

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JANUARY 31, 2024

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, A/V Production Specialist

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
MICAHEL JURKOVIC
CRYSTAL MYERS
RON BARRON
MATT JESICK
SHEPARD BEAMON

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

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

The transcript constitutes the minutes from the
Regular Public Hearing held on January 31, 2024.

CONTENTS

Application No. 20135-A of 3428 O Street LLC	4
Application No. 21027 of Amit and Veronique Singh	64
Application No. 20983 of House of Ruth	75
Application No. 21033 of 1235 W ST, LLC	112
Application No. 21015 of Elisabeth Kidder and Daniel Spurlock	119
Application No. 20853 of 1212 Oates Street, LLC	188
Application No. 20996 of 106 13th Street, LLC	235
Application No. 21025 of Heather Gustafson	301
Application No. 21030 of So Others Might Eat	316

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

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

(10:01 a.m.)

MEMBER MOY: Okay. So Board action, the case before the Board, this is a continued hearing on remand to Application No. 20135 of 3428 O Street LLC. The underlying caption on this case is a self-certified application, pursuant to Subtitle X, Section 1002, for area variance on Subtitle U, Section 254.6G, that would allow corner store use within 750 feet of MU Zone. It's now classified as an R-3/GT Zone. Property address, 3428 O Street, Northwest, Square 1228, Lot 76.

And I believe that's all I'm going to say, Mr. Chairman. If there's any more information you need, then call on me. Otherwise -- oh, finally, I believe, participating is the Chairman, the Vice-Chair, Mr. Smith, Zoning Commission Chair Anthony Hood, and, I believe, Mr. Blake as well, but if everyone can clarify that, then we're -- we'll be -- you should be ready to go, sir.

MEMBER BLAKE: Mr. Secretary, Mr. Chair, I have read into the case record, and I'm prepared to participate and deliberate and/or vote in this -- on this case.

BZA CHAIR HILL: Thank you, Mr. Blake. Mr. Smith.

MEMBER MOY: Mr. Chairman -- Mr. Blake. Just want to remind you that in the record those a motion right from the Opposition. There's an Opposition statement and from the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Applicant as well as a motion to strike from the Opposition,
2 so that's in the record.

3 BZA CHAIR HILL: Okay. Thanks. I think maybe --
4 Mr. Smith. I don't if you have -- Just curious. Did you
5 mute your line, Mr. Smith? Did you just mute your line, Mr.
6 Smith? Yeah. I think it's your line, meaning that I'm --
7 I'm going to mute because it's yours. Well, I was glad I was
8 muted because I cursed. So Mr. Smith, I'm going to mute my
9 line, and you mute -- unmute your line and then speak, and
10 let's see if it works.

11 MEMBER SMITH: Okay. Testing. Are you hearing
12 anything in the background? Okay.

13 BZA CHAIR HILL: Were you able to review the
14 record, Mr. Smith?

15 MEMBER SMITH: Yes, I was able to review the
16 extensive record, and I'm prepared to deliberate on this
17 case.

18 BZA CHAIR HILL: Okay. Great. Thank you. I
19 think, right, if everybody -- I'll mute my line whenever Mr.
20 Smith is about to talk. I'll mute my line. And then, at the
21 next break, we'll try to -- maybe, Mr. Smith, you'll log off
22 and log on. That'd be great. Chairman Hood, are you
23 prepared to move forward with us today?

24 ZC CHAIR HOOD: Morning. I have mentioned once
25 before, I have reviewed the case, and I have reviewed the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 case, and I will be participating. Commissioner May was on
2 this case previously -- taking too many cases, but anyway,
3 I'm ready for this one. Thank you.

4 BZA CHAIR HILL: Great. Thank you. Vice Chair
5 John?

6 VICE-CHAIRPERSON JOHN: Thank you, Mr. Chairman.
7 I have read into the record, and I'm prepared to deliberate
8 on this case.

9 BZA CHAIR HILL: Okay. Let me go ahead and
10 introduce ourselves to everybody, and then, we'll come back
11 on those preliminary matters. Could the Applicant please
12 introduce themselves for the record?

13 MR. SULLIVAN: Marty Sullivan with Sullivan &
14 Barros. I'm here on behalf of the Applicant.

15 BZA CHAIR HILL: Great. Ms. Roth, can you hear
16 me?

17 MS. ROTH: Yes, I can.

18 BZA CHAIR HILL: Oh, great. Could you introduce
19 yourself for the record?

20 MS. ROTH: Yes. It's Melinda Roth, the party in
21 opposition.

22 BZA CHAIR HILL: Okay. Great. Well, welcome
23 back, Ms. Roth. I'm probably the only one that still
24 remembers the face, but at you're still -- everybody's still
25 around since the pandemic. Let's see. Give me one second

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 while I look up something here. Okay. Great. All right.
2 So there is -- we got a vacated remanded order from the
3 Court. It specified us to look at two areas, and then, we
4 asked -- and then, we issued a procedural order on remand,
5 asking the parties basically the questions of that the Court
6 asked us. We then received submissions from the parties, and
7 then, the parties put in preliminary motions to strike the
8 submissions.

9 I'm just speaking to my Board right now. I'm not
10 asking any questions from anybody. Both submissions to
11 strike came in, I think, yesterday. And so, the information
12 that had been requested by the Board was put in January 10th,
13 so it's almost been three weeks since -- or more -- or maybe
14 three weeks -- since we got the information.

15 So unless my Board has any issues with this, what
16 I would put forward is that we deny both motions, and we
17 don't have to have much discussion about it, and then, we
18 would just go ahead and know -- I think the Board is able to
19 determine what is germane and what is not germane to what has
20 been asked from the parties, and we can move forward. I will
21 ask for a little bit of discussion from my Board members, if
22 that sounds good with you all, and I will start with you, Ms.
23 John.

24 VICE-CHAIRPERSON JOHN: I'm fine with dismissing
25 both motions.

1 BZA CHAIR HILL: Okay. So Chairman Hood, your
2 thoughts?

3 ZC CHAIR HOOD: Mr. Chairman, with both of you as
4 well. Thanks.

5 BZA CHAIR HILL: Thank you. Mr. Smith?

6 MEMBER SMITH: I concur with all three.

7 BZA CHAIR HILL: Mr. Blake?

8 (No audible response.)

9 BZA CHAIR HILL: Okay. Then, I'm going to go
10 ahead and make a motion to deny both motions to deny -- I'm
11 going to make a motion to deny both motions to strike and ask
12 for a second, Ms. John.

13 VICE-CHAIRPERSON JOHN: Second.

14 BZA CHAIR HILL: Okay. Great. Thank you. Mr.
15 Moy, just go ahead and take a roll call vote for the record.

16 MEMBER MOY: Thank you, sir. When I call your
17 name, if you'll please respond to the motion made by Chairman
18 Hill to deny the two motions of filed in the record to strike
19 testimony, and this motion was seconded by Vice Chair John.
20 Zoning Commissioner Chair -- Zoning Commission Chair Hood.

21 (No audible response.)

22 MEMBER MOY: Mr. Smith.

23 MEMBER SMITH: Yes.

24 MEMBER MOY: Mr. Blake.

25 (No audible response.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MEMBER MOY: Vice Chair John.

2 VICE-CHAIRPERSON JOHN: Yes.

3 MEMBER MOY: Chairman Hill.

4 BZA CHAIR HILL: Yes.

5 MEMBER MOY: Staff Board record the vote as 5-0-0,
6 and this is on the motion made by the Chairman to deny the
7 two motions. The motion to deny the two motions was seconded
8 by Vice Chair John, who also supported denying the two
9 motions as well as denial from Zoning Commission Chair
10 Anthony Hood, Mr. Smith, Mr. Blake, Vice Chair John, and
11 Chairman Hill. Motion carries, sir, 5-0-0.

12 BZA CHAIR HILL: Okay. Great. So this is my
13 plan, and we'll see how it goes. I'm going to reread what
14 I understand the Court has asked us to do. Okay? Then, I'm
15 going to go ahead and let the Applicant respond to what the
16 Court has asked us to do. I'm going to, then, let the party
17 in opposition respond to what the Court has asked us to do.
18 I don't think -- oh, we do have the Office of Planning. We
19 might hear from the Office of Planning.

20 If the Office of Planning has anything to add
21 about what the Court has asked us to do, the Applicant and
22 the party in opposition will have an opportunity to just ask
23 questions of one another and/or ask questions of the Office
24 of Planning. And then, the Applicant would have an
25 opportunity to rebut and of the questions that had been put

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 forward. I think -- I always get a little confused. In this
2 one, the Opposition will have an opportunity to rebut the
3 rebuttal as long as we all stay within the parameters of what
4 we're talking about. And then, the Applicant would have an
5 opportunity for a conclusion, and then, we'll see what
6 happens with the -- but the Board can ask questions at any
7 point in time.

8 And so, I'm going to try to stay a little bit
9 organized, and I'm going to start with actually just
10 everybody getting 15 minutes with what I'm about to say in
11 terms of, again, clarifying what the Court has asked us to
12 do. I thought that -- by the way, I thought that both of
13 your submissions were very good, and I appreciate them, and
14 they -- although there were areas that could be argued were
15 new information, I think the Board was able to glean through
16 what is, again, germane to the -- what the Court has asked
17 us to do.

18 I am not an attorney, but there is an attorney on
19 the Board, not that that person is -- anyway. What I
20 understand is that we're not supposed to be bringing up any
21 new information. We're supposed to be really looking at what
22 the Court has asked us to do. Now, this could end up then
23 being where this is -- I don't know what the word is I'm
24 trying to -- the Applicant might not get what they want.
25 Right? Or the party in opposition might not get what they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 want, but we're going to have -- we're not -- I don't think
2 we're going to deliberate and decide on this on the bench
3 today, so I think we're going to take time for us to go
4 through this because, again, I think that there -- we
5 probably could have even done this without having any
6 hearing, just based on the record. So there you go.

7 So I'm going to read this again, and I'm going to
8 then turn it over to the Applicant to respond to what I'm
9 about to say. Again, no new information. Everything is
10 supposed to already be in the record. I'll repeat -- I'll
11 even read what the attorneys have told me.

12 So from the vacated remand, it says, In sum, we
13 largely uphold the BZA's reasoning. We vacate the BZA's
14 order and remand the case. However, for further proceedings
15 on two specific topics, one, the implication of Call Your
16 Mother's ten-year lease for the question whether denial of
17 the requested variance would cause practical difficulties to
18 the owner of the property, and two, whether interveners could
19 permissibly proceed by solely seeking an area variance or
20 whether instead a special exception was required. There you
21 go. So Mr. Sullivan, I'm put 15 minutes on the clock. We'll
22 see what that does for you, and you can begin whenever you
23 like.

24 MR. SULLIVAN: To the Board, Marty Sullivan with
25 Sullivan & Barros on the behalf of the Applicant. I need to

1 start, since we didn't have a chance to argue this, my
2 continued objection to the submission. Our submission is
3 completely in the record despite what the party in opposition
4 has stated. The Lester order is in Exhibit 14 -- 52 B. And
5 self-certification was discussed throughout the hearing and
6 argued by us as well.

7 Her submission is almost completely outside of the
8 record. It has, what I would call, propaganda: pictures of
9 dead rats, pictures of license plates, pictures of people
10 congregating with no opportunity whatsoever for us to respond
11 to because it's not part of the record, and we followed the
12 really strict guidelines in the order. So I'll leave it at
13 that, but the fact that -- the thought that that can't bias
14 this Board is really questionable because it's real strong
15 information, true or not, that's -- that we can't respond to
16 and was specifically directed not to be in the record. And
17 I suspect we're going to hear a lot more of it, too, in their
18 testimony too because -- now that it's been let in. So I'll
19 leave it at that --

20 BZA CHAIR HILL: Mr. Sullivan?

21 MR. SULLIVAN: Yes?

22 BZA CHAIR HILL: Mr. Sullivan, I appreciate what
23 you're saying. I appreciate what you're doing for your
24 client and helping us, the Board. I guess we'll see -- this
25 -- we'll see how quickly this all gets resolved. This has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 been going on for a while, and if the Office's legal division
2 tells me later that there's a different way that we could
3 have approached this, we'll have an opportunity now to
4 respond to what you just said. Right? The striking of the
5 record, both of which I got just yesterday. Right? So it
6 was just difficult to strike things that had already been in
7 there for some time.

8 And however, I would like to clarify that I think
9 the Board is going to do its best to make sure that we focus
10 on what we've asked for. However, I do very much appreciate
11 everything that you brought up, and I don't necessarily
12 disagree with it. So go ahead, Mr. Sullivan.

13 MR. SULLIVAN: Thank you, and I didn't file late
14 on purpose. It was just I assumed that it wouldn't be
15 accepted, and that's why I, when I realized it had been --
16 that I filed that. So I'll leave it at that. Thank you.
17 So on the charge from the Court of Appeals, I want to handle
18 the second question first because it seems like the
19 procedural order spent the most time on that issue.

20 And the issue is whether the Applicant could
21 permissibly proceed by solely seeking an area variance or
22 whether, instead, a special exception was required. And so,
23 that was it. That was the mandate from the Court to have
24 further discussion on question two on whether or not a
25 special exception was required. And the rest of the

1 procedural order, I admit I'm very confused by because there
2 was a lot of additional information requested. At one point,
3 it states that the submissions and everything we're going to
4 do today is going to be based on the record in this case.
5 A couple pages later, it directs the Applicant that it must
6 make a special exception argument without submitting any
7 additional information, even though we have never requested
8 a special exception argument, and we don't have any intention
9 of requesting special exception.

10 So I don't know how you square that, how we could
11 argue a special exception with information that's already in
12 the record that was never presented in an argument for a
13 special exception. So that was the confusing -- that was one
14 of the confusing thing in the Board, and then, it also asked
15 for what variance relief we might need within a special
16 exception. And that was not -- had nothing to do with a
17 Court of Appeals mandate, so I'm going to focus on question
18 two.

19 I think the biggest shock for me was that the
20 procedural order seems to already reverse the Board's
21 position on self-certification before there was any
22 deliberation or argument, discussion, or filing of briefs.
23 The procedural order, which was supposed to be a procedural
24 order, comes right out of the gate and states that the
25 Applicant's proposal did not meet the very limited

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 circumstances under which a corner store use is permitted as
2 a matter of right. That's a question for the Zoning
3 Administrator, of course. And then, it proceeds from there
4 in that vein. And I'm not sure what the procedural order
5 asks for. Is it saying that we need to make a special
6 exception argument? Is it saying that the Board has now
7 changed its mind from its position in the BZA order, and
8 that's position two-fold.

9 One is whether or not we ask for special exception
10 relief in addition to our variance argument or whether or not
11 we're required to is irrelevant. It's not germane to the
12 issue before the Board, which was a request for a variance.
13 And I'm going to refer to the Lester case a lot. This is the
14 case that the party in opposition mentioned trying to strike
15 from the record. It's in Exhibit 152 B.

16 The Lester order, on page nine and ten, recites
17 -- is a MasterClass on self-certification and why it exists
18 and how the Board has interpreted it over the years and
19 includes cases -- a Madrid case, 18250; Tabs case, 17537; and
20 it doesn't mention this, but the Court of Appeals decided a
21 case for 421 T Street this past summer, Matthew Fay versus
22 BZA on BZA Case 20290. All of those cases discussed in
23 detail the BZA's interpretation of what self-certification
24 means, and so, I'll quote from Lester on the page ten, It is
25 for this reason the Board has consistently held that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 assertions of an erroneous certification are irrelevant to
2 its review of applications. And then, citing two cases
3 leading up to Lester, Lester stated, The question of whether
4 an applicant should be requesting variance relief is not
5 germane to the question of whether a special exception should
6 be granted. You would switch those for our case.

7 It was be applied to this case that the question
8 of whether or not we should be requesting a special exception
9 is not germane to the bearings of the request. This is a
10 long-standing and indispensable analysis from Lester, and
11 Lester goes on to say, The sufficiency of the self-
12 certificated relief must be proven in the first instance to
13 the Zoning Administrator and not the Board. And why? Why
14 is that? There's a reason for that.

15 In addition to it being the law, if the Board were
16 in a position that it was required to determine whether or
17 not an Applicant had filed and asked for sufficient relief,
18 then it would be subject to an appeal for anything. First
19 of all, the Board would have to then review every proposal
20 and all the plans as if the Zoning Administrator staff was
21 reviewing. And the Board couldn't issue in a variance
22 opinion without making sure that no other relief was needed.
23 Somebody could come back and appeal a zoning -- a BZA
24 decision, so I could get lot occupancy relief and, then, move
25 forward with my project. And then, two years later, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Court of Appeals could come back and somebody could file an
2 appeal, saying, well, they missed it. They didn't meet the
3 bicycle parking space requirement. And then, that's on the
4 Board. So there's no question that the Board is not required
5 to rule on this question of whether or not a special
6 exception is required.

7 And I want to point to the transcript on this
8 because this was discussed, and the Board was really clear
9 on this. It went back and forth because Ms. Roth continued
10 to raise the issue, and at some point, I objected. I said,
11 I think we're back at self-certification -- I'm on page 62
12 of the transcript in January -- December 11th. Chairperson
13 Hill says, Right. So I could agree with Mr. Sullivan. I
14 mean, all of the issues, in terms of the corner store that
15 you had brought up before, I think are really actually
16 something that would be before the Zoning Administrator and
17 wouldn't be under our purview.

18 Couple pages later, as Ms. Roth goes on,
19 Commissioner Shapiro breaks into a conversation between Ms.
20 Roth and Vice Chairperson Hart. If I can, Mr. Vice Chair,
21 Mr. Chair, I believe that, in this odd way, what we're
22 arguing right now is the imagined appeal of the Zoning
23 Administrator. Vice Chairperson Hart says, You're right.
24 And Shapiro adds, Which is down the roads -- Mr. Shapiro --
25 if that happens, we'll deal with that then, but that doesn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 seem like it's before us at all. Chairperson Hill says, So
2 Ms. Roth, this is -- if I'm going to see you again later --
3 okay. And that's what this whole thing is all about. Okay?
4 I'm going to give you five minutes to answer your -- ask your
5 questions because I got to get moving along. Okay. And so,
6 if you're going to appeal a Zoning Administrator decision,
7 that's a whole other thing.

8 So not only was it discussed and clearly ruled on
9 by the Board repeatedly, but Ms. Roth knew what her options
10 were. She has recourse to be able to appeal to this Board
11 whatever decision the Zoning Administrator would eventually
12 make subsequent to the BZA case. So if the Zoning
13 Administrator agrees with the Applicant and says that special
14 exception's not required for the corner store use, then Ms.
15 Roth -- or anybody else that's aggrieved has the right to
16 appeal that decision and would come back to the Board.

17 Now, so the question's why did the Court of
18 Appeals raise the issue, right, because they didn't follow
19 that line in the recently issued Fay opinion. So here's what
20 -- I say they did raise the issue, but here's the question
21 that that they may have, based on my reading of the opinion,
22 and how the Board can help them close the loop on this. So
23 first of all, in B, at the end of B, The Need for Additional
24 Variances, there was some question about -- I guess the party
25 in opposition claimed that we also needed additional variance

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 relief.

2 BZA CHAIR HILL: The end of B? The end of B?
3 What is this discussion?

4 MR. SULLIVAN: I'm sorry. I'm in B, Need for
5 Additional Variances, page -- it's at the -- starts page --
6 at the end of 848 on the opinion -- to 849. And it's Court
7 of Appeals just saying that, If an issue arises about the
8 obtained variance is sufficient, that issue can be decided
9 by the Zoning Administrator at the time a building permit is
10 requested. So that was on the question of whether or not we
11 need additional variances.

12 So then, there's a second claim of insufficient
13 or erroneous self-certification because that's what we're
14 talking about. We're talking about the Opponent claiming
15 there's an erroneous self-cert. So on the second claim of
16 that, which was we also need a special exception from the
17 corner store regulations, which we argued we didn't need, the
18 Court says, Arguably, the BZA could have declined to rule on
19 that issue and could instead have simply granted the
20 requested area variance and left to the Zoning Administrator
21 whether that variance was sufficient to permit CYM's proposed
22 use. So so far, they're onboard with self-certification and
23 the fact that this is the Zoning Administrator's decision.
24 They then say, The BZA did not take that approach however.
25 Rather, the BZA decided that CYM did not require special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 exception. We remand for the Board to further address that
2 issue. And so, the question is, possibly -- although, it's
3 not stated explicitly, I don't think -- does the fact that
4 the Board ruled on this substantively in the order. The fact
5 that the Board said we agree with the Applicant that special
6 exception relief is not required. Does that spoil or change
7 or alter the fact that the decision is still with the Zoning
8 Administrator. It's still self-certified.

9 Ms. Roth can still file an appeal of that, and the
10 Board can make whatever decision it wants to make on that
11 appeal. And the question is no. It does not change that.
12 And in fact, in every case that talks about self-cert,
13 Lester, Madrid, Tabs, which I included in my brief. In all
14 of those cases, just like in this case, the Board did two
15 things. First, they made the self-cert argument and said
16 this is not germane. It's not before us, and it's a question
17 for the Zoning Administrator.

18 And then, they proceeded to say, nevertheless,
19 here's our opinion about it because the Board is free to
20 speak about it. The Board doesn't have a gag order when it
21 comes to self-certification. But the Board's statement in
22 that regard do not affect the situation. They don't alter
23 the fact that the Zoning Administrator has jurisdiction and
24 the authority to make that call. And from Lester, at the
25 bottom of page nine -- and in Lester, again, they went in and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 did a substantive -- two-page analysis of whether or not
2 additional relief was required or not. The BZA stated, Thus,
3 the Board's grant of this or any other self-certified
4 application does not prevent the Zoning Administrator from
5 denying a building permit because more relief is needed or
6 the Board from affirming the denial.

7 So the BZA's saying -- that's critical there.
8 They're saying whatever we say here in this order, that
9 doesn't change the fact that the Zoning Administrator can
10 have a different opinion. And it also doesn't change the
11 fact that we might argue with that different opinion because
12 the Zoning Administrator's looking at it through a different
13 lens. They are the experts in the zoning regulations on a
14 day-to-day basis. They look at the full building permit.
15 Then, they make the determination of whether or not
16 additional relief is required. And then, that can be
17 appealed. So there's no hole in the recourse for the party
18 opponent here as well --

VICE-CHAIRPERSON JOHN:

19 Mr. Sullivan.

20 MR. SULLIVAN: -- they're just going --

21 VICE-CHAIRPERSON JOHN: Mr. Sullivan. Mr.
22 Sullivan.

23 MR. SULLIVAN: Yes.

24 VICE-CHAIRPERSON JOHN: Can you discuss the issues
25 in the Lester case? What was the additional relief that was

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 suggested that the Applicant needed?

2 MR. SULLIVAN: So it regarded -- it related to an
3 issue that's since been resolved by the zoning regulations.
4 It's a building connection between a principal building and
5 an accessory building. And let me pull up the order because
6 I can't remember exactly which way it went. But it was --
7 so back then -- that you could do a trellis to attach two
8 buildings, and when you attach them, it became a single
9 building.

10 And the Applicant wanted to -- and I want to make
11 sure I get this right, which way it was going -- had this
12 trellis up and said this is a single building and then -- and
13 was asking for rear yard relief. And the Opponent's argument
14 was that that was not a legal building connection, and
15 therefore, the back building was an accessory building. It
16 wasn't one single building. And so the relief that would
17 have been required, if it was determined that the trellis did
18 not, in fact, connect the two buildings, would have been
19 different.

20 So the Board said and the Applicant said, well,
21 we're self-certifying. We're confident that the Zoning
22 Administrator's going to agree with us that this is a lawful
23 building connection and that makes this a single building,
24 not two buildings. And an important point of that is, in
25 Lester, the Board also went through the situation where the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Board does have the option, in certain circumstances to
2 dismiss a case for insufficient relief. And I'll note that,
3 in Lester and in Madrid, it was stated that the principle of
4 such dismissal would be for judicial efficiency.

5 VICE-CHAIRPERSON JOHN: So if I could stop you for
6 a moment. So the issue for the Board there was whether or
7 not it was a building, which is an interpretation of the
8 regulations, right, what constitutes a building.

9 MR. SULLIVAN: That's correct. It was an
10 interpretation, and that's a good point because the -- Lester
11 went on to say that if there's any chance that the Zoning
12 Administrator could agree with the Applicant, then the Board
13 doesn't have the authority to dismiss the case, and
14 specifically, they used that that -- the example of a -- an
15 undisputed calculation of height. So if somebody came in
16 with a building that's five feet over the height limit and
17 there's no disagreement on the calculation, it's obviously
18 wrong, and this is exactly how Lester said it.

19 The Board has the right not to waste its time.
20 And so, they can dismiss for that reason, but they go on to
21 say -- or not then they go on to say. They follow up with
22 that by saying, The Board has the right not to waste its
23 time. For example, if an Applicant's own undisputed
24 computation show that a proposed building would exceed the
25 max height permitted, the Board could dismiss the application

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 if the Applicant refused to add the needed variance. But
2 where, as here, the issue is not one of computation but
3 interpretation, the Board should, at this stage, allow the
4 Zoning Administrator to carry out the function of
5 administratively interpreting the zoning regulations vested
6 in him by Part 3F of Reorganization Order, No. 55, from 1953.

7 And the next sentence, of course, Nevertheless,
8 the Board allowed testimony and submissions on the issue, so
9 it will explain why dismissal is not warranted. And then,
10 it goes on to talk about the issue substantively, which all
11 these cases did. And so, if the Court of Appeals was
12 questioning does the fact that the BZA substantively
13 discussed the issue, does that spoil this whole issue of
14 self-certification, and clearly, it doesn't.

15 VICE-CHAIRPERSON JOHN: Okay. All right. Thanks.
16 Continue, please.

17 MR. SULLIVAN: So I think that's it on that issue.
18 I was just -- I just don't know why it wasn't even mentioned
19 in the procedure order because it was very clear from the
20 record. And as --

21 BZA CHAIR HILL: Mr. Sullivan.

22 MR. SULLIVAN: Yes.

23 BZA CHAIR HILL: I got you. So is that -- are you
24 basically wrapping up your argument for question number two?
25 You're on mute. Sorry. You're on mute, Mr. Sullivan.

1 MR. SULLIVAN: I'm going to wrap it up in about
2 20 seconds, and then, I'm going to take a really short amount
3 of time on question number one.

4 VICE-CHAIRPERSON JOHN: Mr. Sullivan, before you
5 wrap up, please address the Court's interpretation of when
6 a special exception is required. The Court went through an
7 analysis of the regulation and how the Court would interpret
8 it and specifically referenced, I think, 254.16 in going
9 through how the relief could have been analyzed in terms of
10 what's the matter of right corner store, what type of corner
11 store requires a special exception, and when a variance would
12 be required.

13 And if you could please address how the Applicant
14 determined that this application was a for a matter-of-right
15 use because the Court went through a lot of analysis in that
16 area, and I'm curious to know how you would respond to the
17 Court's analysis.

18 MR. SULLIVAN: I think it's regulation that's
19 poorly written. I think, in the context of how other
20 regulations are written, it's extremely unclear, and one
21 could certainly -- it's certainly plausible for the Zoning
22 Administrator to find that -- based on the language, that the
23 special exception requirement only applied to uses that
24 didn't meet the requirements under 254.13, meaning it only
25 applied to -- I'll pull up the regulation -- 254 -- so first

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 of all, it -- 254 begins by stating the limitations and
2 requirements on a corner store. Under 254.5 and 6, a corner
3 store shall only be located as it follows. It goes in saying
4 all that and also says, The use shall be retail, general
5 service, arts design and creation, or eating and drinking
6 establishment.

7 And then, in 254.13, it states -- then, it goes
8 to a specific use. A corner store for which the use is a
9 fresh food market or grocery store devotedly primarily to the
10 retail sale of food shall be permitted, subject to the
11 following conditions, and it gives those conditions. But
12 that a matter-of-right use being defined under 254.13 with
13 conditions; 254.14 then says, A corner store use that is not
14 permitted is a matter-of-right, pursuant to 254.13, shall be
15 permitted as a special exception if approved by the BZA.

16 So frankly, I think it can be interpreted both
17 ways, and that's why it has to go back to the Zoning
18 Administrator as well. The BZA Court of Appeals can't force
19 an applicant to file a special exception application --

20 VICE-CHAIRPERSON JOHN: Excuse me, Mr. Sullivan --

21 MR. SULLIVAN: Yes?

22 VICE-CHAIRPERSON JOHN: -- but isn't it the Board
23 that charged with interpreting the regulations in the first
24 instance when a matter is presented to the Board? I'm having
25 difficulty with this discussion because this Board is not --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 if it's a matter of interpretation, I believe, especially
2 where -- as you state that the regulation is arguable
3 ambiguous -- isn't it the Board's authority -- within the
4 Board's authority to interpret that regulation? And isn't
5 that what the Court of Appeals is saying?

6 MR. SULLIVAN: No. First of all, the Board did
7 not do that in the decision, and they can't turn around and
8 reopen the record and do that now. They didn't dismiss the
9 case. The only reason why the Board has the right to dismiss
10 -- well, let me go back. How about Court of Appeals
11 Georgetown Residence Alliance decision states that in
12 evaluating requests for special exceptions to zoning
13 regulations -- in this case, it's a variance, but it's the
14 same concept -- the BZA is limited to a determination of
15 whether the Applicant meets the requirements of the
16 exceptions sought.

17 And this is something we included almost every
18 Applicant statement, that this Board is limited to evaluating
19 and responding to the relief that we're requesting. That's
20 the whole point of self-certification. The self-
21 certification form that we fill out and sign states that we
22 acknowledge that we're assuming the risk of making this
23 determination, but then it also goes on to say, Any approval
24 of the application by the Board does not constitute a Board
25 finding that the relief sought is the relief required to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 obtain such permit certification or determination. So
2 there's two answers to your question, I think, Board Member
3 John. One is that the Board did not dismiss the case. It
4 doesn't have the opportunity to dismiss the case now that
5 it's done. It can only be dismissed for judicial efficiency,
6 and obviously, that ship has sailed because the hearing was
7 -- already took place.

8 Two, according to Lester, the Board should not
9 dismiss the case if there's a plausible basis for the Zoning
10 Administrator to find that special exception relief was not
11 required and shouldn't dismiss it if it's question of
12 interpretation rather than an undisputed calculation. So the
13 Board has -- it said that the Board should, at this stage,
14 beware, as here the issue is not one of computation but
15 interpretation.

16 The Board should allow the ZA to carry out his
17 function, and that's -- so there's two -- I don't think the
18 Board could have or should have dismissed in the hearing,
19 even if they had determined that the special exception was
20 required. I think they would do what they've done in
21 hundreds of other cases is, well, that's on the applicant.
22 And that was discussed. And Ms. Roth knew that she could
23 file an appeal of that decision by the Zoning Administrator.
24 So I don't think the Board can come back and dismiss it now,
25 and I don't think that's what the Court's asking. It's

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 asking for further discussion on that. I think there may
2 have been -- I didn't handle the appeal. I would have raised
3 the issue of self-certification more prominently with the
4 Court of Appeals. I think they're looking for guidance on
5 that point, and I think the Board can provide that so it
6 would be consistent with Lester and hundreds of other cases
7 regarding self-certification.

8 VICE-CHAIRPERSON JOHN: So you still maintain that
9 this is a matter-of-right application?

10 MR. SULLIVAN: It's a question for the Zoning
11 Administrator.

12 VICE-CHAIRPERSON JOHN: So the Zoning
13 Administrator would have -- Zoning Administrator's opinion
14 would take precedent over the interpretation of this Board?

15 MR. SULLIVAN: No. Well, you -- well, actually,
16 yes --

17 VICE-CHAIRPERSON JOHN: I'm not sure.

18 MR. SULLIVAN: -- it would. Yes, and that's what
19 Lester and the -- and Tab and Madrid and Matthew Fay versus
20 BZA, from the Court of Appeals last summer, all said, that
21 regardless of what the Board says, because in all those
22 cases, the Board said we agree with the Applicant. We don't
23 think the relief is required. But they also said the Zoning
24 Administrator has every right to disagree with us and that
25 it's their job to make that decision, and then, it's the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA's job to hear an appeal if somebody files that appeal.
2 So yes. In the end, it goes to the BZA, but it's a question
3 of procedure.

4 VICE-CHAIRPERSON JOHN: Okay. Thank you.

5 BZA CHAIR HILL: Okay, Mr. Sullivan.

6 MR. SULLIVAN: So that I think I've talked about
7 question number two. On question number one, I just want to
8 touch really briefly on that because we have a lot of
9 information in our brief. I would rely on that. The general
10 point being everything that we discussed and everything that
11 was submitted regarding the exceptional condition and the
12 practical difficulty related to the property, it didn't
13 relate to Call Your Mother. It related to the property and
14 its ability to use. And it's an area variance. It wasn't
15 a use variance.

16 An area variance -- from a rule that said it
17 shouldn't be within 750 feet of a commercial zone, and it was
18 550 feet from a commercial zone. So it was 200 feet of
19 relief, in regard to a regulation that is for the purpose of
20 not unfairly impacting the viability of a commercial zone.
21 Also, I would like to -- if the Board could say that a
22 practical difficulty is solved by illusory payments from a
23 lease that's not in the record and you have no details on the
24 specifics of it and there's no details on the specifics of
25 the entity that signed the lease and their ability to pay a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 ten-year lease without ever getting any space in exchange for
2 that, then no tenant can ever sign a lease prior to going to
3 the BZA. It can't be said that the potential to receive
4 payments from a tenant negate the practical difficulty that
5 rests with the property and the owner of that property, who's
6 responsible for maintaining it, keeping it, filling it up
7 again after that lease is gone, not that an owner -- it's a
8 practical difficulty alone for an owner just to maintain a
9 property, even if they were getting lease payments.

10 But the idea that somebody would pay ten years of
11 lease payments without ever using the space is hard to
12 believe, to begin with, and -- but the fact is there's no
13 real information in the record on that because it's not an
14 issue. I don't think that the Board has ever considered the
15 relationship between the landlord and the tenant and has
16 never considered that, well, somebody's going to pay you
17 under a contract that's going to be in breach anyway, so
18 therefore, your practical difficulty goes away. So that's
19 my summation of that. I have a lot more information on the
20 -- in the record on that. And that's all I have for those
21 two issues.

22 BZA CHAIR HILL: Okay. Thanks, Mr. Sullivan. Let
23 me just see real quick here. Okay. All right. Ms. Roth,
24 can you hear me?

25 MS. ROTH: Yes, I can.

1 BZA CHAIR HILL: Okay. Great. So what I'd like
2 to do is I'd like to go ahead and have your presentation now
3 on the those two issues, and then, we can -- then, the Board
4 can also ask questions of you. And then, you can have an
5 opportunity -- then, we'll see whether we get to the Office
6 of Planning or not. And then, you'll have an opportunity to
7 ask questions of everyone. Everybody has an opportunity to
8 ask questions of everybody is what I'm trying to get at. So
9 Ms. Roth, you can go ahead and begin whenever you like, and
10 we're basically -- everybody has 30 minutes right now, but
11 again, you can begin whenever you like.

12 MS. ROTH: Okay. Thank you, Mr. Chairman, and
13 good morning to everybody, members of the Board. As you
14 heard, my name is Melinda Roth. Want to introduce myself
15 because I am the party in opposition. Fifteen other
16 neighbors and I, along with others who didn't lend themselves
17 -- their names to the Court of Appeals case, banded together
18 to oppose the granting of this variance. I live just a few
19 doors down. I am not a zoning lawyer. I am technically a
20 lawyer, but I have never practiced law before.

21 I actually teach at a law school here in DC, so
22 please forgive me for not having the level of expertise that
23 you hear all the time about the -- about some of these
24 issues. But I do think it's pretty straight forward. I do
25 think it's pretty straight forward today. I do want to just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 take a few seconds to address those motions to strike since
2 Mr. Sullivan did address them. We only submitted our motion
3 to strike their submission when we got their motion 15
4 minutes before the 9:30 a.m. deadline and luckily saw that
5 and submitted our own because we think both submissions
6 didn't track perfectly what was already in the record.

7 Mr. Sullivan mentioned that the exhibit that had
8 pictures of some of the detrimental effects that the
9 neighbors have faced. He objected strenuously to those.
10 Well, they are part of the record. They are all things which
11 were mentioned many times, including similar pictures being
12 submitted when we did appeal to the BZA. Now, to address the
13 issues, to address the real issues and the real reason we are
14 here -- and first of all, we are very grateful because we
15 have been waiting quite a while for this to happen, and we're
16 very grateful that we are here this morning.

17 So we submitted an appeal. We filed an appeal to
18 the Court of -- DC Court of Appeals, and they vacated and
19 remanded the decision. And that vacated part is really
20 important, and I've had a lot of fun actually in my class
21 this week, asking -- I have about 200 hundred students in two
22 classes -- asking what people think the definition of vacated
23 is. And vacated means to set aside a previous judgment or
24 order. And that means the Court of Appeals set aside the
25 BZA's order, which granted a variance. Right? They didn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 just remand the decision. They vacated and remanded the
2 decision. And in fact, the brief from the other side -- from
3 Attorney Sullivan says, The Board cannot revoke the
4 previously granted variance approval based on the Applicant's
5 refusal to now apply for a special exception. That is
6 irrelevant.

7 What is relevant is that Court has vacated a
8 decision, and it means technically that there really
9 shouldn't be a variance anymore. But despite the Court
10 making this ruling on August 11, 2022, a year and a half ago,
11 the store, the restaurant in question has been -- sorry --
12 has been operating since and has been operating for almost
13 five years now. So let me focus on the two issues, and since
14 Mr. Sullivan addressed the second issue first, I will also
15 address that second issue first.

16 We believe, and we argued to the BZA during the
17 course of the different hearings that were held and then
18 argued again to the Court of Appeals, that a special
19 exception is needed. One can always say that regulations and
20 statutes are poorly written or not necessarily clear. We
21 think the language here is pretty clear. And it seems like
22 the Court of Appeals agreed with us because the language
23 states that only a fresh food market or a grocery store has
24 a matter-of-right under the corner store regulations. And
25 during our hearings, the Applicant insisted that they had a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 matter-of-right, which is false. If you are not a grocery
2 store or a fresh food market, then you have to -- then,
3 254.14 applies to you, and that states, A corner store use
4 that is not permitted as a matter-of-right, pursuant to the
5 previous section, which is only about grocery stores and
6 fresh food markets, shall be permitted as a special
7 exception, if approved by the Board of Zoning Adjustment,
8 under Subtitle X, Chapter 9, subject to some conditions.

9 So the language, we think -- and we think the
10 Court agreed -- is very clear that fresh food markets and
11 grocery stores have a matter-of-right ability under the
12 corner store regulations, but anything else that is allowed
13 as a corner store must have a special exception. And in
14 fact, every other case that has been a prepared food shop,
15 which is what Call Your Mother has called themselves in a
16 number of hearings on the record -- every other case that has
17 been in front of this Board and the Zoning -- well, I don't
18 know that any have actually gone to the Zoning Administrator.

19 But every other case as a -- for a prepared food
20 shop, under the corner store regulations, have applied for
21 a special exception. This is a special exception to the
22 special exception requirement. For some reason, they're in
23 a different universe, thinking that they do not require a
24 special exception, and they have stated that they never plan
25 to apply for one, and the reason they don't plan to apply for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 one, we think, is because they cannot fulfill the
2 requirements. That Section 254.14 is very clear. It says,
3 Anything that isn't a fresh food market or grocery store
4 needs a special exception, subject to several conditions.

5 And that very first condition -- the very first
6 condition required in order for you all to grant a special
7 exception says that a corner store use shall be located so
8 that is not likely become objectionable to neighboring
9 property because of noise, traffic, deliveries, or other
10 objectionable conditions. And we actually think the buck
11 stops here. We think the remand stops here. All the
12 evidence shows the -- that this is objectionable to the
13 neighbors: the popular, the success of this particular
14 business, the fact that we love bagels --

15 MR. SULLIVAN: Objection. Mr. Chair.

16 BZA CHAIR HILL: Who's saying something?

17 MS. ROTH: I believe that Mr. Sullivan objected --

18 MR. SULLIVAN: I'm going to object to --

19 MS. ROTH: -- I didn't know that I couldn't --

20 MR. SULLIVAN: -- the submission of additional
21 testimony regarding what happened outside of the record after
22 this case, and I'll just say it one time, a blanket objection
23 for all the stuff we're going to hear, including the last
24 comment. So I won't keep objecting. Thank you.

25 BZA CHAIR HILL: Okay. So I guess -- let me

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 think. Ms. Roth, I'm also not an attorney, and so, when
2 people start objecting to things, I'm not sure where the
3 objection will finally fall. And so, I seem to be following
4 along with what you're saying, in terms of you think it
5 should be a special exception, and they can't meet the
6 criteria for the special exception. I do also appreciate
7 that you're not a zoning attorney, but -- so I think Mr.
8 Sullivan is objecting to the things that he is going to
9 object to -- and Mr. Sullivan, you can go ahead and speak up
10 when you think that we're getting a little bit off track
11 because I'm trying to also keep us on track.

12 But I guess, Ms. Roth, you're, again, arguing that
13 they can't meet the criteria for the special exception, but
14 I was following along with you that you think that the Court
15 of Appeals and the regulations clearly state they need the
16 special exception. So you could please begin again. Thank
17 you.

18 MS. ROTH: Thank you, Chairman Hill. Yes, you're
19 exactly right. We do -- or I believe that they require a
20 special exception to operate as they are currently operating.
21 I want to remind everyone that there is already zoning relief
22 attached to this property. They have the ability, and we
23 cannot stop them because that's already there. They have the
24 ability to sell bagels. If they want to be a retail shop and
25 sell bagels, they can do that. They do not require any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 additional zoning relief to do that. Whether or not that is
2 more profitable, less profitable was discussed previously in
3 hearing. There was no evidence about that. The focus in the
4 hearings were all about the timing and the lines, and really,
5 the focus was not necessarily always on the right thing. Let
6 me keep my focus on that second issue.

7 The Court vacated and remanded the decision, and
8 the BZA order asked for submissions about whether or not a
9 special exception was required, and if it was required, what
10 variances may or may not be needed. So we believe, as
11 Chairman Hill rightly restated our opinion, which is that the
12 regulation is clear. A special exception is required. But
13 they do not meet the requirements of that special exception.

14 And in fact, the same exact objections -- the same
15 objectionable conditions, which Mr. Sullivan is objecting to
16 me mentioning, even though they were mentioned in every
17 single hearing, in every single brief that we have turned in,
18 those same exact objections were used in another case that
19 was in front of this Board, with it -- for a juice bar to
20 open just a few blocks away, very close. And in fact, the
21 neighbors in that case used pictures and evidence from the
22 Call Your Mother objections. They used our concrete evidence
23 to show that the juice bar a few blocks away would create
24 similar objectionable conditions. So if Call Your Mother --
25 if the Applicant chooses not to apply for a special

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 exception, that's their issue. But my understanding of
2 vacate is that they do not have a current -- the variance
3 that they had has been vacated, so they have to either go
4 through the process of applying for a variance under the
5 premise that they don't need a special exception, or they
6 have to apply for a special exception, or they can stay in
7 the spot and sell bagels. I'm sorry. Was there a question?

8 BZA CHAIR HILL: No.

9 MS. ROTH: Okay. So as we said in our brief, we
10 believe that they would need a minimal of two variances, if
11 not up to four. The first one is the one that we have
12 discussed and the one that they were awarded, the area
13 variance from a 700 -- from the 750-foot rule, because they
14 are closer than that, to a small commercial zone, and in that
15 small commercial zone is another prepared food shop, who
16 actually testified at a prior hearing that awarding this
17 variance would negatively, economically, impact their
18 business. It has negatively impacted their business.

19 BZA CHAIR HILL: Ms. Roth. Ms. Roth.

20 MS. ROTH: Yes?

21 BZA CHAIR HILL: I'm sorry. I'm just trying to
22 follow along with you. I was there for that argument and
23 that also. So one variance, again, is the area variance.
24 Right? And what's the other variance that you're saying
25 again? Just so I'm clear.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. ROTH: Okay. We believe that they actually
2 would require two area variances. The first one is the 750-
3 foot rule, which we believe they no longer meet those -- the
4 conditions to that. But the second one is one that, again,
5 was a different interpretation of the corner store
6 regulations than what we had, and that second one is also an
7 area variance, and it is Section 254.60 of the corner store
8 regulations, which says that the property cannot be located
9 within 500 feet of three corner store use. And the language
10 in the law is very clear. It says, corner store use, which
11 means stores --

12 BZA CHAIR HILL: Okay.

13 MS. ROTH: -- that were -- that are operating
14 within the neighborhood, and we --

15 BZA CHAIR HILL: I got you.

16 MS. ROTH: -- cite that there are five of them --
17 five of them, more than three -- five of them located within
18 five hundred feet. And that means that they would need a
19 variance from that as well. In a previous hearing, there
20 was, I think, a disagreement about the interpretation, and
21 the Applicant believed that only corner stores that went
22 through the corner store regulations would be considered
23 corner store use. But again, there's evidence in other
24 cases, including one that the Office of Planning and the BZA
25 heard for -- in front of them --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 BZA CHAIR HILL: Ms. Roth. Ms. Roth.

2 MS. ROTH: Yes?

3 BZA CHAIR HILL: I'm sorry. I got you. I
4 remember that from your -- also your submissions. So I got
5 that. The reason why I'm redirecting here is just, again,
6 sticking with the second question again. I understand the
7 Courts are asking about the variance, right, and then, the
8 special exception. Right. Your argument is to -- that they
9 need the special exception. Okay. I got it. Okay. Please
10 continue.

11 MS. ROTH: Okay. So again, they need a special
12 exception, and if they need the special exception, the Court
13 asks for us to discuss. And the order from the BZA asked
14 what variance, if any, would be needed if the special
15 exception was needed. So we, in our brief -- and now would
16 like to, again, reiterate that they would need a minimum of
17 two, if not four, variances. And the first one is the 750-
18 foot rule, which has been discussed in detail.

19 The second is that they're located within five
20 such corner store-use establishments, and in order to -- the
21 Board can actually waive that requirement. You have the
22 ability to waive the requirement, if the corner store
23 applicant is within more than other three corner store-use
24 establishments. But in order to waive that, there's four
25 conditions. And one of -- one is be neighborhood serving,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 and we might -- might be arguments on both sides as to
2 whether or not the Applicant is neighborhood serving or not,
3 but B is, I think, the crucial requirement in order to waive
4 that. You can't be within more than three corner store-use
5 establishments, and B says, not negatively impact the
6 economic viability or vitality of an area zone, MU or MC,
7 that is closer than 750 feet.

8 So again, we get this, You're too close to this
9 small commercial zone, and in that commercial zone is someone
10 who under oath testified that this negatively impacts them,
11 that they are afraid for the future of their business, that
12 they're paying commercial rates, that they're -- they should
13 be protected --

14 BZA CHAIR HILL: I got you, Ms. Roth.

15 MS. ROTH: Okay. But not every -- thank you,
16 Chairman Hill. Not all of the other commissioners were here
17 for our previous arguments, so I want to make sure that
18 everyone is up to speed. I appreciate that.

19 BZA CHAIR HILL: No, no, no. What I meant was
20 that -- and I guess I can -- I'm not trying to stop your
21 thought process -- is that I'm just trying to understand what
22 you think they should be here arguing for and not actually
23 have the argument as to whether or not they're going to get
24 it. Right? That's what I'm just saying. We're not here
25 arguing whether or not they're meeting the criteria for the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 special exception or for any of those variances. You're
2 saying they need them. And so, that's what I'm trying to
3 focus on.

4 MS. ROTH: Okay. I absolutely appreciate that
5 distinction, and again, I think this is pretty simple, and
6 I think that's why there's been very -- I don't know else to
7 call it but clever lawyering on the other side to cloud the
8 issue, to mention the Zoning Administrator and the self-
9 certification issues. The BZA's original decision was
10 vacated and remanded, and there's two issues to focus on and
11 only two issues. Do you need a special exception, and does
12 the landlord have practical difficulties?

13 We think the law and language is clear. All other
14 cases, the zoning handbook, every bit of anything -- you once
15 chided me for using this expression, Chairman Hill, but I'm
16 going to say it anyway. Every shred of evidence points to
17 the fact that a special exception is needed, and I think Vice
18 Chair John actually asked Mr. Sullivan about that. And the
19 issue is clouded by what is the Zoning Administrator's
20 purview or what is a self-certification. The Court asked you
21 all to discuss whether or not they need a special exception.
22 The Court looked at the law and saw that they're not a fresh
23 food market or a grocery store, and therefore, they do not
24 have a matter-of-right, and they must apply for a special
25 exception in order to be able to operate as a prepared food

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 shop. That's the first -- that's the second issue, which I
2 addressed first. I don't know. I could keep going, but I
3 want to make sure that I address the issue about the landlord
4 and the difficulties. So the first thing that --

5 BZA CHAIR HILL: Before you move on, Ms. Roth, I
6 appreciate it. I think you did a good job with number two.
7 And does the Board want me to let -- does the Board have any
8 questions about number two right now, or would you rather us
9 continue to hear about the first issue? Okay. No one's
10 raising their hand, so I'm going to let Ms. Roth go ahead
11 with the first issue. Oh, and Ms. Roth, this thing, as I
12 remember, the -- I think it went on four, six hours. I think
13 everybody got chided, so -- but go ahead, Ms. Roth, on number
14 one, please.

15 MS. ROTH: Yes, Chairman Hill, you are an equal
16 opportunity chider. Absolutely. Everybody did get chided.
17 We got to know each other. If you remember, when we last saw
18 each other, the Nationals were winning the World Series.
19 That's how long ago it was. Okay. So the only thing I want
20 to just say before I move onto the landlord difficulties is
21 these questions about the Zoning Administrator and the
22 Board's power. The Court of Appeals did not say to us,
23 You're in the wrong place. The Court of Appeals did not say,
24 You're barking up the wrong tree, and you need to appeal the
25 decision of a Zoning Administrator. The Court of Appeals

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 heard the case, and while they have to give great deference
2 to the Board's deliberations and opinions, they did vacate
3 and remand the case. They didn't dismiss it and say this is
4 not a proper appeal. The appeal should be to the Zoning
5 Administrator. And I don't want you all to be -- that issue
6 to keep surfacing because, again, the decision was vacated
7 and remanded for these two specific issues.

8 And the second issue is that landlord has --
9 whether the landlord has any practical difficulties. And
10 this is a lower standard than the original use variance that
11 the Applicant applied for, and that's one of the reasons we
12 believe they went for this approach is because it is an
13 easier sort of standard to only have practical difficulties
14 as opposed to the hardship under the higher standard of it
15 -- of a use variance. And so --

16 BZA CHAIR HILL: Chairman Hood had a question.
17 I'm sorry, Ms. Roth.

18 MS. ROTH: That's okay.

19 BZA CHAIR HILL: Go ahead, Chairman Hood.

20 ZC CHAIR HOOD: Forgive me for asking this
21 question, and you may have already mentioned it because the
22 case that Mr. Sullivan cited in 2011, I actually was on. So
23 what you all did in 2019, you don't remember. I don't
24 remember 2011. But let me just ask you this. You keep
25 mentioning the vacate and remand. And I'm really trying to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 follow that because I know it wasn't a reversal. It wasn't
2 -- anyway. What are you trying to convey to us -- some of
3 us about -- you keep mentioning a vacate and remand.

4 We understand what vacate means and remand, but
5 are you trying to -- as far as that goes, what are you trying
6 to impress upon us about the vacate -- what the Court did --
7 vacate and remand -- because vacate, that means they took
8 away the decision, and remand, they sent it back for
9 something, those two issues. So what is the significance of
10 keep mentioning it? I'm just asking.

11 MS. ROTH: Thank you, Chairman Hood. I appreciate
12 the question. And again, my understanding -- I think I've
13 said it several times -- is -- and I think you said it
14 yourself that the decision was vacated, and that means the
15 decision to grant the variation is vacated and doesn't exist.
16 And I think the -- because the law is on our side on this,
17 there's all this -- these other issues that are trying to be
18 raised by Mr. Sullivan about self-certification and Zoning
19 Administrator's power and your power, interpretation of --
20 only because they ignore the fact that the decision is
21 vacated.

22 What does that mean right now? They don't have
23 a variance. If the decision was vacated, they don't have a
24 variance. And as I see it, they only have a few choices.
25 They can stay and operate as a retail shop. They can break

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 their lease, which we'll talk about what that implies for the
2 landlord. They can apply, again, for a variance, or you all
3 can decide to grant it -- grant them one, given that's the
4 only thing that they have applied for. Or they need to apply
5 for a special exception, which Mr. Sullivan says they do not
6 intend to do, but of course, I believe this Board can say
7 that you need to apply for a special exception. That's, I
8 think, the reason why I keep talking about that.

9 ZC CHAIR HOOD: Okay. I get it, Ms. Roth, but it
10 didn't actually say -- the Chairman has been going to those
11 two specific issues, and I think the additional -- I think
12 you're going a step further, but I'm going to be quiet at
13 this point and continue to listen. Thank you.

14 MS. ROTH: I appreciate that. So the second --
15 the first issue, which is now my second one, is this
16 difficulty with the landlord. And in the record, as those
17 of you that weren't here but have familiarized yourself, you
18 can see that there's nothing in the record that proves any
19 difficulties. The difficulties discussed are all about the
20 exceptional -- all about the exceptional circumstances of the
21 building, which we disagree with, but the Court said that
22 there was evidence on both sides, and therefore, they go
23 deference to the BZA. But on the landlord difficulty
24 situation, the Court seized upon some of our arguments. And
25 this property was never vacant, not for a single month.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 There was no effort to try to rent it, ever, only an opinion
2 from the landlord who inherited the building from his father
3 who passed away after signing the lease. So the gentleman
4 inherited the building after the lease had already been
5 signed. He's not a real estate expert. He was never under
6 oath.

7 He never came to any of the hearings. He never
8 tried anything else. He just said, I think it would be
9 difficult to rent. And that is a direct contradiction to
10 what the Applicant themselves said under oath. In testimony,
11 the applicant, Mr. Dana from Call Your Mother, said that
12 Senior Mr. McCann, who passed away, said that people were
13 banging down the door with interest. So we have no evidence
14 that there would be any difficulties for the landlord
15 whatsoever. And in fact, a hardware store, which is just
16 around the corner on the same block, was rented just a few
17 months ago with ease, had no issues finding a tenant --

18 VICE-CHAIRPERSON JOHN: Ms. Roth, Ms. Roth, I have
19 to stop you. You're giving testimony as to current matters
20 --

21 MS. ROTH: Okay.

22 VICE-CHAIRPERSON JOHN: -- about whether or not
23 it could be rented easily today, so please try to stay with
24 what the Court asked you to do.

25 MS. ROTH: Okay. So thank you, Vice Chairman

1 John. I appreciate that. I want to just reiterate that the
2 only -- that there's this fiction -- and this has been
3 discussed previously in the record. There's a fiction that
4 the only possibilities would be a flower shop, a prepared
5 food shop, or converting it to a residence. And we believe
6 there's a million other possibilities, and again, there's
7 only been opinions offered, not anything concrete.

8 Mr. Sullivan mentions the lease, and what he
9 failed to mention is that this Board actually asked for the
10 lease, and it was never submitted into the record. Mr.
11 Sullivan says that the question is whether or not there's
12 illusory payments of a lease and whether not any tenant could
13 ever sign a lease then because there would be a potential
14 difficulty that they couldn't operate as intended. Again,
15 that doesn't prove that there are practical difficulties, and
16 the burden is on the Applicant to prove any practical
17 difficulties for the landlord.

18 Vice Chair John, I want to stay within your
19 parameters of not testifying to current matters, but it seems
20 that the landlord is in a sort of win-win situation here.
21 They have a tenant in their lease. They're either going to
22 get paid for it, or the lease is going to be broken, and
23 they're going to receive a payment for breaking that lease.
24 And then, they would have the ability to then rent to someone
25 else after being paid for five years of -- because right now,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 it's almost five years. In April, it'll be five years of the
2 lease. In the record, it says that the lease was signed in
3 April 2019. Sorry. It might be -- yeah, in 2019. And so,
4 the landlord has received five years of payment and either
5 is going to get five more years of payment, or the lease is
6 going to be broken, and they would have the opportunity to
7 rent it to somebody else.

8 And so, we cannot see, and I think the Court
9 tended to agree, that there are no practical difficulties.
10 They have never shown that at all. And so, just to
11 summarize, we don't think this is up to the Zoning
12 Administrator. We think this is your call. We think the
13 decision by the Court was to vacate and remand for a reason
14 because we do believe that they need a special exception.
15 The law is clear. They are not a grocery store.

16 The special exception can only be granted under
17 some conditions. The first condition is that it cannot be
18 objectionable to the neighbors. We have entered, in our
19 brief, a annex, letter from the two immediate, adjacent
20 neighbors that share a wall. Because it's on a corner,
21 there's two neighbors, one on 35th Street and one on O
22 Street. And both of those neighbors strenuously object --
23 objected previously to the variance --

24 VICE-CHAIRPERSON JOHN: Again, Ms. Roth, Ms. Roth,
25 were those the same letters in the record, or are they new

1 letters?

2 MS. ROTH: Vice Chair John, they're both. They
3 both testified previously, and they gave an updated letter
4 that was attached --

5 VICE-CHAIRPERSON JOHN: But we don't need the
6 update. We're not arguing the case right now, so those
7 updated letters, the Board did not ask for that.

8 MS. ROTH: Okay. Well, I think they addressed --
9 I think they tried to address the issues because, again, the
10 special exception the Court and BZA order asked for what --
11 whether or not a special exception was required and, if so,
12 what variances would be needed. And so, in discussing
13 whether a special exception is required, the Applicant
14 doesn't meet the requirements of that needed special
15 exception because --

16 VICE-CHAIRPERSON JOHN: That's an interpretation
17 of the regulation. We don't need additional statements from
18 neighbors at this point.

19 MS. ROTH: Okay. Appreciate that. And then,
20 again, we just, again, finally, we just want there to be some
21 consistency that other cases under the corner store
22 regulations have been processed as a special exception. One,
23 just a few blocks away, the juice bar, was denied because of
24 the objectionable conditions. And so, I'm open for
25 questions. I believe that we've made our opinion known that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 they do need a special exception and that the landlord does
2 not have any practical difficulties whatsoever.

3 BZA CHAIR HILL: Okay. Thanks, Ms. Ross -- Ms.
4 Roth. Okay. Does the Board have any questions of Ms. Roth?
5 Okay. I know why we're here. Does the Board want to hear
6 from the Office of Planning? Okay.

7 ZC CHAIR HOOD: I'll just speak up, Mr. Chairman.
8 I just want to address, and I'll let the Vice Chair go. But
9 I just want to just -- I think I have enough information to
10 address what the Courts have, and I just wanted see how this
11 proceeding go. I just wanted to ask -- I didn't want to go
12 silent, so I'll let the Vice Chair go.

13 BZA CHAIR HILL: All right. Vice Chair.

14 VICE-CHAIRPERSON JOHN: Well, thank you, Chairman
15 Hood. I was going to ask the Office of Planning if the
16 Office of Planning had anything to add, but it's not
17 necessary for the Office of Planning to weigh in.

18 BZA CHAIR HILL: Okay. Let's hear from the Office
19 of Planning.

20 MR. LAWSON: Hi. Good morning, members of the
21 Board and Chair. Can you hear me okay?

22 VICE-CHAIRPERSON JOHN: Yes.

23 BZA CHAIR HILL: Yes.

24 MR. LAWSON: Great. Thanks. Actually, Office of
25 Planning has nothing to add in this case. If the Board

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 determines they want something from OP, happy to provide that
2 to the record.

3 VICE-CHAIRPERSON JOHN: Thank you.

4 BZA CHAIR HILL: Okay. Thanks. All right. I
5 don't -- I'd like to clarify this. So we have now been
6 speaking for two hours. There is a lot of information in the
7 record. I know that we're not going to be making a decision
8 today. I think that it's actually going to take a little bit
9 of time. And I keep trying to remember this word, and Ms.
10 John will not -- and I don't want to even throw it out to the
11 other people in the -- it starts with an a, and it means
12 policing.

13 And so, we are not the ones that actually go out
14 and stop people from doing what they're doing, meaning it's
15 the -- I don't know who it is. The Department of Buildings,
16 Ms. Roth, because when you keep mentioning the vacated and
17 all that, I guess what I just trying to say is we're not the
18 ones that go out and stop people from doing stuff. So that's
19 -- and I always forget that word that I frickin' -- it starts
20 with an a, and so, it just bothers me. But anyway, we don't
21 do that. But I understand what you're talking about, Ms.
22 Roth. So I preface all this by saying I don't have a lot of
23 questions. Nobody has a lot of questions. However, if Ms.
24 Roth or Mr. Sullivan have questions for each other that are
25 questions that they would like to have answered, let's go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 ahead and try. But I -- again, I want to stay focused and
2 not get too caught up in -- obviously, incredible frustration
3 on one side because they live there and the other person
4 whose job it is to represent their client. So Mr. Sullivan,
5 do you have any questions for Ms. Roth?

6 MR. SULLIVAN: No, I do not. Thank you, Mr.
7 Chair.

8 BZA CHAIR HILL: Okay. Ms. Roth, do you have any
9 questions for Mr. Sullivan?

10 MS. ROTH: I would like to ask one. And that is
11 -- I think that -- again, I don't want to assume anything,
12 but I do think that you would agree that Call Your Mother is
13 not a fresh food market or a grocery store. And so, do you
14 believe that the regulations state that those corner store
15 uses that are not fresh food markets or grocery stores
16 require a special exception?

17 MR. SULLIVAN: I believe that they did not require
18 a special exception, and that's why it exists right now. The
19 use is operable, has C of O.

20 BZA CHAIR HILL: Okay. All right. Okay. Thanks,
21 Ms. Roth. Okay. So just to be clear for Ms. Roth, this
22 whole discussion about self-certification and what is within
23 the Board's purview and what kind of goes to the Zoning
24 Administrator, it isn't to cause confusion with the Board.
25 It's actually a very basic thing that we're trying to now

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 struggle with a little bit. Just to let you, Ms. Roth, know,
2 we're here all the time. And so, a lot of what happens is
3 this issue with self-certification. So that is something
4 that the Board is now going to struggle with and understand.

5 I know for a fact because we are all already kind
6 of struggling with it and understanding what is and isn't the
7 responsibility of the Board when it comes to understanding
8 the regulations and what goes towards the Zoning
9 Administrator, and a little bit of that is towards you, Mr.
10 Sullivan, as well. So that all being said, just because I
11 get to talk because I have the microphone, I guess we're
12 going to now take some time because it's going to take me a
13 little time to get through everything that's been said and
14 also figure it out.

15 So I want at least two weeks, maybe three. And
16 Mr. Sullivan has his hand up. I'll get back to you in a
17 second. But I'm looking to my Board as to how much time they
18 think they need. And I'll start with you, Mr. Smith.

19 MEMBER SMITH: As of right now, I don't think I
20 need anything. I think the record is full, and I thank you,
21 Mr. Sullivan and Ms. Roth, for the very thorough testimonies
22 that you provided today. So as of right now, I don't think
23 I need anything. I will just review the record and review
24 this tape and my notes from the record and make a decision
25 from there.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 BZA CHAIR HILL: Okay. Somebody just asked me a
2 question. I'll get to you, Mr. Moy. Mr. Blake.

3 MEMBER BLAKE: The amount of information in the
4 record, which we -- which I've partially reviewed, but
5 there's additional information here, which I do think is
6 worthy of careful study. It's a matter of just time for this
7 particular thing. I'd say a couple weeks would be good,
8 depending upon the calendar that we have in front of us, to
9 digest this as well as the other things we have. So a few
10 weeks would be fine, but it depends upon the magnitude of the
11 existing calendar.

12 BZA CHAIR HILL: Okay. Thanks. Chairman Hood.

13 ZC CHAIR HOOD: I would agree with Board Member
14 Blake. Mr. Chairman, I will say this -- I'm not going to say
15 soon, but a few weeks would be fine. We don't want to go too
16 far because then we have to restudy again. While it's still
17 fresh, I think, would be very helpful because we do have a
18 few other cases. Thank you, Mr. Chair.

19 BZA CHAIR HILL: Thanks. Vice Chair John.

20 VICE-CHAIRPERSON JOHN: I think a couple weeks
21 would be fine, too, so that we can review the matter when
22 it's still fresh in our minds. But I wanted to ask you, Mr.
23 Chairman, were you planning to ask the parties to provide a
24 brief summary? They didn't have any questions. But did they
25 have closing statements?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 BZA CHAIR HILL: I wasn't going to ask for any
2 summary. However, if you would like a summary of some kind,
3 Ms. John, then --

4 VICE-CHAIRPERSON JOHN: No, I don't. I was just
5 asking you, Mr. Chairman. I'm fine. Yeah.

6 BZA CHAIR HILL: Okay. Hold on. Yeah. So we'll
7 see what happens. Mr. Sullivan has his hand up. Go ahead,
8 Mr. Sullivan.

9 MR. SULLIVAN: Sure. I think you mentioned at the
10 beginning that there would be a short time for rebuttal, and
11 I didn't ask questions specifically, counting on that. I can
12 be really, really brief, and I don't mind if I'm not last in
13 that, too, so I don't --

14 BZA CHAIR HILL: That's fine. I got you. So
15 that's one thing. I am going to ask OZLD a question. I
16 can't recall if, in a remand case -- vacated or not, if we
17 take witnesses during this part of the hearing. Does OZLD
18 know? Public testimony is what I'm asking.

19 VICE-CHAIRPERSON JOHN: No.

20 BZA CHAIR HILL: Okay. I got a, No, from Vice
21 Chair John, which is good enough for me, for now, but now,
22 I want to know from OZLD.

23 VICE-CHAIRPERSON JOHN: Maybe we could hear from
24 Mr. Sullivan while we're waiting to hear from OZLD. I
25 believe it's in the regulation. I'll try to find it there.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA CHAIR HILL: Okay. Then, I would like to go
2 in the order that I usually go in, so Ms. Roth, I think, and
3 I always say it -- preface it this way, and I don't know why
4 I do -- in the regulations, the only person that gets
5 conclusion is the Applicant, I think. But I always let
6 everybody give a little bit of a conclusion so we can hear
7 kind of what they want to summarize. So if you would, just
8 please give a conclusion but not add anything new that I then
9 have to start again with -- would be wonderful.

10 VICE-CHAIRPERSON JOHN: So Mr. Chairman --

11 BZA CHAIR HILL: Yep.

12 VICE-CHAIRPERSON JOHN: -- I think Y801.6 says
13 that testimony at any further hearing shall be limited to
14 witnesses called by the parties until the -- unless the
15 procedural order states otherwise. And the procedural order
16 did not request any testimony.

17 BZA CHAIR HILL: Okay. All right. Well, OZLD got
18 back to me also and said they don't have public testimony,
19 so -- but thank you, Vice Chair John, for that help. Ms.
20 Roth, do you have anything you'd like to add as a conclusion
21 -- or not add but clarify?

22 MS. ROTH: Yes, thank you, Chairman. I will,
23 hopefully, be very brief. I want to say that we understand
24 this struggle that you have with self-certification. Believe
25 me, I have made myself more than familiar with many of your

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 cases and tried my best to learn the zoning law and to see
2 how you all operate as well. But the question here is -- the
3 questions here are of the law, and the law, we think, are
4 very clear, and you can't use the self-certification process
5 -- or you shouldn't be able to use the self-certification
6 process to circumvent the law.

7 And if you do self-certify, then, you're taking
8 that risk. We understand that. That's part of the record.
9 But here, the corner store regulations are clear. The law
10 states that if you're not a grocery store, you got to have
11 a special exception. There's conditions to getting those
12 special -- to getting that special exception. We don't think
13 the Applicant would meet those conditions, and that's maybe
14 why they're resistant to apply for it in the first place.

15 And then, finally, there's never been any concrete
16 evidence that the landlord has any practical difficulties
17 whatsoever, and that makes the -- is the second prong of the
18 three prongs that are required for the original area variance
19 that was granted or any area variance that would be needed
20 under the special exception. Thank you. Thank you all for
21 your attention. Do appreciate it.

22 BZA CHAIR HILL: Thanks, Ms. Roth. All right.
23 Mr. Sullivan.

24 MR. SULLIVAN: Thank you, Mr. Chair and Board
25 members. It was vacated. It was not reversed. If the Court

1 of Appeals had a firm decision on whether or not a special
2 exception was required, they could have reversed, if they
3 thought that that was appropriate. And it was remanded for
4 the Board to further address that issue. And on that issue,
5 self-certification is not a technicality of law. It's not
6 -- we're not circumventing anything.

7 It is the law. It's necessary. It's critical.
8 It's fundamental to the operation of the BZA vis-a-vis its
9 relationship with the Zoning Administrator and who makes
10 zoning decisions. It could never be an error by this Board
11 to fail to dismiss an application for an erroneous self-
12 certification. If that could be an error, then it would
13 fundamentally transform the BZA. It would mean that the BZA
14 is now obligated, required to not miss a thing when anybody
15 brings plans forward. And you know how the plans are the
16 application. You see a small part of the project.

17 And the reason is because the BZA doesn't have the
18 authority, the obligation, the technical expertise to do a
19 complete zoning review of a project. That's for the Zoning
20 Administrator and his professional, full-time staff to do
21 that. And so, that's the whole purpose of self-
22 certification. And it's not -- it goes beyond self-
23 certification. It's what's the Board's job and what's their
24 mandate under the law. It's to say yes or not to whatever
25 the client is asking -- the Applicant is asking for and not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 to delve beyond that. As the Board has repeatedly said,
2 issues of erroneous self-cert are germane to the relief being
3 requested. So yes, the Board arguably has a right to
4 dismiss, in limited circumstances, but that's only based on
5 the principle of judicial efficiency, and that right goes
6 away when the case is finished and hasn't been dismissed.

7 You can't go back and dismiss it after you've
8 granted the variance. Oh, on one thing I've mentioned. We
9 actually changed the relief requested, not because we wanted
10 a lower standard, which is always great. We would do that.
11 But it was actually at the strong insistence of the Office
12 of Planning that we should be requesting a different relief,
13 and that was changed mid-course in the case.

14 Here's the bottom line. I don't know what the
15 mechanics would be. How could the Board or the Court of
16 Appeals force a person to file a special exception
17 application that they don't want to file? They can't do
18 that. And we don't have any intention of doing that. And
19 the Board also can't retract or pull a variance that was
20 granted because of insufficient relief after the fact or
21 because an applicant decides I'm not going to file for
22 special exception relief after the fact when I already have
23 a building permit and a C of O, which was never appealed.
24 There was process here. Ms. Roth knew about it. It's in the
25 transcript. It was talked about repeatedly that her recourse

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 was to file an appeal of the Zoning Administrator's decision,
2 which would go back to the BZA. And then, we would all be
3 having this discussion legitimately. That's not what
4 happened, and it's too late for that. So I'll stop there.
5 Thank you.

6 BZA CHAIR HILL: Okay. All right. I saw Ms. Roth
7 shake her head, but we're just going to with we're summing
8 up. So okay. I guess we're going to come back in two weeks.
9 I don't know what's going to happen. I got to say. I don't
10 know whether we're going to try to have people come back
11 again and ask other questions because I certainly don't know
12 what my thoughts are exactly. So I'm going to take the two
13 weeks to try to figure it out.

14 Enforcement was the word, enforcement. We don't
15 enforce things. So okay. It's doesn't start with an a. All
16 right. Well, I appreciate Mr. Sullivan. I appreciate Ms.
17 Roth. I know that it's gone on a very long time for both of
18 you. I appreciate you being both as professional as you have
19 been. And I will now -- unless somebody else raises their
20 hand -- close this portion of the hearing in the record and
21 say we're going to come back for a decision in two weeks.
22 Mr. Moy, you're coming on there to tell me that I can or
23 can't do that, I assume.

24 MEMBER MOY: I would never tell the Board that you
25 couldn't do it either.

1 BZA CHAIR HILL: Why not, Mr. Moy?

2 MEMBER MOY: You all are smarter than me. Okay?
3 So I just want to be clear on the date and that this would
4 be before the Board for decision-making and its meeting
5 session. That date will be Wednesday, February the 14th.

6 BZA CHAIR HILL: Yes. Is that Valentine's Day?
7 Okay. All right. Okay. All right. Okay. Okay. All
8 right. Okay. Great. That's it. See you all on Valentine's
9 Day. Bye, bye. Close the hearing on the record. Again, for
10 the record, we're just making a decision. We're not actually
11 going to see anybody unless something else happens. We're
12 definitely going to take a break. I don't know what to do
13 now. Chairman Hood is gone. Chairman Hood, it's such a
14 pleasure to have you for that case.

15 ZC CHAIR HOOD: You all have a great day.

16 BZA CHAIR HILL: Thank you. Bye, bye.

17 VICE-CHAIRPERSON JOHN: Bye.

18 BZA CHAIR HILL: And then, let's you want to take
19 just 20 minutes just because -- I'm going to have to have
20 lunch again, at some point. But I don't want to do it now
21 unless you all want to do it now.

22 VICE-CHAIRPERSON JOHN: Twenty minutes is good.

23 BZA CHAIR HILL: Okay. Let's do 20 minutes.
24 We'll come back at noon.

25 VICE-CHAIRPERSON JOHN: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA CHAIR HILL: Thank you. Bye, bye.

2 (Whereupon, the above-entitled matter went off the
3 record at 11:39 a.m. and resumed at 12:17 p.m.)

4 BZA CHAIR HILL: Alright, Mr. Moy. If you want to
5 please call our -- us back in and our next case?

6 MEMBER MOY: Yes. Thank you, sir. After a very
7 quick recess, the board has returned to its public hearing
8 session and the time is now at or about 12:17 p.m.

9 The next case before the board is Application No.
10 21027 of Amit, A-M-I-T, and Veronique Singh. This is an
11 amended self-certified application pursuant to Subtitle X
12 Section 901.2 for the following special exceptions; Subtitle
13 C Section 1501.1(c) from the penthouse height requirements,
14 Subtitle C Section 1501.1(b)(2); and Subtitle E Section
15 5203.1 from the height requirements, Subtitle E Section
16 303.1.

17 Property is located in the RF-1 zone at 630 G
18 Street, SE, Square 877, Lot 88. And that's all I have for
19 you, sir.

20 BZA CHAIR HILL: Okay. Great. If the applicant
21 can hear me, if they could please introduce themselves for
22 the record?

23 MS. DAVIS: Good morning, Chairman Hill, members
24 of the board. My name is Beth Davis. I'm here on behalf of
25 the applicant along with Mr. George Bott from Anthony Wilder

1 Design Build with the owners Design Build Firm.

2 The address of this property, as Mr. Moy stated,
3 is 630 G Street, SE. And I just wanted to say I think it's
4 hilarious that today is the third time I was right after the
5 Call Your Mother hearing.

6 (Laughter.)

7 MS. DAVIS: It's the third time and I thought that
8 was so funny. As soon as I heard it I was like, okay, I can
9 get some work done while we're waiting, but I just thought
10 that was funny that it was the third time I was right behind
11 them.

12 Okay. So --

13 BZA CHAIR HILL: Ms. Davis, are you choosing not
14 to use your camera, which is fine. I just want to know.

15 MS. DAVIS: Yes, because either you get my voice
16 or you get my face, and I think today you need my voice.

17 BZA CHAIR HILL: Got it.

18 MS. DAVIS: Yeah, there's something -- my son is
19 taking the secondary school admissions test and, where I am,
20 I have sketchy wifi.

21 BZA CHAIR HILL: Yes.

22 MS. DAVIS: So, I was in another meeting earlier
23 and really we only get one.

24 BZA CHAIR HILL: Okay. Well, Ms. Davis, I'm glad
25 that you were able to read into the record and vote on the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Call Your Mother case. We'll be calling you --

2 MS. DAVIS: That's so funny.

3 BZA CHAIR HILL: --- later this week.

4 (Laughter.)

5 MS. DAVIS: I have sat and listened to all of the
6 hearings. It's so funny.

7 BZA CHAIR HILL: Yes.

8 MS. DAVIS: But as to this case --

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

14 MS. DAVIS: Not a problem. As Mr. Moy stated, this
15 applicant proposes to construct a new three-story rear
16 addition to an existing detached three-story flat in the RF-1
17 zone.

18 The project has gone through several reviews with
19 input from both the ANC and the Office of Planning's Historic
20 Review Staff.

21 We note that both the ANC and the Office of
22 Planning are in support of the project as presented in the
23 revised drawings.

24 The revised drawings are shown in Exhibit 20, 21A,
25 21B, and 21C. Mr. Bott, the architect, is standing by to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 present the technical matters of the project.

2 BZA CHAIR HILL: Great. Thank you. Mr. Bott, can
3 you hear me?

4 MR. BOTT: I can. Can you hear me okay?

5 BZA CHAIR HILL: Yes. Can you introduce yourself
6 again and then tell us if you want us, I guess, maybe to pull
7 up Exhibit 21A.

8 MR. BOTT: Yeah. 21A1, 21A2 and 21A3 we'll be
9 discussing. That's the plan set broken out.

10 BZA CHAIR HILL: Okay. Great.

11 MS. DAVIS: Yeah, that -- the file was too large
12 to upload as one file. So, we had to break it up into three,
13 just so you know.

14 BZA CHAIR HILL: Okay. Okay. We might not need
15 anything more than 21A, but go ahead, Mr. Bott.

16 MR. BOTT: Yeah. So, I'll run through a brief
17 overview of the entire project and then just get more
18 specific on the exceptions that we're asking for.

19 So, as Beth mentioned, 630 G Street, it --

20 BZA CHAIR HILL: Can you introduce yourself, Mr.
21 Bott, for the record?

22 MR. BOTT: Oh, yes. Yeah. I'm sorry. My name is
23 George Bott with Anthony Wilder Design Build. Amit and
24 Veronique Singh hired us to do their renovation. I'm an
25 architect with Anthony Wilder.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 They hired us to do a renovation and addition at
2 their 630 G Street property.

3 BZA CHAIR HILL: Okay. Go ahead.

4 Mr. Young, if you could bring up 21A?

5 (Pause.)

6 BZA CHAIR HILL: Great. Thank you.

7 MR. BOTT: So, here we see the existing building
8 on the photo, the existing building on the left there at the
9 top. And then a rendering of the proposed building on the
10 right.

11 There's a three-story addition on the back with
12 a garage down below. We're proposing to extend the cornice
13 on the F Street alley side.

14 We set the addition back a little bit from the
15 existing building just to kind of keep that historic building
16 separate.

17 And that being the main building, we're going to
18 -- we will -- let me see here. There's some -- the clients
19 will be doing green features, a rooftop solar geothermal heat
20 pump will reduce ambient noise and electrical usage.

21 The building's envelope will be insulated with
22 high R-Value flash and batt system. New high-performance
23 windows will be installed.

24 We're going to refurbish some of the historic
25 elements like -- the surround on the front door, the bay

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 window and the cornice above are all deteriorating. So,
2 we'll refurbish those.

3 The penthouse we have, the building's existing
4 roof height is 42 feet. If you could please forward a couple
5 pages there, so here we're showing just the location of it.
6 Here's some context photos.

7 Next page, please. There's the existing site plan
8 and proposed site plan.

9 Next page, please. Basically the first-floor
10 plan.

11 Next page, please.

12 BZA CHAIR HILL: Mr. Bott?

13 MR. BOTT: Yeah.

14 BZA CHAIR HILL: I'm going to interrupt you.

15 MR. BOTT: Yes.

16 BZA CHAIR HILL: If you could just go to the sun
17 studies, Mr. Young, which is on page 25.

18 MR. BOTT: Yes.

19 BZA CHAIR HILL: I'm sorry, Exhibit 25. Exhibit
20 25, Mr. Young. I'm sorry.

21 (Pause.)

22 BZA CHAIR HILL: We have a very full day, Mr. Bott.
23 So, I'm trying to --

24 MR. BOTT: Yeah.

25 BZA CHAIR HILL: -- get you through this.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. BOTT: So, just to give you some -- so, we've
2 talked to all the neighbors. All the windows on the back and
3 the side of the addition are very -- they're transom windows.
4 So, you know, we've spoken with the neighbors about that,
5 kept them high -- a high sill so there's not a lot of views
6 to their properties to keep the privacy.

7 The neighbor to the right of the property has
8 solar panels. And so, we worked with them. We created a
9 bunch of sun models.

10 We work in Archicad, which is a 3-D modeling
11 program, which you can basically plug in any time of day and
12 it will produce -- or any time of year and it will produce
13 the sun study like we did looking at here.

14 So, he was concerned about the lower panels. He
15 had three lower panels on his roof there. And we, you know,
16 it's not until during the time -- between 9:00 and 3:00 a.m.
17 there's basically no change and he was satisfied with that.

18 We met with him. We sent him the 3-D model that
19 he could manipulate. And he spoke -- he was saying that he's
20 going to speak with his solar panel company, but we haven't
21 heard back. So, I'm assuming -- oh, actually we did. We did
22 hear back from him. He said there was no objection on his
23 part.

24 BZA CHAIR HILL: Okay. All right. I mean, I've
25 been able to flip through everything.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. BOTT: Yeah.

2 BZA CHAIR HILL: So, just while I have the solar
3 panel shadow studies up, does the board have any questions
4 on this exhibit?

5 MS. DAVIS: I think, if you want to, you can also
6 scroll through because there's a few pages, just in case
7 there are other pages that you might have questions on.

8 MR. BOTT: This is the December. The top is the --
9 with the addition. The bottom is the existing building. The
10 top three drawings are with the proposed work and the bottom
11 three are the existing.

12 BZA CHAIR HILL: Okay.

13 MR. BOTT: So, there's December and then I believe
14 there's a couple -- three other dates.

15 BZA CHAIR HILL: I'm going to interrupt you, Mr.
16 Bott.

17 MR. BOTT: Sure.

18 BZA CHAIR HILL: Okay. Let me drop this slide deck
19 -- thanks, Mr. Young -- so I can see my board members. I'm
20 going to turn to the Office of Planning.

21 (Pause.)

22 MR. JURKOVIC: Sorry, I think I wore the wrong
23 color shirt today. So, I'm not coming up in the video.

24 BZA CHAIR HILL: That's all right, sir. Introduce
25 yourself for the record.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. JURKOVIC: Good afternoon, Mr. Chairman and
2 members of the board. My name is Mike Jurkovic, the
3 development review specialist with the Office of Planning.

4 OP recommends approval of the special exception
5 for maximum height and penthouse height relief, as requested
6 by the applicant, and stands on the record of the report.
7 I'm here to answer any questions.

8 BZA CHAIR HILL: Okay. Does the board have any
9 questions for the Office of Planning or the applicant?

10 Is there anyone here wishing to speak, Mr. Young?

11 MR. YOUNG: We do not.

12 BZA CHAIR HILL: Okay. Ms. Davis, I don't think
13 the board has any questions for you. I hope you don't follow
14 the next CYA case, Call Your Mother, that is.

15 MS. DAVIS: I actually might, but that's okay.

16 BZA CHAIR HILL: Okay. There you go. Well, good
17 luck to you then.

18 MS. DAVIS: No worries.

19 BZA CHAIR HILL: All right. I'm going to close the
20 hearing and the record.

21 (Pause.)

22 (Witnesses excused.)

23 BZA CHAIR HILL: Okay. I didn't have any issues
24 with it. I thought that the applicant had done a good job
25 of stopping any visual intrusion with those windows in the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 bottom.

2 I also am happy to see that the cornice was
3 extended. I don't have any issues with the air or light.
4 I'm glad they spoke to the neighbors about the solar and also
5 happy that they've gone through and done all their due
6 diligence with the ANC, who is also in support, as well as,
7 again, the analysis of the Office of Planning.

8 I'm going to be voting in favor of this
9 application. Mr. Smith, do you have anything you'd like to
10 add?

11 (Pause.)

12 BZA CHAIR HILL: You're on mute, Mr. smith.

13 MEMBER SMITH: Sorry. Sorry about that. I don't
14 have anything to add, Chairman Hill. I agree with your
15 assessment of this particular case and the testimony provided
16 by the applicant.

17 I do believe that they have done their due
18 diligence. I give this application a positive recommendation
19 of approval. So, I will support the application.

20 BZA CHAIR HILL: Thank you, Mr. Smith.

21 Mr. Blake, do you have anything you'd like to add?

22 MEMBER BLAKE: I'm in support the application. I
23 believe it does meet the criteria of E 5202 looking at the
24 shadow studies, the renderings and so forth.

25 I would also credit the -- or reference the HPRB

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 report which received approval and I'm comfortable with the
2 design. I'll be voting in favor of the application.

3 BZA CHAIR HILL: Thank you. Commissioner Stidham?

4 MEMBER STIDHAM: Nothing to add. I am also in
5 support. I think the applicant did a really good job of
6 presenting their case. So, I'm in favor of supporting as
7 well.

8 BZA CHAIR HILL: Vice-Chair John?

9 VICE-CHAIRPERSON JOHN: I'm in support of the
10 application, Mr. Chairman. I have nothing to add.

11 BZA CHAIR HILL: Thank you. All right. I'm going
12 to go ahead and make a motion to approve Application No.
13 21027 as captured and read by the secretary and ask for a
14 second. Ms. John?

15 VICE-CHAIRPERSON JOHN: Second.

16 BZA CHAIR HILL: Motion made and seconded. Mr.
17 Moy, can you take a roll call?

18 MEMBER MOY: Thank you, sir. When I call your
19 name, if you will please respond to the motion made by
20 Chairman Hill to approve the application for the relief
21 requested. The motion to approve was second by Vice-Chair
22 John.

23 So, Commissioner Stidham?

24 MEMBER STIDHAM: I was having trouble. Yes.

25 MEMBER MOY: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Mr. Smith?

2 MEMBER SMITH: Yes.

3 MEMBER MOY: Mr. Blake?

4 MEMBER BLAKE: Yes.

5 MEMBER MOY: Vice-Chair John?

6 VICE-CHAIRPERSON JOHN: Yes.

7 MEMBER MOY: Chairman Hill?

8 BZA CHAIR HILL: Yes.

9 MEMBER MOY: Staff would record the vote as five
10 to zero to zero and this is on the motion made by Chairman
11 Hill to approve. The motion to approve was second by Vice-
12 Chair John, who also voted to approve the application.

13 Approval for the application also from Zoning
14 Commissioner Stidham, Mr. Smith, Mr. Blake, Vice-Chair John
15 and Chairman Hill. Motion carries, sir, five to zero to
16 zero.

17 BZA CHAIR HILL: Thank you, Mr. Moy. You may call
18 our next one when you get a chance.

19 (Pause.)

20 MEMBER MOY: The next case before the board is
21 Application No. 20983 of the House of Ruth. This is a self-
22 certified application pursuant to Subtitle X Section 901.2
23 for the following special exceptions: Subtitle C Section
24 703.2 on the minimum vehicle parking requirements of Subtitle
25 C Section 701; Subtitle C Section 1506.1 from the penthouse

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 setback requirements of Subtitle C Section 1504.1. Property
2 in the RA-2 zone at 1815 and 1819 Minnesota Avenue, SE,
3 Parcel 0218/0138 and 0218/0139.

4 As to preliminary matters, Mr. Chairman, there is
5 a request for postponement from ANC 8A. I believe it's under
6 the name of Holly Muhammad who, incidentally, is signed up
7 to testify and would like to speak, sir.

8 And there is a response from the applicant under
9 Exhibit 33. I believe it's a response to -- in opposition
10 to the request to postpone.

11 The applicant has proffered two witnesses. One,
12 an architect that's not in the witness book, as well as Jami
13 Milanovich, for transportation, who is in the witness book.

14 And there are a number of -- there are three
15 individuals signed up to speak in opposition. And, as I
16 said, ANC 8A is in the panel and that's all I have, sir.
17 Thank you.

18 BZA CHAIR HILL: Okay. Thank you. If the
19 applicant can hear me, if they could please introduce
20 themselves for the record?

21 MS. PRINCE: Allison Prince and Derick Wallace
22 from Goulston & Storrs here on behalf of the applicant, House
23 of Ruth.

24 BZA CHAIR HILL: Thank you. Good morning, Ms.
25 Prince.

1 MS. PRINCE: Good morning.

2 BZA CHAIR HILL: Let's see. So, let me do a couple
3 of things first. Ms. Milanovich has been with us many times.
4 So, I would imagine she's going to be admitted as an expert
5 on my board. If they have any issues, please raise your
6 hand.

7 Outside of that there's an architect. Is that Mr.
8 Stoiber?

9 MS. PRINCE: Jeff Stoiber. Jeffrey Stoiber. He's
10 been a practicing architect in the District, I would guess,
11 for 40 years. Registered architect.

12 And I believe he's been recognized as an expert
13 by this board before. But if you need to requalify him,
14 that's certainly fine.

15 BZA CHAIR HILL: Yeah. Mr. Stoiber, could you
16 please introduce yourself for the record?

17 MR. STOIBER: My name is Jeff Stoiber. I'm the
18 president of Stoiber and Associates Architects and I've been
19 practicing in the District for probably closer to 45 years.
20 The firm is about to be 41 years old.

21 BZA CHAIR HILL: Okay. All right, Mr. Stoiber.
22 Okay. I don't have any issues with Mr. Stoiber being an
23 expert in architecture unless the board has any issues.
24 Please raise your hand.

25 Okay. There's those preliminary matters that are

1 taken care of. So, we will admit him. Please add him to our
2 book, Mr. Moy.

3 Let's see. Can Commissioner Muhammad hear me?

4 MS. MUHAMMAD: Yes, I can hear you.

5 BZA CHAIR HILL: Great. Commissioner, could you
6 introduce yourself for the record, please.

7 MS. MUHAMMAD: Commissioner Holly Muhammad, ANC 8A.
8 My single-member district is 8A03 where this BZA Case No.
9 20983 is proposed to be developed.

10 BZA CHAIR HILL: Okay. Commissioner -- okay. Are
11 you choosing not to use your camera? That's fine. I just
12 want to know.

13 MS. MUHAMMAD: I wasn't able to use it earlier.
14 Let me see.

15 Is it on? Okay. There we go.

16 BZA CHAIR HILL: Maybe not.

17 MS. MUHAMMAD: I'm sorry.

18 BZA CHAIR HILL: Oh, there we go. Oh, great.
19 Perfect. Thanks, Commissioner.

20 Okay. So, Commissioner, you'd like a
21 postponement?

22 MS. MUHAMMAD: Yes. I'm here representing ANC 8A.
23 And the reason that we have asked for a further postponement
24 for this hearing is because we cannot get the applicant to
25 conduct the needed engagement with the community.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 We asked for a postponement back in October giving
2 them three full months to conduct the engagement needed
3 before coming to the ANC in January for a vote.

4 None of that took place. They came to our meeting
5 on January the 9th to announce a community meeting that they
6 would be having in two weeks, which ended up being held on
7 January 29th, just two days ago.

8 I sent the letter from the ANC requesting the
9 postponement and noting that, in the letter, that two days
10 prior to the hearing is unacceptable.

11 They have not reached out even to this point to
12 the very people that are directly affected by this
13 development.

14 And we've asked them to do that because we have
15 many residents -- this is an older community. So, we have
16 many seniors who are not, you know, on the internet, not
17 internet savvy.

18 And we -- I mean, I've been a commissioner for 15
19 years, dealt with many developers. We've never had this kind
20 of pushback in getting a developer to do community
21 engagement.

22 They've been willing to reach out to the residents
23 who don't have internet, reach out to the directly affected
24 community so that they can get the support that they need if
25 the community is willing to support it. So, this was not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 done.

2 They did have a meeting two days ago, and of
3 course I wasn't there because I got a notice of the meeting
4 when I'm working, but I spoke to some of the residents that
5 attended.

6 I spoke to, also, the president of the Fairlawn
7 Civic Association and they were not even given a presentation
8 at the meeting. They were not told that there was going to
9 be a hearing at this meeting.

10 They were discussing this -- the House of Ruth and
11 what the House of Ruth does as an association. They were not
12 given any renderings of the building.

13 They were given one copy of an aerial view of the
14 area where the building is, and I literally had one resident
15 call me to find out what the address of this proposed
16 development is. So, there has not been the needed community
17 engagement on this particular project.

18 And then, also, the Department of Transportation
19 presented a transportation plan that the ANC has not had the
20 opportunity to review.

21 They're required to submit it 30 days in advance.
22 They did not submit it to Zoning until January 12th. And
23 they submitted it to the ANC on January 18 with your hearing
24 being today, January the 31st.

25 So, we have not had an opportunity to discuss the

1 special exception that's needed because we haven't had a
2 presentation.

3 They said they were going to amend their
4 renderings. They never came back to do a presentation to the
5 ANC. When asked continuously have they contacted any of the
6 directly affected residents, they decline to respond. So,
7 I've spoken to some of the residents and they haven't had
8 contact from anyone from the applicant's team.

9 So, the ANC is asking the commission today to
10 please postpone this hearing and instruct the applicant to
11 do their due diligence in community engagement.

12 We, the ANC 8A, normally does an ANC report, but
13 we have nothing to do a report on. And the Office of
14 Planning notated that they did not have a report from the
15 ANC, or comments from the community, because the community
16 didn't have an opportunity to present any comments. There's
17 nothing to present any comments on.

18 And the ANC is in the same position. We can't do
19 a report if we haven't had a presentation and we haven't had
20 an opportunity to review the transportation plan, which is
21 very important.

22 And also, I see that on the BZA website on this
23 case there is a PowerPoint that was presented by the
24 applicant on January 29. That is the same day that they had
25 this meeting.

1 Earlier in the day they presented that -- they
2 uploaded that PowerPoint to the BZA case, but then at six
3 o'clock that evening they told the community they didn't have
4 a PowerPoint or any kind of presentation that they could make
5 so that the residents could even see what they're intending
6 to try to build there.

7 So, I think if we move forward with this hearing
8 today, it totally disenfranchises our community from a
9 process of engagement that they're entitled to. And I really
10 -- I hope that the commission will agree to instruct this
11 applicant to conduct the engagement that is needed and
12 required so that the community can know what is going to be
13 happening around them. They can know -- ask questions on
14 this transportation plan and they'll have a chance to either
15 support it or not support it.

16 BZA CHAIR HILL: Okay.

17 MS. MUHAMMAD: Thank you.

18 BZA CHAIR HILL: Thanks, Commissioner.

19 MS. MUHAMMAD: Thank you, sir.

20 BZA CHAIR HILL: Sure. Commissioner Stidham?

21 MEMBER STIDHAM: Commissioner Muhammad, in the
22 applicant's response to your request to propose, they
23 indicate that you were asking for a change in the project
24 design before you would allow the ANC to review.

25 I got the sense from your testimony -- well, from

1 your testimony this afternoon that the ANC hasn't been -- the
2 full plan hasn't been submitted to the ANC; is that correct?

3 MS. MUHAMMAD: Correct.

4 MEMBER STIDHAM: You're waiting for some change to
5 be made?

6 MS. MUHAMMAD: Correct. So, the community here in
7 Fairlawn, the homeowners, renters, whoever lives here,
8 there's a lot of development going on around us that the
9 community does not agree with.

10 It's well-known and the -- and this whole project
11 that was presented to us by Ms. Jackson, because surrounding
12 or in the Fairlawn area we have got garden-style buildings
13 and what she currently has is garden-style, we ask that that
14 be considered.

15 It was agreed to be considered. They said they
16 would go and bring back new drawings to us. So, that's the
17 -- we haven't seen the new presentation and there seems to
18 be some disconnect in the team because some of the team were
19 saying, no, they never promised that.

20 Well, yes, it was and it's acknowledged to in an
21 email from Ms. Jackson, who is part of the team for this
22 development.

23 So, we asked them to come back with the amended
24 renderings and a presentation and they have just never done
25 that. It's never been presented to the community.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 I haven't seen this PowerPoint that they uploaded
2 to the case, but -- so, I don't know what that is, but we
3 haven't had a presentation. The community hasn't had a
4 presentation.

5 And if they had a PowerPoint that they uploaded
6 on the 29th of January, they could have shown that -- did
7 that same presentation that they're going to present to you
8 guys today, they could have given that -- the community that
9 presentation on January 29th.

10 MEMBER STIDHAM: So, when did they originally come
11 to you and provide information?

12 MS. MUHAMMAD: They -- hold on one second. I'm
13 sorry. They originally provided information in June, I
14 believe it was.

15 MEMBER STIDHAM: Have they requested to come back
16 since June?

17 MS. MUHAMMAD: I'm sorry?

18 MEMBER STIDHAM: Have they requested to come back
19 since they came to you in June?

20 MS. MUHAMMAD: No, but they were -- they said they
21 were going to have their architect develop some new
22 renderings. So, we waited and waited.

23 And when it was time for their hearing, that is
24 why we requested the first postponement because they didn't
25 come back with the renderings and they had not done any type

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 of outreach to the community regarding what their intentions
2 are on that lot there.

3 MEMBER STIDHAM: Okay. Thank you.

4 MS. MUHAMMAD: And that -- I don't know if you have
5 a copy of my letter, but that --

6 MEMBER STIDHAM: I do. I do.

7 MS. MUHAMMAD: I'm sorry?

8 MEMBER STIDHAM: I do. Thank you. I do.

9 MS. MUHAMMAD: Okay.

10 BZA CHAIR HILL: Mr. Smith, you had your hand up.

11 MEMBER SMITH: Yeah, I had a followup question to
12 this. The designs that we see here that are in the
13 PowerPoint that you reference, is that the design that your
14 executive committee saw in June? June -- I believe in your
15 letter you said June 12th?

16 MS. MUHAMMAD: I'm --

17 MEMBER SMITH: June 12th -- June 26th, sorry.

18 MS. MUHAMMAD: I'm sorry, I can't see what you're
19 seeing.

20 MEMBER SMITH: The design of the building that you
21 are referencing in the PowerPoint from this community meeting
22 that they had on the 29th, is that the design that they
23 presented to your executive meeting on June 26th of last
24 year?

25 MS. MUHAMMAD: So, you said the design that they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 had at the meeting on the 29th?

2 MEMBER SMITH: Yes. You're referencing a
3 PowerPoint that's in our record that --

4 MS. MUHAMMAD: Right.

5 MEMBER SMITH: -- shows the design of the
6 building.

7 MS. MUHAMMAD: No.

8 MEMBER SMITH: Was that --

9 MS. MUHAMMAD: I'm sorry, no. What they presented
10 to the community was some type of aerial view. Actually
11 looked like it came off of Google.

12 An aerial view of that area which shows many
13 different buildings and only shows, like, the roof, you know,
14 the roof of the buildings that are in that area.

15 MEMBER SMITH: Um-hm.

16 MS. MUHAMMAD: That's what they presented at the
17 meeting. It was one page. One of the residents sent it to
18 me.

19 BZA CHAIR HILL: Go ahead, Ms. Stidham --
20 Commissioner Stidham.

21 MEMBER STIDHAM: Can I ask questions of Ms. Prince?

22 BZA CHAIR HILL: Yes. Sure. Let me just wait
23 until the Commissioner is done here.

24 Commissioner, are you good?

25 MS. MUHAMMAD: Mr. Chrishaun, he was asking me

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 about -- I can't --

2 BZA CHAIR HILL: I think --

3 MS. MUHAMMAD: Oh, he's asking about the design
4 that's in the PowerPoint.

5 BZA CHAIR HILL: But I think you answered it and
6 we need clarification, but he was asking that back in June,
7 did you see this design?

8 MS. MUHAMMAD: No.

9 BZA CHAIR HILL: And what you're saying is back in
10 June you got an aerial shot of something.

11 MEMBER SMITH: Yes.

12 MS. MUHAMMAD: No. The design that they have is
13 not what we saw, but the aerial shot is what they gave on
14 January 29th, a couple of days ago, to the residents.

15 They gave them out a one-page aerial view of that
16 area where the two buildings are that they propose to raze.

17 BZA CHAIR HILL: Okay.

18 MEMBER SMITH: Okay.

19 BZA CHAIR HILL: Ms. Prince --

20 MEMBER SMITH: I would also like to hear from Ms.
21 Prince as well.

22 BZA CHAIR HILL: Yeah. Sure. Ms. Prince, you were
23 in objection to the postponement. Could you explain why
24 you're in objection to the postponement?

25 MS. PRINCE: I certainly can. And I don't want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 get into a high level of specifics. I don't think it's
2 productive.

3 As you know, I've been doing this for 40 years and
4 I follow a protocol in dealing with ANCs. That protocol was
5 followed here.

6 House of Ruth reached out to the SMD and attempted
7 to work through the SMD in figuring out the best community
8 strategy. It has been an extremely unproductive set of
9 interactions.

10 We have been obstructed from appearing on an ANC
11 agenda for months. We have been unable to get on an ANC
12 agenda. I've never, in my career, encountered this.

13 So, we need a hearing before you on the plans that
14 are before you, on the plans that were filed months ago, that
15 the ANC had months ago. We need a hearing on that.

16 And we'd also, if you need to leave the record
17 open for input from the ANC or report from the ANC, please
18 instruct them to put us on an agenda. That's all I have to
19 say.

20 MS. MUHAMMAD: And can I respond, sir?

21 BZA CHAIR HILL: Sure. Why not.

22 MS. MUHAMMAD: Okay. So, there was no obstruction
23 to the applicant appearing before the ANC. They never made
24 a request after they said they would come back with their
25 supposedly amended renderings because they did not want to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 go to the community.

2 They already were aware that the community was not
3 akin to four- and five-, six-story buildings in this
4 residential neighborhood. She was aware of that when we
5 spoke.

6 BZA CHAIR HILL: Okay.

7 MS. MUHAMMAD: And instead of trying to go to the
8 residents who are going to be affected by the razing of the
9 building, the noise, any parking that may or may not be
10 restricted, these residents that live within 200, 300 feet
11 of this building that already exists, they refuse to reach
12 out to them.

13 They have done everything to try to go around the
14 ANC and the community to get support, including trying to go
15 to the bid, but the community is where they're required to
16 present so that the community knows what is going to happen.
17 Whether they get the support or not, they still must do that.

18 BZA CHAIR HILL: Commissioner --

19 MS. MUHAMMAD: And doing anything other than that,
20 as I said, disenfranchises a community that is already
21 marginalized.

22 BZA CHAIR HILL: Commissioner --

23 MS. MUHAMMAD: So, yes, I would like -- the ANC
24 would like a postponement of this hearing. And they're
25 welcome to come to the ANC, but they must reach out to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 community members who do not have access to the ANC or to
2 your electronic meetings.

3 And then the ANC can have an opportunity to
4 review, consult with any experts that we need to as far as
5 the setback for their building and as far as this
6 transportation plan that we haven't even had an opportunity
7 to review and it's 52 pages. It was submitted late and we
8 ask that it not even be considered.

9 BZA CHAIR HILL: Okay. Commissioner, okay, give
10 me a second. I'm going to look to my board real quick, okay?
11 So, Commissioner, when is your next ANC hearing?

12 MS. MUHAMMAD: Our next meeting is February the
13 6th. It's the first Tuesday of every month, sir.

14 BZA CHAIR HILL: Okay. February 6th, okay. So,
15 I'm looking at my board members. I can go either way, right?
16 We can either hear the case, ask the ANC to put the applicant
17 on their agenda for the 6th and leave the record open to hear
18 from the ANC or we can -- Commissioner Muhammad, either way,
19 can you get them on the agenda for the 6th?

20 MS. MUHAMMAD: I don't know what's on the agenda
21 as of yet, but I would just like to say we would like an
22 opportunity to review this transportation plan, sir.

23 BZA CHAIR HILL: I got you.

24 MS. MUHAMMAD: We --

25 BZA CHAIR HILL: The reason why I'm asking,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Commissioner, is, like, they have been here for a while and
2 we just want to get, you know, we want the ANC to give their
3 recommendation.

4 And also, then, we are trying to be efficient
5 insofar as they are here, and everyone is here, and then also
6 even the witnesses are here to testify. So, I'm a little --
7 I'm going to look to my board members as to how they would
8 like to proceed.

9 But if you can get them on the agenda for the 6th
10 either way, we would leave the record open so that we can
11 hear from the ANC.

12 And what they are going to do is they're going to
13 present whatever they're going to present, meaning they're
14 going to present whatever they want to present.

15 And if the ANC wants to, you know, ask questions
16 or if the ANC doesn't agree with how they're meeting the
17 criteria for us to grant the relief that's being requested,
18 that would be the opportunity for the ANC to let us know.

19 But let me see, first, what my fellow board
20 members think and, I guess, does one of you want to raise
21 your hands?

22 MEMBER SMITH: I have one more question.

23 BZA CHAIR HILL: Go ahead, Mr. Smith.

24 MEMBER SMITH: Just for clarification, because it
25 seems like they've been trying to schedule some type of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 meeting with the ANC, whether the position of either you, as
2 the SMD who's controlling whether this project goes to the
3 full ANC, was that the applicant has individual meetings with
4 the surrounding property owners before you or --

5 MS. MUHAMMAD: I'm sorry, can you --

6 MEMBER SMITH: Can you hear me?

7 MS. MUHAMMAD: I'm sorry, can you repeat because
8 my phone was ringing.

9 MEMBER SMITH: Okay. I just was looking for some
10 clarification of process over the past seven months or so.
11 Was it the position of the SMD, you as the SMD, or the ANC,
12 the full ANC, that the applicant, under your viewpoint, would
13 meet with the surrounding property owners first and get buy-
14 in from the surrounding property owners before they were
15 docketed to speak at the full ANC?

16 MS. MUHAMMAD: Yes. That's our process with all
17 developers. Has been for years. The developers reach out
18 to the most affected residents first. And if they want to
19 have a wide -- a broader community meeting, they do that and
20 they come to the ANC so that we can vote.

21 We just had -- which is developing at 1234 Marion
22 Barry Avenue, do the same process. We have done this process
23 with every developer that has come before us.

24 Most of the developers that come before us are
25 community-friendly. They work with the ANC. They're glad

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 to go out and engage the community because they want the
2 support.

3 But with this particular applicant all we got was
4 pushback, questioning of why they have to do this, oh, we
5 talked to someone building condos and they didn't have to do
6 anything.

7 They didn't understand, I guess, because there's
8 so much matter-of-right zoning out here, they maybe believed
9 they were under matter-of-right versus having to get support
10 for what they're requesting as far as the setback of this
11 penthouse and the transportation relief that they're looking
12 for.

13 MEMBER SMITH: I have one more followup question
14 for that.

15 BZA CHAIR HILL: Sure.

16 MS. MUHAMMAD: I'm sorry.

17 MEMBER SMITH: I have one more followup question
18 to that because you said that this is your standard process.

19 MS. MUHAMMAD: Right.

20 MEMBER SMITH: Being that this is your standard
21 process, can you elaborate to me what this ANC considers a
22 developer being community-friendly?

23 What do they have to do before they are docketed
24 for an ANC hearing?

25 MS. MUHAMMAD: We don't have --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MEMBER SMITH: I've seen --

2 MS. MUHAMMAD: All they have to do is --

3 MEMBER SMITH: I see that you have a letter here.
4 In your letter, you're making reference to another developer
5 offering a community benefit agreement before --

6 MS. MUHAMMAD: Right.

7 MEMBER SMITH: -- they go to the ANC.

8 MS. MUHAMMAD: But that has nothing to do with it.

9 MEMBER SMITH: Okay.

10 MS. MUHAMMAD: What we ask our developers to do is
11 engage the community. And they're happy to do that because
12 they're looking for support for their projects.

13 Now, we've had some go above and beyond, but all
14 we're asking them to do is engage the most affected community
15 because they're the ones that most times get left out.

16 We have agencies and we've had some developers try
17 to get support from people that live a mile, two miles away
18 from what they're developing, but that's not what we're
19 looking for.

20 We're looking for them to engage the most affected
21 community, which is what the ANC requires in the legislation.
22 The most affected community is the community within that
23 single-member district.

24 MEMBER SMITH: Okay.

25 BZA CHAIR HILL: Go ahead, Mr. Blake.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. MUHAMMAD: Yes, we have had --

2 BZA CHAIR HILL: Commissioner?

3 MS. MUHAMMAD: -- developers go door to door.

4 BZA CHAIR HILL: Commissioner?

5 MS. MUHAMMAD: Yes.

6 BZA CHAIR HILL: Commissioner?

7 MS. MUHAMMAD: Yes.

8 BZA CHAIR HILL: That's all right. Just give me
9 one second. I'm just trying to get through my board members'
10 questions.

11 MS. MUHAMMAD: Okay.

12 BZA CHAIR HILL: Mr. Blake, you had your hand up?

13 MEMBER BLAKE: Yeah, I just have a quick question.
14 With regard to the meeting that took place on the 29th, how
15 many people attended that meeting and what issues and
16 concerns were raised?

17 MS. MUHAMMAD: I don't know how many people
18 attended. I did have a call from a few that were concerned
19 that there was no PowerPoint presentation.

20 They were told there was no presentation. When
21 I talked to them about the hearing, they were not aware that
22 there was going to be a hearing.

23 They -- when I talked to them, asked them was the
24 transportation plan discussed, they said, no, but one of the
25 things that the residents brought up on their own because it

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 is a sore point in Ward 8, is they wanted to know how it
2 would affect them parking because there's been an attempt to
3 eliminate parking throughout the city.

4 And that doesn't really work well with Ward 8
5 because it's a community where the residents need vehicles.
6 They have families. They work long distances. So, a lot of
7 residents here drive.

8 And so, they asked those questions on their own,
9 but they were never told that there was a transportation plan
10 or that there was a request to eliminate or reduce the
11 parking restrictions.

12 MEMBER BLAKE: A question if you could --

13 MS. PRINCE: I don't know --

14 BZA CHAIR HILL: Wait one second. Ms. Prince, give
15 me one second.

16 MEMBER BLAKE: If possible, I'd like Ms. Prince
17 just to address those two issues, the attendance and the
18 issues that were raised.

19 MS. PRINCE: Sure. Sandra Jackson is here today
20 on behalf of House of Ruth. She held the meeting. I believe
21 there were ten attendees. She can certainly address any
22 comments that were brought up at the meeting.

23 And I do want to say that in terms of our unending
24 efforts to get on an ANC agenda, we were given some
25 ultimatums. Do garden apartments or we're not putting you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 on the agenda. That's the alternative plan you're hearing
2 about.

3 MS. MUHAMMAD: Do you have that --

4 MS. PRINCE: We are entitled --

5 MS. MUHAMMAD: Ms. Prince --

6 MS. PRINCE: We are entitled to be heard.

7 MS. MUHAMMAD: -- stop it. Do you have that that
8 you can show to the board where you received that?

9 MS. PRINCE: These are the plans --

10 (Simultaneous speaking.)

11 MS. PRINCE: -- for months. We are entitled to
12 go to the ANC and get our application considered. And we
13 have done outreach. The accusations that there's been no
14 outreach are not accurate. Sandra Jackson is here.

15 You just now tried to get a commitment to get us
16 on the February 6th agenda and I don't think you were
17 successful. So, feel my pain. We cannot get on this ANC's
18 agenda.

19 MEMBER BLAKE: Ms. Prince, what were the issues and
20 concerns --

21 MS. MUHAMMAD: I don't --

22 MEMBER BLAKE: -- that were raised by the
23 attendees yesterday, the ten attendees?

24 MS. PRINCE: Sandra Jackson was there. I
25 understand there was concern about prostitution associated

1 with a bus shelter in front of the building.

2 I understand that there were comments on parking,
3 the effect of the removal of parking. We of course did a
4 very detailed parking analysis which shows the parking
5 availability on the street.

6 I don't believe that there were any design
7 comments except perhaps a reference to the need for more
8 brick on the facade.

9 I think we might have heard that, but Ms. Jackson
10 was at the meeting. I did not attend the meeting. She can
11 address it in detail.

12 And remember there are residents -- House of Ruth
13 residents in this building today and they count, too. Their
14 views count, too, and their interest in having new,
15 modernized facilities matter. And they are constituents of
16 Ms. Muhammad.

17 MS. MUHAMMAD: So, the House of Ruth --

18 MEMBER BLAKE: Thank you.

19 BZA CHAIR HILL: Can we --

20 MS. MUHAMMAD: -- residents that live in the
21 building know more about this project than the residents that
22 are homeowners outside of the building --

23 BZA CHAIR HILL: Commissioner Muhammad.

24 MS. MUHAMMAD: -- in this community.

25 BZA CHAIR HILL: Commissioner Muhammad, give me one

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 second. I'm sorry.

2 MS. MUHAMMAD: I'm sorry.

3 BZA CHAIR HILL: That's all right. Let's see.
4 Gosh, this is taking a long time. Okay. Mr. Blake I got his
5 questions.

6 Ms. John, did you have any questions?

7 VICE-CHAIRPERSON JOHN: I would like for Ms. Prince
8 to explain what community outreach was done. It seems to me
9 that I hear the commissioner saying that a lot of the
10 residents are older and they're not -- they don't have
11 computers.

12 And typically, or very often, developers canvas
13 the area with flyers and, you know, talk to the residents and
14 we've seen that before the board in cases that have come
15 before the board.

16 So, has the applicant done any of that?

17 MS. PRINCE: Yes. So, let me start at the
18 beginning. I guess the mistake we made from the beginning
19 was based on previous experience on another House of Ruth
20 facility. Sandra Jackson of House of Ruth thought it was
21 very important to work through the SMD.

22 Instead, in hindsight, we should have just gone
23 directly to the broader community, but we've had backlash not
24 working through an SMD. So, clearly we've reached an impasse
25 with Ms. Muhammad.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 So, but there have been individual discussions,
2 absolutely, and then there have been -- there's been a lot
3 of interaction with the Councilmember's Office, which has
4 been very helpful. And we followed guidance from the Council
5 member's Office, for lack of guidance from our SMD except to
6 produce an alternative plan that wasn't feasible.

7 And then there was extensive outreach to the
8 Fairlawn Community Association and others in connection with
9 the meeting that happened on Monday night.

10 Again, if I had it to do all over again, I would
11 have abandoned the effort to work with the SMD right away,
12 but that's not been my practice. I always want a good-faith
13 effort to work through the ANC through the SMD.

14 Every single effort to get on an ANC agenda has
15 been thwarted. It's really quite incredible to me and I
16 really would appreciate your going forward today. If the ANC
17 wants to take this up at a later date, terrific. Leave the
18 record open for them.

19 It would be good to lock them into a date. We
20 will absolutely appear before the meetings. The plans are
21 the same plans we've had all along. There's nothing new
22 about the plans, but I do have my whole team lined up today
23 to proceed.

24 MS. MUHAMMAD: Okay. You didn't answer --

25 VICE-CHAIRPERSON JOHN: Ms. Muhammad --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA CHAIR HILL: Wait, wait, wait, wait, wait,
2 Commissioner Muhammad.

3 (Simultaneous speaking.)

4 BZA CHAIR HILL: One second. One second. One
5 second. I got to stop for one second, right. Ms. Prince and
6 Commissioner Muhammad, this is just talking about the
7 postponement, okay?

8 And I understand there seems to be a lot of back-
9 and-forth that's gone on for a while. And so -- I have a
10 very full day myself today. And so, we're going to be here
11 until very late in the evening. At this point, probably past
12 dinner.

13 So, let me just figure out what my board wants to
14 do, okay? So, what does my board want to do? And I'll
15 restate again what my thoughts are, right?

16 We either hear this and have the ANC -- and have
17 the -- have -- we either hear this and have the applicant
18 present to the ANC on the 6th, and then wait and leave the
19 record open for something from the ANC, or we postpone this
20 until maybe the 14th, okay, which is that they'll have a
21 chance to present at the 6th. And whether or not they
22 present at the 6th or not doesn't matter, because then we're
23 going to hear it on the 14th.

24 So, I'm looking to my board. And I'll tell you
25 what, unless anybody has any other questions real quick, I'd

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 like to take a quick five-minute break because I need to take
2 a quick five-minute break, and then we can come back and have
3 this decision.

4 Does anybody have any questions from my board
5 about the postponement issue?

6 MS. MUHAMMAD: I have -- I would like for her to
7 answer the question has she done any canvassing, because she
8 has not --

9 BZA CHAIR HILL: Commissioner Muhammad, I'm just
10 trying to figure out if my board -- I don't know if my board
11 member got the answer or not they wanted. And so, I'll let
12 my board member clarify that question.

13 Go ahead -- okay. Go ahead, Mr. Smith.

14 MEMBER SMITH: I know, I'm sorry, Chairman Hill.
15 I have a question for Commissioner Muhammad because there
16 seems to be a disconnect going between -- it sounded like
17 between you, the SMD and Ms. Prince on the expectations of
18 community outreach.

19 All of these items that you are communicating
20 right now, did you communicate this to Ms. Prince previously
21 --

22 MS. MUHAMMAD: Ms. Prince hasn't --

23 MEMBER SMITH: -- on what you want --

24 MS. MUHAMMAD: I'm sorry.

25 MEMBER SMITH: -- of your request for the type of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 community outreach you would like to see?

2 MS. MUHAMMAD: This -- all of these points that I'm
3 making have been communicated with Sandra Jackson who has
4 been the one that's been in communication with me.

5 I haven't had any communication with Ms. Prince.
6 The only other person that has -- I haven't had communication
7 with, but I've received some pretty hostile messages from
8 would be -- he is there with her. He works -- Derick
9 Wallace. Most of my communication has been with Sandra
10 Jackson.

11 MEMBER SMITH: Um-hm. Okay. All right. Thank
12 you.

13 MS. MUHAMMAD: Um-hm.

14 BZA CHAIR HILL: Vice-Chair John, you had our hand
15 up?

16 VICE-CHAIRPERSON JOHN: Mr. Chairman, I think we
17 have enough to decide whether to postpone or not. So, maybe
18 if we can take a five-minute break --

19 BZA CHAIR HILL: Okay.

20 VICE-CHAIRPERSON JOHN: -- we can make that
21 decision.

22 BZA CHAIR HILL: Okay. Let's take a quick five-
23 minute break. I apologize.

24 VICE-CHAIRPERSON JOHN: Thank you.

25 BZA CHAIR HILL: I need a break.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 VICE-CHAIRPERSON JOHN: Thank you.

2 MS. MUHAMMAD: Thank you.

3 (Whereupon, the above-entitled matter went off the
4 record at 1:10 p.m. and resumed at 1:13 p.m.)

5 BZA CHAIR HILL: Okay. Thanks. I'm going to call
6 us back into session if everybody could rejoin us, please.
7 Thank you.

8 Commissioner Muhammad, are you there?

9 MS. MUHAMMAD: Yes, I'm here.

10 BZA CHAIR HILL: Okay. Great. Thanks. So, all
11 right. Now, I'm just talking to my board, okay? The choices
12 are -- it almost gets you to the same place, honestly, but
13 the choices are have the hearing and postpone the decision
14 until the 14th, after which the applicant would have the
15 opportunity to be on the agenda on the 6th at the ANC, or
16 postpone, have the hearing on the 6th -- I'm sorry, have the
17 ANC -- have the applicant present to the ANC on the 6th and
18 then have the hearing on the 14th. Those are the two
19 questions.

20 So, I'm going to look to my --

21 MS. PRINCE: Chairman Hill, could I just say I am
22 not available on the 14th? So, I just wanted to note that.

23 BZA CHAIR HILL: So, then you'd have to come back
24 on the 21st, okay. So, that would be, then, the 21st. So,
25 then, what say ye, my fellow board members? Who wants to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 raise their hand?

2 Go ahead, Mr. Smith.

3 MEMBER SMITH: I think for the benefit of the
4 community just so that there is, you know, full clarification
5 on what we're deciding the full, you know, understanding of
6 the ANC on what they should be reviewing and making a
7 decision on, I don't think that we should deliberate today.

8 I think this needs to be continued until February
9 21st, when counsel for the applicant is available, and with
10 the expectation that this proceeds to the ANC at their next
11 meeting on February 6th.

12 BZA CHAIR HILL: Okay. Who wants to talk next?

13 Go ahead, Mr. Blake. Your hand kind of came up.

14 MEMBER BLAKE: Sure. I agree with Board Member
15 Smith in that the 21st will be appropriate to make sure we
16 get the input from the ANC, but I think it's important, too,
17 and I'm sure you'll talk about this, the ANC should focus --
18 our concern is to give great weight -- or manage to give
19 great weight to the issues and concerns raised by the ANC and
20 also should be with regard to the requested relief.

21 So, to the extent that we have a discussion, we
22 would definitely want to hear that because if there were some
23 conditions that needed to be implemented, we would need to
24 try to do that and factor that into our decision.

25 So, I would like to just encourage the ANC to make

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 sure that the focus is there on the issues and concerns
2 regarding the requested relief.

3 MS. MUHAMMAD: Thank you.

4 MEMBER SMITH: May I add onto that?

5 BZA CHAIR HILL: Yeah. Sure. Go ahead, Mr. Smith.

6 MEMBER SMITH: I'll add onto that. The requested
7 relief before us is parking relief, which you did raise, Ms.
8 Muhammad, and penthouse setback requirements.

9 So, it sounds like there's been a lot of
10 discussion about design and the garden-style apartment. That
11 is not what's before this board today. We cannot articulate
12 a garden-style design. The design is not before us.

13 MS. MUHAMMAD: Okay.

14 MEMBER SMITH: So, to Mr. Blake's point regarding
15 giving great weight, if there is a discussion about -- let's
16 say that there's a letter that comes from the ANC saying, we
17 are concerned about the garden -- the design, it's not
18 garden-style. We cannot give the ANC great weight because
19 the design is not before us.

20 MS. MUHAMMAD: Thank you. I understand.

21 MEMBER SMITH: Yes. Okay.

22 BZA CHAIR HILL: Commissioner Stidham, you had your
23 hand up.

24 MEMBER STIDHAM: I agree with Commissioner Blake
25 and Smith. It would be good to get some certainty here from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Commissioner Muhammad regarding the project being listed on
2 the ANC's agenda for the 6th, but I think there should be
3 also an understanding by the ANC if they don't raise it on
4 the 6th, then what?

5 BZA CHAIR HILL: Okay. Well, we're going to have
6 the hearing either way. And so --

7 MS. MUHAMMAD: We're going to -- I'll make sure
8 that the chair puts this project on the agenda for our
9 meeting February 6th.

10 I would just like to ask if the applicant can be
11 required to do some canvassing within that 200-foot area of
12 the project also in order to not miss out on some of our
13 senior residents.

14 BZA CHAIR HILL: Okay. All right. Vice-Chair
15 John?

16 VICE-CHAIRPERSON JOHN: So, I agree with the
17 recommendations so far. And I would just encourage the
18 application, as Chairman Hood often refers to the "Good
19 Neighbor Policy." So, we can hopefully hear that the
20 applicant has tried to reach out to some of the senior
21 residents to explain what the project is.

22 Regardless of what has gone on before, it will be
23 good for the board to have this input. So, that would be the
24 only thing I would want to add.

25 BZA CHAIR HILL: Okay. Mr. Moy, we don't have a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 hearing on the 21st. Is that what you just told me?

2 MEMBER MOY: Yes, that's correct. The next hearing
3 after that would be February the 28th.

4 BZA CHAIR HILL: How many cases do we have on the
5 28th?

6 MEMBER MOY: It's not bad. We have six cases, one
7 appeal, one reconsideration, one expedited.

8 (Laughter.)

9 BZA CHAIR HILL: Okay. So, the -- what is it? The
10 21st is because -- which holiday is it? I mean, why don't
11 we have a hearing on the 21st?

12 MEMBER MOY: It's President's Day holiday.

13 BZA CHAIR HILL: On the 19th?

14 MEMBER MOY: President's Day, yeah.

15 BZA CHAIR HILL: On the 19th.

16 MEMBER MOY: That's correct. On Monday the 19th.
17 That's why.

18 BZA CHAIR HILL: Okay. And you can't -- we have
19 a special hearing on the 21st?

20 VICE-CHAIRPERSON JOHN: No.

21 BZA CHAIR HILL: Okay. So, Ms. Prince, what does
22 your day look like on the 28th?

23 MS. PRINCE: Well, you already have me on the 28th
24 because I'm -- I'll be representing Kesher Israel on the
25 28th. So, I'll be here anyway.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA CHAIR HILL: Okay. Great. So, I'm not one who
2 likes pushing things off and I think you all know that. And
3 so, I don't like that it's getting pushed off as far as it's
4 getting pushed off, but, nonetheless, it seems to me that my
5 board is leaning that way.

6 And even if we weren't -- even if we weren't to
7 push it off, we wouldn't have a decision until that time
8 anyway.

9 So, let's go ahead and do this: Mr. Moy, let's
10 postpone this until the 28th. I'm looking at my board
11 members.

12 And then, Commissioner Muhammad, I just wanted to
13 again clarify what is before your ANC, right? What's before
14 your ANC is this particular application and the request
15 that's being asked for in this particular application.

16 I understand you've been a commissioner for 15
17 years and I understand that Ms. Prince has been doing this
18 for 40 years. I've seen probably both of you at one point
19 in time. I know I've seen Ms. Prince.

20 So, whether or not you have them on the 6th, is
21 what I'm trying to say, we're going to have this hearing on
22 the 28th, okay?

23 So, it would be best if you have them on the 6th
24 and at least heard whatever they're trying to present. And
25 then you can give us your concerns and recommendations based

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 upon the relief that's being requested, okay?

2 MS. MUHAMMAD: I will make sure that the chair puts
3 them on the agenda, and I would just like the applicant to
4 know that we're expecting a full PowerPoint presentation on
5 the requested relief.

6 BZA CHAIR HILL: Got it. And, Commissioner, they
7 will, I'm sure, give their full presentation. And I see Ms.
8 Prince nodding her head.

9 I guess also what I'm just saying is you know,
10 Commissioner, whatever presentation you get is also whatever
11 presentation you get, meaning some are better than others and
12 some, you know, explain things well and some don't.

13 So, then now, Ms. Prince, Vice-Chair John has just
14 also asked, which you will be asked now about, you know, what
15 type of community outreach has been done for the immediate
16 200-footers with regard to people that also don't have a lot
17 of access to the internet or what have you.

18 MS. PRINCE: Right.

19 BZA CHAIR HILL: So, that all being said, we'll
20 come back on the 28th, okay? Mr. Moy, 3/28.

21 MS. MUHAMMAD: Okay. What date?

22 BZA CHAIR HILL: Oh, I'm sorry, February. I'm
23 sorry, February. February 28th. 2/28/24.

24 MS. MUHAMMAD: Okay.

25 BZA CHAIR HILL: And you're going to get them on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 your ANC for 2/6.

2 MS. MUHAMMAD: Yes.

3 BZA CHAIR HILL: Okay.

4 MS. MUHAMMAD: Thank you, sir.

5 BZA CHAIR HILL: Okay. Let's see. I was going to
6 say something else. Yeah, that's it, I guess. I can't
7 remember what I was going to say.

8 Okay. All right. Does my board have any followup
9 questions? Does anybody have any followup questions?

10 VICE-CHAIRPERSON JOHN: No.

11 BZA CHAIR HILL: Okay. All right. We'll see
12 everybody again on the 28th. Thank you.

13 MS. MUHAMMAD: Thank you.

14 BZA CHAIR HILL: Good luck, you all.

15 Oh, now I remember what I was going to say.
16 Commissioner Stidham, you probably don't have to be with us
17 on the 28th. So, you can pass this off to whoever it is that
18 has that date --

19 MEMBER STIDHAM: Okay.

20 BZA CHAIR HILL: -- because we haven't heard
21 anything.

22 MEMBER STIDHAM: Let me see who is actually
23 supposed to --

24 BZA CHAIR HILL: Well, don't tell us. You're not
25 supposed to tell --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MEMBER STIDHAM: Okay.

2 BZA CHAIR HILL: We're not supposed to tell
3 anybody.

4 MEMBER STIDHAM: Gotcha.

5 BZA CHAIR HILL: Okay. Let's see. All right. My
6 thought is -- let's see. Our next one is -- there's another
7 delay request.

8 Okay. So, I say we go ahead and try to tackle the
9 next case and then we'll break for lunch. Does that sound
10 reasonable?

11 Okay. Everybody is nodding their head. All
12 right. Mr. Moy, go ahead and call the next one, please.

13 MEMBER MOY: All right. Thank you, sir. So, let
14 me read this case into the record. This would be Application
15 No. 21033 of 1235 W Street, LLC, self-certified application
16 pursuant to Subtitle X Section 1002 for area variance from
17 the lot occupancy requirements of Subtitle F Section 210.1.
18 Property located in the RA-2 zone at 1235 W Street, NW,
19 square 271, lot 79.

20 The preliminary matter here, Mr. Chairman, to
21 remind you, is that the -- there's a motion from the
22 applicant to -- and I believe also from ANC 1B for
23 postponement.

24 And I believe they're in the panel. So, they can
25 give reasons why. And I think that's all I have for you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 other than -- let me check one more thing.

2 But if you move forward to hear the case, you'll
3 have five people signed up to testify in opposition. Thank
4 you, sir.

5 BZA CHAIR HILL: Okay. Thank you. All right.
6 Could the applicant please introduce themselves for the
7 record?

8 MR. KADLECEK: Hi. Good afternoon, Chairman Hill
9 and members of the board. Cary Kadlecek from Goulston &
10 Storrs. I'm the land use counsel on behalf of the applicant.

11 BZA CHAIR HILL: Okay, Mr. Kadlecek. So, you all
12 want a postponement, correct?

13 MR. KADLECEK: Yes. But I will say unlike the last
14 case, we are in agreement with the ANC on that.

15 BZA CHAIR HILL: Okay. When do you think you'd
16 like the postponement to?

17 MR. KADLECEK: So, we'd like to have -- yes, so
18 we're requesting -- the ANC is going to consider this at
19 their meeting tomorrow night. We don't know exactly what
20 they're going to do, but we don't want to wait more than, I
21 think, two weeks.

22 So, if we can be rescheduled for two weeks from
23 now or less --

24 BZA CHAIR HILL: Okay. Okay. Let me see what's
25 going on. All right. Is the commissioner here? No. Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Let me look in the record.

2 (Pause.)

3 BZA CHAIR HILL: It says, Mr. Kadlecek, the ANC
4 voted in favor?

5 MR. KADLECEK: Yes. So, the reason that
6 postponement is being requested is it actually was a supposed
7 procedural error on the ANC's part for notice of their
8 meeting on October 6th.

9 BZA CHAIR HILL: Okay. Got it. All right. So,
10 Mr. Moy, our calendar, again, you told me the -- their
11 meeting is tomorrow, correct, Mr. Kadlecek?

12 MR. KADLECEK: Yes.

13 BZA CHAIR HILL: Okay. So, for all that are
14 listening, whoever is -- if you can mute yourself, whoever
15 is not muted, for all those that are listening -- I'm still
16 getting double. Hello?

17 Okay. For all those that are listening, tomorrow
18 is going to be the ANC meeting on this case. So, I would
19 suggest that whoever is on this call be on the ANC meeting
20 tomorrow. And then you'll have an opportunity to testify on
21 this project at tomorrow's ANC meeting.

22 Mr. Moy, what is the 7th looking like?

23 MEMBER MOY: February 7th the board is scheduled
24 to hear what would be one appeal and how many cases? One,
25 two, three -- three cases, one mod of consequence, two

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 expedited.

2 BZA CHAIR HILL: Okay. Is the Office of Planning
3 here? And if so, could they please introduce themselves for
4 the record?

5 MS. MYERS: Good afternoon. Crystal Myers with the
6 Office of Planning.

7 BZA CHAIR HILL: Okay, Ms. Myers. Ms. Myers, nice
8 to see you and I just realized that the Office of Planning --
9 all the Office of Planning people are listening to this. I
10 hope the Office of Planning enjoys our hearings. I hope they
11 are very enjoyable.

12 All right. Let's see. You all are currently in
13 denial, correct?

14 MS. MYERS: Correct.

15 BZA CHAIR HILL: Okay. So, are you waiting on
16 something from the applicant?

17 MS. MYERS: No.

18 BZA CHAIR HILL: Okay.

19 MS. MYERS: We didn't feel they met the variance
20 test. Now, if they have additional information they wanted
21 to provide, you know, that's always an option to them, but
22 for what we reviewed in the record, we didn't feel that it
23 was meeting the test yet.

24 BZA CHAIR HILL: Got it. So, Mr. Kadlecek, you're
25 going to go to the ANC and then you're going to come back to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 me with possibly some ANC information and still a denial from
2 the Office of Planning.

3 Is that what you think is going to happen?

4 MR. KADLECEK: Yeah, I believe so, yes.

5 BZA CHAIR HILL: Okay. So, you're going to make
6 your argument that the board -- you understand the hill you
7 have to climb?

8 MR. KADLECEK: I absolutely do. And I think our --
9 I don't want to litigate our case now, but I think our
10 presentation will be -- address the variance standards pretty
11 sufficiently.

12 BZA CHAIR HILL: That's fine. And so, you don't
13 want extra time to go back to the Office of Planning. You
14 don't see any need for that.

15 MR. KADLECEK: I mean, we're happy to meet with
16 them and we did meet with them and we're happy to do so
17 again.

18 I mean, I guess I would like to understand from
19 the Office of Planning if there's a consideration on their
20 part that they're willing to change their position. Because
21 if they're not, then I don't see any use in going back to
22 them.

23 BZA CHAIR HILL: Okay. I don't need to do that one
24 right now. So, I'm now thinking that -- and you all can make
25 your argument. I mean, that -- I mean, I thoroughly respect

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the Office of Planning, but, you know, we've gone against the
2 Office of Planning before. It's just that it is an uphill
3 climb.

4 And so, I would prefer that you have an
5 opportunity to at least talk to the Office of Planning --

6 MR. KADLECEK: Okay.

7 BZA CHAIR HILL: -- after the ANC meeting, which
8 is on the 1st.

9 MR. KADLECEK: Yes.

10 BZA CHAIR HILL: So, that takes me from the 7th to
11 the 14th.

12 MR. KADLECEK: Okay.

13 BZA CHAIR HILL: Mr. Moy, what again is happening
14 on the 14th? You told me and I forgot.

15 MEMBER MOY: No, no problem. If you move this
16 application to February 14th, this would be your ninth case.

17 BZA CHAIR HILL: Okay. Okay. So --

18 MEMBER MOY: No appeals that day.

19 BZA CHAIR HILL: -- Mr. Kadlecek, are you available
20 on the 14th?

21 MR. KADLECEK: I am available. I want to make sure
22 my client, Mr. Ruppert, is as well though.

23 BZA CHAIR HILL: Mr. Ruppert, could you introduce
24 yourself for the record, please.

25 MR. RUPPERT: My name is Sean Ruppert. I'm the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 owner of Opal and I am available on the 14th.

2 BZA CHAIR HILL: Okay. Great. So, Mr. Ruppert,
3 Mr. Kadlecek has been with us a long time as has Ms. Myers.
4 God, I've been with us a long time.

5 so, Mr. Ruppert, I suggest you talk to Mr.
6 Kadlecek and understand the argument that they're going to
7 have to make to get us to understand the application. And
8 it's helpful that the Office of Planning understands their
9 application. That's all I'm saying.

10 So, I'm going to go ahead and schedule you guys
11 for the 14th, Mr. Moy, okay? And then we'll also have an
12 opportunity to have clarification with the ANC.

13 Mr. Kadlecek, if you can try to get the ANC to
14 give us something then --

15 MR. KADLECEK: Absolutely. Yeah.

16 BZA CHAIR HILL: -- that would be great.
17 Everybody is coming back on Valentine's Day. I think I'm
18 going to go find a valentine.

19 Okay. All right. All right. Is that it?

20 MR. KADLECEK: Yes, that's all. Thank you.

21 BZA CHAIR HILL: All right. We're going to excuse
22 everyone from this hearing and the record.

23 Commissioner Stidham, you again dodged a bullet
24 on that one.

25 Okay. Okay. I guess now we'll break for lunch.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 It's 1:30. Let's try to come back at two o'clock. That's
2 a try, okay? So, little bit after, whatever, okay? Thank
3 you. Bye-bye.

4 (Whereupon, the above-entitled matter went off the
5 record at 1:33 p.m. and resumed at 2:12 p.m.)

6 BZA CHAIR HILL: All right, Mr. Moy. We are back
7 and you may call our next case, please.

8 MEMBER MOY: Thank you, Mr. Chairman. The board
9 has returned to its public hearing session after a quick
10 lunch recess and the time is now at or about 2:12 p.m.

11 The next case before the board is Application No.
12 21015 of Elisabeth Kidder and Daniel Spurlock. This is a
13 self-certified application pursuant to Subtitle X Section
14 901.2; Subtitle E Section 403 under Subtitle E Section 5201
15 from the lot occupancy requirements of Subtitle E Section
16 210.1 and under Subtitle E Section 207.5 to allow a rear wall
17 of a row building to extend further than 10 feet.

18 On this case, Mr. Chairman, as a reminder, the
19 board had granted party status to the opposition team back
20 in October 25, 2023.

21 And -- let me think. Let me think. And I just
22 want to add, Mr. Chairman, that the applicant's team is on
23 the panel as well as individuals who have signed up in
24 opposition, which includes also ANC 6C. Thank you.

25 BZA CHAIR HILL: Okay. Great. Thank you. Could

1 the applicant please introduce themselves for the record?

2 MR. SULLIVAN: Thank you, Mr. Chair. I'll start.
3 Marty Sullivan with Sullivan Barros on behalf of the
4 applicant.

5 BZA CHAIR HILL: Okay.

6 MR. SULLIVAN: And Ms. Fowler is here as well and
7 the homeowners.

8 BZA CHAIR HILL: Got it. Ms. Fowler, do you want
9 to introduce yourself for the record?

10 MS. FOWLER: Hi. Good afternoon, commissioners.
11 I'm Jennifer Fowler with Fowler Architects. I'm the agent
12 and architect for the project.

13 BZA CHAIR HILL: Thank you. Who is here with you,
14 Ms. Fowler?

15 MS. FOWLER: The homeowners are on as well. I
16 think Elisabeth Kidder I see --

17 BZA CHAIR HILL: Okay.

18 MS. FOWLER: -- and Marty.

19 BZA CHAIR HILL: Okay. I got Mr. Sullivan.

20 Ms. Kidder, do you want to introduce yourself for
21 the record?

22 MS. KIDDER: Sure. Hi. I'm Elisabeth Kidder here
23 on behalf of my husband and our four children. It's nice to
24 meet you.

25 BZA CHAIR HILL: Okay. Great. Thank you. Nice

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 to meet you also. And I see the party in opposition -- oh,
2 is Mr. Spurlock -- are you --

3 MR. SPURLOCK: Yeah. I just figured out the
4 camera. So, I'm here -- participate.

5 BZA CHAIR HILL: All right. You're kind of
6 breaking up. Are you a homeowner?

7 MR. SPURLOCK: Yes. I'm Lis' husband.

8 BZA CHAIR HILL: Okay.

9 MR. SPURLOCK: I'm a co-applicant.

10 BZA CHAIR HILL: Okay. Great. Thank you.

11 Ms. Themak, you want to introduce yourself for the
12 record? You're on mute, Ms. Themak.

13 MS. THEMAK: Thank you. Tracy Themak, counsel for
14 party in opposition.

15 BZA CHAIR HILL: Great. Is the commissioner here
16 and the commissioner would like to introduce themselves for
17 the record?

18 MR. ECKENWILER: Hi. Good afternoon, Mr. Chairman,
19 members of the board. Mark Eckenwiler, Chair, ANC 6C on
20 behalf of the ANC. And for clarity in case there was any
21 confusion from the introduction, the agency is supporting
22 this project.

23 BZA CHAIR HILL: Okay, Commissioner Eckenwiler.
24 It's so nice to see you. Happy new year. Thank you for the
25 photograph in the back. It does remind us as when we were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 all live. It's kind of a hodgepodgey little shot there. You
2 need, like, kind of a little bit -- well, you look like
3 you're sitting in a chair maybe. Well, welcome.

4 Let's see. Okay. I got everybody. So, Ms.
5 Themak, you've been with us before. And so, what we're going
6 to do is -- Mr. Sullivan, I guess, on behalf of the
7 applicant, is going to walk us through the application and
8 why they believe they're meeting the criteria for us to grant
9 the relief requested.

10 Then you'll have an opportunity, Ms. Themak, to
11 give your presentation. And we're going to go around and
12 also the ANC, as a party, will have their opportunity to give
13 their presentation.

14 And we're going to hear from the Office of
15 Planning. Everybody will have an opportunity to ask
16 questions of each other. The applicant will have an
17 opportunity to rebut at the end, Ms. Themak, then you can
18 rebut the rebuttal.

19 And then there will be a conclusion, Ms. Themak,
20 we'll give you a brief conclusion followed by the applicant
21 at the end.

22 That all being said, Mr. Sullivan, I'm going to
23 put 15 minutes on the clock just so I know where we are and
24 you can begin whenever you like.

25 MR. SULLIVAN: Thank you, Mr. Chair. Actually, Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Fowler is going to do the presentation, but I think Ms.
2 Kidder and Mr. Spurlock may want to just introduce themselves
3 real briefly before Jennifer takes over.

4 BZA CHAIR HILL: Sure.

5 MR. SULLIVAN: Thank you.

6 BZA CHAIR HILL: Whatever you all want to do.
7 Well, Ms. Fowler, why don't you guide me through what you
8 guys want to do.

9 MS. FOWLER: Yeah, if they could just make a brief
10 statement, then I can take over, but I think we should be
11 able to fit it in 15 minutes if that's the time.

12 BZA CHAIR HILL: That's fine. That's okay.

13 MS. FOWLER: Okay.

14 BZA CHAIR HILL: However it goes. Today's been a
15 day. So, Ms. Kidder, go ahead.

16 MS. KIDDER: Sure. Yes. I know you have a very
17 busy day. So, I'll be very brief. I just wanted to
18 introduce us. We've, you know, we've lived in the
19 neighborhood for 15 years.

20 As I said, we have four children. And so, the
21 goal of this project is to add bedrooms for our children.
22 And my father, unfortunately, has metastatic cancer and we're
23 anticipating that my mother will be moving in with us
24 shortly.

25 So, the basement, we're trying to make an in-law

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 suite in the basement for my mother. So, just that's kind
2 of our family. We love our neighborhood and we're trying to
3 stay. That's the goal of the project.

4 MS. FOWLER: Okay. Thank you both.

5 BZA CHAIR HILL: Sorry, Ms. Kidder, about your
6 father.

7 MS. KIDDER: Thanks. I appreciate it.

8 BZA CHAIR HILL: Yeah, I've gone through some stuff
9 as well and it's always challenging.

10 Ms. Fowler, go ahead.

11 MS. FOWLER: Can we pull up the PowerPoint
12 presentation that was submitted? Exhibit 42. Yeah, there
13 you go. Okay. Next page, please.

14 Okay. So, just a quick overview. Property is in
15 the RF-1/CAP zone with a single-family row dwelling. We're
16 proposing to construct a third-floor addition, plus a three-
17 story rear addition.

18 There's two areas of relief. We have lot
19 occupancy relief asking for 67.5 percent coverage, and we're
20 also asking for the rear yard 10-foot rule regulation relief
21 to go a range from 10.5 to 15 feet past 423 and 5 feet past
22 427.

23 Next slide. We do have support from ANC 6C and
24 you'll hear from them today as well. We have support from
25 the Office of Planning. And we actually have the HPRB

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 approval that we were able to get last week, which was
2 supported by the HPO staff recommending support for the
3 project.

4 Next slide. I'll just briefly go through the
5 plans. I know you're probably all familiar with them, but
6 just looking at the lot -- the square footage number just --
7 we currently have 1500 square feet above grade and the
8 additional square footage will make it 2559.8 above grade.

9 Next slide, please. Next. Just some photos.
10 This is a block plan kind of showing the greater -- the alley
11 system here and the relationship to the other buildings and
12 other row houses.

13 Next. Okay. This is the site plan. So, here you
14 can see the extent of the addition. You can see the front
15 wall of the third floor is set back 18 feet 6 inches from the
16 front of the building.

17 And again, Historic has approved this and we did
18 a lumber mockup. And we documented that to show that it will
19 not be visible from the street frontage of 4th Street. And
20 then you can see where the addition extends 5 feet beyond the
21 rear wall of 427.

22 One thing that has changed since you saw the plans
23 last time is that we incorporated a court at the front of the
24 third floor that's 3-feet-6 by about 15 feet. And this was
25 to address snowdrift considerations for 427 4th Street, NE.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 But otherwise that's -- that as well as some frosted windows
2 that I'll show you on the elevation.

3 Next slide. Next. These are just demo plans.
4 We can scroll through these. Next. Floor plans. Again you
5 can see the basement in-law suite. First floor, we're just
6 expanding the kitchen and adding a family room.

7 Next. Here on the second floor, which is at the
8 bottom of the slide, you can see that we are maintaining the
9 dogleg.

10 So, rather than kind of fill in the dogleg and
11 create a large, boxy addition, we've held that wall away.
12 Part of it for light and air for the occupants, but also to
13 be mindful of historic preservation preferences.

14 So, that second-floor dogleg will be maintained,
15 but the goal here was to add the extra bedroom on the second
16 floor.

17 And then on the third floor you can see we've had
18 to shift the stairs to accommodate the setback due to the
19 snowdrift, but we do have a couple bedroom up on the third
20 floor.

21 Next. And the roof plan here. Next. And then
22 just exterior elevations. On the left you can see the rear
23 facade of the -- it's full width at the first floor, brick
24 facing and then the second floor and the third floor have a
25 setback.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 And the third floor is also set back from the rear
2 wall by 5 feet. Plus, it has a -- it does have a little --
3 a bay that projects from there, but the idea for that was to
4 kind of mitigate the impact on the neighbors with, you know,
5 reducing the kind of -- the verticality of that wall. On the
6 right you can see the front facade facing the street if
7 you're standing on the roof.

8 Next slide. This view you can see from 421 --
9 sorry, yeah, 427 side. There's a portion of dogleg wall
10 that's existing and then we've kind of extended it. And then
11 you can see the third-floor addition above.

12 Next slide. And then this is the side with the
13 dogleg. So, these windows that are new, there's a double
14 window on the third floor, a single window also on the third
15 floor, and then two double-hungs on the second floor. Those
16 are all frosted glass.

17 And that was something that was done, you know,
18 kind of during the ANC process to address concerns with
19 privacy that were raised by the adjacent neighbor.

20 Next slide. And next we have the sun study. Next
21 slide. So, what we did here was we compared existing on the
22 top picture of each slide.

23 The middle picture has the matter-of-right build
24 which is less steep, but it goes all the way across. And the
25 bottom picture would show the proposal.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 As we go through the seasons, what I've done is
2 kind of highlighted the differences between the matter-of-
3 right and the proposed.

4 So, if you switch to the next slide, this is
5 starting in December in the morning and I basically just
6 highlighted where there's a difference between the two lower
7 pictures. And obviously December is going to be the most
8 impact, but only to the 427 property as the sun is low.

9 Next slide. This is 11:00 a.m. So, it's a little
10 kind of shifting over to the right.

11 Next slide. You have 1:00 p.m. Now, it's kind
12 of over top of the trellis and part of the yard at 427.

13 Next slide. And so by, you know, kind of
14 afternoon, three o'clock and beyond, no change in the shadows
15 due to the fact that there's already a three-story at 423 4th
16 Street.

17 Next slide. So, this is March. This is kind of
18 representing the spring and fall seasons. Definitely less
19 impact than the December dates, but still a small impact, not
20 an undue impact to 427. You can see here at 9:00 a.m.

21 Next slide. 11:00 a.m.

22 Next. This is 1:00 p.m.

23 Next slide. And then by three o'clock it's kind
24 of at the very rear yard.

25 And the next slide. This is the summertime, June

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 dates. Morning not any difference in the shadows on any
2 neighboring properties.

3 Next slide. 11:00 a.m., again there's just a
4 small increase on the 427 roof.

5 Next slide. One o'clock it's just kind of hugging
6 the fence line there above the trellis.

7 Next slide. And by three o'clock it's kind of a
8 small, little bit in the yard.

9 And next. Just to kind of go through the
10 requirements of 901.3, which I think we'll address in the
11 next slides, next -- okay. For light and air availability,
12 the shadow study that I just went through shows that
13 objectively the additional massing compared with the matter-
14 of-right massing is a pretty limited shadow impact on 427 and
15 no impact to 423 or to the Carbery Building across the alley.

16 And as far as the privacy is concerned, there are
17 no windows facing north towards 427. And on 423 we did
18 address the privacy concerns by including frosted glass.

19 Next slide. As far as the pattern, you know, the
20 character and scale, again the addition will not be visible
21 from 4th Street. The third floor is set back 18 feet 6
22 inches, from the front wall.

23 The proposed height is actually lower than the
24 current height of 421 and 423, which are houses to the south
25 that have third stories -- original third stories. Those

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 houses are approximately 40 feet tall and our proposal is 35
2 feet tall.

3 The addition is not out of character with typical
4 10-foot rear additions -- 10-foot rule additions. We've also
5 set back the third floor the five feet at the back.

6 The total building area of the third story is
7 516.8 square feet which is only 30 percent occupancy of the
8 lot.

9 The rear yard setback from the property line is
10 31.67 feet. So, we have 11.67 feet more than what is
11 required of the 20-foot requirement.

12 And then this final bullet just kind of is pulled
13 from the HPO staff report. It's a summary of kind of their
14 indication that the proposal is compatible when it comes to
15 the Historic Preservation guidelines.

16 Next slide. And with that, we'll leave it open
17 to any questions. That's the end of my presentation. Thank
18 you.

19 BZA CHAIR HILL: All right. Let's see. I'm going
20 to go through everybody and then we'll do questions if that's
21 okay.

22 Commissioner Eckenwiler, would you like to give
23 us the ANC's opinion?

24 MR. ECKENWILER: Absolutely, Mr. Chairman, I assume
25 you can hear me okay?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA CHAIR HILL: Yes. Thank you.

2 MR. ECKENWILER: Great. Thank you. Again, Mark
3 Eckenwiler, Chair ANC 6C, here on behalf of the ANC. Our
4 letter of support is in the record. That's at Exhibit 32.
5 I'm not going to go over everything that's in there. I'll
6 just hit a couple high points.

7 One, as Ms. Fowler has already mentioned a couple
8 of times, the plans were revised in response to some concerns
9 that we had about potential privacy impacts on 423 4th.
10 Thus, the change to frosted windows on the south elevation
11 of the addition.

12 Obviously, the filing here complies with the
13 requirement -- the regulations to have planned elevations,
14 drawings in this case, extensive sun/shade studies. So, it
15 certainly satisfies that prong of the special exception test.

16 We applied, as the board has in the past, the
17 standard comparison not of the existing condition versus the
18 proposed built condition, but rather looking at what could
19 be constructed by-right as opposed to what is proposed here.
20 The differences, when viewed through that metric, are fairly
21 minimal, as Ms. Fowler's drawings illustrate.

22 We also didn't think -- as Ms. Fowler mentioned,
23 this is not going to be visible from 4th Street. The rear
24 of this block is something of a jumble. Not a bad jumble,
25 but there's no obvious rhythm or pattern that this would be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 disturbing. So, we did not think that the proposed addition
2 would significantly, adversely impact the character, scale
3 and pattern as viewed from Carbery Place.

4 So, I'll stop my testimony there. I'm happy to
5 answer any questions that the board may have.

6 BZA CHAIR HILL: Thank you, Commissioner. Let's
7 see. Let me go ahead. Ms. Themak, would you like to give
8 us your client's thoughts?

9 MS. THEMAK: Yeah. I have a question about can you
10 go over timing? Because I have -- the party consists of
11 myself, our architect Mick Burns, and then the four adjoining
12 neighbors as well as the representative from Carbery, all of
13 whom plan to be part of our case in chief here this
14 presentation.

15 So, can you give me just what you want in terms
16 of timing so they know how long they'll have to speak?

17 BZA CHAIR HILL: Sure. In general, Ms. Themak, we
18 try to give the party in opposition the same amount of time
19 as the applicant.

20 The applicant didn't particularly take up a lot
21 of time, but I'm also not trying to just rush you through --

22 MS. THEMAK: Okay.

23 BZA CHAIR HILL: -- whatever you're trying to do.
24 One second, Commissioner. And then how much time do you
25 think you need?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. THEMAK: I would -- the architect, Michael
2 Burns, and I have about between a seven to ten-minute
3 presentation. And then I want to make sure that there is
4 time for the five adjoining property owners that comprise the
5 party in opposition to speak.

6 So, if they could each have two to three minutes
7 after we're done with the PowerPoint, would that be
8 acceptable?

9 BZA CHAIR HILL: Yes. I'll try to keep it to like
10 20 minutes if I can.

11 MS. THEMAK: That's great. No, I understand. And
12 I understand, then, we also have time in rebuttal and
13 closing. I just want to make sure that we say everything up
14 front that needs to be said.

15 BZA CHAIR HILL: Sure. No, that's great.

16 MS. THEMAK: Great.

17 BZA CHAIR HILL: Commissioner Eckenwiler, you had
18 your hand up?

19 MR. ECKENWILER: Yes, Mr. Chairman. I do have some
20 other matters I need to attend to. Obviously, Ms. Themak has
21 the right to ask me questions as does the board.

22 If there are no questions, it would be a great
23 mercy to me if I could check out. And if the board does need
24 me later, I can certainly come back. You can have Mr. Reed
25 contact me, but I -- it would be helpful if I could conclude

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 my testimony as quickly as possible, including any questions.
2 Thank you.

3 BZA CHAIR HILL: Sure. Thank you, Commissioner
4 Eckenwiler. Thank you also for taking the time to be here.
5 As you know, we never know when we're going to hear cases.

6 Does the board have any questions of the
7 commissioner?

8 The only question I got, I guess, Commissioner
9 Eckenwiler, is that it sounds as though the applicant -- and
10 I know the party here is in opposition and will have their
11 testimony -- it sounds that the applicant has at least made
12 an attempt to work with the community, correct?

13 MR. ECKENWILER: I'm not sure how to answer that.
14 Obviously, you know, people have different thoughts on, you
15 know, what the community is. So, I'm going to let that --
16 the parties can tell you --

17 BZA CHAIR HILL: Sure. No problem.

18 MR. ECKENWILER: -- you know, their views on that,
19 which I think differ, but, you know, specifically with
20 respect to the ANC, yes, we did find that the applicant was,
21 you know, responsive to suggestions.

22 As you can see in our letter, we did have a
23 divided vote. It was by a vote of four to three. So, I
24 would be lying if I said everyone on the commission was
25 satisfied with where we ended up.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 BZA CHAIR HILL: Yes.

2 MR. ECKENWILER: But I would say overall, you know,
3 we didn't have any process difficulties with the applicants
4 or Ms. Fowler, or Mr. Sullivan, for that matter.

5 BZA CHAIR HILL: Thank you. Thank you. Did the
6 SMD vote in -- no?

7 MR. ECKENWILER: Commissioner Merkle, I believe,
8 is proposing to testify. I think she's in the waiting room
9 and my understanding is she may be giving testimony.

10 Yes, she was in opposition and, as I said, we will
11 hear from her.

12 BZA CHAIR HILL: Yes. Okay. All right. Great.
13 Well, nobody has any questions for Commissioner Eckenwiler?

14 All right. Commissioner Eckenwiler, again, do you
15 have any -- Ms. Themak, you don't have your hand up, right?

16 MS. THEMAK: No, that's just how I sit.

17 BZA CHAIR HILL: Sure. No problem. Okay.
18 Commissioner Eckenwiler, we'll see you next time.

19 MR. ECKENWILER: All right. Thank you very much,
20 Mr. Chair.

21 BZA CHAIR HILL: Thank you. Okay. Go ahead, Ms.
22 Themak.

23 MS. THEMAK: Great. If we could bring up the party
24 in opposition's PowerPoint, I am going to start off -- also
25 here with me as part of the party in opposition is Michael

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Burns, our architect, Andy and Lynne Seymour who are the
2 owners of the adjacent property at 423 4th, and Tom Schatz
3 and Leslee Behar who own 427 4th Street, as well as Michael
4 Erps who is here representing the Carbery school to the rear
5 of the proposed project.

6 Like I said, I think Mick and I will take ten
7 minutes to go through the PowerPoint and then we'll leave it
8 so that the neighbors have some time, that are part of the
9 party, to give you the direct impacts to their houses.

10 And I do know that Commissioners Wirt and Merkle
11 are also in the waiting room, but they can provide testimony
12 during the public comment period.

13 So, with that, if you could bring me to the next
14 slide, this has been in the works for quite some time. It
15 has gone to the ANC a couple of times. It went to both the
16 planning and zoning committees of the Capitol Hill
17 Restoration Society and there's a long list of chronology
18 there that you can and have probably reviewed already.

19 What's important to note here, however, is that
20 if you look at the total number of votes that were taken,
21 it's a total of 14 to 12 to deny, and it's split for
22 Historic, and was actually 6 to 4 for Planning and Zoning to
23 deny. And I think it's especially noteworthy when
24 considering all of these votes.

25 Chairman Hill, you just brought up that the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 single-member district representative, Commissioner Merkle,
2 voted against it as did both of the committees from the
3 Capitol Hill Restoration Society.

4 Those are the two bodies and representatives
5 locally charged with the protection of this specific block
6 and their votes were unanimously no.

7 In addition to that, we have a petition signed by
8 42 residents in opposition. Everyone contacted or that
9 submitted comments within the 200-foot radius, their
10 responses were unanimously in opposition.

11 So, while we have support from the ANC and the
12 HPRB, those most impacted unanimously say no and I think
13 that's important to note here.

14 Next slide, please. I know the applicant talked
15 about HPRB. We have submitted a request for reconsideration
16 from the HPRB that is also on the record. This is a long
17 summary of the reasons. I will go through them briefly.

18 At the HPRB meeting on the 25th, the YouTube
19 function was not working. So, those members wanting to
20 participate or call in by phone and watch the hearing
21 couldn't make comments.

22 There were other technical issues. There were
23 misnamed speakers. One of the adjacent property owners, Tom
24 Schatz, was prevented from providing his three minutes of
25 testimony altogether simply because he was in the same room

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 as Leslee Behar, also a separate individual.

2 Commissioner Wirt, though she raised her hand
3 several times, was prevented from speaking. And so, it's our
4 assertion that without their testimony that record is
5 incomplete and all the evidence was not fairly considered.

6 The applicant's architect gave some measurements
7 during that hearing that did not accurately portray the
8 massing and scale that this proposed addition will add. It's
9 huge.

10 The addition is 71 percent of what is existing
11 now. With the additional 1781 in total square footage, it's
12 a 97 percent increase. It essentially doubles the size of
13 what's there now. This is not insignificant and it should
14 have been considered by the HPRB.

15 There were also misstatements about the recessing
16 of the rear wall made at the HPRB. It's recessed by 2 feet,
17 not 5, and it extends 15 feet more than any other home in the
18 subject row when measured as we've noted here.

19 There was a comment at HPRB that the lot coverage
20 is consistent with those in the same row. That also is
21 incorrect. It will have a lot coverage of 21 percent greater
22 than any of the comparable buildings in the row.

23 The issue of Carbery Place being a street and not
24 an alley was really critical and was not -- we weren't able
25 to broach it at the HPRB because our testimony wasn't allowed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 due to time restraints and technical issues.

2 But as Gary Peterson and Nick Alberti determined,
3 they are part of the Planning and Zoning Committee for
4 Capitol Hill Restoration Society, Carbery Place is not an
5 alley. It is a street.

6 And so, the HPRB should have been considering the
7 viewshed from Carbery Place and they ignored that. That was
8 another thing we've raised and hope to have them reconsider.

9 In that same vein, our presentation and slides
10 that were not able to be viewed by the board had a -- had the
11 viewshed from 5th Street as well where this project is going
12 to be very visible from the gaps between Carbery School
13 Condominiums and the next home over.

14 There were staff report errors. Five properties
15 were cited in support of projects just like this that have
16 been approved.

17 Four of them were not actually in the RF-1/CAP
18 overlay zone, which is a special -- it should be afforded
19 special protections.

20 Only one was, and that property was 409 East
21 Capitol Street and East Capitol Street is a very different
22 road from 4th Street. It's two lanes and that property was
23 commercial, not residential. So, the staff report that went
24 before the HPRB had errors in it.

25 And then finally, one of the members that I hope

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 you'll hear from today in the public opposition testimony,
2 Cynthia Zeigler, raised her concerns that this project is not
3 being viewed through the lens of the equity tool that OP has
4 prioritized.

5 After her testimony, that issue was not even
6 discussed by the board. So, again, we've raised these with
7 them, but we believe that you need to be aware of them so
8 that when you're considering the HPRB's vote to recommend
9 this project, we think it is a flawed vote and needs to be
10 reconsidered.

11 Next slide, please. This brings us to the zoning
12 regulations that bring us before you. We believe that in
13 violation of 5201.4 this proposed project does substantially
14 and adversely affect the light, air and privacy of the
15 adjoining properties, and it substantially visually intrudes
16 on the views both from Carbery Place, which we know it
17 doesn't matter to you because alleys would be considered
18 here, but is a street, not an alley, and also from 5th
19 Street.

20 Next slide, please. These were the standards that
21 of course the HPRB considered. I won't read them to you.
22 But because Carbery Place is a street and not an alley if
23 they had considered this, we believe it would not have met
24 either of these standards because of the massing and scale
25 out of context from that perspective.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 This also raises the critical issue of the Carbery
2 School that has over ten units behind -- in the rear of that
3 building that are going to directly look out onto the
4 proposed project.

5 One of the board members at HPRB said, well, it
6 doesn't matter. The view from Carbery is -- they'd look out
7 onto --

8 VICE-CHAIRPERSON JOHN: Ms. Themak?

9 MS. THEMAK: Yes.

10 VICE-CHAIRPERSON JOHN: I'm so sorry --

11 MS. THEMAK: Yes.

12 VICE-CHAIRPERSON JOHN: -- but the process of HPRB
13 is not relevant to the zoning issues that we're discussing.

14 MS. THEMAK: I understand.

15 VICE-CHAIRPERSON JOHN: Perhaps --

16 MS. THEMAK: I think this is to differentiate
17 between the viewshed from Carbery should be considered here
18 because you consider the views from alleys as well; is that
19 correct?

20 VICE-CHAIRPERSON JOHN: We have a long day.

21 MS. THEMAK: I can move forward.

22 VICE-CHAIRPERSON JOHN: Let's just try to be
23 relevant. Thank you.

24 MS. THEMAK: Go to the next slide. This just is
25 a summary of the zoning -- a summary of the zoning and what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 is proposed here. I think it's important to note the
2 applicant shared the sun study with you.

3 There is -- there are impacts. There were
4 skylights omitted in the sun study originally that was done
5 and there is significant impact to the rear pergola that will
6 be impacted as well. So, we disagree with the assessment
7 that there's no impact to the light to 427. Tom Schatz will
8 be speaking later, can speak more to that point.

9 Next slide, please. At this time, for slides 7
10 through 19, I will turn to our architect, Michael Burns, and
11 he can take you through some of the perspectives so that you
12 can see exactly the effect that the massing and scale is
13 going to have on the existing context.

14 Michael, are you there? I know I saw him.

15 BZA CHAIR HILL: Michael, can you hear us? I
16 don't know Michael's last name. Sorry.

17 MS. THEMAK: Michael Burns. I see him there.

18 BZA CHAIR HILL: Mr. Burns, can you hear me?

19 (Pause.)

20 BZA CHAIR HILL: Mr. Burns? Maybe you're on mute.
21 Mr. Burns?

22 MS. THEMAK: It looks like he is on mute.

23 BZA CHAIR HILL: Mr. Young, can you unmute him?
24 You don't know.

25 MR. YOUNG: I cannot unmute him. He has to unmute

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 himself.

2 BZA CHAIR HILL: Okay.

3 MS. THEMAK: Let me see if I can call him and see
4 if he knows why.

5 (Pause.)

6 BZA CHAIR HILL: Why don't we do this, Ms. Themak.
7 As you're calling him, maybe I can also take the testimony
8 from others.

9 MS. THEMAK: It's telling him he can't unmute
10 himself.

11 (Pause.)

12 MR. BURNS: I can't find the --

13 BZA CHAIR HILL: Oh, there we go. We can hear you
14 now.

15 MS. THEMAK: That might have been via my phone.

16 BZA CHAIR HILL: Oh. Maybe stick your phone up
17 next to the speaker.

18 MS. THEMAK: We can do that. I would rather just
19 move forward with him.

20 BZA CHAIR HILL: Yes.

21 MS. THEMAK: Let me get him back.

22 BZA CHAIR HILL: Mr. Burns, can you hear me?

23 MS. THEMAK: Let me get him back and we will do it
24 that way.

25 (Pause.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. BURNS: Hey there.

2 MS. THEMAK: Hey, I've got you on and I believe the
3 board can hear you. Can you hear him --

4 BZA CHAIR HILL: Yes. Mr. Burns, can you introduce
5 yourself for the record?

6 MR. BURNS: Yes. My name is Michael Burns. I'm
7 the architect for Tom Schatz and Leslee Behar, owners of 427.

8 BZA CHAIR HILL: Can you see the slide deck?

9 MR. BURNS: I can see the slide deck just fine.

10 BZA CHAIR HILL: Okay.

11 MR. BURNS: I just cannot unmute myself.

12 BZA CHAIR HILL: That's alright. Go ahead, Mr.
13 Burns, and give your presentation.

14 MR. BURNS: Please, my wife would pay top dollars
15 to figure out how to mute me like this.

16 BZA CHAIR HILL: All of our friends, would, I'm
17 sure.

18 MS. THEMAK: If you can take them through 19, that
19 would be great.

20 MR. BURNS: Yes, I will. Thank you for working
21 with me like this. I generally find myself presenting as an
22 applicant, not in opposition. In fact, I've done two
23 projects on this block asking for relief before the BZA.

24 As we go through these slides, and hold that slide
25 just there for the moment, I'd like to ask the members to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 hold in their mind a few numbers as they evaluate the
2 applicant's proposal.

3 First, the existing house is 1500 square feet
4 above grade only, that's GSA. And the proposed project is
5 2560, again, above grade GSA. That's an increase of 1,060
6 square feet or 71 percent larger than the existing building.

7 The applicant is asking for an additional six feet
8 beyond the ten feet typically allowed past the most recessed
9 neighbor.

10 So, we're not talking about one or two feet.
11 We're talking about 50 percent deviance from the typical ten
12 feet and this rear extension is the crux of the problem.
13 It's the rear extension that's causing the concomitant
14 request for lot overage.

15 Again, we are not opposed to the neighbors
16 improving and expanding their property. What we're opposed
17 to is primarily this extra six feet and the bulk that it
18 incorporates that we find damaging with respect to the three
19 criteria in 5201.4.

20 This added extension is almost the entirety of the
21 portion of the rear yard extension that goes past the rear
22 of 427.

23 So, every bit of this request for the six feet is
24 showing up as the extension and that's what you see in the
25 orange.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 We have modeled the applicant's proposal, but
2 we've separated that six feet into the orange and the yellow
3 as what we would otherwise consider to be by-right.

4 Next slide, please. Now, you see the aerial view
5 of the additional massing looking northwest from the south
6 and this is from the 423 perspective.

7 Next slide. What you're looking at here in these
8 next two slides, this one is taken from approximately five
9 feet behind the rear wall of 427. And the next one will be
10 taken five feet behind the rear wall of 423.

11 This gives you an idea of the massing that you see
12 when you're standing in the rear yard and you're looking up
13 and you can see the bulk extending past the rear wall of 427.

14 Next slide. Likewise standing five feet behind
15 the rear wall of 423.

16 And next slide. This is standing about mid-yard
17 in the rear yard looking up. So, again you get an idea of
18 that volume that's presenting itself with these additional
19 six feet requested.

20 Next. And this then standing about mid-yard in
21 the rear of 423 looking up at the massing.

22 Next slide, please. Now, as we talk a little
23 further about this massing, I'll give you just a moment to
24 reflect on the typology that you see.

25 What you see at the end there with that salmon-

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 colored wall, there are two three-story homes at the end of
2 this row and that salmon-colored wall is the third story.

3 All along this road wherever you have a third
4 story, this third story stops short. It stops essentially
5 at the rear wall of the dogleg and then there will be a
6 projecting two-story addition below that that goes out to
7 what's considered sort of the average rear extension.

8 Next slide. This is looking south then and you
9 see -- this would be 421, I think, and 419 and you see those
10 are the rear walls of the third story with the projecting
11 second story behind it and that's the massing typology that's
12 common on this row. Wherever you have a third story it's
13 recessed and then the second story projects.

14 Per the applicant -- well, actually, next slide.
15 Okay. So, then this is looking -- 427 is just to your right.
16 And you are looking at the rear wall of 427, the rear wall
17 of 429 directly in front of you, 431 to the right, 433 is not
18 terribly visible.

19 Per the applicant, they have presented for their
20 sun study that the light will be most impacted -- most
21 significant in the fall, winter and spring seasons when the
22 light tends to be lower. This is exactly when the light --
23 when the impact of light is so crucial.

24 In fact, the additional six feet requested is the
25 portion that most directly limits the influx of light into

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 the rear yard of 427.

2 With respect to Criteria A, light and air, and
3 Criteria B, use and enjoyment, we think these two things are
4 inextricably tied.

5 I won't talk too much more about those because I
6 want you to hear from the residents themselves from both
7 adjacent neighbors as they are the ones that have lived here
8 and can describe exactly how they feel when they step into
9 that yard with that mass.

10 So, I'll move on to Criteria 3. And if you can
11 go to the next slide, please, this then is looking at the row
12 to the south. You see this row of two-story structures.

13 The next slide, please. This then is 427 and you
14 can see the heavily glazed rear wall or lower story with the
15 pergola behind it.

16 With respect to Criteria C, I just want to read
17 it very quickly. The proposed addition or accessory
18 structure, together with the original building or proposed
19 new building as viewed from the street, alley and other
20 public way, shall not substantially visually intrude upon the
21 character, the scale and the pattern of the houses along the
22 street and alley frontage.

23 So, it's our contention, when you evaluate this
24 project with respect to character, scale and mass, that this
25 is a relatively well-preserved row of historic homes, as

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 we've shown.

2 With limited exception, all the homes are two
3 stories and extend into the rear yards approximately the same
4 distance. There are a couple of exceptions.

5 Where the row does exhibit three-story homes,
6 those homes have limited the third story to the rear wall of
7 the second-story portion of the home. So, all the third
8 stories are recessed from the rear wall.

9 This creates a stepped massing stepping down to
10 the open space of the rear yard providing relief in a tight
11 urban condition.

12 In this case, the applicant, we believe, has
13 largely ignored the existing typology proposing not only to
14 extend the massing to the rear of the second story below, but
15 to push the entire structure an additional six feet out.

16 Applicant states that there is a five-foot recess
17 of the third story, but, in fact, they are proposing a
18 substantial bay window that is counteracting the relief that
19 they're providing by the five-foot recess. In essence, this
20 is a third story that extends all the way to the back.

21 It is our contention, then, based on the evidence
22 that you have in front of you, that this is completely out
23 of character with the row. At 71 percent larger, covering
24 21 percent more lot area than the typical two-story home,
25 it's completely out of scale with the row.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 And when evaluated with respect to a third-story
2 building, it's out of character with the patterning of the
3 row in which the third story is recessed from the rear wall
4 substantially.

5 BZA CHAIR HILL: Can I interrupt you one second,
6 Mr. Burns?

7 MR. BURNS: Yes.

8 BZA CHAIR HILL: Ms. Themak, I just want to make
9 sure I get to your people also.

10 MS. THEMAK: Yes.

11 BZA CHAIR HILL: I'm just flipping through and I
12 just want to see how long Mr. Burns is going to be with us
13 also.

14 MS. THEMAK: No, I think the -- are we ready to
15 move on?

16 MR. BURNS: I've been on, I've heard you've had a
17 long day, and I got about 30 seconds left.

18 MS. THEMAK: And then I'll wrap --

19 BZA CHAIR HILL: Okay. Go ahead.

20 MS. THEMAK: I'll wrap it up.

21 BZA CHAIR HILL: Go ahead.

22 MR. BURNS: Yeah, thank you. Thank you very much
23 for your time. In fact, I think I can substantially end
24 here.

25 If we can just go to the next slide, I'll let Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Themak take it over at this point. Thank you for your time.

2 BZA CHAIR HILL: Thank you, Mr. Burns.

3 MR. BURNS: Slide 20, please.

4 MS. THEMAK: Great.

5 BZA CHAIR HILL: We have the deck which is why I'm
6 saying, like, we're able to flip around.

7 MS. THEMAK: Yes. I'll conclude in two minutes
8 here.

9 MR. BURNS: Yes, go ahead. Next slide, please.

10 MS. THEMAK: Can you go to slide 20 for me?

11 So, we mentioned this. Mick just spoke about the
12 third criteria. And so, this shows the viewshed from 5th
13 Street which we believe is extremely relevant.

14 Next slide. This shows the view from Carbery
15 Place Condominiums that will be looking back over the alley.
16 And just in summary so that you don't have to read all the
17 fine print, the DC Code establishes this as a street, Carbery
18 Place; district services like leaf collection are provided
19 here; and 444 Carbery Place is the converted carriage house
20 that is listed on DC PropertyQuest with this address. So,
21 it is a valid street. The perspectives from here need to be
22 considered.

23 And a large majority of -- a large number of units
24 of Carbery School Condominiums, this is their only view.
25 They do not look onto 5th Street. So, this is exactly what

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 they will be looking at and we believe their viewsheds are
2 critical for your consideration.

3 Next slide, please. Mick mentioned at the outset
4 of his presentation that we're not against development here.
5 It's been mentioned that there is a by-right build here as
6 well.

7 There really isn't a by-right build here because
8 it would have to go through HPRB either way. It would not
9 have to necessarily come before you.

10 We think there's a solution here that would make
11 both parties happy and it would reduce the impacts that we
12 feel make it not satisfy the standards of 5201.4.

13 The next two or three slides are simply an
14 alternate design that we had drawn up that accomplishes the
15 same goals of additional space, but also mitigates the
16 negative impacts to the adjoining property owners.

17 If you could go to the last slide of the deck, I
18 will close. I believe it's one more, maybe. That's it.
19 When we left you last time, we were discussing this design
20 that was offered by the applicant and we were close to a
21 solution here. So, again, we believe there is a solution
22 here.

23 We heard about this solution not being possible
24 because of the snowdrift. It's our contention that this
25 design still ignores the snowdrift effects onto the den and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 the -- of 427 4th Street.

2 So, we're not sure exactly what the true reason
3 that this design was rescinded, but this is an example of a
4 design that would have worked without as many negative
5 impacts and this was actually proposed by the applicant.

6 I'll close there and -- because I definitely want
7 you to hear from the owners of 423, 427 and the residents of
8 Carbery at 410 5th Street. Thank you.

9 BZA CHAIR HILL: Thanks, Ms. Themak. Since these
10 are your witnesses, Ms. Themak -- and I'll wait for Mr. Young
11 to drop that slide deck.

12 (Pause.)

13 BZA CHAIR HILL: Thank you. Since these are your
14 witnesses, Ms. Themak, I'll let you call them.

15 MS. THEMAK: Great.

16 BZA CHAIR HILL: And I guess if we can try to keep
17 them to two minutes each, that would be helpful.

18 MS. THEMAK: Perfect.

19 BZA CHAIR HILL: And go ahead. You can call your
20 first witness.

21 MS. THEMAK: Great. I'd like to call Leslee Behar.

22 BZA CHAIR HILL: Ms. Behar, if you could introduce
23 yourself for the record when you get on, and you'll have two
24 minutes.

25 (Pause.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA CHAIR HILL: Or at least I'll try to keep you
2 at two minutes. Ms. Behar, can you hear me?

3 MS. BEHAR: I'm having a muting problem.

4 BZA CHAIR HILL: I hear you.

5 MS. BEHAR: Okay. I'm good. Sorry. Hi,
6 everybody.

7 BZA CHAIR HILL: Go ahead.

8 MS. BEHAR: I'm Leslee Behar, one of the neighbors
9 of 427. We've lived here for 41 years. I'm going to
10 abbreviate a little bit because I thought I had three minutes
11 and now I have two.

12 BZA CHAIR HILL: You can do three minutes.

13 MS. BEHAR: We've always --

14 BZA CHAIR HILL: Ms. Behar, you can take three
15 minutes.

16 MS. BEHAR: Okay. We've always been involved in
17 our -- we've lived here for 41 years, raised children,
18 countless dogs, been involved with the immediate neighborhood
19 and larger DC community as we do volunteer work at
20 Congressional Cemetery where we sit on the Building and
21 Grounds Committee. I've also dedicated my entire career to
22 managing properties all located -- almost all located on
23 Capitol Hill.

24 Couple of comments. We are and never have been
25 against our neighbors growing their house to meet the needs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 of their family. We have talked many times through the years
2 as friends about additions and welcomed them into our house
3 to see work that we have done over the years.

4 What we object to, along with most of the
5 neighbors on 4th Street, is their plan to overbuild on this
6 small piece of land.

7 In December, a design was presented to us that we
8 accepted, but for some reason the applicants changed their
9 minds and withdrew it. And if they had not, we would be in
10 agreement and we would not be here today. And that's the
11 design that you all saw in that last slide.

12 In the packet that was presented to you, there
13 were two different petitions, several letters from our
14 neighbors.

15 One petition was taken from neighbors on this
16 block and a few on the adjacent streets. The other petition
17 is from Carbery School neighbors. There was not one person
18 that we met with within 200 feet of 425 4th Street who
19 believed that a house built this large would be appropriate
20 and compatible with the neighborhood.

21 We obtained approximately 45 signatures in
22 opposition to this project. Carbery also had quite a large
23 amount of signatures filed in opposition since half of their
24 units have no other view but the view of the rear.

25 The special exception they are asking for

1 essentially removes all of our direct sunlight that we're
2 able to enjoy about half the year.

3 Our den was built 37 years ago and has two large
4 skylights, glass doors, side lights and transoms. We also
5 have a small patio with a plastic, you know, that's a
6 pergola, and the roof of that pergola is clear plastic so we
7 can sit outside in the rain.

8 The view through the plastic roof in our small
9 backyard is of the sky to the south, which is the 425 side,
10 and straight ahead, which is the rear of Carbery School.

11 If our neighbors are allowed to build to this
12 special exemption size, most of the sky to the south would
13 be a brick wall. It is the light and air that we cling to
14 and so desperately do not want to lose.

15 As many of you know, there is not a lot of air
16 circulation in these small backyards in the hot summertime.
17 Our neighbor's addition, if allowed to be built to the
18 special exemption size, would make ours and the Seymours',
19 who are the owners at 423, rear yards absolute hotboxes and
20 essentially render them unusable.

21 I'm done now, but I want to repeat we do not and
22 have never objected to a build next-door. We want and ask,
23 please, that you help us keep this proposed project design
24 so that everyone involved has their needs and their concerns
25 met. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. THEMAK: Chair Hill, I would next have Tom
2 Schatz, who I believe is with Leslee Behar, speak. He also
3 resides at 427 4th.

4 (Pause.)

5 MS. THEMAK: I think you're muted, Chair Hill.

6 MR. SCHATZ: Oh, hi. Hi. I just wanted to go
7 through -- In Mick's presentation he did show what the back
8 looked like, but I think it needs to be seen from the inside
9 as well.

10 So, if you could go to Exhibit 19, please.

11 VICE-CHAIRPERSON JOHN: And can you please
12 introduce yourself and --

13 MR. SCHATZ: Oh, yes. I apologize. I'm Tom
14 Schatz. I am Leslee Behar's husband. And, as she said, we
15 have lived in this house for 41 years.

16 And everything else she said about us I'm not
17 going to repeat, but I just wanted to note for the
18 perspective that we have and the point that in the sun study
19 the most important part of the home was not at all addressed,
20 which is the rear of the house.

21 Most of the light that comes in does not come from
22 the skylights. It comes from the back. So, if you could
23 please bring up Exhibit 19, and I have to grab my other
24 computer because my statement is there. So, if you pull that
25 up and I'll come back in one second.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 (Pause.)

2 VICE-CHAIRPERSON JOHN: Mr. Young, can you pull up
3 Exhibit 19? Thank you.

4 MR. SCHATZ: Okay. If you go to --

5 VICE-CHAIRPERSON JOHN: I guess that's not it.

6 MR. SCHATZ: Well, that is, but there are a lot of
7 pages.

8 BZA CHAIR HILL: Are you at No. 11?

9 MR. SCHATZ: No, this is the right one.

10 BZA CHAIR HILL: Yeah, 11.

11 MR. SCHATZ: Yeah. Okay. So, if you keep -- oh,
12 what happened? Okay. So, we have a bunch of pictures at
13 9:19 a.m. -- sorry -- 1:19 p.m. and 3:10 p.m. on October 9th,
14 2023.

15 So, if you could go down to what would be page 25
16 -- sorry, excuse me, I apologize, page 19. I'm sorry. Keep
17 going. I know it's a lot of pictures, but I wanted to show
18 the one out of the rear.

19 Keep going. You can see all the rest of it coming
20 through -- That one. Stop there. So, you can see the light
21 and the angle is toward where that extra six feet would be.

22 The extra six feet goes past the end of this
23 structure, our den, that again has been 37 years. So, you
24 can see the obvious, and we think, substantial impact that
25 that six feet first and second and now the third floor would

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 have on the light coming into the home from that direction.

2 So, that's 9:00 in the morning. If you can go
3 down further, you will see it at 1:19 p.m. It's like pages
4 30 to 33. It's a number of pictures down. Keep scrolling.
5 I'll let you know.

6 That's the skylight. I'm not going to show you
7 what you're looking at because they're not as relevant.
8 That's from the pergola. Keep going.

9 Sorry, stop there -- I'm sorry, go back one. So,
10 that's again looking straight out. That's at 1:19 p.m. And
11 if you go to the next one, you can see how much the light
12 comes all the way into the kitchen. We don't even turn the
13 lights on. It's so bright.

14 This is also where, you know, we have a home-based
15 business. Leslee has a property management business. This
16 is where she works. And so, it's not just our home. It's
17 also her office.

18 So, I just want to point that out. We have really
19 been unable to show this to anyone. I think it's critical
20 and your evaluation of the impact of the light and air, those
21 are screen doors at the double glass doors. There's screens
22 on the top right and left that we open all the time.

23 And so, we just think that anything that's beyond
24 ten feet will dramatically and substantially impact
25 everything that you see there which is the main source of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 light for the rear of the house.

2 So, I'll stop there because I know there are
3 others who wish to speak and I thank you very much for your
4 consideration.

5 BZA CHAIR HILL: Thank you, sir.

6 MS. THEMAK: Next, I think Andy Seymour, owner at
7 423 4th Street, would like to speak.

8 BZA CHAIR HILL: Mr. Seymour, if you could
9 introduce yourself for the record?

10 (Pause.)

11 MS. SEYMOUR: Can you hear me?

12 BZA CHAIR HILL: Yes.

13 MS. SEYMOUR: Okay. My husband is going to come
14 and speak through my computer. Technical difficulties.

15 BZA CHAIR HILL: No problem. Go ahead, Ms.
16 Seymour.

17 MS. SEYMOUR: Okay.

18 MR. SEYMOUR: Can I be heard?

19 MS. THEMAK: Um-hm.

20 BZA CHAIR HILL: Yes.

21 MS. THEMAK: We can hear you.

22 MR. SEYMOUR: Okay. My name is Andy Seymour and
23 I'm one of the owners and residents at 423. Our objections
24 to the proposed plan and the previous plan submitted by the
25 applicant have been consistent through testimonies in six or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 eight different settings on the record as well as in writing
2 and copies that you have in your case file. So, I'll just
3 summarize.

4 The massing of the proposed property now that
5 you've had some of the visuals will be three stories up from
6 ground level and, for all practical purposes, will envelope
7 our property from the rear.

8 That massing of three stories and that envelopment
9 will have two consequences. I'm going to deal with this very
10 significant consequence first, and that is that the air that
11 we need, which currently is helped by airflow coming from the
12 north, northeast and northwest through Carbery Place
13 relatively unobstructed will be permanently degraded.

14 The structure, in fact, will constitute an air
15 dam. It will block airflow permanently coming up from that
16 direction and that will cause a loss of convection, air
17 turnover, heat dissipation and air quality.

18 That might sound unimportant, but it's important
19 to us and this is why: We have two outdoor spaces, our patio
20 and a deck on our second floor of the rear of the home, that
21 we use throughout the year.

22 These are intrinsic parts of our home as important
23 to us as any room inside the house and our use and enjoyment,
24 if approved, will be permanently and unalterably degraded as
25 far as airflow and our enjoyment of that outdoor space.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Also, I believe that the responses by the
2 applicants as it relates to airflow and air are, at best,
3 superficial in their response that this has some impact.

4 Our point of view is quite the opposite. It has
5 a permanent and dramatic and unalterable impact. I'd like
6 you to consider that.

7 Second point as far as privacy goes, the windows,
8 again, from our deck into our patio going up to the third
9 floor really overlook our space and are in very close
10 proximity.

11 We understand that they've proposed to frost those
12 over and that does mitigate some, but windows can be opened,
13 sounds can be heard. Over time, windows can be changed.

14 So, we still believe that that design as it is
15 also impinges on our sense of privacy and our sense of
16 intimacy.

17 I'm going to conclude with one other occurrence
18 that you're not aware of and I'll share. I was out not long
19 ago working in the back in Carbery Place. I had my garage
20 door open and I noticed that there are three people coming
21 down Carbery Place. Turned out they were with Capitol Hill
22 Restoration Society.

23 They had taken it upon themselves to come down and
24 actually look at Carbery Place and they had in their hands
25 all the design documents that were submitted by the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 applicants.

2 When they saw me, they recognized me from a
3 previous meeting and they asked if they could come into our
4 property, which I granted. They took a look inside our space
5 for some minutes and then continued their survey.

6 It's worth noting that their final decision was
7 unanimous in opposition of this plan as far as the adjustment
8 goes.

9 I'm done. Thank you for your time. I'll let my
10 wife speak a few words and we'll be done.

11 BZA CHAIR HILL: Thanks, Mr. Seymour.

12 Ms. Seymour, if you could introduce yourself.
13 And, Ms. Themak, how many more witnesses do you have?

14 MS. THEMAK: Only one more after Ms. Seymour. It
15 will be Michael Erps from the Carbery School.

16 BZA CHAIR HILL: Okay. Go ahead, Ms. Seymour.

17 MS. SEYMOUR: Okay. My name is Lynne Seymour and
18 I'm at 423 4th Street and I want to thank you for giving me
19 this opportunity. I'll make my comments brief. As the last
20 one, I'm essentially echoing a little bit of what -- of parts
21 of what everyone has said.

22 Basically, you know, we appreciate the fact that
23 Lis and Dan need a larger home. We totally get it. We just
24 get it. We've raised children. We understand.

25 It's just that the plan that they have submitted

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 is going to seriously impact us for our use and enjoyment as
2 my husband has already explained. So, I will not go into
3 that.

4 I'd like to bring your attention to, again, the
5 last slide that was on the PowerPoint demonstration that
6 Tracy showed. I don't know if that can be brought up.

7 BZA CHAIR HILL: We got it. I got it up right now.
8 Go ahead.

9 MS. SEYMOUR: Thank you very much. This is an
10 example of how -- of how the applicant's needs can be
11 achieved and also it would address the concerns of, you know,
12 it would address, you know, some of our concerns.

13 So, it's just the configuration -- changing the
14 configuration can make -- can make a difference, but what is
15 proposed now is very difficult because it has a -- as we
16 explained, the airflow with three stories above you is going
17 to be severely impacted.

18 I would like to suggest that, you know, we -- by
19 changing the massing we might be able to come up with
20 something that's palatable to all.

21 We have a third-story house. Our house is 1891.
22 Our third story is original to the house. Our third story
23 is partial.

24 Our third story comes out 15 -- excuse me, stops
25 15 feet from the back of our house which is also original.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 We have not extended -- there have been no -- what do you
2 call -- additions that have been made to our home.

3 So, we feel that if the applicants, for example,
4 looking at the slide that you have before you, come up with
5 a difference in configuration, particularly given the third
6 floor, it would not only mirror most of the other homes on
7 the property on this block, but would also give us some
8 relief.

9 And I appreciate your time. I just want to say
10 we really, really are just looking for ways that everybody
11 can be satisfied. Thank you.

12 BZA CHAIR HILL: Okay. Ms. Themak?

13 MS. THEMAK: The last witness that we have is
14 Michael Erps from the Carbery School.

15 BZA CHAIR HILL: Mr. Erps, can you hear me?

16 MR. ERPS: Yes, I can. Can you hear me?

17 BZA CHAIR HILL: Yeah. Go ahead, Mr. Erps.

18 MR. ERPS: Thank you. My name is Michael Erps.
19 I'm speaking today as president of the board of directors for
20 the Carbery School Condominiums.

21 I represent more than 15 residents that last
22 October signed a petition to oppose this special exception.
23 The signers object to the blocking alteration and elimination
24 of existing sight lines, light, air, privacy, use and
25 enjoyment at Carbery School.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 I will point out that not every resident at
2 Carbery signed the petition, but I have also not heard from
3 a single person, other than the applicants, that support this
4 project as it's currently proposed.

5 I want to reference a quick passage from a letter
6 written by the Capitol Hill Restoration Society chair. His
7 name is Nick Alberti. He wrote this letter to the Office of
8 Zoning.

9 In the letter he states, the rear of the property
10 faces and is highly visible from Carbery Place, a
11 thoroughfare between D and E Street, NE. The community
12 concluded the applicant has not met the standard for special
13 exception relief because the proposed addition, as viewed
14 from Carbery Place, will substantially intrude on the
15 character, scale and pattern of houses along Carbery Place.

16 Carbery Place is very important to the residents
17 of Carbery School as 13 of the units in this building have
18 primary viewsheds that face west directly looking over
19 Carbery Place. It's the only place where the residents in
20 the back of the building have a chance to receive light and
21 airflow.

22 The proposed structure is unprecedented and
23 disruptive to the spirit and regulations of the Capitol Hill
24 Historic District and our immediate block in particular.

25 If the project is permitted and every other house

1 on the block applied for and was approved for the same size,
2 it could potentially quadruple the population and create
3 havoc with density and parking causing other issues in our
4 immediate area.

5 Approval of this project would -- we fear would
6 set a precedent for such development access across all of
7 Capitol Hill and the rest of ANC 6.

8 We moved here and generally enjoyed the area
9 because of the historic protections that it has in keeping
10 the historic charm that exists in the Capitol Hill district.

11 That's all I have. Thank you for your time and
12 consideration.

13 BZA CHAIR HILL: Okay. Ms. Themak, can you hear
14 me?

15 MS. THEMAK: Yes.

16 BZA CHAIR HILL: Whoever is not muted, could you
17 please mute yourself. All right. Ms. Themak, unfortunately
18 you guys have gone way over what the applicant had, but, you
19 know, we want to be able to hear from everybody.

20 Are you done?

21 MS. THEMAK: We are done.

22 BZA CHAIR HILL: Okay. All right. Let's see.
23 Before I take questions from everybody, somebody is still not
24 muted if they wouldn't mind muting themselves.

25 Let's see. Can I hear from the Office of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Planning?

2 MR. BEAMON: Good afternoon. Shepard Beamon with
3 the Office of Planning. We've reviewed the requested special
4 exception and recommend approval of the requested relief for
5 lot occupancy and rear yard requirements to allow the
6 proposed addition. We find the request meets the criteria
7 under Subtitles E and X and we stand on the record. No
8 further questions.

9 BZA CHAIR HILL: Okay. Thanks, Mr. Beamon.

10 Mr. Beamon, you haven't been with us that long.
11 And so, when we have a lot of people, I ask the Office of
12 Planning to go into a little bit more detail as to how they
13 believe they're meeting the criteria.

14 Could you speak to why you believe that the
15 additional five feet past the -- or five, ten, or whatever
16 it is past the matter-of-right and/or you can even speak to
17 the matter-of-right. I just want to hear a little bit more
18 about how you concluded your analysis, please.

19 MR. BEAMON: Sure. So, again, in reviewing the
20 application we found that the requested additional 5 feet 10
21 inches wouldn't be substantially different from what is
22 permitted by right and cause any additional undue -- or have
23 any negative impact on the adjacent properties.

24 Specifically, the requested relief we found to be
25 only needed for the property to the south since it does

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 exceed the allowed ten feet of the rear extension.

2 Let's see. We also looked at the overall design
3 and we noticed that the applicant is proposing to do the
4 frosted glass or block glass windows to maintain the privacy.

5 We've looked at the remaining zoning criteria that
6 the property would meet, so it would not exceed the maximum
7 height requirement, would meet the minimum rear requirement
8 -- minimum rear yard requirement, would not exceed the
9 maximum 70 percent lot occupancy that can be approved by the
10 BZA, would maintain the ability to park one car on the
11 property and the addition would not be visible from 4th
12 Street.

13 A few more things to add. In terms of the
14 separation of the property between the property and Carbery
15 lofts, we thought that the 30 feet plus the additional 15-
16 foot rear public alley in the rear offered over 45 feet of
17 separation between the principal dwelling and the Carbery
18 lofts. And, yeah, that's it for me.

19 BZA CHAIR HILL: Okay. Great. Okay. Let's see.
20 Does the board have any questions for the Office of Planning?
21 Sure, Mr. Blake.

22 MEMBER BLAKE: Sure. Quick question. When you
23 look at the Carbery Place, looking at it as an alley versus
24 a street, is there a different approach to treatment and does
25 the Office of Planning see it as a street or as an alley and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 would there be a difference?

2 MR. BEAMON: So, in terms of whether it's an alley
3 or a street, we determined that it was, in fact, a named
4 alley and not a street.

5 But if we need to, we can also confirm with DDOT
6 or the Surveyor's Office to confirm whether it's a street or
7 an alley, but overall it does not have an impact on our
8 analysis.

9 MEMBER BLAKE: Thank you.

10 BZA CHAIR HILL: Okay. Anyone else for the Office
11 of Planning form the board?

12 All right. MS. Themak, do you have any questions
13 for the Office of Planning?

14 You're on mute, Ms. Themak. Sorry.

15 MS. THEMAK: I do that way too often. I just have
16 one question. The Office of Planning's report was dated
17 December 8th and I believe that was before -- prior to the
18 Capitol Hill Restoration Society's, both their planning and
19 zoning committees and their historic committee meetings and
20 their determinations, correct?

21 MR. BEAMON: I'm looking back at the record right
22 now.

23 (Pause.)

24 MR. BEAMON: So, our report was filed December
25 10th. And the letter in opposition from CHRS was filed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 December 19th, yes.

2 MS. THEMAK: Okay. So, those weren't part of your
3 consideration when you drafted the report.

4 MR. BEAMON: Correct. No.

5 MS. THEMAK: Okay. That's all I have.

6 BZA CHAIR HILL: And to follow that, Mr. Beamon,
7 would that have changed the report from the Office of
8 Planning?

9 MR. BEAMON: We look at the -- whatever is on the
10 record, but we really don't use that in determining our
11 recommendation.

12 BZA CHAIR HILL: Okay. Thanks, Mr. Beamon.

13 MS. THEMAK: Interesting.

14 BZA CHAIR HILL: Ms. Themak, the Office of Planning
15 pretty much works independently of almost -- well, that's it.
16 Never mind.

17 Okay. Mr. Sullivan, do you have any questions of
18 the Office of Planning?

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

20 BZA CHAIR HILL: Okay. Mr. Young, are there any
21 more witnesses that wish to speak?

22 MR. YOUNG: Yes, we do.

23 BZA CHAIR HILL: Okay. Who do you got for me,
24 please.

25 MR. YOUNG: I have -- let me check -- Leslie

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Merkle, Karen Wirt and Cynthia Zeigler.

2 BZA CHAIR HILL: Okay. Ms. Merkle, can you hear
3 me?

4 MS. MERKLE: I can hear you. Can you hear me?

5 BZA CHAIR HILL: Yes. Okay. Ms. Merkle, as a
6 member of the public, you'll be given three minutes to
7 provide your testimony.

8 If you would like to go ahead and give us your
9 name and address when you introduce yourself and then begin
10 whenever you like.

11 MS. MERKLE: Thank you. Good afternoon. My name
12 is Leslie Merkle. I am a commissioner for ANC 6C02, the SMD
13 in which this property is located, but I am speaking today
14 just as a member of the public.

15 Although ANC 6C voted to move this project
16 forward, it was a divided vote, four to three, and I do
17 represent the neighbors in that neighborhood.

18 I have not had a single neighbor come forward in
19 support of this project. The neighbors in the 400 block of
20 4th Street, NE, are deeply and universally opposed to the
21 applicant's plans as it currently stands.

22 The applicant's project seeking a special
23 exemption for the rear yard requirements and the lot
24 occupancy requirements represents a massive increase to the
25 historic property and almost doubles the size of the original

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 house.

2 Although the applicant's basis of claim for this
3 massive increase is to accommodate a large family, I'd like
4 to point out that I've been living in the neighborhood for
5 35 years just around the corner. My husband and I also
6 raised a large family of four children in an 1890, two-story,
7 three-bedroom house.

8 We were thankfully granted an eight-foot extension
9 which was helpful because three of those four children
10 eventually grew to over six feet. So, it was helpful for us.

11 And family should be able to make those kinds of
12 decisions and choices that work for them, but not at the
13 expense of their neighbors or to the detriment of the
14 historic guidelines and regulations that protect our
15 neighborhood.

16 If the applicant is seeking an expansive property,
17 I would ask that they not do it at the expense of their
18 neighbors and ask them to give up the views, the sunlight,
19 the privacy, the air and the light to accommodate their
20 particular accommodations.

21 It's understood that the applicants could extend
22 the home ten feet as a matter of right, but a 15-foot 10-
23 inch, three-story extension is a heavy burden to place on the
24 neighbors.

25 I'm respectfully requesting that the Board of

1 Zoning Adjustment deny the applicant's request as it
2 currently stands. Thank you. That's all I have.

3 BZA CHAIR HILL: Thank you, Commissioner. Okay.
4 Let's see. Is it Ms. Wirt?

5 (Pause.)

6 BZA CHAIR HILL: Ms. Wirt? Mr. Young, do you have
7 Ms. Wirt?

8 MS. WIRT: Hello? Can you hear me?

9 BZA CHAIR HILL: Yes. Can you hear me?

10 MS. WIRT: Yes, I can hear you. Can you hear me?

11 BZA CHAIR HILL: Yes. Could you please introduce
12 yourself for the record and you'll have three minutes to give
13 your testimony.

14 MS. WIRT: Thank you. My name is Karen Wirt and
15 I have lived in the neighborhood for 48 years. I live about
16 a block away from this residence near the corner of 3rd and
17 E.

18 The reason I'm testifying is I am a former ANC
19 commissioner who served this same community for 24 years.
20 Much of that time as the chair of ANC 6C. I retired last
21 year, but I'm still remaining active in keeping up with the
22 neighborhood appearances.

23 During those years as a commissioner, I saw many
24 proposed projects with light and air concerns, but generally
25 the opposition came from a single set of neighbors in an

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 adjacent house.

2 In this case, numerous neighbors have been
3 negatively affected and I have never seen a case in which a
4 project has the ability to impact so many neighbors.

5 The way the neighbors would be affected is
6 stunning. Their very basic rights to light, air and privacy
7 on both sides will be disregarded if this project is allowed
8 to go forward.

9 This includes shadows where there is light, lost
10 privacy and enjoyment of backyards, solar panels affected,
11 and these neighbors will have a substantial change to the
12 enjoyment of their homes and, more importantly, their quality
13 of life.

14 Second, the residents of historic Carbery Building
15 and, indeed, all DC residents, are disadvantaged because of
16 sight lines along Carbery Place which, in fact, is an
17 official street at the rear of 425, will be substantially
18 changed.

19 The proposed massing will negatively affect the
20 scale and pattern of structures along the street footage and
21 it's most unfortunate that HPRB failed to address this
22 streetscape violation.

23 I hope you are listening to the many residents
24 that have testified today. I cannot see how this proposed
25 project can go forward, an attempt to build a McMansion on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 a lot intended for a small, single-family dwelling.

2 To my mind, the proposed project will set a
3 troubling precedent. These historic homes were designed to
4 be modest homes in a residential neighborhood that has been
5 preserved for more than 200 years.

6 I believe it's our responsibility to preserve the
7 character and scale of these homes as much as possible as
8 they were intended in the RF-1/CAP zone historic district and
9 remain small, single-family dwellings. Thank you for
10 allowing me to speak today.

11 BZA CHAIR HILL: Thanks, Commissioner. I'm sorry,
12 the last person's name is -- I can't read it -- oh, Zeigler.

13 MS. ZEIGLER: Zeigler.

14 BZA CHAIR HILL: Zeigler. Zeigler.

15 MS. ZEIGLER: Yes.

16 BZA CHAIR HILL: Thank you.

17 MS. ZEIGLER: Yes.

18 BZA CHAIR HILL: If you could introduce yourself
19 for the record and then you'll have three minutes to give
20 your testimony.

21 MS. ZEIGLER: Okay. Good afternoon. My name is
22 Cynthia Zeigler and I live with my husband Lonnie at 426 4th
23 Street, NE, where I was born and raised and I've been in this
24 house 70 years and I know the neighborhood in and out.

25 I'm not against them making any renovations, but

1 this is too large of a scale for the size of these houses.
2 We have worked to keep it the same as when it was first built
3 in the 1890s. This block is unique with only six three-story
4 homes and the rest are two stories.

5 I tried to make the point before the Advisory
6 Neighborhood Commission that equity should be considered when
7 the city reviews projects like the one at 425 4th Street, NE.

8 I then found that the Office of Planning has a
9 commitment to equity. We believe that this project will make
10 equity the worst in the city especially in our area of
11 Capitol Hill.

12 Approving a large, eight-bedroom home where most
13 of the homes are three-bedroom means that more of those big
14 houses can be built here.

15 That will make it much harder for people who are
16 not wealthy to buy a home in this area and most -- quite a
17 few of us are on -- we're retired and we're on fixed income.

18 So, a house of that size will make our equity go
19 up and our house insurance go up. Everything will keep going
20 up.

21 And my neighbor next-door is thinking about
22 moving. And if they move and this 425 be approved, then
23 there will -- the house next to me, they can do the same
24 thing. So we, on fixed income, will be pushed out of the
25 city.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 So, it's not that we're not against them building
2 for their family, but you have to -- they have to consider
3 the neighbors here in the neighborhood.

4 And also, if they build back there and them having
5 children, their children are not going to even have any place
6 to play in the backyard. Children should be able to play in
7 their backyard.

8 And it's not the size of the house that make a
9 person, it's for the kids to be able to communicate with one
10 another.

11 The children won't be -- everybody probably be in
12 different rooms and that's why -- children now, they be on --
13 playing games and stuff. They don't interact with their
14 siblings.

15 And with a house with eight bedrooms, you're going
16 to have enough bathrooms. So, that's going to -- these pipes
17 -- these sewer pipes in the street here are real old.
18 They're building something like an apartment. These pipes
19 here is not for apartments. They're for single-family homes.

20 So, I'm sorry, I'm just, you know, I'm just worked
21 up.

22 BZA CHAIR HILL: That's all right, Ms. Zeigler.

23 MS. ZEIGLER: In another house up the street,
24 somebody is moving out. So, it won't be no stoppage if they
25 build a three-story house and that's going to take away the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 historic of these buildings around here.

2 I mean, they could keep it at three stories. They
3 got a basement they could renovate. They got the other
4 floor, the second floor. They could add a room to the back.
5 On the main floor they could add a -- you could do -- I knew
6 the people that lived in that same house. They had four
7 children just like they have now, four children. And all
8 those people -- all those people became professional people.

9 It's not the size of the house that make the
10 person. So, I'm just --

11 BZA CHAIR HILL: Thank you.

12 MS. ZEIGLER: Yeah, just, you know, the equity is
13 -- a big mass built like that is going to change this whole
14 neighborhood.

15 And this is a beautiful neighborhood and each
16 house is unique in its own way. Leslee didn't know her door
17 handle outside is different from everybody else's door handle
18 around here.

19 BZA CHAIR HILL: Okay. All right. Thank you, Ms.
20 Zeigler.

21 MS. ZEIGLER: Yeah. Thank you all for --

22 BZA CHAIR HILL: Thank you.

23 MS. ZEIGLER: -- listening to me.

24 BZA CHAIR HILL: Thank you for giving us your
25 testimony.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MS. ZEIGLER: Thank you.

2 BZA CHAIR HILL: Okay. Before I let the witnesses
3 go, Ms. Ziegler, thank you for your testimony. I'm sorry
4 that all of this, for everybody, is becoming very difficult.

5 Commissioner Merkle, thank you for your service,
6 as well as Commissioner Wirt. I think I'm pronouncing it
7 correctly. I know you were the chair for a long time. So,
8 you had a lot of things that you had to go through as well.

9 Okay. I'm going to ask Mr. Young to excuse the
10 witnesses -- does my board have any questions for the
11 witnesses?

12 Okay. I'm going to excuse the witnesses. Thank
13 you, Mr. Young.

14 Okay. All right. I'm going to go ahead and --
15 Mr. Sullivan, are you there?

16 MR. SULLIVAN: I am.

17 BZA CHAIR HILL: Do you have any rebuttal?

18 MR. SULLIVAN: Very short, yes.

19 BZA CHAIR HILL: Okay. Go ahead, Mr. Sullivan.

20 MR. SULLIVAN: Thank you, Mr. Chairman. Regarding
21 the deal -- oh, the final word on the street versus alley,
22 it's the surveyor's plat. The surveyor rules on that. So,
23 it's a public alley, but I really don't think it matters to
24 the BZA.

25 On the negotiation, we certainly didn't request

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 a six-week postponement with the expectation that we wouldn't
2 have an agreement and, unfortunately, it just -- it couldn't
3 be reached.

4 And I don't think I have anything specific to
5 rebut. We heard a lot of calculations and percentages and
6 other anecdotal stories, but I think Ms. Fowler stayed very
7 focused on the relevant special exception criteria.

8 We've got an addition that goes on one side, 15,
9 10-1/2 past the furthest rear wall. And on the other side,
10 five feet past -- there is a five-foot setback on the top
11 floor.

12 And we're happy to enjoy agreement with the --
13 with our position that there's no undue impact on light and
14 air, privacy or character, scale and pattern with the ANC
15 officially with the Office of Planning and with HPO and HPRB,
16 although, of course, that's not relevant to the BZA case, but
17 it is good information in that regard.

18 And so, I think that's all I have. Unless
19 Jennifer has anything specific that she wanted to say about
20 anything, that's it for us. Thanks.

21 BZA CHAIR HILL: Ms. Fowler, do you have anything
22 on rebuttal that you want to respond to? And then I'm going
23 to let Ms. Themak have any -- if she had any issues with any
24 of the rebuttal.

25 MS. FOWLER: I don't think I have anything

1 specific. I did -- I think somebody had mentioned that I had
2 said there was no impact based on the sun study, but, you
3 know, we acknowledged there is an impact, but it's not an
4 undue impact.

5 So, I just wanted to kind of clarify that, but
6 otherwise I don't have anything else to add. Thank you.

7 BZA CHAIR HILL: Okay. Ms. Themak, do you have any
8 questions about their rebuttal?

9 MS. THEMAK: I do have a question. One that
10 pertains to the snowdrift calculation which they said is the
11 reason for the recision of the -- that negotiated design.

12 BZA CHAIR HILL: Okay. It's not really a question
13 about rebuttal, but that's fine. Go ahead. What's your
14 question?

15 MS. THEMAK: My question is, the whole reason that
16 that design disappeared was because they say that this design
17 mitigates the snowdrift and that there wasn't a solution with
18 that design.

19 What I believe my understanding from that is is
20 that they had proposed a snow mitigation design. We had
21 wanted language in there that said -- the roofer for 427,
22 Wagner Roofing, had said you can't patch this type of roof.
23 So, we need to come up with an alternative snow mitigation
24 design that would accommodate them.

25 We offered to pay for it if it was above any

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 expense that their originally planned snow mitigation design
2 was and that's when the design got changed.

3 With this proposed design that is before you
4 today, snowdrift still isn't accommodated. It still has
5 effects to both the upper and lower roofs of 427.

6 So, I remain confused as to how this design -- if
7 the reason for this redesign and the recision of the other
8 one that we were so close to having as a mutual solution is
9 snow mitigation, I really need to know how this solves the
10 problem when the other design did not.

11 Our architect looked at it and said given the
12 setbacks it's still not accommodating the snowdrift
13 mitigation impacts. So, that's my question for the
14 applicant.

15 BZA CHAIR HILL: Okay. Before you all answer, I
16 just want to rephrase what I think the question is and then
17 you all can do what you want to do.

18 I thought what Ms. Fowler had said was that they
19 changed something on the third floor to accommodate some
20 snowdrift issue, right? So, that's what I thought was one
21 question.

22 What you seem to be asking, Ms. Themak, is why did
23 the design change or did it change because of the snowdrift
24 mitigation? Is that what your question is?

25 MS. THEMAK: Yeah. This seems to create new

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 snowdrift problems essentially.

2 BZA CHAIR HILL: If anybody can answer the question
3 easily, that's fine. And who wants to raise their hand?

4 MS. FOWLER: I can answer that question. The
5 snowdrift issue is typically a problem with original
6 rooftops, like old, 100-year-old houses.

7 So, we've pulled away from the old, original
8 rooftop at the upper level where the rafters are probably
9 undersized in that. But on the lower level, like, in the
10 dogleg next to 427, there's an existing condition where
11 there's a wall there that's higher than, like, a parapet
12 wall.

13 And then the structure at the first floor, the one
14 story was built, you know, in the last few decades. It's not
15 an original. So, presumably it has framing -- modern
16 framing.

17 So, really anything with modern framing doesn't
18 really have an issue with snowdrift. So, that's why we
19 pulled away from the third-floor roof where we're adjacent
20 to kind of original rafters.

21 And that was also why we did not want to sacrifice
22 space at the rear because, as you saw from the floor plans,
23 we had to move the stair because that's exactly where the
24 stairs would stack.

25 And so, now the stairs are located further back

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 in the floor plan. So, we've lost a bedroom on the second
2 floor to be able to get the stairs going up to the third
3 floor. Hopefully that answers the question. Thank you.

4 BZA CHAIR HILL: Okay. I think it kind of answered
5 the question. At least it kind of answered the question for
6 me as to why you're not doing whatever the other proposed
7 design was or at least part of it. I don't know.

8 And so -- and I do understand the reason why you
9 asked for the postponement originally is because you had
10 hoped you would get to an agreement.

11 Now, that all being said, Ms. Themak, you want to
12 give us a little bit of a conclusion --

13 MS. THEMAK: Yes.

14 BZA CHAIR HILL: -- and then, Mr. Sullivan, you
15 can give your conclusion.

16 MS. THEMAK: Absolutely. In closing, I would say
17 that you've seen the views, the massing studies, that we
18 believe show the undue substantial and adverse impacts to
19 those closest to this project.

20 That's supported -- those impacts are supported
21 by the unanimous opposition here from those that are going
22 to be most locally impacted; the two adjacent property
23 owners, the multiunit dwelling directly in the rear of this
24 property, the ANC single-member district representative,
25 Commissioner Merkle, the Capitol Hill Restoration Society

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 specifically tasked with this specific historic district.
2 There can't be anybody that is more representative of the
3 voices of the people that are going to be most directly
4 impacted.

5 And I would note, in closing, that we've heard a
6 lot of the, you know, the votes from HPRB and the Office of
7 Planning.

8 HPRB will be considering a request for
9 reconsideration based on our filing on February 22nd, and
10 that is all I have.

11 BZA CHAIR HILL: Thank you.

12 Mr. Sullivan?

13 MR. SULLIVAN: Thank you, Mr. Chair. I don't think
14 I have much to add other than what I said in rebuttal. I
15 think that Jennifer's -- Ms. Fowler's presentation was very
16 helpful and very focused on the special exception criteria.

17 There's a shadow study that's not rebutted with
18 any other shadow study that shows very minimal impact on
19 light and air.

20 Regarding privacy, there's no windows on one side
21 and on the other side the windows were frosted after comments
22 from the ANC and the neighbor on that side admitted that that
23 did have some mitigation affect.

24 And then regarding character, scale and pattern
25 again its going 15-1/2 feet back on one side -- 15 10-1/2,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 which is not a huge amount under the 10-foot rule, and then
2 5 feet past the one-story addition on the other side.

3 And so, it's not -- doesn't substantially visually
4 intrude on the character and scale and pattern either. So,
5 that's it.

6 Regarding the negotiation, there were reasons why
7 it didn't work out. It became apparent that we were going
8 to have a problem agreeing to how to solve for snow load
9 without that front court.

10 And when you take that front court out, the --
11 with the setback, for HPRB it becomes quite a small third-
12 floor addition.

13 So, in order to make the project worthwhile it had
14 to be a certain size. So, we think the size that it is,
15 regardless of that negotiation, we think it safely meets the
16 special exception criteria. Thank you.

17 BZA CHAIR HILL: Okay. Thank you. All right.
18 Nobody has any more questions. Okay. I'm going to -- I
19 appreciate everybody's time. This has gone on for two hours.
20 And so, we've definitely done our best to hear from everyone.

21 And I am going to close the hearing and the record
22 and please excuse everyone. And, again, thank you for your
23 time.

24 (Whereupon, the above-entitled matter went off the
25 record at 3:53 p.m. and resumed at 4:13 p.m.)

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 MEMBER MOY: Thank you, Mr. Chairman. The board
2 has returned to its public hearing session after another
3 brief recess and the time is now at or about 4:13 p.m. The
4 next case for the board is Application No. 20853 of 1212
5 Oates O-A-T-E-S Street, LLC, self-certified application
6 pursuant to Subtitle X, Section 901.2, special exception
7 under Subtitle E, Section 204.4 for the rooftop architectural
8 element provisions, Subtitle E, Section 204.1.

9 The property is located in the RF-1 zone at 1212
10 Oates Street, Northeast Square, 4060 Lot 79. As a
11 preliminary matter, Mr. Chairman, there is the applicant is
12 proffering expert witness to an architecture that is
13 currently not in the witness book.

14 The opposition is asking for expert witness for
15 Guillermo Rueda, who's already in the, and I believe other
16 than that, to remind you that we have an individual has
17 signed up for testimony. And, of course, there is a party
18 status opposition that was granted party status by the name
19 of Martin Holmes. Thank you, sir.

20 BZA CHAIR HILL: Okay. Let's do this. Now, can
21 the applicant hear me? And if so, could they introduce
22 themselves for the record?

23 MS. BATTIES: Yes, we can hear you. Good
24 afternoon. Leila Batties and John Oliver, we're Holland &
25 Knight on behalf of the applicant, 1212 Oak Street, LLC. We

1 also have representing the applicant, Andre Banks, who is an
2 architect with MWB Architects.

3 BZA CHAIR HILL: Got it. And Ms. Batties, it's
4 Mr. Banks that you are requesting as an expert in
5 architecture?

6 MS. BATTIES: Yes.

7 BZA CHAIR HILL: Okay. Do we have his resume
8 somewhere?

9 MS. BATTIES: Yes. It's in the record. You give
10 me a moment, pull up the exhibit number.

11 MEMBER MOY: I believe it's Exhibit 28, Mr.
12 Chairman.

13 BZA CHAIR HILL: Thank you. Thank you.

14 MEMBER MOY: 28-C.

15 BZA CHAIR HILL: Okay. I don't have any issues
16 with Mr. Banks being admitted as an expert architecture,
17 being he is an architect who has been serving here in the
18 community for some time. Unless the board has any issues
19 with that, please raise their hand? Seeing none. Okay. Let
20 me see. Mr. Holmes, can you hear me?

21 MR. HOLMES: Yes. I can, sir.

22 BZA CHAIR HILL: Great. Could you introduce
23 yourself for the record, please?

24 MR. HOLMES: Sure. My name is Martin Holmes. I
25 am the owner of 1210 Oates Street Northeast, the adjacent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 property. I have been granted party status in opposition to
2 the application, and I am joined by my architect, expert
3 witness, Guillermo Rueda, who should also be on the line.
4 Thank you.

5 BZA CHAIR HILL: Yes. Thanks, Mr. Holmes. Mr.
6 Holmes, are you not using your camera? I just want to know.
7 It's completely fine.

8 MR. HOLMES: Let me figure out how to turn it on.

9 BZA CHAIR HILL: Okay. That's great. Mr. Rueda,
10 I always have a hard time with your, I'm sorry, sir. If you
11 could --

12 MR. RUEDA: It's Rueda, and how are you?

13 BZA CHAIR HILL: Good. Can you introduce yourself
14 for the record, please?

15 MR. RUEDA: Yes. my name is Guillermo Rueda. I'm
16 an architect here on behalf of Mr. Holmes.

17 BZA CHAIR HILL: Got it. Mr. Rueda, welcome back.
18 Happy New Year to you.

19 MR. RUEDA: Happy New Year.

20 BZA CHAIR HILL: Okay. So let's see. Oh, Ms.
21 Batties. Okay. We're good with that. The, oh, Mr. Holmes,
22 I got you. Thank you so much.

23 MR. HOLMES: Sure.

24 BZA CHAIR HILL: All right. What I wanted to do
25 is, I appreciate that you all have waited this long, it has

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 been a long day for us. And I wanted to do our best to focus
2 this hearing on what is before the board. And we have gone
3 through the record and seen everyone's statements and their
4 arguments.

5 And I would like to, again, mention that Mr.
6 Rueda, and you can speak to this when we get to you, but what
7 is before us, and my fellow board members will probably agree
8 with me, is not the building height measuring point. That
9 is something that the zoning administrator is going to have
10 to determine and that's not what the applicant has come here
11 before us.

12 The applicant who is here, the applicant is here
13 before us, for pursuant to X 901.2 for special exception
14 under E 204.4 from the rooftop architectural element
15 provisions in E-204.1. So the porch roof and yes, so that's
16 what I'm just going to make us, you know, stay focused on.

17 And I'm going to start with the applicant and have
18 them give their presentation. Mr. Holmes, if you've been
19 watching the way this works with people who have been given
20 granted party status in opposition is the applicant will go
21 ahead and give their presentation.

22 The party status in general, I try to have them
23 have as much time as the applicant, but I'm not trying to
24 rush anyone. And then the applicant could ask questions of
25 the party status, and the party status can ask questions of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the applicant.

2 The applicant can also ask, both the applicant and
3 the party status, can ask questions of the Office of Planning
4 when that also comes forward. And I do remember, Mr. Holmes,
5 when we granted you the party status, however long ago that
6 was.

7 But in any case, Ms. Batties, if you want to go
8 ahead and give us your explanation of why you believe your
9 client is meeting the criteria for us to grant the relief
10 requested, I'm going to put 15 minutes on the clock just so
11 I know where we are, and you can begin whenever you like.

12 MS. BATTIES: So, Mr. Chair, before we begin, I
13 have one additional preliminary matter. We had tried, I
14 think, last evening to put into the record one additional
15 photo that we may use during the presentation, and we just
16 ask that the board accept that so that if we need to, we can
17 use it. Mr. Young, I think Mr. Young has that photo, too.

18 BZA CHAIR HILL: That's fine. And if we were
19 live, you would just be giving us the testimony --

20 MS. BATTIES: Right.

21 BZA CHAIR HILL: -- that you'd be bringing.

22 MS. BATTIES: Yes.

23 BZA CHAIR HILL: And so all this does now, again,
24 is gives the opportunity for the board and the public to take
25 a look at whatever it is that the applicant would have been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 providing us in live testimony. So, unless the board has any
2 issues, I want to go ahead and drop that into the record so
3 that we can take a look. All right. And you may do that,
4 Mr. Moy, and just let us know when it's been done so we can
5 refresh. Ms. Batties, you can begin whenever you like.

6 MS. BATTIES: Okay. Thank you. As you indicated,
7 this public hearing has been deferred four times previously.
8 The first couple of times, you know, we wanted the applicant
9 to have an opportunity to work through various zoning issues
10 with the Department of Buildings.

11 The last deferral gave us an opportunity to meet
12 with the adjacent property owner at 1210 Oates Street. And
13 while we clarified some of the technical aspects of the
14 application request, which you reiterated today, from that
15 meeting it was unrealistic that the applicant and Mr. Holmes
16 were going to reach an agreement on the application request.

17 So if Mr. Young, if you can pull up slide two,
18 please. Thank you. The next slide. So, yes, so this is a
19 very narrow issue before the board. The applicant seeks
20 special exception approval pursuant to subtitle E, section
21 206.1, to replace a porch roof 18 inches higher than its
22 original location. In this case, it would allow an as-built
23 condition to remain.

24 Next slide, please. So this is a photo of the
25 original porch roof. On December 19, 2022, the zoning

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 administrator determined that the original porch roof and the
2 cornice were deteriorated and needed to be replaced. He
3 authorized the applicant, he authorized the replacement of
4 these elements pursuant to its authority in subtitle E,
5 section 206.1 of the regulations.

6 Next slide, please. So again, we're here before
7 the board on the very narrow issue of the current height of
8 the porch, of the porch roof. The standard of review, is
9 that slide four? Yes it is. Okay.

10 In order for the BZA to approve the application,
11 under the regs it says, "The porch roof cannot have a
12 substantially adverse effect on the use or enjoyment of the
13 adjacent property. It cannot unduly affect light and air.
14 The privacy and enjoyment cannot be unduly compromised, and
15 the adjusted height shall not substantially visually impute
16 upon the character, scale, and pattern of the houses along
17 the street."

18 The two important words in the standard of review
19 are substantially and unduly. Merriam-Webster's online
20 dictionary defines substantial as considerable in quantity,
21 significantly large, and unduly is defined as in a huge
22 manner, excessively. So the Office of Planning reviewed the
23 application and recommended approval based on the special
24 exception criteria.

25 The Office of Planning report concludes that the

1 porch roof placed 18 inches higher than the original
2 placement, does not significantly affect the use or enjoyment
3 of the abutting property, that the placement of the porch
4 roof does not excessively affect the light and air, or the
5 privacy of the use and enjoyment of the adjacent property,
6 and that the placement of the porch does not significantly
7 affect the character and aesthetic of the houses along the
8 street.

9 So what I'd like to do at this time is ask Mr.
10 Banks, the architect, to testify how the application,
11 specifically the features of the porch roof, specifically
12 meet the special exception criteria. Mr. Banks?

13 MR. BANKS: As has been indicated, my name is
14 Andrei Banks. I'm a principal with MWB Architects. So I
15 will address the criteria that Leila has just outlined. The
16 proposed construction specifically to this application
17 pertains to the porch roof, which again was constructed 18
18 inches higher than the original construction.

19 An 18-inch increase doesn't adversely impact
20 neighboring properties, specifically because the new porch
21 is supported by two columns, which are in the front of the
22 porch roof, and do not obstruct air or sunlight, which passes
23 through to the adjacent properties.

24 The increase also does not compromise privacy of
25 use or enjoyment of the neighboring properties because the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 roof does not obstruct any views or adjacent properties
2 usage.

3 The new roof doesn't cover or block the adjacent
4 houses and any stormwater that's collected from the roof will
5 be forded toward the front of the property. The post
6 construction does not visually intrude upon the character,
7 scale, and pattern of houses along the 1200 block of Oates
8 Street, which has varying designs and heights.

9 And the board is authorized to grant a special
10 exception where it finds that three conditions exist. That
11 the new construction will be in harmony with the general
12 purpose and intent of the zoning regulations, will not tend
13 to affect adversely the use of neighboring property in
14 accordance with the zoning regulations and the zoning maps,
15 and will meet such special conditions as may be specified in
16 the title.

17 So the proposed development is consistent with the
18 intent of the RF-1 zone, which is to provide for areas
19 predominantly developed with row homes and small lots, within
20 which no more than two units are permitted. And the
21 development will not adversely affect the use of the
22 neighboring properties. The development is similar in size
23 and scale to buildings within their surrounding area.

24 And if you go to slide nine, we have shown some
25 pictures of some other properties which are in the block

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 which have varying designs, varying heights of the porch
2 roofs. So if you would just go to slide nine, and also in
3 slide ten. So you'll see that there are other varying
4 heights of the porch canopy along the full block. I'll turn
5 this back over to Leila.

6 MS. BATTIES: And also, Mr. Young, if you can pull
7 up the additional photo that we submitted. It should be
8 Exhibit 70.

9 MEMBER MOY: Chairman, that Exhibit 70 is in the
10 case record.

11 MS. BATTIES: Okay. So again, that additional
12 photo is just to show that there are various aesthetics along
13 this section of 1200, the 1200 block of Oates Street. I'll
14 just, I'll conclude by saying the party in opposition will
15 argue that, because this application only pertains to the
16 porch roof, it does not include the cornice, the application
17 is deficient and therefore it should be denied. And that's
18 not true.

19 The only issue the applicant wants the board to
20 consider is the porch roof. The applicant intends to replace
21 the cornice at its original height, and if that is achieved,
22 there is no relief needed by the board. If it can't be
23 achieved, that's the DOB issue, Department of Building's
24 issue, the applicant will file another application to the
25 BZA.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Now, while that may not be the most efficient
2 thing to do, there's no procedural requirement that all of
3 the areas of relief be filed at the same time. And so, with
4 that, the applicant will close its presentation and be happy
5 to answer any questions. Thank you.

6 BZA CHAIR HILL: All right. Before we get to
7 questions, what I'd like to do is go ahead and have the
8 presentation from the party in opposition. And I guess, Mr.
9 Holmes, are you going to begin or are you just going to give
10 it over to Mr. Rueda?

11 MR. HOLMES: No, sir. I am going to begin and
12 then I'll hand it over when I complete my section. I am
13 under the impression that there may also be one of the AMC
14 commissioners online, so I don't know if the typical order
15 is for me to go and then them, or them to go and then me, but
16 just wanted to bring that to your attention.

17 BZA CHAIR HILL: I appreciate it. Is the
18 commissioner with us?

19 MR. HOLMES: I think it was Commissioner Salazar.

20 BZA CHAIR HILL: Mr. Young, do you see a Salazar
21 on our list, there?

22 MR. YOUNG: What was the name?

23 BZA CHAIR HILL: Salazar?

24 MR. HOLMES: Saucedo-Guzman?

25 MR. YOUNG: Yes. I see her. I see her.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA CHAIR HILL: Commissioner, can you hear me?
2 Great. Could you introduce yourself for the record, please?

3 MR. SAUCEDA-GUZMAN: Sure. My name is Salvador
4 Saucedo-Guzman. I'm the chair of ANC 5D.

5 BZA CHAIR HILL: Okay. All right. Commissioner,
6 and I'm going to, I just want to get your name right,
7 Saucedo?

8 MR. SAUCEDA-GUZMAN: I tell all the public to say
9 Commissioner Salvador.

10 BZA CHAIR HILL: Okay. there you go.
11 Commissioner Salvador, however you want to go. Okay. I was
12 willing to try. So Commissioner Salvador, would you like to
13 go ahead and give your testimony to the board?

14 MR. SAUCEDA-GUZMAN: Sure. My testimony is pretty
15 quick. It's nothing complicated. Our understanding that
16 this project was done under the impression that they were
17 going to not replace an element but re-establish and
18 re-develop this porch piece.

19 But for some reason, they went above and beyond
20 to extend the height of this by 18 inches. The commission
21 is strongly opposed to what happened here, particularly since
22 the applicant willfully knew what they were doing when doing
23 this adjustment.

24 We just don't want to see the BZA complicit of
25 anything in terms of accepting this project, because we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 going to see a ton of this in the future where people just
2 do what they want to and then come to the BZA after.

3 So we are opposed to this due to the sore thumb
4 that it duly presents on the block. It's a very negative
5 effect, impacting on the block and we don't want to see that
6 moving forward in the neighborhood. So we hope that the BZA
7 will take this into account that the community and the
8 commission is entirely opposed to this. And we hope that you
9 all not proceed with letting these kind of projects move
10 forward.

11 BZA CHAIR HILL: Thank you, Commissioner. Okay.
12 Mr. Holmes, I'll go ahead and turn it over to you. The
13 applicant, I mean, they barely took 15 minutes, but I'm just
14 not going to, you know, we'll see how we can, you're not a
15 zoning attorney, but we'll see how we can work through this
16 with you.

17 MR. HOLMES: I appreciate it. Thank you, sir.

18 BZA CHAIR HILL: Please feel free to begin.

19 MR. HOLMES: So if we could begin, I'd like to ask
20 that my presentation be pulled up and I'll walk through that.

21 BZA CHAIR HILL: Do you know which exhibit it is?

22 MR. HOLMES: That is it, yes. Thank you. Okay.
23 Next slide, please. Let me begin by thanking you all for
24 your time this afternoon. I appreciate you hearing us.
25 There are lots of slides here, so I will try to get through

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 things quite quickly and just hit on the high points. Just
2 to level set at the beginning, as Commissioner Salazar
3 mentioned, the applicant did not proactively seek a BZA
4 special exemption. Next slide.

5 Instead, what we see is that DCRA caught them in
6 March 2022 with their construction outside the building scope
7 of their permits and issued a stop work order and, only then,
8 could the applicant seek a BZA special exemption. Next
9 slide, please.

10 The applicant's request for relief on 204.1
11 focuses exclusively on the porch and ignores other relevant
12 rooftop architectural elements. Next slide. The most
13 glaring and obvious problem is shown right here with the pent
14 roof that was removed.

15 I mistakenly called it a roof awning, but there
16 are clearly bigger problems at play than simply the porch
17 roof. Next slide. And so, I think on that alone that the
18 application is incomplete and inaccurate and should be
19 rejected. Next slide, please.

20 Notwithstanding, even if we were to just focus on
21 the porch roof, there are bigger problems at play here. This
22 image shows that the entire mass of the building has been
23 shifted up. The porch itself is higher, the porch roof is
24 higher, the pent roof is removed, the doors and windows are
25 all higher than the original building. Next slide.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 This simply shows the 204.4 criteria. Next slide.
2 The 901.2 criteria. Next slide. And my sense is that
3 unfortunately 1212 Oates has already kind of tilted the deck
4 in their favor. Although they want to discuss only the porch
5 roof, even their justifications and material bring out
6 justifications that are not related to porch roofs, so.

7 Next slide, please. For example, their
8 justifications talk about, quote, "varying designs and
9 heights", and also size and scale across the block, but
10 they're not analyzing porch roofs across the block. Instead,
11 they are talking about pop-ups, and additions, and other
12 things, which I think, either we are only talking porch roofs
13 or we are opening the floodgates to everything.

14 Next slide. Here's an example. This is the slide
15 that I just showed you. The line I drew there, look, the
16 porch roofs are all within six inches of each other across
17 those three buildings. They have a gradual increase or
18 decrease in slope based on the grade of the elevation of the
19 property.

20 But when they're trying to convey that there are
21 sizes and differences of scale, what they're really drawing
22 your attention to is the popped up elevation and story of
23 that additional floor they added. Next slide.

24 Exactly the same situation here by exactly the
25 same developer, 1212 Oates, Earle Horton developed this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 property, 1209. Again, this photo is just showing that the
2 porch roofs are pretty well aligned, all within about six
3 inches of each other.

4 But the deception, or the thing they are drawing
5 your eye to, is the additional floor. We're either talking
6 about additional floors and heights or we are not. Next
7 slide. So the bigger problem is that, focusing on the porch
8 roof is a red herring, it's very narrowly focusing on a small
9 symptom of the problem and ignoring the bigger problem.

10 The bigger problem is that they wanted to increase
11 the height of the ceiling in the basement. And when they did
12 that, they increased the porch. And when they did that, they
13 increased the porch roof. And when they did that, they
14 removed the pent roof. They're all connected, they're all
15 relevant, and we shouldn't just be discussing one piece and
16 ignoring the rest. Next slide.

17 Here is their pre-hearing statement from March 8,
18 2023. They said the reason they raised the porch roof was,
19 quote, "natural light to the first floor of the building."
20 So what's happening here is that myself, and other neighbors,
21 and the community, and the character, and the scale, and the
22 pattern of all these buildings are suffering because of
23 design choices that the applicant made, and because they want
24 to provide natural light to kind of cover up for their poor
25 design choices. Next slide.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 I believe that the application does not meet the
2 204.4a requirements for a special exception for relief. The
3 adjacent dwelling does have a substantial adverse impact on
4 my property. It does unduly compromise my enjoyment of the
5 property and it does visually substantially intrude on the
6 character scale and pattern of buildings along the house.
7 Next slide.

8 901.2 criteria, it's not in harmony with the
9 general purpose and zoning, and it does adversely affect my
10 property. Next slide. The design decisions of 1212 Oates
11 end up ultimately isolating my property.

12 They cut my property off from the neighbors. On
13 one side I have an alley, on the other side I have this
14 property where the porch has been increased so high and the
15 porch roof so high that it's several feet above the rest of
16 the scale. Next slide, please.

17 This shows, if I'm standing on my property trying
18 to look at 1212 Oates, look how high that porch is, it's 64
19 inches higher than my porch. Next slide. This shows a
20 neighbor at 1214 Oates, Adina, who I speak with, I used to
21 speak with, quite frequently when I was there at the
22 property. And here we have these porch railings intruding
23 on the visual path for me to have a nice normal conversation
24 there. Next slide.

25 The porches themselves, let's see, are 29 inches

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 from 1212 Oates Street, 29 inches higher than my porch. Next
2 slide. It is 23 inches higher than the porch at 1214 Oates.
3 Next slide.

4 The applicant suggests that the property did not
5 visually intrude and is in harmony with others because of the
6 variances in others, but they are not focused on the porch
7 roofs when they talk about that variety. The porch roofs
8 along the 1200 block on the north side, from one end to the
9 other, entirely consistently deviate by no more than 6 inches
10 based on the grade and elevation of the land itself.

11 And in fact, I believe one of the documents shows
12 a video that's in the record, walking the entire length of
13 the street and all the porch roofs are entirely aligned on
14 that side of the street. Next slide, please.

15 These red lines are simply showing how the entire
16 mass of the building has been shifted up so you see the porch
17 is higher, the porch roof is higher, the pen roof is gone.
18 Next slide.

19 It's not in harmony with the neighborhood. And
20 this next slide shows that it's substantially kind of out of
21 place with the rest of the neighborhood, and the rest of the
22 porch roofs, if that's what we're talking about. Next slide.

23 The roof itself, at the porch roof, between my
24 porch roof and their porch roof, there is a delta of 24
25 inches. That used to be 6 inches, so we are using a factor

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 of 4. We are multiplying what used to be normal, 6 inches,
2 by a factor of 4, to get to the 24 inches. Next slide.

3 Now all of this stuff that I have talked about,
4 so far, is focusing on 901.2 and 204.4A for a special
5 exemption, but the applicant has not even mentioned 204.4B
6 or 204.4C. Next slide.

7 Here is 204.4B. It requires, quote, "graphical
8 representation sufficient to represent the relationship of
9 the proposed construction to adjacent buildings." But look
10 at the slides that Holland & Knight just presented to you.
11 Try to compare the original to the current roof, there are
12 wildly, vastly different angles and perspectives and that
13 disguises the scope of the change. It hides the differences
14 and the application fails to meet the requirements of 204.4B
15 for accuracy and clarity of the representations. Next slide.

16 204.4C allows BZA to require special treatment in
17 the way of design, and I implore you, first and foremost to
18 reject the application, but short of that, at a bare minimum,
19 I beg you to require that the porch roof be removed and
20 reconstructed at its original height. That was a design
21 choice of the applicant. Remove and replace the porch at its
22 original height. Replace the pent roof. Next slide.

23 Several neighbors have written, there are seven
24 neighbors who wrote in opposition to this. The ANC voted in
25 opposition to this. Next slice. And so, ultimately

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 everybody is suffering. I'm suffering, other neighbors are
2 suffering, the block, the community, the ANC.

3 My property is cut off. It's isolated from the
4 quaint character of the rest of the block. And this is
5 occurring because of 1212 Oates design choices. Nobody made
6 them do this, they chose to do this because they wanted
7 natural light after having design problems of their own
8 accord.

9 They could have kept the porch and the porch roof
10 at their original locations, and if there was a gap or a
11 delta, simply build there. They didn't need to increase
12 everything so high. And unfortunately, I, as a citizen, not
13 a lawyer, I just feel like I'm going in circles, talking to
14 BZA, OP, DOB, OZA, others, and I'm begging someone for help,
15 because I don't know what is within our power to do. Next
16 slide, last slide.

17 In conclusion, I just implore you to reject this
18 application. The application omits several relevant
19 architectural elements in section 201. It fails to meet the
20 204.4 and 901.2 criteria. It does not provide accurate
21 graphical representations as required by 204.4B to represent
22 the relationship to other buildings.

23 The applicant had, and still has, alternatives
24 that they could implement to avoid this request for a relief.
25 And I'd now like to turn it over for any, I guess I have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 maybe five or so minutes left, I'd like to turn that over to
2 my architect for any comments he would like to make. Thank
3 you very much for your time.

4 MR. RUEDA: Yes. Good afternoon. I'm not sure
5 I can beat that, Martin. That was pretty good. Chairman,
6 I guess primarily, I submitted my testimony last night and
7 reconsidered what to say.

8 Especially in light of what you just said, which,
9 you know, both the applicants' presentation and your
10 introduction, are trying to sort of focus me, you know, to
11 be relevant to this porch issue. Right?

12 And I prepared a statement, in consideration of
13 the long agenda that you guys have had today, and the fact
14 that you're trying to make my argument all about building
15 height measuring point, when in fact, my ability to offer
16 testimony on building height in this case, is to understand,
17 you know, is, I obviously understand the responsibility of
18 the board to focus on what's being asked for in terms of
19 relief.

20 And the extensive discussion heard earlier today,
21 on the Lester (phonetic) case, tells me that I should convey
22 to you that, in my professional opinion, self-certification
23 of applications is challengeable in specific instances. And
24 in this case, it relates to how they defend the choice to
25 raise the porch roof. Right?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 They, it should be clear that my building height
2 analysis, and any discussed relief, speaks directly to the
3 accuracy of the exhibits that you are reviewing. They do not
4 document the as-built condition of the structure, and I would
5 like to be able to challenge the claims that the terms for
6 special exception relief are met, like Martin has. They are
7 not met.

8 Two things about the requested relief from 204.1.
9 First is that the application is not complete. Ms. Batties
10 now references the fact that they intend to replace the pent
11 roof, even though when we were, we talked about it during our
12 meeting, she made no comment about that. She wasn't even
13 aware of the fact that there was, the pent roof was missing,
14 or if she was aware she was very good at disguising that.

15 So to replace this element, you should understand
16 that because the floors were changed 24 inches, and all the
17 openings were moved, that roof will now be covering the
18 window if it was installed in its original location.

19 And the fact that they have already changed the
20 relationship of the building to the decorative parapets on
21 either side of the property line makes for a difficult
22 decision, which obviously they are prepared to make at a
23 future date, and going to either BZA to ask for a change or
24 going to DOB with something that meets the standard that they
25 have said they would meet.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Second, given that the applicant has repeatedly
2 cited in their Exhibit Number 15, that they do not unduly
3 affect Mr. Holmes' property based on compliance with building
4 height, they make that reference repeatedly. Right? That
5 there's no unduly effect because they comply with building
6 height.

7 Self-certification, in this case, is challengeable
8 because that compliance is not verified by the, obviously,
9 by the zoning administrator, or an approved permit process.

10 The Exhibit that I have on Page 6 outlines
11 relevant errors which we can go over, obviously, after this
12 introduction to my testimony, and the various photographs
13 that follow.

14 Because the drawings are not accurate, they cannot be used
15 to properly, to assess relief by this board or any review
16 body.

17 The board is empowered to assess the provided
18 evidence showing the various omissions and misrepresentations
19 of the exhibit. Grade in this case is relevant. Right? The
20 building height is relevant, especially in regards to how the
21 elements are compared to adjoining properties, which is not
22 shown by section, by perspective, or even photographs that
23 are descriptive enough to really talk about pattern scale and
24 effect on adjoining neighbors.

25 Self-certification in this case is germane and

1 challengeable because compliance of the building is used to
2 allege no undue effect on my client's property, and to meet
3 the terms for relief from the requirements of 204.1.

4 The actual additional height at the lower level,
5 the porch, and roof, not as represented in the exhibit, they
6 must be considered because they alter the mass and the scale
7 of the property and set dangerous precedent to allow elements
8 that are not only foreign to Oates Street, but especially to
9 the development standards of RF-1 districts.

10 If you look at the slides that they point out, 9
11 and 10 and the Exhibit 70, all of those slides show
12 three-story buildings with porches at the same level that
13 existed before.

14 The ones on 70 are kind of, like, weird buildings
15 actually, but I think they're across the street. The fact
16 is, is that the row is pretty consistent, and even the slides
17 that they show have three stories, which the client's
18 property, because of the changes that they made, is four
19 stories.

20 You don't have to rule on that, but you have to
21 know that the certification of that building is a three-story
22 building with a cellar, is not correct. It cannot be used
23 to say, hey, we don't have any undue effect on the
24 neighboring properties.

25 I'm going to leave it to that, except for the fact

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 that I would like to see my Page 6 from my testimony on 69.
2 Exhibit 69, excuse me.

3 BZA CHAIR HILL: Mr. Young, if you could do that,
4 please.

5 MR. RUEDA: There. If you focus your attention,
6 if you're deliberating later, or maybe you're not going to
7 deliberate at all, the fact is, is that this drawing sets out
8 to show how they don't even, you know, in the one graphical
9 representation that they have, they don't even get it right,
10 to show you how this building was actually built. Right?

11 This is barely a modification of what was
12 submitted for permit, which does not represent all of the
13 changes that were made in construction to achieve what they
14 have out there right now. Right?

15 The discrepancies are significant enough to show
16 that relief cannot be granted because a complete and accurate
17 submission has not been made to allow the changes to the
18 architectural elements.

19 A BZA approval would allow the noncompliant
20 elements to remain as built. And I guess, unless there's
21 some questions, I'm going to conclude my testimony. I have
22 submitted in the record, obviously 69, and I can't remember
23 the other number, 51, which obviously are reviewable and a
24 part of the record.

25 BZA CHAIR HILL: Thanks, Mr. Rueda. I'm just

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 pulling it up here. Okay. Let me turn first now to the
2 Office of Planning and then we'll come back for questions.
3 Go ahead, please, the Office of Planning.

4 MS. MYERS: Myers with the Office of Planning.
5 The Office of Planning is recommending approval in this case.
6 I will go through how we got to the approval recommendation.

7 The first thing I'll just note is that our report
8 was filed a year ago, and the zoning regulation citations are
9 a little different today, but the criteria is still
10 essentially the same.

11 So we recommended approval under the X900 general
12 special exception criteria. We pretty much relied on the
13 fact that it met the specific porch rooftop criteria, and so
14 therefore it met the general, so when you look at the general
15 purpose and intent of the regulations, we felt that because
16 it met, at the time it was E5207, it met this criteria.

17 And then the other one saying, does it adversely
18 affect the neighboring properties, again because we felt it
19 met the specific criteria of E5207, which is supposed to look
20 at the specific potential impacts to the adjacent neighbors,
21 we felt that it did meet that criteria as well.

22 As for the specific criteria under E5207, and just
23 a slight note, we only looked at porch roof for this case.
24 So for the porch roof, we felt that it did not substantially
25 adversely affect the neighbor's light and air. Well, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 proposed construction shall not have substantially adverse
2 effect on the use or enjoyment of any abutting adjacent
3 dwelling or property.

4 And for that, we specifically looked at light and
5 air, it's just a porch roof, it has columns, but otherwise
6 does not, there's no prevention of light and air being able
7 to flow between the neighboring properties. So we did not
8 feel that this porch roof substantially impacted the
9 neighbor's light and air.

10 When it came to the privacy and use and enjoyment
11 of the neighboring properties, the porch roof is not blocking
12 the neighbor's property. We did not feel that there was any
13 significant level of blocking the neighbor's, their porch
14 roof or their property.

15 So again, we did not feel that they'd met the
16 criteria of being an undue compromise to the adjacent
17 neighbor's enjoyment of their property. They could still be
18 on their own porch roof without this porch roof impacting
19 them to a substantial level, and when it comes to the, how
20 it is constructed and how it appears on the street.

21 As has been discussed earlier, there are other
22 examples of porch roofs that are slightly different in height
23 from neighboring porch roofs and even though this one is
24 higher than the adjacent neighbors, we did not feel it was
25 at a level that would be substantially impactful to the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 visual character of the street.

2 And with that, I can conclude our testimony. I
3 mean again, we recommend approval because of those criteria.
4 We did note in our report that it looked like there may be
5 some other relief needed in this case, but only porch roof
6 was requested, and so that's all we focused on. Thank you.

7 BZA CHAIR HILL: Thank you. Let me see. Okay.
8 Mr. Smith?

9 MEMBER SMITH: Okay. Thank you. Ms. Myers, you
10 noted, in your staff report, and in your testimony now, that
11 there were other porch roofs that were of a substantial
12 difference in height or that support your position that is,
13 that this difference in porch roof height isn't substantial.
14 Which particular porch roofs did you take a look at along the
15 block to substantiate your claim on that?

16 MS. MYERS: You can specifically see across the
17 street, there are examples where there is absolutely no porch
18 roof for some of the houses. And I think the applicant
19 provided some examples of differing porch roofs as well. We
20 did not measure the porch roofs, so the specific height of
21 the different ones, I would not be able to say much on.

22 But just saying that there are other porch roofs
23 along the street that differ, there are examples of that.
24 And I would also note that this is not a historic district,
25 so we don't have the same level of strictness when it comes

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 to looking at porch roofs that perhaps our historic
2 preservation staff folks do.

3 MEMBER SMITH: Okay. And just one more follow-up
4 question with this, and it's probably more of a broader
5 technical question, when the office of planning looks at
6 these because we, I think we've seen a couple of these
7 lately.

8 There was one that was in Trinidad, a matter of
9 fact, on Florida Avenue that was fairly similar in nature to
10 this case. Just from a technical analysis of how the Office
11 of Planning looks at these, at what threshold is a porch
12 height differential substantially different, when will it be
13 considered different, or visually intrusive to the Office of
14 Planning? Is two feet not visually intrusive?

15 MS. MYERS: Well I mean, we always say with that
16 type of question, every case stands on its own merits, and
17 so I really wouldn't be able to weigh in on hypothetical
18 situations. We'd have to review each case individually.

19 MEMBER SMITH: Okay. And the office of planning
20 doesn't typically ask for heights of adjacent porches, or not
21 porches. I would say, rooftop elements in these particular
22 cases, the adjacent ones, or along the block to do some level
23 of a comparison, of a similarity and differences?

24 MS. MYERS: I mean, I personally have not asked
25 for that before. I guess if there was a, perhaps a situation

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 where there was a drastic difference, and I wanted the
2 adjacent neighbor, maybe that would have been something I
3 would ask. But did not ask for that in this case.

4 MEMBER SMITH: Okay. All right. Thank you so
5 much.

6 BZA CHAIR HILL: Thank you --

7 MEMBER SMITH: Chairman, I'll turn it back over.

8 BZA CHAIR HILL: Thanks Mr. Smith. Does my board
9 have any more questions of the Office of Planning? Okay Ms.
10 Batties, do you have any questions of the Office of Planning?

11 MS. BATTIES: I have one clarification, because
12 Ms. Myers is correct. The report notes that additional
13 relief may be needed, but at the time, it was a discussion
14 about the rear yard, whether relief was needed for the rear
15 yard and the dotted zoning administrative determination, back
16 when the question was raised, that relief wasn't needed for
17 their rear yard. So that was the issue on the table at the
18 time. We've never talked to the Office of Planning about the
19 cornice.

20 MS. MYERS: I will say that I don't recall the
21 rear yard discussion. I'm not saying you're wrong. We just
22 noted that there may be some additional relief. I, you know,
23 I wouldn't want to specify further than that, but just in
24 general, we thought that there may be some additional relief
25 in this case. But again, we looked at it, it's a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 self-certified, and so we just stuck to what the
2 self-certification asked for.

3 MS. BATTIES: Thank you.

4 BZA CHAIR HILL: Okay. Mr. Holmes, do you have
5 any questions of the Office of Planning?

6 MR. HOLMES: I suppose my only question specific
7 to the Office of Planning would be that it's been stated that
8 they looked exclusively and only at the porch roof. My
9 belief is that the porch roof, the location of the porch
10 roof, is intrinsically tied to the building, the porch, the
11 windows, the doors, the pent roof, and is the Office of
12 Planning's position that these things are not related? Are
13 not relevant to a consideration when the porch roof is so
14 intrinsically resultant of the rest of these design
15 decisions?

16 MS. MYERS: We're restricted by what zoning allows
17 us to do when it comes to our review and this was
18 specifically just porch roof, rooftop element section of the
19 subtitle e-regs and we really can't go beyond that.

20 I mean, sometimes Office of Planning may ask the
21 applicant to follow up with the zoning administrator if we
22 think that something else may need looked into. But at the
23 end of the day, our responsibility is just to follow with
24 what the zoning that has been asked for, what the relief for
25 that specific section, and we cannot go beyond that.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 MR. HOLMES: Thank you, ma'am. And because I'm
2 not very technically deep here, I would like to see if my
3 architect, Mr. Rueda, might have any questions. I don't know
4 if he does or not.

5 BZA CHAIR HILL: Thank you. Mr. Rueda?

6 MR. RUEDA: I don't have any questions for the
7 Office of Planning. I understand the limitations under which
8 they express their opinion. Thank you.

9 BZA CHAIR HILL: Okay. Mr. Young, is there anyone
10 here wishing to speak?

11 MR. YOUNG: We do not.

12 BZA CHAIR HILL: Okay. So, Mr. Holmes, what I've
13 been, and I, you know, you guys, I don't know how long you've
14 been watching, but so those in opposition will have an
15 opportunity to give a conclusion, and then also the applicant
16 will. So do you have any kind of conclusion you'd like to
17 give, or would you like Mr. Rueda to give a conclusion?

18 MR. HOLMES: Let me bring up one thing that I did
19 just right now find on a different cell phone, and I think
20 is relevant to the porch roof specifically. If we can pull
21 up Document Number 38, this is actually the ANC's report, and
22 I was able to locate it because I recalled there being a good
23 pictorial there. So if we can pull up 38 and then once it's
24 open, move to slide seven.

25 BZA CHAIR HILL: While you're doing that, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Young, commissioner, oh God, Salazar can you hear me? Not
2 Salazar.

3 MR. SAUCEDA-GUZMAN: Salvador. Yes, sir?

4 BZA CHAIR HILL: Salvador. Salvador.
5 Commissioner Salvador, did you have any questions for the
6 Office of Planning?

7 MR. SAUCEDA-GUZMAN: Yes, just a quick question,
8 I guess. When it comes to these kind of projects, how can
9 we prevent them from happening less in the community when
10 it's, when the community is reading it as a grotesque
11 approach on what can and cannot be done?

12 BZA CHAIR HILL: I don't know if the Office of
13 Planning would have an answer to that.

14 MS. MYERS: Yes, I don't know if there's really
15 much I could say on that. You know, your recourse would be
16 to, I guess, follow up with DCRA or DOB but, and come to
17 these hearings, but there's not much more I would be able to
18 say on it.

19 MR. SAUCEDA-GUZMAN: Okay. that's all. Thank
20 you.

21 BZA CHAIR HILL: Commissioner, I guess this is
22 where we are kind of continuing to circle around, you know,
23 they, this applicant, is here for a specific kind of relief
24 that they're asking for. And that's what the Office of
25 Planning has looked at, and that's what we will look at.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 So different types of plans that you might see,
2 I guess, would be those that you, you know, that are coming
3 across the ANC's desk if there is a request asked for, that's
4 when you would probably see them. I don't know if that's
5 helpful or not. Go ahead Mr. Rueda.

6 MR. RUEDA: I just wanted to add, that in the case
7 that you just cited, drawings would not have been effective
8 in conveying what they were proposing to do if they were
9 coming to ask the ANC because they've made changes during
10 construction that completely altered what was permitted.

11 BZA CHAIR HILL: Well what I mean is that, Mr.
12 Rueda, like this, they, the ANC saw this application with
13 this roof the way it is proposed.

14 MR. RUEDA: No, no. That's not that's not right.
15 I mean, if the proposed change is being, the special
16 exception relief is requested as a result of construction
17 that was done after approval of the permit.

18 BZA CHAIR HILL: Right. Correct.

19 MR. RUEDA: So you don't have a permit to build
20 that roof. They are asking you for relief from the zoning
21 statute so that they can go back and get a permit, in theory.
22 Or to leave it alone and let it remain as is. That's the
23 difference in this specific case. Right?

24 In a normal situation, you're right. They would
25 come, they'd show the porch roof, they'd say, we're going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 be going for special exception. This is how we intend to
2 build it because it benefits our project. But in this case,
3 this is a retroactive approval.

4 BZA CHAIR HILL: Correct. But they still had to,
5 well I'll get back to the applicant, thank you Mr. Rueda.
6 The applicant did come before you for something. Correct,
7 Commissioner?

8 MR. SAUCEDA-GUZMAN: After this was already done.

9 BZA CHAIR HILL: Yes. But they still came before
10 you for this rooftop element.

11 MR. SAUCEDA-GUZMAN: Correct. Correct.

12 BZA CHAIR HILL: Yes.

13 MR. SAUCEDA-GUZMAN: And we disapproved.

14 BZA CHAIR HILL: Yes, you disapproved. I mean,
15 whether or not it's there or not, it's basically hypothetical
16 because they're here for relief. Whether or not they get
17 that relief doesn't matter. I mean, we're here whether or
18 not we're going to grant this relief. If it's not granted,
19 they then have to tear the porch roof down. Right?

20 So they're not getting something retroactively.
21 It's built, so therefore, you could consider it retroactive,
22 but I'm saying it hasn't been approved yet. And so they did
23 go to the ANC to get approval for this porch roof. The ANC
24 said no. So they did go through the steps that they were
25 supposed to go through.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 What I'm trying to help, with the Commissioner,
2 and I don't know whether I'm helping or not is how would
3 other things perhaps be noticed in the future, and there
4 wasn't necessarily a good answer for the Commissioner. And
5 I might be muddying the waters, so I will now move on. Okay.
6 So Mr. Holmes, you wanted us to pull up a slide. Correct?

7 MR. HOLMES: Exhibit 38, thank you.

8 BZA CHAIR HILL: Yes. Exhibit 38, slide 5.

9 MR. HOLMES: Slide 7.

10 BZA CHAIR HILL: Oh.

11 MR. HOLMES: Thank you. And so, what this is
12 showing, and this is the ANC report, I think it's one more
13 slide. This one, yes. Thank you. What this is showing is
14 a walk down the entirety, one end of the street to the next.

15 There are 37 homes on the north end of the 1200
16 block of Oates Street. And what this is showing from one
17 property to the next is that each individual roof, here's
18 Picture, at the bottom, Picture Number One of Five, each roof
19 has a delta that is about six inches.

20 I mean, they are step functions, gradually
21 increasing at the same height. If you go to the next page,
22 slide 8, two more photos, and again, these are showing
23 gradual increases or gradual decreases. Next slide, Page 9,
24 the same.

25 So what you have across these five photos is 37

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 houses where every single porch roof differs by the same step
2 function until you get to photo 5 of 5, which shows the 1212
3 Oates Street roof, which is significantly different compared
4 to all the other 37 houses. And so, from my perspective, I
5 do believe that is a substantial, visible change. And that's
6 all I wanted to convey at this point. Thank you very much.

7 BZA CHAIR HILL: Thank you, Mr. Holmes. Okay.
8 So, that was the applicant's conclusion. Or Mr. Holmes, is
9 that not your conclusion?

10 MR. HOLMES: I suppose that's my conclusion unless
11 Mr. Rueda has anything else he would like to add from a more
12 technical standpoint than me.

13 MR. RUEDA: I really have no other conclusion to
14 offer. I think that the only thing I would like to reiterate
15 I suppose is the fact that, in this case, if you go to the
16 applicant's own exhibit and test them, and rationale for
17 acceptance of the special exception, is that the building is
18 compliant for building height.

19 And in this case, it's neither compliant for
20 building height, overall measurement, or for number of
21 stories because of the changes that they made to the porch
22 in total and the building as Mr. Holmes has stated and,
23 whereas I'm not asking you to rule on that specifically, I
24 am asking that that be challenged, that self-certification,
25 that statement that they comply is challengeable as evidence

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 of support for no undue effect.

2 I think the fact that this thing has been
3 radically changed, it counters all of the development
4 standards, or the more important development standards, of
5 our RF-1 zones. Thank you.

6 BZA CHAIR HILL: Thank you, Mr. Rueda. All right.
7 Ms. Batties, do you have any, I forgot to ask this, do you
8 have any rebuttal and, or, do you want to do rebuttal and
9 conclusion?

10 MS. BATTIES: Some closing remarks. Just a few
11 points. If the property does not comply with the technical
12 requirements of the zoning standards and development
13 standards, that is an issue for DOB. That's not an issue
14 that's before the board.

15 The only issue before the board is whether or not
16 the porch at this current location substantially and unduly
17 compromises the adjacent property. The railings are open.
18 The columns that support the porch roof are open. There's
19 nothing that prevents the adjacent property owner from using
20 his porch. There's nothing that interferes with the privacy.

21 And while there are, there is an adverse impact
22 in terms of can he, you know, look directly across 1212 Oates
23 Street to the neighbor on the other side, it is not
24 substantial in nature. It's not unduly compromised. He can
25 do it.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 And so that's the standard of review. That's
2 before the BZA for the reasons that are listed in our filing
3 and for the reasons reiterated by the Office of Planning.
4 We, the Applicant, is of the position that the application
5 meets the standard of review, and we respectfully request the
6 board's approval. Thank you.

7 BZA CHAIR HILL: Okay. Thank you. All right.
8 Does anybody have any more, we have three more cases, do
9 anyone have any more questions? Okay. Oh, wait. Mr. Blake.

10 MEMBER BLAKE: One quick question. Ms. Batties,
11 could you please just verify with me what your intentions are
12 with regard to the cornice? Are you saying that you will,
13 if necessary, address it or you will address it?

14 MS. BATTIES: We will have to address it. So the
15 intention at this point is to replace it at its original
16 height. If --

17 MEMBER BLAKE: Okay.

18 MS. BATTIES: -- that cannot be achieved, we come
19 back before the board but at this time, that is the intention
20 of the applicant.

21 MEMBER BLAKE: Okay.

22 MS. BATTIES: To replace it at its original
23 height.

24 MEMBER BLAKE: Okay. Thank you. Mr. Chairman,
25 the one question I have, as, in looking at that, I understand

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 that that is, they will do that, they're saying they're going
2 to do that. Would it be appropriate or not to have a
3 condition that requires that? Or would it be more
4 appropriate just to, since they represent, they're going to
5 do it, it's not in the plans that they would do it, but it's
6 -- do you think it would be necessary to put a condition in
7 for that, or do you think that's fine as stated?

8 BZA CHAIR HILL: We can talk about that, or my
9 fellow board members. I personally, at this point, I think
10 that if they come back, you know, if they need to come back
11 before us, they will.

12 And this is, again, getting into the area where
13 we're trying to find out what things we think they need and
14 then they come before us. So I would not be in favor of that
15 as a condition right now.

16 But yes, unless somebody else wants to raise your
17 hand. One way or the other. I don't know, it seemed as
18 though the vice-chair was seconding my opinion but it's been
19 late in the day, so I don't know who I'm hearing or if I'm
20 just hearing voices, you know.

21 VICE-CHAIRPERSON JOHN: Mr. Chairman, I agree.
22 We should look at what's in front of us and the cornice is
23 not shown in any diagrams or plans so I think your initial
24 suggestion makes sense.

25 BZA CHAIR HILL: Okay. All right. I'm going to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 go ahead then and close this hearing and the record. Thank
2 you all very much for being with us on a very long day. Mr.
3 Holmes, I know that this is not, did I lose Mr. Holmes
4 already? I did. Oh, well. Anyway, everybody's getting
5 kicked out.

6 Mr. Holmes, it's been a long day. Thank you all.
7 Mr. Rueda, thank you all for being with us and unfortunately,
8 so much of this brings so many people's passions into play
9 because it's their homes that are being affected so, but I
10 appreciate the time. All right.

11 Everybody's been let go of the hearing, I think.
12 I mean, I think it's relatively straightforward. Like, I
13 think, you know, we have, this again gets into where, what
14 issues are before the board, and the board has been asked for
15 a special exception from the rooftop architectural elements
16 with regard to the height of the porch. And the porch is 18
17 inches higher than other porches.

18 Now, there are other items that have been brought
19 up that aren't within the board's purview currently. And so
20 all I know that we're supposed to focus on is that porch
21 element. And if they come back for the cornice, then they
22 come back for the cornice.

23 I think that the Office of Planning, in what they
24 have stated, is that when they're looking at that porch
25 element, the light and air is not going to be affected

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 adversely on the neighbors.

2 As they said, the columns are there, the open
3 railings are there, and I also have to agree with the Office
4 of Planning. I don't think the 18 inches is really an undue
5 impact or something that I think would keep me from voting
6 no on this. So I'm going to be voting in favor of the
7 application. I'm going to ask Mr. Smith what he thinks.

8 MEMBER SMITH: So we've been grappling with these
9 types of cases for a while now. And as I stated earlier, we
10 saw one relatively close to this site in early 2023 or late
11 2022, I don't know. You know, Chairman, I feel like I'm here
12 just as long as you have been here, man. You know, it's just
13 all the years are just running together for me, now.

14 And we do have a set of criteria that we have to
15 evaluate these particular cases on. So regarding light and
16 air I do believe that the applicant, the way that this is
17 designed, with open railings and an open air porch, it does
18 not affect the light and air to the adjacent properties.

19 But where I disagree is that I do believe, and
20 we're on record, from the Office of Planning saying that they
21 have not conducted an actual measurable analysis of porches
22 along this side of the street. And I am on record multiple
23 times on this particular case, or this type of case, of I
24 would like to see that.

25 I would like to see some level of a measurement

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 of the porch heights and the differentials in heights of
2 porches and other rooftop elements when they have been
3 changed or, if they are being, or be or what is coming before
4 us, is a request for that type of change, for us to do a
5 technical analysis on the visual impact just as we ask for
6 that type of technical analysis for some studies.

7 And I don't think what I'm asking for is
8 difficult. Other jurisdictions do it outside of the District
9 of Columbia. And there isn't anything within the zoning
10 regulations that state that this can't be done. So I do not
11 believe that the Office of Planning has conducted a thorough
12 enough analysis to come to the conclusion that the privacy
13 and use and enjoyment of the neighboring properties has not
14 been unduly compromised.

15 There is a substantial difference in the height
16 of the floor of the porch itself. I know that's not what's
17 before us. And there is a two-foot differential between the
18 height of the, after the fact constructed porch. I do
19 believe that that is a substantial visual intrusion along the
20 street.

21 To say nothing about the removal of the full
22 Mansard roof here, which also, given the scale and size of
23 this third floor addition, I think without this, creates even
24 of a more visual intrusion. So I do not believe that this
25 case or what has been presented to me today, has been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 sufficiently analyzed by the Office of Planning to be able
2 to make the determination that they made, and I will not
3 support that application.

4 BZA CHAIR HILL: Okay. Let's see. Mr. Blake?

5 MEMBER BLAKE: It's an interesting case. It's
6 very complicated in some regards, but simple in others. I
7 think that on the most basic element, it does meet the
8 requirements for the relief. The issue of visual intrusion
9 is the one that stymies me as well.

10 I think that the privacy issue is not compromised.
11 In fact, I think it gives you greater privacy, and we are not
12 guaranteed a view across all our neighbors. But I do think,
13 and I don't think the air, light and air, has impacted all
14 as well, but I do think there is an element of visual
15 intrusion.

16 That said, the record does support consistency
17 that is not, I mean, it could be a complete divergence from
18 it, but on this narrow definition, and looking specifically
19 at the porch itself, I do think that the applicant has met
20 the burden of proof to be granted the release. So I'm going
21 to be in support of the application.

22 BZA CHAIR HILL: All right. I'm going to go a
23 little out of order. Vice-Chair John?

24 VICE-CHAIRPERSON JOHN: So I wasn't sure where I
25 was going to be on this case. I think that there could be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 an argument that the 18-inch, that the porch roof, which is
2 18 inches higher, does substantially, visually, intrude on
3 the neighborhood character.

4 On the other hand, there are other houses along
5 the block that don't have porch roofs, like the one we saw,
6 the applicant showed with the little tiny overhang. And I
7 think there's some houses that actually don't have porch
8 roofs. So it's not that much of an outlier for me.

9 But I also agree with Board Member Smith that the
10 Office of Planning could have given us a more detailed
11 analysis of what the block face looks like so that I wouldn't
12 have to consult Google to see what the houses look like.

13 And that would have been a more complete record
14 for me. And I know the board, I don't believe, and OZLD will
15 remind us, that we're not allowed to rely on Google for
16 completing the record. Much as we would like to take a quick
17 look to see what the block look like.

18 And I used to think at one point that as long as
19 we disclosed that we had, you know, Googled the street and
20 seen what the block looked like, that there would be no error
21 there, but I believe we were advised that we should have this
22 properly entered into the record, even if we disclosed that
23 we looked at the Google Maps on the Street View.

24 So, but as to this case, I think there are
25 pictures in the record that show different roofs and so I,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 it's a difficult case, and so I'm inclined to support the
2 application even though I realize that the record could be
3 more complete.

4 BZA CHAIR HILL: Okay. Thanks, Ms. John. Yes,
5 I guess they did have the pictures of the things across the
6 street, and in the future we can talk with OZLD, and ask
7 Office of Planning, if there's a way to have different kinds
8 of information. And again, I want to state that, you know,
9 we are looking at this narrow scope of relief that's being
10 requested, which is the rooftop element.

11 VICE-CHAIRPERSON JOHN: Right.

12 BZA CHAIR HILL: And so, Commissioner Stidham?

13 MEMBER STIDHAM: It is a tough case, and we are
14 looking at a very narrow portion, so I keep bringing myself
15 back to the very narrow portion that we're looking at and the
16 bar that we're trying to evaluate, does it have substantially
17 adverse effects on the use and enjoyment, and then the land
18 and air availability.

19 I agree with Commissioner Blake regarding, I don't
20 think that it substantially hinders the neighbors or is in
21 conflict with the neighborhood. So I'm in support of this
22 case.

23 BZA CHAIR HILL: Okay. Thank you. And thank you
24 everyone for all your time today. Mr. Smith, if you can mute
25 yourself, I think you're still maybe unmuted or, okay,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 whoever is unmuted, am I unmuted? Oh yes, I'm unmuted.
2 Okay, and I'll mute myself in one second. I'm going to make
3 a motion to approve application number 20853 as captioned by
4 the Secretary and ask for a second Ms. John?

5 VICE-CHAIRPERSON JOHN: Second.

6 BZA CHAIR HILL: Motion made and seconded. Mr.
7 Moy if you take a roll call.

8 MEMBER MOY: When I call your name, if you'll
9 please respond to the motion made by Chairman Hill to approve
10 the application for the relief requested. Motion to approve
11 was seconded by Vice Chair John. Zoning Commissioner
12 Stidham?

13 MEMBER STIDHAM: Yes.

14 MEMBER MOY: Mr. Smith?

15 MEMBER SMITH: No.

16 MEMBER MOY: Mr. Blake?

17 MEMBER BLAKE: Yes.

18 MEMBER MOY: Vice Chair John?

19 VICE-CHAIRPERSON JOHN: Yes.

20 MEMBER MOY: Chairman Hill?

21 BZA CHAIR HILL: Yes.

22 MEMBER MOY: Staff would record the vote as 4 to
23 1 to 0. And this is on the motion made by Chairman Hill to
24 approve. Motion to approve was seconded by Vice Chair John.
25 Board members voting to approve the motion, to approve our

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 zoning Commissioner Stidham, Mr. Blake, Mr. John, and
2 Chairman Hill. Voting to deny or oppose or disapprove the
3 application is Mr. Smith. So again, the motion carries on
4 vote of 4-1-0.

5 BZA CHAIR HILL: Okay. Thanks, you guys. I think
6 we just keep chugging along. Right? Okay. Because I'm not
7 buying you all dinner. I'm just teasing, I'd happily buy you
8 all dinner. Okay. Next case, Mr. Moy, when you have an
9 opportunity?

10 MEMBER MOY: The next case before the board is
11 Application No. 20996 of 106 13th Street, LLC. This is a
12 self-certified application pursuant to subtitle X, section
13 1002. This is for a use variant from Subtitle U Section 301
14 to allow a restaurant use on the second floor of an existing
15 building. Properties located in the RF-1 zone at 106 13th
16 Street Southeast square 1036 Lot 60.

17 And, let's see, and, to remind the Chair and the
18 Board, we have about a half dozen individuals signed up to
19 testify in support, I believe, and the ANC 6B Commissioner
20 is in the panel, Mr. Chairman. And that's all I have. Thank
21 you.

22 BZA CHAIR HILL: Okay, great. If the applicant
23 can hear me, please introduce themselves for the record.

24 MS. WILSON: Alex Wilson from Sullivan & Barros
25 on behalf of the applicant in this case.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA CHAIR HILL: Well, good evening, Ms. Wilson.
2 So nice of you to join us. All right. Let's see. Ms.
3 Wilson, if you want to go ahead and walk us through your
4 client's application and why you believe they're meeting the
5 criteria for us to grant the relief requested, I'm going to
6 put 15 minutes on the clock just because, and we'll see where
7 we get. And you can begin whenever you like.

8 MS. WILSON: Great, thank you so much. Before I
9 begin, I know there are a lot of people signed up to testify,
10 in addition to the ANC reps, and so I think the community has
11 picked four or five people to represent their viewpoint, not
12 in an official capacity, but just to avoid having everybody
13 say the same thing and save some time.

14 So when that time does come up, I'm happy to give
15 Mr. Young the names of the people who want to speak first.
16 It wouldn't limit anyone else's testimony necessarily.
17 Obviously, if anyone wanted to add, they could, but just to
18 speed up the process since there are a lot of people signed
19 up. So just wanted to note that.

20 BZA CHAIR HILL: Great, thank you.

21 MS. WILSON: Of course. If Mr. Young could also
22 please pull up the presentation. And I do want to note, I
23 think some of the, there's about 25 employees at the
24 restaurant, and they might be joining too if they're not
25 already logged in and someone might speak for them as well.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Next slide, please. Thank you.

2 So this property is located in the RF-1 zone.
3 It's improved with a two-story building and a cellar. The
4 first floor has, and has had for 80 years, a C of O for an
5 eating and drinking establishment use. In BZA case number
6 20445, the applicant was granted a use variance to expand
7 that use to the cellar floor of the building.

8 The applicant originally requested to expand the
9 restaurant use to the second story also, but amended its
10 request to only include that cellar level to not delay any
11 restaurant functions or operations with the intention to come
12 back later with more substantial evidence in support for
13 variance approval for that second floor.

14 The restaurant opened in early 2023. It's
15 received glowing reviews and is supported by the
16 neighborhood, but it is struggling financially due to its
17 limited space. And that second floor, which was previously
18 part of a legally non-confirming use, a deli use, has
19 remained vacant, and market conditions coupled with expense
20 and disruption to the restaurant make it infeasible for
21 modification into a legal residential use.

22 Accordingly, the applicant is requesting use
23 variance relief to expand the existing restaurant to the
24 second story at this time. While the request itself is the
25 same, we have been able to pull together more detailed

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 arguments and evidence this time to support the request.

2 We even pushed the hearing, I think, from October,
3 November to today to get even more information into the
4 record. So this includes testimony from an architect in, you
5 know, providing more detail on how the restaurant space will
6 be impacted if this is brought up to code for residential use
7 and a detailed report from a real estate agent supporting the
8 hardship related to actually renting out the second floor as
9 a residence, as well as confirming it's a unique property,
10 as no comps or found for a similar rental situation.

11 We have a letter from a restaurant and hospitality
12 expert in the industry, noting that the restaurant will not
13 be successful long-term without the relief, and finally,
14 substantial neighborhood support, including support from the
15 next-door neighbors that sheds light on the history of the
16 second floor uses.

17 And so, we really did want to get all of that into
18 the record, so we weren't just repeating the same case from
19 2021. Next slide, please. In terms of support, the
20 application has unanimous ANC support from both ANCs 6B and
21 6A.

22 We did have neighborhood support in the previous
23 application, but since Pacci's is open, the neighborhood has
24 really gone out of their way to show support. They want this
25 family-friendly restaurant in their neighborhood across from

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 their local park.

2 I know many neighbors signed up to testify. There
3 are over 80 letters in support on the record, and people have
4 also reached out to Council Member Allen, who filed a very
5 thoughtful letter addressing the variance analysis and impact
6 on the community.

7 In the beginning of his letter, he states, "I
8 rarely comment on zoning matters, but I find this to be a
9 rather unique situation that is unlikely to find a solution
10 elsewhere. As much as I am rooting for the success of
11 Pacci's and Mr. Gioldasis, the applicant, I write on behalf
12 of the many Ward Six neighbors who live near the restaurant
13 and have been frustrated for many years with the high rate
14 of turnover at this neighborhood location over the past
15 decade.

16 Since Park Cafe closed in 2013, there have been
17 two restaurants that have opened and closed in this location.
18 And many years where the building and block sat inactive
19 directly across the street from Lincoln Park, a hub of
20 activity and community gathering. The applicant reports he
21 may become the third failed endeavor in this last decade if
22 there is no change, and I find that quite credible." Next
23 slide, please.

24 Before I get into the variance argument, a little
25 bit about the restaurant, it's called Pacci's, and it is a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 family-owned restaurant offering authentic Neapolitan pizza,
2 pasta, seafood, and favorite Italian sweets.

3 At the last hearing, it hadn't been open, and now
4 that it's open, it's received glowing reviews, and a quick
5 Google search will show at least 70 more reviews like that
6 just raving about the food and experience and that's just
7 within the last year.

8 And in this case, because we are talking about the
9 viability of a restaurant, I think it's important to
10 establish that it is a highly rated restaurant. Next slide,
11 please.

12 Regarding the history of the property, that first
13 floor has always been used for an eating and drinking
14 establishment for food-related uses, and that's been the
15 primary use of the building.

16 In 1987, all three levels, including that second
17 floor, were approved for deli use. And then in 1990, the use
18 was changed back to restaurant from deli with seating, but
19 only on the first floor. And it's not clear why they didn't
20 keep the second floor, but it was effectively abandoned at
21 that time. And we checked DOB records and we couldn't find
22 any other licensing or approvals for that second floor since
23 the 1987 C of O. Next slide, please.

24 And this is the certificate of occupancy. This
25 is also in the record, but I just wanted to include it here.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 You can see it a little better. Next slide, please. So this
2 is a photo of the first floor, which is really small, 1,350
3 square feet. And so only a portion of that, of course, is
4 available for seats when you factor in the kitchen and
5 bathrooms, places for staff to input orders, host to stand,
6 that type of thing.

7 And to quote one of the neighbors who put
8 testimony into the record, "Despite the success and
9 popularity of Pacci's, I understand that it is facing the
10 same obstacles as every other occupant before it, because the
11 ground floor space simply cannot hold enough seats to make
12 the restaurant use viable. If nothing changes, the space
13 will continue to turnover, which is not good for the
14 neighborhood." Next slide, please.

15 So the cellar was approved in the case in 2022,
16 and so there is some hope that maybe that would offset the
17 issue of not being able to expand to the second floor. But
18 the neighbors have testified that this area is really
19 undesirable, and many declined to eat here if these are the
20 only seats available because there aren't any windows.

21 And if, I, at the last hearing, this was part of
22 the argument against having it converted to residential use
23 for code reasons, you can't get windows down here, so it
24 couldn't be brought up to code for residential use and that's
25 impacting the restaurant use as well. Those who have reached

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 out to Council Member Allen have raised similar issues as he
2 states in his letter. Next slide, please.

3 So the only --

4 MEMBER BLAKE: I have a quick question, Ms. -- I'm
5 sorry, I just drifted.

6 MS. WILSON: Yes.

7 MEMBER BLAKE: Can you, how many seats are in that
8 first, in that basement level?

9 MS. WILSON: Let me look. I put it in the record,
10 but I don't recall offhand. Mr. Gioldasis should be on and
11 he can answer.

12 MEMBER BLAKE: Okay. Thank you. We can just skip
13 that. Thank you.

14 MS. WILSON: Sure.

15 VICE-CHAIRPERSON JOHN: Mr. Chairman, Ms. Wilson,
16 can you talk at some point during your presentation about
17 whether there are any uses allowed by special exception.
18 Your entire presentation is focused only on residential use
19 as the only possible option.

20 (Whereupon, the above-entitled matter went off the
21 record at 5:38 p.m. and resumed at 5:38 p.m.)

22 MS. WILSON: Sure. We focused on the matter of
23 right uses, the main one and the zone is residential, but I'm
24 happy to supplement the record or at the end -- or have Mr.
25 Sullivan look for some special exception uses and we can

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 speak to that at another presentation.

2 VICE CHAIR JOHN: Okay.

3 MS. WILSON: Absolutely. All right. So the only
4 use on the record for this second floor is a deli use. There
5 isn't any evidence that it was legally rented. And I'm not
6 saying that it wasn't inhabited or lived in at some point.
7 There just aren't any records of it in licensing and having
8 gone through any inspections. There aren't any CFOs for
9 multiple units despite multiple kitchens. And again, while
10 I can't say with 100 percent certainty, it's likely the space
11 was not inspected for residential use given this layout with
12 two kitchens and the lack of infrastructure required for this
13 building to actually have the split use. And I just received
14 information, there are 28 seats in that basement.

15 Next slide please. Regarding the variance test,
16 there are compliments of factors that create an exceptional
17 situation. I talked about the history of property. The only
18 evidence that people have lived here or stayed at some point
19 is anecdotal. The Moffett's have lived next door to this
20 property for 20 years. They were going to testify today, but
21 they had to go due to the late hour. They do have testimony
22 in the record supporting the fact that the previous owner
23 allowed his daughter and boyfriend to use the second floor
24 at some point. There's anecdotal information about an
25 employee perhaps staying above when necessary. But again,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 there's no paper trail or history of any owner successfully
2 renting that apartment on the open market. And inability to
3 rent that space or use it for commercial purposes certainly
4 impacted the success of the past businesses.

5 This is all to establish that the situation is not
6 as simple as just keep using this as a residence. And so
7 again, I think in an effort to open the restaurant, we sort
8 of kicked more argument about this down the road and didn't
9 get into it enough perhaps at the last hearing. And so I'll
10 talk more about this in the undue hardship. But to legally
11 use this space as a residence would require significant
12 changes to the building. And so the upstairs space, which
13 has been neglected and not every brought up to code is part
14 of our confluence of factors creating that hardship.

15 There's a similar case I just want to touch on,
16 BZA Case No. 19578. I know all cases are decided on their
17 own merits. I'm not suggesting this as precedent, but you
18 know, if at the end of the hearing, you find yourself needing
19 more, I think it could be a helpful case to review. The
20 address is 944 Florida. In that case, the first floor had
21 always been used commercially. The most recent use was a bar
22 use and the applicant actually wanted to change that use to
23 another nonconforming use, a hair salon on the first floor
24 and expand it above. Ultimately the Board did grant that
25 relief and found that bringing the upstairs up to code for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 residential purposes would constitute an undue hardship. OP
2 recommended denial there as well.

3 And so one quote I thought was compelling from
4 that order is that "The Board finds that the property's
5 unique history of use and the significant disrepair of the
6 existing second floor residential unit would create an undue
7 hardship for the applicant if it were not granted a use
8 variance to convert the second floor to salon use." And in
9 that case, they didn't get into the viability of the hair
10 salon if it didn't expand. It was all related to bringing
11 that second floor up to compliance for a matter of right use.
12 And I'd argue that this case has additional considerations
13 given the size of the building and how that impacts the
14 viability of the restaurant use. And so that size is
15 critical here. It's only two stories and the first floor is
16 only 1,350 square feet.

17 Next slide please. Regarding undue hardship,
18 neither use can be successful while the other one exists
19 because the building is too small to implement modern code
20 requirements for residential use without impacting the
21 restaurant use. The restaurant will not be able to sustain
22 without the additional seats upstairs. And upgrading the
23 building and employing changes to properly separate the two
24 uses would be a hardship. Without the relief, the applicant
25 will eventually be forced to close the business.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 And I think you probably did have situations in
2 the District like this in the past where some could live
3 above a small shop in one of these smaller row homes, but
4 throughout the years due to perhaps code requirements or
5 other more desirable housing in the area, the model is not
6 sustainable anymore in this location. And we did ask the
7 real estate agent to try and find any comparable properties
8 and she could not find any, which goes to the uniqueness of
9 the situation. Next slide please. And so the
10 first issue or hardship with the second floor for residential
11 space is that it would require upgrades and additional
12 construction to meet code requirements. And these changes
13 would directly impact the viability of the already struggling
14 restaurant. For example, there was originally a vestibule
15 for residential use. This wall was removed by the owner to
16 allow for six additional seats. And so currently there are
17 only 24 seats on the first floor, plus the cellar and those
18 aren't sustaining the operating costs. So without removing
19 that wall separating the residential stair and entrance,
20 there would have only been 18 seats. And so to use the
21 upstairs for the residential use, that wall and vestibule
22 would need to be reconstructed. And we're not suggesting
23 that the cost of reconstructing the wall is factoring in.
24 It did exist before. But the hardship is related to how that
25 wall and vestibule needed for residential use would then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 impact the restaurant use and viability. The restaurant is
2 struggling and using money now. One can only imagine what
3 a loss of six seats would do to the viability.

4 And then there are upgrades that would factor in
5 additional costs, including floor assembly and other code
6 requirements to properly separate the residential use from
7 the restaurant use. The architect, Mr. Demian, should be
8 signed up to testify and he can speak more to this. But
9 practically, obviously the level of construction that would
10 need to occur would impact the current functions of the
11 restaurant to a point where it could never sustain. But even
12 if the restaurant were not open, it's a massive amount of
13 infrastructure for one or two small dwelling units. It would
14 never make economic sense to do that, which is why it's never
15 been done and the upstairs is largely neglected and likely
16 never inspected.

17 And so we submitted the second floor plan from the
18 time of purchase and that configuration included two
19 kitchens. And similar to the other BZA case I brought up,
20 it appeared to be effectively neglected. So it would require
21 a full gut, whether it was going to be used for residential
22 or restaurant in the future. And so as part of our argument,
23 we aren't even considering the cost of getting it to a fresh
24 point because anyone would have been required to do that for
25 any use. But then at the point where you have a space to add

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 either residential features or restaurant features, to add
2 residential features is clearly more expensive. It would
3 require a kitchen, a full bathroom, a toilet, shower and
4 sink, and washer and dryer. And that's obviously more costly
5 than just to add tables and chairs and maybe a host stand.
6 So even if you don't consider this alone to be a hardship,
7 that coupled with a loss of seats and difficulties in finding
8 a tenant to make a renovation worth it certainly constitutes
9 a hardship.

10 Next slide please. And so even if this variance
11 were denied again, it would never make economic sense to do
12 all of those upgrades for one single rental unit or even two
13 units because it will be effectively impossible to rent. And
14 this time, we talked to a realtor who submitted a report
15 about the immediately surrounding area. And so most of the
16 residential uses in the immediately surrounding area are
17 either row homes or located in medium to large mixed use
18 building near the commercial corridor. This makes it
19 impossible to compete with other rentals. And the real
20 estate opinion letter clearly notes the difficulty in
21 competing with other rentals, stating "The space will always
22 be less attractive to potential tenants because there is a
23 commercial restaurant on the main level. Leasing prospects
24 will be hesitant to lease the space out of concern that the
25 commercial space will hinder quiet enjoyment of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 residential space."

2 Next slide please. And then on top of that, the
3 pricing would never make sense as noted by the real estate
4 agent even with mitigation and a renovation, it is likely
5 that the space would only lease for about \$2,000 a month.
6 And the real estate agent could not even find any direct
7 comps of the apartments located above restaurants and row
8 homes. She found one rental unit currently on the market.
9 It's in Capital Hill, located next to a restaurant. And it
10 had been on the market 171 days as of the pre-hearing filing,
11 which was three weeks ago. And so even if the applicant were
12 to invest in these renovations and even if these renovations
13 would not cripple the restaurant, the proximity to the
14 restaurant would ward off potential lessees in favor of
15 other, more traditional apartment buildings with amenities
16 and not in such close proximity to a restaurant.
17 Accordingly, while it is technically feasible to make changes
18 to separate the residential and restaurant use, it does not
19 make economic sense to invest in this type of change to rent
20 an apartment for below market rate that will likely not find
21 a renter for at least six months.

22 Next slide please. The building has primarily
23 been commercial for decades with potential incidental
24 residential use on the second floor. In the original
25 hearing, the applicant successfully argued that the seller

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 level is not suitable for residential use and that would
2 still be the case now. Similarly, the first floor space has
3 never been used for residential purposes, so removing that
4 space and converting the entire building to residential use
5 would also be a clear hardship.

6 So residential use on the second floor is simply
7 not a viable option either. And so again, to attempt to do
8 that residential use, it would require significant funds to
9 rent it below market rate to try to entice renters. I wanted
10 to touch on this a bit because OP mentioned perhaps we are
11 renting it too -- suggesting the rental could be too high.
12 This could be affordable housing. Maybe \$2,000 was too high.
13 I just wanted to point out that it's about the same pricing
14 as Workforce Housing or IZ. And that there are other
15 affordable IZ units in the area. I found two options within
16 a half mile and these would not be located above a restaurant
17 like this. So even in that price range at a lower range,
18 this would still be a less desirable unit.

19 So ultimately if this does not get an approval,
20 the residential use is never an option as it won't work. And
21 the restaurant has been operating for a year without the
22 approval. And so Pacci's will be added to the list of
23 restaurants forced to close without this relief. There are
24 simply not enough chairs to sustain operating costs. And we
25 submitted a letter from an expert in the industry who

1 reviewed the finances and agreed with that assessment that
2 this number of seats does not work. And even without any
3 testimony, the history of this space and the constant
4 turnover shows that this number of seats has really never
5 worked.

6 Next slide please.

7 MEMBER SMITH: Chairman Hill, before we continue
8 with the presentation, I think Mr. Blake has his hand up.

9 BZA CHAIR HILL: Sorry, Mr. Blake.

10 MEMBER BLAKE: Just a quick question. While
11 you're talking about the economic analysis, I did not see
12 that in the record -- the economic analysis. Where is it?

13 MS. WILSON: A letter from a restaurant expert who
14 had reviewed that. I'm not sure we have the economic
15 analysis in the record, but we're happy to submit that.

16 MEMBER BLAKE: Okay. Second question is how many
17 seats would you have on that top floor -- on the second
18 floor?

19 MS. WILSON: Let me look at what we said in the
20 original -- Mr. Sullivan is finding that exact number for me.
21 So while he's looking that up, I will also go back to Ms.
22 John's question. So special exception in this category
23 including what's incorporated from the R zone, it's a
24 community service center, a youth residential care home, U3
25 HAB, clerical residence, daytime care, emergency shelter,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 healthcare facility, and private school. And so most of
2 those are residential related. And given the size and
3 adjacency to the restaurant, I would say that all of the
4 reasons here as to why it's, you know, an undue hardship to
5 convert to residential use would all apply to those uses.
6 I'm happy to answer any further questions on that.

7 (simultaneous speaking)

8 BZA CHAIR HILL: Ms. Wilson -- Everybody mute
9 except for Mr. Smith. Go ahead, Mr. Smith.

10 MEMBER SMITH: I just have one followup question
11 based on Mr. Blake because what I've been hearing throughout
12 this entire presentation has been, you know, very
13 inflammatory or a very powerful statement that I will say
14 that this restaurant will close. This restaurant will close.
15 And we just recently approved this restaurant a couple years
16 ago under the same, you know, conditions and number of seats
17 that they have now. Was this type of economic analysis that
18 you're saying that your expert presented at this point now,
19 was that also done at that particular time based on the
20 number of seats?

21 MS. WILSON: No, it was not.

22 MEMBER SMITH: Okay.

23 MS. WILSON: We admittedly did not provide this
24 amount of information for the record. And I think this is
25 the amount of information needed for this type of approval

1 (audio interference). So no, we did not include that in the
2 last hearing. We didn't have most of this information for
3 the last hearing.

4 MEMBER SMITH: Okay, thank you. And I'll also
5 piggy back on what Mr. Blake is saying. I will welcome that
6 economic analysis as well.

7 MS. WILSON: Absolutely. And the hope is for 60
8 seats on the -- 67 seats on the second floor. So that would
9 be a great increase obviously. And I'll say this is -- this
10 is a two-part hardship, right? So we are talking about the
11 economic viability of the restaurant. That's one part of it.
12 But we're also talking about the fact that this second floor
13 cannot be put to any, you know, use available in the
14 regulations without extreme changes to the building. And so
15 that's another part of it. And I mean, they go hand in hand.
16 One impacts the other. But there have been cases approved
17 that just cover that first part of not being able to convert
18 an upstairs unit or use a neglected upstairs unit for
19 residential use without significant cost as well so I just
20 wanted to note that. And it's, you know, part of the
21 confluence of these factors here.

22 VICE CHAIRPERSON JOHN: So Ms. Wilson, so the
23 owner bought the building, which had separate stairs and
24 removed the stairs and effectively created this situation
25 where now in order to have residential use of stairs, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 stairs have to be put back. Do I understand that right or
2 am I --

3 MS. WILSON: I apologize if I'm not getting that
4 across. At this point, I'd actually like to bring up the
5 architect and neighbor, but Ziad Demian who wrote the
6 analysis and can speak more to this. I think that would be
7 more relevant than having me try to --

8 VICE CHAIRPERSON JOHN: And please characterize
9 for me whether the owner purchased the building with a
10 potential residential unit upstairs that could be accessed
11 by stairs.

12 MS. WILSON: He never removed the stairs.

13 VICE CHAIRPERSON JOHN: Oh, the stairs are still
14 there.

15 MS. WILSON: They're still there.

16 VICE CHAIRPERSON JOHN: So was this a vestibule
17 where you would enter the restaurant on one side and go
18 upstairs to the other side to get up stairs?

19 MS. WILSON: It was just a wall. So there was --
20 There are three doors in the front. And so if you're facing
21 the building, I believe it's the door all the way to the left
22 that would have led directly into a stair. And it would have
23 had a wall separating it from the rest of the building.

24 VICE CHAIRPERSON JOHN: Yeah. (audio
25 interference) the configuration since I've been on the board.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 So I was wondering how this could have existed with a
2 residential unit upstairs if there was no separate door or
3 some mechanism to allow entry of the residential -- to the
4 residential unit by a separate door. So that's good for
5 clarification for me. So there are three doors in the front.
6 One door leads upstairs and the other two -- originally and
7 the other two lead to the downstairs restaurant.

8 MS. WILSON: Correct. And the point in bringing
9 up the vestibule wasn't to say well, now we have to put a
10 wall back. It's more that the existence of that wall also
11 takes away space from the first floor. And so in order to
12 bring it up to code, that's one of the things we'd have to
13 do. Mr. Demian can talk to, you know, can talk about the
14 other code requirements. That sort of -- That goes more
15 towards the hardship whether that vestibule had been removed
16 or not. So I think -- I hope that clarifies what was done
17 when the building was initially purchased and renovated.

18 VICE CHAIRPERSON JOHN: What's the condition of
19 upstairs right now? Is there a bathroom, a kitchenette or
20 has it been gutted?

21 MS. WILSON: It's been gutted because none of that
22 was salvageable, so whether this was going to be a
23 residential unit in the future or whether it would be
24 restaurant use, that space needed to be gutted just to get
25 approved, I would imagine for the restaurant use below

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 because it was not up to code.

2 VICE CHAIRPERSON JOHN: Okay, thank you.

3 MS. WILSON: Of course.

4 MEMBER BLAKE: Are there any pictures in the
5 record of the space upstairs?

6 MS. WILSON: No, I don't have any. But we can try
7 to find some from before it was gutted or I can find -- or
8 I can, you know, show pictures of it now just, I think it's
9 a shell.

10 MEMBER BLAKE: I think the current state would be
11 most helpful.

12 MS. WILSON: Great. I'll add that to the list.
13 Okay. So jumping back in, I think we've just covered a lot
14 of -- a lot of this. I just wanted to respond a little bit
15 about what OP said regarding the exceptional conditions.
16 Just that it's not -- OPs report says it's not exceptional
17 to have residential space above a restaurant. This is the
18 case when the owner purchased the property. And applicant
19 also argues the property is exceptional because the
20 restaurant use is limited to just the first floor and cellar.
21 And OP does not agree that this is exceptional because there
22 are many examples of mixed use buildings in Capital Hill and
23 throughout the city.

24 And so it's -- again, it's much more than having
25 residential space above a restaurant. It's just neglected

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 residential space on a historically commercial first floor
2 in an exceptionally small building for a building with long
3 time commercial eating and drinking use approved on the first
4 floor for 80 years. This is unique and we're not arguing
5 it's unique to just have a mixed use building period. It's
6 the size of the building and the history of uses and the
7 neglect of that upstairs use. And I also want to add that
8 the building does not have to be unique relative to the
9 entire city. And I'd argue, not even for Capital Hill, but
10 even if you do limit it to the neighborhood, the real estate
11 agent could not find comps for a similar situation with
12 existing rental use above a restaurant use in what's
13 effectively a row structure.

14 Next slide please. And then I also -- I already
15 talked about the vestibule. They picked out that point as
16 well in their report. And the vestibule and wall removal was
17 just an example of one of the things we'd have to do. We
18 talked about the more costly code implications. And so it
19 was an interesting point to pick out because it actually
20 highlights why we removed it in the first place, which is to
21 make more room for seats. And that speaks to the very
22 essence of the variance argument. This building is too small
23 to be mixed use. That's why it was removed. They thought
24 they could make the restaurant work without, you know, that
25 resident -- without that second floor, but now it's clear

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 they can't make the restaurant work in this small space.
2 He's tried for a year.

3 And then to make the residential use work, the
4 other part of this hardship, you have to permanently remove
5 more chairs. And so again, it just goes to the point that
6 one has to choose either all restaurant or all residential
7 to make this space work. And the first floor is never set
8 up for residential use. And the upstairs residential use was
9 based on the evidence, never a license and likely never
10 inspected.

11 Next slide please. Regarding the third part of
12 the variance test, the building has been used as an eating
13 and drinking establishment since at least 1961 and the
14 neighborhood has embraced the restaurant use. The applicant
15 is proposing to expand the legal restaurant use to other
16 parts of the same building to avoid vacancy in an otherwise
17 successful enterprise. There are a number of available and
18 affordable residential properties within the area. And
19 removing a unit that has not been legally rented and was not
20 in any position to be approved for legal rental use at the
21 time of purchase is not really taking away housing.

22 So there are over 80 letters of support on the
23 record. The numerous letters in support highlight the
24 importance of giving this business the chance to succeed to
25 avoid turnover, which has occurred for all of the other

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 businesses formerly occupying this location. Councilmember
2 Charles Allen's letter in support echoes the same concerns
3 from constituents that would out this relief, they will
4 continue to see this space turn over again and again just
5 like it has been for the past three decades. I think we've
6 submitted a substantial amount of evidence compared to the
7 last hearing. And we now know for sure and can argue with
8 more certainty that this will not work without the second
9 floor seating.

10 And so to conclude, I'd like to read some
11 testimony from a neighbor who could not speak, but wanted to
12 submit -- but submitted this specific testimony to the record
13 last night. So I'm reading directly from the record. This
14 is from Suzanne Wells. And she says, "Pacci's has been a
15 good neighbor. They maintain their trash. There has been
16 no noticeable impact on parking because most patrons either
17 walk or use ride shares to get to the restaurant. And they
18 provide a top notch restaurant in the neighborhood with a
19 quality menu you can walk to. With restaurants closing
20 across D.C. due to crime, operating costs that are too high
21 to allow for profit and lack of staff, it seems the city
22 should be doing whatever it can to support small restaurants.
23 Small restaurants contribute to the city's tax base, which
24 supports vital public services in our public schools.

25 Allowing Pacci's to expand to the second floor

1 will improve the dining experience. I've eaten on both the
2 first floor and the cellar, both floors are quite small and
3 it is sometimes difficult to get a reservation due to limited
4 seating. The cellar space has no windows and it is not an
5 inviting space. Allowing the restaurant to expand to the
6 second floor with create more seating and the second floor
7 will be more inviting due to the natural light, along with
8 a view of Lincoln Park. While I certainly support affordable
9 housing, the second floor of the building will only support
10 one or two units. The trade off between one or two
11 residential units versus helping a neighborhood restaurant
12 be more viable by allowing it to create additional seating
13 seems like an easy choice to make."

14 Next slide please. I'll save the conclusion for
15 the very end. But we do have, I think, one neighbor who has
16 to go at 6:15, Mr. Miller, if it would be possible to bring
17 him up. But that concludes my portion of the presentation.

18 BZA CHAIR HILL: Okay. Thanks, Ms. Wilson. Let
19 me see, Mr. Young, if you can bring up Mr. Miller who would
20 like to testify apparently. Mr. Miller, can you hear me?

21 MR. MILLER: Good evening, everyone. Thank you
22 so much for having this hearing and for letting me testify
23 here.

24 BZA CHAIR HILL: Mr. Miller, just real quick, if
25 you can again introduce yourself for the record and then

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 you'll have three minutes to give your testimony. And I love
2 that your name is Steve Miller. Okay. Go ahead, Mr. Miller.

3 MR. MILLER: Yeah, absolutely. I'm Steve Miller.
4 I'm the owner of 1410 Massachusetts Avenue Southeast and I
5 live approximately 50 feet Pacci's across from them in our
6 alley. I would echo Ms. Wells testimony that was just read
7 into the record that they have been excellent members since
8 they've moved in. No issues with trash, noise, any kind of
9 normal complaints. They've been fantastic. And I've been
10 in this house with my wife for over 11 years and we're tired
11 of the turnover we've seen in that space. It's been an eye
12 sore for a long time. The folks on our street and the
13 surrounding area are very, very excited to have a viable
14 restaurant. And then to learn within a year that they can't
15 make a go of it because of the lack of space. And I've been
16 in both the upstairs and the downstairs and I would echo what
17 Suzanne's comments were earlier. We need that space.

18 And as the -- I'm also the principal of Eastern
19 High School, which is three blocks down the road. We have
20 over 150 employees and we live in an area and work in an area
21 that has almost no options for them to grab a bit after work
22 and do the things that are normal in many parts of the city.
23 So I would really encourage the Board to approve the
24 variance. It will help anchor the families in this area who
25 really want this space to work, whether it's for Pacci's or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 for another restaurant. We're just tired of the turnover and
2 we think that this is a very viable way to anchor this.

3 So I appreciate your time. I think that's all I
4 have to say on this. But thank you for again considering
5 this variance.

6 BZA CHAIR HILL: Okay. Thank you, Mr. Miller.
7 All right. We're going to excuse Mr. Miller and then now
8 we're going to hear from the Office of Planning please. And
9 Mr. Miller, thank you for waiting so long to give your
10 testimony, as well as everybody else who's waiting so long
11 to give their testimony. Go ahead please the Office of
12 Planning.

MS. MYERS: Good evening. Crystal Myers
13 with the Office of Planning. While OP is supportive of small
14 businesses, particularly ones that are local and supported
15 by the community as this one is, the use variance test must
16 be met in a way that does not harm the integrity of the
17 zoning regulations. It is not exceptional to have a
18 residential use above a restaurant used within the same
19 building. When the applicant purchased the property, it was
20 configured for residential use on the second floor. And
21 according to the information in both this case and the 20445
22 case, previous owners periodically used the residential space
23 and rented it out.

24 The applicant argues renting out the residential
25 space would be difficult to do at their preferred rent level.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 OP questions if renting the space out would be challenging
2 if a different rental price point were set, and if
3 appropriate, mitigation measures were done. The space is
4 located in a desirable area of the District where there is
5 a demand for more housing, especially affordable housing.
6 While the proposal would not likely result in a significant
7 detrimental impact to the surrounding neighborhood, it would
8 be contrary to the intent and integrity of the zoning
9 regulation. Zoning establishes where a restaurant operation
10 can locate and where it is not permitted. This would not be
11 an expansion -- This would be an expansion of a nonconforming
12 use. This is contrary to what Zoning tries to do. Zoning
13 regulations are typically intended to ensure greater
14 conformity, which in this area is residential and not a
15 nonconformance such as this restaurant use. And so
16 therefore, OP has recommended denial in this case. Thank
17 you.

18 BZA CHAIR HILL: Okay. Thank you, Ms. Myers. Ms.
19 Wilson, I'm also going to want to see some economic numbers
20 now that, you know, I guess your argument again is that they
21 need the space in order for the restaurant to survive. And
22 that, that basement space again that they were here before --
23 like I remember when they were here for that basement space
24 -- isn't actually working because nobody wants to eat in the
25 basement. I'm repeating some things just as I'm thinking of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 them.

2 Does the Board have any questions for the Office
3 of Planning?

4 MEMBER SMITH: I do have a question for Ms. Wilson
5 just based off of one comment that she just made.

6 BZA CHAIR HILL: Go ahead Mr. Smith.

7 MEMBER SMITH: Because what was stated during Ms.
8 Wilson's presentation was unfortunately they can't eat --
9 people aren't willing to sit in the basement. But closing
10 her presentation, she stated that -- and this was a direct
11 quote from one of the committee members and we just heard it
12 from Mr. Miller was that there's trouble getting reservations
13 because the space is so tight. So which one is it? Is the
14 space -- is it so successful that they need additional seats
15 or it's not viable because no one wants to sit in the
16 basement?

17 MS. WILSON: I mean it's both. Right? So at
18 certain times, it's so busy there aren't reservations
19 available perhaps on like a Saturday night where people are
20 willing to do that. And then other times when people can
21 find reservations elsewhere in the city, even if there are
22 some spaces available, they want to go, so it's just on
23 timing. I can have Mr. -- speak more to that.

24 MEMBER SMITH: Okay.

25 BZA CHAIR HILL: Go ahead, Mr. Blake please.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MEMBER BLAKE: Well, they're both for Ms. Wilson.
2 Ms. Wilson, is there an opportunity for outdoor seating? If
3 so, what's that capacity? And what percentage of the
4 business is take-out? That's something I'd like to know as
5 well.

6 For the Office of Planning, I have one question,
7 which was if an economic analysis is provided that shows an
8 undue hardship, would the Office of Planning be comfortable
9 -- Would that be helpful for the Office of Planning?

10 MS. MYERS: I can --

11 MS. WILSON: Sorry.

12 MS. MYERS: I wouldn't be able to say at the
13 moment. We would have to look at it and decide. But you
14 know, we are of course open to reviewing any additional
15 information that is provided.

16 MS. WILSON: And I have a clarification on Mr.
17 Smith's question. The reservations are for the first floor,
18 but they don't take reservations for the cellar. So I think
19 that clarifies that issue. And the outdoor patio, I think
20 was denied but we can confirm that because -- we can check
21 on that. I think it was a public space issue. And then we
22 will get a number of the percentage of take-out.

23 BZA CHAIR HILL: Okay. Okay. So that's the
24 Office of Planning. There are witnesses, correct, Mr. Young?
25 And oh, Ms. Wilson, you were going to help me maybe navigate

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 them.

2 MS. WILSON: Yes. Let me look at my list here.
3 So the first one to call would be Mr. Demian -- Ziad Demian.
4 And you can speak to a lot of the questions.

5 BZA CHAIR HILL: Okay. Mr. Demian, can you hear
6 me? And if so, can you introduce yourself for the record and
7 you'll have three minutes to give your testimony and you can
8 begin whenever you like.

9 MR. DEMIAN: Can you all hear me?

10 BZA CHAIR HILL: Yes. Can you hear me?

11 MR. DEMIAN: Yes. Okay.

12 BZA CHAIR HILL: Okay. I'm going to blame this
13 one -- somebody's echoing. So after I make my statement, I'm
14 going to mute me and then -- that's why I don't see anybody
15 raising their hands. So Mr. Demian, please introduce
16 yourself for the record, then you'll have three minutes to
17 give your testimony. And if we have questions for you, we
18 will. And go ahead and you can begin.

19 MR. DEMIAN: My name is Ziad Demian. I'm an
20 architect -- licensed architect here in the District of
21 Columbia, Maryland, Virginia, and many states. And we've
22 worked on a number of restaurants, over probably 50
23 restaurants in this city and elsewhere. We've represented
24 landlords and we've represented tenants. So we're very
25 familiar of how the restaurant business works.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 So I'm speaking as an architect, but also I'm
2 speaking as a neighbor. I live one block away from Pacci's
3 for over 22 years. So I've always pondered the reason why
4 is it that there's a (indiscernible due to accent) over in
5 this civility associated with this space? We've had a couple
6 of good restaurants. They just lasted for a year and they're
7 gone. -- and the other restaurant and the original Park
8 Café, the original owner.

9 So the reason I'm writing this letter is because
10 I learned about the difficulties there when I went there and
11 I waited to seat -- have a seat. And I was like why you
12 can't take upstairs? He said well, we can't do the upstairs.
13 I said why? And he -- the owner explained to me that there
14 is a case and the rental -- So I kept asking him questions
15 and he said well, how do you know about all this stuff? And
16 I was like I'm an architect. I do this for a living. Then
17 he told me about the challenges.

18 So then I really looked at it, trying to explain
19 what the challenges are. So the building size and
20 configuration makes it really difficult to operate a
21 restaurant with that size because to operate a compliant
22 workable compliant -- okay -- workable commercial kitchen and
23 leaving enough space to form a viable dining room is very
24 difficult because you need a certain size to run a proper
25 commercial kitchen. So even though the lower space -- lower

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 level space has a lot to use -- and I want to repeat, the
2 people talked about the basement level -- or called the
3 cellar. Basement has windows -- this is a cellar. There's
4 no windows. It's really not an attractive and desirable
5 space. It feels like you're in somebody's house basement
6 sitting in there. It's not very -- It's not very desirable.
7 Sorry about that. So I understand -- I'm aware that the BZA
8 previously approved the cellar function, but in practice, it
9 really -- really doesn't work.

10 That was the first time. I went again with my
11 wife. We waited for a long time. They offered us a seat at
12 the -- at the cellar and my wife didn't want to do it again,
13 so we ended up going somewhere else. So that's a clear loss
14 of business. And when I heard about this case that's coming
15 up again, I told them I would be more than happy to send a
16 letter and testify on their -- on their behalf. And I heard
17 this from a lot of other friends and neighbors. They keep
18 saying the same thing. When you go to Pacci, we wait, and
19 then we end up leaving.

20 So I'm going to spake about the technical
21 challenge of it from the architectural point of view, okay,
22 the perspective. The current building, it would probably be
23 helpful if somebody will show the entrance of the building --
24 the elevation of the entrance because I --

25 BZA CHAIR HILL: Mr. -- How do you say, Demian --

1 Demian?

2 MR. DEMIAN: Yes.

3 BZA CHAIR HILL: It's okay, Mr. Demian. You have
4 three minutes and you're kind of running out and there's a
5 lot of testimony. I appreciate it. Just go ahead and tell
6 us about it. We have the picture of the building. We're
7 familiar with -- In fact, I was there for the basement thing,
8 so I'm really familiar with the building.

9 MR. DEMIAN: Okay. I'll be more than happy to
10 explain. So there's -- there's two entrances right now. One
11 is locked and the other one -- the other one is used to enter
12 the restaurant and to go upstairs. The previous restaurant
13 opened it after the restaurant and others closed it up.
14 Okay? So what the Council was talking about, the wall being
15 removed, it's changed from between one restaurant to another.
16 So I remember it being as it is currently now and when it was
17 -- the wall was completely bare.

18 So there are two ways of dealing with this
19 architecturally. You can either grandfather this operation
20 as it is because that's the current use. You don't need to
21 go for an overall upgrade to use as a mixed use. Or you have
22 to make it fully compliant as a mixed use in which case, you
23 want to separate the entrance, have a two-hour rated wall,
24 two-hour rated ceiling. Okay? So if you want to keep it as
25 grandfathered in as it is right now --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 BZA CHAIR HILL: Okay, Mr. Demian --

2 MR. DEMIAN: If somebody needs to go upstairs, go
3 through the restaurant to go upstairs.

4 BZA CHAIR HILL: Mr. Demian, you're going to have
5 to wrap it up.

6 MR. DEMIAN: Well, I need to give you the note
7 that we can't have it both ways. We can't have it as a
8 restaurant and having people going up and down through the
9 restaurant to go up to a unit. Or if you want to separate
10 it, it's going to incur tremendous amount of cost to make it
11 a rated assembly and you have to lose at least six seats to
12 use the second door because you have to create a foyer, a
13 seating arrangement circulation and a receptionist area.

14 BZA CHAIR HILL: I understand. I understand.

15 MR. DEMIAN: So you're either going to have it
16 grandfathered in, which means you can't rent it upstairs or
17 -- and still struggling or you're going to have to make it
18 compliant. And you have to rebuild the entire ceiling and
19 all the connection --

20 BZA CHAIR HILL: Okay.

21 MS. WILSON: Mr. Demian, I think we're going to
22 have an opportunity to submit more testimony to this effect,
23 along with the financial analysis.

24 MR. DEMIAN: Yeah.

25 MS. WILSON: So we're happy to include -- to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 include some additional testimony just in the interest of
2 time if that's okay with everybody.

3 BZA CHAIR HILL: Yeah. Mr. Demian, I guess what
4 -- and Ms. Wilson, I know you were trying to help -- and Mr.
5 Demian, I'm also just trying to get us moving. So public
6 testimony, members of the public have three minutes to give
7 their testimony. And that's how we kind of learn a little
8 bit more about whatever the public wants to talk about.
9 Right? The issue that we're having and I guess I'm speaking
10 to you because I don't mean you to think I'm not listening
11 to what you're saying, we're struggling with a variance
12 argument that they can't use the upstairs for residential.
13 Right? And so that's what we're struggling with. And so Ms.
14 Wilson, had she wanted to use you as an architect, she could
15 have brought you in as an architect and then had diagrams to
16 show about the upstairs et cetera.

17 So what Ms. Wilson is now saying is that we will
18 have an -- It seems as though the Board is going to ask for
19 additional information. And so we will have an opportunity
20 to take some testimony at that time. Does the Board have any
21 questions for Mr. Demian? Okay. All right.

22 How many witnesses, Mr. Young, do we have? I'm
23 sorry. How many people wish to provide testimony?

24 MS. WILSON: So I have on my list three more
25 people to provide testimony and then I believe the ANC needs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 to speak as well. So in the interest of time, I'm sure they
2 would, you know, those who are willing to speak would keep
3 it to three minutes.

4 BZA CHAIR HILL: Okay.

5 MS. WILSON: And I'll just -- I'll encourage them
6 to do that.

7 BZA CHAIR HILL: Mr. Young, if you could bring in
8 -- who are the other three witnesses? I mean at this point,
9 they're witnesses, Ms. Wilson, almost. Okay? So who are
10 they?

11 MS. WILSON: It's Ravi Khanna, Thomas Baker, and
12 Bryan Blom.

13 BZA CHAIR HILL: Okay. So Ms. Wilson, maybe what
14 you want -- if you want to supplement the record with some
15 of their testimony in a different way, you're welcome to do
16 so.

17 MS. WILSON: Okay.

18 BZA CHAIR HILL: Mr. Khanna, can you hear me?

19 MR. KHANNA: Yes, I can. Can you hear and see me?

20 BZA CHAIR HILL: Yes. Mr. Khanna, could you
21 please introduce yourself for the record? Again, what's
22 happening, Mr. Khanna, is you are a member of the public and
23 you're giving us three minutes of your testimony concerning
24 this case. And you may begin whenever you like.

25 MR. KHANNA: Thank you. I'll be brief. First of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 all, my name is Ravi Khanna. I've lived in Washington D.C.
2 since 2013. I moved to Capitol Hill then. I will be brief,
3 but I will first just say as a member of the community, when
4 my wife and I moved to Capitol Hill, we witnessed various
5 restaurants circle right through that location and it was an
6 eye sore. We were delighted to see when Mr. Gioldasis had
7 put so much renovation money to build a family style
8 restaurant at that location.

9 As a friend of Spiro, I've become close with him,
10 I can just tell you openly, he is very focused on running an
11 effective business, keeping prices reasonable for families.
12 This is not a big money maker. My last two years or three
13 years of friendship with him, most are conversations revolve
14 around the financial distress that he is in to keep this
15 operation running in his restaurant and to make it profitable
16 enough to have a reasonable lifestyle.

17 I'll just say that in the time I've lived in
18 Capitol Hill, it was a joke that the second floor of that
19 space was used for residential. The understanding that
20 everyone knew if you walked in that part, the way we all
21 bonded often times was pointing at the eye sore and people
22 would say yeah, someone's running it. They've turned what
23 was a deli into a couple of apartments. And I remember
24 seeing them when the building was empty. This was maybe one
25 to possibly two possible apartments, very not usable. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 we never saw anyone coming in and out of them. And the
2 understanding was that nobody really lived there or maybe the
3 owner lived there, but it was not rentable property.

4 So I'll just conclude with saying that my father
5 moved to Washington D.C. in 1953. And the reason I'm able
6 to be here is that he worked with the Affordable Housing
7 programs that gave him a place to stay in D.C. From what I'm
8 witnessing here, I would just submit to the Board here and
9 the D.C. Office of Planning that what are we trying to solve?
10 This is a viable business. And he's showing the economics
11 if he can use the second floor. It can be profitable and it
12 can execute a reliable business that families want to move
13 in the neighborhood. If he cannot do that, I do not see a
14 viable use of that second floor and we're not really solving
15 a problem. So I hope that was under three minutes, but I'll
16 just take the Board for their time to hear me.

17 BZA CHAIR HILL: Thanks, Mr. Khanna. Mr. Baker
18 or Ms. Baker. I'm sorry.

19 MR. BAKER: Hi there. Can you hear me?

20 BZA CHAIR HILL: Yeah. Mr. Baker, if you could
21 introduce for the record and you'll give three minutes of
22 testimony please.

23 MR. BAKER: Great. Well, the Steve Miller band
24 closed -- was supposed to be the closer. Can you hear me?

25 BZA CHAIR HILL: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. BAKER: Yeah. My name is Thomas Baker. I'm
2 a resident of A Street on the block. I'm a landscape
3 architect. I'm here to testify in support of the
4 application. I'm not really a visitor of many restaurants,
5 but as a landscape architect, I observe things through a
6 different lens, not the lens that of a planner, but from a
7 design standpoint. The ownership has done a great job of
8 keeping the street clean, the alleyway clean. So a lot of
9 the comments we heard already today.

10 But I just want to echo what maybe wasn't said is
11 just that the restaurant in itself as a neighborhood place
12 is essential to the social life of the park. And the east
13 side, in particular, the eastern edge of Lincoln Park has
14 really benefitted in a great way from increased vitality and
15 activity. And I walk by in the evenings when they're closing
16 up and it's just been a great asset to see that activity, to
17 see their workers getting off. It adds to the safety and I
18 can't support them as ownership enough. I know that we're
19 talking mostly about the issue of residential upstairs, I
20 would have to agree with the things that have been said.
21 It's not viable to have a residence above. I believe that
22 the footprint of this was so small and I think that the mixed
23 use of the space was probably -- was probably made for a
24 different era when mom and pop would live below a grocery
25 store and had, you know, a stairway that was not up to code

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 to get upstairs. It's just -- It's not a viable space as a
2 residence in my opinion.

3 So disheartened to see that OP has recommended
4 denial, but I hope that you guys will listen to the
5 neighborhood. Sometimes planners don't always listen to the
6 neighborhood in this overwhelming support. And I don't think
7 we should tie this restaurant's hands behind their back as
8 they're trying to struggle in a post-pandemic economy to make
9 and continue to do this restaurant. That's all I have.

10 BZA CHAIR HILL: Thank you. Thanks, Mr. Baker.
11 Mr. Blom or Ms. Blom, can you hear me?

12 MR. BLOM: I can. Can you guys hear me?

13 BZA CHAIR HILL: Yeah. Mr. Blom, if you want to
14 go ahead and introduce yourself for the record and you'll
15 also have three minutes to give your testimony and you can
16 begin whenever you like.

17 MR. BLOM: Sure. Bryan Blom and I live at 1310
18 E Street, just a few houses down from Pacci's. I've never
19 participated in a hearing like this. I rarely ever stay
20 late. My kids are at home waiting for me. But the only
21 reason I did that was on behalf of Pacci's because I believe
22 in it that much. And they have been such a crucial part of
23 the community and the fabric of the community. We've lived
24 there, my family -- my two kids and my wife and I have lived
25 there going back before they opened.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 And I can tell you the alley was a lot dirtier
2 before they came. It is cleaner now. I can tell you that
3 the building was an eye sore before they came. It is
4 actually beautiful to look at now. I can tell you that it
5 is a -- when you go into Pacci's and I don't know if I'm
6 allowed to buy you guys coffee, but I'd love to do it if you
7 guys come, if you go in the cellar, it is a black box. You
8 do not want to sit down there. If you sit on the first
9 floor, it's beautiful. It's lovely. It's like Cheers.
10 Everybody knows your name. I mean it is a great place to be.

11 I also know that when we moved to that house,
12 there was a -- it's a restaurant desert in Hill East. I
13 don't know how many of you board members live in Hill East
14 or are from there. Now we are blessed. We've got, you know,
15 about three restaurants kind of from the eastern side of
16 Lincoln Park to RFK. And all of them are great in their own
17 sense; Della Barba, the Capital Square Place, and Pacci's.
18 And again, Pacci's has just done such a great job at
19 welcoming the community. They love their neighbor. I think
20 we should love them back.

21 I can tell you, I'm not a lawyer. I'm not a
22 zoning expert, but I can tell you I would not want to live
23 upstairs there. I don't think that you could reasonably
24 determine that you could actually have somebody live there.
25 You'd have to retrofit it. It would be a huge cost. I mean

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 I feel bad Pacci's has to pay for a lawyer for all of this.
2 I mean the fact that they've spent money just trying to
3 survive. Nobody wants to sits downstairs. You only have a
4 few seats on the main floor. Why not provide them this
5 opportunity? Which really the only opportunity to do
6 something viable would be to allow seats on that second
7 floor.

8 So I'm begging you as somebody who lives in the neighborhood
9 and I can assure you that 99.9 percent of the neighbors would
10 agree that they've been nothing but a benefit to the
11 community.

12 BZA CHAIR HILL: Okay. I want to say thank you
13 guys very much for your testimony. I know that the attorney
14 might be reaching back out to you for further clarification.
15 Before I let the witnesses go, did my board members have any
16 questions they needed? Okay. All right. Mr. Young, if you
17 can please excuse -- Oh, sorry. Somebody's got their hand
18 up. Oh, Mr. -- Oh, sorry. Commissioner. How are you doing,
19 Commissioner? Commissioner, let's see. Let's see. Yeah.
20 So Commissioner, first of all, we started at 9:30,
21 Commissioner. So that's why also I'm kind of a little bit
22 out of order here. So you guys as the ANC here -- and
23 Commissioner, you know, we all like pizza. You know? We're
24 all trying to, you know, also get -- maybe get to a pizza
25 right now. Right? So we're just struggling with the whole

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 problem that we have, which is we have to adhere to these
2 regulations and try to figure out how to administer them
3 properly.

4 I think the attorney is putting together a good
5 argument as to why this variance -- and I think maybe you
6 understand -- hopefully you do a little bit -- how strong --
7 you know, this is the highest bar there is -- a use variance
8 for us. Right? And so please go ahead and give us your
9 testimony because you would have had an opportunity to give
10 testimony and tell us whatever you like, Commissioner.

11 MR. D'ANDREA: Thank you, Mr. Chair. My name is
12 Francis D'Andrea. I am Commissioner for ANC 6B04 and also
13 the Chair of ANC 6Bs Planning and Zoning Committee. We voted
14 by a regular meeting properly notice with a quorum present,
15 voted 9-0-0 to send you the letter that we submitted and also
16 for me to present that letter to you today. I think, you
17 know, we've -- as you noted, this Board has been in session
18 for the majority of the day. It is late in the evening.
19 I'll keep my remarks brief.

20 In short, we think -- ANC 6B thinks that the
21 applicant has met the high bar for variance. We think that
22 they meet each prong of the 3-prong test. There is an
23 exceptional hardship. And the regulation says this. You
24 know, there's a litany of things. And then it says or some
25 other exceptional hardship -- that's a paraphrase, you know,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 because of the history of the use -- of the nonconforming
2 use, because it was permitted for all floors as a deli at
3 some point, because of the parade of restaurants that have
4 gone in and out of that space, and because the space and the
5 size of the building would create an economic hardship on the
6 applicant, you know, we think that they meet the first two
7 prongs.

8 I think the third prong, you know, in our view is
9 clear quite easily. The community wants this. It's been an
10 asset to ANC 6B. It's one of the few restaurants in the
11 residential neighborhood and we think it adds liveliness --
12 liveliness to the neighborhood. And also provides a great
13 community asset that, you know, if it went away, would be a
14 detriment to the neighborhood. And you know, third, there's
15 this argument that you know, well, we would remove housing.
16 Yes, that's true, but you know, we think this is an
17 acceptable circumstance. And while living above the store
18 can work, we don't think it can work in this case for all the
19 reasons that have prevented previously.

20 So you know, the zoning is not a strait jacket.
21 And really the variance is here to let there be a relief
22 valve, right, for exceptional circumstances. And we think
23 that, that bar has been met here. We also think that, you
24 know, in the research that we have looked at, there are a
25 couple cases that are very similar. BZA Case 18838 and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 20489. So this isn't creating -- they're very similar
2 circumstances where there's an existing use on the first
3 floor -- or a couple floors of a townhouse in a residential
4 zone that then got expanded to upper floors for different
5 reasons in each case. But you know, the Board did grant a
6 variance in that case. And we think that, that is sort of
7 dispositive in this case as well.

8 And I would also note again, I think that there
9 is a representative from ANC 6A -- and I know my colleague,
10 Commissioner Jayaraman is waiting in the public area to
11 testify as the SMB Commissioner for the area. And with that,
12 I would bring my remarks to a close and I would be happy to
13 answer any questions that the Board might have.

14 BZA CHAIR HILL: Thanks, Commissioner. No,
15 Commissioner, you were very helpful actually. What was the
16 first one you mentioned, 20489, what was the first one?

17 MR. D'ANDREA: The first one was 18838 and the
18 second was 20489.

19 BZA CHAIR HILL: Yeah, I got that one. Okay.
20 Let's see. Ms. Wilson, there's another commissioner?
21 There's another commissioner, Commissioner D'Andrea?

22 MR. D'ANDREA: That's me.

23 BZA CHAIR HILL: Yeah. He said there's another
24 commissioner that wants to speak?

25 MR. D'ANDREA: Yeah. There's Commissioner Chander

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Jayaraman from ANC 6B. And then I believe there is Mr.
2 Cushman for ANC 6A on as well.

3 BZA CHAIR HILL: Okay. I'm going to ask then --
4 Let's see, what am I trying to do? You have two more ANC
5 Commissioners? Okay. All right. So Commissioner D'Andrea,
6 you're here to speak on behalf of your ANC. Correct?

7 MR. D'ANDREA: Yes. I want speaking on behalf of
8 ANC 6B.

9 BZA CHAIR HILL: Got it. And it's great that
10 you're a part of the Zoning group. And then Commissioner,
11 could you introduce yourself -- your last name, I have
12 difficulty with.

13 MR. JAYARAMAN: My first name is Chander, last
14 name is two syllables, Jayaraman.

15 BZA CHAIR HILL: Okay.

16 MR. JAYARAMAN: I'm the advisory neighborhood
17 commissioner for SMB 6B06 in which Pacci's is located.

18 BZA CHAIR HILL: Okay. Commissioner Jayaraman,
19 so then there's you and then Commissioner D'Andrea, you said
20 there's another commissioner?

21 MR. D'ANDREA: I believe Mr. Cushman for ANC 6A.
22 And I'm not trying to play Chair here.

23 BZA CHAIR HILL: That's okay.

24 (Simultaneous speaking)

25 MR. JAYARAMAN: If I could explain, Mr. Chair, Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Michael Cushman was designated by ANC 6A to speak on behalf
2 of ANC 6A.

3 MR. CUSHMAN: Michael Cushman is here. I'm not
4 sure if you can hear me.

5 BZA CHAIR HILL: Okay. So this is where I get a
6 little -- So Commissioner -- sorry, how do you say it?

7 MR. JAYARAMAN: Just call me Chander.

8 BZA CHAIR HILL: Great, Commissioner Chander. So
9 Commissioner Chander, like you can speak now as a member of
10 the public because your ANC has already been represented by
11 Mr. D'Andrea. Okay?

12 MR. JAYARAMAN: That's correct.

13 BZA CHAIR HILL: So you can go ahead and have your
14 three minutes. Give me a second. All right?

15 MR. JAYARAMAN: Yes.

16 BZA CHAIR HILL: And then there was another
17 commissioner -- Commissioner Cushman.

18 MR. CUSHMAN: From next door.

19 BZA CHAIR HILL: Got it. So why don't you also
20 take three minutes, Commissioner. Okay? And let's start
21 with you, Commissioner Cushman if that's all right. Please
22 introduce yourself and go ahead and give us your three
23 minutes of testimony.

24 MR. CUSHMAN: I'm here to speak for ANC 6A. I'm
25 the co-chair of the Economic Development and Zoning Committee

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 of ANC 6A. And I can also speak as a member of the public
2 because I testified the last time. And I was the single
3 member of the public against Pacci's going to the second
4 floor.

5 BZA CHAIR HILL: Okay. So Commissioner --

6 MR. CUSHMAN: I have changed my mind.

7 BZA CHAIR HILL: Okay. Commissioner, hold on a
8 second because what I'm trying to get and now I'm going to
9 ask the office as a legal division, I just -- It's kind of
10 late, so I'm just trying to make sure I'm (audio
11 interference) wherein if you are representing now your ANC
12 and therefore you should have been a party?

13 MR. CUSHMAN: Yes, I should have been a party.
14 They voted 6-0 to support the application.

15 BZA CHAIR HILL: Right. But what I'm saying is --
16 and this is where I get confused as to the regulations.

17 MR. CUSHMAN: Okay.

18 BZA CHAIR HILL: If your ANC borders where there
19 is -- Does your ANC border where this is?

20 MR. CUSHMAN: The border runs down East Capital
21 Street. This is 106 on the unit block --

22 BZA CHAIR HILL: Okay.

23 MR. CUSHMAN: -- south of this. So it's 80 feet
24 to 100 feet --

25 BZA CHAIR HILL: Right.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. CUSHMAN: -- outside of ANC 6A.

2 BZA CHAIR HILL: Ms. Wilson, do you know what I'm
3 trying to get to?

4 MS. WILSON: I believe there's not an affected ANC
5 within the meaning of B100.2 and I -- we can wait to hear
6 from OZ Legal, but perhaps we can take the testimony in the
7 interest of time and decide later what weight to give it.

8 BZA CHAIR HILL: Okay, great. Why don't we go
9 ahead and I'll turn to OZ Legal. And Commissioner Cushman,
10 the reason why again, what I'm trying to understand is -- and
11 thank God Ms. John has just cited the regulation. Again,
12 just because you're right next door doesn't mean you're a
13 party. So that's all I'm just trying to figure out. So
14 there's no disrespect to this, I'm just trying to figure it
15 out.

16 MR. CUSHMAN: None taken.

17 BZA CHAIR HILL: Okay, thank you. So why don't
18 you go ahead and -- First of all, go ahead and give us your
19 testimony.

20 MR. CUSHMAN: I'm Michael Cushman. As I said, I
21 am the co-chair of the ANC 6A Economic Development and Zoning
22 Committee. I was the single member of the public to testify
23 against the application last time when they got their use
24 variance for the basement. Since that time, things have
25 changed. Pacci has turned out to be truly a positive

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 addition to the neighborhood and as you've heard, there's a
2 lot of neighborhood support.

3 Two years ago when I testified in opposition to
4 the upper story, there was a lot of change in the air. There
5 was a protective bike lane in the works, had a proposal to
6 remove 36 parking spaces from the neighborhood. That's been
7 resolved. They took away six or eight. There were two
8 restaurants poised to open nearby; one at the corner of 14th
9 and East Capital and another at the corner of 15th and East
10 Capital. And we didn't know how that was going to affect the
11 neighborhood with parking and crowds coming in. Since then,
12 the two other new restaurants have opened, bike lane was
13 built, and the housing that had previously been above the
14 other restaurant in the neighborhood turned into empty space
15 that is used by Della Barba Pizza.

16 Pacci's is located on a building bounded on the
17 south by an alley and adjacent to a multi-unit apartment
18 building. It's located across the street from Lincoln Park.
19 The building to the north of the multi-unit apartment is a
20 multi-unit condo with a dry cleaner, tailor, alterations.
21 This is a -- This is a -- From the alley north, it's kind of
22 businesslike. This is not the standard row house with
23 English basement that we find in the RF1 Zone. This is a
24 small island of higher density on Lincoln Park.

25 You've got testimony in your exhibits base from

1 the Moffett's who are thrilled. They're the people that live
2 across the alley and they've been there ten or eleven years.
3 They're thrilled to have the building occupied and bringing
4 life to the neighborhood. They accurately report on a very,
5 very scant time when the second floor was used as a
6 residential space by the owner's children without proper CFO
7 or anything else. I've been here 40 years. When I first
8 came, it was empty. It was being lent by bank by somebody
9 who just wanted to keep the commercial space grandfathered.
10 I don't remember ever seeing a deli there. They may have
11 gotten the certificate of occupancy, but I never saw any
12 commercial activity happening until the guy came in to build
13 the Park Café. There was hardship, okay?

14 Spiro's been a great neighbor. Villa Barba has
15 been a great neighbor. The third restaurant has not been a
16 great neighbor. Okay? The prior owner of the space was a
17 terrible neighbor. He was written up in the city paper for
18 wage theft. The restaurant at 15th and East Capital is not
19 a welcome addition to the neighborhood.

20 You're not going to get residential on the second
21 story ever. The only thing that we can do is delay the time
22 when this comes back and it truly is absolutely,
23 incontrovertible that is a valid hardship case to meet all
24 the hardship case to give a use variance on the second floor.
25 So do you do that with this good owner/neighbor or do you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 wait until the luck of the draw sends you somebody else?

2 Thank you very much. You've been doing a lot of
3 work today. I'm going to quit right here.

4 BZA CHAIR HILL: Thanks, Commissioner. Okay. So
5 I have to give clarification, Commissioner. We don't think
6 you necessarily, your ANC counts as an affected ANC, but
7 regardless, thank you for your testimony. And if I'm wrong,
8 they'll be reaching out to you.

9 Commissioner Chander, you are three minutes as a
10 person. So go ahead, Commissioner.

11 MR. JAYARAMAN: Great. Thank you so much. My
12 name is Chander Jayaraman. I wanted to speak directly to the
13 Office of Planning's argument. One of the things they said
14 is that the zone establishes where a restaurant can
15 operationally locate. You know, back in 1961 when it was
16 granted, it was granted as a commercial space. And even if
17 you look at the certificate of occupancy in 1987, they
18 granted the certificate of occupancy for a restaurant or a
19 deli use for all three floors, meaning the second floor, the
20 first floor, and the basement. It was changed at some point
21 after that, but regardless, the zoning regulations -- the
22 zoning regulations envisioned this type of development.
23 Meaning Capitol Hill and the city was developed so you have
24 neighborhoods where you have restaurants, where you have
25 corner stores, and where you have these kind of amenities

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 located. Not in concentrated piles, but in small little
2 batches.

3 Many of our corner stores are gone. There are a
4 small few little restaurants. We want that. That really
5 does enhance the quality of living in a neighborhood like
6 Capitol Hill. Currently, there's a lot of problems on
7 Barrack's Row and other areas. There is no place where you
8 can walk to. And if truly, the city wants to have an area
9 where families can live and play like Lincoln Park and go to
10 have someplace to eat right near by, there is no option.
11 Pacci's is the only place that's currently available.

12 Your choice is really fairly simple. To protect
13 and enhance what the zoning regulations say we ought to do,
14 which is to make sure that the community is liveable by
15 having amenities that make it liveable such as this
16 restaurant or to say we're going to deny it and take the
17 whole thing down. Essentially what you will have is a
18 restaurant that will go under and you'll have an empty
19 building. And the zoning also says we want to protect two
20 units. There has not been two units. We're not losing
21 anything. In fact, the units were never used -- never
22 rented. There is no evidence of that. In fact,
23 I remember going there in 2012 and going upstairs. The owner
24 of Park Café used the upstairs to hold their refrigerator,
25 the ice machine, freezers. That's what he had up there. So

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 he was using it as part of the restaurant, just not saying
2 that. And I remember going there and seeing it and I'm
3 saying why is this, this way? And I assumed it's because
4 it's just part of the restaurant. So we really -- the
5 argument that we're losing affordable housing is not the
6 case.

7 In fact, I have a new building that went up three
8 doors down from me at the corner of 15th and Independence.
9 They have an IZ unit for rent for \$1,200. The owner told me
10 last week that he's having a hard time filling it. So the
11 argument that there is -- that there's all this need on
12 demand for such housing when I know from a neighbor who can't
13 fill it and it's only a block away from this restaurant.
14 There's also a new development at 224 King Street. A lot of
15 affordable units in that. So the argument that this is why
16 we should reject it falls flat.

17 Finally, the special exception and extraordinary
18 circumstances, Ms. Wilson is going to provide you with that
19 data. The only option is either to use it all as commercial
20 or all as residential. And in neither case is doable without
21 a substantial amount of investment. And ultimately, if it
22 was going to -- if I was going to do something like that, if
23 I can't afford it, I have to close the business. So your
24 choice is either to allow for an amenity to remain or say you
25 know what? We don't care. We're going to let this business

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 fail and that's on you. And I appreciate you taking time to
2 hear my testimony and will be glad to answer any questions
3 you have. Thank you.

4 BZA CHAIR HILL: Thanks, Commissioner. I love
5 commissioners. They always know how to say -- how to end
6 correctly. All right, let's see. Does anybody have any
7 questions of anybody? Okay, I'm going to let our
8 commissioner stay, Commissioner D'Andrea. I'm going to let
9 everybody else go.

10 Okay. So let's see, we've heard from everybody.
11 I know that I'm going to lose at least one of my board
12 members at 7 o'clock. So what I need to do now is what I
13 understood Ms. Wilson is that they, the Board, wanted to see
14 some numbers, okay, that supports some of your argument as
15 to why this is not functional the way the restaurant is now.
16 What I'd like to see also is some cost to convert that third
17 floor into an apartment, okay, or second floor -- sorry,
18 second floor into an apartment. Okay? And then Mr. Blake
19 wanted to see what it looks like now. So you can take some
20 pictures of the shell, right, or whatever you've got. And
21 then I think that's all. But Mr. Blake has his hand up. Go
22 ahead, Mr. Blake.

23 MEMBER BLAKE: Actually, you could probably
24 provide a statement that explains why each of the matter of
25 right and special exception (audio interference) -- uses are

1 not viable to the second floor as well.

2 BZA CHAIR HILL: Okay. Did anybody need anything
3 else from the applicant?

4 VICE CHAIR JOHN: So Ms. Wilson, there's been a
5 lot of testimony that there were several restaurants that
6 failed. Is there a record of that, that could be entered
7 into the record officially? For example, are there
8 certificates of occupancy, anything to include in the record?
9 We've heard anecdotal testimony, but is there anything else?

10 MS. WILSON: (audio interference) we could find,
11 but we can do more research and work with the community to
12 find the names of those exact restaurants and sort of provide
13 like a timeline of when they opened and closed. Just you
14 know, something more. Even if we can't find a specific CFO,
15 I'm sure there's other information we can find.

16 VICE CHAIR JOHN: And did I misunderstand someone
17 that in 1961, it had a CFO for all three floors as a
18 restaurant use?

19 MS. WILSON: In 1987 as a deli use. And yes, that
20 is in the record.

21 VICE CHAIR JOHN: So was it -- So it was built in
22 1961.

23 MS. WILSON: I think it was built in 1912.

24 VICE CHAIR JOHN: Oh, 1912.

25 MS. WILSON: But we don't have -- I just couldn't

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 find any CFOs from before 1961, so the earliest use with a
2 certificate of occupancy is from 1961.

3 VICE CHAIR JOHN: So in 1961, the CFO was what?
4 Please remind me.

5 MS. WILSON: Let me look here. It was for --
6 Sorry, I'm looking through the case files in here, 1961. So
7 it was a deli and that is Exhibit 106A.

8 VICE CHAIR JOHN: Okay. And it was on the first
9 floor or first and second?

10 MS. WILSON: In 1961, it was the first floor only.

11 VICE CHAIR JOHN: Okay. All right, thank you.

12 BZA CHAIR HILL: I guess, Ms. Wilson, what would
13 be helpful is if -- what we are actually asking for now if
14 you can put it all in one place --

15 MS. WILSON: Yeah.

16 BZA CHAIR HILL: -- so you know, if you want to
17 go ahead and show us the CFOs for whatever you had before,
18 right? I am actually interested, I guess in the argument
19 that this was a deli at some point in time on all the floors.
20 If you can put that again or highlight it in your next
21 filing. And then, I don't know, anybody else want anything
22 else?

23 MEMBER BLAKE: Is there any way you can -- she can
24 prove that it was purposefully built as a commercial space?
25 Is there anything we can go back to, you know, 1912+ that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 gives me that?

2 MS. WILSON: We can try certainly.

3 MEMBER BLAKE: It might even be just a picture of
4 the square that would reflect something like that.

5 MS. WILSON: Yeah, we can -- Absolutely, we'll
6 look in that.

7 BZA CHAIR HILL: Okay. And again, I'm also
8 speaking for like the applicant. Unfortunately, these types
9 of efforts, particularly within Legal, it costs money.
10 Right? So I understand then this costs money, what we're
11 asking for. And unfortunately, I can't even say that the
12 applicant, you know, is going to -- that this is going to
13 succeed. But you know, there is I think -- I think there is
14 a good argument put forward. I do think there are things
15 that we as a Board can think about. I think that we did --
16 we were convinced for the basement use the last time. I
17 think partially maybe some of that was that there was going
18 to be housing maybe on the second floor. But I'm throwing
19 all that out to say to the owner also, we don't -- I don't
20 know what's going to happen. Okay? All right. Anybody
21 else? Yep.

22 MR. YOUNG: Sorry, I still had a couple people
23 that had signed up to testify. I don't know if they still
24 wanted to testify, but I just didn't want to go past them.

25 BZA CHAIR HILL: Yep. No, because -- I mean Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Wilson, what I thought -- and that's okay -- and the next
2 time we do this, I'm going to figure out a better way to do
3 it. You thought that the -- I'm going to have to -- I'm
4 going to have to have to bring them in now so I don't have
5 to worry about what I may or may not do the next time. I
6 just need them to know that apparently you thought that they
7 weren't going to testify because they were going to be
8 represented by these other people. Correct?

9 MS. WILSON: So the idea was everyone as a show
10 of support would be on, but would be okay with these people
11 representing them. But I understand what you're saying that
12 you need to allow them on basically and whoever wants to
13 speak --

14 BZA CHAIR HILL: Right.

15 MS. WILSON: -- I guess if they still want to,
16 obviously they have the right to.

17 BZA CHAIR HILL: Right. How many do you got, Mr.
18 Young?

19 MR. YOUNG: I believe I have three.

20 BZA CHAIR HILL: Okay. If you want to bring the
21 three in and please give me their names.

22 MR. YOUNG: Yes. The first is Bruce Grindy, the
23 second is Marie Cox, and I had one more, but it looks like
24 they dropped off.

25 BZA CHAIR HILL: Okay. Ms. Grindy, are you there?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Go ahead, Vice Chair John.

2 VICE CHAIR JOHN: Thank you, Mr. Chairman.
3 Unfortunately I have a hard stop at 7:00, so I will review
4 the record if anything else develops after I leave.

5 BZA CHAIR HILL: Got it.

6 VICE CHAIR JOHN: Thank you.

7 BZA CHAIR HILL: Thank you.

8 VICE CHAIR JOHN: Good night, everyone.

9 BZA CHAIR HILL: Good night, Ms. John. Mr.
10 Grindy?

11 MR. GRINDY: Yes, I'm here.

12 BZA CHAIR HILL: Okay. Do you want to introduce
13 yourself for the record?

14 MR. GRINDY: Yes. I am Bruce Grindy and I live
15 at 1434 C Street Northeast. And well, I'm just here to
16 support Pacci's. And that's about all I have to say --

17 BZA CHAIR HILL: Okay.

18 MR. GRINDY: -- so I'll let you guys off the hook.
19 Thank you.

20 BZA CHAIR HILL: Thanks, Mr. Grindy. I think also
21 you may have submitted something into the record, but I'm not
22 sure. But thank you for -- thank you, Mr. Grindy for
23 sticking around. Okay. Ms. Cox, can you hear me?

24 MS. COX: Yes, I'm here.

25 BZA CHAIR HILL: Can you introduce yourself for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 the record please?

2 MS. COX: Of course. Marie Cox and I live on 8th
3 Street Southeast. I have lived on the Hill for 35 and I --
4 Basically everything that's been said by neighbors so far,
5 I agree with. It is the first restaurant that has worked in
6 a very long time. And I like to see us support local
7 businesses and I don't understand why we're having such a
8 hard time supporting this man.

9 BZA CHAIR HILL: Okay, all right. Ms. Cox, nobody
10 wants to not support this man. It's just the regulations
11 that we're trying to figure out as to whether or not we can
12 support this man, but I appreciate you coming and sticking
13 around for this long. All right, thanks Ms. Cox.

14 Okay. Thank you all for coming. Ms. Wilson, you
15 have what you've been asked. Right? I think we're going to
16 have a continued hearing so that we can ask questions upon
17 what you're going to supply us. When do you think you might
18 be able to supply us whatever you think you're going to
19 supply us?

20 MS. WILSON: A few weeks.

21 BZA CHAIR HILL: Yeah?

22 MS. WILSON: Yeah. I think a few weeks would be
23 good.

24 BZA CHAIR HILL: So that gets 7 -- 14th. We had
25 been talking about the 28th, Mr. Moy for something else I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 remember at the beginning of this day. What's the 28th look
2 like again for us, Mr. Moy?

3 MEMBER SMITH: Before Mr. Moy answers that
4 question, Chairman Hill, because I think there was some
5 discussion about this information about an economic analysis
6 being factored in -- analyzed by the Office of Planning. So
7 would that give the Office of Planning enough time to analyze
8 that information as well?

9 BZA CHAIR HILL: Let's see when the Office of
10 Planning may or may not need time. Can the Office of
11 Planning please speak to how much time they need and when
12 they would like the information?

13 MS. MYERS: Let's take a look at it. I don't know
14 what day the applicant is going to be required to submit, but
15 I would think that the Office of Planning would need at least
16 two or three days at the minimum --

17 BZA CHAIR HILL: Yep.

18 MS. MYERS: -- to turn something around.

19 BZA CHAIR HILL: Okay. So if we come back here
20 on the 28th, Mr. Moy, can you just try to figure out who's
21 going to give us what?

22 MEMBER MOY: Yes. Okay. Okay, well it sounds
23 like you've already (audio interference) the continued
24 hearing date or is this a meeting session date?

25 BZA CHAIR HILL: No, it's a continued hearing.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 What do we have on the 28th just so I know again?

2 MEMBER MOY: You have one appeal, six cases, one
3 expedited and one reconsideration.

4 BZA CHAIR HILL: What do we have on -- What do we
5 have on March 6th?

6 MEMBER MOY: March 6th, we have nine cases and one
7 expedited.

8 BZA CHAIR HILL: Ms. Wilson, I know that the
9 sooner's the better. Right? Is the one week going to be
10 that much of an issue for your client?

11 MS. WILSON: Between the 28th and the 6th?

12 BZA CHAIR HILL: Yeah.

13 MS. WILSON: That's fine. The 6th will be okay.

14 BZA CHAIR HILL: Okay. So let's do the 6th then.
15 Okay, Mr. Moy?

16 MEMBER MOY: Okay. So we have a continued hearing
17 for March 6th. Then if the applicant can make her filings
18 by February, let's say -- let's say February 23rd, Friday.
19 And then set a deadline for the Office of Planning to do
20 their evaluation of the submissions by Wednesday, February
21 28th -- or actually, let's make it -- Let's make it Friday,
22 March 1st. And then the continued hearing will be that
23 Wednesday, March 6th. Should I repeat that again or are we
24 good?

25 BZA CHAIR HILL: You can repeat it again. Did the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 applicant hear that? Okay, all right. Okay. All right,
2 then I'm going to see you guys on March 6th and you all have
3 a good evening. Thanks for sticking with us. We're closing
4 this portion of the hearing. Bye.

5 MEMBER MOY: I'm also going to add that for March
6 6th, which I gave for the deadline for OP, do you want any
7 other responses from anyone else or just --

8 (Simultaneous speaking)

9 BZA CHAIR HILL: If the ANC -- If the ANC wants
10 to respond to OP's report or anything that the ANC might want
11 to talk about from OP.

12 MEMBER MOY: Okay. Then for the ANC, we'll give
13 them to let's say -- let's say Tuesday, March 5th. How's
14 that?

15 BZA CHAIR HILL: Okay. If you all could -- If
16 staff could reach out to the ANC just to make sure they got
17 that.

18 MEMBER MOY: We'll do. We'll have an OZ
19 memorandum in the case record as well.

20 BZA CHAIR HILL: Okay, perfect. All right. Mr.
21 Moy, I'm going to call you back. We have two cases left.
22 I know it's getting really late, but if you all will bear
23 with me, I'd like to get them done. Otherwise -- so you all
24 think about it. The last time -- now I'm just looking at my
25 board members -- we did punt one time, but I think we made

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 it to like 9 o'clock. And so if you all can bear with me.
2 Do you want to take -- Right now I'm talking to my board
3 members. Do you want to take a break? Do you want to have
4 dinner? Is break good enough, like 15 minute break, 20
5 minute break good enough? Okay. I'm going to work with the
6 -- I __ that long yet, so I can't -- I don't know what
7 exactly we got there. So let's go ahead and do 20 minutes,
8 okay, then we'll come back. Okay, thank you. Bye-bye.

9 (Whereupon, the above-entitled matter went off the
10 record at 7:07 p.m. and resumed at 7:35 p.m.)

11 MEMBER MOY: All right. The board has returned to
12 its public hearing session, and the time now is at or about
13 7:35 p.m. So the next case before the board is Application
14 No. 21025, Heather Gustafson.

15 This is a self-certified application pursuant to
16 Subtitle X, Section 901.2, for special exceptions under
17 Subtitle C, Section 703.2, minimum vehicle parking
18 requirements of Subtitle C, Section 701, and Subtitle Use
19 Section 203.1(h) to allow a daytime carry use property in the
20 R-1 B zone at 2828 Hearst Terrace, Northwest Square, 1420,
21 Lot 12. And I believe that's all I have. Thank you, sir.

22 BZA CHAIR HILL: Okay, great. Thank you. If the
23 applicant can hear me, if they could please introduce
24 themselves for the record.

25 MR. BARRON: Yes. Thank you, Mr. Chair and board

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 members. Marty Sullivan with Sullivan and Barrows on behalf
2 of the Applicant.

3 BZA CHAIR HILL: Okay, Mr. Sullivan, if you want
4 to walk us through your presentation, why you believe your
5 client is meeting the criteria for us to grant the relief
6 requested and we'll see what happens. Go ahead and begin
7 whenever you like.

8 MR. BARRON: Thank you. If we could have the
9 PowerPoint presentation loaded, please. And I'm not sure if
10 Heather Gustafson, the director, school director and property
11 owner, made it here or not, but if she's out there on the
12 Webex, if she could be elevated to the panel, that would be
13 great. So next slide, please.

14 This is 2828 Hearst Terrace, Northwest. It's a
15 home. This is the old PowerPoint, I think. Maybe not. So next
16 slide, please. I'll come back to this one.

17 So the property is located in R-1B zone. It's the
18 home of Palisade Montessori Preschool. It's for 24 children.
19 It's a room attached to the back of the house, essentially.
20 It's also a single family home. The applicants proposing to
21 continue the existing use.

22 It was initially established in 1984 and the
23 Applicant's requesting relief from the parking requirements
24 because there's one space requirement for the home and one
25 space requirement for the school use. Following the 1984 BZ

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 approval, the order has been renewed five times. This would
2 be the 6th for a total of seven applications over the past
3 39 years.

4 This Applicant has owned and operated Palisades
5 Montessori for the last ten years and has complied with all
6 the associated conditions, was last renewed in 2016 and the
7 Applicant is requesting the same relief under the same
8 conditions, but request that the term limit be removed. Next
9 slide, please.

10 We do have the support of the Office of Planning.
11 ANC 3D voted unanimously in support. Now, note in the ANC
12 3D's letter also. They mentioned that specifically, near the
13 end, ANC 3D supports the Applicant's request to eliminate the
14 term limit. And there's five letters of support in the record
15 and no opposition. Next slide, please.

16 There's a picture of the house. Next slide,
17 please. This is the floor plan of the room. It's one story
18 in the back on the first level and this encompasses the
19 entire use for the 24 kids. Next slide, please.

20 We'll be in harmony with the purpose and intent
21 of the regs. The request is to serve up to 24 children with
22 four staff in a residential neighborhood, and it's compatible
23 with other similarly situated centers approved by the board.
24 And the proposed number of children is consistent with what
25 is permitted via building code. Next slide, please.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 These are the specific requirements. The Applicant
2 has agreed to a list of conditions which was worked on in
3 prior cases. So we just carried over the conditions that were
4 approved last time minus the term limit.

5 I do want to note a request for a change, Heather.
6 Ms. Gustafson realized a couple of days ago that the hours
7 of operation are not correct or she needs to expand them from
8 what they were in the last approval.

9 Right now they're listed as condition No. 4 on
10 page 2 of the Applicant statement says 8:30 a.m. to 03:30
11 p.m., and we would like to revise that to 08:00 a.m. to 6:00
12 p.m., because she currently has eleven children of the 24
13 that don't get picked up until later in the day, prior to
14 06:00 p.m.

15 I mentioned this to the Office of Planning on
16 Monday when I found out about it, I also emailed the ANC. I
17 do have an email from chair Duncan from ANC 3D. She said, I'm
18 responding for Andrew and me. Andrew is the SMD. We cannot
19 speak for the entire ANC on this matter because we haven't
20 had a full transparent vote by ANC 3-D. That said, Andrew as
21 the SMD representative agrees to this change to 6:00 p.m. And
22 you can tell the BZA this, I, as the chair also agree.

23 I think it's a minor enough change. And actually
24 I think it's also within the authority of the chair and or
25 the SMD to agree to that change and still get great weight

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 for all the conditions. But ANC's support in all of the other
2 conditions, we agreed on all of that stuff. The next
3 requirement, there's no offsite play area. Applicant will
4 comply with any requirements for special treatment and we
5 know of no other child development center within 1000 sq.ft.

6 Next slide, please. Regarding the reduction in
7 parking, there's no alley access. All there is room for is
8 one car in the driveway. And that's essentially the reason
9 for the special exception due to the physical constraints of
10 the property. Next slide, please.

11 And any reduction is only for the amount that the
12 Applicant is physically unable to provide. So we still have
13 one parking space, which is the only one available. Next
14 slide, please. And that's it.

15 BZA CHAIR HILL: Thank you. Okay, can I hear from
16 the Office of Planning, please? Is the Office of Planning
17 there? Hi, this is Ron Barron with the DC Office of Planning,
18 please?

19 MR. BARRON: Hi, this is on Barron with the
20 DC Office of Planning. I apologize for my video. I'm having
21 some technical issues, so I'm not able to turn my camera on,
22 if that's okay.

23 BZA CHAIR HILL: That's okay.

24 MR. BARRON: Okay, so for the record, my
25 name is Ron Baron, Development Review Specialist with the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BC Office of Planning. I was the case review specialist on
2 this one. The Office of Planning recommends approval of
3 special exception relief to permit a child development center
4 in the residential structure in the R-1B zone, as well as
5 special exception relief for the parking requirements as
6 requested in the application.

7 Further, upon review of the more complete case
8 record, the Office of Planning would have no objection to the
9 Applicant's request to remove condition 1 of the previous
10 order, which limited the period of approval to seven years.
11 Beyond that, the Office of Planning is content to rest on the
12 record, and I'm available to answer any questions you may
13 have. Thank you.

14 BZA CHAIR HILL: Does the Office of Planning have
15 any thoughts about extending the hours or changing the hours
16 from eight to six?

17 MR. BARRON: We had no objection on that, provided
18 that DDOT was comfortable with it. We would defer to DDOT on
19 that one. We didn't really have time to review it, however,
20 so we would have to defer to them on that issue. But we're
21 comfortable with it, given that the ANC is comfortable with
22 it.

23 BZA CHAIR HILL: Okay. All right, Mr. Young, is
24 everyone here wish to speak?

25 MR. YOUNG: We do not.

1 BZA CHAIR HILL: Okay, I'm going to get to the
2 question that Mr. Blake might have. Just one quick question,
3 if you all can think about my board, meaning if you want to
4 hear from DDOT and/or something more official from the ANC,
5 we can always leave the record open and have a vote after
6 those things come in. But Mr. Blake, you had a question?

7 MEMBER BLAKE: With regard to what we just talked
8 about in terms of the timing. That provision K, 8K on
9 dismissal, it says that, in the TDM, talks about no later
10 than 03:30 p.m. So you probably have to make an adjustment
11 there to be consistent with the hours above. So these are the
12 ones we're going to change, No. 4 and No. 8K. So No. 4 and
13 No. 8K may also have to be adjusted there.

14 Second thing is, with regard to the parking space
15 that's being removed, it would be the parking space for the
16 daycare, is that correct, Mr. Sullivan?

17 MR. SULLIVAN: Nothing's actually being removed.

18 MEMBER BLAKE: You're getting the space proposed
19 as opposed to two required. There's one for the residents and
20 one for the daycare. So I'm -- the daycare space that we're
21 going to abate, is that right?

22 MR. SULLIVAN: Yes. Since that's what we're asking
23 early for, that would make sense, yes.

24 BZA CHAIR HILL: Okay. That's all. Because it just
25 says two. So it's trying to make clear that one and not the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 residential, because I think the residential is required.

2 MEMBER BLAKE: Mr. Sullivan, one last question. Why
3 are you asking for this relief for parking, since we've had
4 this several times before, why this time you're asking for
5 parking relief?

6 MR. SULLIVAN: Yeah, that's a good question. I
7 think it should have been asked for in the past. It may have
8 been because of the change in the regulations. The parking
9 requirement under the 58 regulations was based on number of
10 staff and the parking regulations under 2016, we wouldn't
11 have a parking requirement under the 2016, except for the
12 fact that there's a minimum of one, and that's new.

13 So that's the only thing I could think of that if
14 maybe staff, maybe ten or 20 years ago, the staff was under
15 the number that would require space, which was four at least.
16 It was four at 2016 in the regs I have. But that was changed.
17 No matter how small number of staff you have, you have at
18 least one parking requirement.

19 MEMBER BLAKE: Thank you.

20 BZA CHAIR HILL: Commissioner Stidham.

21 MEMBER STIDHAM: Just one question. Mr. Sullivan,
22 Will it continue to be a residence in addition?

23 MR. SULLIVAN: Yes, yes. The homeowner is the
24 director of the school.

25 MEMBER STIDHAM: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MEMBER BLAKE: Mr. Sullivan, there is a second
2 location, though, on MacArthur, correct?

3 MR. SULLIVAN: She does have one, yes. Palisades
4 Montessori has a location on MacArthur. We actually came in
5 for a parking special exception on that case a few years
6 back, too.

7 MEMBER BLAKE: Okay, thank you.

8 BZA CHAIR HILL: Okay. Do you all need anything
9 from the Applicant? Do you all need anything from DDOT? I
10 don't need anything. All right. Right. So, Mr. Smith, you're
11 good? Okay. All right, I'm going to go ahead, and just to be
12 clear, Mr. Sullivan. Right, so the residential required
13 parking, I'm sorry, there's one parking that is still being
14 there, and that's the residential required parking. Right?
15 Then No. 4 is being changed to 8:30 to 3:30. I'm sorry, is
16 being changed to 8:00 to 6:00. Right? And then No. 8K is
17 being changed to what? -- No later than 6:00?

18 MR. SULLIVAN: Correct.

19 BZA CHAIR HILL: The extend day program -

20 MR. SULLIVAN: Can generally be picked up no later
21 than 06:00 p.m.

22 BZA CHAIR HILL: Right. And then you strike the
23 last piece.

24 MR. SULLIVAN: Correct.

25 BZA CHAIR HILL: Okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. SULLIVAN: And no time limit unless the board
2 has any questions about that.

3 BZA CHAIR HILL: Okay. I'm good with everything
4 that's just been said. I'm just clearing up and want to make
5 sure the board doesn't have any questions before I make a
6 motion. Mr. Moy?

7 MEMBER MOY: Yeah. I'm a little bit slow at the
8 moment. Could you go over that again in terms of the time?

9 MR. SULLIVAN: And don't forget to drop off, in G.

10 MEMBER MOY: In G. So that's 8:30. It's changing
11 to 08:00 a.m., ?correct.

12 BZA CHAIR HILL: The drop off shall be between 8:00
13 a.m. And what? 8:30 to 9:15. So 08:00 a.m. to 8:45?

14 MR. SULLIVAN: That would work. Yeah. And I'm
15 sorry, I had that wrong in that statement.

16 MEMBER MOY: Okay. And then the other follow up -

17 BZA CHAIR HILL: Let me start again, Mr. Moy, just
18 so I know. And then I'm going to repeat it again. What the
19 board is determining whether or not we're going to agree to
20 this is we're striking condition No. 1. Okay. Then in No. 4,
21 the hours of operation will be between 8:00 a.m. and 6:00
22 p.m.. Okay. And then in No. 8G, drop off shall be between
23 8:00 a.m. and 8:45 a.m.

24 MR. SULLIVAN: Mr. Chair, I'm sorry. I don't know
25 if the change to 8:00 a.m. Means the whole window slides or

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 not. I don't think anybody's going to notice, but can we just
2 say 9:00 a.m.? Between eight and nine?

3 BZA CHAIR HILL: Sure.

4 MR. SULLIVAN: I mean, I think the bigger the
5 window, the better anyway.

6 BZA CHAIR HILL: Well, really the drop off is
7 before eight. If the thing starts at eight.

8 MR. SULLIVAN: Well, I think it does, but drop off
9 will be at 8:00, so the time is the same.

10 BZA CHAIR HILL: All right. Okay.

11 MR. SULLIVAN: It starts when they drop off. The
12 day starts when they drop off.

13 BZA CHAIR HILL: Okay. What I'm saying is drop off
14 should have started earlier than 8:00. Otherwise you'll be
15 late all the time. Right?

16 MR. SULLIVAN: Well, I don't know that the
17 Montessori has that strict of, uh -

18 BZA CHAIR HILL: Okay, all right, whatever. I'll
19 do 8:00 tonight then. Okay. And then dismissal, K, Mr. Moy,
20 the last line. Enrolled in the extended day program. She'll
21 generally be picked up no later than 06:00 p.m. And then
22 strike the rest of it.

23 MEMBER MOY: Okay, I got it.

24 BZA CHAIR HILL: Okay. And I'm going to repeat it
25 again when I make the motion. Okay?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MEMBER MOY: Got it.

2 BZA CHAIR HILL: Okay. Actually, I'm not going to
3 repeat it.

4 MEMBER MOY: Thank you.

5 BZA CHAIR HILL: All right. Okay. I'm going to
6 close the hearing in the record. Goodbye, Mr. Sullivan.

7 MR. SULLIVAN: Thank you.

8 BZA CHAIR HILL: Okay. I didn't have an issue with
9 the application. I think that the Applicant is meeting the
10 criteria within the regulations for us to grant this. I think
11 the Office of Planning is in agreement with dropping the
12 conditions of the seven year and the time, and this has been
13 going on for 40 years. And these childcare establishments,
14 and we need these. And so I'm in support. Mr. Smith, do you
15 have anything to add?

16 MEMBER SMITH: I agree with your assessment of this
17 case and dropping the term limit here. Like you were saying,
18 this has been going on for a number of years and we haven't
19 received any negative feedback from the neighborhood. As a
20 matter of fact, the ANC is in support of the continuation of
21 the Montessori school.

22 So based on what's within the record, I do believe
23 they met the burden of proof. But to grant the special
24 exception, I will support it.

25 BZA CHAIR HILL: Commissioner Stidham?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MEMBER STIDHAM: I have nothing to add. I
2 completely support it as well.

3 BZA CHAIR HILL: Thank you, Mr. Blake?

4 MEMBER BLAKE: Nothing to add, sir.

5 BZA CHAIR HILL: Okay. I'm going to make a motion
6 to approve application number 21025.

7 MEMBER STIDHAM: Can I just ask one question?

8 BZA CHAIR HILL: Sure.

9 MEMBER STIDHAM: You had indicated that OP was in
10 support of the removal of the seven year term. And I thought
11 I had read that they were not in support of removing the
12 seven year term. And I just went back and checked their
13 report, and it does say that OP does not support removing
14 this condition. Several characteristics make a periodic
15 review desirable in this case.

16 BZA CHAIR HILL: That's what I thought happened.
17 And then OP just said they didn't have a problem with
18 removing the term. That's why, I guess we can bring op back
19 in. No, that's what they said in their testimony. But you
20 want to bring back in op, Mr. Young? Unless they went home.
21 Mr. Young, are you there?

22 MR. YOUNG: Sorry, can you say that again?

23 BZA CHAIR HILL: Yeah. Can you see if you can bring
24 in the Office of Planning?

25 MR. YOUNG: Yeah.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 BZA CHAIR HILL: Got it. Mr. Barron, can you hear
2 me?

3 MR. BARRON: I did hear that question and I stuck
4 around specifically because I was expecting somebody to ask
5 it. In the report, when we filed it, we had only heard from
6 the AMC. So based on the board's reasoning in the prior
7 orders, I had determined that it made sense at the time.
8 However, we were still waiting to hear back from DDOT on
9 whether or not they had any objection.

10 And after we had filed our case, we did see DDOT's
11 report came in. They had no objection. And the totality of
12 the AMC, the community, and DDOT having no objection, we were
13 moved to change our opinion on the record at the hearing,
14 rather than submit a new filing at a late hour. So that's why
15 we did it this way.

16 MEMBER STIDHAM: Okay. My apologies. I totally
17 missed it in your testimony.

18 MR. BARRON: Not a problem. I added it sort of at
19 the end, so I'm not surprised you missed it.

20 MEMBER STIDHAM: Okay. Sorry. It's been a long day.

21 MR. BARRON: Yes, it has. Thank you.

22 BZA CHAIR HILL: No need to apologize. He said it.
23 I heard him say it, and I was just happy that he said it. All
24 right. Okay, Mr. Young, you can remove Mr. Barron once again,
25 closing the hearing, making a motion to approve application

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 number 21025 as caption read by the secretary including the
2 changes to the conditions that we made, which is that we're
3 going to drop the time limit. They're still providing one
4 residential parking space.

5 The hours of operation are now going to be from
6 8:00 to 6:00. The drop off is going to be from 8:00 to 9:00.
7 And the dismissal, nobody should be there later than 6:00 to
8 pick up people. I ask for a second. Mr. Blake?

9 MEMBER BLAKE: Second.

10 BZA CHAIR HILL: Motion made and second. Mr. Moy,
11 if you could take a roll call?

12 MEMBER MOY: When I call your name, if you'll
13 please respond to the motion made by Chairman Hill to approve
14 the application for the relief requested, along with the
15 changes in the conditions as he has cited in his motion. The
16 motion was second by Mr. Blake.

17 Zoning Commissioner Stidham?

18 MEMBER STIDHAM: Yes.

19 MEMBER MOY: Mr. Smith? Mr. Blake?

20 MEMBER BLAKE: Yes.

21 MEMBER MOY: Chairman Hill?

22 BZA CHAIR HILL: Yes.

23 MEMBER MOY: Staff would record the vote as four
24 to zero to one. This is on the motion made by Chairman Hill
25 to approve. The motion to approve was second by Mr. Blake,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 who also voted to approve the application.

2 Others voting to approve the application, Zoning
3 Commissioner Stidham, Mr. Smith, Mr. Blake, Chairman Hill.
4 No other board members participating, the motion carries four
5 to zero to one.

6 BZA CHAIR HILL: Great. Thank you. You may call our
7 last case, Mr. Moy.

8 MEMBER MOY: This case is Application No. 21030,
9 So Others Might Eat. This is an amended self-certified
10 application pursuant to Subtitle F, Section 901.2, for the
11 following special exceptions, Subtitle C, section 703.2, from
12 minimum vehicle parking requirements, Subtitle C, Section
13 701, Subtitle U, Section 320.2, to allow conversion of an
14 existing residential building to an apartment house and
15 pursuant to Subtitle X, Section 1002, for area variances as
16 follows: Residential Conversion Requirements, Subtitle U,
17 Section 320.2C and TDM requirement for the reduction of four
18 or more parking spaces per Subtitle C, Section 703.4.

19 Property's located in the RF-1 zone at 1876 4th
20 Street, Northeast Square 3567, Lots 811 and 812. The
21 Applicant, as a preliminary matter, has offered expert
22 witness to Mark Feinstein in architecture, but has previously
23 granted him expert status. And only individuals in the room,
24 sir, are the Applicant's Party, I believe.

25 BZA CHAIR HILL: Great. Thank you. Could the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 Applicant please introduce themselves for the record?

2 MR. WALLACE: Good evening to the members of the
3 board. For the record, I'm Derick Wallace with Goulston and
4 Storrs, and I'm joined with my colleague Cary Kadlecek, also
5 with Goulston and Storrs.

6 BZA CHAIR HILL: Okay, great. Mr. Kadelcek, you're
7 going to get me my Office of Planning's recommendation for
8 a positive outcome, correct, Mr. Kavalchek?

9 MR. KADLECEK: Absolutely. Yes.

10 BZA CHAIR HILL: All right. Okay. It's the end of
11 the day. You all are it. Mr. Wallace, you can go ahead and
12 please give us your client's presentation and why you believe
13 you're meeting the criteria for us to grant the relief
14 requested. And you may begin whenever you like.

15 MR. WALLACE: Awesome. Thank you. Chairman Hill.
16 Just for the record, my name again is Derick Wallace and I'm
17 here on behalf of the Applicant, So Others Might Eat. Today,
18 we are here to request two area variances from the TDM plan
19 requirement of Subtitle C, section 703.4, and 900 sq.ft.
20 minimum for each existing and new dwelling unit requirement
21 of Subtitle U, Section 320.2.

22 Additionally, we are requesting special exception
23 relief from the minimum parking and expansion of an apartment
24 house use requirement of Subtitle C, Section 701.5 and
25 Subtitle U 320.2, respectively. All four requests will

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 facilitate the modernization of an existing 93 unit, all
2 affordable rooming house and apartment building in the R-F1
3 zone.

4 Before going into how the application satisfies
5 the standards of relief, I would like to introduce Imani
6 Woodby (phonetic) and Jarrod Brennet, both of whom can speak
7 to SOME's mission and need for a modernized apartment
8 facility.

9 Mr. Young, if you could pull up the presentation, that would
10 be great. Thank you.

11 MR. BRENNET: Thanks, Eric. Again, Jarrod Brennan.
12 I'm the Chief Housing Development officer here at SOME. We
13 can be very brief before we get to Marc Feinstein as
14 architect. Just a brief introduction in case you don't know
15 us, we've been providing homeless services and low income
16 services in DC since the 1970s. Shalom House is one of our
17 earliest housing development projects. We purchased it in
18 1990. We've been operating it, as Derek said, as a rooming
19 house.

20 Since then, we call these single room occupancy
21 units our SRO model, where single individuals occupy a
22 rooming unit, share kitchen, share bathroom, and that's
23 worked well for us over the years, especially those coming
24 sort of the highest barriers straight from homelessness and
25 developing a sense of community, those especially out of in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 recovery services.

2 However, as the years have gone by, that model has
3 become less and less attractive to a lot of folks, and we
4 find ourselves now in the COVID era of needing to modernize
5 and be able to provide decent, modern accommodations to our
6 residents.

7 So this application for, getting to the technical
8 aspects, would allow us to do so by converting these to
9 efficiency units. That's a model that we employ across our
10 portfolio. We have a lot of junior one bedroom and efficiency
11 zero bedroom units that are very successful, including the
12 newly opened 139 at 1550 North Capitol Street.

13 I know it's been a long day, so I'll also just
14 touch on, we have brought this, as you'll see in the record,
15 to the ANC, and had a lot of success there with ANC 5F
16 attending their November meeting and received their vote of
17 approval, support and December meeting. I'll end it there.

18 BZA CHAIR HILL: Mr. Brennett, is that how you say your
19 last name?

20 MR. BRENNET: Yeah. Correct.

21 BZA CHAIR HILL: You guys do excellent work. I mean,
22 you've been around for a long time, and we all know of your
23 work in the city. And even though you're here at the very end
24 of the day and the night, you guys are doing a good job and
25 that you're the last case. Thank you for your presentation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MR. BRENNET: Sure.

2 BZA CHAIR HILL: Mr., who's the architect?

3 MR. FEINSTEIN: Yeah, I'm Mark Feinstein. I'm with
4 Miner Feinstein Architects.

5 BZA CHAIR HILL: Okay, great.

6 MR. FEINSTEIN: I will be brief as well. I'll walk
7 you through what we're trying to do. As you can see from the
8 existing and proposed elevations on the cover there, the
9 massing of the building, the footprint of the building, will
10 not change as a result of our renovation. It's primarily an
11 interior renovation.

12 If you go to the next slide, please, some existing
13 exterior photographs showing that the building is there for
14 quite some time. It's been utilized, and it's kind of
15 ingrained in the neighborhood. Next slide, please.

16 We are doing some changes to outside within our
17 property. We're leveling out an area where the current
18 existing entrance is and relooking it down to a different
19 entrance in order to meet the needs of the function. However,
20 that's not really the purpose of the meeting here. So the
21 next slide, please.

22 As you can see from the existing ground floor and
23 we'll work our way up a little bit, the building has 74
24 sleeping units, which are basically units that have shared
25 bathrooms. And they have 19 efficiency units. And those units

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 have kitchens and bathrooms within the dwelling units, for
2 a total of 93 units.

3 The proposed scope of work calls for relocation
4 of a lot of the community functions to the lower level. And
5 then the actually decreasing of the total number of units
6 from 93 units to 73 total units.

7 Of those, 60 of the units will be regular
8 efficiencies, 11 of the units will be handicapped
9 efficiencies. And then there'll be two one-bedroom units that
10 are basically for live-in assistance for the residents.
11 Moving to the next slide, please.

12 Okay, so this is the first floor you can see on
13 the existing plan on the upper right that shows kind of the
14 density of the current layout, showing how many units there
15 are. And then you see the blue units, which are the
16 efficiency units on the proposed layout on the lower left.
17 You can see that just by the nature of the renovation, each
18 of these units have much greater living spaces. There's
19 bathrooms in all the dwelling units, there's small
20 kitchenette. It'll serve the residents in a much greater
21 capacity based on the current needs, as Jarrod was saying.
22 I believe that's the next couple slides or continued floor
23 plan slides, so we can go ahead real quick. But it's
24 basically the same. Saying the same thing.

25 As we work our way up the boating, the sleeping

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 units become efficiency units and become much more usable for
2 the current needs of the residents. And I'm not sure if
3 that's it. That may be the last slide.

4 There's this elevation. So you can see these are
5 the existing elevations. They're not really changing. We're
6 not really looking to change the exteriors of the buildings.
7 We're primarily looking to repurpose the insides of the
8 buildings to make it more functional for the user. And if you
9 have any questions, happy to answer.

10 BZA CHAIR HILL: Okay. Mr. Blake has his hand up.

11 MEMBER BLAKE: Do you have the average square
12 footage of the efficiencies in the one bedroom?

13 MR. FEINSTEIN: I don't have that hand on.

14 MR. BRENNET: I think they're just under the 300
15 mark, if you look at the zoom in.

16 MR. FEINSTEIN: Yeah. Okay. So the efficiencies are
17 about 360 units, 60 in the 700 to 800 sq.ft.

18 MEMBER BLAKE: And how many of the current
19 apartments, 93, are currently occupied. And how many are
20 going to be displaced or returning to this place?

21 MR. BRENNET: Yeah, it's a good question. It's
22 actually part of why this really makes sense and is necessary
23 for us. 65 are currently occupied. There's a lot of long term
24 residents here. There has been over the years. Again, we
25 recently opened a brand new single build housing building on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 North Capitol Street, that attracted some folks. We allowed
2 them to internally transfer, and it's been harder and harder
3 to get new individuals engaged in our programs over to these
4 SRO units.

5 So, anyway, 65 currently, whoever's remaining at
6 the time that we can close on construction will have the
7 right to return, but we expect it'll be less than the
8 eventual 73 units that we'll have at the building.

9 MEMBER BLAKE: Will you have to relocate everyone
10 before and bring them back, or are you going to be able to
11 do it with them in it?

12 MR. BRENNET: Yeah, we're going to relocate. It'll
13 make a much better, successful construction process. So we,
14 again, have a lot of units that just delivered on North
15 Capitol street. We have other opportunities throughout our
16 portfolio, and then, of course, we'll just go through all the
17 necessary location and help them find housing wherever it is
18 with us or other sort of similar affordable providers.

19 BZA CHAIR HILL: What is an SRO?

20 MR. BRENNET: Single room occupancy unit. It's
21 referred to here as rooming unit, but SRO is what we've
22 called them for the past 30 years. Essentially, a dorm room.
23 Basically just means shared kitchen and often shared bath,
24 in this case, shared bath.

25 BZA CHAIR HILL: Got it. Okay. I guess maybe this is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 for Mr. Wallace. There's not parking now, right?

2 MR. WALLACE: Correct. There is not parking now.
3 And the parking requirement actually stems from that change
4 of use from kind of rooming house to apartment building. So
5 both areas of relief kind of stem from that kind of a
6 technicality, kind of coming from the rooming house to the
7 apartment use. There is no parking currently, and there will
8 not be any parking in the new building.

9 BZA CHAIR HILL: Okay, great. All right. Anyone?

10 MEMBER BLAKE: What's the reason for doing a variance
11 for the TDM as opposed to writing a basic TDM here?

12 MR. WALLACE: I can address that. So I think that
13 the principal concern was the cost of a TDM plan. This being
14 a nonprofit, we wanted to minimize cost as much as possible.

15 Also because of that technicality, and there not
16 being any parking currently, and also the residents are
17 unlikely to have vehicles, so we thought that all of those
18 together, it made more sense to apply for the variance rather
19 than actually go through the TDM plan.

20 MEMBER BLAKE: Okay, thank you.

21 BZA CHAIR HILL: Okay, anyone else from the board? All
22 right, turning to the Office of Planning.

23 MR. BEAMON: I'm with the Office of Planning. We've
24 reviewed the application and recommend approval of the
25 requested parking relief and residential conversion. We found

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 that the request meet the criteria for Subtitle C and U.
2 Staff stands on the record, and we are able to take any
3 questions if you have any.

4 BZA CHAIR HILL: Thank you. Does anyone have any
5 questions for the Office of Planning? Mr. Young, is there
6 anyone here wishing to speak?

7 MR. YOUNG: We do not.

8 BZA CHAIR HILL: Does the board have any final
9 questions? Mr. Wallace, do you have anything you'd like to
10 add?

11 MR. WALLACE: I know it's been a long day, so I
12 just want to thank you all for hanging in there with us.

13 Thank you. I appreciate that. And the board does as well.
14 Going to go ahead and close the hearing in the record. Okay.

15 I don't have anything to add. I think that the
16 Applicant is meeting the criteria for grant as is requested.
17 I am just going to rely, or I'm going to rest on the Office
18 of Planning's report as well as that of the ANC and their
19 thoughts. And I am going to see if my fellow board members
20 have anything to add. Mr. Smith?

21 MR. SMITH: Seems to me that it's fairly
22 straightforward. It's a series of technical special
23 exceptions and area variances because they're changing from
24 SRO to an apartment house. And so I do rest on Mr. -- staff
25 report, given that great weight, and will also support the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 requested release.

2 BZA CHAIR HILL: Thank you. Commissioner Stidham?

3 MEMBER STIDHAM: Nothing to add. I agree. And we'll
4 also be resting on OP's report and prepared to support.

5 BZA CHAIR HILL: Thank you, Mr. Blake?

6 MEMBER BLAKE: Support of the application. Great
7 weight to the office planning recommendation and great weight
8 to the ANC 5E's report. In support with no issues or concerns
9 stated. And DDOT, so they have no objection and is in support
10 of the Applicant not filing a TDM. I'll be in support of the
11 application.

12 BZA CHAIR HILL: Thank you. I'm going to make a motion
13 to approve Application No. 21030 as captioned, read by the
14 secretary and ask for a second. Mr. Blake?

15 MEMBER BLAKE: Second.

16 BZA CHAIR HILL: Mr. Moy, take a roll call.

17 MEMBER MOY: Yes, thank you, sir. When I call your
18 name, if you'll please respond to the motion made by Chairman
19 Hill to approve the application for the relief requested. The
20 motion to approve was second by Mr. Blake.

21 Zoning Commissioner Stidham?

22 MEMBER STIDHAM: Yes.

23 MEMBER MOY: Mr. Smith?

24 MR. SMITH: Yes.

25 MEMBER MOY: Mr. Blake?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 MEMBER BLAKE: Yes.

2 MEMBER MOY: Chairman Hill?

3 BZA CHAIR HILL: Yes.

4 MEMBER MOY: Staff would record the vote as four
5 to zero to one. This is on the motion made by Chairman Hill
6 to approve. The motion to approve was second by Mr. Blake.
7 Mr. Blake also voted to approve the application, as well as
8 approval from Zoning Commissioner Stidham, Mr. Smith, Mr.
9 Blake, Chairman Hill. No other board members participating.
10 Motion carries, four to zero to one.

11 BZA CHAIR HILL: Thanks, Mr. Moy. I got one thing to
12 do. It'll take one minute. So as Chairman of the Board of
13 Zoning Adjustment for the District of Columbia, and in
14 accordance with section 405 C of the Open Meetings Act, I
15 move that the Board of Zoning Adjustment hold closed meetings
16 by video conference at 2:00 p.m. on the following dates:
17 Monday, February 5, 2024. 2:00 p.m.; Monday, February 12,
18 2024. These are all at 02:00 p.m.; Monday, February 26, 2024;
19 Monday, March 4, 2024; Monday, March 11, 2024; Monday, March
20 18, 2024; Monday, March 25, 2024; April 1, 2024; April 8,
21 2024; April 15, 2024; Monday, April 22, these are all Mondays
22 also, 2024; Monday, April 29, 2024; Monday, May 6, 2024;
23 Monday, May 13, 2024; Monday, May 20, 2024; June 3, 2024;
24 June 10, 2024; June 24, 2024; July 1, 2024; July 15, 2024;
25 July 22, 2024; and finally July 29, 2024. All on Mondays, all

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

(202) 234-4433

www.nealrgross.com

1 at 02:00 p.m.

2 The purpose of the closed meeting will be to
3 receive legal advice from our board's council and to
4 deliberate, but not vote, on, the contested cases per section
5 405 B, 4 and 13 of the Act. DC Official Code section 2575 B4
6 and 13, scheduled for the board's public meeting and or a
7 hearing the following Wednesday. Per DC official code,
8 Section 1-2007.42 A, no resolution, rule, act, regulation,
9 or other official action shall take place except at an open
10 public meeting. The closed meeting will be electronically
11 recorded pursuant to DC official code Section 2-578 A. Is
12 there a second, Mr. Blake?

13 MEMBER BLAKE: Second.

14 BZA CHAIR HILL: Motion and made a second. Mr.
15 Secretary, if you could please take a roll call.

16 MEMBER MOY: Thank you, sir. Please respond when
17 I call your name for the roll call. Zoning Commissioner
18 Stidham.

19 MEMBER STIDHAM: Yes.

20 MEMBER MOY: Mr. Smith?

21 MR. SMITH: Yes.

22 MEMBER MOY: Mr. Blake?

23 MEMBER BLAKE: Yes.

24 MEMBER MOY: Chairman Hill?

25 BZA CHAIR HILL: Yes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1716 14th STREET, N.W., SUITE 200
WASHINGTON, D.C. 20009-4309

1 Staff would record vote as four to zero to one.

2 BZA CHAIR HILL: As it appears that the motion is
3 passed, I request that the Office of Zoning provide notice
4 of these closed meetings in accordance with the act. Okay,
5 Mr. Moy, is there anything else before the board today?

6 MEMBER MOY: Definitely nothing else from the
7 staff, sir.

8 BZA CHAIR HILL: I thank you from the bottom of my
9 heart. Otherwise, it would have gone on to something else.
10 Commissioner Stidham, thank you. Mr. Blake, Mr. Smith, you
11 all have a nice evening.

12 (Whereupon, the above-entitled matter went off the
13 record at 8:18 p.m.)

14

15

16

17

18

19

20

21

22

23

24

25

C E R T I F I C A T E

This is to certify that the foregoing transcript


In the matter of: Public Hearing

Before: DC BZA

Date: 01-31-24

Place: teleconference

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



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1716 14TH ST., N.W., STE. 200

WASHINGTON, D.C. 20009-7831

(202) 234-4433

www.nealrgross.com