

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

NOVEMBER 5, 2025

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARL BLAKE, Vice-Chairperson

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

SHEPARD BEAMON
MAXINE BROWN-ROBERTS
MATTHEW JESICK
JOSHUA MITCHUM
CRYSTAL MYERS
KAREN THOMAS

1 OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

2 SARAH BAJAJ, ESQ.

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

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

9:44 a.m.

CHAIRPERSON HILL: Good morning, ladies and gentlemen. The Board of Zoning Adjustment's March -- I'm sorry, 11/5/2025 meeting will please come to order.

My name is Fred Hill, Chairman of the District of Columbia Board of Zoning Adjustment. Today's Board Members are Carl Blake and Commissioner Rob Miller. Today's meeting and hearing agenda are available on the Office of Zoning's website.

Please be advised we do not take any testimony during our public hearing session. Also, this is on, broadcast, webcast via webcast, via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing.

Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing.

Also, please be advised that we do not take any public testimony at our decision meeting session.

If you're experiencing difficulty with Webex or with your telephone call-in, please call our OZ hotline number at 202-727-5471, excuse me, to receive Webex or call-in instructions.

At the conclusion of the decision meeting session, I shall, in consultation with the Office of

1 Zoning, determine whether a full or summary order may
2 be issued. A full order is required when the decision
3 it contains is adverse to a party, including an affected
4 ANC.

5 A full order may also be needed if the Board's
6 decision differs from the Office of Planning's
7 recommendation. Although the Board favors these over
8 summary orders whenever possible, an applicant may not
9 request the Board to issue such an order.

10 In today's hearing session, everyone who is
11 listening on Webex or by telephone will be muted during
12 the hearing, and only persons who have signed up to
13 participate or testify will be unmuted at the
14 appropriate time. Please state your name and home
15 address before providing oral testimony or your
16 presentation.

17 Oral presentations should be limited to a
18 summary of your most important points. When you're
19 finished speaking, please mute your audio so that your
20 microphone is no longer picking up sound and background
21 noise. If you're having issues, please call the OZ
22 hotline number at 202-727-5471. It's also listed on
23 your screen.

24 All persons planning to testify either in
25 favor or in opposition should have signed up in advance

1 and will be called by name to testify. If this is an
2 appeal, only parties are allowed to testify. By signing
3 up to testify, all participants completed the oath or
4 affirmation as required by Subtitle Y, 408.7.

5 Requests to enter evidence at the time of an
6 online virtual hearing, such as written testimony or
7 additional supporting documents, other than live video,
8 which may not be presented as part of the testimony,
9 may be allowed pursuant to Y 103.13, provided that the
10 persons making the request to enter an exhibit explain,
11 A, how the present exhibit is relevant, B, the good cause
12 that justifies allowing the exhibit into the record,
13 including an explanation of why the requester did not
14 file the exhibit prior to the hearing pursuant to Y 206,
15 and how the proposed exhibit would not unreasonably
16 prejudice any parties. Ordinary procedures for special
17 exceptions and variances are pursuant to Y 409.

18 At the conclusion of each case, an individual
19 who was unable to testify because of technical issues
20 may file a request for leave to file a written version
21 of the planned testimony to the record within 24 hours
22 following the conclusion of the public testimony
23 hearing.

24 If additional written testimony is accepted,
25 then the parties will be allowed a reasonable time to

1 respond as determined by the Board. The Board will then
2 make its decision at its next meeting or hearing session,
3 but no earlier than 48 hours after the hearing.

4 Moreover, the Board may request additional specific
5 information to complete the record.

6 The Board and staff will specify at the end
7 of the hearing exactly what is expected and the dates
8 when persons must submit the evidence to the Office of
9 Zoning. No other information shall be accepted by the
10 Board.

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

24 MS. MEHLERT: Good morning, Mr. Chairman and
25 members of the Board. There are no scheduling changes

1 for the agenda today. However, with late filings, the
2 Chairman has reviewed and granted waivers to allow late
3 filings into the applicable case records pursuant to
4 Subtitle Y, Section 206.7 and Section 103.13.

5 Any other late filings during the course of
6 today's live hearing should be presented before the
7 Board by the Applicant parties or witnesses after the
8 case is called, and any other preliminary matters will
9 be noted when that case is called.

10 CHAIRPERSON HILL: Good morning, everybody.

11 Well, I got to tell you, and I should have done it before
12 I started the record, but the Webex thing, I don't like.

13 I can't figure out how to do stuff, and Vice Chair
14 Miller, I love the new background. I like the angle
15 that we have now where you get multiple windows.

16 COMMISSIONER MILLER: Well, my five-year-old
17 grandson said my connectivity issues might be related
18 to where I was located in my house, not close enough
19 to the modem.

20 (Laughter.)

21 COMMISSIONER MILLER: So, after two years of
22 connectivity, I finally -- my five-year-old figured it
23 out.

24 CHAIRPERSON HILL: Your five-year-old.
25 That's very encouraging.

1 (Laughter.)

2 CHAIRPERSON HILL: Okay, all right, that's
3 fun. All right, Madam Secretary, you can call our first
4 case.

5 MS. MEHLERT: The first case in the Board's
6 hearing session is Application Number 21362 of Aswathi
7 Zachariah and Richard Greene. This is a self-certified
8 application pursuant to Subtitle X, Section 901.2 for
9 a special exception under Subtitle E, Section 204.4 from
10 the requirements of Subtitle E, Section 204.1, to allow
11 removal or significant alteration of a rooftop
12 architectural element original to a principal building.

13 This project is a third-story addition to an
14 existed, attached, principal dwelling. It's located
15 in the RF-1 Zone at 1829 Massachusetts Avenue, SE, Square
16 1113, Lot 67. And as a preliminary matter, the
17 Applicant has filed a motion to accept an untimely filing
18 to submit additional photographs in Exhibit 22.

19 CHAIRPERSON HILL: Okay, great, thank you.
20 Now, if the Applicant can hear me, if they can please
21 introduce themselves for the record?

22 MR. DALEY: Good morning. My name is Patrick
23 Daley. I'm a project manager at Eustilus Architecture.

24 CHAIRPERSON HILL: Okay, thanks, Mr. Daley.

25 So, we're not getting Mr. Teran today?

1 MR. DALEY: No, he is not going to be here
2 for this one today.

3 CHAIRPERSON HILL: Okay, all right, Mr.
4 Daley. So, first of all, unless the Board has any
5 issues, I want to accept the untimely filing because
6 I would like to see the additional photographs, so that's
7 number one. Let's see, and number two, Mr. Daley, if
8 you would, go ahead and walk us through your client's
9 application and why you believe they're meeting the
10 criteria for us to grant the relief requested? I'm
11 going to put 15 minutes on the clock so I know where
12 we are, and you can begin whenever you like.

13 MR. DALEY: Okay, Mr. Young, if you could
14 please pull up Exhibit Number 4, the site photos? All
15 right, so this project is an existing two-story rowhouse
16 attached on both sides. We are proposing a third-story
17 pop-up addition. The reason we're here to seek relief
18 is because of the rooftop architectural feature, so it's
19 that sloped roof and the dormer at the top. We are
20 proposing to remove that.

21 In order to do a third-story pop-up, and rather
22 than pushing it back, we'll have a sloped roof that goes
23 up to match the architectural features around it, and
24 we have examples of similar pop-ups that have been done
25 in the neighborhood like it, such as that photo on the

1 top right.

2 CHAIRPERSON HILL: Hey, Mr. Daley?

3 MR. DALEY: Yes?

4 CHAIRPERSON HILL: If you could just call it
5 an addition, a third story, or any kind of addition.

6 The pop-up --

7 (Simultaneous speaking.)

8 CHAIRPERSON HILL: When I hear pop-up, I just
9 lose it, so.

10 MR. DALEY: Sorry.

11 (Laughter.)

12 MR. DALEY: The third story addition.

13 CHAIRPERSON HILL: Thanks.

14 MR. DALEY: If we could go to the next slide,
15 please? And here you see more of the surrounding area,
16 the alley in the back, and the neighbors. I believe
17 that's it for the site photos. If you could please pull
18 up the next exhibit, Exhibit Number 12? This is the
19 plans.

20 All right, so we have an existing lot occupancy
21 of 51.9 percent. We're not proposing to change that.

22 So, we are conforming to all of the other zoning
23 regulations with this addition. The only thing we are
24 asking really for is the architectural feature of the
25 rooftop. The next slide, please?

1 Here is our site plan. You can see they've
2 got the proposed two-story addition that basically takes
3 up the whole footprint. Next slide, please? So, here
4 you can see at the first level here, it's basically just
5 an interior renovation, a minor interior renovation.

6 Next slide, please? Here as well as on the second floor
7 are just interior renovations. Next slide, please?

8 And here you can see the third-story addition,
9 so it's over the existing footprint, and you can see
10 on the left side here, we have a dormer which will create
11 a sloped roof to match the architectural features of
12 the neighborhood. Next slide, please?

13 That's just the roof plan. Next slide,
14 please? Okay, so here you can see our elevations. So,
15 on the south elevation, you're seeing where the rooftop
16 architectural feature is removed and we're adding an
17 architectural feature at the third floor to try to make
18 up for that. The next slide, please?

19 And here you can just kind of see the slope
20 and the size of the dormer as it's viewed from the side.

21 The next slide, please? And the same thing just from
22 the other side. The next slide, please? Here is our
23 section, so you can kind of get an idea of that dormer
24 at the front there and the slope of the roof. The next
25 slide, please?

1 And here is just another section just showing
2 that we're just doing an addition over the existing
3 footprint. Everything under that is just interior
4 work. The next slide, please? Our demolition plan is
5 just showing that it's an interior gut on the inside.
6 Next slide, please?

7 CHAIRPERSON HILL: Hey, Mr. Daley? I'm going
8 to interrupt you.

9 MR. DALEY: Okay.

10 CHAIRPERSON HILL: I have all of your plans
11 here. Can I just stop you for one second? I'm going
12 to turn to the Office of Planning.

13 MS. THOMAS: Yes, good morning, Mr. Chair,
14 Karen Thomas on behalf of the Office of Planning, and
15 we are recommending approval of this addition. We would
16 note that the addition does not push back against the
17 rear, while modifying the front, including the roof,
18 and we've noted that there was similar types of additions
19 in the neighborhood, in and around the neighborhood.

20 We did ask the Applicant to produce some
21 pictures to that effect and it is in the record and it's
22 in exhibits lower down in the record, so you can have
23 a look at that, but we do not see any adverse impact
24 on the neighborhood with respect to this addition and
25 we will rest on the record of our report. Thank you.

1 CHAIRPERSON HILL: Thank you, Ms. Thomas.
2 Do you know where those exhibits are in the record?

3 MR. DALEY: It should be Exhibit Number 22.

4 CHAIRPERSON HILL: Okay, right, those are the
5 photographs, okay. Mr. Daley, are those in the same
6 row or they're just kind of spread out?

7 MR. DALEY: I believe they're spread out
8 throughout that block.

9 CHAIRPERSON HILL: Okay, okay, great. Thank
10 you. All right, let's see, is there anyone here wishing
11 to speak, Mr. Young?

12 MR. YOUNG: We do not.

13 CHAIRPERSON HILL: Okay, Board members, do
14 you have any questions for the Applicant or the Office
15 of Planning?

16 COMMISSIONER MILLER: I do.

17 CHAIRPERSON HILL: Go ahead, Commissioner
18 Miller.

19 COMMISSIONER MILLER: Can we pull up that
20 first slide that showed the other third floor additions,
21 to use the Chairman's language and the Zoning
22 Regulations' language, that are in that block?

23 CHAIRPERSON HILL: The photographs? The
24 photographs in the Exhibit 22?

25 COMMISSIONER MILLER: Yeah.

1 CHAIRPERSON HILL: Exhibit 22, Mr. Young.

2 COMMISSIONER MILLER: I've been having
3 trouble pulling it up on the same screen I have without
4 losing you.

5 CHAIRPERSON HILL: You could call your
6 grandson.

7 COMMISSIONER MILLER: He's in school. So
8 that's -- I think I saw somewhere, and maybe it was in
9 your statement, that there were two houses, 1815 and
10 1829, that, and that was 1815 and 1834, and yours is
11 1829, so there are two that have that, that you're doing
12 it similar to that are on the block.

13 I'm just having a little bit of a concern with
14 the criteria that it's not substantially visually
15 intruding upon the character, scale, and pattern of
16 houses in the neighborhood. I realize these are, there
17 are two that are there, and I guess, you know, if we
18 allow this, then they may all be there.

19 CHAIRPERSON HILL: Actually, Mr. Young, do
20 you want to go through all of them there so that
21 Commissioner Miller can see them?

22 COMMISSIONER MILLER: Okay, thank you, Mr.
23 Chairman.

24 CHAIRPERSON HILL: I think there's two
25 others.

1 COMMISSIONER MILLER: And was it the first
2 slide, that showed the entire block, of the Applicant's
3 presentation? Mr. Daley, was that your first slide that
4 showed the block?

5 MR. DALEY: I'm not sure if our presentation
6 did show the block.

7 CHAIRPERSON HILL: Madam Secretary, is that
8 presentation in the --

9 MR. DALEY: Yeah, that would be Exhibit Number
10 4.

11 COMMISSIONER MILLER: Exhibit 4, okay, if we
12 could just pull that up for a second if possible, Mr.
13 Young? Is that your block, the block -- your house is
14 in the middle of that block or next to --

15 MR. DALEY: Yeah, it's the top left photo,
16 yes.

17 COMMISSIONER MILLER: Okay, and in the upper
18 right, is that the same block or is that across the
19 street?

20 MR. DALEY: That's across the street.

21 COMMISSIONER MILLER: Okay, so let me ask you,
22 Mr. Daley, the Capitol Hill Restoration Society -- you
23 have the support of the Office of Planning and you have
24 the support of the ANC --

25 MR. DALEY: Correct.

1 COMMISSIONER MILLER: -- which was important
2 and we give great weight to. The Capitol Hill
3 Restoration Society, however, opposed it, and said you
4 could accomplish a third-floor addition within a matter
5 of right by setting it back, and so I'm wondering, did
6 you consider setting it back and what was the problem
7 with setting it back, either it would be within the
8 matter of right or setting it back somewhat just to
9 provide some visual --

10 MR. DALEY: So, we did consider setting it
11 back. We have done that with other projects. We just
12 felt that in this case, it would look a lot better to
13 not set it back and to do it with the dormer similar
14 to the other examples we provided, so we just disagreed
15 with the Capitol Hill Restoration Society.

16 COMMISSIONER MILLER: Let me ask, Ms. Thomas
17 from the Office of Planning, if you can comment about
18 the character, pattern, and scale of houses in the
19 neighborhoods and why -- I think you said it. You said
20 there already are others in the neighborhood that had
21 this kind of same addition, but can you just repeat or
22 elaborate on why you think it doesn't substantially
23 visually intrude upon that pattern --

24 (Simultaneous speaking.)

25 MS. THOMAS: Yes, so Mr. Chair, this type of

1 addition is emerging in neighborhoods which are not
2 within historic districts. I'd like to note this is
3 well outside of the Capitol Hill Historic District, and
4 in that neighborhood, I've seen personally more than
5 what is actually even shown here in the photographs,
6 and hence the reason I asked the Applicant to produce
7 these photographs for the record.

8 I would say in this instance, if you look at
9 the houses, the pattern of houses on this street,
10 particularly as viewed from the rear, they are all
11 aligned, and so the addition sort of keeps that pattern,
12 which is also part of the character of the neighborhood.

13 It retains that pattern.

14 And if you lose any -- if you set it back from
15 the front, the addition would not align in terms of if
16 you look at the floor plans, it would not align in terms
17 of providing an adequate bedroom, or where the stairs
18 come up, the addition in itself would not make sense.

19 So, I looked at that as well and sort of keeping
20 it to the front prevents it from pushing out to the back,
21 and I think in this case, it's a better fit and a better
22 design, and that was part of our thinking.

23 COMMISSIONER MILLER: I appreciate that
24 response. Thank you, Ms. Thomas. That's it for me for
25 now -- or let me just, what would they have to do to

1 be within a matter of right? How far setback would they
2 have to -- is it a one to one?

3 MS. THOMAS: I think typically, the
4 permitting office looks at three to five feet setback
5 from the edge.

6 COMMISSIONER MILLER: Right, but you said you
7 think that actually might be more disruptive of the
8 general pattern --

9 MS. THOMAS: Yes, I think so.

10 COMMISSIONER MILLER: Okay, thank you very
11 much. Thank you, Mr. Chairman.

12 CHAIRPERSON HILL: Thank you, Vice Chair
13 Miller. Okay, Mr. Daley, since we seem to be having
14 more discussion about this, so, what did -- did you go
15 to the ANC meeting? Who presented at the ANC meeting?

16 MR. DALEY: It was my colleague that presented
17 at the ANC meeting. I wasn't there, but I understand
18 that the ANC approved unanimously.

19 CHAIRPERSON HILL: Yeah, no, I got that in
20 the report. Okay, all right, I don't have anything
21 else. Mr. Blake, do you have anything?

22 VICE CHAIR BLAKE: No, I do not.

23 CHAIRPERSON HILL: Okay, great. All right,
24 I'm going to go ahead, and Mr. Daley, thank you for your
25 time and testimony. I'm going to close the hearing and

1 the record and please excuse you.

2 MR. DALEY: Thank you.

3 CHAIRPERSON HILL: Okay, thanks. We can have
4 a little bit more of a discussion on this. Hold on,
5 I'm going to turn to that exhibit. So, in this case,
6 again, we have, the analysis of the Office of Planning
7 has advised as to why this meets the regulations, and
8 then we also have the support of the ANC who went through
9 and took a look at this, and I guess they're, you know,
10 they're not in an historic district.

11 And these third-floor additions, you know,
12 I was here at the very beginning when they began, and
13 then I know, Commissioner Miller, you were around in
14 terms of the, excuse me, how you guys changed the
15 regulations so that they are different from what it was
16 before the regulations were changed, and so, I think
17 in this case, I'll go ahead and, you know, agree with
18 the analysis of the Office of Planning and that of the
19 ANC.

20 And what some people do say is that, you know,
21 somebody has to go first, and so, you know, somebody
22 went first in other places on this block and the ANC
23 is comfortable with the way this is kind of moving
24 forward, and also the way that the Office of Planning
25 has taken a look at this and that it would create more

1 of a visual intrusion if they did it within the matter
2 of right, and also the difficulties with doing that
3 because the core itself would change within the
4 stairwell, I'm going to be voting in favor of this
5 application. Mr. Blake, do you have anything you'd like
6 to add?

7 VICE CHAIR BLAKE: Mr. Chair, I agree with
8 your assessment. I do believe that the Applicant has
9 met the burden of proof. And I do appreciate the effort
10 the Office of Planning did in its analysis, which I agree
11 with, and I agree with your analysis that this makes
12 for a better design.

13 And while I understand that CHRS objects, I
14 do believe that the roof line conformity -- I do think
15 that this makes sense as the Office of Planning has
16 discussed, and I give great weight to the ANC 7D report
17 and its support, and I will be voting in favor of the
18 application.

19 CHAIRPERSON HILL: Thank you. Vice Chair
20 Miller?

21 COMMISSIONER MILLER: Thank you, Mr.
22 Chairman. I agree with each of you. I needed to be
23 persuaded by the Office of Planning as to why that
24 initial, why the third-floor addition fit into the
25 pattern and perhaps even better than a setback on that

1 third floor would for the pattern and scale in the
2 neighborhood.

3 So, I also give great weight to the Office
4 of Planning and that evaluation, and the ANC's unanimous
5 support, so even though I had initial concern, I think
6 they've generally been assuaged by the testimony here
7 today, so thank you.

8 CHAIRPERSON HILL: Thank you. All right, I'm
9 going to make a motion then to approve Application Number
10 21362 as captioned and read by the Secretary, and ask
11 for a second, Mr. Blake?

12 VICE CHAIR BLAKE: Second.

13 CHAIRPERSON HILL: The motion has been made
14 and seconded. Madam Secretary, take a roll call,
15 please?

16 MS. MEHLERT: Please respond to the Chair's
17 motion to approve the application. Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MS. MEHLERT: Vice Chair Blake?

20 VICE CHAIR BLAKE: Yes.

21 MS. MEHLERT: And Commissioner Miller?

22 COMMISSIONER MILLER: Yes.

23 MS. MEHLERT: Staff would record the vote as
24 three to zero to two to approve Application Number 21362
25 on the motion made by Chairman Hill and seconded by Vice

1 Chair Blake.

2 CHAIRPERSON HILL: Thank you. Okay, Madam
3 Secretary, you may call our next case when you get a
4 chance.

5 MS. MEHLERT: The next case --

6 CHAIRPERSON HILL: Before you do, I'm sorry,
7 just to let our Board know, I think one of our Board
8 members has some timing issues today that I'm going to
9 have to work around, and so I think we're going to have
10 to adjourn from 1:45 to 2:45, so that's when we'll
11 probably take lunch. So, if you all would like to have
12 a snack or something at the break, that might be helpful
13 for everybody. Madam Secretary, if you want to call
14 our next case, please?

15 MS. MEHLERT: Next is Application Number
16 21354 of Bernard Guzman. This is a self-certified
17 application pursuant to Subtitle X, Section 901.2 for
18 a special exception under Subtitle U, Section 253.8(f)
19 to allow an accessory apartment not meeting the access
20 requirements of Subtitle U, Section 253.8(c).

21 This is for an accessory apartment in a new
22 one-story accessory building in the rear yard of an
23 existing two-story detached principal dwelling. It's
24 located in the R-1B Zone at 4826 Eastern Avenue, NE,
25 Square 4174, Lot 39. And I will note that a signed ANC

1 report replaced the previous unsigned version in Exhibit
2 48.

3 CHAIRPERSON HILL: Thank you, Madam
4 Secretary. If the Applicant can hear me, if they can
5 please introduce themselves for the record?

6 MS. SCHINDER: I can hear you. I am Ileana
7 Schinder. I am the architect for the Applicant. I have
8 no new content to present. I am here to answer questions
9 that may have arisen from the application.

10 CHAIRPERSON HILL: Okay, Ms. Schinder,
11 welcome back.

12 MS. SCHINDER: Thank you.

13 CHAIRPERSON HILL: If you could just go ahead
14 and please walk us through what your client is trying
15 to do and what is the relief that you need, that would
16 be helpful.

17 MS. SCHINDER: Yes, well, this is a very funny
18 relief because we are complying with all requirements
19 for an accessory apartment in the rear of the structure,
20 but because the accessory structure is located in a block
21 that is very long, that the alley exceeds 300 feet, also
22 the existing structure doesn't have the required site
23 setbacks, that it's eight feet, we have six and change,
24 we were forced to present to the Board of Zoning because
25 we don't meet those two criteria. Even if the accessory

1 structure itself of the proposed project complies with
2 our requirements, it's just an odd situation of the
3 existing conditions of the lot and not of the proposed
4 conditions of the project.

5 CHAIRPERSON HILL: Okay, may I turn to the
6 Office of Planning?

7 MR. MITCHUM: Hi, is my video on?

8 CHAIRPERSON HILL: We can hear you. We can't
9 see you.

10 MR. MITCHUM: Oh, can you see me now?

11 CHAIRPERSON HILL: Yes.

12 MR. MITCHUM: Okay, all right, this is Joshua
13 Mitchum with the Office of Planning. Forgive my lack
14 of a background. Webex isn't working today. But we
15 are in support of the Applicants and their proposal,
16 and we believe they meet the burden of proof, and I'm
17 available for any questions.

18 CHAIRPERSON HILL: Thank you, Mr. Mitchum.
19 Mr. Young, is there anyone here wishing to speak?

20 MR. YOUNG: We do not.

21 CHAIRPERSON HILL: Okay, I'm just trying to
22 kind of go through this a little bit, you guys. Do my
23 fellow Board members have any questions of the
24 Applicant?

25 No? Okay. All right, Ms. Schinder, I hope

1 you have a nice day, and I'm going to close the hearing
2 and the record.

3 MS. SCHINDER: Thank you, Mr. Hill.

4 CHAIRPERSON HILL: Thank you. Okay, it took
5 me a minute to get my head around this. So, I'm
6 comfortable with the application. I understand what
7 they're trying to do and why they're here. I would agree
8 with the analysis that the Office of Planning has
9 provided, as well as that of the ANC. I am going to
10 be voting in favor of this application.

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

13 VICE CHAIR BLAKE: Okay, Chair, no, I don't
14 have anything. I agree with you. The Applicant seems
15 to meet the burden of proof to be granted the relief.

16 It's a very limited amount of relief actually. The
17 only occupancy requirement is met and remains in effect.

18 It doesn't conflict with the intent of the
19 R-1B Zone to preserve the single household residential
20 character. And the Office of Planning cited that FEMS
21 did not have any -- typically does not raise any issues
22 with regard to (audio interference). So with that, I'll
23 be voting in favor of the application.

24 CHAIRPERSON HILL: Thank you. Vice Chair
25 Miller?

1 COMMISSIONER MILLER: Thank you, Mr.
2 Chairman. Yeah, I agree with your analysis and that
3 of Mr. Blake, and like you, I give great weight to the
4 Office of Planning's support and the ANC 5A's unanimous
5 support, so I'm prepared to support this application.

6 CHAIRPERSON HILL: Thank you. Okay, I'm
7 going to make a motion to approve Application Number
8 21364 as captioned and read by the Secretary and ask
9 for a second, Mr. Blake?

10 VICE CHAIR BLAKE: Second.

11 CHAIRPERSON HILL: The motion has been made
12 and seconded. Madam Secretary, will you take a roll
13 call, please?

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

16 CHAIRPERSON HILL: Yes.

17 MS. MEHLERT: Vice Chair Blake?

18 VICE CHAIR BLAKE: Yes.

19 MS. MEHLERT: Commissioner Miller?

20 COMMISSIONER MILLER: Yes.

21 MS. MEHLERT: Staff would record the vote as
22 three to zero to two to approve Application Number 21364
23 on the motion made by Chairman Hill and seconded by Vice
24 Chair Blake.

25 CHAIRPERSON HILL: Great, thank you. Madam

1 Secretary, you may call our next when you get an
2 opportunity.

3 MS. MEHLERT: Next is Application Number
4 21365 of Cheryl Jeannine Rich Trust. This is a
5 self-certified application pursuant to Subtitle X,
6 Section 901.2 for a special exception under Subtitle
7 U, Section 253.8(f) to allow a new accessory apartment
8 not meeting the access requirements of Subtitle U,
9 Section 253.8(c).

10 This is for a second-story addition to an
11 existing one-story accessory building in the rear of
12 a two-story semi-detached principal dwelling for use
13 as an accessory apartment above a garage. It's located
14 in the R-2Zone at 701 Jefferson Street, NE, Square 3749,
15 Lot 95.

16 CHAIRPERSON HILL: Great, thank you. If the
17 Applicant can hear me, if they can please introduce
18 themselves for the record?

19 MS. RICH: My name is Cheryl Jeannine Rich.
20 I'm at 701 Jefferson Street, NE.

21 CHAIRPERSON HILL: Okay, Ms. Rich, are you
22 going to be presenting or is your attorney or architect?

23 MS. RICH: My attorney.

24 CHAIRPERSON HILL: Okay, great. Could your
25 attorney please introduce themselves?

1 MS. WILLIAMS: Good morning. My name is
2 Madeline Shay Williams here with my colleague, Leila
3 Batties, from Holland & Knight, as counsel for the
4 Applicant.

5 CHAIRPERSON HILL: Okay, Ms. Williams,
6 welcome to you both. Ms. Williams, if you want to go
7 ahead and walk us through our client's application and
8 why you believe they're meeting the criteria for us to
9 grant the relief requested? I'm going to put 15 minutes
10 on the clock so I know where we are, and you can begin
11 whenever you like.

12 MS. WILLIAMS: Okay, so we do have a brief
13 PowerPoint we wanted to present if that could be pulled
14 up, please? Thank you, and we can move to the next
15 slide. Thank you.

16 The property is located at 701 Jefferson
17 Street, NE, in the R-2 Zone, and has a land area of 2,794
18 square feet. The property is improved with a two-story
19 semi-detached rowhome with a one-car garage to the rear.
20 Next slide, please?

21 The Applicant proposes to convert the existing
22 one-car garage into a two-story accessory apartment.

23 The project requires special exception relief from the
24 accessory apartment access requirements of Subtitle U,
25 Section 253.8(c). Next slide, please?

1 As shown on the site plan, the proposed
2 accessory apartment would be located at the rear of the
3 property and have direct access to a 16-foot-wide public
4 alley. The entrance to the apartment would be located
5 on the western side of the structure.

6 An existing six-foot-wide walkway would
7 connect the entrance along the western lot line, around
8 the existing rowhome, and along a small portion of the
9 eastern lot line to Jefferson Street. Next slide,
10 please?

11 Here, the first level of the proposed
12 accessory apartment would contain one vehicle parking
13 space. Next slide, please? A 300-square-foot
14 dwelling unit would be located on the second level.
15 Next slide, please?

16 Here are the visuals of the east building
17 elevation along the property line and then the building
18 elevation along the existing private yard. Next slide,
19 please? Here, you can see the garage door on the south
20 side of the structure and the apartment entrance on the
21 west side. Next slide, please?

22 The Applicant requests special exemption
23 relief from the permanent access requirements of
24 Subtitle U, Section 253.8(c) which requires permanent
25 access be provided in one of three ways, one, by a

1 permanent passage no less than eight feet wide extending
2 from the accessory building to a public street, two,
3 through an improved public alley with a width of at least
4 24 feet connecting to a public street, or three, the
5 accessory building is within 300 feet of a public street
6 accessible through an improved public alley at least
7 15 feet wide.

8 Here, the proposed accessory apartment only
9 has access to Jefferson Street through a six-foot-wide
10 walkway where a width of eight feet is required. The
11 public alley south of the property is only 16 feet wide
12 where a width of 24 feet is required, and also the
13 property is located mid-block between Jefferson Street
14 and Chillum Place, which is more than the 300-foot
15 maximum distance. Therefore, the Applicant is unable
16 to meet any of the three options for providing permanent
17 access to the accessory building. Next slide, please?

18 Under Subtitle X, Section 901.2, the Board
19 has the authority to grant a special exception provided
20 that the special exception will be in harmony with the
21 general purpose and intent of the zoning regulations
22 and zoning maps, will not tend to affect adversely the
23 use of neighboring property, and will meet any relevant
24 special conditions. Next slide, please?

25 The requested special exception relief will

1 be in harmony with the general purpose and intent of
2 the zoning regulations and zoning maps, and that it would
3 allow for the construction of an accessory apartment
4 which is permitted in the R-2 zone by right.

5 The requested special exception relief will
6 not tend to adversely affect the use of neighboring
7 property given that the proposed accessory apartment
8 would be located at the rear, it would be modest in size,
9 and would provide parking.

10 Lastly, the requested special exception
11 relief will meet the special conditions of Subtitle U,
12 Section 253.8 for an accessory building in the R Zone
13 outlined on the next slide. Next slide, please?

14 The proposed accessory apartment is not likely
15 to become objectionable because it will be located at
16 the rear of the property, have direct access to the
17 public alley, provide parking, and have a building
18 footprint and height compatible with the current
19 aesthetics of the block.

20 There are also adequate public utilities.
21 D.C. Water has confirmed that water is available for
22 the proposed accessory apartment, and given the
23 surrounding residential development, there is adequate
24 infrastructure to support the proposed accessory
25 apartment. Next slide, please?

1 The Office of Planning has recommended
2 approval in its report filed at Exhibit 19. Also, in
3 OP's report, DDOT stated no objection to approval, which
4 is shown on page five. And lastly, the ANC voted
5 unanimously in support of this application, as shown
6 in the resolution filed at Exhibit 22. Next slide,
7 please?

8 So, in conclusion, we respectfully ask that
9 the Board grant the Applicant's requested special
10 exception relief. Thank you for your time and we're
11 available to answer any questions.

12 CHAIRPERSON HILL: Okay, great, thank you,
13 Ms. Williams. May I hear from the Office of Planning,
14 please? Yeah, Ms. Brown-Roberts, we can hear you.

15 MS. BROWN-ROBERTS: Okay, great. Sorry
16 about that.

17 CHAIRPERSON HILL: That's all right.

18 MS. BROWN-ROBERTS: Good morning, Mr.
19 Chairman and Members of the Commission, Maxine
20 Brown-Roberts representing the Office of Planning. As
21 outlined in our report, the proposed accessory apartment
22 meets the requirements of Subtitle U, 253.8(f) for not
23 meeting any of the access requirements of Subtitle U,
24 253.8(c).

25 The accessory apartment would also meet the

1 requirements of Subtitle X, 901.2 as it would meet the
2 intent of the zoning regulations and would have no
3 adverse impacts on the adjacent neighbors or
4 neighborhood. The Office of Planning therefore
5 recommends approval of the requested special exception.

6 Thank you, Mr. Chairman, and I'm available for
7 questions.

8 CHAIRPERSON HILL: Okay, great, thank you.
9 Mr. Young, is there anyone here wishing to speak?

10 MR. YOUNG: We do not.

11 CHAIRPERSON HILL: Okay, does my Board have
12 any questions of the Applicant or the Office of Planning?

13 Okay, Ms. Williams, I guess, thank you very much for
14 your time and I'm going to, I hope you have a nice day,
15 and excuse you guys and close the record and the hearing.

16 MS. WILLIAMS: Thank you.

17 CHAIRPERSON HILL: Thank you. Okay, thanks.
18 This is a little similar to the last case. I don't
19 have any issues really with the -- you know, they meet
20 the eight feet for the walkway, but I think that's --

21 I'm comfortable with that, and I'm also
22 comfortable with the minimum lot width, I'm sorry, the
23 minimum alley width, due to the fact that the Office
24 of Planning has done their analysis and also DDOT has
25 given their support concerning anything that might be

1 going on with FEMS.

2 And also, I do appreciate that the ANC has
3 had a chance to look at this and they didn't have any
4 concerns, and so I'm going to be voting in favor of this
5 application. Mr. Blake, do you have anything you'd like
6 to add?

7 VICE CHAIR BLAKE: Excuse me, Mr. Chair, yeah,
8 I'm in support of the application. I do think the
9 Applicant has met the burden of proof. The lots in this
10 area are just really wide and a little bit different
11 than the rest of the city, but the Applicant does have
12 passage from the front of the house, albeit a little
13 narrower than we would like.

14 It's also served by a 16-foot alley, which
15 provides adequate access right, for fire, and safety,
16 and so forth, so I'm comfortable with that, and that's
17 primarily the issue with these types of dwellings. The
18 subject property, you know, has electricity, and water
19 and sewage systems are on the main structure, so I
20 believe the Applicant has pretty much met the burden
21 of proof to be granted the relief. I'll give great
22 weight to the Office of Planning's recommendation, and
23 I am comfortable with this and will be voting in support.

24 CHAIRPERSON HILL: Thank you. Vice Chair
25 Miller?

1 COMMISSIONER MILLER: Thank you, Mr.
2 Chairman. Yes, I agree with you, Mr. Chairman, and
3 Board Member Blake's analysis, and the Office of
4 Planning's analysis, which supports the application,
5 and the ANC 5A, again, like the previous case,
6 unanimously supported the application, so I'm prepared
7 to vote in favor of this today.

8 CHAIRPERSON HILL: Okay, great, thank you.
9 All right, I am going to -- do you guys want to -- I'm
10 sorry. Sorry, I was moving on. Okay, I'm going to make
11 a motion to approve Application Number 21365 as
12 captioned and read by the Secretary and ask for a second,
13 Mr. Blake?

14 VICE CHAIR BLAKE: Second.

15 CHAIRPERSON HILL: Motion made and seconded.
16 Madam Secretary, take a roll call, please?

17 MS. MEHLERT: Please respond to the Chair's
18 motion to approve the application. Chairman Hill?

19 CHAIRPERSON HILL: Yes.

20 MS. MEHLERT: Vice Chair Blake?

21 VICE CHAIR BLAKE: Yes.

22 MS. MEHLERT: Commissioner Miller?

23 COMMISSIONER MILLER: Yes.

24 MS. MEHLERT: Staff would record the vote as
25 three to zero to two to approve Application Number 21365

1 on the motion made by Chairman Hill and seconded by Vice
2 Chair Blake.

3 CHAIRPERSON HILL: Okay, thank you. All
4 right, so also, for whoever is listening, Office of
5 Planning, witnesses, whatever, it looks like Webex did
6 something new, so you might want to try to log on ahead
7 of time because it took me a minute. And Madam
8 Secretary, you may call our next case.

9 MS. MEHLERT: Next is Application Number
10 21366 of Jonathan Haigh Thornton, as amended. This is
11 a self-certified application pursuant to Subtitle X,
12 Section 901.2 for a special exception under Subtitle
13 E, Section 207.5 to allow the rear wall of a row building
14 to extend farther than ten feet beyond the furthest rear
15 wall of any adjoining principal residential building
16 on any adjacent property, under Subtitle E, 5201 for
17 the lot occupancy requirements of Subtitle E, Section
18 210.1, and under Subtitle E, 5201 for the maximum
19 accessory building and area requirements of Subtitle
20 E, Section 5003.1

21 This is for a two-story rear addition to an
22 existing two-story attached principal dwelling and a
23 new two-story accessory building in the rear yard. It's
24 located in the RF-1 Zone at 307 15th Street, NE, Square
25 4564, Lot 21. As a preliminary matter, the Applicant

1 submitted motions to waive the filing deadline for
2 supplemental materials, which are in the record in
3 Exhibits 33, 39, and 39a.

4 CHAIRPERSON HILL: Okay, I'm going to allow
5 the material into the record because I don't really have
6 an issue with any of the items that are being put into
7 the record. I don't have any issues with them, and I'd
8 like to have a full record so we can take a look at
9 everything at one time, unless my Board has any issues
10 with that, and if so, please speak up? Okay, all right,
11 would the Applicant please introduce themselves for the
12 record?

13 MR. THORNTON: My name is Jonathon Haigh
14 Thornton, 307 15th Street, NE, the owner of the property.

15 CHAIRPERSON HILL: Okay, Mr. Thornton, are
16 you going to be presenting to us or is someone else?

17 MR. THORNTON: I'm going to have my architect,
18 Joe Boyette, present.

19 CHAIRPERSON HILL: Okay, Mr. Boyette, could
20 you please introduce yourself for the record?

21 MR. BOYETTE: Good morning, I'm Joe Boyette,
22 architect at Old City Design Studio. My address is 1317
23 D Street, NE.

24 CHAIRPERSON HILL: Okay, great. Mr.
25 Boyette, do you want to walk us through your client's

1 application and why you believe they're meeting the
2 criteria for us to grant this particular relief? I'm
3 going to put 15 minutes on the clock so I know where
4 we are, and you can begin whenever you like.

5 MR. BOYETTE: Thank you. I sent a
6 presentation yesterday. So, 307 15th Street, NE is a
7 single-family attached home built in 1913. The home
8 is very well-built, but there was a serious lack of
9 maintenance and upkeep on the home and the finishes over
10 the years, and it was not the type of home that was in
11 a condition to sell to anyone other than someone who
12 was willing to invest a lot of time, and energy, and
13 money to make it a desirable place to live.

14 The proposal was for a two-story plus cellar
15 addition to a two-story plus cellar, oh, I'm sorry,
16 that's two-story plus basement addition to a two-story
17 plus basement home. We are also proposing a new
18 two-story garage on the alley.

19 The owner canvassed the neighborhood and has
20 secured 11 letters of support from neighbors, shown by
21 the red dots, including both adjacent neighbors to the
22 north and to the south. The neighbor to the north,
23 unfortunately, was deceased at the time of the
24 application, but Haigh secured a signature from the
25 daughter representing the family member's descendants,

1 or the owner's descendants.

2 Both ANC 6A and 7D support the project. This
3 is -- 15th Street is the boundary between 6A and 7D,
4 so we presented to both ANCs and they both unanimously
5 supported the project. Next slide, please?

6 The three things we're asking for relief for
7 are for an addition extending more than ten feet beyond
8 the neighbor's rear wall, lot occupancy above 60
9 percent, and an accessory structure exceeding 450 square
10 feet.

11 For the lot occupancy of 69 percent, in my
12 mind, it doesn't really tell the whole story.
13 Typically, in rowhomes in Capitol Hill, the front facade
14 is on the property line, and the front porch and often
15 the bay window do not get included in the lot occupancy.

16 In this case, on this block, the property line is in
17 front of the porch, so the front porch is included in
18 the lot occupancy.

19 Similarly, on the rear of the property, the
20 deck is more than four feet above grade due to a grade
21 change, or due to the fact that the building, that the
22 lower level is a basement, and so that is also included
23 in lot occupancy.

24 So, if you look at just the single-family
25 attached residence and the habitable space of that, it's

1 going to occupy 43 percent of the lot, and then the garage
2 will occupy 20 percent of the lot, and then the front
3 and the rear porch make up the remaining six percent
4 of the lot occupancy. Next slide?

5 These are photos of the property. It's the
6 green one, second in from the end, and then the views.

7 At the side is, the bottom right-hand side is a view
8 from the side. That tree actually was removed
9 yesterday, I believe, and then you can see views from
10 the back. It is a very long lot oriented east/west.

11 Next slide?

12 It's a fairly typical floor plan. The
13 basement level had a bathroom and open area. The first
14 floor, living room, dining room, a very small kitchen,
15 and an entry hall with a stair along the party wall.

16 Next slide? Upstairs, on the left-hand side, three
17 small bedrooms, two of them with closets, one without,
18 a very small bathroom, and then again, that straight
19 run stair. Next slide?

20 The proposal is for a dog-leg addition. So,
21 instead of doing a lot line to lot line addition, we're
22 proposing a dog-leg addition, which does give relief
23 to the property owner to the south as far as stepping
24 the building back five feet.

25 On the basement level, we have two bedrooms

1 and a family room in the front. On the right-hand image,
2 we have a living room, a kitchen, a dining room, and
3 a family room, and a powder room, and then if we switch
4 to the next slide, please, upstairs, four bedrooms, two
5 bathrooms, and laundry.

6 And the extra length of this addition is to
7 provide that fourth bedroom, which is a small bedroom
8 that can be used for an office, which we're finding with
9 our projects, whenever our clients can get that bonus
10 space, it's very important to them since COVID.

11 There are, on the first level, there are high
12 windows into the dog-leg. On the second level, there's
13 a high window in the bathroom and egress windows in the
14 two back bedrooms. There are obviously no windows along
15 the party wall, so we feel that there is no intrusion
16 on the privacy of the neighbors with this addition.
17 Next slide, please?

18 The facades on the addition will be treated
19 with a design consistent with the neighborhood and
20 materials with minimal maintenance. At our firm, we
21 believe that there's really not something we call a rear
22 facade. We believe they're all very important and
23 should be handled delicately, and with care and
24 attention to proportion, detailing, and materials.

25 In this case, we have an exposed brick

1 foundation, Hardie lap siding with an historic five-inch
2 exposure, and aluminum-clad wood windows with nice
3 detailing, and a cedar porch off the back. This slide
4 shows the facade on the north side along the property
5 line, which again has that brick foundation, it has
6 Hardie siding, and is painted, low maintenance, and in
7 keeping with the rest of the structure.

8 We have a garage as well. The next slide shows
9 the plans and elevations of that. Next slide, please?

10 Thank you. On the ground floor, which is the bottom
11 left image, the ground floor has parking and then a stair
12 up to the second level. The second level is an office
13 area and a half bath. The structure itself, the facade
14 is a brick facade with historic details, corbeled brick
15 at the top, and nice windows with divided lights, again
16 aluminum-clad wood windows, quality materials, quality
17 construction.

18 So, the addition, the special exception on
19 this is an additional 24.5 square feet over the 450
20 square feet. Haigh wanted a brick structure. Brick
21 walls are thicker than a wood frame structure by more
22 than, a little more than 25 square feet, and so we're
23 asking for the relief because the interior volume of
24 this building would be the same as the interior volume
25 of a 450-square-foot wood-framed building.

1 So, it gives us just that little bit of extra
2 room to get the car in there and make the space --
3 potentially, you know, the owner of this property, in
4 five years after it's built, could convert this into
5 a unit by coming back to the Board of Zoning Adjustment.

6 So, the next slide, I believe, talks about
7 -- yes, so on the left side of the page is a by-right
8 addition, and on the right side of the page is the
9 proposed addition, and the difference between the two
10 during the March and September is negligible on the rear
11 facade. Most of that extra shading is going to happen
12 in the yard, not on the building itself.

13 The next slide shows the summer solstice, and
14 that shows again that the resulting difference between
15 the by-right and the zoning relief shows a negligible
16 difference. There is a little bit more sunlight that's
17 reaching it, that's not reaching it.

18 And then the next slide shows the winter
19 solstice, and this is where there's a little bit of a
20 difference if you look at 9:00 a.m. So, from 9:00 to
21 noon, there is an effect in the wintertime of light
22 reaching that rear facade. And with that, I welcome
23 any additional questions or comments.

24 VICE CHAIR BLAKE: I have one quick question.

25 CHAIRPERSON HILL: Go ahead, Mr. Blake.

1 VICE CHAIR BLAKE: Just to be clear, this is
2 a spec home? Is that what this is?

3 MR. THORNTON: Yeah, I guess I'll elaborate
4 on that. It is a spec home, but it's a little bit more
5 than that. So, I live at 328 13th Street, just two
6 blocks west of here. I've lived there for 15 years,
7 and I've recently left a job with a large commercial
8 general contractor and am starting a home remodeling
9 business to focus primarily on Capitol Hill.

10 So, this is my kind of showpiece. This is
11 going to be my portfolio, which is why I think you'll
12 see, as Joe was talking about, better quality materials,
13 aluminum-clad windows, smaller reveals on Hardie
14 siding, things that are going to be more expensive, an
15 all-brick facade on the carriage house. You know, these
16 are things I want to be able to show potential clients
17 that I'm able to execute --

18 VICE CHAIR BLAKE: Okay.

19 MR. THORNTON: -- effectively, so that's what
20 this is, yes.

21 VICE CHAIR BLAKE: Thank you very much. The
22 reason I asked that question is because of your treatment
23 of the accessory building, because typically, folks ask
24 for a waiver to the five-year time frame, but given the
25 flexibility that you're implying there, it makes sense

1 to do what you're doing, and that's kind of what prompted
2 that question. Thank you.

3 MR. THORNTON: Got you.

4 CHAIRPERSON HILL: Thank you, Mr. Blake.

5 Vice Chair Miller, do you have anything at this time
6 or can I go to the Office of Planning?

7 COMMISSIONER MILLER: Nothing at this time.
8 Thank you.

9 CHAIRPERSON HILL: Thank you. Could I hear
10 from the Office of Planning, please?

11 MR. JESICK: Thank you, Mr. Chairman and
12 Members of the Board. My name is Matt Jesick,
13 presenting OP's testimony in this case, and the Office
14 of Planning is happy to rest on the record in support
15 of the application. We concluded that the application
16 meets the relevant criteria for approval, and again
17 therefore recommend approval to the Board. Thank you,
18 and I'm happy to take any questions.

19 CHAIRPERSON HILL: Thank you, Mr. Jesick.
20 Does the Board have any questions for the Office of
21 Planning? Mr. Young, is there anyone here wishing to
22 speak?

23 MR. YOUNG: We do not.

24 CHAIRPERSON HILL: Okay, I do have a question
25 for you. So, I guess, Mr. Thornton, I mean, I appreciate

1 all of the outreach that you did, and also going to the
2 ANC and gaining their support, and also, again, the
3 outreach that you've done with all of the -- I mean,
4 it's actually gone farther than most do, but you did
5 get two letters of support from both neighbors. Do you
6 know if either one of those neighbors plan on doing any
7 extension of themselves or you don't know?

8 MR. THORNTON: You know, it's hard to say.
9 The neighbor to the north, who, you know, the matriarch
10 of that family just passed away a few months ago. You
11 know, I'm not sure what their intentions are with the
12 property and I don't think they know either. They're
13 still trying to figure that out.

14 The neighbor to the south, she likely has
15 intentions to fix up the property and rent it out is
16 what she's told me, so I'm not sure if that includes
17 an addition or not, but she's very interested in what
18 I'm doing and how that goes, so, yeah.

19 CHAIRPERSON HILL: Is the neighbor to the
20 south the one that's getting affected by the shadows
21 the most in the winter?

22 MR. THORNTON: No, that's the neighbor to the
23 north, the neighbor to the north, yeah.

24 CHAIRPERSON HILL: Okay, okay, great, all
25 right, okay. All right, thank you. Anybody else from

1 the Board? Okay, I'm going to go ahead and close the
2 hearing and the record. I hope you gentlemen have a
3 nice day.

4 Okay, so the reason why I was asking that
5 question is that oftentimes shadowing tends to be
6 something that we are taking a look at, and I'm looking
7 at the shadowing also, and I don't particularly -- I
8 did have kind of some concerns about the neighbor to
9 the north.

10 However, if the neighbor to the north doesn't
11 seem to have any issues with it as well, then I don't
12 think I'm going to have any issues with it. I think
13 maybe the neighbor to the north might be doing something
14 that that's not going to affect them after a while, but
15 I do appreciate that, again, they did get the support
16 from that particular neighbor.

17 I will also agree with the analysis that the
18 Office of Planning has put forward. I mean, this is
19 going 16 feet farther back than the rear wall, but I
20 think that these are pretty small units and they're very
21 large lots, and so I can understand why the developer
22 is trying to make as best use of the property as they
23 can, and so I will agree with the analysis that the Office
24 of Planning has put forward in their report. I'll also
25 agree with the analysis that we received from the ANC

1 and I will be voting in favor of this application. Mr.
2 Blake, do you have anything you'd like to add?

3 VICE CHAIR BLAKE: Sure, Mr. Chairman, I agree
4 with what you said. I'm in support of the application.

5 You know, on the surface, we talk about a 26-foot
6 addition. I thought that was a lot, but I think the
7 explanation that the Applicant provided with the lot
8 configuration and the placement of the building, the
9 rear deck, et cetera, really puts it in perspective.

10 And I would note that the, you know, Capitol
11 Hill Restoration again opposed such a large addition,
12 but once again, when you put it in perspective, it kind
13 of makes sense, you know, given the size of the lot and
14 the other things that I mentioned.

15 So, I do agree with the Office of Planning's
16 analysis and give great weight to their recommendation,
17 and I also give great weight to the issues and concerns,
18 the report of the ANC and the issues and concerns raised,
19 which were none, and I'll be voting in favor of the
20 application.

21 CHAIRPERSON HILL: Thank you. Vice Chair
22 Miller?

23 COMMISSIONER MILLER: Thank you, Mr.
24 Chairman. I appreciate my fellow Board Member's
25 comments, with which I agree. I appreciate Mr.

1 Thornton, the Applicant, and his architect, Mr.
2 Boyette's presentation, and the inclusion of
3 architectural design details to mitigate the large,
4 otherwise large addition that's being, relatively large
5 addition that's being added, including the dog-leg and
6 just the design of the rear facade is done very
7 attractively.

8 So, I also give great weight to the Office
9 of Planning and the two ANCs who unanimously supported
10 this application, ANC 6A and ANC 7D, and I'm prepared
11 to -- yeah, and on the lot occupancy, I agree with the
12 Applicant's analysis.

13 First of all, it's within what's allowed by
14 a special exception. You can go up to 75 percent if
15 it meets the criteria, which I believe it does, but I
16 think the explanation about the placement of the lot
17 with the front porch and rear deck -- and I think we
18 heard a case this week as part of the zoning text
19 amendment where that rear deck might not even be counting
20 toward lot occupancy in the future if we approve that
21 particular proposal. So, anyway, I may have
22 characterized that wrong, but that's my recollection.

23 So, anyway, I'm prepared to support it. Thank you,
24 Mr. Chairman.

25 CHAIRPERSON HILL: Thank you, Vice Chair

1 Miller. Yeah, and also I'll note this is the first time
2 I've heard about, well, I can't remember anybody talking
3 about the width of the brick and how much that eats into
4 the space. So, okay, I'm going to make a motion to
5 approve Application Number 21366 as captioned and read
6 by the Secretary and ask for a second, Mr. Blake?

7 VICE CHAIR BLAKE: Second.

8 CHAIRPERSON HILL: Motion made and seconded.
9 Madam Secretary, take a roll call, please?

10 MS. MEHLERT: Please respond to the Chair's
11 motion to approve the application. Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 MS. MEHLERT: Vice Chair Blake?

14 VICE CHAIR BLAKE: Yes.

15 MS. MEHLERT: Commissioner Miller?

16 COMMISSIONER MILLER: Yes.

17 MS. MEHLERT: Staff would record the vote as
18 three to zero to two to approve Application Number 21366
19 on the motion read by Chairman Hill and seconded by Vice
20 Chair Blake.

21 CHAIRPERSON HILL: Okay, great, thank you.
22 You guys, can we just take a quick ten-minute break?
23 We'll come at 11:00. Thank you.

24 (Whereupon, the above-entitled matter went
25 off the record at 10:50 a.m. and resumed at 11:03 a.m.)

1 CHAIRPERSON HILL: Okay, Madam Secretary, if
2 you could call us back in and call our next case, please.

3 MS. MEHLERT: The Board is back from a quick
4 break and returning to its hearing session. The next
5 case is Application Number 21338 of Starcross Properties
6 and Christopher Hauser. This is a self-certified
7 application pursuant to Subtitle X, Section 901.2 for
8 special exceptions under Subtitle C, Section 703.2 from
9 the minimum vehicle parking requirements of Subtitle
10 C, Section 701.5; and under Subtitle D, Section 5201,
11 from the side yard requirements of Subtitle D, Section
12 208.2.

13 This is for a new detached principal dwelling
14 on an unimproved lot. It's located in the R-1B zone
15 at 329 Peabody Street, Northeast, Square 3733, Lot 820.

16 And this hearing was originally scheduled for September
17 17 and postponed at the Applicant's request.

18 CHAIRPERSON HILL: Okay, great. Thank you.
19 If the Applicant can hear me, if they could please
20 introduce themselves for the record.

21 MS. WILSON: Hi, my name is Alex Wilson from
22 Sullivan and Barros. And we also have Mr. Paul DeVerger
23 from the ownership team joining us, and the project
24 architect, Kay Akinsinde, if there are any questions.

25 But I will be presenting the main presentation.

1 CHAIRPERSON HILL: Okay, great. Ms. Wilson,
2 let's see if we have questions from them. So, I'm not
3 going to go around the table just yet, but if you could
4 kind of walk us through your client's application and
5 explain why you believe they're meeting the criteria
6 for us to grant the relief requested. I'm going to put
7 15 minutes on the clock so I know where we are. And
8 the thing that I have is, you can kind of go through
9 this a little bit, please, I just want clarification
10 as to why this is not a tax lot and this is a record
11 lot. Like, that's something I just kind of need a little
12 bit of clarification on as you go through this. And
13 you can begin whenever you like.

14 MS. WILSON: Great. Thank you so much. Mr.
15 Young, could you please pull up the presentation? Thank
16 you, and could you please go to the next slide? Thank
17 you so much. So the property is located in the R-1B
18 zone and is a vacant substandard non-alley record lot.

19 And, so, this designation is important because
20 typically variance relief would be required for side
21 yards for a new building. But as this is a substandard
22 non-alley record lot that existed prior to the effective
23 date of the regulations, there's a specific allowance
24 under D-5201 for new principal structures to seek this
25 special exception relief under D-5201, and in this case

1 from side yards.

2 And, so, we've submitted to the record showing
3 the original record lot, Lot 46, and it existed well
4 before 2016. So, that is in the record, that it is a
5 record lot, Lot 46.

6 CHAIRPERSON HILL: Go ahead, Mr. Blake. I
7 see your hand.

8 VICE CHAIRPERSON BLAKE: I'm sorry. Ms.
9 Wilson, could you -- that document you shared in the
10 record, it doesn't have any dates on it. And what
11 exactly is the source? Can you help me with that a
12 little bit --

13 MS. WILSON: Sure. It's from the surveyor's
14 office. It's a document directly from the surveyor's
15 office. And it --

16 VICE CHAIRPERSON BLAKE: And what's the date
17 on that?

18 MS. WILSON: Let me see. I'll also add that
19 this is self-certified. So, if there was an issue at
20 the -- let's see, where's the date? If there was an
21 issue during permitting, we would be back here. I don't
22 know the exact date of this document, but I'm, I don't
23 want to say 100 percent but I'm 99.99 percent sure it's
24 older than 2016 just by looking at it. And, so, we can
25 confirm the exact date, but I am confident --

1 VICE CHAIRPERSON BLAKE: Quickly, do you have
2 a sense of the measurements? Are they consistent with
3 the tax lot and the record lot for measurement?

4 MS. WILSON: Yes, and we're going to have to
5 go through that process during permitting. And that's
6 something I, we looked into before we applied, to see
7 if we could get the actual, like, fresh plat from the
8 surveyor's office, but it's something they do during
9 permitting to confirm. So, we --

10 VICE CHAIR BLAKE: Okay, so my only concern
11 is we are asking for a special exception and if you go
12 to permitting and determine, oh, it's very -- this is
13 not really a lot, this is really a variance. So, we're
14 going to go through this analysis and essentially just
15 waste the time when we find out that that's the case.

16 And I understand it's a self-certified application,
17 but if we don't believe that this is a record lot, it
18 doesn't make sense necessarily to go through this
19 exercise because it's a basic bargain, right?

20 So in your mind, is there -- can you give me
21 anything else that can substantiate -- and I suspect
22 that is an older document that they did receive, just
23 to be clear, but is there anything else you can provide
24 us with that the measurements are in sync, or -- because
25 many of the records do, in the city's records, do record

1 it as a tax lot.

2 MS. WILSON: Sure. There is a tax lot but
3 there's also a record lot. So, it's record lot 46 and
4 the dimensions are listed, 30 feet -- I can't read that
5 small. But I can -- we can supplement the record or
6 we can point to the measurement. I can have someone
7 in my office look at the measurements while we're doing
8 the report. But I'm confident that it's a record lot.

9 It exists. Just from -- you can look on DC Atlas, too,
10 and do a record lot overlay online and click the record
11 lot button and it'll also pop up with the same
12 dimensions.

13 And, so, we did go through this before we
14 submitted. Because I agree, we don't -- we also don't
15 want to waste our client's time. And, so, they're aware
16 of what the implications are if there was an issue with
17 that and we do check that before.

18 VICE CHAIR BLAKE: Okay, Mr. Chair, go ahead.

19 MS. WILSON: And it --

20 CHAIRPERSON HILL: Okay --

21 MS. WILSON: -- shows 30 by 75, which matches
22 the dimensions on the tax lot, as well. So, that would
23 also indicate there shouldn't be an issue during
24 permitting.

25 VICE CHAIR BLAKE: No, where did you see that

1 just now? This --

2 MS. WILSON: Ms. Harkham from my office
3 checked the dimensions from the document we submitted
4 and checked the dimensions that are written on record
5 lot 46. And at the end it lists 75 for the parcel, and
6 then --

7 VICE CHAIR BLAKE: Pardon me?

8 MS. WILSON: It's 30 by 75. And then --

9 VICE CHAIR BLAKE: And let's, just to simplify
10 it, why don't you just put something, what you just did
11 in the record and just submit it so we have it, and
12 that'll be what the support is for your assertion?

13 MS. WILSON: Great. We will do that right
14 now.

15 VICE CHAIR BLAKE: Great. Thank you.

16 MS. WILSON: Okay. So in terms of the project
17 itself, the property is currently vacant. The
18 Applicant proposes to construct a new two-story and
19 cellar detached single family dwelling. The side yard
20 setback requirement for a detached single family
21 building in the R-1B zone is eight feet. Given the
22 substandard lot width, the Applicant's proposing side
23 yards of five feet, and this is consistent with the
24 pattern of houses on the block.

25 So, this requires a side yard relief for the

1 three-foot reduction on either side. Instead of eight
2 feet, it will just be five feet. Additionally, due to
3 the grade at the rear, the Applicant can't feasibly
4 provide one parking space. Therefore, the Applicant
5 is also seeking parking relief for one space.

6 The Office of Planning recommends approval
7 and DDOT has no objection. ANC 4B voted unanimously
8 to support the application. We also attended a
9 committee meeting and the full ANC meeting, and then
10 at that meeting we were introduced to the president of
11 the Lamond-Riggs Association and she said that if anyone
12 has any questions, she'll let us know. But we haven't
13 heard anything from any neighbors. We offered to have
14 a neighbor meeting and there wasn't any interest in that.

15 In terms of the adjoining neighbors, the
16 neighbor to the west has the plans and Mr. DeVerger has
17 been in touch with her, and she has his contact
18 information if she has any questions. They last touched
19 base a couple weeks ago. He has not heard any concerns
20 from her. And then the other house is vacant, and that
21 owner is going to rent the property soon and has not
22 raised any concerns either. All this is to say, there's
23 been ample opportunity to discuss the project with our
24 team. If there are any concerns, we have not heard any.

25 I imagine that there is some expectation from

1 the neighbors that a house will be put there eventually,
2 given that it fills in the gap in this pattern of houses.

3 And the ANC's resolution also acknowledges the due
4 diligence efforts made and general neighborhood support
5 for the project in paragraph four of their report.

6 Next slide, please. Thank you. So this is
7 the vacant subject property. You can see these are
8 smaller properties for the R-1B zone with detached
9 houses. These side yards are less than eight feet.
10 Most are about five feet, which is what are we proposing,
11 too. And it's in a similar footprint to what exists
12 next door and it's meant to fit right in with the pattern
13 of houses on this block.

14 Next slide, please. So, this is an aerial
15 view of the property. Next slide, please. The subject
16 property will match the pattern of houses shown here,
17 with a pitched roof and similar window pattern and side
18 yard. Next slide, please. This is just a view from
19 the rear. Next slide, please. So, this shows the
20 proposed footprint. It's approximately the same size
21 as the adjacent properties, with those five-foot side
22 yard.

23 The -- can you please go to the next slide?

24 These are the floor plans with three main bedrooms and
25 a basement bedroom. Next slide, please. These are the

1 elevations demonstrating how this will be keeping in
2 character with the adjoining properties in the block
3 with pitched roofs.

4 Next slide, please. Next slide, please.
5 Next slide, please.

6 And finally, this is the 3D view. Next slide,
7 please. In terms of the general special exception
8 regulations, the property will be a detached single
9 family dwelling in the same pattern and similar design
10 as the other detached single family dwellings on this
11 block, which also have non-conforming side yards.

12 Next slide, please. In terms of the special
13 exception requirements, an additional three feet of
14 building area on either side shall not unduly impact
15 the light and air available to neighboring properties.

16 With respect to the privacy of use and enjoyment, there
17 will be approximately ten feet of separation between
18 the neighboring buildings given the respective side
19 yard, similar to all of the other properties in the area.

20 The Applicant is proposing windows on its east and west
21 sides, but the window pattern has been thoughtfully
22 designed to maintain privacy and also matches the
23 adjacent properties' window patterns.

24 Further, the difference between the by-rights
25 design and requested design is only three feet, the

1 proposed building being only three feet closer to
2 neighboring properties will not unduly compromise the
3 privacy and enjoyment of said properties. This is the
4 norm in the neighborhood to have these non-conforming
5 side yard.

6 As demonstrated by the plans, the proposal
7 has been designed to be compatible with the existing
8 houses. While the proposed side yards will only be five
9 feet, whereas eight is typically required, the house
10 is located in a portion of the R-1B zone where the lots
11 are narrower than the typical R-1B lot. And the side
12 yards, like the other aspects of the house, have been
13 designed to fit the pattern and scale of houses along
14 the block.

15 And, so, the front setback has also been
16 designed to meet the range, but more specifically the
17 front setbacks of the adjoining neighbors. The height,
18 pitched roof and rear yard will generally line up with
19 the pattern and scale along the front and rear. And
20 the Applicant is also proposing fencing and a retaining
21 wall similar to the neighboring properties.

22 Next slide, please. We are also seeking
23 parking relief. As demonstrated here, there is a steep
24 topographical change at the rear of the property. Many
25 other properties on this side of the street face the

1 same challenge. Accordingly, it's not physically
2 possible to create a parking space without substantial
3 land disturbance, and any future purchasers will be able
4 to consider that there is no off- street parking when
5 determining if the house is compatible with their
6 parking needs. And the ANC's report also mentioned
7 parking is not typically congested on this block and
8 there should be ample street parking in the area.

9 Next slide, please. So, this just reiterates
10 what I mentioned in terms of the topography and criteria
11 for parking approval. And again, the reduction is for
12 the number -- for only one parking space. And, so, that
13 concludes our presentation and we are happy to take any
14 questions.

15 CHAIRPERSON HILL: Okay, thank you. Before
16 I turn to the Board, could I hear from the Office of
17 Planning?

18 MS. MYERS: Good morning, Crystal Myers with
19 the Office of Planning. The Office of Planning is in
20 support of this case and we can stand on the record of
21 the staff report but, of course, if you have questions.

22 Thank you.

23 CHAIRPERSON HILL: Thank you, Ms. Myers.
24 Does the Board have any questions for the Applicant or
25 the Office of Planning?

1 (No audible response.)

2 CHAIRPERSON HILL: Go ahead, Vice Chair
3 Miller.

4 COMMISSIONER MILLER: Thank you, Mr.
5 Chairman, and thank you, Alex Wilson and Crystal Myers,
6 for your testimony here today. Ms. Wilson, can you --
7 do you know when the -- was this -- when did the, how
8 this gap in this block became a gap? Was there a house
9 on there that was demolished anywhere in anyone's memory
10 recently? Just out of curiosity.

11 MS. WILSON: I'm not sure, to be honest. I
12 did some initial research at the beginning and didn't
13 find anything, so I couldn't answer that.

14 COMMISSIONER MILLER: Yeah, and I assume, Ms.
15 Myers, you don't have any information on the history
16 of this lot. You would think that there was a house
17 there that probably was in horrible condition that
18 needed to be demolished, but I don't know. Maybe it
19 was just a large, bigger lot at one point. I don't know.
20 Or just -- if any --

21 MS. MYERS: Well, I will -- I just will add
22 that, taking a look at the lot similar along the same
23 street there, there is quite a few lots that are similar
24 size.

25 COMMISSIONER MILLER: Thank you. I have no

1 other --

2 MS. WILSON: And I'll --

3 COMMISSIONER MILLER: Oh, go on.

4 MS. WILSON: I apologize. I was going to say
5 I think the, actually, Exhibit 46 is helpful, because
6 these were all subdivided and we can get the exact year,
7 but it appears they were subdivided to this size many,
8 many years ago.

9 COMMISSIONER MILLER: Thank you. Thank you,
10 Mr. Chairman.

11 CHAIRPERSON HILL: Thank you, Commissioner
12 Miller. Mr. Young, is there anyone here wishing to
13 speak?

14 MR. YOUNG: We do not.

15 CHAIRPERSON HILL: Okay. All right, Ms.
16 Wilson, do you have anything at the end?

17 MS. WILSON: Thank you all for your time.

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

21 Okay, thanks. You know, I've had a chance to review
22 this case and as I said at the very beginning, the initial
23 question that I thought was whether or not this is a
24 tax lot or a record lot and whether or not we actually
25 are going to be looking at this.

1 I appreciate all the questions that Vice Chair
2 Blake had asked, and I'm a little bit more comfortable
3 now with it than I was before. I do think it's something
4 though, Vice Chair Blake, like in terms of the wasting
5 time, I thought it was interesting, like, they -- it
6 is self-certified and I was thinking, the only -- like,
7 we've already read all the cases, the wasting time is
8 the additional, like, you know, I guess 30 minutes of
9 the case. Because, like, my time's already been wasted,
10 right? And, so, you know, and the Applicant, like,
11 that's the person who's just, like, in trouble, right?

12 They're going to have to go through this loop, you know,
13 again. But unfortunately, like, our time got wasted
14 a while ago. And, so -- but anyway.

15 So, after that, I do appreciate the argument
16 that they were making about the parking, and how in-depth
17 they went into that. I appreciate that DDOT is, does
18 not have any issues or concerns. As well as, the ANC
19 was speaking of the parking. In terms of the, I didn't
20 have any concerns about light and air or privacy. And
21 as far as character goes, it's actually going to fill
22 out that hole in the street. So, I'm pretty comfortable
23 with this application, as well as, the fact that the
24 analysis from the Office of Planning and the ANC is in
25 the affirmative.

1 So, I'm going to be voting in favor of this
2 application. Mr. Blake, do you have anything that you
3 would like to add?

4 VICE CHAIR BLAKE: I'm in support of the
5 application. And as you said, assuming this is a record
6 lot which we are, I believe the record does support that,
7 narrowly, but it supports that, I do believe the
8 Applicant has met the burden of proof to be granted the
9 requested relief. They've demonstrated that a
10 five-foot side yard would provide sufficient separation
11 so that light and air isn't unduly impacted, the proposed
12 window placement should lessen potential impact on
13 privacy, and the height, roof line, setbacks along the
14 street limiting potential visual intrusion.

15 And I think the proposed house would be
16 consistent with occupancy bulk, rear yard requirements,
17 and would be under the permitted height. So, in other
18 words, it meets the building standards otherwise. As
19 far as parking is concerned, I'm very comfortable with
20 that because the topography doesn't support it and there
21 is available parking in the immediate vicinity. Give
22 great weight to the Office of Planning's report and great
23 weight to the ANC's written report is stating no issues
24 or concerns. I'll be voting in favor.

25 CHAIRPERSON HILL: Okay, great. Thank you.

1 Vice Chair Miller?

2 COMMISSIONER MILLER: Thank you, Mr.
3 Chairman. I agree with your analysis and Board Member
4 Blake's analysis that the special exception criteria
5 for this application has been made in this case. And
6 appreciate the Applicant's community outreach to
7 neighbors and to ANC4B where they got unanimous, I think
8 unanimous support, support at least. I don't have it
9 in front of me. So -- and Office of Planning's
10 recommended approval. So, I'm prepared to vote for this
11 application right now.

12 CHAIRPERSON HILL: Thank you. All right, I'm
13 going to make a motion then, to approve application
14 number 21338 as captioned and read by the Secretary,
15 and ask for a second. Mr. Blake.

16 VICE CHAIR BLAKE: Second.

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

19 MS. MEHLERT: Please respond to the Chair's
20 motion to approve the application. Chairman Hill.

21 CHAIRPERSON HILL: Yes.

22 MS. MEHLERT: Vice Chair Blake.

23 VICE CHAIR BLAKE: Yes.

24 MS. MEHLERT: Vice Chair Miller.

25 COMMISSIONER MILLER: Yes.

1 MS. MEHLERT: Staff would record the vote as
2 three to zero to two to approve application number 21338
3 on the motion made by Chairman Hill and seconded by Vice
4 Chair Blake.

5 CHAIRPERSON HILL: Thank you. You guys, I
6 have an administrative question of the Secretary. I'm
7 just going to call her and I'll come right back. Thank
8 you.

9 (Whereupon, the above-entitled matter went
10 off the record at 11:24 a.m. and resumed at 11:34 a.m.)

11 CHAIRPERSON HILL: Okay, Madam Secretary.
12 Thank you. You can call us back in, and you can call
13 our next case.

14 MS. MEHLERT: The Board is back from a break
15 and returning to the hearing session. The next case
16 is Application No. 21333 of Parasol Tree Holdings, LLC.

17 This is a self-certified application pursuant to
18 Subtitle X, Section 901.2 for a special exception under
19 Subtitle E, Section 5201 from the lot occupancy
20 requirements of Subtitle E, Section 210.1 and pursuant
21 to Subtitle X, Section 1002 for a use variance for
22 Subtitle U, Section 301 to allow an office use.

23 This is for a new office use on the first floor
24 of an existing two-story attached building and a
25 three-story rear addition for a special use. It's

1 located in the RF-1/CAP zone at 409 East Capitol Street,
2 Southeast, Square 817, Lot 812. This hearing began on
3 September 10th where party status in opposition was also
4 granted to Frank Snellings and Mary Landrieu. The
5 hearing was continued to allow additional submissions.

6 Participating in that hearing were Vice Chair Blake,
7 Board Member Smith, and Commissioner Miller.

8 CHAIRPERSON HILL: Okay, great. Thank you.

9 I have a couple of things to say. But first, I'm going
10 to have the Applicant introduce themselves for the
11 record, please.

12 MR. SULLIVAN: Thank you, Mr. Chairman and
13 Board members. Marty Sullivan with Sullivan & Barros
14 on behalf of the Applicant.

15 CHAIRPERSON HILL: Okay, great. Thank you.

16 And then I see the party in opposition is represented
17 by Mr. Blanchard. Is that correct?

18 MR. BLANCHARD: That's correct.

19 CHAIRPERSON HILL: Mr. Blanchard, can you
20 introduce yourself for the record?

21 MR. BLANCHARD: Yes, good morning. Chairman
22 Hill and members of the Board, my name is Lyle Blanchard,
23 Greenstein, DeLorme, Luchs. And I'm representing the
24 part opponents, Frank Snellings and Mary Landrieu.

25 CHAIRPERSON HILL: Okay. Thanks, Mr.

1 Blanchard. I haven't seen you in a while.

2 MR. BLANCHARD: Yes, good to see you.

3 CHAIRPERSON HILL: Good to see you.

4 MR. BLANCHARD: We missed you on the 9th --
5 I mean, on the 10th of September.

6 CHAIRPERSON HILL: Oh, come on. I'm sure
7 Vice Chair Blake, he did a great job, I'm sure.

8 MR. BLANCHARD: Yes, he did.

9 CHAIRPERSON HILL: Let's see. So your
10 client, Mr. Snellings, can you hear me? Mr. Snellings,
11 can you hear me?

12 MR. SNELLINGS: I can hear you. Can you hear
13 me?

14 CHAIRPERSON HILL: Yes. Could you introduce
15 yourself for the record, please?

16 MR. SNELLINGS: Yes, I am Frank Snellings on
17 with my wife, Mary Landrieu of 405 East Capitol Street
18 and opposing this change of use variance and lot
19 occupancy.

20 CHAIRPERSON HILL: Okay, great. Mr.
21 Snellings, is Ms. Landrieu with you?

22 MR. SNELLINGS: She is not. She is in her
23 car driving to St. Bernard Parish out of Slidell,
24 Louisiana. But she has got the numbers to call in when
25 she's supposed to speak.

1 CHAIRPERSON HILL: Right. I see a number.
2 Ms. Landrieu, can you hear me?

3 MR. BLANCHARD: Chairman Hill, that 518
4 number is one of our witnesses. That's Mr. Josh Thayer.

5 CHAIRPERSON HILL: Oh, okay. So Ms. Landrieu
6 is not with us right now. Okay. Mr. Snellings, if you
7 want to go ahead and mute yourself and we'll get to you
8 as well. You have witnesses, Mr. Blanchard. Is that
9 what you're saying?

10 MR. BLANCHARD: That's correct, Mr. --
11 Chairman Hill.

12 CHAIRPERSON HILL: Mr. Thayer and Ms.
13 Haislmaier.

14 MR. BLANCHARD: Haislmaier, I think, or
15 something like that.

16 CHAIRPERSON HILL: Okay.

17 MR. BLANCHARD: I'm not sure that she's on.
18 (Simultaneous speaking.)

19 CHAIRPERSON HILL: I got you. You think
20 that's -- Mr. Thayer, can you hear me?

21 MR. THAYER: Yes.

22 CHAIRPERSON HILL: Great. Could you
23 introduce yourself for the record?

24 MR. THAYER: Sure thing. My name is Joshua
25 Thayer. I'm a former tenant of 409 East Capitol Street,

1 Southeast.

2 CHAIRPERSON HILL: Okay, great. Thank you.

3 Okay. Mr. Thayer, if you -- I'm sorry. If you could
4 mute your line as well. Okay, great. So let me start
5 by saying a couple thing.

6 One, I have read into the record. It's a big
7 record. And so I've had a chance to kind of read into
8 it. I haven't had a chance to watch the whole video.

9 So what I think I'm going to have to do probably later
10 is I'm not going to be able to vote on this today.

11 And so I'm going to have to go back and take
12 a look at the tape at some point in time. But I know
13 that what we are doing because I have had a chance to
14 review the record is we're going to have a continued
15 hearing here. So basically we're going to go ahead and
16 talk about the items that the Board has asked for and
17 not go back and review the merits of the case in terms
18 of we did that already.

19 Now at the same time, I know that we're going
20 to work through this as best as we can and I've read
21 the record. And I can see that the items that are in
22 the record, it seems as though there is some intense
23 feelings perhaps, one way or the other. And so we're
24 going to try to calmly get through this is what I'm trying
25 to point out, and that's kind of it. So after that,

1 Mr. Sullivan, can you hear me?

2 MR. SULLIVAN: Yes, I can, Mr. Chair.

3 CHAIRPERSON HILL: So before you start, Mr.
4 Sullivan, can you -- I mean, I have the report here and
5 I know what we've asked for. But could you please
6 summarize what the Board asked for from the last hearing?

7 MR. SULLIVAN: Sure. The first thing was
8 clarity on the licensing for the commercial business
9 and rental property. Next was comments on precedents
10 of Bernstein v. DC BZA. Third, letter from the previous
11 zoning administrator and follow-up with the current
12 zoning administrator.

13 And this was -- the purpose of that was there
14 were two points. One was whether or not we can have
15 a flat together with a nonresidential use in the RF zone
16 or whether the two-unit limit was limited to both
17 commercial and residential, meaning we can only have
18 one residential unit. And we've since -- well, I won't
19 get into --

20 (Simultaneous speaking.)

21 CHAIRPERSON HILL: So what else? Is that the
22 end of it?

23 MR. SULLIVAN: No. Updated architectural
24 plans to show the rooms and windows. And by the way,
25 those were updated also to show just one residential

1 unit now. We were proposing two units in addition to
2 the nonconforming use of the commercial use variance.

3 So now we're just proposing one residential unit.

4 CHAIRPERSON HILL: Okay.

5 MR. SULLIVAN: And then had a rear elevation,
6 I think, which wasn't on there before. We didn't have
7 a plan showing windows on the rear. And then the HPRB
8 staff report was the final item.

9 CHAIRPERSON HILL: Okay, great. Okay. All
10 right. So Mr. Blanchard, those are the items that we're
11 going to review right now and go through that. Okay.

12 Let's see. And again, if everyone could just mute
13 themselves unless they're speaking because there's
14 always, like, some feedback issue.

15 Mr. Sullivan, if you want to go ahead and walk
16 us through what you wanted to walk us through at this
17 point. And you can begin whenever you like. One more
18 thing. And then again, what we try to do is, again,
19 the parties in opposition, Mr. Blanchard, you've been
20 here before, right?

21 So you basically get the same amount of time
22 as the Applicant. So I'm just trying to keep us all
23 in context here as to what we're going to do in the next
24 30, 40 minutes. Okay. Go ahead, Mr. Sullivan.

25 MR. SULLIVAN: Thank you, Mr. Chair. I have

1 a PowerPoint that's in response to Mr. Blanchard's
2 filing last week. We had a filing and then they had
3 a response. So I'll use that PowerPoint as the basis
4 for going over the items that we submitted and my
5 response to Mr. Blanchard's response to that.

6 Regarding clarity on the licensing for the
7 commercial business and rental property, we did submit
8 some information on that. And I also have the property
9 owner with us here if the Board has any questions for
10 him, Tony Jia. My main point on this is that it's not
11 relevant to either the special exception or the use
12 variance.

13 And we've provided the information on that
14 in our submission. Comments on the precedence of
15 Bernstein, so -- well, I'll go through the five items
16 real quick, then I'll go through my responses. I'm
17 sorry. And I'll talk about that in the responses on
18 Bernstein as well. The letter from the previous zoning
19 administrator, there were two issues that Board Member
20 Blake -- Chair Blake had raised in that first hearing.

21 CHAIRPERSON HILL: Hey, Mr. Young. Can you
22 hear me?

23 MR. YOUNG: Yes, I can.

24 CHAIRPERSON HILL: Can you drop the slide
25 deck? Thanks. So Mr. Sullivan, again, right, these

1 are the items that the Board asked about, and this is
2 what you're going to provide clarity on those five items.

3 So I'm saying that just so I can focus also. So go
4 ahead.

5 MR. SULLIVAN: Thanks. Appreciate that. So
6 Board Member Blake asked for a letter from the previous
7 zoning administrator and follow-up with the current
8 zoning administrator on, as I understood it, two issue.

9 One is whether or not this property is a --
10 this building is a principal residential building and
11 therefore able to seek special exception relief under
12 5201. And we had a similar case to this on 1500 Ogden
13 Street. I think it was about seven years ago.

14 And we have a determination letter from the
15 zoning administrator that's in the case file where he
16 uses the calculation method of just majority use. So
17 if it's a majority residential use, then it can obtain
18 a special exception for relief from lot occupancy. In
19 that case, there was a grocery store use that took up
20 half of the gross floor area of the building and then
21 there was a residential use on top of it in the same
22 footprint. They were 50/50.

23 In that letter, he stated, because the
24 proposed structure with the addition is going to be more
25 residential than commercial, then 5201 applied and we

1 can get special exception relief. In our case, we're
2 already more residential than commercial because not
3 all of the first floor is the commercial use. And then,
4 of course, the proposed will be a much higher percentage.

5 The other issue that was asked about was
6 whether or not we can have a flat in addition to the
7 nonconforming or to the commercial use that we're asking
8 the use variance for. And that letter actually answered
9 the same question as well. But that's a moot point now
10 because we've dropped the second residential unit. And
11 so now we're just proposing one residential unit.

12 CHAIRPERSON HILL: All right. Mr. Blake --

13 MR. SULLIVAN: Mr. Blake.

14 CHAIRPERSON HILL: -- has his hand up. Go
15 ahead, Mr. Blake.

16 VICE CHAIR BLAKE: Thank you, Mr. Chair, and
17 thank you, Mr. Sullivan, for following up on those
18 questions you asked. Since I asked it, I'm going to
19 just follow up because I have one quick question. I
20 looked at the Ogden case -- situation that Mr. LeGrant
21 responded to.

22 And the primary difference I saw between these
23 cases was the fact that Ogden Street was an existing
24 legal nonconforming retail use. And in responding to
25 that, it does make sense to say if you had that existing

1 legal -- and it was mentioned several times in the
2 termination letter. It's not an insignificant factor.

3 In this particular case, we have a full
4 residential building at this time because the
5 nonconforming has expired. So I actually think that
6 E, 5201 is fine for a full residential building which
7 is what it is right now. But in this particular case
8 where this analysis was done, it was within an existing
9 legal nonconforming retail use.

10 If you could explain to me, kind of clarify
11 that, I'd appreciate it. And also I think you mentioned
12 in this reply because I think that was -- no, we'll go
13 back to that. Let's just stay with this.

14 MR. SULLIVAN: So if I understood the -- and
15 I don't understand actually the question. But I'll
16 understand what I think I -- I'll talk. And then
17 hopefully we can get to the right end point.

18 The issue was -- well, I mean, if that's the
19 case, first of all, we're not a full residential building
20 because the use was never converted to residential.
21 We have an existing currently vacant commercial space
22 that, yes, the history of it was it was a dry cleaner
23 for years and years and year. It was built as commercial
24 space.

25 It's always been operated as commercial space.

1 It's never been a residential space. Prior to this
2 Applicant purchasing the property, the tenant was
3 replaced. The dry cleaner tenant was replaced with an
4 office tenant without that then owner doing any of the
5 necessary work in order to make that new use legal which
6 would've required a use variance at the time of that
7 change.

8 And so -- but the Ogden letter relates to --
9 and we have a similar letter from the zoning
10 administrator for this case too as it relates to what
11 lot occupancy this property is entitled to, whether it
12 is a residential structure or all other structures.
13 And Mr. Beamon used the same rationale, the majority
14 use. The majority use was residential, and this is a
15 residential --

16 VICE CHAIR BLAKE: Is that in -- I didn't see
17 that. I didn't see that. You had a termination letter
18 on this property?

19 MR. SULLIVAN: Yes. And I don't know if we
20 put that in the file or not because it was --

21 (Simultaneous speaking.)

22 VICE CHAIR BLAKE: If it's on this property
23 --

24 MR. SULLIVAN: I don't know.

25 VICE CHAIR BLAKE: -- why would we put that

1 and not this? I have a second question.

2 MR. SULLIVAN: It was a separate issue. It
3 was a separate issue. And I'll check it. I'm sure
4 we're looking for it now. I'll see if it's in there.

5 VICE CHAIR BLAKE: Okay. But --

6 MR. SULLIVAN: Also, all of this is
7 self-certified as well. So if the zoning administrator
8 does have a problem with it and we did follow up with
9 the zoning administrator and the deputy zoning
10 administrator have not received a response yet to
11 whether or not they would affirm Mr. LeGrant's decision.

12 But his decision at heart was you have a structure.

13 And part of that structure is used for
14 nonresidential and part of that structure is used for
15 residential. And the majority use will determine
16 whether or not that's a residential building. In Ogden,
17 it's even clearer because -- well, in our case, too --
18 because he used the proposed relative floor areas, not
19 just the existing.

20 So we had a 50/50 building in Ogden. And he
21 said, you can apply for a special exception because at
22 the end of the day after you do the addition, you're
23 going to end up with a majority residential use. And
24 so I just think the only distinction is what the space
25 is for. It's not residential. So either it's

1 residential or it's not residential. And our existing
2 first floor is not residential.

3 VICE CHAIR BLAKE: Okay. Now I appreciate
4 what you're saying about the fact that it's a
5 self-certified application. But every time I ask you
6 questions you don't want to answer, you typically say
7 it's a self-certified application. So just indulge me
8 --

9 MR. SULLIVAN: With all due respect, I think
10 I did a pretty good job of trying to answer that question.

11 VICE CHAIR BLAKE: Just indulge me.

12 MR. SULLIVAN: And it's true. It's true.

13 VICE CHAIR BLAKE: Let me just --

14 MR. SULLIVAN: I'm only saying it because it's
15 true that it's self-certified.

16 VICE CHAIR BLAKE: Okay. You're right. It
17 is true, Mr. Sullivan. It is true. All right. Now
18 I'm going to ask the question again. So the reason I
19 ask that question a minute ago was that, okay, this is
20 a use variance as you know.

21 And see, we've got a couple different things.
22 We have the special exception on one end and a use
23 variance. So we're bouncing back and forth between
24 what's applicable and what's not.

25 Now the reason I said this is a fully

1 residential building is because you've had abandonment
2 and you've had an illegal use in there, both of which
3 terminate or end your nonconforming -- legal
4 nonconforming. In this particular case you talked
5 about, it had one. I'm just trying to tie the dots.

6 I'm not trying to -- just explain to me how I get that
7 together and don't have me conflicted with facts. If
8 you don't want me to do it, I mean, I'm not -- but I'm
9 just asking if you could just help me connect those dots.

10 MR. SULLIVAN: I would say all of that is
11 irrelevant is at the heart of it. The fact that we have
12 a space. We have a space that was built as commercial,
13 always used as commercial. The fact that a previous
14 owner didn't get the paperwork or didn't get the relief
15 that he needed to change that use doesn't change the
16 fact of the variance criteria that we're arguing.

17 VICE CHAIR BLAKE: Okay.

18 MR. SULLIVAN: Those are all related to the
19 property and the structure itself. We're not saying
20 we have a right to only ask for a use variance when
21 there's a nonconforming use. The reason we need a use
22 variance is because we have no legal use. That's
23 exactly why we need it.

24 VICE CHAIR BLAKE: Okay. Let's clarify on
25 the use variance. This is helping both of us. Why the

1 fact that the previous owner created this situation --
2 and it's very technical words.

3 You can exclude certain things and change
4 this. But there's an element of self-creation when the
5 prior owner did that which would preclude a use variance.
6 So I need you to just help me reconcile that.

7 MR. SULLIVAN: Yeah, I would disagree with
8 that because he had -- it doesn't have anything to do
9 with the current owner. The current owner bought it
10 with a tenant using it as office space. And the previous
11 owner was required to ask for a use variance and did
12 not.

13 So it's not a situation of him creating the
14 office use which was the issue in Bernstein, by the way.

15 The owner of the building actually illegally created
16 the space. This client and the previous owner didn't
17 illegally create the commercial use.

18 They just failed to follow up on it. And so
19 -- but we need the relief regardless of whether he did
20 the paperwork or not. Even if he had, say, gotten a
21 dry cleaner in there or the dry cleaner continued, we
22 need it on the change of use and we also need it for
23 the lapse of use, by the way, which we're not
24 challenging.

25 We know it's been more than three years. I

1 think we stated that in the original. So Mr.
2 Blanchard's witness is going to say it's more than three
3 years is probably unnecessary because we stipulate to
4 that. I just don't think it's relevant. We still need
5 the use variance because of the space.

6 VICE CHAIR BLAKE: And just to clear,
7 self-creation you're saying does not transfer from a
8 prior owner to this owner --

9 MR. SULLIVAN: Not exactly. Not exactly.
10 Well, I'm not saying that -- I'm saying in this case
11 it's not the situation. Otherwise, all the other four
12 cases that the Board's approved that are identical to
13 this case would have the same issue. You'd be
14 self-creating a hardship just by one tenancy ending and
15 then not being able to find another tenant. And so we're
16 not asking for relief because he -- I mean, we're not
17 asking for relief because he changed the space. We're
18 asking for relief -- yes, Mr. Chair.

19 CHAIRPERSON HILL: Okay. So I'm kind of
20 following. And I think, Mr. Blake, maybe we'll come
21 back to more questions. If he wants to just keep --
22 I mean, I don't know if you guys are going to come to
23 answer right now.

24 I am glad I missed the last hearing I got to
25 tell you. Now I'm feeling better about missing the last

1 hearing. But, Mr. Blake, do you want to come back and
2 let him finish the rest of the little --

3 VICE CHAIR BLAKE: That's fine. That's the
4 -- I just want to stop on that point because there are
5 a couple things that I wanted to touch on before we went
6 beyond that. That's all. That's fine.

7 CHAIRPERSON HILL: I do have some questions
8 about the commercial stuff as well. But Mr. Sullivan,
9 why don't you go ahead and finish explaining what the
10 Board asked for and what you gave them, please.

11 MR. SULLIVAN: So the last two items are just
12 the updated architectural plans and then the HPRB staff
13 report. And I don't have much to add on that. The
14 architect is with us if you have any questions for the
15 architect on that.

16 There are windows on the rear elevation, none
17 on the sides. And we do have a 30-foot rear yard as
18 well. So we're 10 foot over the requirement for the
19 rear yard setback. And so yeah, that's it for the items.

20 COMMISSIONER MILLER: Mr. Chair, on the --
21 Mr. Sullivan, on the HPRB staff report, which I think
22 I asked for, I was having trouble finding that in the
23 record. Your supplement, your post-hearing statement
24 said you were providing them in a separate document.

25 It's probably me. I can't find that document. If you

1 can direct me to where it is in the exhibit.

2 I realize the opposition is contesting that
3 notice of that whole HPRB proceeding as well. But I
4 was just trying to see what the staff report was, and
5 I couldn't find it in the record. If it's there, direct
6 me to it. Or if it's not there, put it in now so I can
7 look at it.

8 MR. SULLIVAN: Okay. I'll get that exhibit
9 number for you. And my assistant is telling me she's
10 not seeing it, but it was definitely submitted with the
11 submissions. So we'll submit it right now again if it's
12 not in the record.

13 COMMISSIONER MILLER: Okay. Thank you. Mr.
14 Chairman, I hope will accept that into the record.

15 CHAIRPERSON HILL: Yeah, sure. Madam
16 Secretary, when you do get that, please let us know and
17 let's go ahead and drop that into the record. Okay.
18 Let's see.

19 MS. MEHLERT: It does -- sorry. It does look
20 like the Applicant submitted it with their post-hearing
21 submission. But for some reason, it never made it into
22 the record. So we'll get that in the record right away.

23 CHAIRPERSON HILL: Okay, great. Thank you.

24 Okay. So what we're going to do, we're going to ask
25 questions again. But what I'd like to try to get through

1 again is what this is which is a continued hearing,
2 right? So Mr. Blanchard, of the items that the Board
3 had asked for, what type of response would you like to
4 give or clarification on the items that the Board had
5 asked for?

6 MR. BLANCHARD: So do you want me to do that
7 now or wait until Mr. Sullivan finishes --

8 CHAIRPERSON HILL: I think Mr. Sullivan is
9 done. Right, Mr. Sullivan?

10 You're on mute, Mr. Sullivan. You're on mute.
11 That's okay. We'll wait for you. Okay. We'll wait
12 for you. And I forgot. Right. He had a slide deck
13 -- I'm sorry, a PowerPoint.

14 MR. BLANCHARD: Right. I'd prefer to respond
15 to that.

16 CHAIRPERSON HILL: Yeah. Well, I'm not sure
17 -- hold on. I guess I'm looking -- and this is what
18 I'm going to tell Mr. Sullivan.

19 MR. SULLIVAN: Sorry.

20 CHAIRPERSON HILL: That's okay. Can you hear
21 us?

22 MR. SULLIVAN: Yes, I can hear you. I just
23 couldn't get my mute button off for some reason.

24 CHAIRPERSON HILL: I got you. Thanks. And
25 I guess -- it's okay.

1 (Simultaneous speaking.)

2 MR. SULLIVAN: And the only thing I --

3 CHAIRPERSON HILL: Wait, wait, wait a second.

4 MR. SULLIVAN: I'm sorry.

5 CHAIRPERSON HILL: Give me a second. Give
6 me a second. And Mr. Blanchard, the reason I was
7 assuming that Mr. Sullivan was kind of done -- I got
8 to say something. It's been a long time since I missed
9 the first hearing and I'm only here for the continued
10 hearing.

11 I'll tell you something that's very -- no,
12 no. I'll tell you something that's very easy to do.

13 It's very easy to now know what is on the continued
14 hearing because if I start hearing things from the first
15 hearing, I was, like, no, no, no, no. I'm actually here
16 for the continued hearing, right?

17 So a lot of this stuff that Mr. Sullivan, you
18 guys seem to be talking about in the slide deck -- and
19 it's fine, we can go ahead and do it -- seems to be talking
20 about the first hearing. But we'll see what Mr.
21 Sullivan has to say. So go ahead, Mr. Sullivan. You
22 can go ahead and give us your -- would you like Mr. Young
23 to pull up the PowerPoint?

24 MR. SULLIVAN: No. So I don't think I need
25 to do that because if this ends up -- if I get to respond

1 to Mr. Blanchard, I'll just weave it in. I've talked
2 about most of this stuff in the PowerPoint. So I don't
3 want to waste the Board's time with that.

4 I could just respond to a couple points if
5 need be, if I can. I just wanted to say I think this
6 is an appropriate case for the Board to bifurcate the
7 decision as well. We have two very distinct areas of
8 relief. And so if the Board found it necessary to do
9 so, we would suggest or request that they do that.

10 That's it.

11 CHAIRPERSON HILL: Okay, great.

12 MR. SULLIVAN: Thank you.

13 CHAIRPERSON HILL: Okay, Mr. Blanchard. Can
14 you hear me?

15 MR. BLANCHARD: I'm unmuted now. Yes, I can
16 hear you.

17 CHAIRPERSON HILL: Yeah, I don't mean to throw
18 your presentation off now if your basic plan was to
19 respond to that PowerPoint. So I am going to ask you
20 to go ahead and do whatever you think you might need
21 to do to represent your client. All I'm trying to point
22 out, as I said, I'm not going to be able to make a decision
23 today. I've read into the record I haven't had a chance
24 to watch the video. And so I'm going to view that the
25 next time. But really I'm just here to talk about the

1 continued hearing questions that the Board had. But
2 if you feel the need to respond to some of the things
3 that are in the record that the Applicant has put
4 forward, then go ahead and do so.

5 And then we'll have -- Mr. Sullivan will have
6 an opportunity to rebut those items. You'll have an
7 opportunity to ask questions on those items. We're just
8 trying to get through this so that at the end of the
9 day, and I keep mentioning this, it's the Board that
10 has to figure this out, right? And so you know that,
11 Mr. Blanchard. Okay. Go ahead, Mr. Blanchard, and
12 give us your presentation.

13 MR. BLANCHARD: Certainly. So thank you.
14 So there were those five items, and I'll limit my remarks
15 to those. On the licensing issue, our response to that
16 was merely to point out that there had been -- that there
17 is no license yet. That's obvious because of the C of
18 O issues.

19 And my point was providing all of those C of
20 Os was just to get to the conclusion that the dry cleaner
21 use had, in fact, lapsed. Mr. Sullivan has stipulated
22 to that. So I will not need to call Mr. Thayer on that.

23 He was a tenant, and the dry cleaner -- one of our
24 attachments was an -- not an affidavit but a sworn
25 statement from Frank Snellings based on what Mr. Thayer

1 told him.

2 And that's why I had Mr. Thayer here today.

3 But basically that the dry cleaner use ended sometime
4 in the middle of 2020. So that's now more than five
5 years ago. And I do not dispute that the way to share
6 that now is to request a use variance.

7 So onto the next point, Bernstein. And in
8 my filing, I have several paragraphs about why I believe
9 Bernstein and other cases are applicable. And those
10 really center on the fact that -- and I was going to
11 call Mr. Snellings.

12 I'd like to give him just a moment or two to
13 talk about why my clients changed their mind and now
14 oppose the use variance. But essentially, Mr.
15 Sullivan's client -- Mr. Sullivan and his client has
16 said there's a practical difficulty. That's the shop
17 window or show window in front of the building on the
18 first floor, ground floor, and that somehow that shop
19 window makes it very difficult for them to revert back
20 to a residential use on the ground floor.

21 But there really isn't evidence in the record
22 of how that's an undue burden, either through the cost
23 of renovating the property. The property is going to
24 have to be substantially renovated just to do the
25 addition that they're proposing with a special

1 exception. And so it remains to be seen how much of
2 a hardship that really is.

3 And Bernstein, it was an office space. It
4 was used illegally and self-created as Mr. Blake pointed
5 out. And they tried to show, hey, it's going to be
6 difficult to make this a residential unit.

7 But the Court said they weren't seeing any
8 evidence that either they were -- it was difficult to
9 market the unit, the empty illegal commercial space as
10 a residential unit any more than marketing any other
11 of the units in that Bernstein property which was The
12 Chastleton on 16th Street. So that's really my point
13 with Bernstein is that they haven't -- there's not enough
14 there, there to prove the test, the practical difficulty
15 and economic hardship test. On the -- what do we have
16 next?

17 CHAIRPERSON HILL: The ZA letter. The ZA
18 letter.

19 MR. BLANCHARD: The ZA letter, we're not
20 disputing the original plans which are really just
21 concept plans. The residential square footage was 52
22 and a half percent. The commercial square footage was
23 47 and a half.

24 We've not disputing that it was a residential
25 use. So the only point that I pointed out in my letter

1 is that we still don't know what the utility space is
2 going to be for either the commercial unit or the
3 residential unit. And that is a point that was made.

4 It was left as an open issue in the zoning
5 administrator's letter back in April of 2022. And
6 that's the letter that the architect put in the plans.

7 I believe it's page 8.

8 So that's okay on what's principal, what's
9 not. But I don't think the facts are there yet through
10 the plans on providing enough clarity to the Board.
11 On the -- we covered that already. What else do we have?

12 CHAIRPERSON HILL: The updated architectural
13 plans.

14 MR. BLANCHARD: Yes, so that was my point,
15 the architectural plans. Also, I believe the building
16 has a basement. And there's no mention of any use of
17 that at all, not that would necessarily count at the
18 GFA.

19 And then on the staff report, I agree. That's
20 not a matter that's withing the jurisdiction of the BZA.

21 But there are issues with the design that will be
22 decided by the HPRB. And Mr. Forehand I'm sure will
23 confirm that HPRB's approval is just conceptual. It
24 still has to go back for full approval.

25 And we have filed for reconsideration. It's

1 on the HPRB's calendar earlier this month. But I would
2 like to have Mr. Snellings just get on the -- present
3 short testimony and if he can on the change in use.

4 CHAIRPERSON HILL: Okay. Where is Mr. -- oh,
5 okay. Mr. Snellings, can you hear me?

6 MR. SNELLINGS: Yes, I can. Thank you, sir.

7 And thank you, Lyle, and everyone who's participating
8 here this morning. We did not oppose the change of use
9 initially, the idea being that we have worked with three
10 neighbors since we built our home and moved in, in 2002
11 at 405 East Capitol.

12 The first one was Fluor which is at 403 East
13 Capitol. They wanted to close in their courtyard, add
14 an elevator, extend a little bit out into the driveway
15 that they have at the back of their building. And we
16 said no problem.

17 Then the neighbor who faces on 4th Street but
18 two lots -- our rear lot and their side lot -- intersect
19 at the back of our lot. They wanted to add 10 to 15
20 extra feet to their building so they can build a second
21 bedroom. We had no objection. Fine. Then Mr. Jia
22 three years ago came in with a plant and --

23 CHAIRPERSON HILL: Mr. Snellings?

24 MR. SNELLINGS: Yes, sir.

25 CHAIRPERSON HILL: Mr. Snellings? Can I

1 interrupt you? I'm sorry. I'm just literally trying
2 to remain focused because I don't want to lose my track
3 of thought.

4 MR. SNELLINGS: Sure.

5 CHAIRPERSON HILL: Mr. Blanchard, he -- Mr.
6 Snellings is providing testimony on what, please?

7 (Simultaneous speaking.)

8 CHAIRPERSON HILL: That's okay. So, Mr.
9 Snellings, I guess you're talking about the dry cleaner.

10 MR. SNELLINGS: Yes, sir. What I'm trying
11 to say is that three years ago after saying to two other
12 neighbors beforehand and also with Mr. Jia three years
13 ago, we did not object to what he wanted done with that
14 building at that time because it seemed reasonable.
15 And the reason we didn't object initially to the unit
16 variance is I thought, well, we've explained ourselves
17 to Mr. Jia and his attorney and we were hoping that we
18 would get some movement on their part and not ask in
19 addition to the use variance but ask for the increase
20 to 70 feet of lot occupancy that they would come with
21 some sort of a compromise because we're not opposed as
22 you can -- as I've said.

23 We're not opposed to them improving their
24 property. But this is a historic district. And what
25 they're proposing and have not backed off of is putting

1 this huge addition on the back that's almost 30 feet
2 high and will tower over our property.

3 And we've already testified to that in the
4 previous hearing. And what we did get from Mr. Sullivan
5 and his client was, well, we can put families in the
6 remaining units but not single people in the units if
7 that would help bring us along to a compromise which
8 almost seems to me like discriminatory against
9 individuals. But that's -- I'll leave that for somebody
10 else to opine on. So that's why we're pushing back on
11 this use variance because there's been really no
12 movement at all from the other side to try to work through
13 this and have something --

14 CHAIRPERSON HILL: Okay. Mr. Snellings --

15 MR. SNELLINGS: -- that will not be impinging
16 on us.

17 CHAIRPERSON HILL: Okay, Mr. Snellings. So
18 Mr. Blanchard -- and I don't mind. I'll have Mr.
19 Sullivan turn back on his camera and we're going to
20 continue to kind of go through these little things.
21 But Mr. Blanchard, you were asking Mr. Snellings as your
22 witness to testify for what again?

23 MR. BLANCHARD: So Chairman Hill, so at the
24 previous hearing, my client's testimony was they were
25 only opposing the special exception. And they did not

1 oppose the use variance. But after that hearing
2 concluded --

3 CHAIRPERSON HILL: Mr. Blanchard, I get it.
4 It's okay. They can change their mind. Anyone can
5 change their mind. So --

6 (Simultaneous speaking.)

7 MR. BLANCHARD: Ms. Landrieu, I believe, is
8 on the phone. I'm sorry. Go ahead.

9 CHAIRPERSON HILL: Mr. Blanchard, that's all
10 right. What I understood was that I thought Mr.
11 Snellings was going to testify as to when the office
12 use ended. Was that correct? Mr. Blanchard?

13 MR. BLANCHARD: I asked him to testify about
14 the change in use variance. He could certainly testify
15 to when it ended.

16 CHAIRPERSON HILL: Okay. Now I'm confused
17 again. Tell me again. You asked him to testify in what
18 or what?

19 MR. BLANCHARD: My first question to him was
20 please explain why he and his wife, Mary Landrieu,
21 changed their position to oppose the use variance.

22 CHAIRPERSON HILL: Okay. All right. So I
23 got that one.

24 COMMISSIONER MILLER: Mr. Chairman, I was
25 very interested in the answer to that question.

1 CHAIRPERSON HILL: Okay. I thought he
2 explained it. But, okay, Mr. Snellings --

3 COMMISSIONER MILLER: I think he had.

4 MR. SNELLINGS: We were hoping to work
5 something out that would be acceptable to both sides.

6 And we feel the Applicant has not moved more than maybe
7 an inch. And that's not very helpful.

8 CHAIRPERSON HILL: Got it. Okay. All
9 right, Mr. Blanchard. You had somebody else who wanted
10 to testify about something?

11 MR. BLANCHARD: Yes, Mary Landrieu. I
12 believe she's on the phone.

13 CHAIRPERSON HILL: Okay, great. And I just
14 want to remind my Board members they can ask whatever
15 they want to ask whenever they want to ask it. Like,
16 I'm not trying to stop anyone from asking questions.

17 And the HPRB report is now in the record. The staff
18 has just let me know. Now I'm sorry.

19 Mr. Blanchard, again, who do you want as a
20 witness next?

21 MR. BLANCHARD: Mary Landrieu.

22 CHAIRPERSON HILL: And what do you want them
23 to testify about?

24 MR. BLANCHARD: Well, if it's not repetitive,
25 when the dry cleaner ended to her knowledge and why she

1 changed her mind on opposing the variance.

2 CHAIRPERSON HILL: Okay. Ms. Landrieu, can
3 you hear me? Ms. Landrieu, can you hear me?

4 (Simultaneous speaking.)

5 MS. LANDRIEU: Can you hear me?

6 CHAIRPERSON HILL: Yes.

7 MS. LANDRIEU: Can you hear me?

8 CHAIRPERSON HILL: Yes, can you hear me, Ms.
9 Landrieu?

10 MS. LANDRIEU: I can.

11 CHAIRPERSON HILL: Great.

12 MS. LANDRIEU: Thank you, Mr. Chairman.

13 CHAIRPERSON HILL: Can you introduce
14 yourself, for the record?

15 MS. LANDRIEU: Yes, I'm Mary Landrieu. I'm
16 a longtime resident -- wife of Frank Snellings and a
17 longtime resident of the District of Columbia and live
18 at 405 East Capitol.

19 CHAIRPERSON HILL: Okay, great. So Ms.
20 Landrieu, I guess the question was if you could clarify
21 when you think it stopped being an office use. And even
22 Commissioner Miller seems interested why you guys
23 changed your mind to now opposing the use variance.

24 MS. LANDRIEU: I think it was about five years
25 ago. And I think Frank has the details on that. So

1 they far exceeded their, I think, two- or three-year
2 requirement. They just don't seem to want to pay
3 attention to any rules. And I wouldn't say our position
4 changed as much as it evolved as we got to realize what
5 some of the priorities are for the District.

6 And we aren't like you all steeped in all of
7 the detailed information. But as we went through this
8 process -- which has been difficult as you all may know
9 from the record because this developer and his attorney
10 did not give proper notifications to us, the next door
11 neighbors, or to the other neighbor on the other side
12 or to any of the neighbors. And that is a real violation
13 of the trust that we place in you guys to uphold those
14 notifications and to take that seriously.

15 CHAIRPERSON HILL: Okay. Ms. Landrieu --

16 MS. LANDRIEU: Hold on. We're not
17 unreasonable people let me say because it's my turn to
18 testify that our position evolved because we learned
19 that you all may want to have more residential properties
20 in D.C. which I understand the housing shortage. I
21 mean, I served in the Senate for 18 years. I'm very
22 well aware of the housing shortage all over the country.

23 If this gentleman that's developing this
24 property wants to put a residential unit downstairs and
25 maintain -- it's a two-unit property right now except

1 one is commercial and one is residential. He can easily
2 put a residential on the ground floor and keep the
3 residential on the up floor and pick up one residential
4 unit without violating the character of the neighborhood
5 or disappointing dozens of neighbors who have submitted
6 letters to you all opposing this expansion. So you can
7 get your extra residential unit if that's your intention
8 without harming our property and the properties around
9 us.

10 CHAIRPERSON HILL: Okay.

11 MS. LANDRIEU: So it wasn't so much a change.

12 It was an evolution of understanding what your agenda
13 is and trying to be as cooperative as we possibly can.

14 I mean, if you move past a year, not --

15 CHAIRPERSON HILL: No, that's okay. I don't
16 think there's --

17 MS. LANDRIEU: Not several months but years.

18 CHAIRPERSON HILL: I don't think there's
19 disagreement on that one. But okay, all right. And
20 you can change your mind. It can evolve. You can
21 change your mind.

22 MS. LANDRIEU: No, sir. It's not a changing
23 -- no, no, no. I am entitled to change my mind and so
24 are you. But I'm explaining I didn't change my mind.

25 I want the record to reflect that.

1 My thinking evolved as I listened to you and
2 to your group and what you all wanted to do even after
3 we were not given proper notification. Not by you all
4 but it's not your responsibility. But it is your
5 responsibility to hold people accountable for
6 notification. Otherwise, the process becomes a joke
7 for the whole city. And so that is how our position
8 has evolved. And again, if he wants to put a residential
9 unit, he wants to have families or single people or any
10 people live next door, we're perfectly fine with that.

11 CHAIRPERSON HILL: Okay.

12 MS. LANDRIEU: But yeah.

13 CHAIRPERSON HILL: Okay.

14 MS. LANDRIEU: So he can have two residential
15 units. You all can pick up on, and we could all be happy.

16 CHAIRPERSON HILL: Okay, Ms. Landrieu.
17 Thank you so much. All right. Let's see. So can I
18 hear from the Office of Planning real quick if there's
19 any additional --

20 (Simultaneous speaking.)

21 MR. BLANCHARD: Oh, Mr. Hill, I'm sorry.
22 Just a quick point. Can we see if Ms. Haislmaier is
23 on the -- is available?

24 CHAIRPERSON HILL: Okay. If everybody can
25 mute their line unless you're talking, please, because

1 there's feedback over on my end. Let's see. Okay.
2 Mr. Landrieu, who do you want to talk to again now?
3 Or I'm sorry, Mr. Blanchard, who do you want to talk
4 to? I can't hear you now, Mr. Blanchard. Now you're
5 muted. Mr. Blanchard, now you're muted.

6 MR. BLANCHARD: Okay. Now can you hear me?

7 CHAIRPERSON HILL: Yes. What were you trying
8 to do, Mr. Blanchard?

9 MR. BLANCHARD: I'm sorry. I wanted to check
10 and see if Ms. Haislmaier was available to just make
11 any remarks about -- she lives in the rear of the --
12 behind East Capitol Street. And her house is in the
13 rear. And so --

14 CHAIRPERSON HILL: Okay.

15 MR. BLANCHARD: -- I wanted her to comment
16 if she had any comment on the revised architectural plans
17 and the windows, how they would affect her privacy.

18 CHAIRPERSON HILL: Okay. Ms. -- I'm sorry.
19 Could you pronounce your name, please, for me?

20 MS. HAISLMAIER: Haislmaier.

21 CHAIRPERSON HILL: Oh, Haislmaier. Ms.
22 Haislmaier, could you introduce yourself for the record,
23 please?

24 MS. HAISLMAIER: Yes. My name is -- first
25 of all, thank you for including me in this. My name

1 is Helen Haislmaier. I reside at No. 10, 4th Street,
2 Southeast with my husband, Edmund.

3 Our garden doesn't directly back on to the
4 property in question at 409. There is one house between
5 us. But those are our neighbors at No. 8. And we will
6 be directly affected if the planning is approved for
7 this addition.

8 We've lived in the house for approximately
9 30 -- almost 34 years now. At the moment, we are not
10 directly overlooked by the property at 409 because it's
11 only a small two-story property. We spend a lot of time
12 in our garden.

13 And as I say, we've lived here a long time.

14 But based on the plan as what was shared with us if
15 the proposed three-story addition goes ahead, it will
16 be a much bigger building. And if they get the
17 permission to go over the 60 percent of the land for
18 building on, we will be directly impacted because we
19 will now have -- we will be overlooked.

20 And they will be able to see us and our
21 neighbors at No. 8 and our gardens. And we will be able
22 to see them. So lose complete privacy. And I would
23 say that our neighbors at No. 8 and we will be almost
24 more impacted should the extra store and the extra use
25 of land be approved.

1 Then even Mr. Snellings and Ms. Landrieu, we
2 have a very clear site path to the property. And at
3 the moment, you just see trees. If they build an extra
4 layer and they come up with an extra -- I think it's
5 9 or 10 feet, we will then be overlooked and lose our
6 privacy.

7 CHAIRPERSON HILL: Okay.

8 MS. HAISLMAIER: And I know site lines go down
9 from the front of the property. But I don't think any
10 were done for the rear. And I will say we will
11 definitely be impacted with that and lose the privacy
12 that we currently enjoy and have been the last 34 years.

13 CHAIRPERSON HILL: Okay. Okay, thanks, Ms.
14 Haislmaier. So okay, I understand your -- it sounds
15 as though, again, nothing has changed with the new
16 architectural plans versus the old architectural plans
17 in that record.

18 MS. HAISLMAIER: We were not aware at all of
19 the original property plans. But as I said, once we
20 learned about this they were going up a story and out
21 further, that's a lot bigger project than -- I mean,
22 the property that is there, the historic properties,
23 it's a small property. And like, Ms. Landrieu, we have
24 no opposition to turning the lower level from a
25 commercial property into a residential property --

1 CHAIRPERSON HILL: Okay, Ms. Haislmaier.

2 MS. HAISLMAIER: -- to a residential unit.

3 But it's the height and the coming out that we do object
4 to.

5 CHAIRPERSON HILL: I got you. Okay. Yeah,
6 they are opposed to that now, but it's okay. Mr.
7 Blanchard, can you hear me?

8 MR. BLANCHARD: Yes.

9 CHAIRPERSON HILL: Okay. Are you done?

10 MR. BLANCHARD: So Mr. Hill, I am done. I'd
11 like to reserve a few minutes at the very end to say
12 something after Mr. Sullivan. But I'm not going to call
13 the last witness, Mr. Thayer, because he was going to
14 testify to the voracity of what was in our exhibit, the
15 sworn statement from Mr. Snellings. But since Mr.
16 Sullivan has stipulated that the use has lapsed, I'd
17 just say that I believe that does create a --

18 CHAIRPERSON HILL: Okay.

19 MR. BLANCHARD: -- self with a hardship.
20 Thank you.

21 CHAIRPERSON HILL: Okay. Thanks, Mr.
22 Blanchard. Okay. So I'm going to ask my Board if they
23 have any questions. But give me a quick minute just
24 to get clarification from the Office of Planning. And
25 if the people on the phone, if they could mute their

1 lines, please. Thank you. Could I hear from the Office
2 of Planning, please?

3 MR. BEAMON: So good afternoon, Board
4 members. For the record, Shepard Beamon with the Office
5 of Planning. OP has reviewed the original application
6 for the requested special exception and area variance
7 relief from use permissions and lot occupancy. And we
8 have found that the request meets the criteria for
9 Subtitles E and X.

10 As requested by the Board at the previous
11 hearing for this case, OP has reached out to the current
12 zoning administrator and received confirmation via
13 email. The applicability of Subtitle E, Chapter 5201
14 which allows special exception relief from lot occupancy
15 for the use occupying the greater square footage. So
16 which in this case, it would be residential use.

17 OP has submitted a supplemental report to the
18 record for this information. And we continue to
19 recommend approval and stand on the record of the
20 original OP report. And with that, I can take any
21 questions.

22 CHAIRPERSON HILL: Okay. Thanks, Mr.
23 Beamon. Did the ZA -- is that email on the record that
24 you got from the ZA?

25 MR. BEAMON: That is not, but I can upload

1 that if needed.

2 CHAIRPERSON HILL: Okay. That'd be helpful.

3 I see Mr. Blake's hand. Mr. Blake, did you have a
4 question?

5 VICE CHAIR BLAKE: Could you repeat what you
6 just said by the ZA? I didn't hear it.

7 MR. BEAMON: About the ZA's email?

8 VICE CHAIR BLAKE: Yes.

9 MR. BEAMON: So yeah, we did receive an email
10 from the ZA's office. And they did uphold the previous
11 ZA LeGrant interpretation. So they said in this case
12 that would be the same scenario where the residential
13 use, both the existing and the proposed GFA would be
14 the primary. And therefore, we would use the lot
15 occupancy for the residential use as the -- for the
16 special exception.

17 VICE CHAIR BLAKE: And there's question for
18 you too. What would then use to determine the amount
19 of space that could be allocated ultimately to the
20 nonresidential use? Would you then do a -- if the
21 nonresidential use is -- I'm not sure what it is because
22 I haven't look at that new schematic they put out and
23 I don't know what the total amount of space is.

24 But clearly, we have to do a use variance for
25 that. Would you then do -- what amount of space would

1 then be allocated? Because it's above 40 percent or
2 is it the building then can be there as long as it's
3 devoted to residential space?

4 MR. BEAMON: The way it was interpreted was
5 that if it's over 50 percent, then we would just go with
6 the residential use. I don't think there was a minimum
7 amount of square footage that could be --

8 VICE CHAIR BLAKE: So how large could the
9 commercial space -- nonresidential space be? Could it
10 occupy the entire 70 percent? Or would it be limited
11 to 40 percent?

12 MR. BEAMON: So I think we're looking at the
13 overall building here. And in that case, we're looking
14 at the primary use. If you're looking for a maximum
15 amount of GFA that the commercial space could cover,
16 again, that would be less than 50 percent. But in terms
17 of square footage or the ground floor -- in terms of
18 the ground floor, I would have to follow up with the
19 ZA's office to confirm that. But --

20 (Simultaneous speaking.)

21 MR. BEAMON: Yeah, to my understanding, you
22 still would use that same rationale for the lot
23 occupancy, again, if the residential use is over -- or
24 if the primary use were over 50 percent.

25 VICE CHAIR BLAKE: So if I'm interpreting what

1 you said, and I'm not going to go into it right now.

2 But you're saying -- and I agree with you that the law
3 could be 70 percent occupancy so long as it was -- as
4 long as it was residentially focused. You're saying
5 that to the extent that there is a commercial space in
6 that first floor, you're unclear as to what that number
7 should -- that the amount of commercial space that could
8 occupy as far as lot occupancy is concerned.

9 MR. BEAMON: Correct. Yeah, I don't want to
10 answer that right now. I would have to confirm with
11 the ZA.

12 VICE CHAIR BLAKE: Okay. Thank you. Thank
13 you.

14 CHAIRPERSON HILL: Commissioner Miller, do
15 you have any questions of anyone?

16 COMMISSIONER MILLER: Thank you, Mr.
17 Chairman. Yeah, I apologize. It's kind of -- we're
18 going back to the original hearing. But if Mr. Beamon
19 could just elaborate on the special exception for the
20 lot occupancy why this proposed additional expansion
21 in your view does not adversely impact the adjacent
22 properties, both in the rear in the opposition party,
23 why it doesn't adversely impact their use and enjoyment
24 of their property and light and air of the property.

25 If you could just briefly restate what I think your

1 report states and what you stated previously.

2 MR. BEAMON: Yeah, correct. So again, this
3 is -- they're not proposing to exceed the maximum lot
4 occupancy allowed by special exception. The Applicant
5 did provide some sun studies for both the right and
6 proposed development where it appears to be minimal
7 change in the shadow coverage on the neighboring
8 properties.

9 Considering that they're proposing to have
10 no windows on either of the side facades, there wouldn't
11 be any views onto the adjacent properties. They are
12 not proposing a height that exceeds the height allowed
13 in the RF zone. And also, they are not proposing to
14 extend the addition more than 10 feet beyond the
15 neighboring property's rear wall. And the lastly, it's
16 already been approved by HPRB. So we don't think it
17 would conflict with the character or the nature or
18 appearance of the surrounding neighborhood, including
19 the height which from a street view, we can see that
20 there are other buildings who also are at three stories,
21 so --

22 COMMISSIONER MILLER: Do you know -- and I
23 can ask the Applicant when we talk to them again or the
24 opposition, if they know the answer to this question.

25 Do you know what the square footage is or the -- of

1 the expansion is versus what's their now or the
2 footprint, the square footage of the footprint there
3 that would be allowed? If we allow the special
4 exception, what the percentage expansion would be?

5 MR. BEAMON: I think that's a better question
6 for the Applicant.

7 COMMISSIONER MILLER: Somebody can provide
8 that for the record, maybe the Applicant or the
9 opposition might know that.

10 CHAIRPERSON HILL: Okay, hold on. The Office
11 of Planning didn't know that number. Mr. Sullivan,
12 you're the Applicant. Do you happen to know that
13 number?

14 MR. SULLIVAN: And what exactly was the number
15 again, the percentage increase in lot occupancy from
16 existing to proposed?

17 CHAIRPERSON HILL: I think it was square
18 footage.

19 COMMISSIONER MILLER: Yeah, the footprint on
20 the property and the square footage. The lot -- well,
21 I know the lot occupancy. We know that it's less than
22 10 percent.

23 The square footage increase is from what to
24 what and in terms of the footprint and what the square
25 footage inside is from existing to what's being proposed

1 in your revised architectural plan. And when you
2 respond to that, have you produced that expansion at
3 all in these revised architectural plans from what
4 previously was before us? You're not doing the
5 additional residential unit. But is it the same square
6 footage that was in the original architectural plans?

7 MR. SULLIVAN: Yes. And I think there's some
8 confusion about what was original. There was a plan
9 before HPRB two or three years ago which some people
10 I think the one they may have referred to as the original.
11 But there's no change in the massing or substance of
12 the plans from our original filing.

13 I do have those numbers. I know I submitted
14 them, and I can get them. But Mr. Forehand may be able
15 to answer that for us. Brian, if you can answer that
16 question. And of course, I may be misunderstanding the
17 conversation. But of course, we can't expand the use
18 at all. We would need a separate use variance for that
19 as well. We're just asking to keep the space that
20 exists.

21 CHAIRPERSON HILL: Mr. Forehand, if you could
22 introduce yourself for the record before you answer that
23 question.

24 MR. FOREHAND: Sure, absolutely. My name is
25 Brian Forehand. I'm the principal of Nth Degree

1 Architecture and Interiors and the architect of the
2 project.

3 CHAIRPERSON HILL: So do you understand the
4 Commissioner's question and can you answer it?

5 MR. FOREHAND: Yes. So the original square
6 footage per use on the space of the original, as existing
7 to clarify, residential spans at 753 square feet, 52.5
8 percent. The commercial is 682 square feet. So that's
9 47.5 percent.

10 The proposed residential would be 2,100 square
11 feet and that's spread over three floors, the two upper
12 floors and then a partial of the lower floor. And the
13 commercial proposed actually is slightly less based on
14 our proposed plans at 664 square feet. So we're not
15 -- as Mr. Sullivan mentioned, we're not able to increase
16 a nonconforming use. We can maintain it but not
17 increase it. But we're actually slightly reducing that
18 based on the current proposed plans.

19 MR. SULLIVAN: Thanks. And I would add that
20 it's in Exhibit 40, Section 3. It would go through the
21 square footage of the existing and proposed for both
22 residential and commercial and the section on the letter
23 from the previous zoning administrator in Exhibit 40.

24 COMMISSIONER MILLER: Okay. Thank you for
25 directing me to that and thank you for your response.

1 And I thank the Board for indulging my question.
2 That's it for now.

3 CHAIRPERSON HILL: Thank you, Commissioner.

4 So Mr. Blanchard, what I have for you is -- so how this
5 now works is that you have an opportunity to ask
6 questions on the continued hearing information, or I'm
7 sorry, testimony that the Applicant has put forward.

8 You also have an opportunity to ask questions of the
9 Office of Planning on the testimony that they've put
10 forward, although it seems a little repetitive as to
11 what they did the time before, but please go ahead and
12 ask your questions. And then what's going to happen
13 is Mr. Sullivan will be able to have rebuttal.

14 And then, Mr. Sullivan, as you know this,
15 whatever you provide testimony on on rebuttal, then
16 they'll have questions upon that rebuttal.

17 So Mr. Blanchard, do you have any questions
18 for the Applicant on the continued hearing information?

19 MR. BLANCHARD: Yes, for Mr. Forehand, it
20 looked to me on the revised plans that were submitted
21 on the -- just looking at my calendar, the 22nd, that
22 you provided square footages for the commercial space
23 from the first page of the grand floor plans, but you
24 did not provide square footage on the residential. So
25 it would be helpful to have that and also any -- do you

1 know what the utility space is going to be or where it
2 will be located?

3 MR. FOREHAND: So I can at least provide to
4 you and I'd have to honestly take a look at each plan
5 to see.

6 CHAIRPERSON HILL: Mr. Blanchard --

7 MR. FOREHAND: And I can effectively tell you
8 what that is because --

9 CHAIRPERSON HILL: Mr. Forehand? Mr.
10 Forehand?

11 MR. FOREHAND: Yes, I'm sorry.

12 CHAIRPERSON HILL: That's all right. If you
13 want to take a minute while we're going through this,
14 just add up -- I think all we're trying to figure out
15 is what's the residential square footage on the
16 building, right? And then you can also tell us what's
17 the residential and the office square footage on the
18 building.

19 MR. FOREHAND: Right, I did just provide that
20 information so the proposed residential is 2100 square
21 feet and the square footage of commercial is 664 square
22 feet.

23 MR. BLANCHARD: Right. So it looks to me like
24 the commercial square footage as you said was reduced?

25 MR. FOREHAND: Partly, yes, that's correct.

1 MR. BLANCHARD: Maybe 18 square feet or
2 something like that? And I think that was the issue
3 that Chairman Blake was focused on at the first hearing
4 about whether or not there was going to be any expansion
5 through a corridor in the rear.

6 MR. FOREHAND: And I can address that very
7 quickly. It's not necessary, because the square footage
8 of the commercial space doesn't require more than one
9 means of egress, so there's one in existence currently
10 and in actuality. So the front entrance would be
11 maintained as the means of egress for that space, so
12 even if a second door was provided, it wouldn't be
13 materially an expansion of that commercial space because
14 it's not needed for egress.

15 CHAIRPERSON HILL: I don't think he was asking
16 that, but that's okay.

17 Mr. Blanchard, what's your next --

18 MR. BLANCHARD: I'm sorry. For the
19 Applicant, I just have one question for OP.

20 CHAIRPERSON HILL: Sure.

21 MR. BLANCHARD: And that was Mr. -- sorry.

22 CHAIRPERSON HILL: Mr. Beamon, Mr. Beamon.

23 MR. BLANCHARD: Beamon, yes. Mr. Beamon.

24 Mr. Beamon, having heard Ms. -- and I'm trying not to
25 get her name wrong, Haislmaier, something like that and

1 I apologize. That spelling is not easy for me to get
2 my tongue around. Having heard her testimony again
3 today about the impact on her privacy which I understand
4 is just one lot away from the rear of 409, does that
5 change OP's position at all?

6 MR. BEAMON: So I believe she's actually --
7 that property owner is at 10 4th Street, Southeast,
8 correct?

9 MR. BLANCHARD: That's correct.

10 MR. BEAMON: So there's a house in between
11 their house and this property and I believe there's an
12 alley as well. I may be incorrect in saying that, but
13 --

14 MR. BLANCHARD: That's actually a private
15 driveway.

16 MR. BEAMON: Okay.

17 MR. BLANCHARD: It's an open space, so it
18 looks like an alley on the map and so if you look from
19 4th Street, you can see the rear of the building.

20 MR. BEAMON: So this property does not
21 directly abut.

22 MR. BLANCHARD: No.

23 MR. BEAMON: Okay, so yes, with it being a
24 property between this property and the other person's
25 property, we would not think that that would impact them

1 directly. And even with -- and even if it were a closer
2 property, this proposal does not propose to reduce the
3 required rear yard and again, they're not reducing --
4 they're not increasing the height beyond what's allowed
5 in the zone, so we would not change our opinion about
6 the proposed rear addition in terms of rear yard or in
7 terms of privacy or views.

8 MR. BLANCHARD: Okay. But would it
9 indirectly impact, yes or no?

10 MR. BEAMON: I don't think it would. We don't
11 see that being an issue for the rear properties. Again,
12 as we're maintaining the required rear yard.

13 CHAIRPERSON HILL: All right, Mr. Blanchard,
14 I'm sorry, your question, it doesn't seem like -- they're
15 not changing their mind based on the testimony that we
16 heard.

17 MR. BLANCHARD: Right, I just wanted to check.
18 I think the owners disagree, but that's okay.

19 CHAIRPERSON HILL: They definitely disagree.
20 Okay.

21 MR. BLANCHARD: That's the last of my
22 questions. Thank you.

23 CHAIRPERSON HILL: Okay, thanks, Mr.
24 Blanchard.

25 Mr. Sullivan, do you have any questions for

1 the -- I'm sorry, do you have any questions for the
2 opposition or the Office of Planning?

3 MR. SULLIVAN: I do not. Thank you.

4 CHAIRPERSON HILL: Okay. Mr. Sullivan, do
5 you have anything that you need to have rebuttal on?

6 MR. SULLIVAN: I do, just some rebuttal
7 testimony or information here.

8 CHAIRPERSON HILL: Go ahead.

9 MR. SULLIVAN: First, a clarification for
10 Member Blake. We did submit the other letter regarding
11 the majority question and that was actually from LeGrant
12 when this project was considered a couple of years ago
13 without BZA and it was -- and Mr. LeGrant wrote an email
14 in that case saying that the majority use rule applied
15 to make the lot occupancy for this 60 percent, not 40
16 percent. So it made it a residential building, not
17 another structure which was a little separate issue than
18 whether or not we can avail ourselves the 5201.

19 CHAIRPERSON HILL: Mr. Sullivan, give me just
20 a second real quick.

21 MR. SULLIVAN: And that was Exhibit 40B,
22 sorry.

23 CHAIRPERSON HILL: I'm sorry, 40B. Mr.
24 Blanchard, you can hear me, right? I see you nodding
25 your head. I'm just letting you know, Mr. Blanchard,

1 I'm taking notes as to what Mr. Sullivan is providing
2 rebuttal on, just so I know what questions we're going
3 to be talking about about rebuttal, okay? Okay.

4 Go ahead, Mr. Sullivan. What's your next
5 item?

6 MR. SULLIVAN: Next item, there is no basement
7 in this property. It's been stated that there was.
8 But there's no basement. I just want to clarify we're
9 not discriminating against anybody. We just -- I
10 reached out to Mr. Blanchard to say would his client
11 appreciate if we had one unit instead of two and then
12 after he said that wouldn't make a difference, we decide
13 to do it anyway just because it made for a simpler project
14 anyway.

15 Regarding notifications, I'm not sure what
16 that was about. We -- all notifications for the BZA,
17 it may have been referring to the HPRB which I didn't
18 have anything to do with and that's being handled by
19 HPRB.

20 Regarding Ms. Haislmaier, yes, she's two lots
21 away and her property is about 50 feet away from our
22 rear elevation which has a 30 foot rear yard. It doesn't
23 tower over her property. And it doesn't affect privacy.
24 Yes, they can see each other as they could now and as
25 they could without the relief.

1 And then finally --

2 CHAIRPERSON HILL: Mr. Snellings, Mr.
3 Snellings, can you mute your line?

4 MR. SNELLINGS: Yes, but I would like to say
5 something before we sign off.

6 CHAIRPERSON HILL: Okay, Mr. Snellings, I'll
7 let you do that when your attorney has an opportunity
8 to respond. Could you mute your line for now? Thank
9 you.

10 Mr. Sullivan, you just were finishing with
11 your comments about the testimony of Ms. Haislmaier?

12 MR. SULLIVAN: Haislmaier, yes, I was finished
13 with that.

14 So the last thing I want to talk about is on
15 the question of Bernstein which I wasn't -- I mean I
16 wasn't prepared to speak about it in the original hearing
17 and we did research it after this. It hasn't been
18 discussed in any of the other Board decisions that are
19 similar to this, but I would point out that it's
20 completely distinguishable from the current situation.

21 That was an affirmation of a denial by the BZA. That
22 was a space that was illegally converted to commercial
23 by an owner and then ten years later, they wanted to
24 get it approved. Is that based on that?

25 It wasn't like this property. It wasn't

1 originally built for non-residential. It wasn't like
2 this property, it didn't have a historic storefront and
3 it didn't have 80 plus years of non-residential use
4 behind it. So almost nothing about Bernstein relates
5 to the facts in this case which actually relate very
6 closely to the Board's approvals.

7 And somebody brought up the question of store
8 windows and privacy and we cited four cases that have
9 the same elements that this case has that the Board has
10 approved over the last few years and I'll just go through
11 some of the OP reports and some of the comments. Large
12 commercial bay windows --

13 CHAIRPERSON HILL: Mr. Sullivan, Mr.
14 Sullivan.

15 MR. SULLIVAN: Yes.

16 CHAIRPERSON HILL: You're providing rebuttal
17 on the windows, is that what you're saying?

18 MR. SULLIVAN: On the bay window being an
19 exceptional condition that results in an undue hardship.

20 CHAIRPERSON HILL: Okay. Was that the Office
21 of Planning that provided that testimony?

22 MR. SULLIVAN: I think Mr. -- no -- well, we've
23 asserted that and Mr. Blanchard questioned that, so I'm
24 responding to that.

25 CHAIRPERSON HILL: Okay.

1 MR. SULLIVAN: And in three of the four cases
2 that we've cited as having the same conditions as this
3 case, the bay window is cited in three of those. In
4 this case, we have -- it's an historic property, too,
5 the bay window cannot be changed. And some of the
6 commentary from the Office of Planning in those cases,
7 the most recent one which was just in 2019, the building
8 is exceptional because it was purpose built as a store.

9 It's been in commercial use since then and it has a
10 shop window projection which makes it impractical,
11 expensive, and unlikely to result in desirable
12 residential space.

13 And then the other -- I won't go through the
14 others. The others state the same.

15 CHAIRPERSON HILL: Okay.

16 MR. SULLIVAN: And we can provide more
17 evidence on that as well if the Board would like.

18 CHAIRPERSON HILL: Mr. Sullivan, it's okay.
19 If the Board asks for that stuff, they'll give it.
20 I'm just trying to get through rebuttal.

21 MR. SULLIVAN: We're happy to provide that.
22 I hadn't because I'm not in the habit of over lawyering
23 cases and these cases, it was enough to provide here's
24 the condition of the property. Here's the historic use.

25 CHAIRPERSON HILL: Okay, okay, I got you.

1 I'm just getting through rebuttal.

2 MR. SULLIVAN: Got it.

3 CHAIRPERSON HILL: Anything else?

4 MR. SULLIVAN: So last thing, yes, the last
5 thing I'll point out about that is -- I mean it's
6 important to note that I think you heard why. I'm not
7 sure I understood why they changed to opposing the use
8 variance. It sounded like it was for leverage. And
9 nobody has been opposed to this, not at the first hearing
10 and we have unanimous support from two ANCs.

11 CHAIRPERSON HILL: Okay, Mr. Sullivan, okay,
12 I don't mind -- I mean I understand what you just brought
13 up, but I'm again just pointing out, it's the Board
14 that's going to have to decide whether or not any of
15 this is within the regulations. So people can change
16 their mind. They can adapt. They can evolve. They can
17 do whatever they want to do, right? And so with that,
18 I'm going to turn to Mr. Blanchard.

19 And Mr. Blanchard, I know that you have some
20 questions perhaps on -- or actually, do you have any
21 questions on all the things that we just wrote down
22 together on rebuttal? I know your client has at least
23 one question. I want to say though these are now
24 hopefully questions, but go ahead, Mr. Blanchard.

25 You're on mute, Mr. Blanchard.

1 MR. BLANCHARD: So on rebuttal, I would just
2 disagree with Mr. Sullivan about Bernstein. I think
3 the principles are related, whether the facts are not
4 -- he cited, I believe he cited -- anyway. The facts
5 are not related. Economic hardship and practical use,
6 we in our filing provided examples of five different
7 properties that were listed on page five of my cover
8 letter on the 29th where properties with shop windows
9 or commercial frontages have been beautifully -- I don't
10 want to overuse that word, renovated into residential.
11 So it's not impractical. It's not an economic hardship
12 to convert a formerly commercial use into a residential
13 use.

14 CHAIRPERSON HILL: Okay. Okay. Mr.
15 Blanchard, give me one second.

16 What's that game show that's in the form of
17 a question?

18 MR. BLANCHARD: Jeopardy?

19 CHAIRPERSON HILL: Yes, Jeopardy. So Mr.
20 Blanchard, thank you. So I'm assuming that all of this
21 is going to be in the form of a question, but it's going
22 to Mr. Sullivan, right, because you're not just
23 providing testimony that he said something that you
24 don't agree with. You basically said, Mr. Sullivan,
25 do you agree with this and he would then say no. So

1 okay, you just talked about Bernstein. Do you have any
2 questions about his rebuttal?

3 MR. BLANCHARD: I would say Mr. Sullivan, is
4 it impossible to convert a former commercially used
5 building with a shop window into a residential use, yes
6 or no?

7 MR. SULLIVAN: Yes. In this case, it is
8 virtually impossible, it is reasonably impossible which
9 is the language of the use variance and in accordance
10 with the standards adopted by this Board in at least
11 the last five decisions in cases identical to this case.

12 CHAIRPERSON HILL: Okay, Mr. Blanchard,
13 what's your next question?

14 MR. BLANCHARD: I don't have any other
15 questions. I think Mr. Snellings wanted to say
16 something about notice, maybe.

17 CHAIRPERSON HILL: Okay. Mr. Snellings, do
18 you have any questions about rebuttal?

19 MR. SNELLINGS: No. I just wanted to say that
20 Mr. Sullivan said there is no basement and there is a
21 basement with this building. I've been in it several
22 times in the years past and access is provided through
23 the front with a double metal wide opening where you
24 open it like you would like in New York City and places
25 like that. But it does definitely have a basement. Now

1 it's not improved, but it has a basement at least half
2 way, if not all the way to the rear of the existing
3 property.

4 CHAIRPERSON HILL: Okay. Thanks, Mr.
5 Snellings.

6 MR. SNELLINGS: For whatever that's worth.

7 CHAIRPERSON HILL: Sure. Is there a
8 basement, Mr. Sullivan? Or actually, I should ask the
9 architect. I should also really say is there a basement
10 in your plan? Where is the architect?

11 MR. SULLIVAN: Can we ask the architect or
12 Mr. Jia?

13 MR. FOREHAND: I mean the reason that we're
14 not showing the basement in the plans as Mr. Snellings
15 just indicated, it's not a finished basement and there's
16 no intention to include that in our scope.

17 CHAIRPERSON HILL: Got it. Okay.

18 MR. SULLIVAN: Can we hear from Mr. Jia on
19 that because --

20 CHAIRPERSON HILL: Mr. Jia -- it just sounds
21 like there's something here now, but you guys aren't
22 proposing --

23 MR. FOREHAND: If I misstated that that was
24 just relaying what my client had told me.

25 CHAIRPERSON HILL: That's fine. Mr. Jia?

1 Can you hear me and if so, can you introduce yourself
2 for the record?

3 MR. JIA: Yes, thank you members of the Board.

4 I'm Tony Jia. I'm the property owner. The question
5 regarding the basement in my understanding, there is
6 a public access on the main road. It's not a basement
7 that we've ever used or ever been in and for the purposes
8 of this hearing, it's not a basement that we're using.

9 CHAIRPERSON HILL: Oh, my God, Mr. Jia, now
10 you're confusing me. Is there a basement down there?

11 It sounds like there's a basement down there, you guys
12 just aren't using it. That's fine. That's just what
13 you're saying, correct?

14 MR. JIA: Correct.

15 CHAIRPERSON HILL: Okay, great. Thank you.

16 All right. Let's see, okay, so this is what we're going
17 to do, okay? We're going to go take an emergency hearing
18 -- an emergency meeting with legal counsel because
19 there's so much stuff going on that I have to make sure
20 I've completed all my dots and crossed my Ts and all
21 that stuff. And then we're going to come back. And
22 within the regulations, it doesn't say that the
23 opposition has a conclusion, but I like to hear from
24 everybody. Okay?

25 So Mr. Blanchard, you can go ahead and give

1 us a little bit of conclusion and again, it doesn't mean
2 you go ahead and redo the whole thing, right? Just give
3 a three-minute conclusion and Mr. Sullivan, you'll have
4 the same opportunity. And then we're going -- again,
5 no decision is going to be happening today, but we're
6 going to at least close this portion of the continued
7 hearing and then I'm sure the Board is going to go back
8 and look at everything before they make a decision.

9 So with that, I'm going to make a motion that
10 we hold an emergency closed meeting. As Chairperson
11 of the Board of Zoning Adjustment for the District of
12 Columbia and in accordance with 407 of the District of
13 Columbia Administrative Procedures Act, I move that the
14 Board of Zoning Adjustment hold a closed emergency
15 meeting on 11/5/2025 for the purposes of seeking legal
16 counsel advice on Case No. 21333 and/or deliberate upon,
17 but not vote, on Case No. 2333 for the reasons cited
18 in D.C. Official Code 2-575(b)(13).

19 Is there a second, Mr. Blake?

20 VICE CHAIR BLAKE: Second.

21 CHAIRPERSON HILL: The motion has been made
22 and seconded.

23 Madam Secretary, could you take a roll call,
24 please?

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

1 motion.

2 Chairman Hill?

3 CHAIRPERSON HILL: Yes.

4 MS. MEHLERT: Vice Chair Blake?

5 VICE CHAIR BLAKE: Yes.

6 MS. MEHLERT: Commissioner Miller?

7 COMMISSIONER MILLER: Yes.

8 MS. MEHLERT: The motion passes.

9 CHAIRPERSON HILL: Thank you. As it appears
10 the motion has passed, I hereby give notice that the
11 Board of Zoning Adjustment will recess this procedure
12 on this date, 11/5/2025 at the time of 12:57 to hold
13 an emergency closed meeting pursuant to D.C. Official
14 Administrative Procedures Act. A written copy of this
15 notice will be posted in the Jerrily R. Kress Memorial
16 Hearing Room at this time.

17 So what we're going to do, we're going to go
18 jump on to another call and we'll come back here, so
19 don't go anywhere. Thank you.

20 (Whereupon, the above-entitled matter went
21 off the record at 12:58 p.m. and resumed at 1:35 p.m.)

22 CHAIRPERSON HILL: All right, can you all hear
23 me, I guess? Okay, great. I can at least be heard.

24 Do I see Mr. Sullivan? Mr. Sullivan is there.

25 Okay, great.

1 I'm losing a Board Member in ten minutes, so
2 Mr. Blanchard, do you want to give us your conclusion?

3 MR. BLANCHARD: Yes, thank you. I'll be
4 brief. So in closing, the party in opposition continues
5 to oppose both the special exception and the use
6 variance. We disagree with both the Applicant's
7 characterizations of minimal impact and OP's position
8 as well. You've heard a lot of testimony both at the
9 September 10th hearing and the continued hearing today.

10 There's been testimony of at least 13 people who are
11 neighbors in that square who see an adverse impact with
12 the lot occupancy relief and those include -- well, you
13 know who they are. You heard from most of them today.

14 There were a couple more at the hearing on the tenth,
15 Mr. Levin, an adjoining property owner; Snellings and
16 Ms. Landrieu; the adjoining property owner, Ms.
17 Haislmaier, not adjoining, but very close by. And
18 eight, well, Ms. O'Reilly on the tenth and then there
19 are eight -- there was a petition in Exhibit 37 of eight
20 other neighbors who reside at seven properties in the
21 square who were opposed as well. So that's the first
22 point.

23 The second point on notice, there was
24 testimony at the hearing on the 10th about lack of notice
25 both from ANC 6C and 6B, even though our client went

1 to one of the hearings, ANC hearings. One of the
2 Commissioners told him he could leave because the --

3 CHAIRPERSON HILL: Well, Mr. Blanchard, Mr.
4 Blanchard, please don't provide additional testimony.

5 MR. BLANCHARD: No, this is not additional
6 testimony, I'm just recapping what's already in the
7 record.

8 CHAIRPERSON HILL: Okay. Okay.

9 MR. BLANCHARD: So that's on notice on three.
10 I just wanted to say each case stands on its own. Each
11 property has its own particular set of facts and
12 circumstances. Mr. Sullivan is with me of other cases
13 where the Board came to similar conclusions, does not
14 take precedence. The plans are still deficient. They
15 don't include utility rooms or things of that nature
16 that could affect the square footage and lastly, there's
17 no dispute that the nonconforming use that's very clear
18 has lapsed and so what we're left with is an illegal
19 or abandoned use and that's a self-inflicted economic
20 hardship and there's no factual support either -- no
21 sufficient factual support either for the practical
22 difficulty or the extent of the economic hardship.

23 And my last point is that if the Board allows
24 the Applicant to submit additional documents into the
25 record, post-hearing, that we request the opportunity

1 to respond to any such filing. Thank you.

2 CHAIRPERSON HILL: Okay, thanks, Mr.
3 Blanchard.

4 Mr. Sullivan, I've got six minutes before I'm
5 going to lose somebody.

6 MR. SULLIVAN: Thank you, Mr. Chair and Board
7 members. In closing, on the special exception request,
8 the shadow clearly showed only minimal additional
9 shadow, certainly not in the territory of undue impact.

10 The highest point of the sloping roof of the addition
11 is five and a half feet under the maximum permitted
12 height. The rear yard setback at that point is 30 feet,
13 10 feet more than the minimum. We're not asking for
14 10 foot rule relief. We're actually in line with Mr.
15 Snellings' and Ms. Landrieu's property. They do have
16 an L-shaped building and we're actually only 13 feet
17 past the most shallow rear wall of their staggered house,
18 but we're even with the other portion of that.

19 I note the ANC 6B is in support, this ANC is
20 in support of the use variance. On the special
21 exception, they noted in their report that they're
22 obliged to reflect the sentiment of the neighborhood
23 when there is sincere opposition to a particular
24 project. And they didn't get into why the shadow study
25 they thought was impactful or privacy was an issue or

1 any of the special exception criteria.

2 Regarding character, scale, and pattern,
3 there's a couple other buildings that are actually
4 longer than this building on this block and so it's not
5 out of character, scale, and pattern as viewed from the
6 interior. You actually can't see it from the street
7 or from an alley.

8 Regarding the use variance, this is -- the
9 elements and I know we've gotten to the point where we've
10 disparaged precedence so much that it's now just a litany
11 of other cases. It's more than that. It's how the
12 Board interprets their regulations as applied to a
13 certain set of facts. And if it was just one case, I
14 wouldn't come here and say oh, it's a precedent because
15 it could be an aberration, you know, it would just be
16 a very unique situation. But when you have four or five
17 cases with very specific elements that repeat in another
18 case like historic commercial use from day one, it was
19 built as commercial use. It's never been residential.

20 A storefront window in the Historic District is not
21 alterable and considered in these other cases as a
22 privacy issue and difficult to have a residential use
23 for it.

24 The economically catastrophic cost of
25 reconfiguring and eliminating that commercial space all

1 of those elements are present in this case as they all
2 were in the line of cases that we've cited, that the
3 Board has decided in the last few years.

4 And yes, regarding the self-created issue,
5 I think you can separate the fact when -- the Board has
6 clearly decided that to change a use and to grant it
7 as a use variance in this situation on these cases and
8 it's not a self-created hardship to have to change a
9 use from one use to another. And the Board has approved
10 the change from a salon use to office as a use variance
11 recently. And then they actually modified that
12 approval to expand to a wider list of uses. They've
13 approved a vacant, lapsed space that was always a grocery
14 store into a restaurant.

15 CHAIRPERSON HILL: Mr. Sullivan, is this your
16 conclusion?

17 MR. SULLIVAN: Yes.

18 CHAIRPERSON HILL: Okay, you're kind of going
19 over all the arguments that you're making about the
20 history of the things that the Board has done and how
21 they now to do the same thing that they did before.

22 MR. SULLIVAN: I'm not saying the Board has
23 to do the same things. I'm saying these inform the Board
24 on this case and we meet those same criteria that the
25 Board has decided are sufficient to meet the use variance

1 test in other cases and if you had the support of two
2 ANCs and the Office of Planning and you had the support
3 of these four precedents, even if the Board does think
4 it can do whatever it wants in that situation, why would
5 it when all those people are supporting it and we have
6 those elements present. And so I feel like I need to
7 make that argument.

8 A self-created hardship would be what you had
9 in Bernstein when an owner created the space illegally.

10 That's not the case here. This is a case where the
11 space has always been non-residential. And the reason
12 I brought up the special exception that used to exist
13 before 2016 is because all of the use variance cases
14 that we've had to request over the last ten years would
15 have been special exceptions including this one. But
16 I think that was done in error. I think it should be
17 corrected, but that's a separate issue.

18 CHAIRPERSON HILL: Okay, great. So I have
19 one more minute before I lose somebody and if I could
20 get a couple of minutes that would be great.

21 Mr. Sullivan, I don't know, recently it seems
22 to be, and I'm now just making a comment because I'm
23 able and I want to clarify something, that whatever the
24 Board has done in the past, I appreciate that your
25 office, your firm is pointing out different things that

1 we've done in the past.

2 I've been told from the Office of Planning
3 and every time I try to do this that we're supposed to
4 look on the merits of this particular case and so I'm
5 just letting you know how I look at it. I feel a little
6 bullied actually as to how we're supposed to do something
7 where if the Board decides that it doesn't want to --
8 if the Board wants to do whatever it wants is exactly
9 what you said. So the Board does not do whatever it
10 wants. The Board tries to take the regulations, it
11 tries to look at what's going on, and determines as
12 volunteers whether or not they think it fits this
13 category. So just to let you know, the Board doesn't
14 do whatever it wants and the Board takes very seriously
15 what it has done in the past, but it still looks at each
16 case individually.

17 MR. SULLIVAN: Okay, I take issue with the
18 fact that I'm bullying anybody. We're certainly not
19 and this Applicant certainly is not in a position to
20 be bullying anybody. And so I'm advocating for my
21 client and I'm educating the Board on here's the things
22 that have mattered in the past.

23 CHAIRPERSON HILL: Mr. Sullivan, if I were
24 able to talk to you separately, I'd love to talk to you
25 separately and maybe I'm allowed to and I'll do that

1 at another time as to how I feel when things are going
2 on. I'm trying to share, okay?

3 MR. SULLIVAN: It's not personal, Mr.
4 Chairman. I'm advocating for my client.

5 CHAIRPERSON HILL: I appreciate that you're
6 advocating for your client. I guess what I'm trying
7 to say is when you say that the Board -- if the Board
8 wants to do whatever it wants, I'm taking it a little
9 personally.

10 MR. SULLIVAN: I understand. That was a bit
11 much. I understand and part of that might be that so
12 much of this happens in a closed meeting, we're a little
13 in the dark about some of the things going on behind
14 the scenes on issues of merit. So maybe that probably
15 makes communication a little more difficult, too.
16 Thank you.

17 CHAIRPERSON HILL: Thank you. I do wish we
18 were in person. It would be a much more easy thing to
19 do. So I know I got a little confused. But I did have
20 a question, Mr. Sullivan and I didn't even put you on
21 the spot. Also as well, I just had to clarify.

22 I do have a question for you. If your client
23 were not to get the use variance, what do you think would
24 happen with that area of the building? You don't know.

25 You don't have to say if you don't know, that's fine.

1 MR. SULLIVAN: I don't know offhand, no.

2 CHAIRPERSON HILL: Okay, that's fine. Okay,
3 great.

4 I'm going to go ahead and close this portion
5 of the hearing and the record because I know I'm going
6 to lose somebody and I suspect that I'm going to need
7 a little bit more time to decide on this to go back and
8 look at it and everything. So I'm going to say the 19th,
9 if my Board agrees with me, we're going to go ahead and
10 put this on for decision.

11 Is that all right with by fellow Board members?
12 I'm getting a thumbs up and I'm getting a nod.

13 Okay, Madam Secretary, we're going to come
14 back for a decision on the 19th, okay?

15 MS. MEHLERT: Okay.

16 CHAIRPERSON HILL: Okay. And then we only
17 have to break. So anyway, thanks so much. I know it
18 was a long hearing. I know everybody is doing what they
19 need to do for their clients and I'm just trying to
20 express myself as best I can so I'm sorry if I also put
21 people on the spot. So have a good day and a good
22 afternoon, all right?

23 MR. SULLIVAN: Thank you.

24 CHAIRPERSON HILL: Thank you. So we're going
25 to lunch or whatever it is. We're going to be gone for

1 an hour, okay? I think that's when I get the person
2 back. Okay? So we'll come back in an hour. Okay?

3 COMMISSIONER MILLER: Okay, see you then.

4 CHAIRPERSON HILL: Thank you.

5 (Whereupon, the above-entitled matter went
6 off the record at 1:48 p.m. and resumed at 3:16 p.m.)

7 MS. MEHLERT: The Board has returned from its
8 break and returning to the hearing session. The next
9 case is Application Number 21329 of Stephen Jackson.

10 This is an application pursuant to Subtitle X, Section
11 901.2 for a special exception under Subtitle E, Section
12 204.4, and the requirements of Subtitle E, Section
13 204.1, to allow removal or significant alterations of
14 a rooftop architectural element original to a principal
15 building.

16 This is for the alteration of the roof of a
17 front porch to allow installation of a railing for a
18 second-story deck at an existing two-story principal
19 dwelling. It's located in an RF-1 zone at 1128 4th
20 Street, Northeast, Square 773 at Lot 73.

21 And the public hearing was originally
22 scheduled for July 30th and postponed once at the
23 Applicant's request and then administratively
24 rescheduled.

25 CHAIRPERSON HILL: Great, thank you. If the

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

3 MR. JACKSON: Yes, good afternoon, Chairman
4 Hill. My name is Stephen Jackson. I'm the owner of
5 1128 4th Street, Northeast.

6 CHAIRPERSON HILL: Okay, Mr. Jackson. Are
7 you going to presenting for us?

8 MR. JACKSON: Yes.

9 CHAIRPERSON HILL: Okay, great. And could
10 the ANC Commissioner please introduce himself?

11 MR. ECKENWILER: Good afternoon, Mr.
12 Chairman, Mark Eckenwiler, Vice Chair, ANC 6E, here on
13 behalf of the ANC.

14 CHAIRPERSON HILL: Okay, great. Welcome,
15 Commissioner.

16 All right, Mr. Jackson, if you can -- and by
17 the way, thanks, you guys. I mean, honestly, because
18 of the whole, like, shutdown thing, I lost one of by
19 Board members. I never know exactly what's happening.
20 So sorry there's, like, all of a sudden you're on or
21 off, you know.

22 But Mr. Jackson, if you could please walk us
23 through your presentation. And I know you're probably
24 not a zoning attorney but, you know, whatever you can
25 do to help us understand your project, and why you

1 believe you're meeting the criteria to meet this
2 particular relief. I'm going to put 15 minutes on the
3 clock just so I know where we are, and you can begin
4 whenever you like.

5 MR. JACKSON: Okay, if Mr. Young could pull
6 up Exhibit 26, which is my Power Point presentation.

7 Great, and I just want to also note that, yes, you're
8 right, this is totally new to me. And I had no idea
9 that you all would volunteer, so thank you all for your
10 service and this large time commitment.

11 So I'm requesting a special exception for the
12 guardrails that I installed on my front porch roof.
13 I acknowledge I did this in the wrong order, I built
14 them before attending your approval. And I'll explain
15 what happened and why I'm asking you to approve this
16 application.

17 In 2021, my wife and I began a major renovation
18 to this house which I've owned and lived in off and on
19 since 2013. We wanted to include a porch roof deck.

20 You see them all throughout our neighborhood, and we
21 thought it was a smart upgrade to our house without
22 drastic change.

23 When our contractor submitted the building
24 plans, the architect included the deck. During review,
25 Zoning flagged it as requiring a special exception.

1 Our architect removed it from the plans and
2 independently came up with a quick solution, which was
3 Juliet balcony. And that was the solution my wife and
4 I felt didn't adequately address what we wanted to
5 accomplish with that.

6 So our first daughter was born April 2022,
7 and the next month, May, we decided to install these
8 railings and create that deck. And so once again, I
9 should have come to you guys first, and I acknowledge
10 that. The city ended up citing me and issued a
11 substantial fine, so I'm here to request what I should
12 have done in the first place.

13 So what we added to the roof of our porch is
14 black metal railings, 42 inches in height. They match
15 the color and style of my first-floor porch railings,
16 same black metal appearance. They're minimal in
17 design. They have two and a half inch posts and
18 half-inch spindles. They're not a solid wall, they're
19 just simple open railings.

20 As I understand the process, you evaluate
21 three criteria for the special exception. Does it block
22 the light or air of neighboring properties, does it
23 create privacy concerns, and does it substantially
24 visually intrude on the neighborhood character.

25 Let me show you the (audio interference)

1 context first. Because I think context is really
2 important. So can you go to the next slide, please?

3 So these are the houses of my block. The entire block
4 has nine different shapes and sizes of houses. Some
5 houses are attached, some are detached.

6 My side of the block though contains many
7 variations of a theme, given the same builder
8 constructed these houses in the 1920s. You see brick
9 columns next to wood columns, next to metal columns,
10 houses with three separate second-story windows next
11 to houses with a continuous window band, different
12 dormer sizes and placements. The pattern here is
13 variation with different details and not a rigid,
14 uniform read when it comes to features and their
15 placement.

16 Next slide. And you just go a block away,
17 you know, approximately 120 yards from my house, you've
18 got these modern eight-story apartment buildings which
19 were constructed about five years ago. As you all
20 know, NoMa, near Northeast neighborhood has undergone
21 significant evolution over the last 20 years. And at
22 least my part of that has really, really exponentially
23 increased over the pandemic.

24 Next slide. Within three to four blocks of
25 my property, there are over two dozen houses with similar

1 porch roof decks. The addition of one to my house is
2 an anomaly. It's an established pattern of how this
3 neighborhood is evolving.

4 So back to the criteria of privacy, it's
5 obviously an important consideration, so next slide.

6 You can see from this aerial photograph the red line
7 shows some of the existing sight lines from the houses
8 across the street. And the yellow line shows site lines
9 from my porch roof deck. They're all the same angles.

10 We're not creating any new privacy impacts.

11 But most importantly, the residents of 1126
12 and 1130, those immediately adjacent to me, have both
13 submitted letters supporting this application.
14 They've been living adjacent to these railings and porch
15 deck for over are three years. And if that had created
16 problems for them, I think they would have told you.

17 So they're supporting me.

18 So let me address the visual character
19 standard. Yes, I'm now dealing with a property on the
20 block faced with a porch deck. But let me explain why
21 I believe this is appropriate under the applicable
22 zoning standards.

23 I'm not in a historic district. Over half
24 of my ANC 6C fall within the Capitol Hill Historic
25 District boundaries, but my property does not. This

1 distinction is critical. If I were in a historic
2 district, uniformity requirements would be much
3 stricter, and changes would have much more scrutiny.

4 But again, it's not a historic district. The standards
5 that apply to me are different.

6 So does it substantially visually intrude?
7 I don't believe it does for several reasons.

8 Can we actually just go back to Slide 1 to
9 view the house?

10 As you can see, these railings are minimal
11 in design. They're 2.5 inch posts, quite slim, they
12 have half-inch spindles spaced 4.5 inches apart. It's
13 open metal design, it's not solid walls, black metal
14 matching the color and styles of the first floor porch.

15 And from the street, they could be an extension of
16 the existing architectural elements of the house.

17 Two, the visual impact has been modest. Many
18 of my neighbors didn't realize they'd been added until
19 much later. Some took months to notice, including one
20 who, literally eight months after they were installed,
21 asked if they had just been added?

22 I installed these in May 2022. The city
23 didn't issue a citation until March 2023, ten months
24 later. If these created a substantial visual
25 intrusion, one would expect they would have been more

1 immediately apparent.

2 In the previous case today, the Capitol Hill
3 Restoration Society filed opposition to a third-floor
4 addition to a different house. And CHRS' Zoning
5 Committee also looked at my case. And they informed
6 me they wanted to remain silent on it, and not submit
7 comments. And so I think that sort of speaks for itself
8 in terms of whether this is a substantial visual
9 intrusion.

10 Three, your lawyer at of the Office of Planning
11 has evaluated this. And they agree with me that it does
12 not substantially intrude. And four, the block already
13 exhibits considerable variety.

14 And so next slide again. Again, nine
15 distinctly different house shapes, and sizes, and
16 designs, different columns, windows and dormers. The
17 pattern here is that rigid uniformity, it's variations
18 within a general architectural character. My railings
19 represent another compatible variation.

20 So yes, I was first on the block, but first
21 doesn't automatically mean inappropriate. They are
22 small, minimal railings that compliment my house.
23 They're compatible with the character of the residential
24 neighborhood in this block with over two dozen examples
25 within a few blocks. And this is how non-historic

1 neighborhoods naturally evolve over time.

2 So I just wanted to just reiterate the three
3 criteria again. Light and air, these are open metal
4 railings with slim spindles. They're not blocking the
5 light or air flow of the neighboring properties.

6 Privacy, Office of Planning confirms no direct
7 view site-lines from adjacent windows. Both adjacent
8 neighbors support this application.

9 And the visual character question, the minimal
10 design that compliments my existing house is compatible
11 with the neighborhood. And so that's where I'm at with
12 everything. So again, I really appreciate your time
13 for this. And I look forward to answering any questions
14 you have.

15 CHAIRPERSON HILL: Okay. Thanks, Mr.
16 Jackson. Let me get through this process. And then
17 I'll see who has any questions for anybody.

18 Can I have the Office of Planning next, please?

19 MS. MYERS: Good afternoon, Crystal Myers
20 with the Office of Planning. The Office of Planning
21 is in support of this case. And we can say on the record
22 the staff report refers to your questions. Thank you.

23 CHAIRPERSON HILL: Real good, thanks. I'm
24 going to try to work through this as best I can. Because
25 Commissioner Miller and also other staff members are

1 going to have to leave at 5 o'clock for the Zoning
2 Commission.

3 Commissioner Eckenwiler, can you hear me?

4 MR. ECKENWILER: I can, Mr. Chairman.

5 CHAIRPERSON HILL: Thanks. Commissioner
6 Eckenwiler, I don't know if you've noticed or not, but
7 I've had a long day. And so the --

8 MR. ECKENWILER: I've been listening all day,
9 Mr. Chairman.

10 CHAIRPERSON HILL: It's been a bit. And I
11 appreciate your slide deck. And I'm not trying to
12 change your presentation. It seems to be about whether
13 or not -- how we got to this point. And so I just would
14 hope that we can just kind of get through this in a way
15 that is just somewhat calm.

16 So Commissioner Eckenwiler, go ahead and
17 please give us the ANC's presentation.

18 MR. ECKENWILER: Thank you, Mr. Chairman, and
19 members of the Board. Mr. Young could pull up my slides,
20 please.

21 And in response to your request, Mr. Chairman,
22 I am going to condense a little bit on the opening
23 sequence that I think there are still some important
24 points to press upon here.

25 CHAIRPERSON HILL: Thank you.

1 MR. ECKENWILER: So if you can go to Slide
2 2, Mr. Young.

3 So I just want to point out, to begin with,
4 that today is the first time that the Applicant is coming
5 clean with the Board about what really happened here.

6 The Applicant filed two different burden of proof
7 statements that made numerous false statements,
8 misrepresentations to the Board about what actually
9 happened.

10 And that was clearly an attempt both to, you
11 know, conceal what had happened but also to illicit
12 sympathy from the Board because, you know, the Applicant
13 had a young child who was going to be put in danger
14 by this, you know, seemingly irrational set of drawings
15 that had been approved, but also to suggest, you know,
16 that he was in some sort of difficulty and had to act
17 and so just did the reasonable thing. None of that is
18 true.

19 Next slide, please. So as he mentioned, and
20 what I have here at the bottom is just an extract, this
21 is from his architect's response to the zoning
22 reviewers. And a reviewer had pointed out even zoning
23 relief to put this deck and railer up there, the
24 architect said yes, we'll get rid of it, put in the Juliet
25 railing in front of the only operable door.

1 Next slide, please. And I think we can just
2 skip this slide and just go to the next. So this is
3 what the approved drawings actually showed, not, as the
4 Applicant claimed in his two different burden of proof
5 statements, that there was a door, you know, that
6 opened out giving access onto the porch roof.

7 On the contrary, this is what is in the
8 approved plans which he claims, in his burden of proof
9 statement, to be familiar with. So that's what I say,
10 these are not just misrepresentations, these were known
11 misrepresentations to the Board.

12 Next slide, same point.

13 Next slide, please. So let's come to the
14 special exception criteria. And I want to say at the
15 outset, we see this a lot for properties outside of the
16 historic district where the Applicant comes in, having
17 done illegal work, and says, well, this is not the
18 historic district.

19 Nobody's saying it's the historic district.

20 No one is trying to assess this under the standards
21 of the historic district. I'm very familiar with what
22 those standards look like. We are applying the zoning
23 regulations here. And Section 204.4 actually has
24 aesthetic criteria in it.

25 So it's really more than a little bit of a

1 misdirection to say, oh, it's not in the historic
2 district. That is not what is at issue. What is at
3 issue is compliance with zoning regulations.

4 And as you know, Mr. Chairman, in the RF zones,
5 including where this property is located, the alteration
6 or modification for a rooftop architectural element
7 must, you know, it must be done only where there is no
8 potential adverse impact on a number of factors.

9 Here the relevant ones, air and light are not
10 at issue. But character, scale, and pattern is really
11 the big one. And then, notwithstanding what the
12 Applicant has said, privacy of the adjacent properties
13 is, in our view, very much at issue.

14 Next slide, please. So as the Applicant
15 alluded to briefly, this block was built by a single
16 developer, McKeever & Goss, in the span of under two
17 years. And while the Applicant has tried to, you know,
18 paint this as sort of variegated block, all kinds of
19 different standards, this is a porch front block. And
20 it exhibits extraordinary, extraordinary consistency.

21 Yes, there are some original variations like,
22 you know, in the exact style of the roofline. There
23 have been some later modifications. He averted to the
24 types of pillars supporting the roof. And we know that
25 those get replaced over time.

1 And so I'm not telling you that every single
2 one of these houses is intact. That's not how it works
3 essentially later. People have made changes before the
4 creation of zoning regulations, before any of these
5 other rules came in. It would have inhibited those
6 kinds of changes.

7 But that is not the point. The point is we
8 have here a common vocabulary and a single basic building
9 type, the porch front. And as the Applicant concedes,
10 not a single one, not even one of the other buildings
11 on this block face has such a porch top railing and deck
12 on it, not a single one.

13 There are not a lot of places in ANC 6C where
14 we see this kind of market consistency. There are a
15 few blocks in the same area where that is the case, and
16 there is one square over closer to the Capital bounded
17 by 6th, 7th, D, and E which was all, you know, built
18 by one developer in one go, basically build it all in
19 the span of about a year and a half. That is exactly
20 what the character, scale, and pattern standard is meant
21 to address.

22 And I think it also bears repeating, because
23 here too we see a kind of misdirection that has been
24 offered up to the Board in past cases, and it's offered
25 up here. But, well, you know, there are lots of other

1 things going on if we look, you know, three or four blocks
2 distance. That is the test under the regulation.

3 The test is this particular street front, this
4 character scale and pattern, not can I cherry-pick
5 something from two blocks away. It's when I'm looking
6 this property, this Applicant's property where the
7 illegal work was done, what do I see the context as.

8 What's it like on either side of that building, and
9 in my view shed, as I look at this property, not as I
10 walk around the neighborhood generally.

11 And I can attest, Mr. Chairman, that you don't
12 have to go far to find illegal work that has been done
13 somewhere in any neighborhood in ANC 6C. But this block
14 is different. These buildings are largely intact. And
15 I want to emphasize not a single one of them has this
16 intrusive railing at the top the porch. It has no
17 railing other than here where it was constructed
18 illegally.

19 And this is -- I want to emphasize this is
20 a really long block. The numbers go all the way up to
21 1162. So, you know, between, I think this is between
22 L and M. That's a lot. That's pretty extraordinary.

23 And we think that the criteria under the zoning
24 regs, not only historic preservation guidelines, not
25 under the Secretary of Interior's standards, under

1 Section 204, that is the character, scale, and pattern
2 to be preserved instead of being disrupted, especially
3 where the disruption was made illegally.

4 Next slide. And so just to show you, again,
5 there are is market consistency here. These are
6 two-story porch fronts. They've got these slanted
7 generally angled roofs. They've got a little bit of
8 a bend, roughly in the middle, with a dormer up top.

9 And so this is, as I say, it exhibits remarkable, in
10 fact, uncharacteristic consistency along this block
11 face.

12 Next slide, please. And so as I've said, the
13 ANC's position is that this illegal work does, in fact,
14 substantially visually intrude upon the character,
15 scale, and pattern of the houses on this street, not,
16 you know, we don't care what's over on Abbey Place or
17 what's around the corner on L Street. That is not what
18 the standard addresses.

19 Next slide, please. So that, in and of
20 itself, is fatal to this application. The Board can
21 stop there. But I do just want to mention that,
22 notwithstanding the support from both neighbors, one
23 of whom does have a pending case before the Board, and
24 so maybe there's a bit of, you know, I'll scratch your
25 back, you'll scratch mine going on here.

1 Those people aren't going to live in those
2 houses forever. But if this deck is allowed to remain,
3 it will be there. And the subsequent residents will
4 have to deal with the fact that, in fact, this does
5 provide point-blank views into those second-story
6 windows.

7 So I don't think the Board should discount
8 the privacy concerns here. But, as I say, you don't
9 need to reach that. The character, scale, and pattern
10 failure, the adverse impacts alone are enough to deny
11 this application.

12 Next slide, please. And I do just want to
13 say, and I know, obviously, Vice-Chair Miller,
14 vice-chair of the Zoning Commission, can't say anything
15 here, but I just want to mention there is a pending
16 rulemaking that seems to have been received very
17 favorably, in fact, ANC 6C supported it with some
18 proposed modifications to the text, that would allow
19 the exclusion of exterior decks up to a certain
20 threshold. What OP has proposed is 200 square feet.

21 It simply would not count towards building area at all.

22 And so if the Board were to deny the
23 application here and require the removal of this
24 illegally constructed deck and railing, that's not game
25 over for this homeowner or any other homeowner. I think

1 it is almost a certainty, because there was no
2 significant opposition to this proposal, that there will
3 be a safety valve allowed under regulations for the
4 construction of exterior decks.

5 And if and when that comes to pass, this
6 Applicant and his neighbors can, you know, look into
7 the possibility of building a deck in the appropriate
8 place in the back, not on the primary elevation where
9 it substantially impairs the character, scale, and
10 pattern on the street.

11 And I believe that's my last slide. Mr.
12 Young, if you'll just confirm for me.

13 MR. YOUNG: Yes, that's the last one.

14 MR. ECKENWILER: Okay. That's it.

15 MR. YOUNG: Thank you.

16 MR. ECKENWILER: Thank you, Mr. Chairman.
17 Happy to answer your questions.

18 CHAIRPERSON HILL: Thanks, Commissioner.
19 So, Mr. Jackson, what's going to happen in a minute
20 or two, is the Board's going to ask some questions.
21 Then you can ask any questions that you might have of
22 the Office of Planning or the ANC. And then after that
23 happens, the ANC will be able to ask any questions it
24 has of you or the Office of Planning. And if anybody
25 has any questions, great. And if not, that's also

1 great.

2 And then you, Mr. Jackson, will have an
3 opportunity for rebuttal. That means whatever got
4 said, you can say anything that you think wasn't correct
5 about what got said. And then everybody else will ask
6 questions about only the rebuttal that you put forward.

7 MR. JACKSON: Okay.

8 CHAIRPERSON HILL: That's kind of the best
9 I can do. All right. I'm so tired.

10 Let's see, does anybody have any questions,
11 Mr. Blake, or Commissioner Miller?

12 COMMISSIONER MILLER: I have a question.

13 CHAIRPERSON HILL: Sure, go ahead,
14 Commissioner.

15 COMMISSIONER MILLER: Thank you, Mr.
16 Chairman. And thank you, Mr. Jackson, and Mr.
17 Eckenwiler for being here and your participation today
18 in today's hearing.

19 I'm trying to understand, Mr. Eckenwiler, I
20 appreciate your going through the zoning regulation
21 criteria very accurately, as usual. And I think I
22 understand the argument about the inconsistency with
23 the pattern, scale, and character, although it's
24 railings. It's kind of minimal railings.

25 But what I don't understand, both from the

1 Applicant and from Commissioner Eckenwiler, is the
2 adverse impacts upon privacy due to the sight lines that
3 are newly created because of that inconsistent pattern,
4 particularly across the street.

5 Was there any community outreach? I
6 appreciate you had the adjacent neighbor's support.
7 Was there any outreach to the neighbors across the street
8 whose second floors are newly available as a sight line?

9 And, Mr. Jackson, and Mr. Eckenwiler, obviously --

10 CHAIRPERSON HILL: What do say, Mr.
11 Eckenwiler? I'm just trying to see who Commissioner
12 Miller is asking his question toward. And then you can
13 also comment as well.

14 But Commissioner please finish your question,
15 and also just let me know who you're asking the question
16 to?

17 COMMISSIONER MILLER: I'm asking it of both
18 of them. Was there community outreach and was there
19 any conversations with the neighbors across the street
20 whose privacy, whose sight lines will now be -- from
21 Mr. Jackson's property will now be enhanced --

22 (Simultaneous speaking.)

23 CHAIRPERSON HILL: Let me ask the Applicant
24 first.

25 MR. ECKENWILER: Mr. Chairman, I'm sorry to

1 interrupt, but I think we may be able to short circuit
2 this. And I know that, especially Vice Chair Miller
3 needs to be somewhere else.

4 The ANC is not predicating its argument there
5 on views into the houses across the street. So I don't
6 know --

7 COMMISSIONER MILLER: I recognize that.

8 MR. ECKENWILER: -- the outreach -- okay.

9 COMMISSIONER MILLER: I want to know about
10 the potential adverse impact. So, Mr. Jackson, do you
11 have any -- was there any outreach to your across the
12 street neighbors, or conversations with them, and
13 reaction?

14 MR. JACKSON: So I did talk to the person
15 directly across the street to me. But by and large,
16 you know, the windows, and really the roof porch itself,
17 always existed. So there wasn't anything that's
18 totally new. Which I think Mark is, or Commissioner
19 Eckenwiler is also noting.

20 So, no, there wasn't a conscious effort to
21 get their approval but more of just concentrating on
22 the adjacent houses being the top priority. And, you
23 know, there wasn't any quid pro quo there. I really
24 take offense to that. But that's where we're at with
25 everything.

1 COMMISSIONER MILLER: What is the depth of
2 all those existing porch roofs?

3 MR. JACKSON: They're --

4 COMMISSIONER MILLER: Six feet, is it six
5 feet?

6 MR. JACKSON: It's six to seven feet. I could
7 pull up the --

8 COMMISSIONER MILLER: Yes. So, I mean,
9 you're closer --

10 MR. JACKSON: You're right, it is --

11 COMMISSIONER MILLER: -- closer to the
12 windows across the street than from your windows.

13 MR. JACKSON: That is true. You know, you
14 could stand on the street and have similar, you know,
15 but if someone's using binoculars, it's a similar
16 situation. So again, there's no, you know, whether you
17 can see into the window, I think, is the concern, would
18 be the concern. And you always can see in the window.

19 CHAIRPERSON HILL: Mr. Jackson, it's all
20 right. Commissioner Miller was just asking a question.

21 MR. JACKSON: Oh, yes.

22 CHAIRPERSON HILL: There hasn't been any
23 outreach to those things.

24 MR. JACKSON: No, nothing --

25 CHAIRPERSON HILL: Okay --

1 MR. JACKSON: I talked with one, but no, not
2 with any --

3 CHAIRPERSON HILL: Commissioner Miller --

4 COMMISSIONER MILLER: Thank you. That's my
5 only question at this time. I appreciate both of your
6 testimonies in response.

7 CHAIRPERSON HILL: Thank you. Vice Chair
8 Blake?

9 VICE CHAIR BLAKE: Yes, Chairman, thank you.
10 Mr. Eckenwiler, I agree with you. I don't think the
11 crux of your argument is privacy, it's visual intrusion.
12 But I do want to want to ask on the privacy side just
13 one thing.

14 How wide is that street? And what do you think
15 the distance -- you know this pretty well, what do you
16 think the distance is between that deck and the windows
17 across the street, of the, you know, property across
18 the street, given the width of the sidewalk, the front
19 stoop on both sides. How far do you think it is?

20 MR. ECKENWILER: Vice Chair Blake, I don't
21 know, and I would not want to hazard a guess. Because
22 it would be a wild guess. I mean, that information is
23 certainly available on the DDOT TOPS database.

24 VICE CHAIR BLAKE: Okay.

25 MR. ECKENWILER: It will at least tell you

1 what's called the distribution. So that would be the
2 width of the carriage way, curb to curb, the width of
3 the sidewalk, what's called the public parking, so
4 inside the fence line.

5 VICE CHAIR BLAKE: Okay --

6 (Simultaneous speaking.)

7 MR. ECKENWILER: I'm sorry.

8 VICE CHAIR BLAKE: Would you say that it's
9 about average, though, for a typical street, like, it's
10 about an average distance between the -- the width of
11 the street? It's not an unusually narrow street, that
12 it's an average size width street, correct?

13 MR. ECKENWILER: No, it's actually -- it's
14 only a one-lane street, so it has -- there's parking
15 on either side, there is a large vehicle travel lane,
16 and then there is an unprotected bike lane. So no, it's
17 not -- I mean, there are certainly a lot wider streets,
18 you know, including in neighborhoods, just putting aside
19 the arterials.

20 VICE CHAIR BLAKE: Okay --

21 (Simultaneous speaking.)

22 MR. JACKSON: Yes, sorry, it isn't a
23 substantially smaller street. There are smaller
24 streets in my neighborhood, Abbey Place, the
25 aforementioned Abbey Place --

1 VICE CHAIR BLAKE: Okay.

2 MR. JACKSON: -- is a great example of that.

3 But it is wide enough for two cars to get around each
4 other --

5 VICE CHAIR BLAKE: Okay.

6 MR. JACKSON: -- which happens a fair amount
7 with the bike lane. But I did pull it up. It's seven
8 foot and four inches is sort of the depth of the porch
9 deck. And then I have my side of the street, so it's
10 27 feet to the curb, I guess. So then you have to add
11 the street and the other side of it as well.

12 VICE CHAIR BLAKE: Okay. So, I mean, I'm just
13 going to be honest. The way I'm looking at it is the
14 incremental three or four feet that you're gaining
15 sight, we're on the site into these other properties,
16 is the issue of the privacy, right. Because you have
17 those windows that exist today.

18 If I step out onto the porch and look, I've
19 gone about two or three feet more closer. Is that
20 materially changing my view into the other person? I
21 guess that's the question I have. Or am I going to peer
22 around and look through the other windows or something
23 like that? That's what I'm kind of grappling with.

24 That's why I was trying to get a sense of the
25 distance between the thing that was really, you know,

1 looking into somebody's immediate element. I do think
2 that that's what I was trying to figure out. Thank you
3 very much, both of you, for your input on that.

4 CHAIRPERSON HILL: Thanks, Mr. Blake. Mr.
5 Jackson, I have one question. Do you know what you're
6 allowed to do by matter of right? Like, are you allowed
7 to do that Juliet balcony thing that was originally on
8 a plan?

9 MR. JACKSON: That's a good question.
10 Honestly, visually I feel like that was more intrusive.
11 But I don't know. That's not something --

12 CHAIRPERSON HILL: Okay.

13 (Simultaneous speaking.)

14 CHAIRPERSON HILL: I'll get to you in one
15 second, Commissioner.

16 The Office of Planning, do you know what their
17 allowed to do up there as a matter of right, if anything?

18 MS. MYERS: You mean if they're allowed to
19 --

20 CHAIRPERSON HILL: Yes, like, there --

21 (Simultaneous speaking.)

22 MS. MYERS: No.

23 CHAIRPERSON HILL: And one of Commissioner
24 -- he has an answer, I guess, but one of Commissioner
25 Eckenwiler's slides there was approved permit drawings.

1 And it they're approved, I guess they're approved.
2 But it's for a Juliet balcony, meaning the door opens,
3 and I guess there's just a railing there. Do you know
4 if that's a matter of right?

5 MS. MYERS: Oh, as a matter of right, I don't
6 think that would have been something that would have
7 come across our desk for any kind of relief if there
8 was just a Juliet balcony.

9 CHAIRPERSON HILL: Okay.

10 Commissioner Eckenwiler, you thought you had
11 an answer?

12 MR. ECKENWILER: I know I have an answer, Mr.
13 Chairman. So first of all, and I apologize for being
14 this picayune, it is not a Juliet balcony. It's a
15 railing. So it's basically flush with the building
16 face, the door opens inward. So it's not something --
17 there's nothing to step out onto.

18 Yeah, my understanding would be, I mean,
19 that's -- DOB is not perfect, but there's no reason why
20 that wouldn't be a matter of right at this location.

21 In the historic district, different story, here at a
22 historic district, I don't see any bar to that at all.

23 CHAIRPERSON HILL: Okay. I'll get back to
24 you. I see what you're talking about in terms of just
25 the -- it seems like still the railing would come out

1 a couple of inches.

2 But did you have your hand up, Mr. Blake?

3 VICE CHAIR BLAKE: I did. Of course, if it
4 was -- Commissioner Eckenwiler, the way I looked at this
5 rowhouses on the street, there seemed to be a lot of
6 distinguishing characteristics.

7 I see the roof, you know, the top there of
8 the roof. I see the porches, all the stuff. There are
9 a lot of elements that are in that. That railing seems
10 to be, on a scale of one to ten, like a about a four,
11 in distinguishing between those elements in that
12 building relative to the others. That's just my quick
13 way of looking at it.

14 Can you just talk a little bit about what you
15 see as the distinguishing elements that are carried
16 throughout on these properties?

17 MR. ECKENWILER: So, first and foremost, none
18 of these properties ever has had, to my knowledge, a
19 railing, certainly they would not have been part of the,
20 you know, original design.

21 They have a common form. And when I said
22 earlier, I think I said this, that there's this
23 vocabulary. Yes, there are some variations that sort
24 of tweaks in the exact shape of the dormer, exactly how
25 high the roof is, and the angle. But, you know, when

1 you look it at bottom, these are all more or less the
2 same house, and if you put a railing on top of that porch,
3 you disrupt it?

4 And also, I do want to emphasize here, this
5 is the camel's nose under the tent, right? If you prove
6 this, then the next person's going to get one. And we
7 slowly erode the
8 character, scale, and pattern on this block. And we've
9 got, you know, a whole variety of different ones, right.

10 You know, some of them may be metal railings in black.
11 We may get painted wood. And pretty soon it's a
12 hodgepodge.

13 And, you know, this is the thin end of the
14 wedge. And in order to uphold the standard under the
15 regs, protect the character, scale, and pattern, you
16 should deny it here. Because if you grant it here, then
17 that just makes it that much easier to erode that
18 character, scale, and pattern in the next case.

19 VICE CHAIR BLAKE: So it's not that this
20 actually necessarily reaches the substantial visual
21 intrusion. But it's the gateway to substantial visual
22 intrusion. Is that what you're saying?

23 MR. ECKENWILER: On the contrary, actually,
24 no, Mr. Vice Chair. This in itself, our position is
25 that it's a substantial visual intrusion on character,

1 scale, and pattern.

2 VICE CHAIR BLAKE: Okay, thank you very much,
3 Commissioner. Thank you.

4 CHAIRPERSON HILL: Okay. All right, so the
5 Office of Planning, Ms. Meyers, can you hear me?

6 MS. MYERS: Yes, sir.

7 CHAIRPERSON HILL: All right, then that's
8 that. Thanks. To visually intrude upon the character,
9 scale, and pattern of the houses, right, so I am -- and
10 Mr. Jackson, you're doing a great job. You're doing
11 a good job, you know. I know you -- and you had to go
12 through the ANC. And I know where you are, and who
13 you're up against, and all these things. And so, like,
14 you know, you're doing the best you can.

15 However, Ms. Myers, like, how did you all get
16 -- I mean, I'm looking at this rarely, right. And I'm
17 also thinking to myself in terms of this whole row of
18 houses, right, how did you get to where it's not visually
19 intruding upon the character, scale, and pattern of the
20 houses?

21 MS. MYERS: We took into account that the
22 railing is of a similar look and material as other
23 railings in the neighborhood. Now it is the railing
24 for the porch roof deck, but there are similar ones,
25 I believe, next door when it comes to the entryway of

1 those houses. So it's a look that's not unusual for
2 the area when it come to the railing itself.

3 We also took into account that the adjacent
4 neighbors who were in support were not concerned with
5 it. We also took into account that it seems relatively
6 small and not of a level that would be very intrusive
7 or challenging to appear or to observe from the street.

8 And with, you know, this would just not be significantly
9 out of character for the look of the house. So we were
10 completely in support.

11 And again, I know the Applicant mentioned
12 this, this is not a historic district, so we tend to
13 be a little more flexible when it comes to some of the
14 changes on the front of the house when it's not a historic
15 district.

16 CHAIRPERSON HILL: Got it. And do you know
17 if there's any other railings on any of those other
18 rooftops in that whole block?

19 MS. MYERS: From the rooftops, I'm not aware.
20 I was referring to railings when it comes to the stairs
21 --

22 CHAIRPERSON HILL: No, no, I got it. I'm just
23 saying, so you don't know if there's one on that -- if
24 any of them has one of those decks above their porch,
25 you don't know. I'm --

1 MS. MYERS: Of the top of my head, I'm not
2 aware.

3 CHAIRPERSON HILL: Okay, great.

4 Commissioner, do you know?

5 MR. ECKENWILER: I think we can take the
6 Applicant at his word. He himself said earlier in this
7 hearing that there are none other than the one he
8 constructed.

9 CHAIRPERSON HILL: Okay, got it. Great,
10 thanks. Everybody's trying to be nice a little bit.
11 Okay, great. Okay, let's see, oh, Mr. Blake, you had
12 your hand up?

13 VICE CHAIR BLAKE: Commissioner Eckenwiler,
14 looking at this, I understand your point that you're
15 making. What design change in your mind takes this to
16 a level that you think would not be visually intrusive,
17 substantially visually intrusive?

18 MR. ECKENWILER: To get rid of the railings.
19 And to give you some context, Mr. Vice Chair, we have
20 consistently, I can't think of a single case where we
21 have supported one of these kinds of structures atop
22 a porch front, whether it was after the fact, after
23 illegal construction, or someone, you know, coming, you
24 know, hat in hand before the fact. We have opposed these
25 consistently --

1 VICE CHAIR BLAKE: Okay, thank you.

2 MR. ECKENWILER: -- on the porch tops.

3 VICE CHAIR BLAKE: Got you. But to the extent
4 that he did the Juliet railings, which would be matter
5 of right, would that be in the context that you'd be
6 comfortable with, even though it would change the --
7 it would impact those same railings just tight against
8 the window. That would be more comfortable to you?

9 MR. ECKENWILER: Well, once again, since
10 we're not in a historic district, I don't think that's
11 an issue. And what triggers the need for relief here
12 is the alteration of the rooftop architectural elements.
13 The Juliet railing would not in any way impact the
14 porch.

15 So that's why I say, I think that is a matter
16 of right. And even if, you know, in my subjective view,
17 that were to change in and of itself, change the
18 character, scale and pattern, which I don't think the
19 Juliet railing would, it's not an issue. Because
20 outside the historic district, you know, if you're not
21 altering a rooftop architectural element, protected by
22 Section 8204, then we don't even get to the character,
23 scale, and pattern concern. So I hope that answers your
24 question.

25 VICE CHAIR BLAKE: It does, it does. But I

1 was really trying to get to the subjective element as
2 to whether you thought that -- I understand matter of
3 right and all that, I was just trying to get a sense
4 if you felt that it still would be visually intrusive.

5 Because it would look very similar, it just wouldn't
6 be all the way out there. But, okay, that's all. Thank
7 you very much.

8 CHAIRPERSON HILL: Okay, thank you. All
9 right, Mr. Young, is there anyone here wishing to
10 testify?

11 MR. YOUNG: We do not.

12 CHAIRPERSON HILL: Okay. Mr. Jackson, do you
13 have any questions for the ANC or the Office of Planning?

14 MR. JACKSON: No, I do not.

15 CHAIRPERSON HILL: Okay. Mr. Eckenwiler, do
16 you have any questions for either the Applicant or the
17 ANC, I'm sorry, or the Office of Planning?

18 MR. ECKENWILER: None, Mr. Chairman.

19 CHAIRPERSON HILL: Okay, thanks. Mr.
20 Jackson, do you have anything that would want to say
21 in rebuttal to anything that's been said?

22 MR. JACKSON: Yes. I just want to note that
23 Mr. Eckenwiler, or Commissioner Eckenwiler likes to
24 consistently, with this character, scale and pattern,
25 talk about changing it. And changing it is not the

1 standard. It's substantial visual intrusion. So that
2 seems to be a much, much higher standard than just a
3 change to those things. So I think that that's an
4 important component here. Thank you.

5 CHAIRPERSON HILL: Are you an attorney, Mr.
6 Jackson?

7 MR. JACKSON: No, but I probably should have
8 been one.

9 CHAIRPERSON HILL: Okay. Well, I think --
10 Commissioner Eckenwiler, are you an attorney.

11 MR. ECKENWILER: I am not here before the
12 Board as an attorney if --

13 CHAIRPERSON HILL: No, I was just asking,
14 that's okay. Well, that sounded like a pretty good
15 attorney to me.

16 MR. ECKENWILER: I am admitted to practice
17 in another jurisdiction.

18 CHAIRPERSON HILL: I was just curious,
19 Commissioner. Okay, we won't go into it. I married
20 an attorney so, you know, it's okay. I got a litigator
21 actually, and so I'm very proud of that. Let's see,
22 although I lose a lot of arguments.

23 Okay, yes, I guess that's it. You all got
24 any other questions or anything?

25 No? Okay, all right. Okay, go ahead, Mr.

1 Blake.

2 VICE CHAIR BLAKE: Mr. Eckenwiler, I just want
3 to say one thing before we go. I know that ANC has been
4 very consistent in its, you know, opposition to these
5 types of things. But I think you've also realized that
6 the Board has also been somewhat consistent in its
7 application of this as well.

8 So I'm just trying to make sure I can
9 understand and maybe see -- I want a little bit more
10 to use for this. Because I think the Board is basically
11 seeing these types of things pretty consistently. And
12 we could argue this is unique in many ways.

13 But I just want to make sure we can, based
14 on how we looked at it -- and if you think about the
15 places in your ANC, how many we've had about this type
16 of topic and kind of where we've ended up, I mean, the
17 arguments are pretty much always about the same, right?

18 So I'm just kind of --

19 (Simultaneous speaking.)

20 VICE CHAIR BLAKE: I haven't had a chance to
21 look at that.

22 MR. ECKENWILER: Sure, Mr. Vice Chair. So
23 I think a key factor here is do you even have character,
24 scale, and pattern. Because if what you have is a block
25 with, you know, a jumble of different styles, right,

1 you've got a flat front, you've got a porch front here,
2 you've got a couple of bay fronts, and it's a real
3 hodgepodge, a mix, then I would say no. That would be
4 different.

5 And if somebody, you know, I personally
6 wouldn't, you know, be in favor of it, but that's not
7 the test. The test is would it disrupt the character,
8 scale, and pattern. And if there's not a pattern, you
9 know, other than, well, it's just a rowhouse, right,
10 it's that basic building form but, you know, lots of
11 different substantial variations on that theme, then
12 there's no character, scale, and pattern to be
13 disrupted.

14 This is at the other end of the spectrum.
15 This is a block built by one developer, all the houses
16 are in the same style, and none of them has had this
17 sort of structure added onto it. That's very different.
18 And that's basically character, scale, and pattern at
19 its apex.

20 And so there's a lot more to disrupt here than
21 there would be on a lot of other law cases. So I think
22 it is highly, well, I mean, if we look at the text of
23 the regulation it's highly context-dependent. What do
24 you look at when you're looking at this property and
25 those next to it, in effect? And here it's very

1 different from, you know, what you might see in a lot
2 of other blocks.

3 It's been around since we had one of these,
4 so I honestly can't recall just, you know, where all
5 the prior ones have been on the spectrum. But this is,
6 as I say, this is way out at one end of the scale.

7 CHAIRPERSON HILL: Okay, hold on a second.
8 So Vice Chair Blake asked, or started to ask a general
9 question about the ANC and kind of got a little bit more
10 specific back to the case.

11 Mr. Jackson, do you have any rebuttal
12 concerning what just happened? Or I saw you shaking
13 your head at one point.

14 MR. JACKSON: Well, we seem to keep lowering
15 the standard of what the actual regulation says, which
16 again substantially visually intrude. And, you know,
17 disrupting and changing are not the same things. You
18 know, we could pull up the photos again. You know, on
19 --

20 (Simultaneous speaking.)

21 CHAIRPERSON HILL: He's right.

22 MR. JACKSON: -- about our block but, you
23 know, when you look at it, the pattern is not as cut
24 and dry as I would suggest that he continues to assert.
25 So that would be my point.

1 CHAIRPERSON HILL: Okay. Thanks, Mr.
2 Jackson.

3 Okay. All right, I'm going to go ahead and,
4 you know, we have to -- if something changes. But at
5 this point in time, we're going close the hearing and
6 the (audio interference).

7 Thank you all very much for your time, and
8 have a nice evening. Bye, bye.

9 Okay, I hate to say this, I don't want to put
10 off a decision again. But I'm going to put off a
11 decision. And I have a lot -- well, the reason why is
12 I actually kind of do want to talk to the Office of
13 Zoning's Legal Division about one little thing.

14 But just to give you a sense of where I am,
15 like, I'm having a little bit of difficulty voting yes,
16 okay. And unfortunately, we need three. And so don't
17 know where you all are, it doesn't matter right now.

18 I'm just kind of letting the Applicant also know that.

19 And part of that reason is because of that whole row,
20 right, and that I had been in a similar case before and
21 -- anyway, so if it's okay with you all, I'm going to
22 put this off.

23 Commissioner Miller, do I need to put one off?

24 I already put one vote off, right. Were you involved
25 in that?

1 COMMISSIONER MILLER: Yes. Well, the
2 Capitol Hill case we're going to vote on November 19th,
3 I think you said.

4 CHAIRPERSON HILL: Got it, right. So let's
5 put this off for voting on November 19th. Because then
6 you'll have to come back here again at that point anyway.

7 COMMISSIONER MILLER: Well, if we're going
8 to do that, I actually might have been prepared to
9 support it. And I would have given my reasons why and
10 the reservations I had. But if we're going to put it
11 off, I would ask the Applicant to confer
12 directly with their neighbors across the street, and
13 show them the picture, and see if there are any concerns,
14 as long as we're going to put it off.

15 But I don't think it's substantially, visually
16 -- it does change the character. And if we started to
17 get, you know, decks that were -- instead of the simple
18 guardrails here, if we started to get, like, a whole
19 wall, a white wall that was inclosing it, and then other
20 types of enclosures, I think that would be more
21 problematic.

22 But if we're going to put it off, I'd ask Mr.
23 Jackson, if he's still listening, to confer. And if
24 there's anything that there is to report back to, even
25 though the record is closed, to send it to you, we can

1 determine whether we want to accept it at that point.

2 CHAIRPERSON HILL: We can bring him back in,
3 Commissioner. I'm sure they're still available.

4 COMMISSIONER MILLER: I didn't know we were
5 going to put it off.

6 CHAIRPERSON HILL: Yes, I didn't know either.
7 And I'm not confused about me, I don't have an answer
8 but, Mr. Blake, do you have anything you'd like to add
9 at this point?

10 VICE CHAIR BLAKE: Have or ask for? What do
11 you guys saying?

12 CHAIRPERSON HILL: Ask, or I don't know.
13 Commissioner Miller's kind of told us where he is. And
14 so if you want to show your hands now, if you know,
15 because I don't know. So, you know --

16 VICE CHAIR BLAKE: I mean, I think I've said
17 a lot of what I'm thinking. Obviously privacy's not
18 an issue. And the visual intrusion is the key issue.
19 And Commissioner Eckenwiler made some valid points.

20 I would love if I could get some -- I'm looking
21 quite a few pictures right now. So I think I'm okay.

22 I'm curious to see, I mean, you know, what else is taking
23 place on this location. I can understand the fact that
24 there's 30-some houses in a row, built by the same
25 developer 100 years ago. But, you know, it's not a

1 protected zone, and it needs to evolve.

2 And whether there are some pop-ups up there
3 or not, I can't quite make it out from the pictures I
4 have in front of me. But I don't need to concentrate
5 that far. I'll just look at the first few houses. I
6 think we can get a decent sense.

7 But I do appreciate the fact that, you know,
8 we're not going that far away. We are looking at the
9 immediate vicinity, and does this thing materially
10 change what we have. So actually, I'm okay for now.
11 Thank you.

12 COMMISSIONER MILLER: I just wanted to add
13 that, you know, I can -- we're looking at this as if
14 it's a new application that wasn't already built, and
15 it is built. And there were some miscommunication or
16 misrepresentations. And I think that maybe
17 appropriately affected the Commissioner's view point
18 about the whole thing.

19 But when the application comes before us,
20 we're not really considering that it was done illegally
21 or wrongly, at least in this type of case. We're just
22 saying does it meet the criteria for a special exception
23 as if it were new? And I just want to make that comment.

24 But I can understand the frustration of those who might
25 have been misled in prior representations.

1 CHAIRPERSON HILL: Okay, Commissioner
2 Miller, did you want something? I can bring them back
3 in.

4 COMMISSIONER MILLER: Are you going to put
5 this off?

6 CHAIRPERSON HILL: Yes. I mean, currently
7 we don't have three votes so it is --

8 COMMISSIONER MILLER: Yes, yes --

9 COMMISSIONER MILLER: -- if you would bring
10 Mr. Jackson back in, I can then ask him would he talk
11 to the neighbors across the street and report back to
12 us --

13 CHAIRPERSON HILL: Mr. Jackson, can you come
14 back in, please? I'm going to re-open the case on the
15 record, please. If Commissioner Eckenwiler is there,
16 he is most certainly allowed to join, although there
17 will be time to respond.

18 So, Mr. Jackson, what Commissioner Miller is
19 asking for -- Commissioner Miller, could you again ask
20 him?

21 COMMISSIONER MILLER: Yes. Mr. Jackson, I'm
22 not sure exactly what communications you had with the
23 neighbors directly across the street. But if you can
24 show them what you've showed us, in terms of the pictures
25 and the site line, and just report back on what your

1 conversation was, or if they want to submit anything.

2 I think we would probably accept that.

3 That's all I was asking, that there be a direct
4 conversation, directly saying what you're -- well, they
5 see what you have there. They've already been living
6 with it. So anyway, but if you can just report back
7 as to a direct conversation where they know that you
8 have to get approval for what already is there.

9 MR. JACKSON: Absolutely, and yes, there
10 really had not been a formal engagement. We did focus
11 on the adjacent, because I thought, you know, my
12 understanding would be that would be the concern. So
13 more than happy to talk to them and work on getting some
14 letters of approval.

15 Are you most concerned about directly across
16 or sort of, you know, the couple across, or just sort
17 of understand what --

18 COMMISSIONER MILLER: I guess the angle --
19 the sight lines that you showed on your own slide.

20 MR. JACKSON: Okay, absolutely.

21 COMMISSIONER MILLER: We might have the two
22 adjacent houses --

23 MR. JACKSON: Yes.

24 COMMISSIONER MILLER: -- in addition to the
25 direct one across the street.

1 MR. JACKSON: Can absolutely do that.

2 COMMISSIONER MILLER: Thank you.

3 MR. JACKSON: And I just want to, you know,
4 if there's any other sort of components that I can gather
5 as well, I'm more than happy to do that just for --

6 COMMISSIONER MILLER: Yes, I appreciate it.
7 And I realize that the Office of Planning Office of
8 Planning commented on that and said they didn't think
9 it was a problem.

10 CHAIRPERSON HILL: Okay, thanks. So, Mr.
11 Jackson, do you think you can do that by Monday, the
12 10th?

13 MR. JACKSON: This Monday?

14 CHAIRPERSON HILL: Yes, or the 11th?

15 MR. JACKSON: Unfortunately I'm out of town.
16 I fly out on Saturday. And I'm gone all next week.
17 So no, I could not do it.

18 CHAIRPERSON HILL: Okay. I'm just thinking
19 about timing, that's all.

20 MR. JACKSON: Yes, absolutely.

21 COMMISSIONER MILLER: I can come back later,
22 Mr. Chairman. We often pop in.

23 CHAIRPERSON HILL: Sure, well,
24 Thanksgiving's the one after that.

25 COMMISSIONER MILLER: I know.

1 CHAIRPERSON HILL: And when -- do we have a
2 hearing before Thanksgiving, Madame Secretary?

3 MS. MEHLERT: No, there is nothing that week
4 of the 24th.

5 CHAIRPERSON HILL: So the 26th, I'm sorry,
6 the 26th there's no hearing.

7 MS. MEHLERT: Right.

8 CHAIRPERSON HILL: So when do you think, Mr.
9 Jackson, you would be able to get the information that
10 Commissioner Miller is asking for?

11 MR. JACKSON: So we get back on Sunday the
12 16th. So I need a few days. You have hearings on
13 Wednesdays, right?

14 CHAIRPERSON HILL: Yes. But see, what
15 happens is whenever you submit your thing, the people
16 that are parties, which is the ANC, has a week to back
17 that to them, back to --

18 (Simultaneous speaking.)

19 CHAIRPERSON HILL: -- response or something,
20 right. So therefore, I'm trying to us to where we get
21 what whatever we're going to get from the ANC before
22 Wednesday.

23 MR. JACKSON: I got you. Yes, I think
24 ideally, you know, you could just knock on the door,
25 and they're there, and you could talk to them. But yes

1 --

2 CHAIRPERSON HILL: Yes, you don't know.
3 That's fine. So if you get back on the 16h, you get
4 back on the 16th.

5 MR. JACKSON: Yes.

6 CHAIRPERSON HILL: Right. So then maybe you
7 could do something by the 21st, November 21st?

8 MR. JACKSON: Yes.

9 CHAIRPERSON HILL: Okay.

10 MR. JACKSON: Maybe the 24th, just to give
11 me a weekend too.

12 CHAIRPERSON HILL: Sure, the 24th, okay.
13 Then that means the ANC has until the first to respond
14 to whatever you give us on the 24th. Correct, Madam
15 Secretary?

16 MS. MYERS: Correct.

17 CHAIRPERSON HILL: Okay. And then how much
18 stuff do we have on the third, Madam Secretary?

19 MS. MYERS: You've got five hearing cases,
20 two decisions.

21 CHAIRPERSON HILL: Okay. Then let's put this
22 on for decision on the 12th. I'm sorry, on the 12/3.

23 MS. YERS: The third?

24 CHAIRPERSON HILL: Yes, the third. Okay.

25 Okay, great.

1 MR. JACKSON: And the Vice-Chair mentioned
2 potentially wanting other photos. Is that something
3 that you are interested in, in terms of the entirety
4 of the block or other items?

5 CHAIRPERSON HILL: No, that won't be
6 necessary. I mean, how would you show the entirety of
7 the block, Mr. Jackson?

8 MR. JACKSON: You know, you get the iPhone
9 panorama on your --

10 CHAIRPERSON HILL: I'll take that. You can
11 go ahead and do that. I'd like to see what the whole
12 block looks like. I don't think you can --

13 MR. JACKSON: I can do that.

14 (Simultaneous speaking.)

15 CHAIRPERSON HILL: -- shot, but I'd be kind
16 of interested to see. But if you bring pieces that I
17 can see, that's fine, okay?

18 VICE CHAIR BLAKE: Would you want both sides
19 of the street, Mr. Chair?

20 CHAIRPERSON HILL: No, I just want his side
21 of the street.

22 VICE CHAIR BLAKE: Okay.

23 (Simultaneous speaking.)

24 CHAIRPERSON HILL: Okay, great. All right,
25 thanks, Mr. Jackson.

1 All right, so good. So then we're all clear?

2 VICE CHAIR BLAKE: Right.

3 CHAIRPERSON HILL: Well, you all have a good

4 -- and I'm closing it again. You all have a nice day.

5 MR. JACKSON: Thank you again.

6 CHAIRPERSON HILL: Bye, bye.

7 Okay, so we've got 45 minutes, right, before
8 there's a hard stop. And I don't know if this is even
9 worth trying to start. Because Mr. Miller should have
10 at least a little bit of a break before he has to do
11 this all again with a whole bunch of people.

12 So I'm going to call us --

13 MR. YOUNG: I would say I actually have less
14 time than that.

15 CHAIRPERSON HILL: Okay. How much time, Mr.
16 Young, do you have?

17 MR. YOUNG: Because I have to start it.

18 CHAIRPERSON HILL: Yes, I got you. How much
19 time do you need or have, Mr. Young?

20 MR. YOUNG: I would say I have another 30
21 minutes.

22 CHAIRPERSON HILL: Okay, that's fine. So
23 we're going to start this next one just to hear from
24 everybody. And then we're probably going to put this
25 off until maybe just next week, I guess. And we can

1 squeeze it in. I don't know where we are, but we'll
2 -- what's next week look like, Madam Secretary?

3 MS. MEHLERT: You've got six hearing cases.

4 CHAIRPERSON HILL: Okay, great. Let's see,
5 go ahead and call our next case, please, Madam
6 Secretary.

7 MS. MYERS: Next is Application Number 21209
8 of 304, 306, and 308 K Street, LLC, as amended. This
9 is a self-certification application, pursuant to
10 Subtitle X, Section 1002, for area variances from
11 Subtitle C, Section 306.1(a) and (b) to allow three new
12 alley record lots not having frontage along the alley
13 at least 24 feet wide or access to a public street through
14 a public alley at least 24 feet wide.

15 And pursuant to Subtitle X, Section 901 for
16 Special Exceptions under Subtitle U, Sections 601.1(f),
17 to allow a residential use on three alley lots not
18 meeting the requirements of Subtitle U, Section
19 600.1(f)(4)(b), under Subtitle E, Section 5201 from the
20 alley centerline setback requirements of Subtitle E,
21 Section 5100.1(e), and under Subtitle E, Section 5201,
22 and the side yard requirements of Subtitle E, Section
23 5100.1(d).

24 This project is a subdivision of an existing
25 alley record lot to create three new alley record lots

1 within the two-story attached principle dwelling of
2 each new record lot. It's located in the RF-1 Zone at
3 304, and 306, and 308 K Street, Northeast, Square 774,
4 Lot 65. The public hearing was virtually scheduled on
5 March 19th and postponed three times at the Applicant's
6 request.

7 CHAIRPERSON HILL: Okay, great, thanks. If
8 the Applicant can hear me, if they could please introduce
9 themselves for the record.

10 MR. BELLO: Good afternoon, Mr. Chairman and
11 Board members, Olutoye Bello representing the
12 Applicant.

13 CHAIRPERSON HILL: Okay, great, hi, Mr.
14 Bello.

15 MR. BELLO: Good afternoon, sir.

16 CHAIRPERSON HILL: Let's see, so Mr. Bello,
17 unfortunately there's not enough time for you guys
18 today. So what I would suggest is are you able to come
19 back next week?

20 MR. BELLO: Absolutely, sir.

21 CHAIRPERSON HILL: Okay, so I'm doing. I'm
22 going to let Commissioner Miller and Vice Chair Blake
23 ask any particular questions. But the things that I
24 was going to have to go through, Mr. Bello, so you kind
25 of know where I'm going to be when you get back here,

1 is that you know where you are with the Office of
2 Planning, right --

3 MR. BELLO: Sure.

4 CHAIRPERSON HILL: -- and what they think of
5 your particular project, right?

6 Sorry, give me one second.

7 Okay, you're going to have to write this down,
8 because I'm not exactly sure about this, or you can
9 re-write it. Like, the self-cert form for Lot B in
10 Exhibit 53 does not match the relief specified in the
11 Applicant's latest burden of proof in Statement 49.

12 In addition, the self-cert submitted for Lot
13 C in Exhibit 54 appears to be a duplicate of Exhibit
14 53. So you need to kind of clean that up by next week,
15 okay?

16 MR. BELLO: Okay, sir.

17 CHAIRPERSON HILL: Okay. So that's number
18 one. The next is that, you know, you're trying to get
19 three lots, right. So why can't you just do -- you know,
20 what's the practical difficulty with getting two lots
21 versus three lots, right? Because the degree of
22 relief is actually going to be a question.

23 And then you might even, I don't know, you
24 might even go back to the Office of Planning and be,
25 like, if you got two lots, because it's a big lot, you

1 know, if you got two lots do you think that's something
2 that might work?

3 And so those are the questions I have for you.

4 Mr. Blake, do you have any questions of the
5 Applicant?

6 VICE CHAIR BLAKE: Mr. Chair, thank you,
7 you've captured my questions. Thank you.

8 CHAIRPERSON HILL: Thank you.

9 (Simultaneous speaking.)

10 CHAIRPERSON HILL: I'll let Mr. Bello talk.

11 MR. BELLO: Okay.

12 CHAIRPERSON HILL: Vice Chair -- oh, I'm
13 sorry, Commissioner Miller, do you have any questions?

14 COMMISSIONER MILLER: I also was going to ask
15 about the two lot configuration possibility.

16 CHAIRPERSON HILL: Okay.

17 Mr. Bello, you had a comment?

18 MR. BELLO: Yes, just a bit of a the
19 background. The Applicant had actually started out
20 with two lots. The issue with the two lots is that the
21 minimum lot area requirements for semi-detached
22 structures are different, the 3,000 square feet each.
23 So it would actually require one additional relief to
24 be able to have lots less than the size prescribed for
25 semi-detached structure. And we did try that, and

1 Office of Planning was not in favor of that.

2 CHAIRPERSON HILL: What was the additional
3 relief you were going to need?

4 MR. BELLO: A minimum of the dimensions,
5 because for semi-detached structures in the RF-1 zone
6 you need 3,000 square feet each. We're a little short
7 of that.

8 CHAIRPERSON HILL: Okay. I don't know. So,
9 you know, I mean, ultimately the Office of Planning
10 --

11 MR. BELLO: But I'm glad to revisit that and
12 have that discussion with the Office of Planning.

13 CHAIRPERSON HILL: Yes, and maybe the Office
14 of Planning, now that they're hearing us speak a little
15 bit, it is a big log, right. And so what is it that
16 they think should be done with that lot, I guess, right?

17 And so if -- and then, Mr. Bello, if you come
18 back and we end up thinking maybe the Board might, I
19 don't know, want to hear about that in a different way
20 with the two lots and the additional relief, if we can
21 get through it at that point. But I'm a little -- I
22 know that we're in a time crunch here with the Zoning
23 Commission.

24 So I appreciate, Mr. Bellow, you coming in.

25 I'm sorry that you had to come here just as a very late

1 thing, but at least it's not in person. So you didn't
2 have to be in the hearing room the whole day.

3 (Simultaneous speaking.)

4 MR. BELLO: Thank you.

5 CHAIRPERSON HILL: Okay, Mr. Bello. And
6 actually, you know, Mr. Bello, we'll put you first, okay,
7 on next Wednesday, okay?

8 MR. BELLO: Yes, sir, thank you.

9 CHAIRPERSON HILL: All right. Thank you.
10 I'm closing the hearing and the record for this
11 portion.

12 Madam Secretary, do you need anything from
13 me?

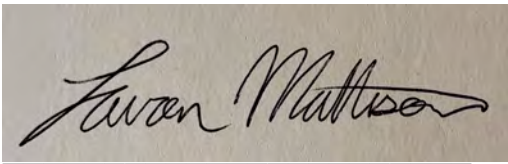
14 MS. MYERS: No, I don't think so.

15 CHAIRPERSON HILL: Okay, great. All right,
16 you guys, you have a nice evening. We are in
17 adjournment. Bye-Bye.

18 (Whereupon, the above-entitled matter went
19 off the record at 4:23 p.m.)
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1 C E R T I F I C A T E

2 This is to certify that the foregoing transcript was
3 duly recorded and accurately transcribed under my
4 direction; further, that said transcript is a true and
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9 of any of the parties nor counsel employed by the
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11 interested in the outcome of the action.

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