

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

SEPTEMBER 24, 2025

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CARL H. BLAKE, Vice Chairperson  
CHRISHAUN SMITH, Commissioner  
ANTHONY J. HOOD, Chairperson, Zoning Commission

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

KEARA MEHLERT, Secretary  
PAUL YOUNG, A/V Operations

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ALSO PRESENT:

ON BEHALF OF THE OFFICE OF PLANNING:

MICHAEL JURGOVIC  
MAXINE BROWN-ROBERTS  
SHEPARD BEAMON  
KAREN THOMAS  
MATT JESICK  
PHILIP BRADFORD

The transcript constitutes the minutes from the  
Regular Public Hearing held on September 24, 2025

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

2 (9:30 a.m.)

3 VICE CHAIRPERSON BLAKE: Good morning ladies and  
4 gentlemen. The Board of Zoning Adjustment September 24th, 2025  
5 public hearing will please come to order.

6 My name is Carl Blake, Vice Chair of the District of  
7 Columbia Board of Zoning Adjustment. Joining me today are Board  
8 members Chrishaun Smith representing the National Capital  
9 Planning Commission and Zoning Commission Chair Anthony Hood.

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

20 Today we'll begin with our decision meeting session and  
21 then proceed with our public hearing session. Please be advised  
22 that we do not take any public testimony at our decision meeting  
23 session. Public testimony will be received during the public  
24 hearing session, however only parties are allowed to testify on  
25 appeals. At the conclusion of a decision meeting session the

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1 Chair, in consultation with the Office of Zoning will determine  
2 whether a full or summary order may be issued. A full order is  
3 required when the decision it contains is adverse to a party  
4 including an affected ANC. A full order may also may be needed  
5 if the Board's decision differs from the Office of Planning's  
6 recommendation. Although the Board favors the use of summary  
7 orders whenever possible, an applicant may not request the Board  
8 to issue such an order.

9 In today's hearing session everyone who's listening by  
10 Webex or by telephone will be muted during the hearing and only  
11 persons who have signed up to participate or testify will be  
12 unmuted at the appropriate time. Please state your name and home  
13 address before providing oral testimony or your presentation.  
14 Oral presentations should be limited to a summary of your most  
15 important points.

16 When you're finished speaking please mute your audio  
17 so that your microphone is no longer picking up sound or  
18 background noise. Once again, if you experience difficulty  
19 accessing Webex or with your telephone call-in, or if you have  
20 forgotten to sign up to 24 hours prior to this hearing then please  
21 call our OZ hotline number at 202-727-5471 to sign up to testify  
22 and to receive Webex login or call-in instructions.

23 All persons planning to testify either in favor or in  
24 opposition should have signed up in advance. They'll be called  
25 to testify by name. By signing up to testify all participants

1 completed the oath or affirmation as required by Subtitle Y,  
2 Section 408.7. Requests to enter evidence at the time of an  
3 online virtual hearing such as written testimony or additional  
4 supporting documents other than live video which may not be  
5 presented as part of the testimony may be allowed, pursuant to  
6 Subtitle Y, Section 103.13.

7 The order of procedure for special exceptions and  
8 variances are pursuant to Subtitle Y, Section 409. The order of  
9 procedure for appeals are pursuant to Subtitle Y, Section 507.  
10 Time constraints will be maintained pursuant to Subtitle Y,  
11 Sections 408.2 and 408.3.

12 At the conclusion of each case an individual who is  
13 unable to testify because of technical issues may file a request  
14 to leave the record open to file a written version of the planned  
15 testimony to the record within 24 hours following the conclusion  
16 of public testimony in the hearing. If additional written  
17 testimony is accepted, then parties will be allowed a reasonable  
18 time to respond as determined by the Board. The Board will then  
19 make its decision at its next meeting but no earlier than 48  
20 hours after the hearing.

21 At the conclusion of the hearing the Board may request  
22 additional specific information to complete the record. The  
23 Board and staff will specify at the end of the hearing exactly  
24 what's expected and the date when persons must submit the evidence  
25 to the Office of Zoning. No other information shall be accepted

1 by the Board. Once again, after the Board adjourns the meeting  
2 the Office of Zoning, in consultation with the Chair, will  
3 determine whether a full or summary order may be issued. A full  
4 order is required when the decision it contains is adverse to a  
5 party, including an affected ANC. A full order may also be needed  
6 if the Board's decision differs from the Office of Planning's  
7 recommendation. And, again, although the Board favors the use  
8 of summary orders whenever possible, an applicant may not request  
9 the Board to issue such an order.

10 Finally, the District of Columbia Administrative  
11 Procedures Act requires that a public hearing on each case be  
12 held in the open before the public. However, pursuant to Sections  
13 405(b) and 406 of that Act the Board may, consistent with its  
14 rules and procedures and the Act, enter into a closed meeting for  
15 purposes of seeking legal counsel on a case pursuant to D.C.  
16 Official Code Section 2-575(b)(4) and/or deliberate on a case  
17 pursuant to D.C. Official Code Section 2-575(b)(13) but only  
18 after providing the necessary public notice and in the case of  
19 an emergency closed meeting after taking a roll call vote.

20 Madam Secretary, do we have any preliminary matters?

21 MS. MEHLERT: Good morning, Mr. Vice Chair and members  
22 of the Board. There's one change to the schedule today. Appeal  
23 No. 21057 of ANC 6C was just postponed yesterday. Also in terms  
24 of late filings, the Vice Chair has reviewed and granted waivers  
25 to allow late filings into the applicable case record pursuant

1 to Subtitle Y, Section 206.7 and Section 103.13. Any other late  
2 filings during the course of today's live hearing should be  
3 presented before the Board by the applicant, parties or the  
4 witnesses after the case is called. And any other preliminary  
5 matters will be noted when the case is called.

6 VICE CHAIRPERSON BLAKE: Great. Thank you, Madam  
7 Secretary. Would you please call our first hearing matter.

8 MS. MEHLERT: The first hearing or meeting?

9 VICE CHAIRPERSON BLAKE: I'm sorry. Meeting, madam,  
10 thank you.

11 MS. MEHLERT: The first case in the Board's meeting  
12 session is Application No. 21113-A of Jamals 1750 H, LLC. This  
13 is a request pursuant to Subtitle Y, Section 703 for a  
14 modification without hearing. The order approving Application  
15 No. 21113 to expand a usable (phonetic) space in an approved roof  
16 deck (audio interference) of approved penthouse habitable space.  
17 The project is located in the D-6 zone at 1750 H Street,  
18 Northwest, Square 166, Lot 42.

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

20 The Applicant in this case is seeking a modification  
21 without hearing pursuant to Subtitle Y, Section 703. Now pursuant  
22 to Subtitle Y, Section 703 such a modification is permitted to  
23 allow a change to a condition cited by the Board in a final order  
24 such as a redesign or relocation of architectural elements and  
25 open spaces from the final design approved by the Board.



1 I've reviewed the case record and it looks generally  
2 complete. However, the way the regulation is written,  
3 specifically Subtitle C, Section 1501.1, the proposed  
4 modification would expand the accessible rooftop deck area on the  
5 roof of the building beyond what is previously approved  
6 necessitating additional zoning relief and therefore will not,  
7 will require a public hearing. So unfortunately I don't believe  
8 that this application is appropriate for the consent calendar.

9 So I'm looking at my other Board members. If anyone  
10 has any issues with that, I'm going to remove this item from the  
11 consent calendar and direct the Applicant to file an application  
12 for modification with a hearing pursuant to Subtitle Y-704 for  
13 the request to be considered. Do we have any issues or concerns  
14 with that? Okay. Great.

15 So, Madam Secretary, if you would work with the  
16 Applicant and see if the Applicant wishes to do this, if you'd  
17 work with them to set a hearing date after the proper  
18 notifications have been made. Okay?

19 MS. MEHLERT: Yes.

20 VICE CHAIRPERSON BLAKE: Okay.

21 MS. MEHLERT: We will follow up with them.

22 VICE CHAIRPERSON BLAKE: Great. Would you please  
23 call the next meeting issue?

24 MS. MEHLERT: Next in the meeting session is a time  
25 extension request, No. 20586-A of Hoa and Christopher Bergerson.

1 This is a request pursuant to Subtitle Y, Section 705.2 for a  
2 one year time extension of the validity of the order in  
3 Application No. 20856 issued on May 16th, 2023. This project is  
4 for a new two-story accessory building containing a principal  
5 dwelling in the rear yard of an existing three-story semi-  
6 detached principal dwelling. It's located in the RF-1 zone at  
7 451 Park Road, Northwest, Square 3036, Lot 25. And as a  
8 preliminary matter the Applicant filed a motion for a waiver to  
9 allow the late filing of the time extension request.

10 VICE CHAIRPERSON BLAKE: Okay. Thank you, Madam  
11 Secretary.

12 So in this application, the Applicant is seeking a one-  
13 year time extension to an order that was issued on May 16th, 2025  
14 that had a validity of two years. Now, the Board is authorized  
15 to grant an extension for up to two years for good cause upon  
16 the filing of a written request by the Applicant before the  
17 expiration of the approval, and that's pursuant to Subtitle Y,  
18 Section 705.

19 Well, this order was issued on May 16th, 2023. It  
20 expired on May 16th, 2025. The extension was filed on June 2nd  
21 of 2025 after the period of validity ended. So now the Applicant  
22 is seeking the Board to waive the strict enforcement of Subtitle  
23 Y, Section 702 to allow a late filing of the time extension  
24 request and they're citing certain extenuating circumstances  
25 which prevented them to file the form timely.

1           Now, this situation has come up more than once. The  
2 problem is that the rules don't allow the Board to waive the  
3 filing deadline. In this case the order had already expired a  
4 full 17 days before the request was made. That means there really  
5 isn't anything in front of us to act on. We've never granted an  
6 extension once the order has expired and without an active order  
7 there's nothing left to bring back.

8           So, Mr. Smith, do you have anything you want to add to  
9 that? That's kind of where I am.

10           COMMISSIONER SMITH: No. I don't have anything to add.  
11 I agree with everything that you just stated just now.

12           VICE CHAIRPERSON BLAKE: Okay.

13           Mr. Chair? Mr. Hood?

14           ZC CHAIRPERSON HOOD: I don't have the experience to  
15 get that (indiscernible) with you guys. Also I was in the corner  
16 to move forward but I'm going to follow you all's lead on this  
17 because I haven't had the opportunity to run into a situation  
18 like this.

19           VICE CHAIRPERSON BLAKE: Okay.

20           ZC CHAIRPERSON HOOD: I appreciate the strict  
21 application of the law but I was looking at them saying they were  
22 having problems getting something uploaded and some other issues  
23 that were going on. I'm familiar with all that, but anyway I'll  
24 just leave it at that.

25           VICE CHAIRPERSON BLAKE: Okay. Thank you.

1           ZC CHAIRPERSON HOOD:    I'm fine with the direction  
2   you're going.

3           VICE CHAIRPERSON BLAKE:   Okay.  So, as I said, I think  
4   the issue there is that we just don't have the authority to waive  
5   the provisions of Y-702 so therefore the issue has expired and  
6   there's really nothing we can do about it.  That said, it was a  
7   fairly straightforward application.  I do think that the  
8   Applicant, you know, could bring it up again and go for it from  
9   there.

10           So with that, I'm going to make a motion to deny the  
11   request for a waiver and to dismiss the time extension as untimely  
12   and ask for a second.  Mr. Smith?

13           COMMISSIONER SMITH:   Second.

14           VICE CHAIRPERSON BLAKE:   Okay.  The motion has been  
15   made and seconded.  Madam Secretary, would you please take a roll  
16   call vote.

17           MS. MEHLERT:  Please respond to the Vice Chair's motion  
18   to deny the waiver and dismiss the time extension application.

19           Vice Chair Blake?

20           VICE CHAIRPERSON BLAKE:  Yes, to deny and --

21           MS. MEHLERT:  Board Member Smith?

22           VICE CHAIRPERSON BLAKE:  -- and dismiss.

23           MS. MEHLERT:  Board Member Smith?

24           COMMISSIONER SMITH:  Yes, to deny.

25           MS. MEHLERT:  And Chairman Hood?

1 ZC CHAIRPERSON HOOD: Yes, to deny.

2 MS. MEHLERT: Staff would record the vote as three to  
3 zero to deny the motion and dismiss the application or the request  
4 No. 20856-A on the motion made by Vice Chair Blake and seconded  
5 by Board Member Smith, with Chairman Hill not participating.

6 VICE CHAIRPERSON BLAKE: Thank you, Madam Secretary,  
7 Would you please call our first hearing case.

8 MS. MEHLERT: The first case in the Board's hearing  
9 session is Application No. 21328 of H Street DC, LLC. This is a  
10 self-certified application pursuant to Subtitle X, Section 901.2  
11 for a special exception under Subtitle C, Section 1506 from the  
12 penthouse setback requirements of Subtitle C, Section 1504 and  
13 pursuant to Subtitle X, Section 1002 for an area variance from  
14 the requirements for rear yard relief under Subtitle I, Section  
15 205.5 to allow the window of a residence use within 40 feet of  
16 another adjacent building.

17 This is for a new apartment house providing 48 dwelling  
18 units in two existing buildings and a new 11-story addition.  
19 It's located in the D-4-R zone at 471-473 H Street, Northwest,  
20 Square 517, Lots 833, 834 and 835, and as a preliminary matter  
21 the Applicant has submitted a motion to accept an untimely filing  
22 to submit revised plans and self-certification form, and these  
23 are in the record in Exhibits 23A and B.

24 (Pause.)

25 COMMISSIONER SMITH: You're on mute, Chair.

1 VICE CHAIRPERSON BLAKE: Okay. If there's no  
2 objections from the members of the Board I'm will admit those  
3 matters to the Board, those items to the Board as supplemental  
4 materials and we'll go from there.

5 First thing I'd like to do is, Mr., let's see. The  
6 Applicant's here, so Mr. Williams, would you please introduce  
7 yourself for the record and the other members who are joining you  
8 today and kind of give me an overview of how you would intend to  
9 present, who would be presenting and so forth.

10 MR. WILLIAMS: Yes. Good morning. My name is Zach  
11 Williams. I'm a land use attorney with the law firm of Venable  
12 representing the Applicant today, and with me we have our team.  
13 First, Howard Bongam, who is with the developer and owner of the  
14 property. We also have the architects, Mark Freeman and Guillermo  
15 Rueda from Aggregate Architecture and we also have Daniel Solomon  
16 with Gorove Slade.

17 The plan is we have a presentation that is in the record  
18 that Mr. Young has. I intend to go through that presentation,  
19 walk through the slides and then we'll be available for Q&A and  
20 our whole team will be here available for questions.

21 VICE CHAIRPERSON BLAKE: Okay. Great.

22 Now, before we get started I want to just clarify  
23 exactly what the request is before the Board. When I looked at  
24 the latest self-cert. in Exhibit 23B it lists an area variance  
25 under Subtitle I, Section 205.5. Now, the zoning rules actually

1 set the rear yard requirements in Section 205.1, so Section 205.5  
2 doesn't set the requirement itself. It just lets the Board grant  
3 relief from the 205.1 rear yard rule as a special exception if  
4 certain conditions are met.

5 So I guess my question there is, are you actually  
6 requesting a variance from 205.1 or are you trying to get a  
7 variance from a provision in 205.5 and then seek a special  
8 exception for that?

9 MR. WILLIAMS: I think it's, the answer is it's related.  
10 We're seeking relief from the rear yard requirement under 205.1,  
11 however the zoning regulations do allow the Board to grant that  
12 relief as a special exception pursuant to the other provision you  
13 mentioned but under certain conditions and we don't meet all of  
14 those conditions, notably the window, the distance of the window  
15 of the property on the other side of the alley. And so we're  
16 making clear that this is a variance from the regulations that  
17 would otherwise allow this as a special exception, obviously we  
18 don't meet those conditions so we need to get an area variance  
19 instead.

20 VICE CHAIRPERSON BLAKE: Okay. So the area variance  
21 though would be 205.1, not 205.5.

22 MR. WILLIAMS: That's right.

23 VICE CHAIRPERSON BLAKE: Is that correct?

24 MR. WILLIAMS: That's correct.

25 VICE CHAIRPERSON BLAKE: Okay. So could you, we're

1 going to need to have the self-cert. reflect that. So if you  
2 would amend your self-cert. to reflect the requested relief from  
3 205.1, that would suffice I believe to address the issues and  
4 that should do it.

5 MR. WILLIAMS: And we can do that, and we could do that  
6 after the hearing today immediately if the, and I will defer  
7 obviously to Vice Chair Blake and the Board. If the Board wants  
8 to defer the vote until later in the agenda, we could supply that  
9 in the interim. We've done that in the past.

10 VICE CHAIRPERSON BLAKE: Yes. If you can try to supply  
11 that sooner rather than later, by the end of the hearing would  
12 be idea because it would, you know, it would help us to move  
13 faster through this process. Okay? So we're going to conduct  
14 the hearing, go through the slides and, Madam Secretary, we're  
15 going to note and we'll have the additional submission with the  
16 relief being for 205.1. It's same area variance requirement,  
17 same criteria, but it will be an amended self-cert. form should  
18 be provided by the end of the hearing today. Okay?

19 MS. MEHLERT: Yes.

20 VICE CHAIRPERSON BLAKE: All right. So with that, Mr.  
21 Williams, if you want to proceed with your presentation that'd  
22 be fine.

23 MR. WILLIAMS: Mr. Young, could you pull up the  
24 presentation. Great. Thank you.

25 As I mentioned we have our team today as including



1 Howard Bongam, Mark Freeman and Guillermo Rueda available to  
2 answer questions. I'll walk through this presentation now and  
3 then we'll all be available. Danial Solomon is also here from  
4 Gorove Slade.

5 This is a project proposed at 471 to 473 H Street,  
6 Northwest. Moving on. Next slide, please.

7 Here is an aerial view of the site. It's at the  
8 Northeast corner of the intersection of 5th Street, Northwest and  
9 8th Street, Northwest, and the Chinatown neighborhood. There's  
10 three lots. We added one lot recently, a very small narrow lot  
11 to the application. Lots 833 and 834 and 835 comprise about 42  
12 or so feet of total lot width. Next slide, please.

13 This is the zoning map. This is the downtown D-4-R  
14 zone. Here you can see the two primary lots that are involved.  
15 There's also a sliver that is actually covered by the line on  
16 the right side of this rectangle as well. Next slide, please.

17 Here's the lots as they currently exist today. These  
18 are current images from H Street and from the alley as well as  
19 from 5th Street. As you can see the existing buildings on the  
20 site are two historic rowhome buildings. They originally were  
21 built as residences. They have been used as offices for quite  
22 some time now and as a part of this project they'll be converted  
23 back to their original use, residences as well as the addition  
24 of an 11-story tower behind which we'll get to in a minute.

25 You can see here that there are additional historic

1 buildings to the immediate west of the site and then to the  
2 immediate east is a large apartment building that is, a large  
3 apartment building that I believe is 11-stories tall and there's  
4 a large apartment building behind the site as well that is along  
5 Mass. Ave. Next slide, please.

6 This is the proposed project. Bird's eye view as a  
7 well as a view from H Street. Those historic buildings will stay  
8 exactly as is on the exterior and there will be a proposed,  
9 there's a proposed 11-story tower behind the site. This is an  
10 interesting application and interesting site because of the  
11 historic nature of the buildings but also we're in the downtown  
12 zone which obviously supports density, significant density up to  
13 what is allowed under the Height Act which, in this case, is 110  
14 feet.

15 However, we can't build on top of, or at least on top  
16 of all of the existing footprint of historic buildings and the  
17 Board should be aware we have been before Historic Preservation  
18 Review Board. HPRB has approved a conceptual approval similar  
19 to what you see here today. We are also in the jurisdiction of  
20 the Commission of Fine Arts and CFA has also approved a conceptual  
21 approval similar, essentially the same as what you see here before  
22 you today. The Capitol Historic Trust is another group that has  
23 reviewed this as well. Next slide, please.

24 Here's another view, another bird's eye view of the  
25 project. We will be adding a green roof to the existing historic

1 buildings. A portion of one of the buildings which is not  
2 considered historic by HPRB will be removed to allow a larger  
3 footprint for the development of the new building behind but for  
4 the most part those historic footprints will stay the same and  
5 the new project will be built on the rear portion of the site  
6 which is currently such as paved, essentially a paved parking  
7 lot. You'll also see some of the design and materials that I  
8 proposed as well for the site. Again, all of this has had to go  
9 through HPRB and CFA and we made sure to do that before we came  
10 to you today. Next slide, please.

11 Here's some additional elevations, just again looking  
12 at the side from different vantage points. On the left side  
13 you're looking at the site from 5th Street. Again looking over  
14 that existing residential building on the corner but here you get  
15 a good view from both angles really of the large apartment  
16 buildings that are on the other sides of this site, just to get  
17 a sense of the context of the area. Next slide, please.

18 Some additional elevations. Now the elevation on the  
19 right side is looking down the alley towards 5th Street and just  
20 to get a sense for how this will fit in down the alley you can  
21 see that the building on Mass. Ave., that's fronting Mass. Ave.  
22 which is to the right side here, is essentially flush against the  
23 alley. There are some courts that are interlaced in there but  
24 it's essentially flush against the alley itself. Next slide,  
25 please.

1           So to summarize the project, we'll be converting the  
2 two historic buildings from office back to residential use. We'll  
3 be constructing an 11-story residential apartment building. This  
4 will be an affordable rental apartment building. We do need the  
5 variance and special exception relief here for two primary  
6 elements. One is the penthouse setbacks and the other is the  
7 rear yard setback and as I already mentioned, CFA and HPRB have  
8 already reviewed and approved conceptual drawings for the site.  
9 Next slide, please.

10           The first element of relief is a special exception  
11 pursuant to Subtitle C, Section 1506 for penthouse setbacks. The  
12 second area of relief, which we already discussed, is an area  
13 variance from the rear yard requirement subject to 205.1 and we  
14 just talked about why 205.5 is mentioned here as well. Since  
15 there is the opportunity to do this as a special exception, we  
16 don't qualify here because of how close that building on Mass.  
17 Ave. is to the alley. Next slide, please.

18           Turning to the setback relief for the penthouses.  
19 We're requesting penthouse effectively for a portion of the rear  
20 penthouse on the new building. As we will show, the by-right  
21 density of the site and the height is very much constrained by  
22 those historic buildings and the historic footprint on the site.  
23 Providing that required rear setback relief would require a  
24 design of essentially an entire row of units. We would lose 18  
25 out of 48 units which essentially would render the project no

1 | longer viable and we'll show some additional drawings here that  
2 | will illustrate that. Next slide, please.

3 |           Here's a cross-section view of elevations showing the  
4 | penthouse relief we're seeking and that's at the top of the  
5 | building, the blue portion, the blue shading is the relief that  
6 | we're seeking here. Now, there is an elevator overrun in this  
7 | penthouse which is causing that relief to be a little bit more  
8 | than it otherwise would be. But essentially what you're seeing  
9 | is if we were to take that off we would lose that penthouse there  
10 | and we would lose the ability to serve that corridor of units.  
11 | We would lose approximately 18 units because we do need that  
12 | space for the elevator overrun and we have limited space on the  
13 | front of the building, we have very limited space to get to the  
14 | front of the building because of the historic footprint which is  
15 | really eating into most of the site. Next slide, please.

16 |           This is an other vantage point looking overhead at the  
17 | relief that we need. You can really understand here why we can't  
18 | do much more with this penthouse. We can't move it to the side.  
19 | We can't move it forward. We have to keep it where it is to,  
20 | and frankly this is how we request the least amount of relief in  
21 | this case and still make this building work, rear yard setback,  
22 | rear penthouse setback relief here we think as I'll get into has  
23 | limited impacts on light and air and visibility. You essentially  
24 | can't see it because of where it's placed on the building and so  
25 | we thought this was the least, if you will, in terms of the relief

1 that we would need to seek for the design of this building. Next  
2 slide, please.

3 So getting into the standards. The relief must be in  
4 harmony with the general purpose and intent of the zoning  
5 regulations. We know the downtown zones are really encouraging  
6 density. This is a high density zone and a mixed use  
7 neighborhood. We're limited on this site from providing the  
8 density that the zone wants to see because of the historic  
9 footprint so we have to put all the density at the rear of the  
10 site and in order to do that and in order to capture the density  
11 that's really recommended in the zone we need this relief. So  
12 we think this relief will bring the project overall into harmony  
13 with what is envisioned in the downtown zones, will allow us to  
14 build out this residential affordable building in a neighborhood  
15 it would otherwise be very difficult to do much of anything with  
16 this site. Next slide, please.

17 The next standard is that the relief should not  
18 adversely affect neighboring property. We think typically of  
19 light, air and privacy. We don't think that it will because of  
20 where the penthouse relief is sought. The buildings to the east,  
21 to the rear, are larger or the same as this building so that  
22 shouldn't have any impact at all on those sites. The building  
23 to the west is not adjacent to where we're seeking the relief  
24 because that penthouse is going to be set back on the rear eastern  
25 portion of the building and we don't need the relief on the

1 | portion of the building adjacent to those historic parcels.

2 |           Lastly, the relief is essentially -- the penthouse is  
3 | essentially not visible from the street, certainly not visible  
4 | from H Street. There are portions of 5th Street where a portion  
5 | of it could be visible but there's very narrow vantage points  
6 | where anyone could ever see this relief, this penthouse, from the  
7 | street. Next slide, please.

8 |           Turning to the variance. The variance is for rear yard  
9 | relief and I'll get into exactly where that is, but first I want  
10 | to touch on the standards. The first standard that everyone is  
11 | familiar with is that there must be a peculiar exceptional  
12 | condition on the property. The strict application of a zoning  
13 | regulations result in peculiar and exceptional practical  
14 | difficulties or undue hardship. We know from case law that  
15 | there's often a confluence of factors that we look at for variance  
16 | cases and we do have various factors in play here.

17 |           The first is the historic nature of the property and  
18 | really the historic nature of those building footprints very much  
19 | limit us in what we can do with the remainder of the site and  
20 | build out a viable building. We've walked through different  
21 | options with HPRB, with CFA. We have landed on one which you've  
22 | seen today that HPRB and CFA are comfortable with. Other options  
23 | such as building on top of the historic buildings or removing the  
24 | historic buildings were not supported and so we have those  
25 | constraints as well. We also have very narrow parcels. It's

1 just over 40 feet tall width for the three sites. So we have  
2 very limited room to work with, not only from a width standpoint  
3 but also from a depth standpoint because of the limited nature  
4 of the footprint that can be redeveloped.

5 The required setback would move the building back, it's  
6 actually 13 feet. It was initially 15 and a half. It's 13 now,  
7 and that is in our self-certification just to be clear. The  
8 number here is a relic from a previous presentation. So it's a  
9 13 foot relief that we're seeking. The required rear yard setback  
10 is 23 feet from the middle of the alley. The alley is a 20 foot  
11 alley and so we need 13 feet of relief for the required setback.  
12 Next slide, please.

13 The shading here shows exactly where the relief is  
14 sought and as you can see, it would be considerable. Again, if  
15 we were to lose this we would lose an entire row of units. We  
16 would lose the same 18 units that I mentioned we would lose if  
17 we didn't have the penthouse setback relief. The project wouldn't  
18 be viable, and so it would be an undue hardship. We wouldn't be  
19 able to build a building, we wouldn't be able to build out the  
20 density or the rest of the affordable units without the relief  
21 we're seeking here. Next slide, please.

22 So this slide shows, from an aerial perspective, the  
23 penthouse relief overlaying the variance relief and as you can  
24 see the penthouse relief, even though it's slightly more depth,  
25 it's much less width. It only affects that portion of the site



1 on the eastern rear portion. The variance relief, on the other  
2 hand, is the entirety of the building above 25 feet, just to make  
3 that clear. In this zone the rear yard starts from above 25 feet  
4 so the portion of the building on the alley itself is not part  
5 of the relief sought, just to make that clear. It's the portion  
6 of the building above 25 feet where that rear yard relief is  
7 needed for the area variance. Next slide, please.

8           So this is the alley as it exists today. It's known  
9 as the Hook and Ladder alley and you can see that what's  
10 interesting about this is that I already mentioned the apartment  
11 building on Mass. is built essentially right up the alley. The  
12 historic buildings that I mentioned that are adjacent to these  
13 sites that are at the intersection of 5th and H are also built  
14 right up to the alley and they don't have any rear yard relief  
15 either. So the rear yard of this building, the rear wall I should  
16 say, will be essentially flush with the historic buildings that  
17 currently exist there today immediately adjacent to the west.  
18 Next slide, please.

19           This gives you an illustrative example of exactly what  
20 I was just talking about. On the left side of the screen you're  
21 looking down the alley. From 5th Street you can see that that  
22 historic building on the right, the two-story historic building  
23 there at 5th and H is built right up to the alley. That'll be  
24 flush with where this building would be and then you can see that  
25 the building on the other side of the alley is built right up to

1 the alley as well. Next slide, please.

2           So walking through additional variance standards. The  
3 relief sought can be granted only without substantial detriment  
4 to the public good and without substantially impairing the  
5 intent, purpose and integrity of the zone plan. Similar too with  
6 the penthouse relief, we believe that this rear yard variance  
7 will help us to unlock the vision of the downtown zone, unlock  
8 density that would otherwise not be buildable here given the  
9 nature of the site and the constraints that we're dealing with.  
10 As I already mentioned, other buildings on this exact same block  
11 on this same alley are built right up to the alley already so  
12 we'll be in harmony. We won't be out of context with the  
13 neighborhood or with this block.

14           The majority of buildings are also built with very  
15 large apartment buildings. In fact, this site as it currently  
16 exists today is really not in harmony with what the downtown zone  
17 envisions. We'll be bringing that building back into what the  
18 downtown zone envisions in terms of adding that density and  
19 converting the office to residential and re-invigorating the site  
20 with a new affordable project.

21           I'd also mention that there are at least two other  
22 projects nearby within a block or so with very similar constraints  
23 that the BZA has granted this same area variance relief for rear  
24 setback and those were BZA cases 20974 and 20763. Those were  
25 just in the last few years. I noticed some additional cases

1 before that but I just wanted to highlight those recent ones  
2 because they are very, very similar in nature to what is sought  
3 today in terms of the constraints of the site, the historic  
4 parcels, the lot width, everything about that and they're in this  
5 very same neighborhood as well. Next slide, please.

6 A note that we did present with the ANC three times and  
7 we received support from the ANC. I believe it was unanimous  
8 support with one abstention. Office of Planning is also fully  
9 in support of the relief that we're seeking here today. We've  
10 also worked with DDOT. DDOT requested a transportation  
11 statement. We provided that. DDOT also asked us to add in some  
12 additional spaces for cargo and e-bikes. We did that as well  
13 and you might have seen the letter in the record from DDOT that  
14 as a result of these changes and working with the Applicant, that  
15 DDOT does not have any objection to the application. Next and  
16 final slide, I believe. Yes.

17 The team is available for questions. Thank you.

18 VICE CHAIRPERSON BLAKE: Thank you, Mr. Williams. Does  
19 anyone from the Board have questions for the Applicant?

20 ZC CHAIRPERSON HOOD: Mr. Vice Chair, a quick question.

21 VICE CHAIRPERSON BLAKE: Yes, sir.

22 ZC CHAIRPERSON HOOD: Mr. Williams, you mentioned that  
23 you met with the ANC three times. Why was it three times? Was  
24 it three times to get the vote or three times, so that we can  
25 understand exactly the nuances and the process?

1           MR. WILLIAMS: Met with the ANC initially almost a year  
2 ago and that was because we were going through HPRB and CFA and  
3 we wanted to make sure that, there was also some press on this  
4 site, we wanted to make sure the ANC was aware and able to start  
5 weighing in during those processes. So that was the first meeting  
6 and that was well before we filed this application. Then we had  
7 a second meeting after we filed the application and what happened  
8 was the ANC voted to support but mistakenly did not have a quorum  
9 and so we went back and this time they did have a quorum and they  
10 again voted to support the application.

11           ZC CHAIRPERSON HOOD: Okay. Thank you. I was just  
12 making sure on the level of concern. Thank you.

13           MR. WILLIAMS: Thank you.

14           ZC CHAIRPERSON HOOD: Thank you, Mr. Chairman.

15           VICE CHAIRPERSON BLAKE: Okay. Thank you very much for  
16 your question as well. Okay. Now, we're going to turn to the  
17 Office of Planning.

18           MR. JURGOVIC: Good morning Chairs and member of the  
19 Board. This is Mike Jurgovic, Development Review Specialist with  
20 the Office of Planning.

21           OP recommends approval of the relief requested by the  
22 Applicant for minimum rear yard and penthouse setback relief. We  
23 rest on the record of our report and I'm here to answer any  
24 questions. Thank you.

25           VICE CHAIRPERSON BLAKE: Mr., one thing we did was we

1 | did, as you know, at the outset change the requested relief from  
2 | 205.5 to 205.1. Would that be consistent with your findings at  
3 | the, I think your report did the 205.5?

4 | MR. JURGOVIC: It would not affect our findings. We  
5 | would still recommend the approval of the relief.

6 | VICE CHAIRPERSON BLAKE: Okay. Thank you. Do we have  
7 | any questions for the Office of Planning from the Board? Does  
8 | the Applicant have any questions for the Office of Planning?

9 | MR. WILLIAMS: We do not. Thank you.

10 | VICE CHAIRPERSON BLAKE: Okay. I guess, Mr. Williams,  
11 | do you have any closing remarks?

12 | MR. WILLIAMS: No. Other than just thanking Michael  
13 | and OP for working collaboratively with us as they always do and  
14 | just thank the ANC as well for the meetings and the support and  
15 | the support in the record.

16 | Thank you.

17 | VICE CHAIRPERSON BLAKE: Okay. Just one thing. Now,  
18 | how long will it take you to get that self-cert. submitted, the  
19 | revised self-cert.?

20 | MR. WILLIAMS: Immediately. We'll do it in the next  
21 | 30 minutes or so.

22 | VICE CHAIRPERSON BLAKE: Okay. So what we're going to  
23 | do is we're going to hold off on the deliberations until that  
24 | document is in the file. So, let's see. We're going to close  
25 | the hearing and the record except for that self-cert. filing that

1 we expect and we will reconvene this hearing a little bit later  
2 on in the day and we will go through deliberations. Excuse me?

3 MR. YOUNG: Sorry. I didn't think you asked if there  
4 was any public witnesses but I just wanted to put it on the record  
5 that there is not.

6 VICE CHAIRPERSON BLAKE: Thank you very much, Mr.  
7 Young. I appreciate that. There are no public witnesses so we  
8 don't have to have the additional testimony. Thank you.

9 So, as I said, we're going to close the record and  
10 we're going to close the hearing for now except for that one  
11 filing. We'll wait and we'll bring this back up a little later  
12 in the day, have deliberations and vote. Okay? Okay, Mr. Young,  
13 if you could excuse everyone at this point.

14 (Pause.)

15 VICE CHAIRPERSON BLAKE: Madam Secretary, are you  
16 there?

17 MS. MEHLERT: Yes, I am.

18 VICE CHAIRPERSON BLAKE: Great. Would you please call  
19 our next hearing session case.

20 MS. MEHLERT: Yes. Next is Application No. 21332 of  
21 Lars Etzkorn and Gregory Hoss. This is a self-certified  
22 application pursuant to Subtitle X, Section 901.2 for a special  
23 exception under Subtitle F, Section 5201, from the lot occupancy  
24 requirements of Subtitle F, Section 210.1. This is for a one-  
25 story rear addition to an existing two-story attached principal

1 dwelling located in the RA-2 zone at 1848 Kalorama Road,  
2 Northwest, Square 2553, Lot 80. And as a preliminary matter the  
3 Applicant submitted a motion to waive the filing deadline to add  
4 an updated letter of authorization in the record in Exhibit 28.

5 VICE CHAIRPERSON BLAKE: Okay. If anyone is, has an  
6 issue with that we can admit that letter, that additional filing  
7 and, let's see. Who is here to represent the Applicant?

8 MR. HOSS: I am here. This is Gregory Hoss.

9 VICE CHAIRPERSON BLAKE: Okay, Mr. Hoss. If you would,  
10 would you introduce yourself and if there is anyone else with you  
11 that's going to be testifying today, introduce them as well and  
12 we'll go from there.

13 MR. HOSS: Okay. Great. Thank you, Mr. Vice Chair and  
14 members of the Board. Again, my name is Gregory Hoss. I am a  
15 registered architect here in D.C. and I'm one of the Applicants  
16 today.

17 VICE CHAIRPERSON BLAKE: I'm sorry, go ahead. Go ahead,  
18 I'm sorry.

19 MR. HOSS: Okay. Yes. And with me, although I don't  
20 see him on my screen is my husband, Lars Etzkorn, who's a licensed  
21 attorney here in Washington, D.C., and also one of the Applicants.  
22 I don't know if he's there, or where he is.

23 VICE CHAIRPERSON BLAKE: Okay. So what we're going to  
24 do, Mr. Hoss, is we're going to put 15 minutes on the clock and  
25 if you could please tell us how you believe you, tell us a little

1 bit about your application and how you believe you're meeting the  
2 burden of proof to be granted the relief, we'd appreciate it. So  
3 thank you and you can begin whenever you like.

4 MR. HOSS: You bet. If you can bring up the PowerPoint,  
5 please. Great. Thank you. Can everyone see that? Okay.

6 The address of the subject property again is 1848  
7 Kalorama Road, Northwest. Lars, who I now see here, Lars and I  
8 are representing the legal entity that owns this property, the  
9 A.D.A. Louise Trust and we are both trustees of that trust. Next  
10 slide, please.

11 The property is in the RA-2 zone and we're proposing  
12 to construct a 124 square foot addition one-story plus a cellar  
13 to the rear of the house. One area of relief is being requested  
14 here for lot occupancy to go to 64.3 percent. Next slide, please.

15 We've received support from the Office of Planning and  
16 the Historic Preservation Office. The ANC 1C has voted  
17 unanimously in support of the project and we have seven letters  
18 of support including both of our adjacent neighbors. Next slide,  
19 please.

20 Here you can see the subject property on the zoning  
21 map. Next slide, please.

22 And this is an overhead aerial view of the project  
23 looking at the back of the property where the project is being  
24 proposed. Next slide, please.

25 For context we're showing you two street views of the



1 front of the property on Kalorama Road. There is no work proposed  
2 for the front of the house. These are here just for context.  
3 Next slide, please.

4           These are three views of the subject property from the  
5 rear alley. You can see the Applicant's, our façade is set back  
6 about seven feet, the one in the center of the middle photo there,  
7 set back about seven feet from the face of 1850 Kalorama on the  
8 left side and the balcony projections of 1844 Kalorama on the  
9 right side. Next slide, please.

10           Here is a view of the back of the existing house. The  
11 wood deck is proposed to be removed here. Next slide, please.

12           This is the approved D.C. surveyor's plat with the  
13 property improvements shown over on the right. Next slide,  
14 please.

15           So these are existing, this is an existing site plan  
16 on the top showing the existing deck which will be removed and  
17 then the proposed site plan on the bottom shows the new addition  
18 there in yellow. Next slide, please.

19           The next three slides compare the existing and the  
20 proposed floor plans for the basement, the first floor and the  
21 second floors of the house. Next slide, please.

22           Note that the existing deck, which is shown in red on  
23 the existing plan on the top, is being removed and the addition  
24 in yellow, which you see on the bottom, is being proposed. Next  
25 slide, please.

1               Next slide, please.

2               This is an elevation of the west façade of the house  
3 comparing the existing condition on the left with the wood deck  
4 and the proposed addition on the right. Next slide, please.

5               And this is the south elevation of the house facing the  
6 alley. You can see the one-story addition to architectural  
7 character takes cues from the front porch and it's appropriately  
8 set back from the property lines on both sides. Next slide,  
9 please.

10              These are two exterior elevations of the replacement  
11 fences on the east and the west property lines that that roughly  
12 match the height of the existing fences that exist today. Next  
13 slide, please.

14              So granting the relief we're seeking is in harmony with  
15 the general purpose and intent of the regulations and the maps.  
16 The property will still be used as a single family dwelling unit  
17 and the granting of the special exception will also not adversely  
18 affect the use of neighboring properties. Again, both of our  
19 adjacent neighbors, the ANC and the HPO have voiced their support  
20 for the project. Next slide, please.

21              The report from the Office of Planning outlines in  
22 detail how this project addresses the three specific requirements  
23 for granting relief, the height, the width and the depth including  
24 the setbacks from the property lines of the one-story addition  
25 will not unduly affect light and air available to neighboring

1 properties. Similarly, the configuration and location of the  
2 addition will not unduly compromise the privacy of neighboring  
3 properties. As I said the replacement fences maintain roughly  
4 the existing level of privacy between properties and views from  
5 the rear would essentially remain as currently exists into  
6 neighboring rear yards. As partially seen from the alley, the  
7 design, the materials and the colors of the addition would  
8 compliment the house and the neighborhood and it will not  
9 substantially intrude upon the variety in pattern and character  
10 of the houses along the alley.

11 And I think that's all I have for today. Thank you  
12 very much.

13 VICE CHAIRPERSON BLAKE: Thank you very much. Does  
14 anyone on the Board have any questions for the Applicant?

15 (Pause.)

16 VICE CHAIRPERSON BLAKE: No? Okay. We're going to  
17 turn, okay, we'll turn to the Office of Planning.

18 MS. BROWN-ROBERTS: Good morning, Mr. Vice Chair and  
19 members of the BZA. For the record, I'm Maxine Brown-Roberts  
20 with the Office of Planning.

21 As outlined in the OP report, the proposed one-story  
22 rear addition with the increase in the lot occupancy meets the  
23 requirements of Subtitle F, 5201 and Subtitle X, 901. In  
24 particular, the proposal would not have an undue impact on  
25 adjacent neighbors regarding light, air and privacy and would be

1 in harmony with views from the adjacent alley. OP therefore  
2 recommends approval of the requested special exception.

3 Thank you, Mr. Vice Chair, and I'm available for  
4 questions.

5 VICE CHAIRPERSON BLAKE: Thank you, Ms. Brown-Roberts.  
6 Does anyone have any questions for the Office of Planning from  
7 the Board? And does the Applicant have any questions for the  
8 Office of Planning?

9 MR. HOSS: No.

10 VICE CHAIRPERSON BLAKE: Okay. Mr. Young, is there  
11 anyone who wishes to testify?

12 MR. YOUNG: We do not.

13 VICE CHAIRPERSON BLAKE: Thank you. Mr. Hoss, do you  
14 have any closing remarks you'd like to make.

15 MR. HOSS: I'd like to thank everyone on the Board and  
16 Maxine for all of their diligence in this matter. We very much  
17 appreciate it.

18 VICE CHAIRPERSON BLAKE: Okay. Thank you very much for  
19 your presentation. It was very thorough and it was very helpful,  
20 and I'd like to excuse the witnesses, close the hearing and excuse  
21 the witnesses.

22 (Pause.)

23 VICE CHAIRPERSON BLAKE: Okay. Now, we can deliberate  
24 this. I think we're okay with that.

25 I thought the application was fairly straightforward

1 and I think the Applicant definitely has met the burden of proof  
2 and it's a modest one-story addition. It's only about 13 feet  
3 high and only extends about nine feet beyond the neighbor to the  
4 east and only three to the neighbor to the west. The windows  
5 and doors, they're faced windows but they're buffered back by  
6 setbacks. There are fences and retaining walls that provide some  
7 shielding. It's not visible from Kalorama Road and only partially  
8 visible from the alley and its design, it obviously clearly  
9 matches the materials really do match the house pretty well.

10 So I think these issues together, combine these factors  
11 together, it's not visually intrusive and it shouldn't have an  
12 impact on the light, air or privacy of neighboring properties and  
13 the relief sought is in harmony with the zoning regulations and  
14 mass, and I actually think will actually reduce the, a reduction  
15 in the air flow lot occupancy measure overall.

16 I'll give great weight to the Office of Planning's  
17 recommendation for approval. I'll also give great weight to the  
18 report of the ANC 1C which is in support and states no issues or  
19 concerns. That report is actually found in Exhibit No. 15. I  
20 would also note that there are several letters of support from  
21 the neighbors including both the adjacent property owners. So  
22 I'll be voting in support of the application.

23 Mr. Smith?

24 COMMISSIONER SMITH: I agree with you, Vice Chair  
25 Blake, that this is a fairly straightforward application. A very

1 modest addition I believe, and what we're actually seeing is the  
2 reduction in the lot occupancy. It just so happens that this is  
3 required because this is a new construction for a property that  
4 already exceeds their maximum lot occupancy as it is now and they  
5 will achieve the reduction in the lot occupancy because they're  
6 removing a larger rear deck. So I do agree with the Office of  
7 Planning's recommendation for approval and will support as well.

8 VICE CHAIRPERSON BLAKE: Thank you, Board Member Smith.  
9 Chairman Hood?

10 ZC CHAIRPERSON HOOD: I agree with you and Board Member  
11 Smith. I think this was tastefully done throughout the whole  
12 process and also very thoughtfully done with mitigating any  
13 adverse impacts, especially from a design standpoint. So very  
14 well done and I too will be supporting this application.

15 Thank you.

16 VICE CHAIRPERSON BLAKE: Excellent.

17 Having deliberated I'm going to make a motion to  
18 approve Application No. 21332 as written and captioned by the  
19 secretary, read by the secretary, and ask for a second. Mr.  
20 Smith?

21 COMMISSIONER SMITH: Second.

22 VICE CHAIRPERSON BLAKE: Okay. The motion's been made  
23 and seconded. Madam Secretary, will you please conduct a roll  
24 call vote.

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

1 to approve the application.

2 Vice Chair Blake?

3 VICE CHAIRPERSON BLAKE: Yes.

4 MS. MEHLERT: Board Member Smith?

5 COMMISSIONER SMITH: Yes.

6 MS. MEHLERT: Chairman Hood?

7 ZC CHAIRPERSON HOOD: Yes.

8 MS. MEHLERT: Staff would record the vote as three to  
9 zero to two to approve Application No. 21332 on the motion made  
10 by Vice Chair Blake and seconded by Board Member Smith, with  
11 Chairman Hill not present or participating.

12 VICE CHAIRPERSON BLAKE: Excellent. Madam Secretary,  
13 would you please call our next hearing session case?

14 MS. MEHLERT: Next is Application No. 21339 of Sumit  
15 Manchanda and Sylvia Paruzzolo. This is an application pursuant  
16 to Subtitle X, Section 1002 for an area variance from the lot  
17 occupancy requirements of Subtitle E, Section 210.1 and pursuant  
18 to Subtitle X, Section 901.2 for special exceptions under  
19 Subtitle E, Section 5201, from the rear yard requirements of  
20 Subtitle E, Section 207.1 and under Subtitle C, Section 703.2  
21 from the parking requirements of Subtitle C, Section 701.10 to  
22 allow a reduction in the minimum number of required vehicle  
23 parking spaces.

24 This is for a one-story rear addition at the cellar  
25 level of an existing two-story row building with roof deck on the

1 first floor level. It's located in the RF-1 zone at 2759 Woodley  
2 Place, Northwest, Square 2206, Lot 120.

3 ZC CHAIRPERSON HOOD: I think you're on mute, Mr. Blake,  
4 Mr. Chair.

5 VICE CHAIRPERSON BLAKE: If the Applicant is here would  
6 you please introduce yourself and anyone who'll be joining for  
7 today.

8 MS. STAFFONE: My name is Angela. I am the  
9 architectural designer assigned for this project and I don't know  
10 if there's anyone else who is showing up.

11 VICE CHAIRPERSON BLAKE: Okay.

12 MS. STAFFONE: I know that the owners are not able to  
13 be here for the presentation.

14 VICE CHAIRPERSON BLAKE: Okay. Ms. Staffone, is that  
15 right? Is that right?

16 MS. STAFFONE: Yes. Close enough.

17 VICE CHAIRPERSON BLAKE: Excuse me? What is it? I  
18 want to be right? What is it?

19 MS. STAFFONE: Staffone.

20 VICE CHAIRPERSON BLAKE: Ms. Staffone.

21 MS. STAFFONE: Yes.

22 VICE CHAIRPERSON BLAKE: I reviewed the application and  
23 I want to just be clear before we get started. I think you  
24 submitted some revisions to the file earlier into the record, a  
25 few days ago. We reviewed those and I understand there's some



1 | things there, I'm not exactly sure what relief is being requested  
2 | today.

3 |           So, first of all, I looked at the ZA memo in today's  
4 | application. You asked for three areas of relief. One is an  
5 | area variance from lot occupancy for the project which is 73.7  
6 | percent, and two special exceptions. One was for the minimum  
7 | rear yard setback requirement and the other was for relief from  
8 | the parking requirements and it looks like the relief is based  
9 | on those original plans. Now, you submitted the plans to the  
10 | Board that were different and then it looks like different than  
11 | the ones that you submitted to the Zoning Administrator. So, and  
12 | it looks like you added a parking space and maybe enlarged the  
13 | rear yard.

14 |           So the Board can only take action on what's being  
15 | requested in the application so it's important that the relief  
16 | be clear and the requested relief be consistent with the plans  
17 | that are being provided. So I guess my question to you is, what  
18 | relief, are you seeking the same areas of relief that you put in  
19 | the, that's been captioned and read and were in the ZA referral  
20 | memo, or are you seeking to amend the application?

21 |           MS. STAFFONE:     So we submitted the application  
22 | originally as you're seeing with the enclosed area under the deck  
23 | to be at the same point of the deck and parking as it was  
24 | originally done. We were contacted by the Office of Zoning to  
25 | amend the drawings to push back or reduce the area underneath the

1 deck of three feet in order to accommodate for the parking  
2 requirements and the reduction of the lot occupancy down to 70  
3 percent. So we have submitted those updated drawings and we had  
4 submitted an updated burden of proof.

5 VICE CHAIRPERSON BLAKE: Okay. But your, okay. I'm  
6 not sure exactly if the Office of Zoning suggested that, but at  
7 any rate the plans that you've submitted now, are you asking for  
8 the same relief that you were asking for before or different  
9 relief?

10 MS. STAFFONE: There's no more parking relief and  
11 there's no more lot occupancy relief.

12 VICE CHAIRPERSON BLAKE: Okay. All right.

13 So, now we are not in a position to advise you or  
14 provide a determination for you right now about this. This  
15 determination came from the Zoning, this particular request came  
16 from the Zoning Administrator.

17 MS. STAFFONE: Yes.

18 VICE CHAIRPERSON BLAKE: So you have the ability to  
19 provide a self-certified application. You also have the ability  
20 to withdraw requests that were made, even from the Zoning  
21 Administrator's thing, memo. But in this case you either need  
22 to, in either case your drawings need to be consistent with the  
23 request that you're making because we want to approve the request  
24 and we also need to approve the plans that are supporting that  
25 request. Are you a licensed architect in addition?

1 MS. STAFFONE: I am a architectural designer. The work  
2 that we do is under a licensed structural engineer.

3 VICE CHAIRPERSON BLAKE: Okay. So what I'm going to  
4 do is, you have two choices here for this. I want to get the  
5 application consistent with the plans and I think that you made  
6 some changes to parking. I'm not sure if that parking space is  
7 sufficient to qualify as a parking space under the regulations.  
8 You need to make sure of that.

9 MS. STAFFONE: We (indiscernible).

10 VICE CHAIRPERSON BLAKE: And we want to make sure that  
11 the rear yard relief you're requesting, lot occupancy relief is  
12 still the same. I believe that if the deck, you anticipate  
13 maintaining the deck?

14 MS. STAFFONE: Yes. Because the deck was original to  
15 not only that house but the exact same deck was built on all the  
16 neighboring properties. We have gone through D.C. records and  
17 D.C. archives. There are no permits that are pulled which is  
18 what started this whole thing and we've been working one-on-one  
19 with Shepard Beamon. Shepard Beamon was the one, and I'm sorry  
20 if I butchered his last name, he was the one that had reached  
21 out to us a couple of weeks ago in order to update the drawings  
22 and update the burden of proof. So that's who we've been working  
23 with.

24 VICE CHAIRPERSON BLAKE: Okay. So that's good. What  
25 I'd like you to do though is I'd like you to either get, go back

1 and get a memorandum from the Zoning Administrator to make sure  
2 we've got the right areas of relief requested.

3 MS. STAFFONE: Perfect.

4 VICE CHAIRPERSON BLAKE: Or get a self-certified form  
5 signed by a licensed D.C. architect.

6 MS. STAFFONE: Okay.

7 VICE CHAIRPERSON BLAKE: This is a fairly  
8 straightforward application but I do think that you need to make  
9 sure you're asking for the right thing and that it is supported  
10 by the right documentation.

11 MS. STAFFONE: (Indiscernible).

12 VICE CHAIRPERSON BLAKE: So if you would do that we  
13 will have this back here, we can call this case back. I mean,  
14 you may actually be able to simplify this thing to the point  
15 where you maybe even hit the consent calendar. So I do think  
16 it's an easy application, you just need to make sure you're asking  
17 for the right things (indiscernible) right way. So how much time  
18 do you think you need to straighten that out?

19 MS. STAFFONE: So all you're asking for is just the  
20 updated memorandum then from the Zoning reviewer?

21 VICE CHAIRPERSON BLAKE: Well, I would, yes. So the  
22 Zoning Administrator will take a look at that and they would make  
23 the determination as to what the proper relief is, just like when  
24 you took the first draft in. They looked at it and said this is  
25 the relief we believe you need. They would do the same thing in

1 | this case because you've made the alterations to your plans and  
2 | you may be reducing the requirement. That would be, so they  
3 | would help you determine that and then just align the plans with  
4 | the request and then return, yes.

5 | MS. STAFFONE: Okay. So the last time we submitted for  
6 | a memorandum from the Zoning Office it took over a month for them  
7 | to get back to us.

8 | VICE CHAIRPERSON BLAKE: Uh-huh.

9 | MS. STAFFONE: So hopefully it doesn't take that long  
10 | but there's no guarantees.

11 | VICE CHAIRPERSON BLAKE: Okay. So what we're going to  
12 | do, Madam Secretary, if you would help us out here and re-schedule  
13 | this for, say a month, six weeks out for the hearing and we can  
14 | proceed.

15 | MS. STAFFONE: Okay. And then would we be able to  
16 | continue working with Shepard Beamon to make sure that what we  
17 | have will meet the minimum requirements?

18 | VICE CHAIRPERSON BLAKE: Absolutely. The Office of  
19 | Planning will review the request based on that when you put that  
20 | in.

21 | MS. STAFFONE: Okay.

22 | VICE CHAIRPERSON BLAKE: Thank you. Mr. Beamon, are  
23 | you with us?

24 | MR. BEAMON: Yes, I'm here.

25 | VICE CHAIRPERSON BLAKE: Okay. Just want to point out

1 that the Office of Planning's approval included a special  
2 exception for the 70 percent lot occupancy which was not  
3 consistent with what was requested by the Applicant or the ZA  
4 memo, so we want to make sure that too aligns. So please review  
5 the application that's submitted with the request that's  
6 submitted so we can do that. We cannot approve something that's  
7 not requested by the Applicant.

8 MR. BEAMON: Okay.

9 VICE CHAIRPERSON BLAKE: Okay. Thank you very much.  
10 Madam Secretary, you were looking at the dates for us.

11 MS. MEHLERT: I'd recommend November 12th to give  
12 enough time to get that new memo and make sure everything is  
13 lined up for OP to review as well. That would work best with  
14 the Board's schedule.

15 VICE CHAIRPERSON BLAKE: Okay. So we'll re-schedule  
16 it for that date and so I will close this meeting for now and  
17 postpone the hearing until that date. Okay. Thank you very much  
18 for coming.

19 MS. STAFFONE: Yes. Thanks for all the help.

20 VICE CHAIRPERSON BLAKE: All right. We'll see you  
21 shortly.

22 And, Mr. Young, could you just excuse everyone and  
23 we'll call our next hearing case.

24 MS. MEHLERT: Great. Next is Application No. 21342 of  
25 Culture Building, LLC. This is a self-certified application

1 pursuant to Subtitle X, Section 901.2, for special exceptions  
2 under Subtitle U, Section 802.1(e) to allow an entertainment  
3 assembly and performing arts use, and under Subtitle C, Section  
4 703.2 from the minimum vehicle parking requirements of Subtitle  
5 C, Section 701.5.

6 This is for a new entertainment assembly performing  
7 arts use in two existing connected buildings. It's located in  
8 the PDR-2 zone at 2002-2006 Fenwick Street, Northeast, Parcel  
9 01420029 and 01420015. And there are two preliminary matters.  
10 The Applicant has filed a motion to waive the 15 day posting  
11 requirements and has also submitted a request to waive the filing  
12 deadline to submit a transportation study.

13 VICE CHAIRPERSON BLAKE: If anyone, first of all, Ms.  
14 Moldenhauer, are you there?

15 MS. MOLDENHAUER: (Indiscernible).

16 VICE CHAIRPERSON BLAKE: Would you please, I'm just  
17 curious to know. What were the logistical constraints?

18 MS. MOLDENHAUER: On the posting notice requirements?

19 VICE CHAIRPERSON BLAKE: Being able to post, yeah.

20 MS. MOLDENHAUER: So we had some challenges with  
21 obtaining the posters and getting those over to the site. We  
22 had a courier deliver them twice and had an issue with just not  
23 getting, they said they were delivered but then they didn't get  
24 delivered.

25 VICE CHAIRPERSON BLAKE: Okay. Thank you. I don't

1 think the delay then really will have a prejudice to any party  
2 in the community since they did actually later meet with the ANC  
3 and people attended and so forth and were able to do it, so I'm  
4 going to waive the 15 day posting requirement deadline and also  
5 submit, also allow for the untimely filing of the transportation  
6 study because I think it's critical to the application. Okay.

7           Having said that, Ms. Moldenhauer, would you please  
8 introduce yourself for the record and anyone who will be joining  
9 you today?

10           MS. MOLDENHAUER: Good morning, Vice Chair Blake and  
11 members of the Board. My name is Meredith Moldenhauer here on  
12 behalf of Cozen O'Connor and the Applicant in this case. I am  
13 joined by Mazen, one of the principals of the Applicant. I'll  
14 have him introduce himself and I believe Mr. Young can bring up  
15 our presentation and we can walk that through with the Board.

16           VICE CHAIRPERSON BLAKE: Thank you.

17           MR. ZAATARI: Thank you so much, Meredith, and  
18 greetings all. I am Mazen Zaatari here. I'm one of the managing  
19 partners of Culture, LLC and it's a pleasure to be presenting to  
20 you today.

21           VICE CHAIRPERSON BLAKE: All right. Welcome, sir. All  
22 right, Ms. Moldenhauer, you have 15 minutes on the clock. Would  
23 you please tell us how the Applicant is meeting the burden of  
24 proof for approval.

25           MS. MOLDENHAUER: Wonderful. Thank you. Next slide,



1 please.

2           So you can see here, the property is two separate  
3 parcels located in the PDR-2 zone fronting on Fenwick and having  
4 a small access on to Okie Street. Next slide.

5           Here is the existing condition of the properties. On  
6 the right hand side you see 2006 Fenwick. On the left hand side  
7 you see 2002 Fenwick in their existing condition and as their  
8 proposed condition. Next slide.

9           The property is located in the Ivy City neighborhood.  
10 The existing condition is that 2002 Fenwick is a two-story  
11 structure with 8,000 square feet and 2006 Fenwick is a one-story  
12 structure with 5,000 square feet. The existing use has a  
13 Certificate of Occupancy for a restaurant and bar use. That use  
14 is intended to continue. The relief we're requesting today is  
15 to add, for a change of use, to add the indoor music entertainment  
16 venue use classification to the existing property and restaurant  
17 and bar. There is no intended expansion, no intended  
18 exterior/interior renovations to the property and no interior  
19 intended renovations for construction to the property. Next  
20 slide, please.

21           The relief we're seeking today is for special exception  
22 relief for the entertainment assembly use in the PDR-2 zone under  
23 Subtitle U, 802.1(e). Special exception also relief for parking  
24 relief for Subtitle C, 701.5. Next slide.

25           Under the special exception use relief, we believe that

1 the relief is compliant with the three prong test. First, it is  
2 compliant with the fact that the proposed use is in harmony with  
3 the zoning regulations and map as the use is expressly permitted  
4 by special exception in the PDR-2 zone. The PDR-2 zone is  
5 intended for allowing a medium density industrial use including  
6 cultural and entertainment venues and this is consistent with the  
7 overall goals and intent of the New York Avenue corridor and Ivy  
8 City smaller area plan.

9 The proposed use is not going to intend to adversely  
10 affect adjacent neighboring properties as the surrounding area  
11 is entirely industrial or mixed use. There are no abutting  
12 residential zones and the nearest residential zone is over two  
13 blocks away. The proposed use will occur entirely as an indoor  
14 facility and the use, and there would be no outdoor noises or  
15 crowding anticipated. Additionally, if there's any additional  
16 special conditions we believe that we satisfy and will walk  
17 through those in the next slide. Next slide, please.

18 The special exception has additional special conditions  
19 including that the use shall not be objectionable due to noise,  
20 traffic, parking or loading. We are very appreciative that we  
21 are able to work with the Department of Transportation and file  
22 the transportation study and received no objection from DDOT. We  
23 also believe that obviously our patrons will come to the site via  
24 a ride share and transit and I'll address that a little bit more  
25 of the parking when I get to the parking relief.

1           The project will have no, shall not about a residential  
2 use for the zone and that is compliant here as there is no  
3 residential adjacent to the site. All of the surrounding property  
4 is PDR zoned property. No other live music venue will be within  
5 1,000 feet. We met with the Zoning Administrator and actually  
6 yes, on Tuesday, we received a confirmation email that we reviewed  
7 with her existing uses in the area and she confirmed that no  
8 variance is needed and that we are compliant with Subtitle  
9 802.1(e)(3) and that this section is compliant. No. 4, that no  
10 external performances or amplification will occur. The Applicant  
11 has no intent and does not currently provide opportunity for  
12 outdoor events or outdoor amplification.

13           And then if there is obviously any additional  
14 conditions that might be required, we did work extensively with  
15 the ANC and have signed a letter with them to authorize the  
16 potential use by the community for the space when specific events  
17 are not occurring at this sole location, as well as coordinating  
18 with them for adding additional language to the website to  
19 encourage patrons to utilize existing parking facilities that are  
20 in the area. Next slide.

21           We are seeking parking relief by adding the  
22 entertainment venue use that adds 26 parking spaces for the  
23 proposed use. The current facility with the bar and restaurant  
24 Certificate of Occupancy has a ten parking credit because the  
25 current lot is fully built out and has no parking on-site. So

1 based on that, we are asking for parking relief for 16 parking  
2 spaces and we believe that we comply with the special exception  
3 conditions here as under 703.2(a). The site is built out lot  
4 line to lot line and that leaves no room for surface or obviously  
5 any other location for parking without potentially demolishing  
6 the existing structure for which obviously we believe relief is  
7 appropriate. Under 703.2(d) the property is well surfaced by  
8 transit. The property is .75 miles from Rhode Island metro  
9 station and we believe that most of the individuals that are  
10 patronizing this facility are coming through other means and that  
11 are not obviously parking but rather potentially car share  
12 programs where there's not parking specifically located or needed  
13 in the community.

14 In addition to that, the neighborhood land use  
15 minimizes the need for on-site parking and we believe that that  
16 is consistent here, and we have worked, as I said, with DDOT,  
17 and we appreciate them working with us for late filing of the  
18 transit report and the community to agree to two conditions.  
19 One, to update the website and post a "getting here" section that  
20 talks about if you are going to use transit, how to get there.  
21 If you are going to have a car share program, where to be dropped  
22 off or if you're driving that you can utilize the existing parking  
23 garage that is located just a block away. We are also agreeing  
24 to provide four short term bicycle parking spaces on new racks  
25 in front of the property. Next slide.

1               Sorry, in addition to that we believe the proportionate  
2 relief is appropriate based on the public transit and the  
3 additional factors that I just provided and that relief is  
4 appropriate based on the number of parking that can be provided  
5 at the site given that the property is fully built out and so we  
6 believe the relief is limited to that which is required as there  
7 is a perspective or percentage of relief. Next slide.

8               As I indicated a little bit earlier, we have engaged  
9 extensively with the neighborhood and the ANC. In July we  
10 presented to the Zoning Committee and talked with them about the  
11 application. We then continued and had additional information  
12 that they requested and obtained an ANC resolution in support  
13 after the most recent ANC meeting and that is in the record for  
14 the Board as a letter of support. Next slide.

15              With that, I will conclude our presentation but  
16 obviously we are here and available for any questions from the  
17 Board.

18              VICE CHAIRPERSON BLAKE: Before I open it up for  
19 questions from the Board, I have a couple of quick questions for  
20 you on this.

21              First of all, would the C of O for the restaurant and  
22 bar in the existing space, how much of the existing space does  
23 that C of O cover? Is it the 5,000, 6,000 or the entire thing?  
24 I'm just not sure.

25              MS. MOLDENHAUER: It's the entire thing.

1 VICE CHAIRPERSON BLAKE: Oh, okay. And it is actually  
2 used as a restaurant bar in the entire thing --

3 MS. MOLDENHAUER: Yes.

4 VICE CHAIRPERSON BLAKE: -- at this point? Okay. Are  
5 you changing the, the current bar there now, was it Ghibillena?  
6 Is that changing or is that already, is that --

7 MS. MOLDENHAUER: No. The current bar is Culture DC  
8 and so it's currently going to be operated in a similar fashion  
9 as it is today within the licensure and the ability to operate a  
10 music venue.

11 VICE CHAIRPERSON BLAKE: Okay.

12 MR. ZAATARI: Ghibellina --

13 MS. MOLDENHAUER: The interior layout is the same.

14 VICE CHAIRPERSON BLAKE: Okay.

15 MR. ZAATARI: To clarify, Ghibellina is 2000 Fenwick  
16 Street, Northeast, not 2002 or 2006.

17 VICE CHAIRPERSON BLAKE: Oh, okay. I understand, okay.  
18 So it's next to it. Okay. Thank you very much.

19 What is the proposed hours of operation?

20 MS. MOLDENHAUER: The proposed hours of operation are  
21 really venue-based. This is a ticketed opportunity. We're  
22 (indiscernible) come for a ticketed event, so whenever those  
23 occur they will range in time but they are potentially, you know,  
24 evening hours and most likely on the weekends.

25 VICE CHAIRPERSON BLAKE: Okay. And what's the

1 capacity?

2 MS. MOLDENHAUER: I don't know the current capacity.

3 MR. ZAATARI: I believe it's around 500, 600 something  
4 but that will need to be confirmed.

5 VICE CHAIRPERSON BLAKE: Five or six hundred?

6 MR. ZAATARI: Correct.

7 VICE CHAIRPERSON BLAKE: It seems like not so many  
8 parking spaces for five or six hundred people. Will there be  
9 valet parking?

10 MR. ZAATARI: We do currently have valet parking  
11 (indiscernible).

12 VICE CHAIRPERSON BLAKE: Do you anticipate having it  
13 going forward?

14 MR. ZAATARI: As Meredith mentioned earlier, I mean,  
15 the biggest thing right here is that we encourage all our clients  
16 to come through ride shares or Ubers or Lyfts just because the  
17 purpose behind the venue is going to be drinking. But as the  
18 study also showed that there is over 30 percent of unutilized  
19 parking on the streets as it currently stands.

20 VICE CHAIRPERSON BLAKE: Okay. And do you have any  
21 idea of how frequently you anticipate having these live music  
22 events?

23 MR. ZAATARI: Usually it's on the weekends, probably  
24 Fridays and Saturdays most of the times.

25 VICE CHAIRPERSON BLAKE: Okay. And last question.

1 | There are some other venues in the area, I guess they're not  
2 | defined exactly the same way but I think just down the street  
3 | there are quite a few. Could you just tell you us a little bit  
4 | about the other ones that exist in the area?

5 |           MS. MOLDENHAUER: This is the conversation we had with  
6 | Kathleen Beeton. None of the other locations in the area have a  
7 | permitted Certificate of Occupancy for live music and  
8 | entertainment, as required. And so there's one establishment  
9 | that we are aware that the Zoning Office is working with them to  
10 | bring them into compliance or for them to clarify that and then  
11 | there are other venues that may focus mostly on restaurant and  
12 | bar services, but if they do potentially from time to time offer  
13 | live music, again they're not currently licensed in that way.

14 |           VICE CHAIRPERSON BLAKE: Okay. Thank you very much.  
15 | Do any other Board members have questions of the Applicant?

16 |           ZC CHAIRPERSON HOOD: Mr. Chair, I want to echo your  
17 | comment on live music. I will say this, Mr. Mazen, the other  
18 | establishment is very well respected by that community over there  
19 | in Ivy City and I'm also glad to see that you all are doing what  
20 | you're doing over there because when that area was planned, it  
21 | was planned to come up and do exactly what's happening. So I  
22 | don't have any issues with your application, but I appreciate the  
23 | conversation that the Chair had with you about the Applicant, and  
24 | I'm looking at the last, Ms. Moldenhauer, I'm looking at the last  
25 | PowerPoint and I'm glad there is some clarification so that can



1 get straightened too because the other status which you mentioned  
2 about the tenancy compliance is very well thought of in that  
3 community, and I'll just leave it at that.

4 Thank you, Mr. Chairman.

5 VICE CHAIRPERSON BLAKE: Thank you, Mr. Chair.

6 Okay. We'll now hear, any other questions for the  
7 Applicant?

8 Mr. Smith, do you have anything?

9 COMMISSIONER SMITH: No, I don't have anything.

10 VICE CHAIRPERSON BLAKE: Okay. Thank you.

11 We'll now hear from the Office of Planning.

12 MS. THOMAS: Mr. Chair, members of the Board, Karen  
13 Thomas --

14 VICE CHAIRPERSON BLAKE: I can't quite hear you. Maybe  
15 it's me, I just can't quite hear you.

16 MS. THOMAS: Can you hear me now? Okay. Sorry.

17 Good morning, Mr. Chair, members of the Board, Karen  
18 Thomas with the Office of Planning.

19 And the Office of Planning is in support of this  
20 Applicant bringing its operations into compliance via getting a  
21 permit for what it is actually used for and we believe it  
22 satisfies the criteria under 802 as outlined in our report. And  
23 with respect to parking the property does not support on-site  
24 parking but there are many options in the neighborhood including  
25 a parking garage and, as the Applicant stated, most clients would

1 be coming by different modes of transportation not involving  
2 single occupancy vehicles, and with that I would rest on the  
3 record of our report in support of the application.

4 Thank you.

5 VICE CHAIRPERSON BLAKE: All right. Thank you very  
6 much, Ms. Thomas. Does anyone on the Board have questions for  
7 Ms. Thomas of the Office of Planning?

8 ZC CHAIRPERSON HOOD: Yes. I do have a quick question  
9 and this may not be germane. I'm just trying to orientation  
10 straight.

11 Ms. Thomas, there was a proposed, there was a trash  
12 transfer station which I know is, I believe it's gone now. That  
13 was on Okie Street. Was that in that area too where Culture is  
14 located, or is going to be located? It wasn't? It's further  
15 away? I know Ms. Rhodes knows exactly about that, so anyway I'll  
16 leave it, maybe I'll ask Ms. Rhodes. I'm just trying to see.

17 MS. THOMAS: All right.

18 ZC CHAIRPERSON HOOD: Thank you.

19 MR. ZAATARI: It is actually away from our property.  
20 It's on the other side.

21 ZC CHAIRPERSON HOOD: Is it still there?

22 MR. ZAATARI: I believe, no. We currently have, we  
23 have an alley next to us that has the dumpsters that all the  
24 neighbors kind of share but the one that you're referring to I  
25 believe is closed to the Okie, the 1350 Okie Street.

1                   ZC CHAIRPERSON HOOD: I was just trying to remember.  
2 Ms. Rhodes will help me with it, we've been (indiscernible). Let  
3 me be quiet. Go right ahead.

4                   VICE CHAIRPERSON BLAKE: Okay. Does the Applicant have  
5 any questions for the Office of Planning?

6                   MS. MOLDENHAUER: No. Thank you so much for working  
7 with you, Ms. Thomas.

8                   VICE CHAIRPERSON BLAKE: I'm not done yet. Okay. The  
9 next --

10                  MS. MOLDENHAUER: (Indiscernible) Applicant to ask.  
11 Sorry.

12                  VICE CHAIRPERSON BLAKE: Okay. Yes. So now I'm going  
13 to hear from the ANC. I think we have the ANC. Would you please  
14 go ahead with your presentation.

15                  ANC COMMISSIONER RHODES: Yes. My name is Sabrina  
16 Rhodes. I'm currently the Advisory Neighborhood Commission 5B02  
17 for Ivy City and I do approve of Culture LLC being in this  
18 building. It was formerly Big Chief and as Chairman Hood was  
19 stating about the trash transfer station, it's in Brentwood which  
20 is still operating. We also have the City Winery that has a new  
21 owner now that's getting ready to, that'll be operating soon. We  
22 have Ivy City Smokehouse that does have live music. We have the  
23 THRoW Social who have different events.

24                  But I do appreciate Cozen and Meredith and Mazen coming  
25 to the ANC coming to the community, letting us know everything

1 that they'll be doing. Vera, which is on top of Ghibellina, when  
2 they fixed that space they made sure that it was soundproof. So  
3 any events that's going on currently we do not hear it in the  
4 community which we appreciate and we want to continue to have a  
5 relationship with Mazen and Culture.

6 As it was stated, they're going to open a space for the  
7 community so we can have community events and possibly community  
8 meetings. They also stated that they would help with community  
9 clean-ups as well. The building is right beside the, well there's  
10 an alley, but right there is the men's shelter which will be  
11 moving to where the dog shelter is but right now we're having an  
12 issue with trash and they did offer to help clean the community.

13 So I really appreciate the relationship that they have  
14 began with us and so if I can come and talk to them about anything  
15 they're open to it. They sent me the community benefits agreement  
16 so that we can have community events or anything that we would  
17 like to have in the facility and everybody is not doing that. So  
18 I really appreciate it.

19 If anyone has any questions for me, I'm happy to answer.

20 VICE CHAIRPERSON BLAKE: Thanks. Does anyone have any  
21 questions for Commissioner Rhodes?

22 ZC CHAIRPERSON HOOD: Mr. Chairman, I just wanted to  
23 make sure that Mr. Mazen and Ms. Moldenhauer understand the  
24 endorsement. I've worked with Ms. Rhodes and we haven't always  
25 been on the same page and we probably won't be sometime, but I

1 know her work and when I saw her name as this, I don't want you  
2 all to deminimize, and I know you don't, I want you to know just  
3 how big that endorsement is and I'll leave it at that.

4 Thank you, Mr. Chairman.

5 VICE CHAIRPERSON BLAKE: Thank you, Mr. Chair. Are  
6 there any questions for the ANC Commissioner other than that,  
7 from the Applicant? Any other Board member? Okay.

8 Thank you very, very much, Ms. Rhodes --

9 ANC COMMISSIONER RHODES: Thank you.

10 VICE CHAIRPERSON BLAKE: -- for your service and for  
11 your very glowing testimony. It was very well received. Thank  
12 you very much. We acknowledge that. Okay.

13 Mr. Young, is there anyone else who wishes to testify?

14 (Pause.)

15 VICE CHAIRPERSON BLAKE: Mr. Young, is there anyone  
16 else who wishes to testify?

17 MR. YOUNG: We do not.

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

19 Just before anything else, are there any other  
20 questions from the Board for the Applicant or the Office of  
21 Planning? No. Okay.

22 Ms. Moldenhauer, do you have any closing remarks?

23 MS. MOLDENHAUER: No closing remarks. Thank you so  
24 much for your time. I appreciate working with ANC Commissioner  
25 Rhodes and the ANC, and the Office of Planning.

1 Thank you.

2 VICE CHAIRPERSON BLAKE: Okay. Thank you very much.  
3 With that, I'm going to close the hearing and the record. Mr.  
4 Young, could you excuse everyone. Okay.

5 We can start and talk a little bit about this. I  
6 actually thought this application was fairly straightforward at  
7 the end of the day. I do believe that the Applicant has met the  
8 burden of proof to be granted both areas of requested relief.  
9 All the activities including music are going to be contained  
10 within the structures. There'll be no outdoor performances or  
11 amplified sound. There are also going to be some attenuation  
12 measures in place. Site also does not abut any residential zones.  
13 The nearest housing is about two blocks away and there are no  
14 other licensed live venue that exist within 1,000 square feet  
15 meeting the standard.

16 So I agree with the Office of Planning's analysis that  
17 the Applicant's proposing these conditions of U-802 and I think  
18 that the granting of relief will be in harmony with the zoning  
19 regulations as they apply to the PDR-2 zone, and which does in  
20 fact support the adapted re-use of industrial space for creative  
21 and commercial purposes.

22 I do not believe that any conditions would be necessary  
23 although I would recommend the inclusion of the TDM plan because  
24 I do think that that is effective to help manage the congestion  
25 and potential traffic issues that may arise. As to the parking

1 relief, I do believe that the Applicant has met the burden of  
2 proof for that as well. Both lots are built out to their lot  
3 lines so there's no room for inside parking and the site is served  
4 by a metro bus to some extent. But I do think that, as the  
5 Applicant pointed out, that there is a public garage about a  
6 block away and most of the venues' patrons are expected to arrive  
7 by ride share, walking, things of that sort.

8           So that would be my recommendation. So I give great  
9 weight to the Office of Planning's recommendation. I do note  
10 that DDOT doesn't have any objection to the project so, with the  
11 TDM plan. I also give great weight to the ANC 5B report and its  
12 glowing recommendation from Commissioner Rhodes. I also asked  
13 many questions. I think that if anybody, I'm perfectly  
14 comfortable with it. I like it.

15           So if, Mr. Smith, do you have anything you want to add?

16           COMMISSIONER SMITH: Eloquently stated by you, Chairman  
17 Blake. So I have nothing to add on top of what you stated, so I  
18 will vote in support.

19           VICE CHAIRPERSON BLAKE: Okay.

20           Chairman Hood?

21           ZC CHAIRPERSON HOOD: I won't try to add to that. As  
22 Board Member Smith said it was eloquently done and I don't want  
23 to chop it up and mess it up, so I'm going to be supporting as  
24 well.

25           VICE CHAIRPERSON BLAKE: Okay.

1 Well then, with that I'm going to make a motion to  
2 approve Application No. 21342 as read and captioned, subject to  
3 one condition that they include a TDM plan, and ask for a second.  
4 Mr. Smith?

5 COMMISSIONER SMITH: Second.

6 VICE CHAIRPERSON BLAKE: Madam Secretary, the motion's  
7 been made and seconded. Would you please take a roll call vote.

8 MS. MEHLERT: Please respond to the Vice Chair's motion  
9 to approve the application with the one TDM condition.

10 Vice Chair Blake?

11 VICE CHAIRPERSON BLAKE: Yes.

12 MS. MEHLERT: Board Member Smith?

13 COMMISSIONER SMITH: Yes.

14 MS. MEHLERT: Chairman Hood?

15 ZC CHAIRPERSON HOOD: Yes.

16 MS. MEHLERT: Staff would record the vote as three to  
17 zero to two to approve Application No. 21342 with one condition,  
18 on the motion made by Vice Chair Blake and seconded by Board  
19 Member Smith, with Chairman Hill not present or participating.

20 VICE CHAIRPERSON BLAKE: Okay. Great. All right.

21 Let's take a 15 minute break. I want to work on my  
22 technical difficulties and we'll have the, I think two other  
23 cases after that. So 15 minutes. I'll see you guys in 15  
24 minutes.

25 (Whereupon, there was a brief recess.)



1 VICE CHAIRPERSON BLAKE: Please call us back in.

2 MS. MEHLERT: Yes. The Board is back from a quick  
3 break and returning to its hearing session.

4 VICE CHAIRPERSON BLAKE: Okay. Would you please bring  
5 back the case we need to review, to deliberate.

6 MS. MEHLERT: And this is just for a decision, correct?

7 VICE CHAIRPERSON BLAKE: Yes.

8 MS. MEHLERT: Yes. So that would be Application No.  
9 21328 of H Street DC LLC. As amended, this is a self-certified  
10 application pursuant to Subtitle X, Section 901.2 for a special  
11 exception under Subtitle C, Section 1506 from the penthouse  
12 setback requirements of Subtitle C, Section 1504 and pursuant to  
13 Subtitle X, Section 1002 for an area variance from the rear yard  
14 requirements of Subtitle I, Section 205.1.

15 This is for a new apartment house providing 48 dwelling  
16 units in two existing buildings in a new 11-story rear addition.  
17 It's located in the D-4-R zone at 471-473 H Street, Northwest,  
18 Square 517, Lots 833, 834 and 835, and the updated request for a  
19 self-certification form is in Exhibit 27.

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

21 I reviewed this case in detail and I do believe with  
22 the adjusted amended request, I believe the Applicant has met the  
23 burden of proof for both the rear yard relief as well as the  
24 special exception for the penthouse rear setback.

25 As far as the exceptional conditions and the first

1 | prong of the test, I do think the historic preservation  
2 | constraints, as well with the narrowness of the width, the  
3 | shallowness of the lot do create a practical difficulty because  
4 | that would eliminate essentially 18 units and undermine the  
5 | financial feasibility of the project.

6 |           I do think that the project, looking at the shadowing  
7 | and privacy impacts, would not cause any substantial detriment  
8 | to the neighbors and I think that the project is certainly  
9 | consistent with the purpose of the D-4-R zone which is high  
10 | density housing development preservation.

11 |           As for the special exception I do think it meets the  
12 | requirements for the setback. Special requested relief is needed  
13 | so that the mechanical equipment, elevator and stair access and,  
14 | again, without that, if we propose the regulations the design  
15 | would cut into the unit count and also harm the project's  
16 | feasibility.

17 |           I think, again, as far as the, you know, light, air,  
18 | visual intrusion, I think that the surrounding properties are  
19 | much taller. There'll be minimal impacts on the neighbors.  
20 | Again, the relief requested here is consistent with the D-4-R  
21 | zone purpose and I would give great weight to the Office of  
22 | Planning's recommendation for approval. I'd also give great  
23 | weight to the report ANC 6E which states no issues or concerns.  
24 | I'll also note that DDOT has no objection and I will be voting  
25 | in favor of the application.

1 Mr. Smith?

2 COMMISSIONER SMITH: Nothing to add, Vice Chair Blake.  
3 I agree with everything that you stated regarding how the property  
4 meets the area variance prongs as well as the special exception  
5 criteria, and will vote in support as well.

6 VICE CHAIRPERSON BLAKE: Thank you.

7 Chairman Hood?

8 ZC CHAIRPERSON HOOD: I too, Mr. Vice Chair, would  
9 agree with both of my colleagues' comments and I think the record  
10 in this case warrants our approval.

11 Thank you.

12 VICE CHAIRPERSON BLAKE: Okay. Having deliberated --

13 ZC CHAIRPERSON HOOD: You went on mute, Mr. Chair, Vice  
14 Chair.

15 VICE CHAIRPERSON BLAKE: I'm sorry. You had gone on  
16 mute for a minute.

17 COMMISSIONER SMITH: You're on mute.

18 VICE CHAIRPERSON BLAKE: Oh, my goodness. I'm sorry.  
19 I'm sorry.

20 ZC CHAIRPERSON HOOD: We really want to hear what you  
21 have to say.

22 VICE CHAIRPERSON BLAKE: I can't see the button. Okay.  
23 Yeah.

24 Having deliberated, I'd like to make a motion to  
25 approve the application, let's see, Application No. 21328 as

1 amended and just read by the secretary, and ask for a second.  
2 Mr. Smith?

3 COMMISSIONER SMITH: Second.

4 VICE CHAIRPERSON BLAKE: Okay. The motion has been  
5 made and seconded. Madam Secretary, would you please conduct a  
6 roll call vote.

7 MS. MEHLERT: Please respond to the Vice Chair's motion  
8 to approve the application.

9 Vice Chair Blake?

10 VICE CHAIRPERSON BLAKE: Yes.

11 MS. MEHLERT: Board Member Smith?

12 COMMISSIONER SMITH: Yes.

13 MS. MEHLERT: Chairman Hood?

14 ZC CHAIRPERSON HOOD: Yes.

15 MS. MEHLERT: Staff would record the vote as three to  
16 zero to two to approve Application No. 21328 on the motion made  
17 by Vice Chair Blake and Board Member Smith, with Chairman Hill  
18 not present or participating.

19 VICE CHAIRPERSON BLAKE: Thank you very much. Would  
20 you please call our next hearing session case.

21 MS. MEHLERT: Next is Application No. 21303 of Jamal  
22 Ahmed. As amended, this is a self-certified application pursuant  
23 to Subtitle X, Section 1002 for an area variance from Subtitle  
24 U, Section 301.5(b) to allow an increase in the number of units  
25 in an existing apartment house with less than 900 square feet of

1 lot area per dwelling unit, and pursuant to Subtitle X, Section  
2 901.2 for a special exception under Subtitle C, Section 703.2  
3 from the minimum vehicle parking requirements of Subtitle C,  
4 Section 701.5.

5 This is for the creation of two additional dwelling  
6 units in the cellar of an existing four unit apartment house in  
7 a two-story building. It's located in the RF-1 zone at 1631 A  
8 Street, Southeast, Square 1086, Lot 804 and this hearing has been  
9 postponed twice at the Applicant's request and the merits have  
10 not been heard.

11 VICE CHAIRPERSON BLAKE: Okay. Ms. Wilson, welcome.  
12 If you would please introduce yourself for the record and if you  
13 can take the first 15 minutes or so to kind of give us an overview  
14 of your request and how you believe your client is meeting the  
15 criteria for approval for the requested relief.

16 MS. WILSON: Sure. My name is Alex Wilson from Sullivan  
17 & Barros on behalf of the Applicant in this case, and Mr. Jamal  
18 Ahmed and Razel (phonetic) Ahmed. Mr. Ahmed is here with me  
19 today, Mr. Jamal Ahmed. Thank you, Mr. Young, for pulling up  
20 the presentation. If you could please go to the next slide.

21 The property is currently improved with an existing  
22 four-unit purpose built apartment building. It has two stories  
23 and a basement level below. There are two units on each floor  
24 and the Applicant has a C of O for four units so the building is  
25 an existing apartment building with four legal units.

1           The existing units were recently upgraded when the  
2 owners purchased the property in June, 2024 moving laundry in-  
3 unit and modernizing the systems. During construction the  
4 basement served as some storage for tenant furniture, renovation  
5 materials but once completed the basement will be a vacant  
6 conditioned space where systems used to be down there.

7           The basement level already has appropriate egress for  
8 living space, making it a perfect place for two additional units  
9 generally matching the layouts of the floors above. Subtitle U,  
10 301.5 allows as a matter-of-right the expansion of these purpose-  
11 built apartment buildings so long as properties have 900 square  
12 feet of land area. The property has 2,000 square feet of land  
13 area and accordingly the Applicant is seeking an area variance  
14 from U-301.5(b). Additionally, there are no parking spaces on  
15 the property and the addition of two new units will trigger a  
16 requirement for one parking space. As there is no physical way  
17 to provide parking on-site the Applicant also seeks parking  
18 relief pursuant to C-703.2.

19           The Office of Planning is now recommending approval.  
20 Originally they were recommending denial. This is before we  
21 joined this team and we worked with them to submit updated  
22 information about this case in particular and the unique aspects  
23 of the property and strengthened the original argument. ANC 7D  
24 voted in support of the application. DDOT has no objection and  
25 there are two letters in support from the neighbors. Next slide,

1 please.

2           This just shows the location of the property. It's a  
3 corner lot. Next slide, please.

4           This is the existing building. Next slide, please.

5           These are just additional shots of the existing  
6 building. Next slide, please.

7           This is some access, the side. Next slide, please.

8           In terms of the variance test, the property is impacted  
9 by a confluence of factors. First the existing structure in age,  
10 it was built 80-plus years ago as an apartment house with four  
11 units, two per floor. It became legally nonconforming under the  
12 1958 zoning regulations. The units are two per floor with the  
13 same floor plan layout so the (indiscernible) have identical  
14 floors with a stairwell leaving little room for vertical  
15 integration of the units without adding another interior stair  
16 and really eating into the existing units.

17           Given the age modernization (indiscernible) really  
18 needed when the owners purchased the property in June, 2024 they  
19 immediately set to upgrading the units including in-unit laundry,  
20 upgrades to HVAC, electrical and utilities. The basement level  
21 space formerly had these systems and so now that they have been  
22 relocated and upgraded, the space will be vacant and the owners  
23 are left to do or are going to be left with this vacant  
24 conditioned space that they need to maintain but can't be put to  
25 any use or integrated vertically.

1           This is also a corner lot with high visibility adjacent  
2 to major pedestrian corridors including East Capitol,  
3 Independence Avenue, and Massachusetts Avenue. It's also two  
4 blocks from the Stadium-Armory metro and near RFK which will  
5 certainly become busier in the near future. It has at-grade  
6 exposure to the public realm and there have already been  
7 demonstrated issues with security, and while this alone might not  
8 be a determinative factor it has been taken into consideration  
9 by the Board as part of the confluence of factors, specifically  
10 in Case No. 20289 and in that case there aren't any demonstrated  
11 issues of security as there have been in this case, just  
12 speculative issues with security. Of course this is also a fixed  
13 size lot with no opportunity to expand on its own. Again, that  
14 may not be unique but worth mentioning.

15           And then in terms of comparing this to other properties  
16 we took over the case in July and I would agree that at that time  
17 a case had not been made and this prong was the weakest. There  
18 is nothing in the record explaining why this property was unique  
19 relative to other purpose-built apartment buildings in the area  
20 and so that's the first thing I wanted to tackle and investigate  
21 because there are a number of purpose-built apartment buildings.

22           And so that's helpful in one sense because the area is  
23 perhaps more unique than a traditional row dwelling neighborhood  
24 but it matters as to how this property is unique compared to  
25 those properties. And so we go into more granular detail in



1 Exhibit 34A, the pre-hearing, but this property is sustained from  
2 those properties because it's the only corner purpose-built  
3 apartment building with an existing basement level above grade  
4 that isn't using all of its space.

5           So all of these other apartment buildings have  
6 maximized their space using all the available square footage for  
7 residential units and so in order to add units they would have  
8 to add space. The ones on the corner they either do not have  
9 cellar levels or the levels are below grade so, for example to  
10 add to those buildings there would need to be major excavation  
11 done and then the other purpose-built apartment buildings are  
12 utilizing a grade for each of their space as well. And so this  
13 building is distinct because it's the only one with this vacant  
14 space that is ready to accommodate units with no excavation or  
15 exterior modifications. Next slide, please.

16           In terms of the practical difficulty in Palmer v. Board  
17 of Zoning Adjustment the Court of Appeals stated, "the variance  
18 procedure has many purposes. It is designed to provide relief  
19 from the strict letter of the regulations, protect zoning  
20 legislation from Constitutional attack, alleviate an otherwise  
21 unjust invasion of property rights and prevent usable land from  
22 remaining idle." In terms of the practical difficulties without  
23 relief the Applicant's only real option is to maintain this vacant  
24 conditioned space at a cost to the Applicant with no utility  
25 leaving it idle and creating an unnecessary burden. There are

1 additional costs associated with maintaining any space including  
2 HVAC, cleaning, pest management and security. It's a corner lot  
3 which has led to safety issues and additional security measures  
4 and cameras are needed and obviously this needs to be present if  
5 units were there, such units would offset some of these costs.

6           This is really the only option to leave this space  
7 vacant if this is not approved, because it's infeasible, costly  
8 and impractical to combine the upper units. It would require  
9 demolition and effectively a gut of the building, displacing  
10 tenants and requiring significant funds and it would result in  
11 oversized units that would be difficult to rent for a reasonable  
12 price right for the area and cover costs, and this fact pattern  
13 in the facts of this case are nearly identical to 2801 R Street  
14 in Case No. 19959. I think this case is a little stronger in  
15 terms of the unique aspects of the surrounding area including the  
16 apartment building nearby and the adjacency to transit, and so I  
17 did include that in the same brief we submitted which is identical  
18 to the ones for the other 900 foot rule cases.

19           So that is in the record and I think this case is unique  
20 in and of itself without any additional help from that brief and  
21 case law, but we had it available and submitted it at the request  
22 of the Office of Planning. But as mentioned, this property is  
23 unique. The building is unique and the area is unique and there  
24 is a clear practical difficulty in maintaining a vacant idle  
25 space which is one of the reasons the variance procedure exists.

1 Next slide, please.

2 In terms of the third prong, the use itself is permitted  
3 in this zone as a matter-of-right and the relief relates to the  
4 land area. The 900 foot rule based on some of the legislative  
5 history found appears not to necessarily prevent density where  
6 appropriate and the most recent set of regulations governing the  
7 rowhouse zones are meant to prevent over-concentration of density  
8 and combination of lots and pop-ups and top-hats in traditional  
9 rowhouse neighborhoods.

10 In this case, again, it's not a traditional rowhouse  
11 neighborhood. It's located so close to public transit, metro and  
12 major thoroughfares and this facilitates this density without  
13 creating additional congestion or traffic. The neighbors'  
14 support letters reflect that sentiment as well. It is an  
15 appropriate location for two new units of housing as it is vacant  
16 idle space that is already ready for use in that way. It is  
17 unique relative even to other purpose-built apartment buildings  
18 on the same square and would not create an influx of people  
19 seeking this relief because the confluence of factors is so unique  
20 it's not readily replicated and even corner properties on the  
21 same square cannot replicate this. Next slide, please.

22 We also added parking relief as the additional two  
23 units triggers the need for one parking space to be added. There  
24 are currently no parking spaces on-site and the property doesn't  
25 have alley access nor a curb cut and DDOT does not permit curb

1 cuts for one space and there is no space on-site for parking.  
2 The property is very local (phonetic) located near recreation,  
3 bars, restaurants, parks, the stadium, the metro and other  
4 amenities. Next slide, please.

5 Thank you. So these are the floor plans. The proposal  
6 is for a one two bedroom and one one bedroom units, similar to  
7 the floor plans above. It's a simple project that would result  
8 in two high quality units near transit without any exterior  
9 renovations with neighborhood and community and OP support in a  
10 unique building in a unique area, thus meeting the intent and  
11 purpose of the zone as well as the variance test. Let's see, is  
12 there another, next slide.

13 Or is that the end? If that's the end that concludes  
14 my presentation. Thank you.

15 VICE CHAIRPERSON BLAKE: Okay. Does anyone from the  
16 Board have any questions for the Applicant? Does anyone from the  
17 Board have any questions for the Applicant? No. Okay. I have  
18 a couple of questions for you.

19 You know, when I look at this, you already have a  
20 building that is compliant but it has, what is the ratio right  
21 now of square footage per lot today if we were to look at it  
22 today as it stands with the existing units?

23 MS. WILSON: So it's a 2,000 square foot lot with four  
24 units of 500 square feet.

25 VICE CHAIRPERSON BLAKE: So we're already well below

1 the 2,000, the 900 square foot rule and if we added two more  
2 units we'd go down to about 330 square feet per, right, per unit?

3 MS. WILSON: Yeah. And that's not unusual in these  
4 types of cases and I would say it was a similar situation in 2801  
5 R Street and 400 Seward Street. It might have been either one.

6 VICE CHAIRPERSON BLAKE: Well, the magnitude wasn't  
7 quite as great as it is and it's a fairly large deficiency. If  
8 you're talking about a 24, you know, a 2,000 square foot lot and  
9 3,400 square foot deficiency. So the deficiency's larger than  
10 the lot itself. But it's something to think about relevant when  
11 you think about density and what that reflects relative to the  
12 square foot rule. I understand what you're saying.

13 I'm not sure, I may have actually deferred to Chairman  
14 Hood to discuss about it, to review your history of, the  
15 legislative history of the 900 square foot rule and it was  
16 interesting, as you kind of referred it to some issues, but it  
17 just seems like density tends to be an issue that's looked at  
18 quite a bit. I think a lot of the 900 square foot rule cases  
19 we've seen tend to be acceptable because they meet the 900 square  
20 foot rule.

21 The variances are very unique conditions. They are  
22 very substantial. I don't know that you can pull them together  
23 that closely but if you could just elaborate a little bit more  
24 to me as to the density measure. How should the Board view the  
25 density that I just described, because 300 square feet per unit

1 | sounds a little tight on a 2,000 square foot lot. Now, granted  
2 | that's above the minimum for the lot because it's 1,800 square  
3 | feet but it just seems like a whole lot on a lot, if you know  
4 | what I mean.

5 |           MS. WILSON: I'm not quite sure I understand the comment  
6 | that the 900 square foot rule cases that we submitted were  
7 | approved because they meet that. Those all were variance requests  
8 | to be well under 900 square feet per unit and I'd have to check,  
9 | I can pull up some of the Office of Planning reports, but I would  
10 | say like any case it's been looked at on a case by case basis  
11 | but some of the mitigating factors I've seen, and that I think  
12 | would apply here, are neighborhood conditions specifically where,  
13 | if you were looking at a property in an area that even though  
14 | this is an RF zone, there are a number of mixed uses in the area.

15 |           It's near transit, it's near amenities and the  
16 | neighborhood won't be adversely impacted by additional density.  
17 | It can handle that. I think that's been a mitigating factor in  
18 | the past. 400 Seward Street is one that I can think of, and I'd  
19 | have to pull up the OP report, but I want to say there were 14  
20 | units on a lot that wasn't much bigger than this.

21 |           And then I can go through and provide, the OP reports  
22 | in the record should identify the square footage per unit, but I  
23 | think in this particular case it is two blocks from the metro.  
24 | There are a number of amenities. The neighborhood is supportive.  
25 | It's sort of a mixed use neighborhood and I think that helps

1 mitigate some concerns over density versus if you had it in the  
2 middle of a traditional rowhouse neighborhood and you were trying  
3 to add two units and it would effectively quadruple the density  
4 of every other building on that block.

5 VICE CHAIRPERSON BLAKE: Yes. Ms. Wilson, I do agree  
6 that the examples you gave us do in fact support what you're  
7 saying although I don't think your example for all inclusive, I  
8 mean, you selected a set of cases that did support your point.  
9 But I do think that there have been decisions that the Board has  
10 made that are not necessarily consistent with that, but I  
11 understand, I would stand corrected to say you're right here,  
12 your cases did support that (audio interference).

13 MS. WILSON: Yes. And I'd be happy to look at any of  
14 those cases. I tried to be fairly comprehensive and find all of  
15 the 900 square foot variance cases from the last ten to fifteen  
16 years that I could. So, you know, if there is an opportunity or  
17 it would be helpful I would appreciate the opportunity to look  
18 at those ones that you're talking about and be able to understand.

19 VICE CHAIRPERSON BLAKE: Okay. The last question I  
20 have for you is when you look at the issue of the area variance  
21 being intended to provide flexibility in areas where people could  
22 do things that would otherwise be prohibited because of the  
23 regulations, it seems to me that the regulations don't  
24 necessarily point to the optimization of a property's earning  
25 potential which is what I think this does. Can you speak to that

1 for me?

2 MS. WILSON: Sure. I wouldn't categorize this as  
3 optimization of a property's earning potential, only that this  
4 would be a vacant space. There's no in between. It has to be  
5 conditioned and maintained or else it's going to get moldy. It  
6 has to have security in order to keep the existing permitted use  
7 safe. So I think if we were trying to squeeze four units in  
8 there versus two units, that would maybe be more of a discussion.  
9 But this is the difference between this is our only option to  
10 maintain vacant space and so there's no go between option in  
11 terms of maximizing value. This just one option or two options.

12 VICE CHAIRPERSON BLAKE: Okay. So next question is,  
13 so there's no adaptable use for the space at all other than these  
14 two apartments? There's nothing that can be done in that space  
15 at all?

16 MS. WILSON: Correct. This is, yeah. Our zone is a  
17 2,000 square foot space and I'll also add that it's not a use  
18 variance. We aren't required to go through every single use but  
19 in this case there really are no feasible uses in this space  
20 other than residential. And it is allowed, because this is  
21 allowed, again, as a matter-of-right if we have the square  
22 footage.

23 So I don't think it's a comment in terms of the use so  
24 much as how the additional density impacts the surrounding area  
25 because that's really the crux of the 900 foot rule cases because



1 | if these were use variances, we would show maybe more financial  
2 | information or talk that this couldn't be converted to anything  
3 | else except for residential. But the zoning regulations  
4 | specifically allow for a multi-family use in existing purpose-  
5 | built apartment buildings which this is compared to, say, a single  
6 | family home that is being converted and then would request the  
7 | 900 square foot rule of relief --

8 | VICE CHAIRPERSON BLAKE: Okay.

9 | MS. WILSON: -- (indiscernible).

10 | VICE CHAIRPERSON BLAKE: In this case though this  
11 | building is already within the context beyond the 900 square foot  
12 | rule for what it has so we're taking the density even further  
13 | down. I'm just trying to get clarification.

14 | MS. WILSON: Sure.

15 | VICE CHAIRPERSON BLAKE: Now the other thing too, is  
16 | there no need for, you don't want to have a fitness room? You  
17 | don't want to have a library, you know, common storage area? I  
18 | mean, I think it was a laundry facility before and you took it  
19 | out and put each one in the units upstairs in each unit. Is that  
20 | what happened?

21 | MS. WILSON: Yes. And Mr. Ahmed is here, but there  
22 | were also, like, various electrical systems and stuff that I  
23 | think that, like, shrunk, got smaller and systems were upgraded,  
24 | and so that space is going to be completely vacant where it did  
25 | used to be a tenant space.

1           And then in terms of, like, a library or a gym, I'm not  
2   sure how feasible it is or costly. At that point you're starting  
3   to add gym equipment and sort of additional maintenance there as  
4   an accessory use and I would say, again, it is similar to 2801 R  
5   Street where the Board and the Office of Planning found that  
6   those types of uses would not be practical or feasible or needed  
7   in an apartment of this size or have six units, or four units I  
8   guess, especially in this area where there's a number of really  
9   nice gyms and public libraries.

10           VICE CHAIRPERSON BLAKE: Okay. Does anyone else from  
11   the Board have questions for the Applicant? Yes. Chairman?

12           ZC CHAIRPERSON HOOD: Since you mentioned the 900  
13   square foot rule I was just seeing how this was going, I'm a  
14   stickler for that. I think my record shows that.

15           But let me go back to you, Ms. Wilson. You started  
16   talking about the legislative history and I may have missed some  
17   of it because I was looking at some of the things in the record.  
18   But let me ask you this. What was your interpretation of the  
19   legislative history on the 900 square foot rule from the Zoning  
20   Commission?

21           MS. WILSON: So the most robust record of the rule that  
22   I could find was in case 14-11 because there's nothing from the  
23   original legislation, I mean, in it's adoption which I can assume  
24   was in the 1958 regulations. That's in the seeking (phonetic)  
25   nonconforming. And so the discussion in 14-11 focused on

1 reinforcing the intent of the RF zones and using the 900 foot  
2 rule as one of those tools to prevent, and this is what I saw  
3 consistently throughout the record, it was to prevent mid-block  
4 conversions and additions that would undermine the character of  
5 the rowhouse neighborhoods.

6           So purpose-built apartment building weren't even the  
7 discussion of that dialog in 14-11. I tried to find anything on  
8 purpose-built apartment buildings but it just simply wasn't part  
9 of the concern and so instead, again, the concern related to  
10 large out of character new buildings where people had identified  
11 this issue, I guess it happened a couple of times, where people  
12 would buy out rows mid-block and then try to combine them and do  
13 a larger apartment building.

14           And so one of the tools that OP had was the 900 square  
15 foot rule and then the other was to do IZ for every fourth, sixth,  
16 eighth, tenth unit, et cetera, and so this was really effective  
17 and that's why we haven't seen the RF-1 zones turn into defacto  
18 apartment zones which is one of the concerns or other speculative  
19 over building. And so this was a decade ago and I think it was  
20 successful, and you do see these specific situations come up, but  
21 it is fewer and far between. And so that was the main place I  
22 found discussion of the 900 foot rule in 14-11.

23           ZC CHAIRPERSON HOOD: Okay. 14-11 is more recent. The  
24 900 square foot rule is much further back than that.

25           MS. WILSON: Yeah.

1                   ZC CHAIRPERSON HOOD: And that issue came up for the  
2 simple reason of livable space and being able to live. You know,  
3 when you start getting me on the 900 square feet then, you know,  
4 I remember specifically, it's been some years we've been talking  
5 about being able to (indiscernible) move around and some other  
6 issues, I can't remember all of it. But I would suggest we go  
7 back and, Mr. Chairman, I can tell you this is a heavy lift for  
8 me already and I'm glad you brought it up. I just wanted to see,  
9 again, I'm not here every week so I don't know, and I think you  
10 all know previously even we start talking about taking about a  
11 unit down to 890, that's a stretch for me. So I'll just leave  
12 that and let me just see how the discussion is going to go. But  
13 I do know, Ms. Wilson, thank you for that but 900 square foot  
14 rule goes further back than 14-11.

15                   Thank you.

16                   VICE CHAIRPERSON BLAKE: Thank you, Mr. Chairman. Do  
17 you have any questions, Mr. Smith?

18                   COMMISSIONER SMITH: No. I think questions that are  
19 coming up, I have those same questions but not necessarily to the  
20 Applicant. I think there probably needs to be some discussion  
21 from the Office of Planning but not put Mr. Beamon on the spot,  
22 probably from Joel or someone that can speak from the Office of  
23 Planning's standpoint on the intent of that 900 square foot rule.  
24 So I think I would just defer that question to them just to (audio  
25 interference) you, Mr. Beamon, and Joel, if he's on the call

1 | somewhere.

2 |           VICE CHAIRPERSON BLAKE:   Okay.   Yes, Ms. Wilson.   Do  
3 | you have a comment?

4 |           MS. WILSON:   Yes, I do.   So for those cases coming up  
5 | next, I mean that's what was requested of us for those cases and  
6 | I, to find the origins of the 900 square foot rule.   And so I  
7 | personally could not find much legislative history on that,  
8 | again, 14-11 was the most recent.   It was the most robust  
9 | discussion I could find.   I'm happy if you all would like -- can  
10 | you all hear me?

11 |           VICE CHAIRPERSON BLAKE:   Yeah, we do.   Thank you, Ms.  
12 | Wilson.

13 |           MS. WILSON:   Okay.

14 |           VICE CHAIRPERSON BLAKE:   We'll come back to that.   I  
15 | want to hear from the Office of Planning.   We'll come back to  
16 | this in a minute.   We're going to turn to the Office of Planning  
17 | for your report.   Go ahead, Mr. Beamon.

18 |           MR. BEAMON:   Good afternoon, Board members.   For the  
19 | record, Shepard Beamon with the Office of Planning.

20 |           OP has reviewed the application for the requested  
21 | special exception and area variance relief from the minimum  
22 | parking and use permission requirements to add two additional  
23 | units, and we found that the request meets the criteria for  
24 | Subtitle C, U and X.

25 |           As the Applicant has mentioned, the owner has upgraded

1 the existing units and the cellar is no longer used for communal  
2 space so they're now left with a vacant conditioned cellar that  
3 essentially would not be usable. Additionally, the enlargement  
4 or expansion of the existing dwelling units to the cellar would  
5 lead to disruptions for the existing tenants. And then lastly  
6 when viewing the parking requirements, as the Applicant also  
7 mentioned there is no alley access. A curb cut is not feasible  
8 and the property is located less than half a mile from the metro  
9 station.

10 So we found that there should not be a need for parking  
11 on-site. Therefore, we recommend approval and I can take any  
12 questions.

13 VICE CHAIRPERSON BLAKE: Okay. Do we have any questions  
14 for Mr. Beamon? Board Member Smith?

15 COMMISSIONER SMITH: Mr. Beamon, did you state that the  
16 Office of Planning felt that it would be disruptive to tenants?  
17 Is that what you stated?

18 MR. BEAMON: Correct, yes. We were saying they were  
19 proposing to potentially expand the ground floor units down to  
20 the cellar, to expand those units. That would result in  
21 disruption or maybe even displacement of those tenants that are  
22 currently there.

23 COMMISSIONER SMITH: Got you. Okay. Thank you.

24 VICE CHAIRPERSON BLAKE: Mr. Smith, you had some  
25 questions earlier about the --

1 COMMISSIONER SMITH: Yes. So the, that one was probably  
2 more so for Joel but, Mr. Beamon, if you could speak to, if this  
3 has been studied by the Office of Planning, what is the intent  
4 of that 900 square foot rule?

5 MR. BEAMON: Yeah. I think that is a question that I  
6 think Joel would probably be better answering, but I'm not sure  
7 if he's available to be on this call right now.

8 COMMISSIONER SMITH: He just popped up.

9 VICE CHAIRPERSON BLAKE: Mr. Lawson, (audio  
10 interference). Is he with us?

11 (Pause.)

12 VICE CHAIRPERSON BLAKE: Okay. I don't have, I can't  
13 even see him.

14 ZC CHAIRPERSON HOOD: Yes, I don't see him either.

15 COMMISSIONER SMITH: Like, I see him on but he isn't --

16 VICE CHAIRPERSON BLAKE: Mr. Young, if you can help Mr.  
17 Lawson get on, I'd appreciate it.

18 MR. YOUNG: He's on, I'm just not sure if he's  
19 available.

20 MR. BEAMON: Right now, I'm not sure.

21 VICE CHAIRPERSON BLAKE: Okay. Well, we'll have to  
22 come back to that. We'll come back to that then. Okay. All  
23 right. Very good. Okay.

24 Are there any other questions as of right now for Mr.  
25 Beamon?

1 (No audible response.)

2 VICE CHAIRPERSON BLAKE: Okay. Is there anyone from  
3 the ANC or is there anyone that wishes to testify?

4 MR. YOUNG: We do not.

5 VICE CHAIRPERSON BLAKE: Okay. All right.

6 So what we're going to do is we're going to, if we  
7 don't have any more questions for the moment we're going to  
8 continue this hearing because I do think we want to hear from  
9 the Office of Planning with regard to these issues and perhaps  
10 we can just have the Office of Planning and the Applicant do a  
11 little bit more work on the intent of the 900 square foot rule.  
12 That would make sense.

13 I know to a large extent the regulations tend to be  
14 reactive, so it would make sense that the one, 14-11, would have  
15 focused on an issue that was coming up to refine the existing  
16 regulation. So that said, we should probably dig a little deeper  
17 if we're going to quote the legislative history behind as to the  
18 intent of the regulation because it did appear to me that density  
19 was an issue we needed to discuss.

20 Who was going to speak next?

21 COMMISSIONER SMITH: So, are you continuing the case  
22 now?

23 VICE CHAIRPERSON BLAKE: I think we're going to need  
24 to continue this case. I was hoping, we can do it. I mean that  
25 we, the three of us do not have the ability I'm sensing to,



1 perhaps we do, to get closure on this at this point. So, but if  
2 you want to call for a vote and do that now, we can. My intention  
3 was I would prefer to defer this and get further information and  
4 look at the other two cases in here as well.

5 COMMISSIONER SMITH: I'll support that deferral and,  
6 you know, some of these, these are very valid questions that I  
7 think that are being raised and Commissioner Hood teed this up.  
8 And I appreciate, Ms. Wilson, I wasn't on those cases back in  
9 July but I appreciate the research that you have done regarding  
10 the intent of the 900 square foot rule.

11 But I do believe that one of the intents of the 900  
12 square foot rule is not just about bulk and character, it is  
13 about unit density to a certain degree and there is, what you're  
14 requesting is an area variance to reduce it down from 900 square  
15 feet to allow these units to be a third of the size of that  
16 minimum standard and I believe the Applicant is proposing to put  
17 in, what two additional units? Why was that, you're reducing  
18 down to essentially a ratio of a third of that. Regardless of  
19 combining units I'm still confused why there wasn't even a  
20 discussion of just one so that it would be more closely in  
21 character or the intent of the 900 square foot rule.

22 I understand the economic considerations that you and  
23 your colleague bring to this Board all the time but that cannot  
24 be the only basis for, the permeating basis for these types of  
25 area variances. They will override what I think may be a

1 multitude reasons for the intent. So I will welcome some of that  
2 additional feedback from the Office of Planning on the intent of  
3 this regulation beyond just what was submitted in the record.

4 So thank you.

5 ZC CHAIRPERSON HOOD: I just don't remember, I can tell  
6 you that was more than a 30 minute discussion. I'll just leave  
7 it at that. It was more than 30 minutes. It took us a while  
8 for us to get to the 900 square foot. I just, I remember the  
9 energy that went into that whole conversation and deliberation  
10 so that's why I don't want to just bypass it and just  
11 automatically show up and move forward with whatever's presented  
12 in front of me because we put time and attention to this matter  
13 and I know it was before 14-11.

14 But, you know, I appreciate the work as well, Ms.  
15 Wilson, but I also have to refresh my memory as well. There's a  
16 reason why we came to 900 square feet and I'm not, have not been  
17 in the past amenable to doing something major like this and I'll  
18 just leave it at that, at least for now. So, Mr. Chairman, I  
19 don't know how the Board is going to vote but I would encourage  
20 you to make sure you have another member, and I 'll leave it at  
21 that.

22 Thank you.

23 VICE CHAIRPERSON BLAKE: Thank you, Mr. Chairman. Ms.  
24 Wilson, I think that's a good observation. You probably don't  
25 have the votes and we probably should go through the, to explore

1 the legislative history further to determine how to make this  
2 work.

3 So that said, okay, let's see. We don't have anyone  
4 to speak. Mr. Beamon, thank you very much. We haven't heard  
5 from the Office of Planning. Mr. Lawson's still not available?  
6 Is that right?

7 MR. BEAMON: No, I don't think so.

8 VICE CHAIRPERSON BLAKE: Okay. So what we're going to  
9 do is, Ms. Wilson, do you have any more remarks you'd like to  
10 make because I'm going to (audio interference)?

11 MS. WILSON: Yes. As part of the continued hearing I  
12 would just refer again to Exhibit 37B with some of the OP  
13 recommendations of approval and these have all been also approved  
14 by the Board, and the square footage per unit. And I do  
15 understand that as a matter of course moving forward, the Board  
16 is indicating here now that these 900 foot rule cases are giving  
17 you all pause and you want additional information, and perhaps  
18 in the past these have been approved without as much discussion  
19 and the times are changing.

20 There is also a discussion on the concept of stare  
21 decisis in the brief at the end, just commenting on the importance  
22 of administrative consistency when certain fact patterns come up  
23 and so I'm happy to also work with the Office of Planning and  
24 sort of get more to the intent of the 900 square foot rule. That  
25 would obviously strengthen anything we submit and this is never

1 to say the Board can't change its mind. But the concept of stare  
2 decisis means that it can't be retroactive, it has to be moving  
3 forward. That these lines of cases now are not something the  
4 Board is going to be approving moving forward, not necessarily  
5 apply to this. And so just, there's a more robust discussion on  
6 that in the brief that I submitted.

7 VICE CHAIRPERSON BLAKE: Okay. Thank you. That is  
8 noted. I did see it. I think that, as the Chair said, we should  
9 get some more information and sort through it, and I do think it  
10 is important for administrative consistency, as you pointed out,  
11 and we are all aware of that. Okay?

12 So that said, let's see. Mr. Smith, what information  
13 would be helpful to you at this point that we could specifically  
14 ask for in our continuation?

15 COMMISSIONER SMITH: I think probably, it probably lays  
16 with the Office of Planning more so for them and, Ms. Wilson,  
17 you've done a very thorough job. I would say go back, if you  
18 can, and see if there's some additional information to supplement  
19 what you stated given that Commissioner Hood said that it wasn't  
20 just 14-11. It may have been a longer legislative history on  
21 that. So maybe you can help the Office of Planning with that.

22 And to the Office of Planning, I would like to see  
23 within the next staff report, some type of supplemental staff  
24 report, that speaks to the intent of the 900 square foot rule  
25 that has a more robust history of that and the reasons why the

1 Office of Planning believes that this requested variance meets  
2 that intent of the 900 square foot rule based on that legislative  
3 history.

4 VICE CHAIRPERSON BLAKE: Okay. Chairman Hill, is there  
5 any, Chairman Hood, is there anything else that you'd like?

6 ZC CHAIRPERSON HOOD: Other than, and I really want to  
7 know from Ms. Wilson how many I actually participated in. I  
8 don't want to make it personal because I know just like the  
9 setback of ten feet and beyond, I've had problems with that.  
10 I've had problems with the 900 square foot, deemimizing the 900  
11 square foot for the reason being that the Zoning Commission put  
12 it in place and I know the Board, that's what the Board's task  
13 is, but I don't believe that we throw it out the window every  
14 time we get a case.

15 And I'm looking at the cases, Ms. Wilson, and I didn't  
16 know it was that many cases where there were variances for the  
17 900 square foot rule but because if that's the case, if we're  
18 not going to go by it we need to we need to take it out of the  
19 regulations. But that's just been my thought. This ain't my  
20 first time saying it. I've said it before. That's how I know  
21 14-11 was not the first time and my colleague, Peter May, was  
22 the one we all went back and forth about the 900 square foot  
23 rule, and that's enough.

24 I'm also, Mr. Chairman, I'm going to also talk to  
25 council to see about the legislative history as well because I

1 think it goes back further than 14-11. So I'll leave it at that.

2 VICE CHAIRPERSON BLAKE: Okay. Very good.

3 ZC CHAIRPERSON HOOD: And you're going to have another  
4 Board member because I don't know if I can get there. So thank  
5 you.

6 VICE CHAIRPERSON BLAKE: All right. Okay. Understood.  
7 Thank you very much.

8 So we're going, Madam Secretary, I'm going to need your  
9 help. Would you try to schedule this? Where can we put this on  
10 the calendar? Ms. Wilson, how long do you think it will take  
11 you to kind of do this work to get the additional information  
12 for us on the legislative history?

13 MS. WILSON: Probably another couple of weeks just to  
14 work -- I'd like to work the Office of Planning. I think that  
15 would be critical to coordinate with, check with Mr. Lawson on  
16 that too. So an additional two weeks would be good for us.

17 VICE CHAIRPERSON BLAKE: Mr. Beamon, what do you think  
18 the Office of Planning is capable of doing?

19 MR. BEAMON: Give us two to three weeks I think would  
20 a sufficient amount of time.

21 VICE CHAIRPERSON BLAKE: Okay. Madam Secretary, how  
22 does the calendar look, not the 8th?

23 MS. MEHLERT: You could do it on October 22nd, so that  
24 would give the Applicant maybe until October 8th to submit their  
25 supplemental information and OP another week to October 15th to

1 submit their supplemental and then the Board could be back for a  
2 continued hearing on the 22nd, if that works for you all.

3 VICE CHAIRPERSON BLAKE: Ms. Wilson, does the 22nd work  
4 for you?

5 MS. WILSON: That works for me.

6 VICE CHAIRPERSON BLAKE: Okay. Timeframe, Mr. Beamon?

7 MR. BEAMON: Yes.

8 VICE CHAIRPERSON BLAKE: Okay. So we will continue  
9 this till that date. The record will be open for those additional  
10 submissions. Okay? And we will I guess close the hearing for  
11 now and, again, the record remains open. Okay? Mr. Young, you  
12 can excuse everyone.

13 (Pause.)

14 VICE CHAIRPERSON BLAKE: Okay. Well, we're going to  
15 move on to the next application. Would you please call our next.

16 MS. MEHLERT: Next is Application No. 21319 of 1332  
17 HARVAR, LLC. This is a self-certified application pursuant to  
18 Subtitle X, Section 1002 for an area variance from the minimum  
19 lot area requirement of Subtitle U, Section 301.5(b) to allow an  
20 additional dwelling unit in an existing three-unit apartment  
21 house. This would allow a fourth unit in an existing apartment  
22 house which is a Certification of Occupancy for three units where  
23 four units are existing.

24 It is located in the RF-1 zone at 1332 Harvard Street,  
25 Northwest, Square 2855, Lot 66. The hearing began on July 23rd

1 and the Board requested additional information from the  
2 Applicant. Participating in that hearing were Chairman Hill,  
3 Vice Chair Blake, and Chairman Hood and I believe Board Member  
4 Smith will be participating today as well.

5 VICE CHAIRPERSON BLAKE: Okay. Board Member Smith,  
6 have you read into the case?

7 COMMISSIONER SMITH: Yes. I read into this case and  
8 I'm ready to proceed.

9 VICE CHAIRPERSON BLAKE: Okay. Excellent. Okay.

10 With that, if the Applicant could introduce yourself  
11 for the record, who's with you and your presentation. We would  
12 probably benefit from, I think you have a fairly extensive  
13 slideshow on this, it would benefit I think Mr. Smith to hear  
14 the entirety of your presentation. So rather than just skip to  
15 the chase, we'll just go through it.

16 MS. WILSON: Great. I'm Alex Wilson from Sullivan &  
17 Barros on behalf of the Applicant in this case and I'm here with  
18 Mr. Wayne Jordan and Ms. Renee Geesler on behalf of the ownership  
19 team and, yes, I did recall that Mr. Smith was not originally on  
20 these and so I do have a bit of a refresher. Next slide, please.  
21 Thank you.

22 So a summary of the case. The property is currently  
23 improved with a purpose-built apartment building constructed  
24 circa 1903 located in the RF-1 zone and it was originally  
25 constructed with three units. It has four units, only three of



1 | which are on the C of O. A former ownership group purchased the  
2 | property in 2008 led by a relative of the current managing  
3 | partner. The current managing partner was not involved at the  
4 | time. The 2008 owner, who is a separate individual, sold it to  
5 | the former managing partner, the relative, and that individual,  
6 | the original owner, in 2008 was in the process of converting the  
7 | basement to a unit, likely without permits and unbeknownst to the  
8 | managing partner and certainly not known to the current partner,  
9 | the ownership group.

10 |           The fourth unit is the basement unit and it was never  
11 | added to the C of O despite undergoing a renovation at the same  
12 | time as the other three units and being, and inspected and  
13 | receiving a C of O for three units. It was then rented  
14 | successfully for over a decade without any enforcement. The  
15 | current managing partner and group bought out the former managing  
16 | partner. They tried to get the paperwork in order to change the  
17 | ownership name on the C of O in 2022 and 2023, and so they had  
18 | to go back and forth with the D.C. agencies for years to figure  
19 | out why they couldn't get the C of O updated and finally they  
20 | were informed by Zoning when they applied to update the C of O,  
21 | they applied to DOB, to get a permit and then Zoning informed  
22 | them they needed relief to add that fourth unit. And so now  
23 | they're here seeking area variance relief from U-301.5(b). The  
24 | Office of Planning recommends approval and ANC 1A voted in support  
25 | of the application. Next slide, please.

1           This is the subject unit. It's fully up to code and  
2 it's been rented in this configuration for over a decade without  
3 any issues nor enforcement action. Next slide, please.

4           This shows the proximity to other higher density zones  
5 such as the R-4 zone and then further to the west is the MU-5A  
6 zone along 14th Street. Next slide, please.

7           This shows the proximity to 14th Street and the general  
8 location. It's very close to the Columbia Heights metro. Next  
9 slide, please.

10          And, again, this shows the general area characterized  
11 by a mix of primarily moderate to medium density residential  
12 uses. Next slide, please.

13          And this is a photo of the building and there's no  
14 construction proposed for this. The unit already exists fully  
15 up to code and the request is to be able to add it to the C of  
16 O. Next slide, please.

17          So at the previous hearing the Board asked that we  
18 provide more information and we made a substantial filing and one  
19 of the critical points is that there have been fact patterns for  
20 900 foot rule cases typically approved by the Board and they  
21 generally fall into two categories, the first being this category  
22 of an inherited condition and then the second category being that  
23 there's vacant basement space in a purpose-built apartment  
24 building which was the previous case, type of case that the Board  
25 saw.

1           In this particular case both scenarios could apply.  
2   The first obviously is inherited condition which more clearly  
3   applies but if this were looked at de novo or if the worst case  
4   scenario and the unit had to be gutted the vacant basement space  
5   fact pattern could also apply. So for the inherited condition  
6   these types of fact patterns typically involve a situation where  
7   a buyer purchases the property and there are more units than  
8   allowed under the 900 square foot rule and they're unaware of  
9   this at the time and the unit operates for years without being  
10   added to the C of O. These are typically flats or single family  
11   homes that have been converted to three units and the Applicant  
12   is seeking to make that third unit or fourth unit legal with no  
13   expansion proposed.

14           Relief under this line of cases has consistently  
15   (indiscernible) to meet the criteria for approval, as  
16   demonstrated in the filings with the Board relying heavily on OP  
17   reports and testimony. These cases have tended to be  
18   straightforward so there has been relatively limited Board  
19   discussion and limited information in the orders. I know that's  
20   what was requested at the last hearing. We found what we could  
21   for those cases and if this is continued we're happy to find any  
22   lingering additional 900 foot cases that were not already  
23   included as I know that is likely an important point that the  
24   Board made at the previous hearing too. So it's clear that OP  
25   and the Board, based on these cases have not found these to be

1 | overly complicated nor cases that would be purposely duplicated.

2 |           The current case is even stronger than the typical  
3 | inherited condition case.   It's a purpose-built apartment  
4 | building so its not a conversion case and that second line of  
5 | cases discussed typically involves an existing pre '58 purpose-  
6 | built apartment building in need of modernization and then the  
7 | new owner or current owner is proposing to update the building  
8 | and these updates would include moving laundry in-unit and  
9 | operating systems. And so the Board in these cases, and OP, have  
10 | consistently have accepted that vacant conditioned space and  
11 | maintaining that is an unnecessary burden due to the cost of  
12 | maintenance and security risks and that it's impractical to  
13 | combining it vertically often resulting in overly large units.

14 |           And, again, the brief we submitted does have more of  
15 | an explanation on this and lists the cases in which OP and the  
16 | Board have found that to be true. So these factors all exist in  
17 | this case in addition to having the inherited condition of a  
18 | longtime rented existing unit that hasn't been added to the C of  
19 | O. Next slide, please.

20 |           VICE CHAIRPERSON BLAKE: Ms. Wilson, could you go back  
21 | to that for a second? Oh, let me just talk about it a second.  
22 | On an inherited condition. Inherited condition is not a term  
23 | really that's defined in the zoning regulations but to a large  
24 | extent this inherited condition is actually a noncompliant  
25 | illegal dwelling is what it is that was inherited by acquisition.

1 But that's, I mean, I think the words inherited condition it  
2 sounds what is heard but it doesn't necessarily capture the in a  
3 sense of what the difference is in those cases. Just wanted to  
4 point that out. If you want to elaborate on that further as you  
5 go to the next page, I'd appreciate it.

6 MS. WILSON: Sure. The next slide talks more about it.  
7 I just wanted to do an overview of the categories and maybe this  
8 is just for organizational purposes. We don't have to necessarily  
9 call it an inherited condition. Officially, you know, it's when  
10 an individual purchases a property and there's an illegal  
11 condition on the property that they then inherit I guess from,  
12 or purchase from the previous owner.

13 And just for some additional background here. So  
14 there's three different owners that have been involved. There's  
15 the pre-2008 owner, owner one, who began the illegal basement  
16 conversion. He was an individual completely unrelated to the  
17 current manager nor former managing partner. Then there is a  
18 former managing partner, owner two, who purchased the property  
19 in 2008, a relative of the current managing partner who is this  
20 current owner, owner three, who took over and purchased the  
21 property under a separate entity in 2008. The current owner was  
22 not involved in the management process, he only became involved  
23 in the management process in 2021 after they bought the property  
24 from owner two.

25 So they adopted or inherited, purchased a property with

1 | this condition at that time and believed the units were fully  
2 | compliant and legal and there is ample evidence of that fact.  
3 | When the inspector came out to close out the construction in  
4 | 2009, he reviewed the property, saw the work including the four  
5 | units and four meters and still issued the C of O. It was for  
6 | three units which, I don't know if no one realized it at that  
7 | time or what the issue was with the former managing partner,  
8 | owner two, but they were issued a C of O business license fully  
9 | inspected.

10 |           And then the basement was rented as a unit for over a  
11 | decade and so the current owners only had knowledge of the  
12 | successful rental of all four units for over a decade without any  
13 | enforcement action. And so there are a couple of layers here  
14 | where owner one was the one who started illegal construction and  
15 | then owner two didn't rectify the situation. None of these  
16 | conditions were self-created or created by the current owner.  
17 | He's not any more culpable than say any other owners in some of  
18 | these past approved 900 foot rule cases where people purchased  
19 | buildings with pre-existing illegal units.

20 |           For example, one case we did, Case No. 21081, and I  
21 | don't think we put this in the record so this is one that could  
22 | be very helpful and we can include this, is the case of Alexandra  
23 | Chevalier. And so she purchased a three unit building at 3721  
24 | 9th Street. It had no Certificate of Occupancy. It was in a  
25 | state of disrepair. The building itself was not even up to code.

1 The electrical systems were effectively rigged for a third  
2 basement unit, if I recall. So the former property owner had  
3 been renting it out as three units and advertised it for sale to  
4 her as three units. She did not check any C of Os, that would  
5 have been ideal of course if everyone checks their C of O but  
6 sometimes it happens that people don't, and so she could have  
7 realized it was not approved for three units. It didn't have a  
8 C of O but she saw it advertised as three units. She saw that  
9 three units existed and that was enough for her to believe that  
10 three units were allowed. So she purchased the property expecting  
11 three units to be approved in permitting, and then requested our  
12 assistance when it clearly wasn't the case.

13 And so in that case the Applicant really ignored some  
14 red flags. I think here there's some structural issues,  
15 mechanical and system upgrades that needed to occur before it  
16 could even be three units. The building was not up to code and  
17 needed a full renovation so there was a lot more work involved  
18 and ultimately the Board approved that case and never mentioned  
19 any self-imposed or self-created hardship.

20 The Board has to some degree set a standard in these  
21 types of cases as it relates to a self-created hardship when you  
22 do purchase these properties with existing non-conforming  
23 conditions and typically the Board has looked at, in the past,  
24 things like existing rental history, number of meters and  
25 utilities and the former owner's statements and advertisements.

1 And so one could have argued that she should have seen these red  
2 flags because the building was in a total state of disrepair. It  
3 didn't meet a number of building code items and that still wasn't  
4 enough, in the Board's opinion, to bump it into this self-created  
5 category where it wasn't, where she couldn't overcome the first  
6 prong, she couldn't meet the first prong.

7 VICE CHAIRPERSON BLAKE: Ms. Wilson?

8 MS. WILSON: And so the --

9 VICE CHAIRPERSON BLAKE: Ms. Wilson, I have a question  
10 for you real quick. It seems that self-creation is not a barrier  
11 to an area variance.

12 MS. WILSON: Correct.

13 VICE CHAIRPERSON BLAKE: So as this isn't a use variance  
14 that's why it could occur. But it is self-creation because self-  
15 creation does continue on even though that owner did not create  
16 it, it is a self-created issue but it is not a barrier to an area  
17 variance. So we, that's the issue there I think.

18 But one question that I have for you which is very  
19 clear to this and because you talked about this timing issue.  
20 This noncompliance began in 2010. It's 15 years later today  
21 2025, why is it today 15 years later we are addressing this issue,  
22 not five years ago and not 15 years ago?

23 MS. WILSON: Sure. So Mr. Jordan's group purchased the  
24 property in 2021 and Ms. Geesler took over at that time to add  
25 the new ownership to the existing C of O and they had absolutely



1 no clue there was an issue with this fourth unit. So they buy  
2 the property. They know it's been operating for a decade in this  
3 configuration and Ms. Geesler thinks she's just doing routine  
4 paperwork to update the C of O. And so she can speak where, to  
5 all of the various D.C. agencies she went through to finally  
6 first get an answer that they needed to add the fourth unit, and  
7 then how to do that which was to apply for a permit to add the  
8 fourth unit. And so they had as-built plans prepared for  
9 permitting and then after that she was told I think at maybe the  
10 end of 2024, the beginning of 2025, that they needed to request  
11 a variance and then they came to us and now we're here. And Ms.  
12 Geesler can confirm this, the (indiscernible).

13 VICE CHAIRPERSON BLAKE: So you say the Applicant  
14 didn't realize they needed a variance to do this until 2025? It  
15 took five years, even four or five years from that to just figure  
16 that out?

17 MS. WILSON: Yes.

18 VICE CHAIRPERSON BLAKE: Oh, okay.

19 MS. WILSON: Yes.

20 VICE CHAIRPERSON BLAKE: But did they have a business  
21 license registered for the fourth unit and they had no C of O  
22 for it, but they did reap the benefits over that period of time  
23 although they didn't actually --

24 MS. WILSON: As soon as they found out it wasn't on  
25 there they took both units off the market.

1 MS. GEESLER: I attempted to change the --

2 VICE CHAIRPERSON BLAKE: Who, I'm sorry? I'm sorry,  
3 could you please identify yourself and introduce yourself for the  
4 record.

5 MS. GEESLER: Hello. I'm Renee Geesler.

6 VICE CHAIRPERSON BLAKE: Okay.

7 MS. GEESLER: I've been working on this case since 2022  
8 to understand the process with different D.C. agencies. So it's  
9 taken this long to fully understand how to move forward with  
10 engaging legal help. But it hasn't been straightforward dealing  
11 with the different agencies, but we've finally gotten to this  
12 place but it's taken since 2022.

13 VICE CHAIRPERSON BLAKE: Ms. Geesler, do you operate,  
14 you manage the property?

15 MS. GEESLER: I am the administrative assistant for the  
16 property.

17 VICE CHAIRPERSON BLAKE: Okay. Has the property been  
18 rented this entire time?

19 MS. GEESLER: No.

20 VICE CHAIRPERSON BLAKE: When did it cease to be rented?

21 MS. GEESLER: It ceased to be rented when I attempted  
22 to change the C of O and get the business license updated. That  
23 was in 2022, so we stopped renting when tenants moved out over a  
24 year ago.

25 VICE CHAIRPERSON BLAKE: When did you stop renting the

1 unit?

2 MS. GEESLER: It was 2024.

3 VICE CHAIRPERSON BLAKE: In 2024.

4 MS. GEESLER: And we have a broker so he was renting  
5 it up until we tried to update the business license when that  
6 expired and his, you know, he will not rent units unless there's  
7 an updated business license. So when that started happening we  
8 stopped, we took it off the market.

9 VICE CHAIRPERSON BLAKE: Okay. So it's 2024 and it was  
10 because someone, your broker, had explained to you that you had  
11 an expired business license. But there was no concern about the  
12 fact that there was no C of O for the unit before?

13 MS. GEESLER: Yeah. It was all a concern.

14 VICE CHAIRPERSON BLAKE: Okay. Okay. Okay. Thank  
15 you.

16 MS. WILSON: (Indiscernible).

17 VICE CHAIRPERSON BLAKE: Does anyone else have any  
18 questions for Ms. Geesler or the Applicant?

19 (Pause.)

20 MS. WILSON: May I continue on with the presentation  
21 if we don't have any questions?

22 VICE CHAIRPERSON BLAKE: Please. Thank you, Ms.  
23 Wilson. Thank you.

24 MS. WILSON: Thank you.

25 Yeah. And I think this discussion speaks to how this

1 owner has been trying to operate everything above board to the  
2 best of their ability and navigating these D.C. agencies and so  
3 there has been some time delay. But throughout this whole process  
4 now for over a year that unit is not rented and I think that  
5 speaks to the desire to do things above board and go through this  
6 process in the right way, even though this unit has been operating  
7 under the former ownership.

8           And so in terms of what we were discussing previously,  
9 I was discussing Alexandra Chevalier's case and self-created  
10 hardship and I know there's no barrier, but I believe, Vice Chair  
11 Blake, you mentioned it in the previous case some concerns about  
12 self-created hardship or maybe I misread that. So I did want to  
13 have this discussion.

14           But moving on in terms of practical difficulty. A  
15 strict application of the regulations would leave only two  
16 options. So the first would be to merge the basement and the  
17 first floor which is impractical and would result in  
18 approximately \$300,000 worth of costs. It would lead to an  
19 oversized and unrentable unit, nearly 4,000 square feet with four  
20 bedrooms, and the other option is to just gut the unit. This  
21 would result in additional costs obviously in demolition and then  
22 on top of that there would be additional loss of income and cost  
23 of maintaining conditioned space.

24           At the last hearing I did want to clarify something  
25 because the Board asked Mr. Jordan what would you do if this were

1 denied and he said, oh, we'll just leave the unit as is. But  
2 the Department of Buildings will not allow an existing full  
3 apartment unit to remain unpermitted. They don't even allow an  
4 additional wet bar in a single family home without a covenant,  
5 so they're not going to let an existing full unit to remain  
6 unpermitted as is and so they would have to significantly gut  
7 that apartment unit in order to even update the C of O that  
8 they've been trying to update, and the business license, and they  
9 would have to go through permitting again for that. So this  
10 option is still perhaps the lesser of two evils and so if it were  
11 denied, the unit would be demolished resulting in a practical  
12 difficulty. Next slide, please.

13           And so that would bring us to the other option and  
14 perhaps this is not as strong as the existing case and fact  
15 pattern. But it brings us full circle to where this is de novo  
16 analysis where you start with an existing vacant space and you  
17 can look at this as either an additional practical difficulty as  
18 to the current base situation or if you wanted to look at it as  
19 a de novo situation as in 2008 this case came in front of the  
20 Board.

21           So if this reviewed as a fresh application even before  
22 the original owner began renovations, it goes in line with some  
23 of those purpose-built apartment building fact patterns. There's  
24 a pre-'58 apartment building. It's nonconforming. It's unique  
25 for the block. The adjacent building spaces are already occupied,

1 not leased. One, if not both, appear to have four separate units.  
2 It's located in a dense neighborhood close to the metro and then  
3 pre-2008 it would have needed that modernization that was part  
4 of the attempt and so that's when they moved all the laundry in-  
5 unit and each unit is relatively large with ample storage. But  
6 of course, again, if this were, if they were required to demolish  
7 the existing unit these factors would also come into play in that  
8 there would be existing vacancies to maintain on top of having  
9 to spend (phonetic) cost to demolish the unit.

10 VICE CHAIRPERSON BLAKE: Ms. Wilson, just to clarify.  
11 In this case you're saying what existed in that location prior  
12 to the apartment being put there was just a laundry facility?

13 MS. WILSON: It was laundry facilities and I believe  
14 there were other, like, HVAC systems. I'm not sure. Mr. Jordan  
15 or Ms. Geesler, could you testify to that with any sort of  
16 certainty? I know the laundry was there from what you all told  
17 me.

18 MR. JORDAN: As far as I know. I'm Wayne Jordan, the  
19 current owner of the property. I understand that my nephew did  
20 all of the renovation on this property and I was an investor in  
21 it at the time. It's my understanding that there was a laundry  
22 room and maybe some storage but when we bought the property, the  
23 building had already been gutted so I can't verify for sure what  
24 was in that location.

25 VICE CHAIRPERSON BLAKE: How many square feet is in

1 that lower level?

2 MR. JORDAN: I believe it's 1,000 or 1,100 square feet,  
3 something like that.

4 VICE CHAIRPERSON BLAKE: How much?

5 MR. JORDAN: I think it's about 1,100 square feet.

6 VICE CHAIRPERSON BLAKE: Okay.

7 MS. GEESLER: 1,600.

8 MR. JORDAN: Sixteen hundred.

9 VICE CHAIRPERSON BLAKE: Sixteen hundred square feet  
10 and you had mechanical --

11 MR. JORDAN: Sixteen hundred.

12 VICE CHAIRPERSON BLAKE: What's the ceiling height  
13 prior to the renovation?

14 MS. GEESLER: It's the same. They didn't --

15 MR. JORDAN: I'm not sure.

16 MS. GEESLER: It's on the plans.

17 VICE CHAIRPERSON BLAKE: It's on the prior? Well,  
18 okay, okay.

19 MS. WILSON: Thank you. Next slide, please.

20 And so I know that we had a bit of a discussion on this  
21 in the last case and if this case gets pushed to another date as  
22 well we will provide more information about the purpose of the  
23 900 foot rule and as noted in our filings, obviously each case  
24 is decided on its own merits. Typically though how we view these  
25 900 foot rule cases just from the zoning attorney perspective,

1 we watch these cases every week and I've been doing this for ten  
2 years and so, again, while each case is decided on its merits  
3 there have been certain trends that arise with specific fact  
4 patterns which is why we watch these BZA cases every week and so  
5 we can give the best advice to these owners, most of whom want  
6 to improve the buildings in the District and add value.

7           And so the conversation around the principle of stare  
8 decisis that we added to the end of the brief, it's not a  
9 conversation so much as about precedent as much as standards and  
10 trends and so we know that the Board has the right to shift  
11 standards and there are different Board members and there are  
12 different opinions that come into play as the zoning landscape  
13 changes, and over the past ten years I think we've seen about at  
14 least 15 of these 900 foot rule cases and I guess I didn't include  
15 every single one in the brief. I probably didn't include that  
16 were denied. We can add more of those. But those ones that have  
17 been denied follow a completely different fact pattern.

18           And so this particular case generally follows the same  
19 fact patterns consistently approved and in the past those have  
20 been approved without a ton of discussion in terms and  
21 difficulties of the Board's review of this and so that has  
22 informed how we do give advice to clients on these types of cases.  
23 In this particular case, even absent the previous fact patterns  
24 I think are sufficient information for the Board to find that the  
25 Applicant has met its test and just support an approval and avoid



1 a loss of the unit.

2 But what the concept of stare decisis does and what the  
3 fact patterns can do is provide an extra layer of support for  
4 feeling comfortable approving a case knowing it has met those  
5 fact patterns of similarly approved cases. Even if moving forward  
6 beyond, say, the Board is indicating it's not ready to approve  
7 these cases as it used to be or it's not as ready which of course  
8 would be within the Board's power and so we respectfully request  
9 that the Board carefully consider the information in the record  
10 and find that it's sufficient to meet the test and save this unit  
11 of relatively affordable housing as it has existed for over a  
12 decade.

13 I do think it's important to note that the price point  
14 for this unit is on par, if not even a little lower, than if this  
15 were a conversion case where you had a fourth unit of required  
16 IZ. It's set at 80 percent on a five point that would be required  
17 for an IZ unit and of course this is a purpose-built apartment  
18 building and that's why IZ is not required but it is consistent  
19 with that.

20 That concludes the discussion. We're happy to answer  
21 any additional questions.

22 VICE CHAIRPERSON BLAKE: Okay. Thank you very much,  
23 Ms. Wilson. Do any of the Board members have questions?

24 Mr. Smith?

25 (No audible response.)

1                   ZC CHAIRPERSON HOOD: Sorry. I want to (indiscernible)  
2 something.

3                   VICE CHAIRPERSON BLAKE: (Indiscernible.)

4                   ZC CHAIRPERSON HOOD: Even in that last case. In this  
5 case I'm more open to this. But let me just say I want to make  
6 sure I let Ms. Wilson know I appreciate her work because my  
7 research on 14-11 there was a B, C, D and E. So it goes on and  
8 we're talking about continued and I've actually got 14-11 mixed  
9 up with 24-11. That's why I never refer to cases by case number.  
10 So I'm going to pull back until we get the legislative history.  
11 But it was not, when I said it was more recent I'm thinking about  
12 another case, so when you talk about numbers I think about  
13 different things. So anyway, I want to strike all that from the  
14 record but I do want the legislative history.

15                  So thank you, Ms. Wilson, for all your work. If that  
16 made sense.

17                  VICE CHAIRPERSON BLAKE: Okay. Mr. Smith, do you have  
18 any questions for the Applicant?

19                  COMMISSIONER SMITH: No, not at this moment.

20                  VICE CHAIRPERSON BLAKE: Okay. Then we will, thank you  
21 very much for your presentation.

22                  I'm going to ask the Office of Planning to come in and  
23 speak.

24                  MR. JESICK: Thank you, Mr. Chairman and members of the  
25 Board. My name is Matt Jesick presenting OP's testimony in this

1 case.

2 And we reviewed the Applicant's supplemental  
3 information in the record and the information did not change our  
4 original analysis or recommendation and we continue to recommend  
5 approval of the case. We've been listening to the Board's  
6 discussion here in this case and the previous case and we're  
7 happy to provide any additional information that the Board would  
8 request. We will do what research we can. The 900 square foot  
9 rule does date back to the 1958 regulations so I would just  
10 caution that it may be difficult to find some of that original  
11 intent. But we will do our best to dig up what we can.

12 VICE CHAIRPERSON BLAKE: Okay. Thank you, Mr. Jesick.  
13 Does anyone on the Board have any questions for Mr. Jesick?

14 ZC CHAIRPERSON HOOD: Yes. A quick question, Mr.  
15 Jesick. Could you help me remember why we brought it up and  
16 spent so much time on the 900 square foot rule and what I'm  
17 hearing today I thought at one time the 900 square foot rule was  
18 not waivable. But anyway, I know that's adding more. I'm just  
19 trying to refresh my memory, so if you can do that and include  
20 that in your additional findings.

21 Thank you. Thank you, Mr. Chair.

22 MR. JESICK: Will do. Thank you.

23 VICE CHAIRPERSON BLAKE: Okay. Any more questions for  
24 the Office of Planning? Okay.

25 Mr. Young, is there anyone who wishes to speak?

1 MR. YOUNG: We do not.

2 VICE CHAIRPERSON BLAKE: Okay. Thank you.

3 Ms. Wilson, do you have any other comments you'd like  
4 to make?

5 MS. WILSON: Thank you all for your time today.

6 VICE CHAIRPERSON BLAKE: Okay. All right.

7 So what we're going to do is we're going to continue  
8 this as well and I'm going to continue this to the same day as  
9 we continued the other cases because they are obviously fairly  
10 intertwined at some level and I also would like to have the  
11 Chairman participating in these cases.

12 So, Madam Secretary, would you please add to the  
13 calendar on that day a continued hearing on this case. We'd like  
14 to, again, get some additional information from the Office of  
15 Planning on the legislative history and, again, any other cases  
16 that we think would be, I mean, I'm open to hearing from other  
17 cases that we've processed over the years on this matter, so  
18 those would be the things I'd be for and that would be something  
19 from the Office of Planning as well as from the Applicant under  
20 the same timeframe as what we outlined in the last case.

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

22 (No audible response.)

23 VICE CHAIRPERSON BLAKE: Chairman Hood?

24 ZC CHAIRPERSON HOOD: No, Mr. Chairman. I think you  
25 captured all we should be, at least have something to work with.

1 Thank you.

2 VICE CHAIRPERSON BLAKE: Okay. All right. Thank you  
3 very much, Mr. Jordan. Thank you very much. Ms. Wilson, thank  
4 you. Let's see, we can excuse the witnesses. Let's see. Madam  
5 Secretary, please call our next case.

6 MS. MEHLERT: The next case in the Board's hearing  
7 session is Application No. 21307 of Henry Tam and Lan Tran. This  
8 is a self-certified application pursuant to Subtitle X, Section  
9 901.2 for a special exception under Subtitle U, Section 320.2 to  
10 allow the conversion of an existing residential building to a  
11 three-unit apartment house and pursuant to Subtitle X, Section  
12 1002 for an area variance from the minimum lot area requirement  
13 of Subtitle U, Section 320.2(c) to allow conversion to an  
14 apartment house use with less than 900 square feet of land area  
15 for each existing and new unit and pursuant to Subtitle X, Section  
16 901.2 for a special exception under Subtitle C, Section 703.2  
17 from the minimum vehicle requirements of Subtitle C, Section  
18 701.5.

19 This is for the conversion of an existing residential  
20 building to a three-unit apartment house. It is located in the  
21 RF-1 zone at 725 Hobart Place, Northwest, Square 2888, Lot 197.  
22 Like the last case, this hearing began on July 23rd and the Board  
23 requested additional information. Participating were Chairman  
24 Hill, Vice Chair Blake and Chairman Hood and Board Member Smith  
25 can confirm that he's read into the record for today.

1 VICE CHAIRPERSON BLAKE: Okay. Mr. Smith, have you  
2 read into the case and are prepared to participate?

3 COMMISSIONER SMITH: Yes, I've read into this case and  
4 have been brief, so I'm prepared to proceed.

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

6 Mr. Sullivan, welcome. I know you've heard everything  
7 we've done so far today so if you would introduce yourself for  
8 the record and if you could give us, again, give us a little bit  
9 of the background for the benefit of Board Member Smith, it would  
10 be helpful in, please if you can go through and just kind of  
11 update us on where we are and your application.

12 MR. SULLIVAN: Thank you, Mr. Chairman and Board  
13 members, and if Mr. Young could please load the presentation. So  
14 I tried to focus on a summary and then addressing the questions  
15 that the Board had at the previous hearing. Next slide, please.

16 So the property is improved with three-story three-  
17 unit row building and the Applicant purchased the property in  
18 2018 at which time it was configured and advertised as a three-  
19 unit building and the Applicant discovered no C of O for the  
20 existing third unit and is now seeking relief to make the third  
21 unit legal. No changes are proposed to the building, just keep  
22 it as it is but get the third unit legal and the property has  
23 1,688 square feet of land area so we're asking for area variance  
24 relief from the 900 square foot rule principally. I mean, there's  
25 a special exception as part of that conversation as well and, so

1 the next slide, please. And parking relief attendant to that  
2 increase.

3 The Office of Planning has recommended approval and ANC  
4 1E voted unanimously in support. Next slide, please.

5 I think that might be all that there is to our summary  
6 of the case, so if there's any questions about the case itself.  
7 One thing I'll point out is one of the pieces of evidence that  
8 we have is an affidavit from a tenant who is still at the property  
9 who was a tenant under the previous owner and that was the  
10 principal piece of evidence that we used to show that it was  
11 three units prior to this Applicant's purchase of the building.

12 This is an area variance. It is, not a use variance,  
13 it's an area variance and that's specifically in the regulations  
14 called out. But before they inserted that into the regulations  
15 in the 2016 rewrite, it was determined by the Court of Appeals  
16 to be an area variance in the Wolf v. District of Columbia Board  
17 of Zoning Adjustment case in 1979 I think that was. Next slide,  
18 please.

19 So I want to go over Wolf slightly. Actually I want  
20 to save this for later. I'll come back to the Wolf rationale.  
21 Next slide, please.

22 Next slide, please.

23 I want to stress the Office of Planning's rationale on  
24 this because it's very similar to the cases that we've put down  
25 as precedents. I also want to note, if it's not clear yet, this

1 type of application's similar to the previous two cases you heard  
2 but very distinct as well in that this is a case of what we've  
3 termed in the brief to be an inherited condition as opposed to  
4 the other two cases which are, at least in part, adding units in  
5 an unused basement space.

6           The previous case from HARVAR actually has both the  
7 inherited condition and adding units in a previously unused  
8 basement space. So there are six or seven cases over the last  
9 ten years. So to Chairman Hood's comment about it being off,  
10 and I don't think it's so frequent that it's not rare and unique.  
11 You hear lot occupancy variance cases probably a couple of times  
12 a month, so but it is quite rare. Once every two years maybe a  
13 case like this comes up and there's a very specific fact pattern  
14 repeated in these cases and the Office of Planning has addressed  
15 the critical elements which are present in all of those cases  
16 that lead them to say that this satisfies the variance test.

17           Specifically the practical difficulty would involve the  
18 eviction of tenants. It would involve considerable expense from  
19 construction costs to reconfigure the building back to two units  
20 and also has considered, and this Board has agreed with a loss  
21 of income, loss of rental income, as part of the practical  
22 difficulty as well. Next slide, please. And all those three  
23 things are in there.

24           When it comes to no substantial detriment to the public  
25 good, the Office of Planning has noted that the density is



1 generally compatible with the surrounding area for this building.  
2 We are two properties away from a large apartment building in the  
3 commercial zone or the mixed use zone and also there are other  
4 apartments, there's another apartment on this block as well.  
5 They have also noted that denial of the request would result in  
6 a need for construction related disruption to the residents of  
7 the building and the neighborhood and the permanent eviction of  
8 one tenant. Next slide, please.

9 In regards to the intent of the zone and no substantial  
10 detriment to that, it noted that given that the current owners  
11 are not responsible for the illegal conversion granting the area  
12 variance would not significantly impair the integrity of the  
13 zoning regulations. Next slide, please.

14 Next slide, please.

15 Purposes of the 900 foot rule as was pointed out in the  
16 brief that we filed in this and the other cases, is shown here  
17 to preserve rowhouse neighborhood character, prevent speculative  
18 mid-block assemblages, direct multi-family growth to higher  
19 density zones, maintain a rational predictable density standard  
20 and it's aimed at conversions to prevent micro units. Next slide,  
21 please.

22 Precedents. You heard Ms. Wilson talk about this.  
23 While the Board views each case on its own merits it still has  
24 an obligation to apply consistent legal standards to similarly  
25 situated fact patterns. Saying that a case is decided on its

1 own merits just means every case has different facts but when the  
2 Board does its variance analysis it looks or it has certain  
3 patterns, customs, practices on how they use certain things and  
4 whether or not that satisfies the variance test. We have, there's  
5 five cases in the brief and there's another one that I'm going  
6 to talk about, six cases over the last ten years that match  
7 exactly this fact pattern and in one or two aspects our case is  
8 a little stronger actually than those fact patterns. Next slide,  
9 please.

10 I mentioned before that this comes up often enough to  
11 have a strong body of consistent precedent but not so often that  
12 it needs a text amendment. Previous decisions, now I cite some  
13 older cases. There's Wolf, a case that's behind Wolf, 18312 and  
14 18598. The reason I bring up those cases, those are pre-2016  
15 cases. If we could go back to the Wolf slide, or the second Wolf  
16 slide, Mr. Young, about page 6 I believe it was. The rationale  
17 for the practical difficulty in that case was simply based on  
18 marketability of the size of the units and that was just a  
19 conversion.

20 That wasn't a case like this with an inherited  
21 condition. That was just somebody asking for relief, for variance  
22 relief from the 900 square foot rule de novo. It wasn't currently  
23 existing as three units and it was where a "two family character  
24 of subject property made marketability of its approximately 3,000  
25 square feet as a single unit unfeasible. The structure of the

1 property worked against its effectively functioning as a two-  
2 unit apartment house," and monthly expenses, and then they go  
3 into the expenses and the difficulty of marketability of two  
4 units to three units.

5 I remember a case before that where the rationale, this  
6 was in the '70s, was, well, it's three stories and it makes sense  
7 to have one unit on each level so they approved that. 18312 is  
8 a case that I did about 15 years ago or so where we requested  
9 four units, this was prior to the 2016 regulation and the IZ  
10 requirement, on a lot that was under 1,800 square feet and that  
11 was approved based on a theory of what I call disrepair. The  
12 property was in disrepair. It had been neglected for a long time  
13 and had been vacant for a long time and that had been involved  
14 in law suits and bankruptcies, and the Board found that to be an  
15 exceptional condition, the practical difficulty of which it was  
16 too difficult to bring the property back to life and needed the  
17 extra income from a third and a fourth unit.

18 Then 18598 was a case of mine as well in 2014 where I  
19 would say the disrepair rationale was rejected quite forcefully  
20 and from that point on to my knowledge nobody has filed a request  
21 for relief from the 900 foot rule asking for relief based on the  
22 condition of the building and the need for extra income to support  
23 a difficult renovation of the building, and I certainly haven't  
24 asked for that.

25 So the reason I'm doing this is to show the evolution

1 of this Board's application of the variance test to situations  
2 like this where people are asking relief from the 900 foot rule,  
3 variance relief from the 900 foot rule. Since 2015, I think  
4 there have been seven cases in a situation like this. I don't  
5 know of any denials on the other side so I don't think this is a  
6 split decision. In all of those cases, and several of the Board  
7 members here voted positively on those cases, there's a  
8 consistent very objective, and we can go to -- I don't think it  
9 matters what slide we're on at this point, but maybe slide 16.  
10 So there's been a consistent identification of the critical  
11 elements that make a property or a situation, a scenario, satisfy  
12 the area variance test which, again, is unnecessarily burdensome  
13 to turn the property back to two units.

14 And in those cases those elements are good faith  
15 purchaser, owner of the property, tenant eviction is present  
16 although it's not always mentioned by the Office of Planning in  
17 their report, reconstruction expense and loss of rental income  
18 which also is not mentioned in every case but it's mentioned in  
19 a couple of the six or seven cases.

20 What I think this case has in addition, it has all of  
21 that. We have the good faith purchaser situation. We have a  
22 tenant eviction of at least two tenants to reconfigure and then  
23 one permanently. We have reconstruction costs to take it from  
24 three back to two. Loss of rental income of course from the  
25 third unit. In addition to that we have the affidavit so we

1 think our good faith argument is much stronger, much cleaner.  
2 We're also on a mixed block with a couple of multi-family units  
3 already on the block. We're close to Georgia Avenue here and on  
4 that block it's a little more mixed. If you go down to the next  
5 block, residential, then it's straight rows where it's all  
6 singles and flats. If we were there it might be a little  
7 different as far as substantial detriment to the public good.

8 As far as the lot area and the density itself, the six  
9 cases I'm going to talk about, we're kind of in the middle of  
10 those land areas. There's lot areas of 1,400 square feet in a  
11 couple of cases 1,900 in one, we're at 1,688 for lot area. So  
12 if that matters regarding density. Each of these units is about  
13 900 square foot units, they're not small units, they're not micro  
14 units.

15 So on the six cases that the Board has seen the Office  
16 of Planning, I'm going to do some snippets from some of their  
17 case reports. The Applicant would be faced with substantial  
18 renovation and expense as well as the eviction of at least one  
19 of the current residents.

20 In 20116 they said substantial renovation and expense,  
21 loss of the rent they would collect for the third unit. In 20002  
22 they noted substantial renovation and expense, loss of the rent  
23 they would collect for the third unit. In 19574, substantial  
24 renovation and expense. In 21335 significant renovation to  
25 combine units would be expensive and practically difficult.

1 Vacating two units through the reconstruction process and then  
2 losing one unit would significantly impact rental income or  
3 potential sales price. And then on 21081 I think was the most  
4 recent. Next slide, please.

5 Next slide, please. Slide 17, and I just put some of  
6 the transcript here. I wanted to note that Chairman Hill stated  
7 because it was mentioned in the last hearing that there's no full  
8 orders and I think there's no full orders for a reason. These  
9 were always unanimous decisions. Never had opposition from  
10 anybody. Always had Office of Planning support as well. Chair  
11 Hill said to change it, it was, "The way it was that to change  
12 it would be practically impractical difficulties. I do agree  
13 with the first prong. I agree with the second prong and I agree  
14 with the third prong and I think I will also agree with the Office  
15 of Planning's report and I will also agree with the ANC's  
16 position." And Board Member Blake stated that it was a  
17 straightforward case.

18 The reason I point that out is because it's very clear  
19 from the transcripts and from the approvals that the Board has  
20 adopted the Office of Planning's rationale for these cases. The  
21 reason I went through the evolution, I think prior to 2014 it  
22 was difficult and ambiguous to get relief in the disrepair cases  
23 and anything but the inherited condition cases. This is the only  
24 case that the office of Planning has ever supported. The Office  
25 of Planning never supported the disrepair cases either. Whenever

1 we did those cases, we would be going against the Office of  
2 Planning. The only cases that the Office of Planning has  
3 supported, and they've been very consistent about it, are the  
4 inherited condition cases which we have here.

5 What's great about that is it's very predictable and  
6 objective and I know not to bring forward a disrepair case. I  
7 know that I can bring forward a case like this. Now, I would  
8 guess that there are probably a lot more people out there that  
9 have illegal third units and they're not coming forward to correct  
10 their C of O. So the six or seven cases that we've seen over  
11 the last ten years are the honest landlords that are coming  
12 forward to correct their C of O and I don't think it's a good  
13 idea to leave, to encourage people to stay in the shadows rather  
14 than come forward and correcting a situation like that because  
15 the C of O is not just, it just doesn't say what you can do with  
16 it, the C of O is also the document that says your property's  
17 safe under building code.

18 So as part of this the Applicant's going to have to go  
19 through the building permit process and the building's going to  
20 have to be deemed to be completely compliant and safe from a  
21 building code perspective as well. And so I don't think just  
22 from a practical standpoint, I don't think it's a good idea to  
23 leave that out there and I don't think an Applicant that comes  
24 forward to make a property compliant should be punished.

25 I'm a little not real clear on the discussion of the

1 purpose and intent. I know that's very applicable to special  
2 exception cases. I don't know how it would impact the Board's  
3 variance analysis in a case like this exactly. But I was a little  
4 taken aback by the response at the last hearing and some of the  
5 things that I've heard here because this has been a consistent  
6 standard by the Board, especially for cases of inherited  
7 condition and if you read through the brief there's some comments  
8 from Board members saying I haven't seen a case like this before,  
9 this is rare. That's true. But it's been approved and by the  
10 Board members on this panel as well. I'm not saying that every  
11 case that gets approved for a certain situation has to be approved  
12 every time. That's not what I'm saying. But in this case the  
13 standards are very clear, very objective and there's no precedent  
14 in the other direction. There's no precedent that says, well,  
15 the good faith purchaser who has substantial construction costs  
16 and eviction of tenants and loss of income, we don't consider  
17 that a practical difficulty. There's nothing in the other  
18 direction.

19           So there's nothing in the other direction over the last  
20 ten years and six or seven strong cases supported by OP, always  
21 supported by the ANC, and approved by this Board, why would you  
22 come down on a position of punishing this particular applicant  
23 when he's in the exact same position. There's certainly no  
24 concern that an approval wouldn't be defensible because there's  
25 no jurisprudence saying that it's not.



1           So, and again if the Board decided, well, we're just  
2 not going to approve 900 foot rule relief ever under any  
3 condition, I suppose you could make that statement but it  
4 shouldn't be retroactive and it shouldn't just punish this  
5 particular applicant for applying for that. So I'm not sure what  
6 happened between those five decisions which were not  
7 controversial at all and there are pre-study (phonetic) over the  
8 last ten years including 21081 which was just in the past year,  
9 I believe. But --

10           VICE CHAIRPERSON BLAKE: Mr. Sullivan, are all the  
11 cases you've cited in the prior brief that we've already received  
12 from you, or did you add some new cases to that?

13           MR. SULLIVAN: Just 21081 which was the Chevalier case  
14 that Ms. Wilson mentioned in the last --

15           VICE CHAIRPERSON BLAKE: But nothing else is new other  
16 than what's in your briefs? Okay.

17           MR. SULLIVAN: No, that's it. The other five cases are  
18 in the brief and they go into detail, and the Office of Planning  
19 reports are included with those. So I just think more so than  
20 almost any other variance case there are three elements to hang  
21 a hat on as far as practical difficulty and that's reconstruction  
22 costs, eviction of tenants and loss of rental income. It's rare.  
23 I sometimes say, you know, I'll retire not really ever  
24 understanding the variance argument because it can be so  
25 ambiguous in so many cases and, but in this case I think it's

1 pretty, respectfully, as Board Member Blake stated in 21081 it's  
2 straightforward and I think it's that in this case as well. This  
3 case is a little stronger because we have the additional evidence  
4 of the affidavit and the location near other multi-family.

5 ZC CHAIRPERSON HOOD: Mr. Chairman?

6 VICE CHAIRPERSON BLAKE: Go ahead, Chairman Hood.

7 ZC CHAIRPERSON HOOD: So I appreciate Mr. Sullivan.  
8 Mr. Sullivan, I think a lot of the things that you said have a  
9 lot of loopholes. But I will tell you this. It makes the point  
10 even more when you talk about case by case. But the problem I  
11 have with what you just keep saying about what Board Member Blake  
12 said, and I read that. But you didn't read the last. Basically  
13 what he, the last sentence, that's why it's always good to read  
14 the whole thing, just not the part that goes to your piece. He  
15 says it makes sense.

16 So what we're doing in all three of these cases is it  
17 has to make sense. That's what we're trying to fish for.  
18 Nobody's punishing anybody. I'm the last guy to want to punish  
19 somebody who just recently deals with DOB. I don't want to punish  
20 any resident in this city because I know how hard and difficult  
21 it can be.

22 So I think if you're going to present something to us,  
23 present all the facts. Give us everything, and some of that's  
24 your interpretation. We have interpretations and the Board  
25 changes, and they interpret it differently. But I will tell you,

1 I will tell you I have not sat on a lot of 900 foot rules and  
2 that discussion about not making it waivable has come up. This  
3 is nothing new. What I'm trying to do is refresh my memory and  
4 back to what Board Member Smith said in that case that you keep  
5 citing, you just read the first sentence. At the last part of  
6 what you showed us, it said it makes sense.

7 So what I think we're looking at is something that  
8 makes sense to our regulations. We're just trying to make it  
9 make sense. That's it. The precedents of what happened  
10 previously, you know, you have different characters and different  
11 nuances, so let me just say this. From my perspective, you  
12 mentioned your case is strong enough too, I put your case along  
13 with the last one I just heard and the first one is the one I  
14 had the major issue with.

15 So I don't know. You can put all the loopholes in  
16 saying we're punitive. Nobody's being punitive to anybody. So  
17 we would appreciate you, and here's the thing. If we didn't do  
18 what we're doing, we would not be doing our due diligence. It  
19 would be disrespectful to the residents of this city if we did  
20 not do what we're doing.

21 Thank you, Mr. Chairman.

22 COMMISSIONER SMITH: Mr. Chairman?

23 VICE CHAIRPERSON BLAKE: You go ahead, thank you  
24 Chairman Hood, and go ahead, Mr. Smith.

25 COMMISSIONER SMITH: Speaking of, and I've heard

1 several terms today about the inherited and good faith and due  
2 diligence. So speaking along those three terms. It looks like  
3 there was an addition done on this building. Was it some type  
4 of pop-up, like, was a third floor added? Just based on the  
5 pictures within the record, is there a third floor that was added  
6 on to this building?

7 MR. SULLIVAN: No. I think the third floor was there.  
8 There was work done but I think ten or eleven years ago under  
9 the previous owner.

10 COMMISSIONER SMITH: And we keep talking about this  
11 previous owner. Speaking of good faith and due diligence and  
12 inheriting things, did your particular applicant do any type of  
13 title search before he acquired this property and if that could  
14 be provided within the record? Was there anything done, before  
15 he bought this property, to research any construction that may  
16 have occurred, any permits that may have occurred for that third  
17 floor pop-up addition, anything?

18 MR. SULLIVAN: I don't know exactly what he went through  
19 and we've never presented any evidence of those things in the  
20 other cases as well. Nobody's ever asked that question before,  
21 so I'm not sure exactly sure what he did as part of his due  
22 diligence.

23 COMMISSIONER SMITH: Well, the reason I bring that up  
24 is that you brought up and you're speaking to what previous case  
25 law and previous records that our Board has stated, that you keep

1 saying in good faith. So my question is, how is it in good faith  
2 if you haven't really presented a body of work within the record  
3 to speak of the good faith that the applicant has put in?

4 So that's my concern about this conversation about good  
5 faith and inherited, so I think I will need some additional  
6 information from you to help me with this particular case.  
7 Because I'm not quite sold that this is a nonconforming situation.  
8 This is more similar to a case that we heard a few weeks where  
9 there was a question about nonconforming versus noncompliant. So  
10 without any additional information within the record, it seems  
11 to me that some of these conversions render this noncompliant.

12 MR. SULLIVAN: It's all, it's noncompliant. That's why  
13 we're asking for the relief so he can become compliant. It's  
14 not a legally nonconforming condition, as none of the precedents  
15 were.

16 COMMISSIONER SMITH: Okay.

17 MR. SULLIVAN: So, I mean, otherwise they wouldn't be  
18 asking for that relief. I know I keep bringing up the precedents  
19 but the public does expect to have some consistency and it's, I'm  
20 just not, if the Board maybe could help us on they're going to  
21 totally reject seven precedents, the Office of Planning and the  
22 ANC in this case in favor of, and I'm not sure why or how to  
23 answer that because there's nothing that's different in this  
24 case, in those cases as a critical element other than we have a  
25 little more evidence on the good faith because we have the

1 affidavit from a continuing tenant.

2 But all the elements are there and in the past the  
3 Board has had no issue with it and always agreed with the Office  
4 of Planning, and now there's a switch and I don't quite understand  
5 what's missing for the Board, and I'm trying to understand that.

6 COMMISSIONER SMITH: I think what's missing may be a  
7 combination of what we would need from the Office of Planning and  
8 from the Applicant is additional history on, a deeper dive on the  
9 history of these particular properties. If that means a rent  
10 roll that the Applicant can find if that's, additional permitting  
11 history on this particular, anything that may have occurred  
12 within this property that the Office of Planning can do additional  
13 research on that supports this use existing for a longer period  
14 of time because all we're getting from you in this particular  
15 case is that they bought it in good faith and we should just  
16 approve it.

17 MR. SULLIVAN: No. We had two hearings and a 30 page  
18 brief and a full application explaining in great detail why we  
19 think it is. I just didn't say good faith. Two tenants are  
20 going to be evicted, one permanently. So we lose the unit housing  
21 and one permanently, two tenants evicted, catastrophic economic  
22 loss for the good faith purchaser. Regardless of whether he  
23 bought it 20 years after it was illegally converted or three  
24 years after it was illegally converted, he's in the same  
25 situation.

1           ZC CHAIRPERSON HOOD: So that goes to the argument of  
2 affordable housing, Mr. Sullivan.

3           MR. SULLIVAN: For housing, I mean housing in general.  
4 But that's not really part of the variance argument as well.

5           ZC CHAIRPERSON HOOD: Right. It's not, but it's  
6 something that was considered, again, it goes back to the  
7 legislative history. That's something I do know for a fact that  
8 was considered. That was taken up, at least before did one of  
9 the 14-11 B, C or whatever it was. So that was one of the things  
10 that was taken up. You're talking about predictability and that  
11 was one of the things that was discussed. So that's what, again,  
12 it goes back to Board Member, the Vice Chair Board Member Blake's  
13 point. I keep saying that last sentence that you did not read.  
14 It has to make sense, and that's why.

15           MR. SULLIVAN: And I would argue it makes sense because  
16 it's the exact same fact pattern. And so this makes sense as  
17 well. This is a legal proceeding, not just goes by feel but this  
18 one makes sense and it's straightforward just like that case was.

19           ZC CHAIRPERSON HOOD: It goes by regulations and  
20 unfortunately I don't believe my name was on that. There are so  
21 many different cases so I don't know about that case. I'm just  
22 going by what I'm hearing you say here today. I know about the  
23 cases that are in front of me right now and I know you've alluded  
24 to members who have voted for. I assume in one of those bunch,  
25 but it's going to be far and few between.

1 MR. SULLIVAN: It's in the brief that we filed. It's  
2 in the case file.

3 ZC CHAIRPERSON HOOD: Okay. Thank you. Thank you, Mr.  
4 Chairman. I'm, anyway.

5 VICE CHAIRPERSON BLAKE: Yes, sir. No, go ahead.

6 ZC CHAIRPERSON HOOD: I was going to say I've heard  
7 enough.

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

9 Board Member Smith, do you have anything else you want  
10 to add?

11 (No audible response.)

12 VICE CHAIRPERSON BLAKE: Okay. Let's see. I forget  
13 where we were. Did we hear from the, we're still on the original  
14 presentation.

15 Mr. Sullivan, do you have anything else you were going  
16 to add on your presentation before we go to the Office of  
17 Planning, if you're done?

18 MR. SULLIVAN: No, I'm fine. Thank you, Mr. Chair.

19 VICE CHAIRPERSON BLAKE: Okay. Thank you. Office of  
20 Planning?

21 MR. BRADFORD: Good afternoon, members of the Board.  
22 For the record, Philip Bradford with the Office of Planning.

23 OP continues to support the application and concurs  
24 with the Applicant's analysis on the 900 square foot rule. The  
25 OP report does contain information on the history of the property



1 such as when the upper story addition was approved and permitted  
2 but we're happy to provide a more detailed history in a  
3 supplemental report, if the Board would like.

4 As previously stated, during the past two cases OP is  
5 happy to coordinate with the Applicant and provide further  
6 testimony on the purpose and intent of the 900 square foot rule  
7 and that concludes my testimony.

8 Thank you, and I'm available for any questions.

9 VICE CHAIRPERSON BLAKE: Thank you, Mr. Bradford. Does  
10 anyone from the Board have any questions for the Office of  
11 Planning?

12 (No audible response.)

13 VICE CHAIRPERSON BLAKE: Mr. Sullivan, do you have any  
14 questions for the Office of Planning?

15 MR. SULLIVAN: No. Thank you.

16 VICE CHAIRPERSON BLAKE: Okay. Mr. Young, is there  
17 anyone here wishes to speak?

18 MR. YOUNG: We do not.

19 VICE CHAIRPERSON BLAKE: Okay. All right.

20 Let me just say, Mr. Sullivan. I kind of, I want to  
21 say I do agree that things have changed in a couple of different  
22 directions. I think that the city's goals and objectives have  
23 changed since 1958. I think that they've changed since 2016 and  
24 they continue to evolve. A lot of the things that we focused on  
25 and a lot of the discussion that you've made is to maintain and

1 create these additional available spaces which is a goal and  
2 objective of the city, the District. But the regulations are  
3 wedded in a variance test which is a fairly strict variance test  
4 which requires, you know, exceptional conditions and so forth.

5 So I think that, you know, just to be honest about it.  
6 A special exception for a lot of this type of things would be  
7 appropriate because it really does address the specific needs of  
8 it consistent with the impact it has on the community. But as  
9 we look at the variance level itself, it is a little bit  
10 challenging to fit those round holes in those square pegs.

11 So I do believe that, I've read the cases, I've looked  
12 at all the precedents that you and Ms. Wilson put together. I  
13 do think that, you know, leveraging those cases and those  
14 transcripts you made some, you know, valid points. That said,  
15 as I read the regulations and I read the intent, and I understand  
16 with density and so forth, you know, scrutiny about this is  
17 important to me to do things and perhaps things have changed and  
18 we just need, we do need to figure that out. And I guess we're  
19 going to do it. So I guess if you have any closing remarks?

20 Oh, I'm sorry. Mr. Chair?

21 ZC CHAIRPERSON HOOD: I know I missed this because I  
22 went back and I looked at it and I kept seeing everybody's name,  
23 and I'm glad, Mr. Sullivan, let me thank you for what you did  
24 especially with your brief because you captured exactly what  
25 we're trying to do here. Now you said, also Chairman Hood noted

1 | it was one of those rare cases and I just would put on the record  
2 | that it's not precedent setting, but I think, and the case that  
3 | you cited that I was on but I think this is a difficulty, as the  
4 | Office of Planning has already mentioned.

5 |           We have to just dive, do a deeper dive, one of my  
6 | colleagues just mentioned that. That's all we're doing here and  
7 | I'm glad you put that in there because I'm exactly saying the  
8 | same consistency here in these three cases. That's it, no more,  
9 | no less. And I would agree with you, Mr. Vice Chair.

10 |           Other than that, thank you.

11 |           VICE CHAIRPERSON BLAKE: Okay.

12 |           So what I'm going to, okay. Closing remarks. Did you  
13 | just do those? You're good, Mr. Sullivan? You have some closing  
14 | remarks?

15 |           MR. SULLIVAN: Well, I would just point out too that  
16 | along the lines of what Chairman Hood said, I think that the  
17 | Board has narrowed the focus of 900 foot rule relief to a very  
18 | specific condition and eliminated all others, and I've seen that  
19 | over the last 15 years or so and that, because it's subjective  
20 | and nonambiguous, is what we fit into and very few cases do fit  
21 | into actually.

22 |           So I think that they've, which is as it should be. I  
23 | mean, the disrepair cases were always very, very difficult and  
24 | ambiguous. I think they've scaled it back down to be just having  
25 | very specific elements that would allow it and remember the test

1 for an area variance, much less than the use variance, is  
2 unnecessarily burdensome.

3 So the question at the end of the day is, it is  
4 unnecessarily burdensome for this property owner to spend 100,000  
5 or whatever it is to reconfigure the property and for these  
6 tenants to be evicted, and that standard is lower than the use  
7 variance standard and I think if you look at it from unnecessarily  
8 burdensome it certainly is in that case.

9 Thank you.

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

11 So we are not going to act on this case today because  
12 I do want the Chairman to participate in this case just so we  
13 can get closure in the event that we aren't. I also would like  
14 to get back the additional information that we're asking for on  
15 the other 900 square foot rule cases. I think that would be very  
16 instructive and I think we can probably get all that together on  
17 the same day and address these issues. Is everyone else  
18 comfortable with that or would you rather just vote on this  
19 sooner, or how would you like to approach it?

20 Mr. Smith?

21 COMMISSIONER SMITH: You know, just as we've approached  
22 this with the other cases about researching the intent, some  
23 additional information from the Office of Planning on the 900  
24 square foot rule, I would prefer just from my standpoint today  
25 to continue this to another date and maybe the Chair will be

1 back, for us to have even more of a discussion about the 900  
2 square foot rule.

3 VICE CHAIRPERSON BLAKE: Okay.

4 Chairman Hood?

5 ZC CHAIRPERSON HOOD: I would agree and, again, I need  
6 to pay more focus, more attention on the brief, and I thank you  
7 again, Mr. Sullivan, because you even have a case where I voted  
8 against the 900 square foot rule. So I'm consistent. So thank  
9 you, Mr. Vice Chair. I would agree with you. Let's go and do a  
10 little more discovery and let's do it. Let's do our due diligence  
11 for the city.

12 VICE CHAIRPERSON BLAKE: Okay. Thank you very much,  
13 Mr. Chair.

14 Madam Secretary? Okay. I'd like to put this on the  
15 calendar on the same day.

16 MS. MEHLERT: Okay.

17 VICE CHAIRPERSON BLAKE: I believe we can do this though  
18 on the consent calendar. Well, now it's going to get screwed up  
19 because we're going to have to hear the, we need all the  
20 information. We'll put it on the continued hearing as well,  
21 okay, on that date.

22 Mr. Sullivan, you've got the dates already, right? You  
23 want to state the dates so we have it.

24 MS. MEHLERT: So October 22nd is the continued hearing  
25 and similar to the previous cases any submissions from the

1 Applicant will be due on October 8th, and then the OP supplemental  
2 report will be due on October 15th.

3 VICE CHAIRPERSON BLAKE: Okay. Great. Mr. Sullivan,  
4 you okay with that?

5 MR. SULLIVAN: Sounds great. Yes. Thank you, Mr.  
6 Chairman, Board members. Appreciate it.

7 VICE CHAIRPERSON BLAKE: And thank you very much for  
8 your time and effort in all this. You and Ms. Wilson have done  
9 a great job and I appreciate it.

10 MR. SULLIVAN: Thank you.

11 VICE CHAIRPERSON BLAKE: Okay. Thank you.

12 Mr. Young, you can excuse the witnesses, everyone.  
13 Okay. Madam Secretary, is there anything else on our agenda  
14 today?

15 MS. MEHLERT: Nothing else from staff.

16 VICE CHAIRPERSON BLAKE: Okay. Well, thank you very  
17 much. Gentlemen, thank you very much and you all, this meeting  
18 is adjourned and have a great day.

19 ZC CHAIRPERSON HOOD: Okay. Good job, Mr. Chairman.  
20 Thank you.

21 (Whereupon, the above-entitled matter went off the  
22 record at 1:35 p.m.)

23

24

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

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 09-24-25

Place: Via Webex

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



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Vanessa Gonzalez