER JOHN: Yes, Mr. Vice Chairman. I'm fine  
12 with that.

13 VICE CHAIRPERSON BLAKE: Okay. Great. Let's do that.  
14 And so now let's go to the Office of Planning.

15 MR. MITCHUM: Hi. For the record this is Joshua Mitchum  
16 with the Office of Planning.

17 We just want to reiterate that we recommend approval  
18 of the present modifications as well as the approval of the  
19 special exception for the retaining wall, and we would reaffirm  
20 the analysis and the comments made in our report.

21 So that's all I have at this time. Open to any  
22 questions. Thank you.

23 VICE CHAIRPERSON BLAKE: Okay.

24 Any questions for the Office of Planning from the  
25 Board?

1 (No response.)

2 VICE CHAIRPERSON BLAKE: Any questions from the  
3 Applicant for the Office of Planning?

4 (No response.)

5 VICE CHAIRPERSON BLAKE: Okay.

6 Mr. Young, is here anyone who wishes to speak or  
7 testify?

8 MR. YOUNG: No, we do not.

9 VICE CHAIRPERSON BLAKE: Okay. Okay.

10 So let's see. We don't have that opportunity to pull  
11 that together yet, so what we're going to do is we're going to,  
12 let's see, how can I do this, Ms. Mehlert? I want to close the  
13 hearing except for, no, except for that information we requested.  
14 I want you to go through and give us a nice clean thing, submit  
15 that to the record. I want to re-open this at the end of the  
16 day and deliberate and vote on the application.

17 Would the Board be amenable to that? Ms. John?

18 COMMISSIONER JOHN: Yes, Mr. Vice Chair. Alternatively  
19 you could leave the record open for just that one thing so it's  
20 not necessary to reopen the record. That's another option.

21 VICE CHAIRPERSON BLAKE: Okay. We could do that.

22 Mr. Smith, your thoughts?

23 COMMISSIONER SMITH: I agree with Ms. John.

24 VICE CHAIRPERSON BLAKE: Okay.

25 Chairman Hood, are you okay there?

1                   ZC CHAIRPERSON HOOD: I'm fine, Mr. Chairman. But  
2 we're going to deal with it today, right?

3                   COMMISSIONER JOHN: Yes.

4                   VICE CHAIRPERSON BLAKE: Yes. I think we're going to  
5 close the record and, except for that one piece of information  
6 which we need, and we're going to re-convene this hearing at the  
7 end of the day when we have that information in the file and  
8 we're going to deliberate and vote on this application.

9                   ZC CHAIRPERSON HOOD: Good. Thank you.

10                  MS. MEHLERT: Just to clarify. So are you closing the  
11 hearing and the record except for the requested information?  
12 Would you like the parties to come back or are you just going to  
13 deliberate at the end of the day?

14                  COMMISSIONER SMITH: Have the parties come back to  
15 discuss the conditions, have them come back.

16                  VICE CHAIRPERSON BLAKE: Continue the hearing then.

17                  COMMISSIONER SMITH: Yeah.

18                  VICE CHAIRPERSON BLAKE: Continue the hearing. Okay.  
19 We'll continue the hearing. That way in case there are some  
20 issues we want to clarify, we can. Okay.

21                  MS. SHIKER: Should we submit the updated document  
22 through the record or should we submit it to OZ staff directly?

23                  COMMISSIONER JOHN: Ms. Mehlert?

24                  MS. MEHLERT: Send it to BZA submissions. Thank you.

25                  MS. SHIKER: We will do that. Thank you very much.

1 And we will see you back this afternoon.

2 VICE CHAIRPERSON BLAKE: Thank you. All right.

3 So let's see. Well, I'm going to. I think we're good  
4 for that. We're going to move. Okay. I'm going to dismiss the  
5 witnesses for now. Okay, let you guys go. And I think,  
6 unfortunately, I'm going to need a 15 minute break, okay, at  
7 least that before we go on to the next case. Is that, are you  
8 guys comfortable with that or do you want 30 minutes?

9 COMMISSIONER JOHN: I think it's lunchtime, Mr. Vice  
10 Chair.

11 COMMISSIONER SMITH: It's lunchtime, yeah.

12 VICE CHAIRPERSON BLAKE: Sounds like a winner. So  
13 let's see, it's lunchtime. See you back at 1 o'clock.

14 ZC CHAIRPERSON HOOD: All right.

15 COMMISSIONER JOHN: Okay.

16 VICE CHAIRPERSON BLAKE: All right. Thank you.

17 COMMISSIONER JOHN: Thank you.

18 (Whereupon, there was a recess for lunch.)

19 MS. MEHLERT: The Board is back from its lunch break  
20 and is returning to its hearing session.

21 The next case is Application No. 21230 of Washington  
22 Area Bicyclists Association. This is a self-certified  
23 application pursuant to Subtitle X, Section 901.2 for a special  
24 exception under Subtitle A, Section 207.2 to allow extension of  
25 regulations applicable to the portion of a split-zoned lot

1 | located in a less restricted use zone to the portion of a lot in  
2 | a more restricted use zone, and pursuant to Subtitle X, Section  
3 | 1002 for an area variance from Subtitle G, Section 201.1 from the  
4 | density requirements of Subtitle G, Section 201.1.

5 |           This is for an office use in a two-story detached  
6 | building located in the MU-3A and R-2 zones at 1110 Hamlin Street,  
7 | Northeast, Square 3876, Lot 47.

8 |           VICE CHAIRPERSON BLAKE: Okay. Thank you.

9 |           Welcome back everybody. Let's see. Is the Applicant  
10 | here? If so, would you please introduce yourself and those you  
11 | might have with you today for your presentation. Ms. Kiker, is  
12 | that, are you the, who's the Applicant? Who's representing the  
13 | Applicant?

14 |           MR. LEWIS: I'll start off. Thank you. Can you all  
15 | hear me?

16 |           VICE CHAIRPERSON BLAKE: Yes.

17 |           MR. LEWIS: Yes. Good afternoon, Chair Blake, members  
18 | of the Board. I'm Dave Lewis. I'm here with my colleague, Liv  
19 | Torres, Goulston & Storrs, which is land use counsel-based case  
20 | on behalf of the Applicant, Washington Area Bicyclist Association  
21 | or WABA. It's a D.C.-based non-profit organization. On behalf  
22 | of WABA is Elizabeth Kiker, the Executive Director and also  
23 | available on our team for questions is the property owner, Jack  
24 | Sterne who's also on the conference.

25 |           VICE CHAIRPERSON BLAKE: Great. Excellent.

1 I assume you'll be heading a presentation, but I would  
2 appreciate it if we could have Mr., the property owner and Ms.  
3 Kiker both introduce themselves for the record.

4 MS. KIKER: Hi. My name is Elizabeth Kiker and I'm the  
5 Executive Director of the Washington Area Bicyclist Association.

6 MR. STERNE: And I'm Jack Sterne. I'm the property  
7 owner.

8 VICE CHAIRPERSON BLAKE: Okay. Could you, I'm sorry,  
9 I forgot. Could you please include your address as well.

10 MR. STERNE: Sure. The address of the property is 1110  
11 Hamlin Street, Northeast.

12 VICE CHAIRPERSON BLAKE: Ms. Kiker as well. Would you  
13 please just give me your address as well?

14 MS. KIKER: The current address where?

15 VICE CHAIRPERSON BLAKE: Your address. I just want to  
16 get your address on the record.

17 MS. LEWIS: Yes. Your current office address.

18 MS. KIKER: Okay. 2599 Ontario Road, Northwest,  
19 Washington, D.C. 20009.

20 VICE CHAIRPERSON BLAKE: Great. Thank you very much.  
21 All right.

22 I think we also have the ANC representative. Could you  
23 please introduce yourself for the record.

24 ANC COMMISSIONER AMIN: Good evening, Board. I'm  
25 Commissioner Ra Amin, ANC SMD 5B04 Brookland.

1 VICE CHAIRPERSON BLAKE: Okay. Thank you very much for  
2 joining us.

3 What we'd like to do is just kick off the presentation.  
4 Mr. Lewis, if you would give us a sense of what the Applicant's  
5 program is and how you believe that they're meeting the standard  
6 for us to grant them approval.

7 MR. LEWIS: Sure.

8 VICE CHAIRPERSON BLAKE: If you have a presentation,  
9 I'll put 15 minutes on the clock and you can begin whenever you  
10 like.

11 MR. LEWIS: Should I share my screen or will Mr. Young  
12 pull it up?

13 VICE CHAIRPERSON BLAKE: Unfortunately we can't do that  
14 but Mr. Young can pull up your slide deck for you.

15 MR. LEWIS: Okay. Thank you. That's it. All right.  
16 Thank you. Go ahead to the second slide there, Mr. Young.

17 I just want to start things off by saying this  
18 application involves an existing building on the property at 1110  
19 Hamlin Street which WABA seeks to use as its new headquarters.  
20 It'll be an office use. WABA hopes to maintain its presence as  
21 a non-profit organization headquartered in the District which  
22 it's been for many years now. Mr. Young, next slide, please.

23 WABA intends to use the existing building with only  
24 minor changes to the interior and possibly only the addition of  
25 an ADA ramp and new bicycle parking to the exterior. There are

1 no meaningful changes proposed to the exterior of the building.  
2 Next slide, please.

3 Just a quick note about the property. The lot, existing  
4 lot today is very small. About one third of the lot is in the  
5 MU-3A zone and the balance of the lot is in the R-2 zone. As  
6 shown in the map on the left it's an easy bike ride from the  
7 Metropolitan Branch Trail and a short walk to two different metro  
8 stops on the red line. Next slide, please. Thank you.

9 We are before you today because WABA seeks two areas  
10 of relief. The first is a special exception under Section 207.2  
11 of Subtitle A to extend that MU-3A zone portion of the lot 35  
12 feet to the west to apply to the entirety of the property. Next  
13 slide, please. Thank you.

14 The second area of relief is a variance to allow the  
15 FAR for the building to exceed by a very small amount, the overall  
16 1.0 FAR applicable to non-residential structures in the MU-3A  
17 zone. The additional FAR that's the subject of the request is  
18 all existing and the amount by which it exceeds the zoning limit  
19 is all in a below grade portion of the building. Next slide,  
20 please.

21 And just to reiterate. The exterior of the building  
22 will not change. This is not a demolition nor a raze in any way.  
23 The existing building is going to remain. The existing  
24 footprint's going to remain. So just wanted to make sure that  
25 was really clear up front. Next slide, please. Thank you.



1           We're very happy to be here with support from  
2 Commissioner Amin and the rest of ANC 5B, support from the  
3 Brookland Neighborhood Civic Association, OP, no opposition from  
4 DDOT. We have a support letter from Council Member Parker and  
5 more than two dozen neighbors and note just briefly a typo on  
6 the slide, I's ANC 5B, not ANC 5D. Apologies for any confusion  
7 there. But this application is before you with robust support  
8 and folks are very excited for WABA to be in the Brookland  
9 neighborhood.

10           So at this point I'll turn the presentation over  
11 briefly to Elizabeth to talk a little bit about WABA and its  
12 mission and why this property is really uniquely well situated  
13 for WABA's mission because that's such an important part of our  
14 justification for the requested relief. So, Elizabeth, would you  
15 go to the next slide and then Elizabeth will talk through WABA  
16 briefly.

17           MS. KIKER: Thank you so much, Dave, and thank you  
18 council for hearing our application.

19           WABA was founded in 1972 and we work in Washington,  
20 D.C. as well as in Virginia and Maryland. We work to promote  
21 bicycling, walking and transit in the entire region. As you all  
22 know when you cross a jurisdiction you don't stop driving or stop  
23 biking, you have to keep going to wherever your destination is.

24           We have been located in Adams Morgan for 15 years. The  
25 long term goal of our organization has been to buy -- I actually

1 spoke with a Board member yesterday who said, gosh, we have always  
2 struggled to find a place that meets all of our needs that we  
3 wanted to buy when I was on the board 15 years ago. So it's been  
4 a long time and the former executive director said the best time  
5 for WABA to buy would have been any time in the past 15 years.  
6 So we can go to the next slide.

7           The work that we do is sort of three prongs. We really  
8 work strongly with advocacy. We're working to make sure that in  
9 Washington, D.C., Maryland and Virginia there are safe places for  
10 people to bike and walk and take transit. We really focus on  
11 protected bike lanes and making sure that planners are using bike  
12 lenses as well as driving lenses. We organize community members  
13 around bicycling and safe streets. We've built strong  
14 relationships with decisionmakers and then we work with allied  
15 groups. A lot of our work is with lots of partnerships to show  
16 how vital transportation investments are. Next slide.

17           We also do a lot of education work. We do that in the  
18 entire region, Prince George's County, Montgomery County,  
19 Arlington County and Fairfax County as well as D.C. We have a  
20 contract where we teach in the D.C. public charter schools  
21 programs throughout each year reaching lots of students and we're  
22 teaching children how to ride and also how to ride safely, and  
23 then we also teach youth and adult classes, again both how to  
24 ride and then how to ride, you know, with traffic and on those  
25 streets and on the bike lanes that we have now and so we reach

1 thousands of people that way each year. Next slide.

2           And then we have this great program called the Trail  
3 Rangers which is supported by the D.C. Department of  
4 Transportation as is our education program. And the Trail  
5 Rangers, I wish they were in Virginia and Maryland too. They do  
6 work. They're really, I don't know if any of you have seen them  
7 but they're amazing. They go out on all the D.C. trails and keep  
8 it cleared. So they cut down branches, clean up tires. You know  
9 how people will dump tires, they clean out 30 or 50 tires a day.  
10 They clean invasive vines. There's an invasive vine clearing  
11 this coming Saturday. And then they have coffee hours and just  
12 talk with people on the trails too, so it's a really neat program.  
13 Next slide please. Thank you.

14           And then we just opened a community bike shop called  
15 Gearin' Up which is a continuation of a ten-year tradition that  
16 existed in Washington, D.C. It was a separate organization that  
17 fell on hard times and was not able to succeed but WABA bought  
18 its assets and kept it going. So people donate bikes to Gearin'  
19 UP and then the student, there's youth that come and take classes  
20 and learn how to repair bikes and then earn a bike, get a free  
21 bike themselves and then if they're interested they say and learn  
22 how to run a bike shop, learn how to be a mechanic. And then we  
23 also do a service where people bring their bikes and we fix them  
24 or they donate bikes and we sell them. So it's a community bike  
25 shop and it is right next to Alethia Tanner Park. Next slide.

1           So the location, as I mentioned we've been looking for  
2 a very, very long time, but the trick is that we, I would show  
3 you the office I'm sitting in right now. I showed you a blank  
4 wall, but the rest of it is jus boxes and there's a tiny window  
5 you can see right --

6           VICE CHAIRPERSON BLAKE: That's okay. We can't do  
7 live, you shouldn't do live testimony. Just go ahead on the  
8 slide. Thank you.

9           MS. KIKER: I'm sorry. I apologize.

10          So I think here we're more focused, the current  
11 location is more on the bike parking side than the human side so  
12 we have a lot of bike parking needs both for our Trail Rangers  
13 and our education programs as well as the staff that bike to  
14 work. And so our current offices are sub-floor, basement, and  
15 it's hard to find a place. There is a lot of property in D.C.,  
16 but it's hard to find a place like law firms have a lot of space  
17 now but they don't want Trail Ranger bikes with chainsaws and  
18 tools, you know, parking in their lobby.

19          And so the thing that we really love about Hamlin Street  
20 that we were so excited about was, that I'm also excited about,  
21 is that there is a real, the basement entrance fits the Trail  
22 Ranger bikes, fits the education bikes, fits a lot of the bikes  
23 that we need to store and there's a lot of light and a lot of  
24 windows for the offices and the staff for the rest of the team  
25 on the second two floors, and I apologize for turning the camera

1 around but we're, that's why we are so excited about Hamlin  
2 Street.

3 And I believe that's the end of my presentation.

4 VICE CHAIRPERSON BLAKE: Thank you very much.

5 MR. LEWIS: Go ahead one more slide, please, Mr. Young.

6 MS. KIKER: Oh, I'm sorry. And we didn't, oh, the  
7 proximity. I forgot to say the proximity to the trail is so  
8 vital because at this point our staff have to come from where  
9 they live, many of them in northeast or elsewhere, to Adams Morgan  
10 to get their bikes and then go back to the trails to maintain  
11 the trails, or they ride here. And so the proximity to the metro  
12 and the trail is amazing and we are just very excited about that  
13 opportunity as well.

14 MR. LEWIS: Thanks Elizabeth. Next slide, please, Mr.  
15 Young.

16 So, as I mentioned, there are two relief requests in  
17 this application. I'll run through the standards for each quickly  
18 after Elizabeth has talked through kind of the public interest  
19 mission of the WABA. The first area of relief is the special  
20 exception which includes four prongs under Section 207 of  
21 Subtitle A, and then the two under the general special exception  
22 standards, Subtitle X, Section 902.1.

23 So running through those standards quickly. Under  
24 207.2(a) the property is exactly 50 feet wide per the 1925 plat  
25 that created the lot. Fifteen feet of the lot is in the MU-3A

1 zone per the zoning and then the balance, thirty-five feet is in  
2 the R-2 zone. So the zoning regulations permit extending the  
3 less restrictive MU-3A zone 35 feet to the west which lines up  
4 perfectly with the entirety of the lot in the R-2 zone. So we  
5 satisfy that first prong.

6 The second prong, Section 207.2(b) does not apply here.  
7 That section applies only when the R-2 zone is the less  
8 restrictive zone which is not the case here. Here, the R-2 zone  
9 is the more restrictive zone. Next under Section 207.2(c) and  
10 901.2(b), I've grouped them together. They're similar. They go  
11 to adverse impacts on nearby properties for the neighborhood  
12 generally and, as evidenced by all the support in the record and  
13 from our written statement, this application is not going to have  
14 adverse effects on the neighborhood.

15 Under Section 207.2(d) there are no conditions  
16 necessary for this use at this location. So that item is also a  
17 nay. And finally under Subtitle X, Section 901.2(a), this  
18 application is in harmony with the intent and purpose of the  
19 zoning regulation. It allows small scale office use along a  
20 mixed use corridor, Brookland. The height and density of the  
21 building are, as they are today, and in line with what is allowed  
22 in the R-2 zone. Next and final slide, please, Mr. Young. Thank  
23 you.

24 Under the second area of relief, the Applicant seeks  
25 an FAR variance to use the entire building for office headquarters

1 use. MU-3A permits a maximum FAR of one. The existing building  
2 which pre-dates zoning very slightly exceeds 1.0. It's 1.045.  
3 That's entirely on the basis of a portion of the building, the  
4 basement, counting as GFA.

5 The Applicant would like to maintain the existing  
6 building as is and would like to use that basement area as part  
7 of its operations as, as Elizabeth testified, it would be used  
8 largely as the Trail Ranger storage and kind of, correct me if  
9 I'm wrong, Elizabeth, I think the Trail Rangers would have space  
10 down there where they would meet and, you know, and work together,  
11 that sort of thing as well. So it would be very difficult to  
12 remove that basement space from the building or exclude it from  
13 the CFO for the office use, which is why we're seeking the  
14 variance to continue that space.

15 So quickly running through the variance standards.  
16 There are a number of factors that make this property unique  
17 including its size, lack of rear yard gut most importantly,  
18 location of the zone boundary in the pre-zoning age building.  
19 These are more fully identified in our written statement and in  
20 the OP report.

21 These unique factors together create a practical  
22 difficulty in complying with the FAR limit of the zoning regs and  
23 as this Board is aware, you all may be more flexible in applying  
24 the standards for a variance to an Applicant that serves the  
25 public interest as WABA does, and where the relief goes to the

1 Applicant's public interest mission, as is the case here. Here  
2 the FAR relief is necessary to allow for that bicycle storage and  
3 tool storage and for the bikes that are used for educational  
4 purposes as well. All that is directly related to WABA's public  
5 interest mission.

6 And finally, the final prong of the variance relief  
7 goes to adverse effect on the neighborhood, again, and not  
8 impairing the zone plan and, as mentioned in the special exception  
9 standards, again, the relief here really is not at all  
10 inconsistent with the planning or with the zoning regs or frankly  
11 the zoning maps for the site.

12 So at this point we'll wrap up our direct presentation  
13 and take any questions that the Board or the ANC may have, but  
14 just wanted to say thank you again for your time. We really  
15 appreciate the opportunity to present this afternoon.

16 VICE CHAIRPERSON BLAKE: Great. Thank you, Mr. Lewis.

17 Do we have any questions from the Board?

18 (No response.)

19 VICE CHAIRPERSON BLAKE: Do we have any questions from  
20 the ANC to the Applicant?

21 (No response.)

22 VICE CHAIRPERSON BLAKE: Okay.

23 Then turn over to the Office of Planning, please, for  
24 your report.

25 MR. BEAMON: Good afternoon Board members. For the



1 record Shepard Beamon with the Office of Planning.

2 OP has reviewed the application for the requested  
3 special exception relief for the zone (indiscernible) and  
4 requested area variance from FAR and finds that the requests meet  
5 the criteria for Subtitles A and X. As the Applicant proposed  
6 no changes to the existing building, the proposed non-profit  
7 office use should not negatively impact the surrounding context.  
8 The Applicant encourages alternative uses for mobility,  
9 discourages the uses of cars. The existing building located on  
10 a split zone also creates a condition that limits the property  
11 in terms of use considering the building exceeds the maximum FAR  
12 for both the R2 and the MU-3A zones.

13 Therefore, OP recommends approval as stated on the  
14 record. OP will also note that since this is a self-certified  
15 application OP reviewed the requested relief submitted by the  
16 Applicant. However, should it be determined that the Applicant  
17 needs additional FAR relief during the permitting process, OP  
18 does not object to the granting of additional relief, if needed,  
19 and with that I can take any questions.

20 VICE CHAIRPERSON BLAKE: Does anyone have any, anyone  
21 on the Board have any questions for the Office of Planning?

22 (No response.)

23 VICE CHAIRPERSON BLAKE: Does the Applicant have any  
24 questions for the Office of Planning?

25 MR. LEWIS: No, sir.

1 VICE CHAIRPERSON BLAKE: Okay.

2 Mr. Beamon, I have a question for you. You had  
3 mentioned something about additional FAR. Do you mean if they  
4 wish to use more of the lower level space or what exactly are  
5 you referring to?

6 MR. BEAMON: So, again, those calculations that the  
7 Applicant provided were based on a previous case. So we weren't  
8 sure if that was actually the correct amount of FAR would be  
9 needed for this specific property considering that it is split-  
10 zoned and I'm looking at the regulations. It may be interpreted  
11 for this case that it may need additional FAR relief to endure  
12 the permitting process. But, again, OP does not, you know, object  
13 either way but it's not OP's responsibility to interpret the  
14 zoning regulations.

15 VICE CHAIRPERSON BLAKE: Okay. I understand.

16 Mr. Lewis, did you, is that, do you have any comment  
17 on that?

18 MR. LEWIS: No. I understand Mr. Beamon's comment and  
19 I appreciate OP's support. My understanding from both this Board  
20 and the Zoning Administrator, we have not spoken with the Zoning  
21 Administrator in this case, but in the past she has interpreted  
22 207.2, 207.1, to have the more restrictive zone adopt the FAR  
23 limits of the less restrictive zone which is what we're talking  
24 about here. The R-2 zone is more restrictive than the MU-3A  
25 zone. So the 1.0 FAR will apply to the R-2 portion of the site.

1           If the R-2 was less restrictive, for instance, and the  
2 neighboring site, the neighboring zone boundary was R-2 R-1.  
3 There is no FAR for the R-2 under the zoning regs. So if the  
4 zoning regs say in the R-2 zone the FAR is .4. We don't think  
5 the .4 is applicable here at all. We think that the FAR for the  
6 R-2 portion of the site is going to be the 1.0. So that's our  
7 understanding from the Zoning Administrator's past actions and  
8 frankly from the BZA's past actions involving a leap of this  
9 sort.

10           I think what Mr. Beamon is saying is that if the ZA  
11 changes her mind and says that the FAR for the R-2 portion is  
12 actually 0.4, then we would need additional FAR and OP doesn't  
13 object to that additional FAR.

14           VICE CHAIRPERSON BLAKE: Okay.

15           Well, I can have the other Board members comment on  
16 this but I do think that the measurement is not our  
17 responsibility. Either it is the ZA who will make that  
18 determination and if, this is a self-certified application, so  
19 to the extent that you do have to revisit it I think we probably  
20 could focus on the questions before us and based on the  
21 information we have.

22           MR. LEWIS: Uh-huh.

23           VICE CHAIRPERSON BLAKE: Any other Board members concur  
24 or disagree with that?

25           COMMISSIONER JOHN: I don't disagree. It's a self-

1 certified application.

2 VICE CHAIRPERSON BLAKE: All right.

3 Then, let's see. Mr. Young -- we have another  
4 question. Mr. Young, do you have anyone that wishes to speak?

5 MR. YOUNG: No, we do not other than the ANC.

6 VICE CHAIRPERSON BLAKE: Oh, I'm sorry, I'm sorry.  
7 Thank you very much.

8 Mr. Amin, I apologize for doing that. Please.

9 MR. AMIN: No. No problem, Vice Chair Blake and good  
10 afternoon again, Chair Hill, Chair Blake and Board members.

11 I did prepare a few things to say but, you know, for  
12 the sake of time I do not, and I can go straight to some key  
13 points that I just wanted to make. Again, I'm the ANC  
14 Commissioner and I've been authorized by 5B, my colleagues, to  
15 speak on this.

16 The Brookland community and ANC 5B as well as me as the  
17 SMD representative, we've conducted a pretty extensive and  
18 extended community engagement process. There have really been  
19 no real oppositions or concerns that have not been able to be  
20 addressed by the ANC or the Applicant and we're very, very pleased  
21 with that.

22 This project has become very, very important to the  
23 Brookland community and there's a lot, a lot of support behind  
24 it. One of the main reasons that it is very, very supported here  
25 is because the, it's very important that we revitalize historic

1 12th Street in Brookland and we feel like this project alone,  
2 WABA coming into our community, moves us closer to that goal that  
3 this community has been working on for many, many years to bring  
4 life back into historic 12th Street as well as just the work that  
5 WABA does in the community. They've already proven to us they're  
6 going to be good neighbors and good partners along the way. We  
7 can already see the benefits of WABA possibly coming into our  
8 neighborhood. Zeke's Coffee will be opening up on 9th and Girard  
9 in our neighborhood next week. So this is really exciting for  
10 us because this is what we've been working for as a community.

11 And, you know, and with all that being said, on behalf  
12 of ANC 5B and the Brookland community SMD 5B04 and Ward 5, I want  
13 to ask the Board to support this Applicant on this request here  
14 and thank you for your time, and I'm happy to answer any questions  
15 from the Board or the community.

16 VICE CHAIRPERSON BLAKE: Yes, sir, Mr. Amin.

17 Thank you very much for your ringing endorsement. I  
18 appreciate that. It certainly does sound like the community is  
19 really excited about this and wants it, and I'm overwhelmed with  
20 your enthusiasm.

21 Does the Board have any questions for the Commissioner?

22 ZC CHAIRPERSON HOOD: I too want to echo your comments  
23 about Commissioner Ra Amin. He and I worked together in other  
24 capacities but we appreciate, and I want you to know publicly, I  
25 appreciate all the work you do, Commissioner, and continue to

1 keep doing the good job you're doing for the community.

2 Thank you.

3 ANC COMMISSIONER AMIN: Thank you, Chair.

4 VICE CHAIRPERSON BLAKE: Okay. All right. Thank you  
5 very much again.

6 All right. Now, Mr. Young, is there anyone who wishes  
7 to speak?

8 MR. YOUNG: We do not.

9 VICE CHAIRPERSON BLAKE: Okay.

10 So, Mr. Lewis, do you have any comments that you would  
11 like to close with?

12 MR. LEWIS: Just very briefly.

13 Thank you to Commissioner Amin and Mr. Beamon for the  
14 support on this application and thank you to the Board for your  
15 time.

16 I'll just keep this very brief. We think this  
17 application (indiscernible) to the Board. As noted, we have lots  
18 of support from the ANC, OP, DDOT, neighbors, et cetera. No  
19 opposition. This application is directly in line with special  
20 exception criteria and satisfies the variance test, especially  
21 when the Board applies the public interest standard laid out in  
22 the case law.

23 So we thank the Board and the agencies and the community  
24 members watching for your time and your consideration. Thanks  
25 so much.

1 VICE CHAIRPERSON BLAKE: Thank you.

2 I'm going to dismiss the witnesses and I guess we can  
3 be in deliberations if everybody's prepared for that. Let's see.

4 COMMISSIONER JOHN: And I think, Mr. Chairman, you  
5 wanted to close the record and (indiscernible).

6 VICE CHAIRPERSON BLAKE: Oh, yes. Sorry about that.  
7 Thank you very much, Ms., former Vice Chair John. Thank you.  
8 Would you please close the record so we can deliberate this and  
9 move on. Okay?

10 So I'm going to, let me see if I can find my notes.  
11 That's what I was actually looking for. The, I believe that the  
12 Applicant has met the burden of proof to be given, to be granted  
13 the relief. Reviewing this, it's clear that the special exception  
14 to extend the height and bulk into the standard MU-3 to the R-2  
15 zone. They've met the criteria for that and we've discussed it,  
16 particularly with the leeway granted through the non-profit  
17 status.

18 I think that it's a very interesting building because  
19 it is residential in appearance and they don't intend to increase  
20 the size of it which means it will have the same appearance as a  
21 residential unit going forward, even though it would now be  
22 considered in the M-3 zone.

23 I'll be honest, my major concern with this particular  
24 thing is that as you extend the zone you do extend also the other  
25 development standards with it and also some of the matter-of-

1 right use standards that go with the MU-3 zone, which would be  
2 fairly inconsistent in some regards with the R-2 zone. However,  
3 in this particular instance we are looking at an office use and  
4 it's going to be an office used by a not-for-profit organization  
5 that is actually outside focus. I mean, they're all on the  
6 trails, they're doing stuff outside. They're not in there  
7 carrying on and doing a whole bunch of stuff. So the reality of  
8 it is this, the nature of this and the nature of the office use  
9 does make this I think not so detrimental to the, not problematic  
10 for the neighborhood and creating some adverse impacts.

11 So that said, I do believe granting relief would be in  
12 harmony with the zoning regulations and I would be in favor of  
13 the application, I mean in favor of approving the application for  
14 a office use in this, as part of that to accommodate office use.  
15 So we would incorporate that in the caption.

16 Mr. Smith?

17 COMMISSIONER SMITH: Couldn't have said it better  
18 myself, Chairman Blake. So I don't think I have anything to add.  
19 I agree with everything that you've stated regarding this case  
20 and will support the application.

21 VICE CHAIRPERSON BLAKE: Thank you very much.

22 Ms. John?

23 COMMISSIONER JOHN: I'm in support of the application  
24 as well. I'm going to give great weight to OP's analysis of the  
25 application meets the standards for the area variance and, again,



1 I'm in support.

2 VICE CHAIRPERSON BLAKE: Thank you.

3 Chairman Hood?

4 ZC CHAIRPERSON HOOD: Yes, Mr. Chairman.

5 I would agree with my colleagues as well as with the  
6 record. I think everything that's been said I think warrants our  
7 approval. I think this record's complete and ready to move  
8 forward, and will be voting in support.

9 Thank you.

10 VICE CHAIRPERSON BLAKE: Thank you.

11 Having deliberated and moved to the vote, I'd like to  
12 make a motion to approve the application as read and captioned  
13 by the Secretary for an office use and ask for a second. Ms.  
14 John?

15 (Pause.)

16 VICE CHAIRPERSON BLAKE: I'm sorry, Ms. John. You're  
17 on mute.

18 COMMISSIONER JOHN: Thank you.

19 Yes, I'm in support of the application and I would  
20 second based on how the application is read and captioned.

21 VICE CHAIRPERSON BLAKE: Okay.

22 Having seconded, Madam Secretary, would you please take  
23 a roll call vote.

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

1 Vice Chair Blake:  
2 VICE CHAIRPERSON BLAKE: Yes.  
3 MS. MEHLERT: Ms. John?  
4 COMMISSIONER JOHN: Yes.  
5 MS. MEHLERT: Mr. Smith?  
6 COMMISSIONER SMITH: Yes.  
7 MS. MEHLERT: Chairman Hood?  
8 ZC CHAIRPERSON HOOD: Yes.  
9 MS. MEHLERT: Staff would record the vote as four to  
10 zero to one to approve Application 21230 on the motion made by  
11 Vice Chair Blake and seconded by Ms. John.  
12 VICE CHAIRPERSON BLAKE: Okay. Thank you.  
13 Madam Secretary, would you please call our next case.  
14 MS. MEHLERT: Next is Application No. 21234 of the D.C.  
15 Department of General Services. This is an application pursuant  
16 to Subtitle X, Section 901.2 and Subtitle C, Section 1312 for a  
17 special exception under Subtitle C, Section 1305.2 from the  
18 height requirements for building mounted antennas of Subtitle C,  
19 Section 1305.1.  
20 This is the relocation of building mounts of antennas  
21 from one building to another on a university campus. It's located  
22 in the R-1B zone at 4200 Connecticut Avenue, Northwest, Square  
23 1964, Lot 812. As a preliminary matter there is a request from  
24 the Applicant to waive the filing deadline for supplemental  
25 filings in the record Exhibits 25 through 25G.

1 VICE CHAIRPERSON BLAKE: Okay.

2 If there is, I have no problem admitting that to the  
3 record if there's no objection from my Board. I'd like to see  
4 that information. Okay. Hearing no objections, we should do so.

5 Could you please, if the Applicant is here could you  
6 please introduce yourself?

7 (Pause.)

8 VICE CHAIRPERSON BLAKE: Mr. Gregory? Mr. Gregory, are  
9 you having trouble with your device?

10 (Pause.)

11 VICE CHAIRPERSON BLAKE: Mr. Young, can you help him  
12 or, let's give him a couple of minutes to figure it out here.

13 (Pause.)

14 VICE CHAIRPERSON BLAKE: Mr. Young, can you help Mr.  
15 Gregory?

16 MR. YOUNG: Yeah. I would advise him to call the  
17 hotline number if he's having issues and he can call in by phone.

18 (Pause.)

19 VICE CHAIRPERSON BLAKE: Mr. Gregory, if you can hear  
20 that, would you please call the hotline number. It's on the  
21 screen. I said it earlier. I can't see it though, oh, 202-727-  
22 5471.

23 MR. GREGORY: (Audio interference). I apologize.

24 VICE CHAIRPERSON BLAKE: Ah, there you are. Thank you.

25 MR. GREGORY: Yes, yes.

1 VICE CHAIRPERSON BLAKE: Welcome.

2 MR. GREGORY: I was only now able to unmute myself.

3 VICE CHAIRPERSON BLAKE: Okay. Well, welcome.

4 Would you please introduce yourself for the record.

5 MR. GREGORY: Yes. Good afternoon members of the Board.

6 My name is Phil Gregory. I work for the Department of General  
7 Services in this application for the special exception request.

8 VICE CHAIRPERSON BLAKE: Okay. Your voice is not coming  
9 through very clearly. There's some break up. Also, are you able  
10 to use your camera or is that using up too much bandwidth?

11 MR. GREGORY: I can hear you fine. There's an echo but  
12 I can definitely see all of you on my screen. But I don't know  
13 why --

14 VICE CHAIRPERSON BLAKE: Can you use your screen  
15 itself?

16 MR. GREGORY: Sure. Let's see. Integrated camera.  
17 Oh, there I am. Oh, thank you.

18 VICE CHAIRPERSON BLAKE: There you are. Great. Okay.

19 Well, I appreciate it if you would introduce yourself  
20 for the record, first.

21 MR. GREGORY: So my name is Phil Gregory. I work for  
22 the Department of General Services, the Applicant in this  
23 particular request for special exception.

24 VICE CHAIRPERSON BLAKE: Okay.

25 Do you have anyone else with you today?

1           MR. GREGORY: So online I am joined by the Office of  
2 Unified Communication. This is someone who manages all public  
3 safety radio sites around the District. I am also joined by  
4 Dwayne (phonetic) Kinley with Motorola. Motorola, as you know,  
5 is the radio operator for the District. And I am finally joined  
6 by Eric Sohl who provided all the drawings and filed the permits  
7 for this particular project. And here is Dwayne joining us here.

8           VICE CHAIRPERSON BLAKE: Okay.

9           MR. GREGORY: And Eric Sohl is also there.

10          VICE CHAIRPERSON BLAKE: Just, Mr. Young, did all of  
11 these people sign up to participate?

12          MR. YOUNG: I do not have them on my witness list so I  
13 would check with the Secretary to make sure they're sworn in.

14          MS. MEHLERT: No. We just have Mr. Gregory for this  
15 case.

16          VICE CHAIRPERSON BLAKE: Okay.

17          So if we, should we just, if they're called for  
18 testimony we can just admit them for that? They've done the  
19 affirmation and the oath, right? That's done.

20          MS. MEHLERT: No. If they have not signed up, then  
21 they did not take the oath.

22          VICE CHAIRPERSON BLAKE: Okay. So we would, should do  
23 that. Can you just, to make it simple, can you just administer  
24 that?

25          MS. MEHLERT: Sure. If you all would please raise your

1 right hand.

2 Do you swear or affirm that the testimony that you will  
3 give today is the truth?

4 MR. KINLEY: Yes.

5 MS. MEHLERT: You may consider yourself under oath.

6 MR. KINLEY: Very good. Thank you.

7 VICE CHAIRPERSON BLAKE: Okay. Just to simplify  
8 matters.

9 Okay. Now, Mr. Gregory, would you please, you've got  
10 15 minutes on the clock. If you could take a minute to go through  
11 and tell us a little bit about the project and how you believe  
12 the Applicant is meeting the burden of proof to be granted relief.

13 MR. GREGORY: Absolutely. In fact, I do have a  
14 presentation. Mr. Young, if you could please pull that up? Thank  
15 you. Thank you, Mr. Young.

16 All right. So this particular project, if you could  
17 please switch over to the next slide, is for the relocation of a  
18 public safety radio system within the UDC campus. You will notice  
19 in the picture here that building 41 was the site of a Motorola  
20 public safety radio system for the past 22 years. We're, building  
21 41 on the right hand side of the screen going through the  
22 abatement process and soon to be demolished to make way for the  
23 archives building. A new location for the radio site was  
24 identified in building 38 on the left side of the screen. That  
25 particular building requires a number of antennas for the

1 reception and the transmission of public safety radio signal and  
2 if you could please turn to the next slide. Thank you.

3           And the purpose of these antennas are essentially to  
4 make sure that there is a clear communication between first  
5 responders and the District 911 and 311 center. We have these  
6 antennas in place essentially to provide that centralized  
7 coordination of all public safety voice communication with the  
8 Office of Unified Communications 911 center and 311 center and  
9 of course our first responders. So this particular radio site  
10 ensures that it serves the need of the community. Next slide,  
11 please.

12           Just to give you an idea. On this particular slide you  
13 will see four quadrants. The one on the far left corner shows  
14 ten dots. These dots, each dot represents a radio site. On the  
15 upper left hand corner the middle dot is the UDC radio site. You  
16 probably notice how the communication is solid because of the UDC  
17 radio site whereas if you switch over to the next quadrant, if  
18 we were to remove the radio site from UDC from that particular  
19 quadrant of the city you would completely lose communication from  
20 an exterior portion of the building. In fact, the green area  
21 that you see here illustrates a radio gap or signal gap in that  
22 particular area.

23           Now, likewise on the third quadrant the UDC radio  
24 signal allows first responders, if they were to communicate  
25 inside the building, to have a clear signal as they communicate

1 back and forth with their headquarters, with the call center and  
2 911 and 311 and any other law enforcement agencies. Now if you  
3 were to remove that particular radio site from UDC, and I'm  
4 referring to the last picture on the right, you probably noticed  
5 the green area, that green area shows a complete gap in the radio  
6 signal by not having that particular radio site at UDC. If I  
7 could please look at the next slide. Thank you.

8           So what we're requesting, Chair Blake and members of  
9 the Board, is a special exception from these building mounted  
10 antennas under 35, excuse me, 1305.1, 1305.2, 1312 and 901.2 to  
11 install four nine foot panel antennas in the area that you see  
12 on the picture. So these antennas will be located inside the  
13 screen wall away from any public view insofar as the mounting  
14 equipment and hardware is concerned. The antennas will be seen  
15 of course above the wall, which is why we're requesting a special  
16 exception. Likewise, the two twenty foot Omni antennas which  
17 will be used for reception, will be installed above the wall but  
18 with the mounting hardware inside the ten foot parapet or screen  
19 wall.

20           So these antennas, as we will see in the next slide,  
21 required a permit and so we had to file two separate permits with  
22 the Department of Buildings. The first permit was to allow the  
23 installation of the two twenty foot antennas, or what we call the  
24 Omni antennas or Whip or reception antennas and the second permit  
25 was required to install the four nine foot panel antennas. These



1 panel antennas are required to transmit radio signal from the  
2 building and to the surrounding areas. Next slide, please.

3 All right. So let me focus a little bit on this  
4 particular aerial view of UDC. What we're going to do here, and  
5 if you look at the center of the screen, there is a rectangular  
6 shape highlighted in yellow, a sliver of real estate where the  
7 radio antennas are installed. These antennas are on the building  
8 38 and what we are going to do right now is essentially illustrate  
9 how the presence of those antennas throughout the area around UDC  
10 does not present any issues insofar as the visibility is  
11 concerned.

12 So what we're going to start with first is on the right  
13 hand side you'll probably notice a small number, 01, and we are  
14 going to go counter-clockwise around the picture with a specific  
15 vantage point where photographs were taken directed towards the  
16 building and you will see that in some cases antennas are visible  
17 and in other cases they are not. So if I may please take a look  
18 at the next slide.

19 So this particular shot here, the building 38, is in  
20 the background. The shot here was taken from Veazey Street at  
21 the intersection of course of Veazey and Connecticut Avenue. The  
22 antennas can be seen because the 20 foot antennas actually, you  
23 know, protrude above the parapet wall. But I should point out,  
24 members of the Board, that these pictures were taken I guess at  
25 the best possible time to make a case in point, right, because

1 the leaves are down, this is probably the time of year where you  
2 would be able to see the antennas. But as you can see because  
3 of the distance but also because of the material views in  
4 constructing these antennas, they are rather discreet. Next  
5 slide, please.

6 So this particular picture was taken from Connecticut  
7 Avenue with a clear shot of the building. You can barely see  
8 the antennas from across the street. In fact, the picture was  
9 taken caddy corner from the Starbucks which is in the UDC campus  
10 area. Next slide, please.

11 So this particular shot was taken from Windom Place  
12 with a clear shot of building 38. As you can see, we cannot  
13 really see those antennas even though of course, you know, there  
14 are no leaves on the trees. But if you were to, you know, get a  
15 close-up of the picture you would see a part of the two Omni  
16 antennas. Next shot, please. Next slide rather.

17 So this particular picture was taken from the side of  
18 building 41. Building 41 is the building on the right hand side  
19 with a clear shot of building 38 straight ahead. You can barely  
20 see the antennas but we know they're there because we installed  
21 them. Next slide, please.

22 So this particular shot here was taken from the  
23 intersection of International Drive and Van Ness. You may  
24 recognize the ramp to UDC. So between the ramp of UDC and the  
25 building on the right you probably took note of the Omni antenna

1 on the left hand side and two panel antennas on the right hand  
2 side. So this particular vantage point is really useful because  
3 it allows you to see first hand what you would be seeing if you  
4 were to stand in this particular spot. Next slide, please.

5 So in this particular slide we're now back on  
6 Connecticut Avenue. Right across the street there is an antenna  
7 that shows up on this particular picture. It's one of the two  
8 Omni antennas that we mentioned. And finally the last slide of  
9 the pictorial. Thank you.

10 So this particular picture here was taken right smack  
11 in the middle of the UDC Plaza. You have building 38 in front  
12 of you. Building 41 is in the back. You probably took note of  
13 one of the two Omni antennas in front of you atop the rooftop  
14 and a couple of panel antennas on the right hand side. So the  
15 Omni antennas are facing north while the panel antennas are facing  
16 west and we're now looking east at the building. Next slide,  
17 please.

18 All right. What I'd like to do right now is to go over  
19 the burden of proof discussion and share with you why we believe  
20 we meet the test for a special exception approval. Next slide,  
21 please.

22 So going through the various regulations that pertain  
23 to 1305.1, 1305.2, 1312 and 901, we checked every single  
24 regulation and are able to respond. If we could please start  
25 with the top of the antenna, it has to, it cannot extend above

1 the top of the wall. In this particular case of course, as the  
2 drawings show, they do extend above the wall for a very specific  
3 purpose which we'll go over in a minute. But as a result of  
4 course we respectfully ask that you give us an exception from  
5 this requirement as we will continue to discuss below.

6 So the antenna installation shall be located or  
7 screened such that its visibility from public spaces, et cetera,  
8 is to the greatest practical extent limited, well you probably  
9 noticed in the series of pictures that we took that the antennas  
10 are actually minimized to the greatest practical extent as their  
11 unobstructed heights are required for the sole purpose of  
12 transmitting and receiving a radio signal which are critical  
13 communication between first responders, the 911 center, 311  
14 center and of course other law enforcement agencies.

15 Finally, in this particular regulation the nature of  
16 this particular application is really for and only for the mission  
17 critical nature of this installation. These antennas are  
18 identical to the antennas that were, and still are and will be  
19 removed on building 41. Those antennas, as I pointed out, were  
20 installed back in 2003 and they pre-date the 2016 regulation for  
21 regulating antenna heights. So, again, I just want to point out  
22 that the existing antennas on building 41 will be going down as  
23 the building itself will be demolished under a separate project.  
24 It's going through the abatement process right now.

25 The next regulation that we also reviewed and

1 considered for this particular request for a special exception  
2 is the type of material that was used for the construction of  
3 the antenna. Well, if you noticed in the pictures the material  
4 used and the colors used were, you know, used in such a way that  
5 they blend in with the skyline. We did not, you know, notice  
6 any glaring contrast against the sky and as you know, the pictures  
7 that were taken were actually taken as I mentioned when all the  
8 leaves were off the trees and so this was a perfect time to be  
9 able to illustrate how discreet, as much as they can be discreet,  
10 these antennas are.

11           The next regulation that we also looked at was the  
12 building mounted antennas had to be placed on the penthouse or  
13 rooftop structure with a rooftop outdoor space which is secured.  
14 Well, the good thing about building 38 is that the rooftop only  
15 has the communication devices or equipment to support the radio  
16 site which is actually on the third floor of the building. So  
17 unlike building 41 which had a shelter on the rooftop, this  
18 particular building actually has its own mechanical room where  
19 the radio site is actually installed.

20           So when you make your way to the rooftop, the only  
21 thing that you see in terms of radio equipment are the antennas,  
22 the two Omnis, the four panels as well as what we call a doghouse  
23 for cable management going down to the third floor. But when  
24 you stand inside the rooftop, you are actually surrounded on all  
25 three sides by a ten foot screen wall or parapet, okay, and above

1 the parapet is where those antennas extend.

2           The next regulation that we looked at is the shelter.  
3 As I pointed out the nice thing about the building 38 is that  
4 the shelter does not exist since we actually have a specific room  
5 where the radio equipment is installed. Next slide, please.

6           So in this particular case what we looked at is the map  
7 of the area that is being served for the new antennas. So the  
8 transmission and the reception of those antennas provide  
9 communication throughout the northwestern part of the District  
10 and they serve, as I pointed out earlier, a specific public safety  
11 radio communication.

12           Last but not least, the regulation requires a map  
13 indicating the location of any other antennas. So if we could  
14 please look at, let's see, the next slide. Oh, no, let's go back  
15 to the previous slide, please.

16           So the map of the area, you may have seen during the  
17 presentation that the Office of Unified Communications maintains  
18 ten radio sites throughout the District. Now, there are other  
19 antennas within a two mile radius. Those antennas do not belong  
20 to the Office of Unified Communications. We checked with the  
21 office of the Department of Buildings and do not have a record  
22 of what antennas or who the owners of those antennas are. I can  
23 tell you that if you were to look west from Van Ness you will  
24 probably notice at the intersection more or less of Nebraska  
25 Avenue and Van Ness, NBC News is out there and there is a tower

1 and that tower is there for the purpose of commercial carrier  
2 communication with NBC. But, and it is within a two mile radius,  
3 but it does not form part of the OUC radio site forum.

4 So this concludes my presentation and the discussion  
5 and I'm of course hoping that based on our presentation, we will  
6 have demonstrated that it meets the test for the special exception  
7 approval by this Board.

8 Thank you for your time.

9 VICE CHAIRPERSON BLAKE: Thank you, Mr. Gregory. Thank  
10 you for that very thorough presentation.

11 MR. GREGORY: Thank you, sir.

12 VICE CHAIRPERSON BLAKE: Is there anyone on the Board  
13 that has any questions for the Applicant or any of those with  
14 him?

15 (No response.)

16 VICE CHAIRPERSON BLAKE: Okay.

17 Let's turn to the Office of Planning. Ms. Myers? Would  
18 you please introduce yourself for the record? Oh, Joel. How  
19 are you?

20 MR. LAWSON: Well, thank you, Mr. Chair. Thank you.  
21 Joel Lawson here for the Office of Planning. I'm sitting in for  
22 the far more antenna knowledgeable Karen Thomas on this case  
23 who's not able to be here.

24 But I will note that OP has recommended approval of  
25 this case. Our report is in the record at Exhibit 26 and if you

1 have any questions I can try to take them.

2 Thank you.

3 VICE CHAIRPERSON BLAKE: Thank you.

4 Does anyone have any questions for the Office of  
5 Planning? Does the Applicant have any questions for the Office  
6 of Planning?

7 MR. GREGORY: Well, I would only add that the ANC voted  
8 unanimously six zero zero to provide their letter of support in  
9 favor of these public safety antennas.

10 VICE CHAIRPERSON BLAKE: Right. Thank you, Mr.  
11 Gregory. That is in the record. Okay.

12 Mr. Gregory, is there anything else you'd like to add  
13 before we close?

14 MR. GREGORY: I do not have any other items to discuss,  
15 Chair Blake. Thank you, sir.

16 VICE CHAIRPERSON BLAKE: Okay. Well thank you very  
17 much.

18 I'm going to dismiss the witnesses.

19 MR. YOUNG: Mr. Chair, I just didn't think you asked  
20 for public testimony.

21 VICE CHAIRPERSON BLAKE: I did not. We don't, but do  
22 we have any public testimony? My apologies. Thank you very  
23 much, Mr. Young.

24 MR. YOUNG: We do not.

25 VICE CHAIRPERSON BLAKE: Do we have any public



1 testimony?

2 MR. YOUNG: No, we do not.

3 VICE CHAIRPERSON BLAKE: Okay. Thank you very much.

4 All right. So now we'll dismiss the witnesses and move  
5 on to deliberation if, right.

6 (Pause.)

7 VICE CHAIRPERSON BLAKE: Now I see how the Chairman  
8 gets gassed at the end of the day.

9 Anyway, I'm in support of the application. As the  
10 Applicant explained there simply are no options to reduce the  
11 height and achieve the desired coverage for 911 service. The  
12 pictures provided in Exhibit 29 and in the Applicant's  
13 presentation really show that the view would not change  
14 appreciably from what is currently exists due to the proposed  
15 projections above the screen and walls and the Whips would be  
16 minimally visible from Connecticut Avenue, if at all.

17 So the proposed installation should not adversely  
18 affect the use of surrounding neighboring property and it already  
19 exists within the neighborhood and the complaints have not been  
20 received operation or visibility.

21 So I credit the Applicant's presentation and the Office  
22 of Planning's analysis of how the Applicant has met the burden  
23 for approval. I agree with the Office of Planning's analysis and  
24 give great weight to its recommendation for approval and I also  
25 give great weight to the report of the ANC 3F which is in support

1 and say some issues or concerns.

2 Mr. Smith, do you have anything you want to add?

3 COMMISSIONER SMITH: No further comments. I'll be in  
4 support as well.

5 VICE CHAIRPERSON BLAKE: Ms. John?

6 COMMISSIONER JOHN: Thank you, Mr. Vice Chair. I think  
7 you covered everything and I'm in support.

8 VICE CHAIRPERSON BLAKE: Mr. Hood?

9 ZC CHAIRPERSON HOOD: I agree, Mr. Chairman, and I want  
10 to thank Mr. Gregory for his very thorough analysis and  
11 presentation.

12 VICE CHAIRPERSON BLAKE: Okay.

13 So if I neglected before, I want to close the record  
14 and the hearing. Having completed deliberations I want to move  
15 to the vote. So I'm going to make a motion to approve the  
16 application as written and read by the Secretary, and ask for a  
17 second. Ms. John?

18 COMMISSIONER JOHN: Second.

19 VICE CHAIRPERSON BLAKE: I have a second. The motion  
20 is seconded and I'd ask for the Secretary to take roll call vote.

21 MS. MEHLERT: Please respond to the Vice Chair's motion  
22 to approve the application.

23 Vice Chair Blake?

24 VICE CHAIRPERSON BLAKE: Yes.

25 MS. MEHLERT: Ms. John?

1 COMMISSIONER JOHN: Yes.

2 MS. MEHLERT: Mr. Smith?

3 COMMISSIONER SMITH: Yes.

4 MS. MEHLERT: Chairman Hood?

5 ZC CHAIRPERSON HOOD: Yes.

6 MS. MEHLERT: Staff would record the vote as four to

7 zero to one to approve Application 21234 on the motion made by

8 Vice Chair Blake and seconded by Ms. John.

9 VICE CHAIRPERSON BLAKE: Okay. Madam Secretary, would

10 you call in the next case.

11 MS. MEHLERT: The next case is Application No. 21235

12 of 5058 Central Ave Trust. This is an application pursuant to

13 Subtitle X, Section 1002 for a use variance from Subtitle U,

14 Section 201 to allow a flat in a semi-detached two-story with

15 basement building. It's located in the R-2 zone at 5058 Central

16 Avenue, Southeast, Square 5286, Lot 837, and in Exhibit 24 the

17 Applicant submitted a request to waive the filing deadline to

18 submit a response to the OP report.

19 VICE CHAIRPERSON BLAKE: Great. Thank you, Madam

20 Secretary. I'd like to make sure we get all that information

21 into the record, so if it's okay I would like to permit those

22 late filings.

23 Would the Applicant please introduce themselves? Ms.

24 Hartley, I believe? You're on mute.

25 MS. HARTLEY: My name is Cynthia Hartley. Address is

1 1511 Neal Street, Northeast, Washington, D.C. 20002.

2 VICE CHAIRPERSON BLAKE: Okay, Ms. Hartley. Thank you  
3 very much for being here today.

4 We've reviewed your case. Obviously you have in front  
5 of us what is going to be a use variance. That's a relatively  
6 high standard for relief. Essentially in a use variance it's  
7 determined that the application you want for the use you'd like  
8 is something that the Zoning Commission has determined that is  
9 not appropriate for the zone and if, however, you're able to  
10 demonstrate a particularly unusual circumstance related to the  
11 property, you, or a combination of factors and issues that lead  
12 to an undue hardship which is also a very high standard, and  
13 there's no issue with the intent of the regulations or that you're  
14 not really having an adverse impact on neighboring properties,  
15 we can grant you relief.

16 So, again, it's a very high standard. So, with that,  
17 I'd like for you to begin your presentation. I'll put 15 minutes  
18 on the clock and you can begin whenever you like.

19 MS. HARTLEY: Thank you. If you could please bring up  
20 the PowerPoint that I submitted. Let me scroll over to the clock  
21 so I can keep an eye on it.

22 Okay. So this is a very unique situation because this  
23 is something that actually took place in 2017, so we're talking  
24 eight years ago. So next slide, please.

25 Yeah. In 2017 I submitted a building permit, or in

1 2017 I secured an architect to do some renovations on a house.  
2 I bought a property on Central Avenue and I secured the services  
3 of Ohi Engineering to, an architect and engineering firm licensed  
4 in D.C. because I wanted to convert the basement into a one  
5 bedroom apartment. Ohi, and as you can see this is the building  
6 permit that was granted. It's a two-unit flat granted by what  
7 was DCRA at the time, submitted by Ohi Engineering without any  
8 conditions restrictions. If you can go to the next slide, please.

9 And next slide after that, please.

10 So this is a timeline of events and as you can see it  
11 goes back to 2016, 2017. So I also secured the services of Paul  
12 Wharton Construction Services, a general contractor licensed in  
13 D.C. The next slide, please.

14 Is that it? Yeah. And so, I think that's the next  
15 slide. I apologize. I'm a little confused and nervous. So in  
16 this email here we see Ohi Engineering is communicating with DCRA  
17 to say that we are, that the intent is to obtain a certificate  
18 of occupancy because it's not going to, essentially it's not  
19 going to be owner occupied. At the time I was not aware of the  
20 difference between a two-unit flat, a single family house with  
21 an ADU and no one could explain it to me and no one had explained  
22 it to me until last year, and I'll kind of get to that point.  
23 Next slide, please.

24 Again, that's the building permit. Next slide, please.

25 And that's the contract I had with Paul Wharton

1 Construction Services. Next slide, please.

2 And then in turn Mr. Wharton secured the services of a  
3 third party engineer licensed in D.C., Charles Mobley &  
4 Associates to, sorry, third party inspector, to do all the  
5 inspections and he submitted the mechanical, the plumbing, and  
6 the electrical inspection, and the next slide please.

7 And he also submitted the final inspection, all while  
8 under the permit of a two-unit flat. Next slide, please.

9 Shortly after the final inspection the general  
10 contractor began the process of trying to obtain a Certificate  
11 of Occupancy and I gave him the name of the LLC to which the C  
12 of O should be under. Next slide, please.

13 And he followed up with me the next week to say that I  
14 didn't need a C of O. I did question that. I said I think all  
15 rentals need to have a C of O and then I said I was going to go  
16 to DCRA, and when I went to DCRA they too said I didn't need a C  
17 of O and I tried to get an understanding as to why and he just  
18 said you don't need one, and so I said okay, fine. Next slide,  
19 please.

20 So everyone was on board with the conversion and the  
21 building permits were issued so I want to fast forward to 2023  
22 when I wanted to put solar panels on the roof for the tenants  
23 upstairs and there was a delay in permitting. So I was told that  
24 there was a zoning issue from 2018 and this was of course well  
25 after everything was done because this is now in 2023. And so

1 around this time I revisited the C of O issue. Next slide,  
2 please.

3 And as you can see from the message on the portal it  
4 says a C of O is not required but here it says a single family  
5 house with an ADU. Now at this time, again, I didn't know the  
6 difference between the two so I went down to DCRA at this point  
7 and I spoke with a Mr. Calhoun who was the person who reviewed  
8 the C of O request and he explained to me what had happened. And  
9 when I explained that I had a permit for a two-unit flat, he said  
10 the permit was issued in error and he suggested I discuss this  
11 with the Zoning Administrator, Kathleen Beeton, and she said  
12 there was nothing I had to do. I had to come here for relief  
13 and she wrote the relief memo.

14 So as I'm working to resolve the permitting issue with  
15 the solar panels, I was told that zoning approved the building  
16 permit for a single, next slide please, for a single family house  
17 which is in this letter and says, "As you're aware they approved  
18 the building permit for a single family house with an ADU," but  
19 as I already pointed out I received a building permit for a two-  
20 unit flat and, again, I didn't know the difference. I just went  
21 forward knowing that it was never my intention to live in the  
22 house.

23 So two weeks later, next slide please, I received  
24 another email from the Board of Zoning stating that they're  
25 correcting the building permit from eight years ago, so now

1 | they're making it a building permit for a single family with an  
2 | ADU and that the building permit was issued in error from eight  
3 | years ago. Next slide, please.

4 |           And then this is a snapshot from the Department of  
5 | Buildings SCOUT database where it shows that in 2018, I can't see  
6 | it, it's a bit small. Let me see if I have a copy. But I think  
7 | you might be able to read it where it says in 2018, here it is,  
8 | that they issued the, the permit was issued with an incorrect  
9 | scope of work that reflects a use that's not allowed by zoning  
10 | regulations. But this is something that they realized after the  
11 | fact, after I did the renovations, after I went to the expense  
12 | and after I rented out the units and I was never informed that  
13 | there was a mistake. So, next slide, please.

14 |           So now I know why all of this time I could not get a  
15 | Certificate of Occupancy. It was because DCRA at the time made  
16 | an error and this has caused me exceptional difficulty and  
17 | hardship because I am not able to obtain a Certificate of  
18 | Occupancy. Because I can't get a Certificate of Occupancy, I  
19 | cannot get a business license. Without a business license, I  
20 | cannot register with the Department of Housing and Community  
21 | Development and therefore I essentially have no legal standing  
22 | and at this time, I've experienced a personal financial loss of  
23 | well in excess of \$10,000 because the tenant is not paying rent.  
24 | But all of this happened after I started this, so it's not as I  
25 | started to do this because the tenant stopped paying rent. The



1 | tenant stopped paying rent after this ball was already put into  
2 | motion. So next slide, please.

3 |           So had I known from the beginning, had DCRA said to me,  
4 | no, you have to do a single family house, had they just said we  
5 | cannot give you a building permit for a two-unit flat and had I  
6 | understood the difference I would have said, okay, well, I'm not  
7 | going to do the extensive renovations that I did. I converted  
8 | the basement. That was the basement before in the top picture  
9 | and this is the basement as it looked after the renovations.

10 |           I dug out the basement an extra foot. I installed  
11 | twice the appliances that I had to in the house. I have twice  
12 | the HVAC units, two electrical panels, two sets of plumbing and  
13 | everything. I also had to do some additional structural issues  
14 | in terms of widening the back stairs to make it into, meet  
15 | compliance for the basement requirements. So all of that cost  
16 | quite a bit amount of money so there was definitely a financial  
17 | hardship there, financial investment that I'm now experiencing  
18 | hardship because I, if I can't keep it as a two-unit flat which  
19 | was the intention all along, then I'm going to have no other  
20 | choice but to sell the property. Next slide, please.

21 |           So it's either move in or sell the property. If I sell  
22 | the property I displace the tenants that are there. The upstairs  
23 | tenants are a very lovely couple. They've lived there since  
24 | 2017. They have three children that have been raised in that  
25 | house for the longest time and they've expressed to me that they

1 want to stay.

2           The other option is for me to move in which I don't  
3 want to do because I've been living in my house here in Trinidad,  
4 I've been living in this neighborhood for 15 years. I have a  
5 community here. I would be displacing the tenants over there  
6 anyway and I actually rely on my house as an additional source  
7 of income because my job was reduced from 40 hours to 20 hours  
8 last year so I've been pet sitting dogs on Rover to supplement  
9 my income and that's something I can do at this house. I would  
10 have to give up my entire clientele and start building a new  
11 clientele all over again. The next slide, please.

12           So I don't believe that there is any detriment to the  
13 public good and I did get a unanimous letter of support from the  
14 local ANC. I met with them on several occasions including the  
15 community organization. The house from the outside, nothing has  
16 changed. It looks like every other house in the area on the  
17 streets. The original footprint of the house wasn't expanded.  
18 The only thing that's different is the use inside of the house  
19 and I would actually say it's positive for the public good because  
20 it's a safe home, it's affordable, it's energy efficient and even  
21 more so now that I've put the solar panels on the house. And  
22 the next slide, please. I think this is the last slide.

23           That was the last slide. So this is a very unique case  
24 because everything that happened happened eight years ago and I  
25 get that at the time it wasn't clear as to what the difference

1 is, you know, with a single family house and a two-unit flat. I  
2 understand that they had just changed the codes at that time and  
3 the city made a mistake. But now, you know, it seems like I'm  
4 being penalized because of that mistake because I tried to do  
5 everything that I was supposed to do and there was a mistake. It  
6 was beyond my control and I do believe that's an exceptional  
7 situation that has caused me hardship.

8 VICE CHAIRPERSON BLAKE: Okay. Thank you very much,  
9 Ms. Hartley, for your testimony. I have a couple of quick  
10 questions for you just to clarify a couple of things and then  
11 we'll move through to the Office of Planning, and other questions  
12 from the Board and then the Office of Planning.

13 When you purchased the building did you intend to live  
14 in it or did you intend to make two units and then rent them out?

15 MS. HARTLEY: It was going to be to have two units and  
16 rent them out. It was not my intention to live in it.

17 VICE CHAIRPERSON BLAKE: And the real estate  
18 professional that sold you the house indicated to you, did not,  
19 sold it to you as a single family house though?

20 MS. HARTLEY: It was a single family house, yes.

21 VICE CHAIRPERSON BLAKE: Okay. So you undertook, the  
22 renovations yourself?

23 MS. HARTLEY: I did, yes.

24 VICE CHAIRPERSON BLAKE: Okay.

25 MS. HARTLEY: In consultation with an architect and

1 engineer, a general contractor, third party inspector.

2 VICE CHAIRPERSON BLAKE: The investment professional  
3 there, the real estate there, right, right.

4 Did you apply, what did you apply for when you actually  
5 applied for the, what did you apply for? We don't have a copy  
6 of the documentation for your application but what did your  
7 application actually say?

8 MS. HARTLEY: The building permit was for a two-unit  
9 flat. That's what the architect put down. When I met with  
10 them --

11 VICE CHAIRPERSON BLAKE: The architect put that down?

12 MS. HARTLEY: Yeah.

13 VICE CHAIRPERSON BLAKE: Okay.

14 MS. HARTLEY: They said you want a two-unit flat and I  
15 said yeah. I honestly didn't know the difference. I just thought  
16 it was a matter of semantics, single family house with an ADU,  
17 two-unit flat.

18 VICE CHAIRPERSON BLAKE: Okay. And you're saying that  
19 none of the real professionals you hired could tell you the  
20 difference between the ADU and the flat?

21 MS. HARTLEY: Not only did they not tell me but no one  
22 at DCRA that I spoke to could tell me the difference --

23 VICE CHAIRPERSON BLAKE: All right.

24 MS. HARTLEY: -- between a two-unit flat and, yeah. It  
25 wasn't until last year when I spoke to Mr. Calhoun that he

1 explained it to me.

2 VICE CHAIRPERSON BLAKE: Okay. All right. All right.

3 Do you have any other documentation other than the  
4 permit that stated this was a two-unit flat? I mean, you used  
5 the permit as your primary document. Is there anything else?  
6 Was there anything else that you got that would say that?

7 MS. HARTLEY: Well, you know, I tried to access  
8 ProjectDox and I tried to access ProjectDox a while ago. That's  
9 the system that they use for the whole building permit process,  
10 to see if there was anything in there that I could get and for  
11 some reason I no longer have access to that. And I emailed the  
12 department several months ago, a couple of months ago, saying,  
13 hi, I can't access ProjectDox and somebody just followed up with  
14 me yesterday saying do you still need this, and I said yes. I  
15 still need access to ProjectDox. I can pull up her email, I  
16 don't remember it off the top of my head.

17 VICE CHAIRPERSON BLAKE: Okay. So, all right.

18 So I think I have a pretty good handle on what's going  
19 on in the timeline. Does anyone else on the Board have any  
20 questions for the Applicant?

21 ZC CHAIRPERSON HOOD: I do very quick, Mr. Chairman.

22 Ms. Hartley, I get your professionals like the real  
23 estate and whoever sold you the house and your architect, but you  
24 continued on -- I'm trying to make sure I understand the story.  
25 You continued on also relying on what the government, the

1 information the government gave you as well, proceeding on those  
2 same lines. Is that a correct assessment or statement?

3 MS. HARTLEY: I continued based on the building permit,  
4 yeah.

5 ZC CHAIRPERSON HOOD: So what they gave you, that's  
6 what you relied on?

7 MS. HARTLEY: That's what I relied on. Had I not been  
8 given a building permit for a two-unit flat, had they said, no,  
9 you cannot have a two-unit flat, I would have switched gears. I  
10 would have asked, well, what's the difference and then I would  
11 have said, okay, well, if I can't do it I can't do it. I wouldn't  
12 have gone through all of this, you know, the duration, the period  
13 it takes to request a use variance, I would have just renovated  
14 the house as a single family house without doing the renovations  
15 in the basement and building it out. I wouldn't have gone through  
16 that expense.

17 ZC CHAIRPERSON HOOD: Okay. I got it. Thank you.  
18 Thank you, Mr. Chairman.

19 VICE CHAIRPERSON BLAKE: Okay. Thank you, Chairman  
20 Hood.

21 I'm going to turn to the Office, oh, I'm sorry, Ms.  
22 John. Do you have, I'm sorry. Please.

23 COMMISSIONER JOHN: Yes, yes. Ms. Hartley, so was  
24 there a building inspection done?

25 MS. HARTLEY: Yes, there was by Mr. Mobley. The third

1 party inspector, Charles Mobley.

2 COMMISSIONER JOHN: Okay.

3 ZC CHAIRPERSON HOOD: I think his name is Clarence  
4 Mobley.

5 MS. HARTLEY: Clarence, I'm sorry. Yes. I'm looking  
6 through my notes here. Clarence Mobley.

7 COMMISSIONER JOHN: Yeah. Okay. Is there an exhibit  
8 with that building inspection?

9 MS. HARTLEY: In the PowerPoint slide --

10 COMMISSIONER JOHN: Uh-huh.

11 MS. HARTLEY: -- one of the slides shows a copy of the  
12 final inspection submitted by Mr. Mobley. The slide right after  
13 the mechanical, electrical and plumbing is on one slide and then  
14 the final inspection is on the next slide.

15 COMMISSIONER JOHN: Okay.

16 And about what date was that?

17 MS. HARTLEY: That was August 14th, 2017.

18 COMMISSIONER JOHN: Okay.

19 Let me see if I can pull that up. I wasn't able to  
20 read it on the slide, Mr. Young. Let me see.

21 (Pause.)

22 COMMISSIONER JOHN: Okay. So I see mechanical and  
23 final inspection. I'm looking at slide 8. I don't see zoning.

24 MS. HARTLEY: There was a --

25 COMMISSIONER JOHN: George Worsley, scope of

1 certification, mechanical, final, electrical, final, plumbing,  
2 final. That would have been August 14th, '17.

3 MS. HARTLEY: Yeah.

4 COMMISSIONER JOHN: My computer is doing strange  
5 things. Building, final.

6 (Pause.)

7 COMMISSIONER JOHN: Okay. It has the permit number  
8 there. And was the basement complete at that time?

9 MS. HARTLEY: Yes, yes.

10 COMMISSIONER JOHN: With all of the changes?

11 MS. HARTLEY: Yes.

12 COMMISSIONER JOHN: Okay. I don't have any more  
13 questions at this time, Mr. Vice Chair.

14 VICE CHAIRPERSON BLAKE: Okay. Thank you.

15 Let's see. Mr. Smith, do you have anything you'd like  
16 to ask at this point? Okay.

17 I'm going to turn now to the Office of Planning and,  
18 Ms. Myers, I'd like you to introduce yourself for the record, but  
19 also I'd like to after that to actually go into a little bit of  
20 detail with regard to the requirements behind a use variance,  
21 specifically talk about what is required and then talk a little  
22 bit about the Applicant's application in relation to that.

23 MS. MYERS: For the record, Crystal Myers with the  
24 Office of Planning.

25 Unfortunately, in this case the Office of Planning is



1 recommending denial. This is because, as was mentioned earlier,  
2 the use variance test has to be met in order to support an  
3 approval and in this case the Office of Planning does not feel  
4 that the test has been met.

5           The criteria for the use variance is for there to be  
6 an exceptional situation resulting in an undue hardship to the  
7 owner and that situation has to be related to the property or to  
8 the building itself. Also, there has to be no substantial  
9 detriment to the public good and there has to be no substantial  
10 impairment to the zoning regulations.

11           In this case back in 2017 the Department of Buildings  
12 issued the building permit for the property and it includes a  
13 scope of work description that says the house is being converted  
14 from one unit to two units. In order to get a full picture of  
15 what happened OP reviewed the Applicant's submitted emails with  
16 the Department of Buildings and talked with the Department of  
17 Buildings staff. Though the staff person who originally issued  
18 the 2017 building permit is no longer with the Department of  
19 Buildings, OP was able to discuss this case with current DOB  
20 staff.

21           Department of Buildings acknowledges that the scope of  
22 work on the building permit is not clear. In their email to the  
23 Applicant they state that at the time there was confusion on how  
24 to represent accessory units. Back in 2017 accessory apartments  
25 were relatively new to Department of Buildings. They did not

1 have a clear way of representing them in building permits and at  
2 the time it was sometimes their practice to describe them as  
3 single dwelling houses with accessory units as two-unit houses,  
4 and I understand from the Applicant that their team is the one  
5 who reflected it as two units but, again, Department of Buildings  
6 kind of looked at this being kind of interchangeable at the time.

7           So when the permit was issued, Department of Buildings  
8 discussed with the Applicant's team that a second unit could only  
9 be used as an accessory unit. So Department of Buildings at the  
10 time had always, at least my understanding is that they had always  
11 understood it as being a single family house with an accessory  
12 unit. It's just that how that was described is where the  
13 confusion comes in at, and so when it was issued they had  
14 discussions with the Applicant's representatives that this was  
15 an accessory unit and it could only be used as an accessory unit.

16           This is why a Certificate of Occupancy permit was never  
17 approved. A Certificate of Occupancy is needed to rent out two  
18 principal units. It is not needed for an accessory apartment  
19 which is why the Applicant's team was told that a C of O was not  
20 needed and I believe the Applicant was also told so by her team  
21 that a C of O wasn't necessary. But I believe her team told her  
22 that. If Department of Buildings had intended to approve this  
23 as two principal units, then they would have also completed the  
24 process of a Certificate of Occupancy and approved that permit  
25 as well, but it was not done. I know that an application was

1 submitted but along the way it was figured out that this was just  
2 an accessory building and the C of O was in error.

3           So although OP sympathizes with the Applicant's  
4 situation OP does not consider this an exceptional situation.  
5 The misunderstanding appears to be mainly between the Applicant  
6 and her development team, but not the Department of Buildings.  
7 Similarly, in regards to an undue hardship to the owner, OP does  
8 not consider the Applicant's hardship to be from an exceptional  
9 situation related to the property and this is why OP did not feel  
10 that that first prong of the test had been met and essentially  
11 that is why the rest of the test was unable to be met as well.

12           OP does understand that when it comes to substantial  
13 detriment to the public good it would perhaps not be a substantial  
14 detriment to the public good to grant this. But when it comes  
15 in regards to impairment to the zoning regulations, we do feel  
16 that there would be an impairment to the zoning regulations.  
17 Granting the requested use variance would be contrary to the  
18 intent of the zoning regulations for the zone and no exceptional  
19 situation leading to an undue hardship to the owner has been  
20 sufficiently identified on the property.

21           Furthermore, the integrity of the zoning regulations  
22 could be seen to be eroded if this relief were granted,  
23 particularly since the regulations specifically provide a  
24 conforming option for a second unit which is an accessory  
25 apartment. That would meet the intent of the regulations and

1 address the Applicant's will to provide a second unit on the  
2 site.

3 And with that, I will conclude the OP testimony, but  
4 of course here for questions.

5 Thank you.

6 VICE CHAIRPERSON BLAKE: Thank you very much. I do  
7 have a couple of questions for you.

8 Do you know in what timeframe, I know the Applicant had  
9 kind of talked about this, what timeframe was the C of O applied  
10 for? Do you have a sense of that?

11 MS. MYERS: I believe it was 2017 or I know, I think  
12 the Applicant purchased the property in 2016, so somewhere  
13 between then and I guess when it was approved. Oh, you said,  
14 I'm sorry, you said the Certificate of Occupancy?

15 VICE CHAIRPERSON BLAKE: Uh-huh.

16 MS. MYERS: My apologies. I believe that was somewhere  
17 in that 2017-2018 range timeframe.

18 VICE CHAIRPERSON BLAKE: It was not before --

19 MS. MYERS: It was, I think it was just out there. I  
20 don't even think it was completed. I think it was pre-determined  
21 that it wasn't necessary so they didn't finish the process.

22 VICE CHAIRPERSON BLAKE: Now, are there any public  
23 records available that would give us an indication otherwise of  
24 how this whole thing unfolded. The story you told me about, you  
25 know, the development of the reporting at the DCRA at the time,

1 | you know, was a little disappointing. But could you tell me if  
2 | there is, is there any other paper trail that we could have that  
3 | can help us, in public records, that might piece this together  
4 | so we can have a better sense of, the Applicant didn't have any  
5 | other documentation?

6 | MS. MYERS: Unfortunately, I'm not aware of anything  
7 | more. I mean, maybe there's a C of O application, but nothing  
8 | that was completed and I don't have access to anything more than  
9 | what is in the record.

10 | VICE CHAIRPERSON BLAKE: Okay. All right. Thank you.  
11 | Does anyone else on the Board have any questions for  
12 | the Office of Planning? Yes, sir.

13 | COMMISSIONER SMITH: So just a clarification. So I  
14 | mean a lot of this hinges on some of this discussion that you  
15 | said that you had with DOB. So this discussion that you said  
16 | that you had with DOB, is that written down somewhere or is that  
17 | just a conversation you had with the Zoning Administrator and the  
18 | Zoning Administrator's staff on this conversation that happened  
19 | between the Applicant's contractors and DOB staff?

20 | MS. MYERS: Yeah. It was a verbal conversation as well  
21 | as the Applicant's emails that was, that's in the record. One  
22 | of the inspectors I believe who she had communicated with who had  
23 | reflected some of the information that I also heard from the  
24 | folks that I talked to at Department of Buildings specifically  
25 | about how the scope of work description was intended to be about

1 an accessory apartment but it was unclear and confusing on how  
2 it was described in there. But the inspector specifically said  
3 that it was intended to mean for an accessory apartment.

4 MS. HARTLEY: That would have been Mr. Rohan Reid and  
5 that would have been an email that he sent to me last year when  
6 I started this whole, this whole thing unfurled if you will and  
7 I was trying to get the solar, the permits for the solar panels.  
8 And as he's trying to investigate what's going on he sent an  
9 email saying as you know you are approved for a building permit  
10 for a single family house with an ADU and I'm, like, no that's  
11 not -- I didn't tell him that back and forth. I said no, that's  
12 not the case. I wasn't, I was approved for a two-unit because I  
13 have the building permit.

14 He sent a follow-up email a week or two later stating  
15 that the building permit that was issued to me was issued in  
16 error and that's, so it was just last year is the first time that  
17 I'm hearing of this, that DCRA made a mistake, I shouldn't have  
18 been issued a permit for a two-unit flat. It should have been a  
19 single family with an ADU.

20 VICE CHAIRPERSON BLAKE: Okay. I have a question.

21 Ms. Myers, do you have anything from the public records  
22 that would give us an indication of whether that permit was  
23 surrendered or revoked? Obviously there's a process you go  
24 through to get to that point. If that permit was found to be in  
25 error, then they would have gone through and issued a notice of

1 | revocation and requested surrender. Do you have anything in the  
2 | record that would support that?

3 |           MS. MYERS: I'm not aware of it being surrendered or  
4 | revoked. My understanding, and I think this was in the email  
5 | actually, is that it was just left pending because it just wasn't  
6 | completed. I think they were asking, they were saying that there  
7 | needed to be another step or two done and that was not done when  
8 | it was realized that this was completely unnecessary. But if it  
9 | was revoked or withdrawn or anything along those lines, that may  
10 | be true. It's just not something I was aware of.

11 |           MS. HARTLEY: If I may, again. Mr. Rohan, he had an  
12 | inspector come out to do a, he said there was not a final  
13 | inspection that was done. But as we saw there was a final  
14 | inspection that Mr. Mobley did in 2017, so Mr. Rohan said that  
15 | he had to send an inspector to come out and do a final inspection  
16 | and he did send somebody out and that's when they were able to  
17 | do, to lift the issue and say, okay, we did the inspection for  
18 | an accessory apartment.

19 |           But this wasn't a situation of an accessory apartment.  
20 | The final inspection was done for a two-unit flat. Now they're  
21 | doing an inspection for accessory apartments last year. So that's  
22 | why, that may, I don't know why but that may have been why it  
23 | was pending.

24 |           VICE CHAIRPERSON BLAKE: Chairman Hood, you had a  
25 | question I believe.

1           ZC CHAIRPERSON HOOD: Ms. Myers, you may not want to  
2 answer this. Maybe you'll leave it to the legal folks, and I'm  
3 going to use a word that I hear all the time over the years.  
4 Detrimental reliance. If I throw that word out there in this  
5 situation, would you respond or do you have a response if I use  
6 those words?

7           MS. MYERS: I don't have a response. I mean, all I  
8 can do is tell you what, the information that I have from the  
9 emails and the little bit I know from the conversations that I've  
10 had with DOB staff, and unfortunately the original DOB staff  
11 member, who was more involved in this case, is no longer at DOB.

12           ZC CHAIRPERSON HOOD: Okay.

13           I do remember some years ago about the conversations  
14 about ADU which is not germane to this situation, and I know the  
15 city and the Commission and Zoning, and we're all trying to get  
16 it together. So I was around for some of that, so thank you.

17           Thank you, Ms. Myers. Thank you, Mr. Chairman.

18           MS. HARTLEY: And if I may, I forget what slide it's  
19 on. I can tell you in a moment. It's the slide that says where  
20 Mr. Reid mentions that the permit was issued in error. It's in  
21 that same email that he discusses exactly what we were talking  
22 about. "I'm following up to inform you the review of the  
23 inspection information is complete and it confirms the maximum  
24 gross floor area of the accessory apartment is not being exceeded.  
25 Further, OZA has confirmed they approve the building permit



1 B1702150 for a single family dwelling with an accessory  
2 apartment. Based on this information, the zoning administrative  
3 hold has been removed from DOB's permit system to allow further  
4 processing of the solar permit application."

5 So the hold that might have been in place was, the hold  
6 might have been there from the beginning or from 2018 is what I  
7 think it was when I looked at the Department of Buildings SCOUT  
8 website. It looks like there was a hold placed in 2018 and saying  
9 to, that I need to turn a permit in but nobody ever emailed me,  
10 nobody ever called me, nobody ever sent me a letter. The only  
11 time I found this is out is as I'm looking for information related  
12 to this and I came across that on the SCOUT website.

13 VICE CHAIRPERSON BLAKE: Thank you very much.

14 Ms. John, Mr. Smith, do you have any other questions  
15 for either the Applicant or the Office of Planning?

16 (No response.)

17 VICE CHAIRPERSON BLAKE: Okay.

18 COMMISSIONER JOHN: I have a question for the Office  
19 of Planning. I don't know if you can answer but I'm going to  
20 ask it anyway.

21 So there was a final inspection for mechanical and some  
22 other things, electrical. If there had been a final inspection  
23 for zoning, shouldn't there be some record of what Zoning did at  
24 the same time? And I think now there is such a cheat sheet,  
25 because I've seen it at DOB. So if everybody checks theirs off

1 in the last group that sees it is Zoning and I believe HPRB. So  
2 do you know how, what the process is now?

3 MS. MYERS: I don't. You know, I work with the Office  
4 of Planning and not the Department of Buildings.

5 COMMISSIONER JOHN: I understand.

6 MS. MYERS: And so unfortunately I don't fully know  
7 their processes.

8 COMMISSIONER JOHN: Yes, yes.

9 MS. MYERS: I will say that, and the one thing that has  
10 been told to me a few times from them, is that you need a C of O  
11 in order to rent out the two units and a C of O was never approved  
12 on this case and so for them that's sort of why they would say  
13 it. Like, that's just always been the process and that was  
14 communicated to the Applicant's representatives, and so that's  
15 what we kind of based our decision and position on is the fact  
16 that that's been a constant in this case, it was never given.

17 But everyone acknowledges that there was confusion with  
18 the building permit and so we understand 2017, that was right  
19 when the ADU, we're really coming into being and so there was  
20 still a little bit of confusion on how to represent them on  
21 building permits. But the C of O, that has been a constant.

22 MR. HARTLEY: And I can appreciate that it's been a  
23 constant and it's my understanding as well that you need a C of  
24 O for a rental and in an email from the general contractor,  
25 unfortunately he's no longer around, he said that the property

1 would not need a C of O and all I have to do is complete the  
2 business license application, pay the fee and you're all set.  
3 Bring your LLC registration documents and walk it through. All  
4 the inspection finals are in the system. No on-site zoning  
5 inspection required. You're good to go.

6 And in my email to him I said it's my understanding  
7 that since this is a rental and not a primary residence I do need  
8 a C of O, however, I'll head down to DCRA tomorrow morning to  
9 follow up, and I went down and, again, they said you do not need  
10 one. Not that it was rejected or denied, but you don't need one  
11 and they never gave an explanation as to why I didn't need one  
12 or the difference between a single family and a two-unit, they  
13 just said you don't need one and so I just said, all right, I  
14 guess I don't need one. Maybe, if DCRA is telling me I don't  
15 need one, general contractor is telling me I don't need one and  
16 everyone else is telling me I don't need one, then I'm thinking,  
17 okay, I don't need one.

18 COMMISSIONER SMITH: Ms. Hartley, just as a follow-up  
19 to that question.

20 VICE CHAIRPERSON BLAKE: Mr. Smith (indiscernible).

21 COMMISSIONER SMITH: Oh, I'm sorry, Mr. Blake.

22 VICE CHAIRPERSON BLAKE: No. We're going to go to the  
23 same place. Go ahead, Mr. Smith.

24 COMMISSIONER SMITH: Did you, in the conversation that  
25 you had with DOB and it sounds like you had this conversation at

1 DCRA, when it was DCRA at that particular time, did you follow  
2 up with them with an email or formal determination that you, it  
3 sounds like you intended for this to be a rental unit. Did you  
4 follow up with them to see if you could get it in writing,  
5 especially given the, this being up in the air and unclear even  
6 between them and your contractor?

7 MS. HARTLEY: No, sir. I didn't. I presumed that DCRA  
8 knew this was going to be a rental because in an email from the  
9 architect she said that there was going to be a change of use  
10 and I will be applying for a C of O. So but, again, this is  
11 something that I wasn't aware of at the time. It's only something  
12 that I'm aware of now as I'm looking through emails and trying  
13 to find, trying to piece together what happened eight years ago.

14 COMMISSIONER SMITH: Okay. Got you.

15 MS. MYERS: What I'm wondering is if, you do not need  
16 a C of O for an accessory dwelling and I believe that also means  
17 you could rent it out and would not need a C of O. The problem  
18 is is when you have two principal units and you rent those out.  
19 There may, again, you know, there sounds like there was confusion  
20 for multiple things here but, you know, our position is that it  
21 seems like the correct communication, at least verbally, was  
22 between the Department of Buildings or DCRA at the time and your  
23 team, and your team did not correctly explain things to you when  
24 it comes to you don't need a C of O because it was an accessory  
25 unit, or at least that was how everyone understood it.

1 MS. HARTLEY: Yeah.

2 VICE CHAIRPERSON BLAKE: Okay. (Indiscernible).

3 MS. HARTLEY: And I'm not sure who on my --

4 VICE CHAIRPERSON BLAKE: Excuse me. Excuse me, Ms.  
5 Hartley. Let me see if I can help this a little bit here.

6 I mean, that's obviously unfortunately there's a lot  
7 of hearsay involved in what we're hearing on that part of it  
8 which is concerning. It would be ideal to have some  
9 documentation, emails or otherwise, to make that more from that  
10 perspective.

11 Ms. John, I think you have something, a question. If  
12 not --

13 COMMISSIONER JOHN: I don't have a question. The  
14 description of work on the application stated a conversion from  
15 a single family dwelling into two-unit flat. That's coming from  
16 Mr. Reid. So this is probably deliberation so I can wait to make  
17 those comments.

18 VICE CHAIRPERSON BLAKE: Okay.

19 Before we close the hearing, I want to know is there  
20 anything that the Board needs that would help help individuals  
21 with this analysis in this decision? Is there any additional  
22 information that anyone might need?

23 COMMISSIONER JOHN: Short of information from DOB, I  
24 can't think of anything. I mean, what did the application state?  
25 What did the scope of work state? Are those documents available?

1 You know, we don't know what's in the record from DOB except for  
2 the oral testimony of Ms. Myers and they admit to confusion about  
3 how to identify scope of work for an accessory apartment as  
4 opposed to a flat. So I don't really know, Vice Chair Blake.

5 VICE CHAIRPERSON BLAKE: Okay. That's good.

6 Mr. Smith, do you have anything else?

7 COMMISSIONER SMITH: I agree with Ms. John. Short of  
8 DOB pulling out the emails from this previous employee that has  
9 gone, I don't know what we can ask for here. So no, I don't  
10 think I need any additional information.

11 VICE CHAIRPERSON BLAKE: Chairman Hood, do you need  
12 anything else that might help you?

13 ZC CHAIRPERSON HOOD: I saw the timeline but to me, the  
14 timeline, I'm just as confused as they probably were in '18 or  
15 '17. That timeline that helped me, how she just spelled it out,  
16 we did this and we did that, if I saw it visually, and maybe I'm  
17 missing it, of who did what. Who's on first, who's on second,  
18 who told who what, for me that would help me out other than me  
19 trying to go off my recalling of what I just heard. So that's  
20 just where I am.

21 Thank you, Mr. Chairman.

22 VICE CHAIRPERSON BLAKE: Okay. All right.

23 So I'm going to do this a little bit different. I'm  
24 going to do this real quick. I'm going to ask, I'm going to  
25 close the hearing, no. Are there any people who wish to testify,

1 Mr. Young?

2 MR. YOUNG: No, we do not.

3 VICE CHAIRPERSON BLAKE: Okay.

4 Ms. Hartley, do you have anything that you'd like to  
5 add at this point? I'm not saying, I'm going to close this down  
6 in a second and speak to the Board in deliberations. Is there  
7 anything else you have, that you'd like to say?

8 MS. HARTLEY: The only thing I would add is, I mean I  
9 don't know the definition of hardship other than it would  
10 certainly cause me hardship to have to sell this house. All the  
11 work, all the time I've put into it, it would cause me hardship  
12 to have to move into that house just to keep it and it would  
13 cause the tenants hardship to have to displace them, whether I  
14 sell it or I move into it. I don't see where anyone would win  
15 in that situation.

16 VICE CHAIRPERSON BLAKE: Okay. Okay. Thank you very  
17 much.

18 So I believe with that I'm going to close the hearing  
19 and close the record and I'll dismiss the witnesses.

20 MS. HARTLEY: Thank you.

21 VICE CHAIRPERSON BLAKE: And I'm going to move to  
22 deliberations. Now, in doing this we indicated that there may  
23 be some pieces of information that could cause, would be helpful  
24 in making this decision. I'm not clear that there isn't enough  
25 information currently and so I, because I have no idea where

1 people are on this. So I would like to go through deliberations.  
2 If we find that we're not in a position to make a decision, then  
3 I would feel very comfortable getting that additional information  
4 and if we're in a position to make a decision I'd like to do  
5 that.

6 So, Mr. Smith, would you like to kick this off?

7 COMMISSIONER SMITH: I don't even know where to begin  
8 and how to kick this off because, again, this is, there is a lot  
9 of hearsay on what has, on some of the discussions between DOB  
10 or DCRA, the contractor, and the Applicant in question. You  
11 know, I can discuss about some of my findings based off what I  
12 heard today and also the staff report.

13 So in looking at the information presented by the  
14 Office of Planning, and looking at the three prongs I can see  
15 how they arrived at their approach for the three prongs. But,  
16 again, for the first prong the, what's the word I'm looking for,  
17 an exceptional situation. The Office of Planning bases the  
18 exceptional situation on, to me it sounds like some discussions  
19 hat they've had with the DCRA.

20 Now what I'm concerned with, and I, you know, will use  
21 the term that Chairman Hood has said, detrimental reliance. I  
22 can arrive at the Applicant detrimentally relied on DOB's  
23 description, or DCRA's description on their building permit.  
24 When the Zoning Commission permitted accessory units within zones  
25 that only previously allowed single family use, I think it was



1 incumbent upon DCRA to make that clear on their permits and in  
2 this particular case they used a use that would not have been  
3 allowed. So I think they should have modified their permits to  
4 provide that clarify.

5 So I think, and because they didn't modify their  
6 permits I think it created an issue for everyone in the approval  
7 apparatus, in the entire apparatus, to have this large degree of  
8 confusion. So I do believe that there was some measure of  
9 detrimental reliance that could lead to exceptional situation.  
10 So I'm, you know, I would like to hear from my other Board members  
11 regarding that approach to the first prong.

12 With the second, with the third prong I think that I  
13 agree with the Office of Planning that it may not rise to a, I  
14 do believe that it would be contrary to the intent of the zoning  
15 regulations so within a R-2 zone the regulations do grant option  
16 for conforming second unit as an accessory apartment. But  
17 however, again, I think there's a case of detrimental reliance  
18 on how that permit was issued.

19 So currently right now I don't quite know where I'm at  
20 so I would welcome, like, some additional dialog from my fellow  
21 Board members on their reading of the prongs.

22 VICE CHAIRPERSON BLAKE: I'm going to go to Ms. John  
23 next.

24 COMMISSIONER JOHN: So I was of two minds about this,  
25 but I think I am leaning towards what I would call reasonable

1 | reliance on DOB's evaluation and description of the permit. Was  
2 | it reasonable for the Applicant to believe that she was authorized  
3 | to build a two-unit flat? And I look at the description of work  
4 | again. It says interior renovation and conversion from single  
5 | family into two-unit flat. Doesn't say anything about an  
6 | accessory structure, accessory unit including mechanical,  
7 | electrical and plumbing.

8 |           So the zoning designation is there, two-unit flat.  
9 | Doesn't say anything about an accessory structure and there's  
10 | also a new basement entry and, again, proposed use is flat two  
11 | family, existing use single family. You know, and then the email  
12 | that admits that there was confusion in how to describe a single  
13 | family unit, I'm sorry, a building with a principal dwelling and  
14 | an accessory dwelling and that's in the emails. So I mean what  
15 | do we do with that?

16 |           If DOB was confused about how to evaluate these  
17 | applications at that time, you know, since everyone has had more  
18 | experience with the regulations, you know, there's more clarity  
19 | on how this process should work. But I just think that it was  
20 | reasonable for the Applicant to rely on the conduct of DOB in  
21 | this case. It's a close case and I agree with the Office of  
22 | Planning that if there's another acceptable use, then the Board  
23 | should not grant the use variance.

24 |           But this case bothers me because, you know, DOB didn't,  
25 | admits they didn't know what they were doing basically and so how

1 do we say that this is a self-created hardship? So that's where  
2 I am. Those are my thoughts.

3 VICE CHAIRPERSON BLAKE: Okay. Very good. Okay.

4 Chairman Hood, do you want to say something or do you  
5 want me to go?

6 ZC CHAIRPERSON HOOD: I'll go last. I'll go after you.

7 VICE CHAIRPERSON BLAKE: Are you sure? Okay.

8 ZC CHAIRPERSON HOOD: I'm positive, because I'm going  
9 to steal (phonetic) who I am now, but go right ahead.

10 VICE CHAIRPERSON BLAKE: Okay.

11 This is a very challenging case to me because when I  
12 look at the timeline, which is the key to me in this whole thing,  
13 I see, and I'm going to go through each element of what I think.  
14 So the whole issue is this, this is a use variance. Now there  
15 are a couple of barriers to a use variance.

16 One is if it's a self-created situation and, in fact,  
17 this is self-created and on the top that would be a barrier to a  
18 use variance and I would argue it's self-created, and it is,  
19 because the Applicant purchased the property with the intent to  
20 create a two-unit rental property. The Applicant had advice from  
21 real estate professionals, development professionals, builders,  
22 none of which could decipher, well, I take that back. We were  
23 also in the process, as they pointed out and we should get  
24 documentation on this about the exact timing and creation of the  
25 ADU structure because it would, it's not unreasonable to think

1 that people would not understand ADU if it was just created. So  
2 that's a whole other thing too.

3 But that said, for these investment professionals not  
4 to know the difference between the R-2 zone, the zone they're in  
5 and what it is, what can be there, it seems odd to me and I think  
6 that the Applicant would have to have made, have to come up with  
7 an idea, had the design work done before they submitted the  
8 application which said I want a two-unit flat. So they were  
9 asking for something that was not permitted in the zone from the  
10 outset.

11 Now, differentiating between, you know, an apartment  
12 that's a flat and an apartment that is an accessory dwelling, the  
13 reality of it is the difference can be, you know, size, it can  
14 be the percentage of the building it occupies. But the biggest  
15 difference which is the one that's got a waivable attribute is  
16 the fact that it is ownership and the occupation of the owner in  
17 one of the two units and even if you had an inspection, it would  
18 not tell you who's living in there. It's not, I see two people  
19 sitting here and I wouldn't know if they were owners or not, or  
20 is you an owner or is you my cousin. It's not clear, so I don't  
21 think an inspection would have an uncovered the zoning issue.

22 In fact, on one of the exhibits the Applicant put out  
23 pretty clearly their, in my mind I read that and I said, oh,  
24 don't worry, there's no zoning inspection. With capital letters,  
25 NO, meaning don't worry, they won't know. And in my mind, but

1 that's yeah, that's my interpretation. That's not factual. The  
2 (indiscernible) my interpretation.

3           When I do think that there would have been, the fact  
4 that you were denied the C of O does give you an indication that  
5 something is wrong and that, if you think about the timeline  
6 which, well, I could decipher. It looked like it was in the 2017  
7 time frame. They would have known then that this may not be  
8 something that would work. So it wasn't, I don't think it was  
9 just till last year or so that you figured out that there may  
10 have been a problem. I think there was an indication that there  
11 was an inconsistency a long time ago.

12           As far as the reliance, there was reliance on, yes,  
13 DCRA but the Applicant has the burden of proof and they gave us  
14 one piece of information, the permit, they talked about that.  
15 They, that's the only thing I have and we don't have other  
16 documentation of the application, although the Applicant did  
17 indicate that they applied for a flat but they didn't know what  
18 a flat was. They applied for two units to rent and it wasn't  
19 clear whether those two units to rent would be called a flat or  
20 something else. So I think there was a level of confusion there  
21 but I do think also those real estate professionals could have  
22 provided some advice on that.

23           All right. So, the reliance was on, and I think the  
24 Office of Planning stated the reliance was mostly on them, on the  
25 clients. The reliance could also have been in part on both. So

1 everyone had an element of reliance with, the Applicant had a  
2 reliance on several people and the Department of Buildings did  
3 make an error at some point.

4 Now when they made the error, did they, when they  
5 realized it did they cancel the, did they terminate the permit?  
6 I don't know. We don't have a record of that. That would be  
7 valuable to know if there's a trail for that. Then I would have  
8 something better to substantiate other than hearsay as to what  
9 the, what took place at DOB.

10 As far as the hardship. The hardship is clearly not a  
11 typical hardship tied to anything related to the property.  
12 There's circumstances and the hardship is the hardship on the  
13 tenant who is actually delinquent and will be evicted anyway.  
14 There's a hardship on the owner who has to move into it, but that  
15 is, or sell it, but that is basically the zone requirements.

16 So I struggle a great deal with this because there are  
17 a number of elements which I think you could argue that this is  
18 clearly a, you know, a self-created situation. It's unfortunate  
19 as all get out but it does seem to me that, given the regulations,  
20 it doesn't meet the standard. Those are my thoughts.

21 Chairman Hood?

22 ZC CHAIRPERSON HOOD: Maybe I should have followed  
23 first. But I will tell you that, well I agree it doesn't meet  
24 the standard, we got that. And going through this, that's why  
25 the timeline would have been fine, not that it would have changed

1 anything so I'm going to try to go off of my memory.

2 But I will tell you this, Mr. Chairman and Board, I  
3 believe that if Ms., if she had not, had come back and tried to  
4 put solar panels or whatever, none of this ever would have come  
5 up. If Ms. Hartley had not even moved in that direction this  
6 would have never come up, eight years later. Eight years later  
7 she relied on, and she has a permit and to say that the  
8 professionals would have come out and tell you something  
9 different or should have found it, professionals every day tell  
10 you you don't need permits, all the time. They can come out here  
11 and they do me, but I know better. They tell you don't need  
12 permits. They don't do what we do. Ms. Hartley doesn't do this  
13 all the time.

14 So I think she relied on the permit. She proceeded  
15 and, you know, so much confusion all the way around and even in  
16 our conversation and our deliberation here, we're having a type  
17 of confusion. So for me a timeline would be better. I don't  
18 know how to fix it, but I think she relied on that permit and  
19 she proceeded on that permit. You know, I don't know how to get  
20 to where I think it needs to be but I think her reliance was on  
21 what she was issued by the government.

22 But I agree and I don't want to say that some people  
23 who are professional help, sometime they in it for the money and  
24 they don't always give you all the things. But had she not even  
25 come back and tried to do what she wanted and picked up the solar

1 panels, this probably would never even have come up. So, and I  
2 do remember the conversation about ADUs. I know we made the  
3 change some years back but I really don't know what to do. But  
4 I just think that she relied on the government and, as always  
5 stated down here, the government should be predictable and there  
6 was some miscommunications and that's how she arrived, and the  
7 residents, I've always believed the residents should not be  
8 punished.

9 That's my statement. That's all I can say.

10 VICE CHAIRPERSON BLAKE: Okay.

11 So let's see where we are. I guess I would say we  
12 probably, well do we, I don't know if we have a consensus or not.  
13 Oh, no, do I have to call the emergency meeting? The, let's see.  
14 Do we have a consensus on this? Okay. I'll ask the Board. Are  
15 you prepared to take it to a vote or would you like to get  
16 additional information? I would like some additional information  
17 if I can get it from the Department of Buildings for better  
18 justification if I would support the position. Absent that  
19 position, it's challenging, it's not as strong an argument.

20 COMMISSIONER JOHN: Can I say something, Vice Chair?

21 It's not the strongest argument for a variance but  
22 here's what, for me, is the definitive issue. Okay. The, this  
23 is in the letter from Mr. Reid. It says, "OZA understands that  
24 there may have been some confusion as to how an accessory  
25 apartment should be represented in the description of work on



1 permit applications at that time." So this was right after the  
2 regulations were changed in 2016. We're in a 2017 time frame  
3 and I joined the Board in 2018. There was still a lot of  
4 discussion about ADUs. But, and Ms., the Office of Planning also  
5 said the same thing that, yes, there was some confusion. That  
6 confusion to me is represented in the building permit which, you  
7 can't get away from it. It says, you know, it's a flat twice.  
8 So that's where I am.

9 With respect to the hardship, you know, it's not an  
10 absolute number. It's a financial hardship to the Applicant to  
11 have in reliance on the advice she got, you know, converted the  
12 basement into a separate dwelling or to a flat, or, yeah. It's  
13 a little late. But anyway, that's where I am and I'm in support.

14 Ordinarily, I would take a more restricted view in  
15 terms of interpreting the regulation, but I think this Applicant  
16 did everything. Had not there been a statement that the  
17 application itself described the scope of work and that the permit  
18 reflected what the application stated, I might not be so inclined  
19 to support the application.

20 But I agree with Chairman Hood that, you know, the  
21 Applicant reasonably relied on the permit she had and had there  
22 been an issue, it took DOB eight years to notify the Applicant  
23 that there was a problem. I just think that's difficult for me  
24 to swallow.

25 VICE CHAIRPERSON BLAKE: Okay, Vice Chair John.

1 I think I want to say one thing that came to my mind  
2 as well as I listened to your comments. I think that the fact  
3 that this took place, and I'm not sure when this Applicant went  
4 to purchase this property nor am I exactly sure what the  
5 regulations were prior, if you were in the process of purchasing  
6 a property and the regulations changed in mid-purchase, you may  
7 not know that you can no longer do what you thought you were able  
8 to do.

9 So there is an element where the education process may  
10 have failed us in making sure that the regulations really did  
11 apply in this case, because if we think about our timeline, she  
12 may have been looking at the requirement in 2016. She may have  
13 been, I don't know what that time frame, I'm not familiar, but I  
14 think we're at a point where we should go ahead and take a vote.

15 So I'm going to ask someone to make a motion.

16 COMMISSIONER SMITH: I'll make the motion to approve  
17 the use variance before us to allow a flat with two units.

18 VICE CHAIRPERSON BLAKE: Okay. And we'll need a second.

19 ZC CHAIRPERSON HOOD: I'll second the motion. Oh, no,  
20 I'm sorry, not the motion. I withdraw my second.

21 COMMISSIONER JOHN: No, Commissioner Hood. That's  
22 fine.

23 ZC CHAIRPERSON HOOD: Okay. I don't usually second.  
24 All right. All right. I'll second.

25 VICE CHAIRPERSON BLAKE: Okay. The motion has been

1 made and seconded. Madam Secretary, would you please take a roll  
2 call vote.

3 MS. MEHLERT: Please respond to Mr. Smith's motion to  
4 approve the application.

5 Vice Chair Blake?

6 VICE CHAIRPERSON BLAKE: No.

7 MS. MEHLERT: Ms. John?

8 COMMISSIONER JOHN: Yes.

9 MS. MEHLERT: Mr. Smith?

10 COMMISSIONER SMITH: Yes.

11 MS. MEHLERT: Chairman Hood?

12 ZC CHAIRPERSON HOOD: Yes.

13 MS. MEHLERT: Staff would record the vote as three to  
14 one to one to approve Application No. 21235 on the motion made  
15 by Mr. Smith and seconded by, I believe, Chairman Hood, with Vice  
16 Chair Blake opposed to the motion.

17 VICE CHAIRPERSON BLAKE: Okay.

18 Let's call our final case back.

19 MS. MEHLERT: For the last case the Board is returning  
20 to Application No. 18431=A of The Field School. This is a self-  
21 certified request pursuant to Subtitle Y, Section 704 for a  
22 modification of a hearing to modify the order in Application No.  
23 18431 with modifications, conditions and approval of special  
24 exceptions under Subtitle U, Section 203.1(m) to allow an  
25 addition to a building at an existing private school, under

1 Subtitle X, Section 104 to allow modification of a private school  
2 plan and an application pursuant to Subtitle X, Section 901.2 for  
3 a special exception under Subtitle C, Section 1402.1 from the  
4 maximum height requirements for retaining walls of Subtitle C,  
5 Section 1401.2.

6 VICE CHAIRPERSON BLAKE: Okay.

7 Would the Applicant re-introduce yourself for the  
8 record so we can get started.

9 MS. SHIKER: I'm Christine Shiker with the law firm of  
10 Holland & Knight representing the Applicant.

11 Our other participants are being brought up at this  
12 point and as they're being brought up I will let you know that  
13 we did submit a clean and a redline version of the conditions as  
14 updated to reflect the Board's questions during the public  
15 hearing this morning. We would be happy to walk through the  
16 changes that were made using the redline so you can see the  
17 specific changes that were made since we were in front of you  
18 this morning.

19 Thank you.

20 VICE CHAIRPERSON BLAKE: Okay. Did you submit the  
21 redline to the record?

22 MS. SHIKER: We did. It is in Exhibit 36A --

23 VICE CHAIRPERSON BLAKE: Okay. Mr. Young --

24 MS. SHIKER: -- and a clean copy is in 36.

25 VICE CHAIRPERSON BLAKE: Okay. Great.

1           Mr. Young, would you pull that up and let's go through  
2 it.

3           (Pause.)

4           VICE CHAIRPERSON BLAKE: Mr. Young? Okay. There it  
5 is.

6           MS. SHIKER: Vice Chair Blake, would you like for me  
7 to walk through the few changes that were made?

8           VICE CHAIRPERSON BLAKE: Yes. If we can make it a  
9 little bit, maybe I'll make it a little bigger so I can see it.  
10 Okay. All right. Got it.

11          MS. SHIKER: Mr. Young, if you could go to the next  
12 page. There were no changes on the first page except to identify  
13 what it was in the record.

14          So for Condition 11 we, as the Board requested, we  
15 inserted the condition regarding the waste removal and we limited  
16 the times for trash removal to times outside of the drop-off and  
17 pick-up times and we specifically included what those times are.  
18 This revised condition reflects the current operations that we  
19 discussed, but it also provides some flexibility to the extent  
20 that the trash route that is currently established moves  
21 slightly.

22          In addition, this condition mitigates any potential  
23 adverse impacts that can result from conflicts between the trash  
24 truck and the pick-up/drop-off activities happening at the school  
25 which is consistent with DDOT's request for other private

1 schools.

2           As we discussed, the trash bins are located on the  
3 northern most portion of the site which is not near any of the  
4 existing residential neighbors. In addition, the only neighbor  
5 in that area is the Kreeger Museum which is set back more than  
6 50 feet and is shielded behind significant foliage and based on  
7 current operations, the museum is not open during trash pick-up.  
8 It does not open until 10 a.m.

9           Finally, there have been no issues or concerns raised  
10 in any of our meetings with the community or the nearby residents  
11 about trash pick-up, so we believe that this condition as revised  
12 addresses the Board's questions and it addresses any potential  
13 adverse impact.

14           Condition No. 12. This condition has been revised to  
15 specifically identify the types of outside groups that could be  
16 able to use the field. Specifically, we have identified it to  
17 say that the school may allow schools, youth sport organizations,  
18 community youth groups and other educational-based institutions  
19 to use the athletic field. So we have further defined that to  
20 make it not as wide open as it was in the previous version.

21           We have also incorporated the information that should  
22 be provided on the website about it. So you'll see that the  
23 school shall include the following on its website, information  
24 about the availability of the field, instructions for submitting  
25 rental requests which were the two things that were mentioned

1 before, and we have added and requirements to limit adverse  
2 impacts relating to noise in the evening hours. So this is a  
3 specific enforceable condition that the requirements should be  
4 set forth on the website and it will help to address the concerns  
5 that Board member Smith raised. Next page, please.

6 For Condition No. 14, we did not make any changes to  
7 this condition due to the open nature of the campus for public  
8 use and the specific requirements that are identified on outside  
9 groups in other conditions. However, the Applicant has no  
10 objection to the Board re-inserting this language in Condition  
11 14 that has been maintained out. It is the Board's prerogative.  
12 We're fine with either one. We just believe that it was more  
13 appropriate to have it removed. If we could go to page with  
14 Condition No. 31, please, so it's a couple of pages down.

15 There we go. Well, we're at the top of it. We'll talk  
16 through it and go to the next one. So this is the condition that  
17 relates to the field lighting. We have deleted the second and  
18 third provisions that were discussed in the condition. As you  
19 can see, we had maintained that the school shall install the  
20 exterior event lighting in accordance with the plans and that the  
21 school shall turn off that lighting no later than 9 p.m., daily.  
22 If you could go to the next sheet.

23 You can see that we have deleted the other two phrases  
24 that we discussed. The first was the concept relating to limiting  
25 potential, excuse me, adverse noise impacts. We have

1 incorporated that into Condition No. 12 to make it an enforceable  
2 condition and not have it be as general as it's set forth here.  
3 And then secondly we removed the condition regarding working with  
4 the community for potential issues because that commitment  
5 continues to be stated in Condition 31, excuse me, in Condition  
6 38.

7 Condition No. 32. We added, we re-inserted the time  
8 frame for turning off the lights in the parking lot. We have  
9 identified that as 11 p.m., as we discussed in the hearing this  
10 morning. Again, I will note in all of our discussions with the  
11 neighbors and the ANC, there were no issues or concerns raised  
12 about the parking lot lights which have been in existence for the  
13 last 13 years. So there were no issues that we're trying to  
14 mitigate but we have put a time frame on here, as the Board has  
15 requested.

16 And then for the construction management, in response  
17 to the questions about enforceability of construction management,  
18 we have confirmed that all of the concepts in this section were  
19 included in the record in a little bit different language, but  
20 generally the same. So we are proposing that you just reference  
21 that there's a construction management plan and you can delete  
22 the conditions consistent with Board member John's discussion.  
23 If we could go to the next page, please.

24 Condition 38, which we find is a very important  
25 condition, we have only deleted the last phrase to reference, you



1 know, a specific example of what could be talked about. However,  
2 the Applicant confirms that any issues can be brought up during  
3 these meetings that are going to happen at least every six months  
4 so the Applicant does commit to the community that any issues can  
5 come up and so we don't need to have any examples of those.

6 And so, therefore, with these changes we believe that  
7 we have addressed the concerns of the Board. We believe that we  
8 have met the burden of proof as well, and our team has worked  
9 very closely with the community and enjoyed strong support from  
10 the community, I believe due to its willingness to work in real  
11 time with the community when issues come up. That is why we  
12 arrived at this hearing with so much support.

13 We believe that these conditions, as proposed to be  
14 modified, do mitigate any potential adverse impacts and they  
15 reinforce the Applicant's commitment to continue to be a good  
16 partner in the community. And with that, I'd be happy to answer  
17 any other questions you have.

18 Thank you.

19 VICE CHAIRPERSON BLAKE: Okay. I'll turn to the Board.

20 Does anyone on the Board have any questions for the  
21 Applicant with regard to the application or with regard to the  
22 provisions and the conditions statement?

23 COMMISSIONER JOHN: I don't have any objection. I just  
24 wanted on Condition No. 32 where we replaced the language to  
25 state that the school shall turn off the lights to the parking

1 lot, I would suggest no later than 11 p.m., instead of at 11 p.m.

2 MS. SHIKER: Thank you, Board member John.

3 That's a good, a good change, sorry, that we did not  
4 catch that. That's better language.

5 ZC CHAIRPERSON HOOD: A question, Ms. Shiker, on the  
6 waste drop-off and pick-up. Do the kids ever get out of school  
7 early?

8 MS. SHIKER: Ms. Strauss, could you answer that?

9 MS. STRAUSS: I would say they get out of school maybe  
10 two times a year early, not very often if ever on a conference  
11 day.

12 ZC CHAIRPERSON HOOD: Okay. I just think that, okay.  
13 I'm not going, that's too much. Okay. That's very de minimis.  
14 Okay. Thank you. I just wanted to make sure we're covered here.  
15 I don't know if the time still, I kind of go back to what you  
16 all had proposed previously, but I know my colleagues wanted the  
17 timing in there.

18 So if we get out one day, I mean, I'm in The Field  
19 School and I get out at 12 o'clock and the trash is having to  
20 come by and pick up at 12 o'clock, so I kind of go back to what  
21 you all proposed but if my colleagues are fine with the timing,  
22 I'm good with it.

23 Thank you.

24 VICE CHAIRPERSON BLAKE: I think we are pretty much  
25 moved on with this. Ms. Shiker, do you have any closing remarks?

1 MS. SHIKER: I would just reiterate that we do believe  
2 that we have met the burden of proof for both the modification  
3 to the private school plan as well as for the retaining walls.  
4 The school is excited and prepared to move forward with these  
5 projects as soon as it receives approval of the application as  
6 such. We would ask if the Board could consider it as soon as  
7 possible and we appreciate your consideration.

8 Thank you.

9 VICE CHAIRPERSON BLAKE: Thank you.

10 So I'm going to close the hearing and the record, and  
11 dismiss the witnesses.

12 (Pause.)

13 VICE CHAIRPERSON BLAKE: And we can begin our  
14 deliberations. Would anybody like to lead this?

15 COMMISSIONER JOHN: Okay. So I'll start.

16 So I thought the application was quite clear and I  
17 appreciate that The Field School and the community work together  
18 to come up with solutions that would be, that would work for both  
19 the school and the community without, you know, unduly  
20 compromising the school's educational purpose.

21 In terms of how the application meets the requirement  
22 for relief, the increase in enrollment is from 320 to 400 students  
23 and increasing faculty staff from 74 staff members to 110 which  
24 is not significant in the scheme of things.

25 The addition I think meets all of the development

1 standards and so I have no objection to that as well, and I  
2 thought that the site plan was really quite, I don't want to say  
3 impressive, but I do like how the new building was sort of -- it  
4 continued what was there before and is well integrated into what  
5 was there previously. I thought that the Applicant explained why  
6 the three retaining walls needed to exceed the limits as required  
7 by the regulations and I believe that it met the criteria for  
8 relief.

9           And in terms of the conditions, I appreciate the  
10 Applicant's willingness to review again with the community the  
11 changes that the Board suggested, and I think all of these  
12 conditions will help to mitigate any potential impacts on the,  
13 potential adverse impacts on the community. And I think this is  
14 remarkable that there is a private school application for relief  
15 that can be heard and decided in one day. I think this is a  
16 first.

17           Thank you, and I'm in support of the application. Thank  
18 you.

19           VICE CHAIRPERSON BLAKE: Okay. Mr. Smith?

20           COMMISSIONER JOHN: Oh, I'm going to give great weight,  
21 I forgot to say I'm going to give great weight to the Office of  
22 Planning's analysis and recommendations and I appreciate the  
23 ANC's report in that they granted subject to the 38 conditions  
24 and because the Board addressed those conditions, I believe that  
25 whatever concerns the ANC had have now been addressed.

1           And, let's see. I also appreciate DDOT's, I believe  
2 there was a report from DDOT. I would just note that the order  
3 should reference the construction management plan as we discussed  
4 in the hearing, and that's it, Mr. Vice Chair.

5           Thank you.

6           VICE CHAIRPERSON BLAKE: Thank you very much, Ms. John.  
7 I appreciate that very thorough analysis.

8           Mr. Smith?

9           COMMISSIONER SMITH: I don't think I have anything to  
10 add. I agree with her assessment and the Office of Planning's  
11 assessment of this particular case.

12           In looking at the site plan it's a very, as Ms. John  
13 stated, this is a very thought out design that I think would be  
14 the least impactful. They're tucking the new addition into the  
15 rear existing building so there wouldn't be too much, wouldn't  
16 be any visual impact I think from the street and the existing  
17 vegetation I think would screen it from any of the residential  
18 buildings to the east and the south.

19           And the particular project complies with all of the  
20 other I think regular, the standard development standards that  
21 have become issues in previous school cases of this particular  
22 manner which relate to parking and pick-up and drop-off. That's  
23 not a concern in this particular case, so kudos to the Applicant  
24 for making sure that they were designing a project that would be,  
25 had the least adverse impact on the surrounding neighborhood

1 given all of the issues that were raised prior to me sitting on  
2 this Board when it came down to previous special exceptions for  
3 this particular school.

4 So with that, I give OP's staff report great weight,  
5 incorporating the conditions as we just discussed and I will  
6 support.

7 VICE CHAIRPERSON BLAKE: Chairman Hood?

8 ZC CHAIRPERSON HOOD: Thank you, Mr. Chairman.

9 I would agree with what I heard, but I want to  
10 especially thank this Applicant for all of the diligence they did  
11 in working with the community and I would agree with Ms. John's  
12 analysis to the tee, as well as Board member Smith.

13 Thank you.

14 VICE CHAIRPERSON BLAKE: Thank you.

15 I too agree with the analysis put forth by Board member  
16 John and Board member Smith and the Chairman. I appreciate, I  
17 think the Applicant has done a great job, has met the burden of  
18 proof for the retaining wall as well as modifications for the,  
19 the many modifications in the plan.

20 I will be voting in favor of the application and with  
21 that, having deliberated, I'd like to make a motion to approve  
22 the application as read and captioned by the Secretary, with the  
23 conditions as presented in Exhibit 36A, and ask for a second.  
24 Ms. John.

25 COMMISSIONER JOHN: Second.

1 VICE CHAIRPERSON BLAKE: The motion is made and  
2 seconded. Madam Secretary, would you please take a roll call  
3 vote.

4 MS. MEHLERT: Please respond to the Vice Chair's motion  
5 to approve the application with the conditions listed in Exhibit  
6 36A.

7 Vice Chair Blake?

8 VICE CHAIRPERSON BLAKE: Yes.

9 MS. MEHLERT: Ms. John?

10 COMMISSIONER JOHN: Yes.

11 MS. MEHLERT: Mr. Smith?

12 COMMISSIONER SMITH: Yes.

13 MS. MEHLERT: Chairman Hood?

14 ZC CHAIRPERSON HOOD: Yes.

15 MS. MEHLERT: Staff would record the vote as four to  
16 zero to one to approve Application 18431-A with conditions, on  
17 the motion made by Vice Chair Blake and seconded by Ms. John.

18 VICE CHAIRPERSON BLAKE: Madam Secretary, do we have  
19 any other business for today?

20 MS. MEHLERT: We do not. Great job, Vice Chair.

21 VICE CHAIRPERSON BLAKE: Then this meeting is  
22 adjourned. Thank you everybody. Bye.

23 COMMISSIONER JOHN: Thank you. Bye.

24 (Whereupon, the above-entitled matter went off the  
25 record at 3:49 p.m.)

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

This is to certify that the foregoing transcript

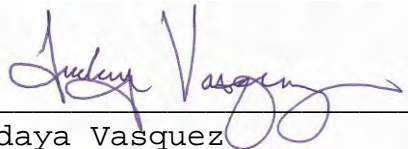
In the matter of: Public Hearing

Before: DC BZA

Date: 03-05-25

Place: Videoconferencing

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

  
\_\_\_\_\_  
Judaya Vasquez