

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

NOVEMBER 19, 2025

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 10:00 a.m. EST, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARL BLAKE, Vice-Chairperson
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice-Chairperson
GWEN WRIGHT, District Resident Appointee
JOSEPH S. IMAMURA, PhD, AOC Designee
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary
BEVERLEY BAILEY, Sr. Zoning Specialist
TRACEY W. ROSE, Sr. Zoning Specialist
ESTHER BUSHMAN, General Counsel
ELLA ACKERMAN, Zoning Specialist
MARK HAMALA, Zoning Specialist
KEARA MEHLERT, Zoning Specialist

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MICHAEL SAKINEJAD, Zoning Data Coordinator
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

JOEL LAWSON, Associate Director
RON BARRON
SHEPARD BEAMON
PHILIP BRADFORD
MAXINE BROWN-ROBERTS
MATTHEW JESICK
MICHAEL JURKOVIC
JONATHAN KIRSCHENBAUM
JOSHUA MITCHUM
CRYSTAL MYERS
KAREN THOMAS

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
COMETRIA COOPER, ESQ.
CARISSA DEMARE, ESQ.
DENNIS LIU, ESQ.
HILLARY LOVICK, ESQ.
MARY NAGELHOUT, ESQ.
RYAN NICHOLAS, ESQ.
CHRISTOPHER PENA, ESQ.
JACOB RITTING, ESQ.
MAXIMILIAN TONDRO, ESQ.

The transcript constitutes the minutes from
the Regular Public Hearing held on November 19, 2025.

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

10:06 a.m.

CHAIRPERSON HILL: All right, Madam Secretary, let's go ahead and try our next order of business please.

MS. MEHLERT: Next is in the board's hearing session, it's application number 21334 --

CHAIRPERSON HILL: Madam Secretary, I'm sorry to interrupt you. So, right, so that first part of that did pass though, the denial of the use variance, so that you can process, correct?

MS. MEHLERT: Correct.

CHAIRPERSON HILL: Okay, great, thank you. Okay, go ahead again, Madam Secretary, sorry.

MS. MEHLERT: So, the next case in the board's hearing session is application number 21334 of Della Barba Company, it's a self certified application pursuant to Subtitle X, Section 1002 for a use variance from Subtitle U, Section 320.1A to allow restaurant use, and pursuant to Subtitle X, Section 901.2 for a special exception under Subtitle C, Section 703.2 the minimum vehicle parking requirements of Subtitle C, Section 701.5.

This is for a new restaurant on the first floor and basement of an existing two story road building with outdoor seating and public space. It is located in the RF1 zone at 1382 East Capitol Street Northeast, Square 1035, Lot

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1 814. This hearing began on September 10th, and the board
2 asked the applicant to clarify the requested relief first
3 beginning on the 10th before Vice Chair Blake, Mr. Smith, and
4 Commissioner Miller.

5 CHAIRPERSON HILL: Okay, you guys give me one
6 moment. Okay, great. If the applicant can hear me, if they
7 could please introduce themselves for the record? You're on
8 mute, sir.

9 MR. RACHAL: Good morning members of the board.
10 Anthony Rachal for the applicant, Della Barba Pizza. Joining
11 me, Tracy Wingate, the manager of the Della Barba Pizza.

12 CHAIRPERSON HILL: Okay, Ms. Wingate, could you
13 introduce yourself for the record?

14 MS. WINGATE: Sure, my name is Tracy Wingate, I'm
15 one of the owners of Della Barba Pizza, and delighted to be
16 here today, and looking forward to the outcome.

17 CHAIRPERSON HILL: Okay, great, thank you. All
18 right, okay, let me see. Ms. Wingate, I'm looking at the
19 little pictures of your establishment and it looks very nice,
20 and cute.

21 MS. WINGATE: Thank you.

22 CHAIRPERSON HILL: I'm going to swing by and try
23 it one day.

24 MS. WINGATE: You should, it's absolutely
25 delicious.

1 CHAIRPERSON HILL: I bet it's delicious, it looks
2 delicious. Mr. Rachal, can you hear me?

3 MR. RACHAL: Yes.

4 CHAIRPERSON HILL: Okay, so Mr. Rachal, I've had
5 a chance, and for the record by the way, I have gone back to
6 the original hearing and reviewed the record, and I continue
7 to think you guys are here for the wrong relief. So, what
8 I'm going to do is I'm going to try to clarify why I think
9 you're here with the wrong relief, and then hopefully help
10 you facilitate this in a way that might be helpful.

11 Because also the ANC is in favor of this
12 application, and it seems to be a well loved establishment.
13 So, what I think is that you're here currently for a use
14 variance, right?

15 MR. RACHAL: That's correct, Mr. Chairman.

16 CHAIRPERSON HILL: Okay, and so the use variance
17 lists as the use permitted by special exception in RF zone.
18 Under U320.1A states that any use permitted by special
19 exception in RF zone under U203 may also be permitted by
20 special exception in RF zone. OP treats the application as
21 a request for use variance under U201, use is permitted as
22 a matter of right in residential house zone.

23 Even though the applicant's property is in a
24 residential flat zone RF1, the use as permitted as a matter
25 of right in RF are listed in U301, and include uses permitted

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1 in a matter of right in R zones U301.1A, allow any permitted
2 use in R zones under U201 for U202. A special exception from
3 C701.5, minimum parking requirements, the Office of Planning
4 could -- can you all mute yourself?

5 I'm sorry, I'm getting a lot of feedback. Thank
6 you so much. The Office of Planning did not provide any
7 analysis of the relief because the Office of Planning says
8 that the minimum parking requirements are not necessary. A
9 special exception under X5201, Subtitle X does not contain
10 5201. 5201 generally authorizes the board to allow additions
11 to residential buildings, and new or in large accessory
12 buildings by special exceptions.

13 This application does not propose that type of
14 project. Okay, I have a lot of clarifying thoughts here, but
15 I'm going to kind of get to the chase, okay? And I can hear
16 from the Office of Planning on this as well, what I think is
17 that the Department of Buildings is trying to help you out,
18 but I don't think they have the requested relief that is
19 necessary.

20 One way of doing this is going back to the Zoning
21 Administrator and pointing out that we, or whatever through
22 the experience of the board, the application may be -- should
23 possibly be here under a special exception from a corner
24 store use. A special exception under U54.14 so long as A,
25 the use is not likely to become objectionable to neighboring

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1 properties because of noise, traffic, deliveries, or other
2 objectionable conditions.

3 And B, the use will not detract from the overall
4 residential character of the area, and will enhance the
5 pedestrian experience. I want to reference, Mr. Rachal, a
6 Board Order 21157, which speaks of this relief from a corner
7 store use. Okay, so what I think is that you could again,
8 go back to the Permit Buildings, you could also speak with
9 the Office of Zoning, our office.

10 And see if they can help clarify how you can come
11 back with a burden of proof for the special exception from
12 the corner store provisions. Mr. Rachal, are you following
13 along what I'm trying to say? You're on mute, sorry. It's
14 okay.

15 MS. WINGATE: Tony, you're still on mute.

16 CHAIRPERSON HILL: Yeah, he's trying to figure it
17 out.

18 MR. RACHAL: I got it. Yes, Chairman, yes, I
19 understand. The one concern that we may have is that when
20 I look at the corner store regulations, there are provisions
21 about not being able to have alcohol on premises, and the
22 application we're seeking in the future to be able to provide
23 for consumption of alcohol on the premises.

24 CHAIRPERSON HILL: Okay, that I have to look for.

25 MR. RACHAL: And that pushed us back to the Office

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1 of Planning came out in terms of a request for use variance.
2 I believe that given the condition of the property, which is
3 very small, and restricted, and has always been in commercial
4 use for many, many years, going back at least the last 20 or
5 more, that there has been a use that has not lapsed for
6 commercial purposes and retail sales.

7 The hardship to the applicant would be to try to
8 financially restore it to residential use, which we believe
9 is a very difficult, if not impossible situation given it's
10 in a historic district, and given that it's on a corner
11 location that is well trafficked, and has not ever been
12 residential on the ground floor, it's unlikely that that
13 would be a financially viable option, and we would --

14 CHAIRPERSON HILL: Mr. -- go ahead, I'm sorry, Mr.
15 Rachal, go ahead.

16 MR. RACHAL: We would amend our request in line
17 with what the Office of Planning has suggested as a use
18 variance request.

19 CHAIRPERSON HILL: Okay, we're going to do a
20 couple of things, we might actually go out and speak with our
21 legal counsel because I'm not sure about the alcohol thing.
22 But at the same time, I don't know, what I'm trying to cut
23 to the chase here, Mr. Rachal, is I don't think you
24 necessarily might win under this, so that's why I'm trying
25 to be helpful.

1 MR. RACHAL: Yes, I understand, Mr. Chairman.

2 CHAIRPERSON HILL: Let's see, what was I going to
3 say. Office of Planning, can I get your input please? Mr.
4 Beamon? There we go.

5 MR. BEAMON: Yes, good morning. For the record,
6 Shephard Beamon with the Office of Planning filling in for
7 Philip Bradford.

8 CHAIRPERSON HILL: Okay, so Mr. Beamon, what is
9 it that you guys analyzed this application for?

10 MR. BEAMON: So, we did our analysis based off of
11 a use variance to allow for a drinking, dining establishment
12 and fast food, sorry, yes.

13 CHAIRPERSON HILL: And what was the first prong
14 analysis again, could you tell me please?

15 MR. BEAMON: So, we found that converting it to
16 a conforming residential use would likely require extensive
17 modifications to both the exterior and interior of the
18 structure, which is also located in a historic district. So,
19 we found that this would result in an undue hardship.

20 CHAIRPERSON HILL: All right, and you don't think
21 they need the parking removed?

22 MR. BEAMON: Correct, we have confirmation from
23 DDOT for that.

24 CHAIRPERSON HILL: Okay, and Mr. Rachal, you went
25 to DDOT, and what did they say you needed relief from? Now

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1 you're on mute still, Mr. Rachal, sorry.

2 MR. RACHAL: From a use variance.

3 CHAIRPERSON HILL: Okay. Mr. Blake, did you have
4 your hand up?

5 MEMBER BLAKE: Yeah, I just have a couple
6 questions for Mr. Beamon. In this instance, there is an
7 operation up and running currently, to what extent would not
8 getting this variance hurt the owner of the property?

9 MR. BEAMON: Well, I mean they would not be --
10 they could not expand the use essentially. So, the outdoor
11 space wouldn't be used.

12 MEMBER BLAKE: But they could continue to operate,
13 correct?

14 MR. BEAMON: Correct, if it's still conforming
15 use, yes.

16 MEMBER BLAKE: And how would it impact the owner?

17 MR. BEAMON: That might be a question for the
18 owner, but I would assume that they would just continue to
19 operate as they are currently, but again, there would be this
20 just unused space outside that they could potentially use for
21 that outdoor seating.

22 MEMBER BLAKE: So, if we did not approve the
23 variance, would it impact the owner of the property, or the
24 restaurant here?

25 MS. WINGATE: So, can I chime in as one of the

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1 owners?

2 MR. RACHAL: Mr. Blake, if I could --

3 MEMBER BLAKE: The reason I'm asking that question
4 is that the variance has to be for the owner, right? It has
5 to adversely affect the owner, so I'm trying to get to the
6 are we connecting with the owner part of it here. So, that's
7 part of this.

8 MR. RACHAL: Yes, Mr. Blake, I would point to the
9 history in terms of the use of the property. It has never
10 been put to a residential use going back for many years
11 beyond the 20 years of use as a pizza fast food operation.
12 Prior to that it was a retail sales commercial use, and it
13 has always been a commercial use. If it were forced not to
14 be able to maintain that, the owner would suffer because of
15 the cost associated with trying to convert it back to a
16 residential use.

17 And the history of it has shown that it has not
18 been attractive to the market for a conversion as
19 residential. Not to mention the fact of all the costs as
20 identified by OP with which we concur, it would be very
21 extensive renovation, if not feasible in terms of the space,
22 because it is a very restricted space. And I would also --

23 MEMBER BLAKE: Would the variance allow the owner
24 to collect a higher rent?

25 MR. RACHAL: I would doubt that, because it has

1 never shown any value as residential over some 50 plus years.

2 MEMBER BLAKE: I'm sorry, the conversion to the
3 use requirements, the use is what I'm asking about.

4 MR. RACHAL: Yes, the use would be again, for a
5 very limited purpose. This is seasonal outdoor use
6 expansion, so that it's not going to be that great of a
7 financial thing for the owner. It will be an improvement,
8 and I would point out that in today's economic conditions
9 throughout the District of Columbia, restaurants are
10 suffering mightily, many are closing to the point that it's
11 less of a benefit for the residents, and visitors to have
12 fewer restaurants in the city.

13 I think it's an impact negatively in terms of the
14 city's own budget, which has been based in terms of some
15 retail sales that are now suffering. And what this would do
16 is to try to reverse course, and provide for additional
17 seasonal income to the restaurant, and to the owner
18 ultimately.

19 CHAIRPERSON HILL: Mr. Rachal, we're trying to
20 make sure you're here for the right relief, that's all.
21 That's all we're trying to make sure of at this point. And
22 Ms. Wingate, I saw you had your hand up, but I just wanted
23 to make sure -- I mean we can go through this, you can do
24 your presentation the way you think you want to do it right
25 now. I'm just trying to help us all out if this isn't what

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1 we should be here talking about, right?

2 But let me do this. I'm going to go speak with
3 counsel real quick, okay? And see how this might go next,
4 okay? So, go ahead, Mr. Miller.

5 COMMISSIONER MILLER: Yeah, before we do that, I
6 just hadn't said anything, I think I certainly want to get
7 to a yes on allowing this project, I think that's what my
8 colleagues do too, to allow the fast food conversion to a
9 restaurant with outside dining, and no need for parking. So,
10 and I thought at the end of the last hearing, Mr. Rachal, you
11 were going to try to get a certification.

12 A memorandum from the Zoning Administrator stating
13 what their business relief is needed in this case. Do we
14 have that in the record, or did you try --

15 MR. RACHAL: Yes, yes --

16 COMMISSIONER MILLER: I know there's been
17 discussions, informal discussions that people have had, both
18 OP, and maybe you all, but do we have a memo in the record?
19 I missed it if we do.

20 MR. RACHAL: No. On September the 12th I
21 submitted a written request to the Department of Buildings
22 to give a determination letter, and outline the fact that the
23 board had asked for that type of assistance, and only last
24 night did I receive a call back from DOB from Elisa Vitale
25 indicating that they knew the hearing was coming up, and was

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1 wishing that we would be able to resolve it in the hearing.

2 They had no real objection to what the Office of
3 Planning had recommended. In fact pointed out that the
4 Office of Planning had supported the request as a use
5 variance and no parking requirement.

6 COMMISSIONER MILLER: Well, we're familiar with
7 Alisa Vitale, she used to be on the Office of Planning staff,
8 is now the Zoning Administrator staff. We can have a
9 conversation with counsel, but I think it would be helpful
10 if the ZA would just certify what the -- send a memo, put it
11 in writing what the relief is that they believe is necessary
12 in this case.

13 I mean, we're the board, we can decide that
14 ourselves, but I think that would be helpful for us if that
15 was there. But you didn't want to hear from the owner, Mr.
16 Chairman, before we talk to counsel?

17 CHAIRPERSON HILL: Actually I don't think the
18 owner is here, I think it's the manager, correct, Ms.
19 Wingate?

20 COMMISSIONER MILLER: That's what I meant.

21 MS. WINGATE: No, I'm one of the owners, I'm one
22 of the owners.

23 MR. RACHAL: Mr. Chairman, I may have one other
24 comment I'd like to make before you talk with counsel. In
25 looking at, again, the corner store regulations, if the board

1 were disposed to allow for the special exception for us to
2 have alcohol sales on premises, I think that would remedy the
3 situation via a corner store special exception.

4 CHAIRPERSON HILL: As I kind of understand it, you
5 can have alcohol, right? But that's some clarification that
6 I can give -- I'm sorry, I'm hoping to get. But Ms. Wingate,
7 I guess what Board Member Blake is trying to say, and I don't
8 want to speak for him, he can speak for himself in a second,
9 is that the use variance that you kind of keep it the way it
10 is, right?

11 And you're still going to make the same amount of
12 money, you can still get a use out of it, right? And so we
13 are trying to accommodate, I shouldn't say accommodate, we're
14 trying to make sure you're here for the right relief, right?
15 And so, that's what I think Mr. Blake was trying to ask, is
16 that correct, Mr. Blake?

17 MEMBER BLAKE: Yes, Mr. Chairman. I'm trying to
18 make clear that the hurdle is very high for the variance, and
19 I'm trying to figure out if all the parameters are there.
20 To the extent that they're not, I do think that if a lesser
21 degree of relief can be accomplished, it should. Now, at the
22 September 10th meeting we said let's try to come up with
23 something.

24 And I see that you did recently go to the Zoning
25 Administrator, we had actually hoped that you would have a

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1 little bit more today than that. And one of the things we
2 tried not to do in that meeting on the 10th was do a
3 determination for you. I mean the board is not to make the
4 determination, it really is the job of the Zoning
5 Administrator, or for you to do a self serve.

6 So, the chairman has been very generous to
7 actually push you in a very clear direction that might work,
8 but it's really not -- we as the board, it's not the
9 responsibility to make the determination. So, that's one of
10 the reasons why I think we've been kind of -- we're wrestling
11 with kind of guiding you, but that's kind of where I think
12 the variance continues to be, I think a high hurdle.

13 Because we are still going to look at it on the
14 merits of it, and when you think about what you're actually
15 asking for, it is a high hurdle for a use variance.

16 MS. WINGATE: Okay, so first off let me say just
17 thank you for the discussion, it's been very interesting.
18 So, I think it's important to level set here. To set up this
19 little pizzeria, we have spent a million dollars first off,
20 right? This is not something that is a fly by night
21 operation, it has taken significant resources to setup. It
22 costs a lot of money day in, day out to run this operation.

23 We decided on Capitol Hill because my husband is
24 very dedicated to Capitol Hill, he grew up there. So, we
25 wanted to be there, we picked the neighborhood, we absolutely

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1 love it. If we don't get this variance, we will close,
2 that's it. We absolutely cannot continue, despite the
3 support of the neighborhood.

4 MEMBER BLAKE: Ms. Wingate, do you own the
5 building as well as the restaurant?

6 MS. WINGATE: We do not, we do not. And every
7 single year our rent increases significantly, that's the
8 state of play, right? We actually signed the lease right
9 before COVID, then we had an addendum after COVID, which
10 significantly increased our costs, but that's what happens,
11 right?

12 CHAIRPERSON HILL: Ms. Wingate?

13 MS. WINGATE: Yeah.

14 CHAIRPERSON HILL: I'm just trying to get -- I'm
15 sorry, we're totally here trying to help, right? And --

16 MS. WINGATE: I understand that, I just want you
17 to know that when you say it's a high bar, I want you to know
18 that I get that, it is a high bar, I am telling you if we
19 don't get something, we will close. So, that's the problem,
20 right?

21 CHAIRPERSON HILL: Okay, thanks, Ms. Wingate. I
22 guess, Ms. Wingate, I'm not trying to get too far along in
23 this, but Mr. Blake is trying to say this kind of applies to
24 the building owner, that's why we're trying to also figure
25 out how to do this, right?

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1 MS. WINGATE: I see, yeah, so we're not the
2 building owner, yeah, we're not.

3 CHAIRPERSON HILL: So, we'll come right back,
4 okay? So, I'm going to have an emergency meeting, okay?

5 MS. WINGATE: Okay.

6 CHAIRPERSON HILL: Thanks. As chairperson of the
7 Board of Zoning Adjustment for the District of Columbia in
8 accordance with 407 of the District of Columbia
9 Administrative Procedures Act, I move that the Board of
10 Zoning Adjustment hold a closed emergency meeting on
11 11/19/2025 for the purposes of seeking legal counsel on case
12 number 21334, deliberate, not vote on case number 21334. Is
13 there a second, Mr. Blake?

14 MEMBER BLAKE: Second.

15 CHAIRPERSON HILL: Great, can I get a roll call
16 vote please, Madam Secretary?

17 MS. MEHLERT: Please respond to the chair's motion
18 to hold an emergency closed meeting with legal counsel.
19 Chairman Hill?

20 CHAIRPERSON HILL: Yes.

21 MS. MEHLERT: Vice Chair Blake?

22 MEMBER BLAKE: Yes.

23 MS. MEHLERT: Commissioner Miller?

24 COMMISSIONER MILLER: Yes.

25 MS. MEHLERT: Motion passes.

1 CHAIRPERSON HILL: Okay, great. As it appears the
2 motion passed, I hereby give notice that the Board of Zoning
3 Adjustment will recess this procedure on 11/19/2025 at 10:41
4 to hold a closed emergency meeting pursuant to District of
5 Columbia Administrative Procedures Act. A written copy of
6 this notice will be posted in the Jerrily R. Kress Memorial
7 Hearing Room. Okay, we're going to go right to talk to legal
8 counsel and we'll come back, okay? Thank you.

9 (Whereupon, the above-entitled matter went off the
10 record for a recess.)

11 CHAIRPERSON HILL: All right, Mr. Rachal, can you
12 hear me?

13 MR. RACHAL: Yes, I can, Mr. Chairman.

14 CHAIRPERSON HILL: This is what I suggest, okay?
15 I suggest, Mr. Rachal, that you go back and take a look at
16 U254.14, and under B, B1, a demonstration of conformity to
17 the provisions of Subtitle U254.5 through 254.12, I have
18 these braces in my mouth, they're killing me. So again, I'll
19 repeat. A demonstration of conformity to the provisions of
20 Subtitle U254.5 through 254.12, and then there's a bunch of
21 things that are under B, right?

22 And so make your argument for why your client is
23 good with 254.5 through 254.12, and there are items in there
24 of terms of alcohol, outdoor seating, on site cooking, all
25 of which the board can grant as a special exception if you

1 meet those criteria. And again, as I mentioned, the criteria
2 was under 254.14, so long as A, the use is not likely to
3 become objectionable to neighboring property because of
4 noise, traffic, deliveries, or other objectionable
5 conditions.

6 And B, the use will not detract from the overall
7 residential character of the area, and will enhance the
8 pedestrian experience. I'm also going to send you to my
9 office, the Office of Planning, and they can also possibly
10 clarify any questions. And then I would also refer you to
11 case number 21157, which is the order that just came out.
12 So, if you go ahead and come back with us with a revised self
13 certification and your burden of proof, I think that would
14 be the most helpful thing for you and your client.

15 MR. RACHAL: Thank you, Mr. Chairman.

16 CHAIRPERSON HILL: So, Madam Secretary, if we
17 account for timing such as that, and then we need to get a
18 new report from the Office of Planning concerning that
19 special exception, and once again, Mr. Rachal, a special
20 exception is a much lower bar than a use variance, yeah, the
21 use variance is the highest bar we've got, that means you
22 can't do anything.

23 And so this is a way to proceed that I'd like to
24 put you on, and if that's the case, Madam Secretary, when can
25 we come back here?

1 MS. MEHLERT: So, again, we only have two more
2 hearings in 2025, so I don't know if the applicant is able
3 to provide this information, how soon they're able to provide
4 this information, and how soon OP is able to do a
5 supplemental.

6 CHAIRPERSON HILL: Let me ask two questions. One,
7 we have -- tell me my case load, our last one is on the 7th,
8 no, our last one is on the 10th?

9 MS. MEHLERT: Yes.

10 CHAIRPERSON HILL: We only have two more?

11 MS. MEHLERT: Right.

12 CHAIRPERSON HILL: Okay, the 3rd is how many
13 cases?

14 MS. MEHLERT: There are five hearing cases on the
15 3rd.

16 CHAIRPERSON HILL: And the 10th?

17 MS. MEHLERT: There are seven, and you have an
18 appeal, and a couple party status cases.

19 CHAIRPERSON HILL: You're kidding me, there's no
20 way, on the 10th? Okay, so then you said we just scheduled
21 something for the 7th, and then we're back again on the 14th
22 of January?

23 MS. MEHLERT: The 21st.

24 CHAIRPERSON HILL: And how many cases do we have
25 on the 21st?

1 MS. MEHLERT: We just added another one, so now
2 there's six total, and five meeting cases.

3 CHAIRPERSON HILL: Okay, and I'm looking to you,
4 Mr. Rachal, and I guess I can look to Mr. Beamon, but it
5 really is Ms. Wingate in terms of what you're trying to do,
6 and when you're trying to do it, and by the way the board is
7 really trying hard. The 3rd, you'd have to come back on the
8 3rd, because there is no way I could add you on the 10th, and
9 I don't think you're going to have your ducks in a row by the
10 3rd.

11 So, I think the best thing for you guys is
12 actually to take your time so that you know what's going on,
13 and come back here on the 21st. And if we come back here on
14 the 21st and still we're trying to accommodate that date,
15 then when would you need information, Madam Secretary?

16 MS. MEHLERT: So, for January 21st, it's the --
17 I know it's the holidays, but if the applicant could submit
18 their information by say January 2nd, or the 9th, I don't
19 know -- again, I don't know how long OP would need to purview
20 submissions for any relief. So, I mean we could either give
21 them one week or two weeks basically.

22 CHAIRPERSON HILL: Mr. Beamon, do you have any
23 idea?

24 MR. BEAMON: Yeah, again, considering the
25 holidays, I mean I don't know for the applicant, I'm not sure

1 if we can push to the next date after the 21st, and that
2 would allow us some additional time to review and provide a
3 supplemental.

4 CHAIRPERSON HILL: Okay, so if we put them on the
5 28th, then when would you back up from that point, Madam
6 Secretary?

7 MS. MEHLERT: So, then if an OP report could be
8 submitted by the 21st, then if the applicant could submit
9 their information by January 7th, if two weeks is enough time
10 for OP.

11 MR. BEAMON: Yes, that's good, yes.

12 CHAIRPERSON HILL: Mr. Rachal, do you understand
13 the time line?

14 MR. RACHAL: Yes, I do, Mr. Chairman. There is
15 no possibility of perhaps trying to get on the first session
16 on the 21st of January?

17 CHAIRPERSON HILL: I mean, I guess my thought is
18 one more week isn't necessarily going to do one thing or
19 another for you guys in terms of your time line, because
20 you're already -- the time line is already not what your
21 client wants, I know that, right? But I want to make sure
22 that the next time you come here, everything is ready to go,
23 right? You don't want to have to get this going any further,
24 right?

25 So, I think the 28th might be your best bet to be

1 able to -- I mean you still need to talk to our office, you
2 need to still talk to the Office of Planning, you still need
3 to get your self cert in correctly, you need to get your
4 burden of proof according to that self cert. So, let's just
5 go ahead and go with the 28th, and then the date that --
6 repeat the dates again please, Madam Secretary, if we come
7 back on the 28th?

8 MS. MEHLERT: So, the applicant submissions would
9 be due on January 7th, then OP could file a supplemental
10 report on January 21st, and then there would be a continued
11 hearing on January 28th.

12 CHAIRPERSON HILL: Okay, great. All right, you
13 guys, we'll see you here on January 28th, okay?

14 MR. RACHAL: All right, thank you, Mr. Chairman.

15 CHAIRPERSON HILL: Thank you. Thank you, Ms.
16 Wingate, good luck. Let's take a break, okay? It's 11:05,
17 take 10 minutes, 15 minutes. Thank you.

18 (Whereupon, the above-entitled matter went off the
19 record for a recess.)

20 CHAIRPERSON HILL: Madam Secretary, if you could
21 call us back please, and call our next item of business?

22 MS. MEHLERT: The Board is back from a quick
23 break, and returning to its hearing session. The next case
24 is application number 21330 of Paul Pike as amended, this is
25 a self certified application pursuant to Subtitle X, Section

1 901.2 for a special exception under Subtitle B, Section 5201,
2 lot occupancy requirements of Subtitle E, Section 210.1.

3 This is for a new accessory structure in the rear
4 yard of an existing attached dwelling, it's located in RF1
5 slash D.C. zone at 1818 15th Street Northwest, Square 191,
6 Lot 63. This was originally scheduled for July 30th, and the
7 hearing has been postponed twice at the applicant's request.
8 Party status in opposition was also granted to Jacqueline,
9 Gail and John Jacobson on June 18th.

10 CHAIRPERSON HILL: Thank you. Madam Secretary,
11 this is 21330?

12 MS. MEHLERT: Yes.

13 CHAIRPERSON HILL: What about, did we already --
14 so, 21346, did we postpone that?

15 MS. MEHLERT: Sorry, yes, we did postpone that.

16 CHAIRPERSON HILL: Okay, did we set a date?

17 MS. MEHLERT: Yes, February 25th.

18 CHAIRPERSON HILL: Okay, great. If the applicant
19 can hear me, if they can please introduce themselves for the
20 record?

21 MR. SULLIVAN: Yes, thank you, Mr. Chairman, and
22 board members. This is Marty Sullivan on behalf of the
23 applicant.

24 CHAIRPERSON HILL: Okay, hi, Mr. Sullivan, welcome
25 back. Ms. Fester, or I should say the party in opposition,

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1 could they please introduce themselves for the record?

2 MS. FESTER: Yeah, good morning, Mr. Chairman, and
3 members of the board, I'm Andrea Fester, I represent the
4 Jacobsons, who have been admitted and recognized as
5 opposition parties in this matter.

6 CHAIRPERSON HILL: Give me one second. Okay, so
7 there has been some movement, it looks like. Mr. Sullivan,
8 could you please explain on behalf of your applicant what has
9 happened since the last time you were here?

10 MR. SULLIVAN: Yes, happy to report that we've
11 come to an agreement with the party opponent, and we've
12 signed an agreement with them, and they are withdrawing their
13 party status in exchange for the terms of that agreement.

14 CHAIRPERSON HILL: Okay, Ms. Fester, is that
15 correct?

16 MS. FESTER: With one clarification. We have
17 reached an agreement, and we're joining the applicant in
18 requesting that there be two conditions associated or
19 attached to any board order approving the special exception.
20 We are withdrawing our opposition to the special exception,
21 but I would prefer not to withdraw our status as a party so
22 that we can continue to receive notices, and filings on this
23 matter.

24 CHAIRPERSON HILL: What are the two conditions,
25 Ms. Fester? I don't know whether they're going to happen or

1 not, I just want to get clarification. What are the two
2 conditions that you were hoping to get included?

3 MS. FESTER: Yes, and they are also in the letter
4 submitted by the applicant as well, let me just get them in
5 front of me. The first condition is a request that any board
6 order approving the special exception provide that the order
7 will expire and not be renewable if the applicant fails to
8 apply for a building permit and begin construction of the car
9 port and deck depicted in the special exception application
10 within nine months of the effective date of the BZA order.

11 And the second condition is a condition that
12 directs the applicant to promptly reapply to the BZA to
13 request appropriate relief if the building permit for the car
14 port is denied based on zoning compliance issues, or to
15 otherwise correct, satisfy, or resolve any zoning compliance
16 issues.

17 CHAIRPERSON HILL: Okay, give me a second here.
18 Mr. Sullivan, is that what your understanding is with your
19 client?

20 MR. SULLIVAN: Well, no, my understanding was that
21 they would be withdrawing request for party status, but per
22 the agreement they're withdrawing their opposition to the
23 special exception, so I suppose I don't have an issue as long
24 as it's clarified that they're now a party in support rather
25 than a party in opposition.

1 CHAIRPERSON HILL: So, Ms. Fester, I guess the
2 reason why that is important, if that helps with
3 administrative issues concerning the order, do you understand
4 that as the case -- sorry, go ahead, Mr. Sullivan.

5 MR. SULLIVAN: We have opposition I believe from
6 the ANC, so it doesn't really matter as far as timing. We
7 still have party opposition. I'm sorry, if that's what you
8 were referring to, the timing of the order, it doesn't
9 matter.

10 CHAIRPERSON HILL: I appreciate that, Mr.
11 Sullivan, give me a second. I'll be right back. All right,
12 sorry again. Ms. Fester, do you understand what Mr. Sullivan
13 is asking about in terms of support? You would still be a
14 party, you would still be getting all the information, but
15 you would be listed in support.

16 MS. FESTER: If that -- my clients have some
17 difficulty in saying they support this project as opposed to
18 not oppose it, but if that is necessary for administrative
19 purposes you may consider us a party in support.

20 CHAIRPERSON HILL: Okay, I can find out whether
21 or not what I think it is is correct later, and I will let
22 you know, Ms. Fester. I mean, the thing that I'm mostly
23 trying to figure out, Ms. Fester, we haven't really gone
24 through this yet, so Mr. Sullivan, we are going to go through
25 the hearing, and you're going to present your client's

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1 argument, and we're going to go through the normal things.

2 We're going a little bit backwards on this because
3 this has been postponed, and back and forth. And I guess,
4 Ms. Fester, what I am going to now point the board toward
5 also, is the board often times will put in conditions that
6 the board thinks is necessary within what we're looking for
7 with the regulations, and we don't necessarily put them in
8 there.

9 But if the board thinks that it's something that
10 maybe we can put in as a condition, then that's something
11 that we will do. I'm just kind of highlighting that for my
12 fellow board members as we kind of go through this. And that
13 may or may not determine maybe the crux of what you're
14 speaking toward with your client, Ms. Fester. And I think
15 the conditions sound somewhat reasonable, but we can talk
16 them through. All right, that all being the case, Mr.
17 Sullivan, go --

18 MS. FESTER: Mr. Chairman, if I could just say one
19 other thing? And that is that because of our changed
20 position, even though we would like to still be considered
21 a party, I do not intend to cross examine any witnesses, or
22 present any case either in support or opposition. I will be
23 passively here.

24 CHAIRPERSON HILL: Okay, great. I hadn't even
25 thought of that, Ms. Fester, but thank you, that makes my day

1 a little easier. Mr. Sullivan, if you want to go ahead and
2 walk us through your client's application, and why you
3 believe they're meeting the criteria for the substantial
4 relief requested, I'm going to dream about saying that one
5 day. If you could go ahead, I'll put 15 minutes on the clock
6 so I know where we are, and you can begin whenever you like.

7 MR. SULLIVAN: Thank you, Mr. Chairman. If Mr.
8 Young could please load the PowerPoint presentation? The
9 property is 1818 15th Street Northwest. Next slide please.
10 Property is in the RF1 slash Dupont Circle overlay zone
11 approved with three story single family dwelling. And the
12 applicant constructed a car port at the rear, which brings
13 the total lot occupancy to 70 percent, and actually
14 constructed it larger than that, but this was originally a
15 variance.

16 He's proposing to scale it back to 70 percent lot
17 occupancy, so we're requesting relief for the 10 percent.
18 The Office of Planning is recommending approval. ANC 2B
19 voted to not support, and we haven't gone back to the ANC
20 after coming to agreement with the neighbor. There are four
21 letters of support from the other adjacent neighbors,
22 including three adjacents, and then one across the alley.

23 Next slide please. There is a photo on the left
24 is the front of the property at 1818, on the right is the car
25 port, and one of the reasons that the car port was

1 constructed was there are buildings all along his side
2 property line facing Swan Street, and things have fallen off
3 the roofs of some of those buildings at times, and damaged
4 his vehicle.

5 Next slide please. There is a view from the
6 inside of the property going back towards the rear, and
7 showing the house. Now, the proposal that you see here, this
8 deck will be considerably smaller to get to 70 percent lot
9 occupancy. Next slide please. The purpose of the RF1 zone
10 is to provide for areas predominantly developed with row
11 buildings and small lots, single family, no more than two
12 principal dwelling units.

13 This is a single family row dwelling, and this
14 deck is not out of character with the adjacent property, or
15 surrounding properties regarding decks and rear parking
16 spaces. Next slide please. So, the special exception
17 criteria is light, and air, privacy, and character, scale,
18 and pattern. The car port is modest in scale at six feet,
19 ten inches in height.

20 It's located at the rear of the property. The
21 adjacent lots occupy 100 percent of their land area adjacent
22 to the north, so the car port will adjoin the bulk of an
23 existing residential structure rather than open yard space,
24 as a result it will not introduce new shadows or masking
25 beyond existing conditions. It is constructed of wooden

1 slats, the car port will maintain air flow, and remain
2 visually compatible and subordinate to the primary building.

3 While the neighboring property at 1508 Swan has
4 an at risk window facing the applicant's parking area. The
5 car port will not materially affect light or air to that
6 window. The car port has a pretty low height to remain below
7 that window, which is I believe the living room window of Ms.
8 Jacobson. Regarding privacy, located at the rear of the
9 property and oriented toward the alley, the car port
10 minimizes direct views into adjacent private spaces.

11 And this is, I believe was the main issue that the
12 agreement resolved regarding privacy. The applicant has
13 agreed to provide funding for the frosting of the living room
14 window, which would provide privacy to Ms. Jacobson, but
15 still allow light and air in. He's also agreed not to
16 obstruct those windows, that at risk window, or the other
17 three at risk windows.

18 Regarding character scale and pattern, the car
19 port is not visible from 15th Street, and there are several
20 other nearby properties that contain similar rear additions
21 and accessory structures, so it's not out of line with that.
22 The applicant is currently going through the HPRB process,
23 they have not received that approval yet. Next slide please.
24 This is a representation of what the deck will look like.

25 It won't be able to cover the entire car, but we

1 were limited to the 70 percent with the special exception,
2 so it covers enough of it to hopefully protect his car from
3 any potential damage in the future. Next slide please.
4 There is the site plan drawing showing how this will look
5 with the car underneath it, steps on the right. Next slide
6 please.

7 And there is a section elevation showing the car
8 port deck. Car goes underneath that, saris up to the deck.
9 Next slide please. This is the same drawing. Next slide
10 please. And I think that's it, thank you.

11 CHAIRPERSON HILL: Excuse me, Mr. Sullivan?

12 MR. SULLIVAN: Yes?

13 CHAIRPERSON HILL: Before Mr. Young, you drop
14 that, is there any way that you can show me where these
15 windows are that you guys are going to frost, or?

16 MR. SULLIVAN: Yeah, if we go back to -- I'm sure
17 there's exhibits, and I'll find out what those exhibits are
18 that might show it better, but I do have the maybe page two
19 or three of this presentation. Next slide. So, on this, if
20 you go up the stairs on the deck on the right, you'll see the
21 living room window on the right.

22 CHAIRPERSON HILL: Yeah, that's okay. I mean if
23 you can find an exhibit, that would be helpful.

24 MR. SULLIVAN: Okay.

25 CHAIRPERSON HILL: Okay, Mr. Young, you can drop

1 it. Before I turn to my board who might have questions,
2 could I hear from the Office of Planning?

3 MR. BEAMON: Good morning again. For the record,
4 Shephard Beamon with the Office of Planning on behalf of
5 Philip Bradford. OP has reviewed the application for the
6 requested special exception relief from lot occupancy to
7 allow a rear car port with decks as revised, and finds that
8 the request has met the criteria for Subtitles E and X.
9 Therefore we stand on the record, and I can take any
10 questions.

11 CHAIRPERSON HILL: Thank you. Mr. Sullivan, why
12 was the ANC opposed?

13 MR. SULLIVAN: Well, when we went there the first
14 time we were asking for a variance at I believe it was 76,
15 or 78 percent lot occupancy --

16 CHAIRPERSON HILL: 77.

17 MR. SULLIVAN: Yeah. And we had the party
18 opposition, and we didn't go back, and they revoted when we
19 changed it to a special exception, they took it again, and
20 voted, and voted to continue their opposition to it. And we
21 weren't invited to that meeting, and at that point we still
22 had party opposition as well.

23 CHAIRPERSON HILL: So, you didn't go back once the
24 party opposition had been resolved?

25 MR. SULLIVAN: No, that was resolved last evening,

1 so yesterday.

2 CHAIRPERSON HILL: Okay, do you want to go back?

3 MR. SULLIVAN: I don't think it's necessary, I
4 mean we're -- because the deck was built, there is an OAH
5 case going on, so the applicant has to proceed with revising
6 it, so --

7 CHAIRPERSON HILL: Okay, that's fine, I was just
8 --

9 MR. SULLIVAN: I mean, I don't know, the last two
10 orders we got were a little quicker than they have been, so
11 I think the delay wouldn't have been worth it, no.

12 CHAIRPERSON HILL: Okay, all right. Does my board
13 have any questions of the applicant or the Office of
14 Planning?

15 MEMBER BLAKE: Yes, I do have a question of the --
16 sorry, go ahead Commissioner Miller.

17 COMMISSIONER MILLER: Well, you're the vice chair
18 of this body, so you go ahead.

19 MEMBER BLAKE: Okay, I'll take it. Mr. Sullivan,
20 could you talk to me a little bit about those two conditions
21 that are in that agreement? I want to make sure that A, how
22 do you believe that the Board has the authority to do those
23 two things, and how would you tie those, what element would
24 you tie that to, or what issue of concern do I tie those two
25 conditions to? And Ms. Fester, you're welcome to contribute

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1 to that conversation as well, thank you.

2 MR. SULLIVAN: So, the first requested condition
3 was that any order will expire within nine months. I'll
4 defer to the board on whether they're authorized to do that.
5 I believe they could, I don't see why that wouldn't have
6 something to do with it. The reason why is because the deck
7 is there, and the neighbor has an interest in seeing it
8 revised, and corrected sooner rather than later. So, they
9 understandably don't want the applicant to wait two years to
10 file an update --

11 CHAIRPERSON HILL: I got you, Mr. Sullivan, I'm
12 going to interrupt you one second, because I can at least get
13 that tie. Where that if they don't -- if you guys don't try
14 to do something that you say you're going to do that this is
15 going to expire, and I'm sorry to jump in there, Mr. Blake,
16 but just then the second one, directing the applicant to
17 promptly reapply to the BZA to request appropriately if the
18 building permit for the car port is denied based on zoning --
19 but if it's denied, then you have to tear it down.

20 MR. SULLIVAN: Well, that's why we added the
21 language or to otherwise correct, satisfy, or resolve any
22 zoning compliance issues. I think this is just a statement
23 of what is. This isn't obvious, this will happen as a matter
24 of course whether you make it a condition or not. But if for
25 instance DOB found, I'm not sure what the party opponent was

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1 thinking.

2 But if they found that we were over lot occupancy,
3 obviously we would have to either fix that, or come back to
4 the board.

5 CHAIRPERSON HILL: Ms. Fester, do you want to --
6 do you have any thoughts on Mr. Blake's question?

7 MS. FESTER: Yeah, Mr. Sullivan is correct, our
8 reason why we proposed to support those conditions is that
9 the deck is already there, the illegal deck that could not
10 be built without an area variance. And as to the second
11 condition, if the building permit is denied for a zoning
12 reason, we don't want the deck to remain there even though,
13 as you say, it will be subject, theoretically they would be
14 required to demolish a non-compliant deck.

15 As we know, this deck has been non-compliant for
16 quite some time, over a year, and the Department of Buildings
17 does not act too quickly in compelling, and would require a
18 lot of process before they could actually compel the owner
19 to demolish it. So, we just want to make sure that whatever
20 happens, that there is a compliant deck in a timely fashion
21 to address the problem that my client is dealing with, an
22 illegally constructed deck currently, and that's the status
23 quo.

24 I also did want to respond to your earlier
25 question about an exhibit that would depict what the windows

1 look like, and if you can go to Exhibit No. 49, which was the
2 PowerPoint presentation that my client had submitted prior
3 to the earlier hearing, that has a number of photographs
4 showing existing conditions.

5 CHAIRPERSON HILL: Okay, I'm looking through it.
6 Okay, and then sorry, Mr. Blake, did that answer your
7 question, and do you have any more?

8 MEMBER BLAKE: No, yeah, that's fine, that's
9 perfect, thank you. Commissioner Miller, you had a question?

10 COMMISSIONER MILLER: No, I didn't have a
11 question, I just had a comment, I wanted to thank the
12 applicant, Mr. Sullivan, on behalf of his client, Paul Pike.
13 And Ms. Fester, on behalf of her clients, the day you've
14 spent on working out an agreement, we always want neighbors
15 to work out any differences. And so, and I appreciate the
16 applicant's earlier revision of the original application.

17 To go from instead of 77 percent area variance,
18 to do a 70 percent lot occupancy, that is important as well.
19 So, if it meets the special exception criteria, so I just
20 wanted to thank the parties for working together on that.

21 CHAIRPERSON HILL: Mr. Sullivan or Ms. Fester,
22 what was the frosting, which windows are getting frosted?

23 MR. SULLIVAN: The large living room window. We
24 do have another photo in Exhibit No. 33 I think that would
25 show the window. Yeah, that's it, the first page of the

1 party opponent submission, Exhibit No. 33 shows the window
2 and the deck is under the bottom of that.

3 CHAIRPERSON HILL: That's the window you're going
4 to frost, the second floor primary living window?

5 MR. SULLIVAN: Correct.

6 CHAIRPERSON HILL: Okay, and then there was
7 something, you're not going to block something?

8 MR. SULLIVAN: Well, just because it's an at risk
9 window, and that's my client's property, he's agreed not to
10 put any materials in front of the window to block the light.

11 CHAIRPERSON HILL: I see, okay. And that's
12 something you all have agreed to?

13 MR. SULLIVAN: Correct.

14 CHAIRPERSON HILL: Okay, all right. Let's see,
15 Mr. Young, is there anyone here wishing to speak?

16 MR. YOUNG: Other than the party, no, we do not
17 have any individuals.

18 CHAIRPERSON HILL: Okay, did the party wish to
19 speak? Ms. Fester?

20 MS. FESTER: No, we don't, thank you.

21 CHAIRPERSON HILL: Okay, great, thank you. Okay,
22 all right, I'm fine, are my fellow board members okay? Any
23 further questions? Okay, Mr. Sullivan, and Ms. Fester, thank
24 you all, have a nice day.

25 MS. FESTER: Thank you.

1 CHAIRPERSON HILL: Okay, well I echo Commissioner
2 Miller's comments, that it really is helpful, and hopeful if
3 the neighbors can work together, and so that is helpful and
4 hopeful that the neighbors were able to work together. In
5 terms of the relief that's being requested, I'm fine with the
6 increased lot occupancy to 70 percent based on the analysis
7 that the Office of Planning has provided us as a special
8 exception.

9 I also think that it would have been obviously a
10 difficult thing as a variance, and that I'm going to be able
11 to get behind this particular application. I also think that
12 the conditions that are being put forward, I actually can get
13 behind them. I think that the first one really, since the
14 deck is already there, it is something that would make me
15 feel more comfortable to know that they are now going to do
16 a building permit, and construction, and construct the new
17 car port and deck as depicted in the special exception
18 application within nine months.

19 And then I also don't have a problem with
20 condition B because it's already there, and that DOB, and
21 something would be -- that who knows how things would go if
22 they actually did get denied. But they would need to tear
23 it down if it got denied, and I don't see why it would get
24 denied at this point if this BZA order were to be approved.
25 So, I will be voting in favor of the application.

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1 I am unclear as to how to give weight to the ANC,
2 in that I wasn't clear as to what the -- I'll take a closer
3 look at that, but before I try to muddle my way through that,
4 Mr. Blake, do you have anything you'd like to add?

5 MEMBER BLAKE: Yeah, I've got a couple of things
6 I want to add. First of all, I agree with your analysis that
7 the applicant has met the burden of proof with regard to the
8 required criteria. I do also want to give great weight to
9 the Office of Planning's recommendation for approval. But
10 I want to address the ANC's concern, as we are required to
11 give it great weight.

12 That means we must carefully consider the issues
13 and concerns of the ANC as articulated, and explain how they
14 factor into the board's decision. The ANC 2B voted to oppose
15 the application and grounded its position primarily in the
16 argument that the applicant had not met the burden of proof
17 under E5201. The ANC identified two specific terms, the
18 primary impacts of the adjacent property at 1508 Swan Street,
19 including the views from the deck into the neighbor's rear
20 window.

21 Having reviewed the full record, including the
22 OP's analysis, site plans, the photographic evidence, as well
23 as the revisions that the applicant has made to design, and
24 more recently the agreement with the party in opposition, I
25 believe those activities mitigate those concerns to the

1 extent that impacts do not rise to the undue level under
2 E5201.

3 So, in that sense I think that those issues have
4 been addressed that were raised by the ANC. So, I'm
5 comfortable with that. With regard to the conditions, I am
6 -- we can waive -- the board has the authority to waive
7 Y702.1, and do a nine month period of validity. However, I'm
8 not sure we can actually do the second one, because that
9 would essentially preempt the future board actions.

10 And we can't tell them to come back again and do
11 it, so I think the second one, we could not, we should not
12 do because we don't have the authority to do. I think the
13 first one, we do have the authority to shorten the time
14 period of validity. So, that's where I'm at.

15 CHAIRPERSON HILL: Okay, I'll agree with that.
16 Vice Chair Miller?

17 COMMISSIONER MILLER: Thank you, Mr. Chairman.
18 I concur with each of your comments, Chairman Hill, and Vice
19 Chair Blake. And I was prepared to support both conditions
20 of the BZA approval, but it is part of the separate agreement
21 between the applicant and the previous party in opposition.
22 So, there hopefully will be good faith to comply with the
23 agreement that they've each agreed to. So, I'm prepared to
24 support the application.

25 CHAIRPERSON HILL: Okay, thank you. And then

1 actually if the -- I'll get to you, one second, Mr. Blake.
2 If as the order is being written we can reference those items
3 that I will repeat, that would be helpful. And if those
4 can't be referenced, then I will leave that up to them. Mr.
5 Blake, you have your hand up?

6 MEMBER BLAKE: Yes, Mr. Chair. The one thing also
7 with regard to that, is if we simply change the period of
8 validity, the applicant could actually come back for
9 extensions, to extend the period of validity as well
10 technically. So, I would say but we just leave it nine
11 months as we said.

12 CHAIRPERSON HILL: Okay, yeah, I guess -- I mean
13 yeah, it's from the effective date of the order. So, all
14 right, I'm going to make a motion to approve application
15 number 21330 as captured and read by the secretary including
16 a condition that any order approving application 21330 will
17 expire and not be renewable if the applicant fails to apply
18 for a building permit and begin construction of the car port
19 and deck depicted in the special exception application within
20 nine months of the effective date of the BZA order.

21 And if possible we can reference in the order, not
22 as a condition, the agreed upon paying for the frosting of
23 the at risk window, and then also not blocking the window.
24 And ask for a second, Mr. Blake?

25 MEMBER BLAKE: Yeah, Mr. Chair, I believe those

1 two conditions with the other persons, the stuff we're doing
2 to the other person, you said not include that?

3 CHAIRPERSON HILL: I would just reference it in
4 the order, it's not a condition.

5 MEMBER BLAKE: Yeah, and as terms, can we just set
6 the period for nine months, as opposed to from the -- it
7 would be from the effective date of the order if we just set
8 the period for nine months, it would be from the date of the
9 effective order, I would do that.

10 CHAIRPERSON HILL: Okay.

11 MEMBER BLAKE: Because otherwise you're saying if
12 something else changes then it would be two year, would it
13 extend to a different time period?

14 CHAIRPERSON HILL: No, it would --

15 MEMBER BLAKE: It's just -- can we just do nine
16 month time period?

17 CHAIRPERSON HILL: Sure, nine month time period.

18 And I ask for a second, Mr. Blake?

19 MEMBER BLAKE: Second.

20 CHAIRPERSON HILL: The motion remains -- before
21 I specified that motion, I did want to add that Mr. Blake,
22 as you were talking about it again, I wanted to mention that
23 the -- and I just thought about this when you were talking
24 about the ANC, for me, some of the ANC's issues again, were
25 speaking to a window, there was an at risk window. And so,

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1 that was something that would really kind of be something
2 that the window is at risk.

3 And so, I just wanted to clarify that thought, and
4 ask for the secretary to now take a roll call.

5 COMMISSIONER MILLER: Mr. Chairman, I just wanted
6 to clarify something. And I understood the motion to include
7 that first order, that first condition that the parties
8 agreed to, that our order would include that condition, and
9 that our order would also reference the window frosting is
10 what you said, I think. And can it also reference the second
11 condition that the parties agreed to, just to reference,
12 directing the applicant to promptly reapply to the BZA?

13 Can we just note that in the order that that was
14 part of the agreement between the parties?

15 CHAIRPERSON HILL: Sure.

16 COMMISSIONER MILLER: Okay, then I am prepared to
17 vote in favor of this.

18 CHAIRPERSON HILL: Okay, all right, thank you.
19 Then I don't believe I need to remake the motion, Madam
20 Secretary, can you please take a roll call?

21 MS. MEHLERT: Please respond to the chair's motion
22 to approve the application with the nine month expiration
23 period and references that were mentioned. Chairman Hill?

24 CHAIRPERSON HILL: Yes.

25 MS. MEHLERT: Vice Chair Blake?

1 MEMBER BLAKE: Yes.

2 MS. MEHLERT: Commissioner Miller?

3 COMMISSIONER MILLER: Yes.

4 MS. MEHLERT: Staff would record the vote as three
5 to zero to two to approve the application number 21330 on the
6 motion made by Chairman Hill and seconded by Vice Chair
7 Blake.

8 CHAIRPERSON HILL: Thank you. Wow, this is the
9 first thing all day I'm actually putting in the trash can,
10 everything else is on the floor. Okay, let's see. Let's try
11 to do one more, and then maybe take lunch I guess, because --
12 if you want to call our next one please, Madam Secretary?

13 MS. MEHLERT: Next is application number 21372 of
14 1501 Eerie Street Construction, LLC. This is a self
15 certified application pursuant to Subtitle X, Section 901.2
16 for a special exception under Subtitle C, Section 703.2, the
17 minimum vehicle parking space requirements of Subtitle C,
18 Section 701.5. This project is a nine unit apartment house
19 and a new four story attached building located in the MU4
20 zone at 1341 Pennsylvania Avenue Southeast, Square 1045, Lot
21 124.

22 And as a preliminary matter there is a request for
23 party status in opposition to the application from Jenkins
24 Row REA Inc., which is the controlling party of Jenkins Row,
25 LLC., located at 1391 Pennsylvania Avenue Southeast.

1 CHAIRPERSON HILL: Okay, great, thank you. First
2 off could the applicant please introduce themselves for the
3 record?

4 MR. SULLIVAN: Yes, thank you, Mr. Chairman, and
5 board members. Marty Sullivan with Sullivan & Barros on
6 behalf of the applicant.

7 CHAIRPERSON HILL: Thank you. Could the party
8 status person please introduce themselves for the record?

9 MR. SHENKMAN: Good morning, Mr. Chairman. My
10 name is Michael Shenkman, I'm director and officer of Jenkins
11 Row REA, party status applicant.

12 CHAIRPERSON HILL: Thank you. Let's see, Mr.
13 Shenkman, I reviewed your request for party status, I believe
14 party status in opposition, correct?

15 MR. SHENKMAN: Correct.

16 CHAIRPERSON HILL: Okay, and I don't have any
17 issues with you being admitted as a party in opposition. And
18 I believe we haven't seen anything from the applicant or the
19 ANC within the required time frame to think that they were
20 in objection to it. Do my board members have -- one second
21 then, Mr. Sullivan, you had your hand up?

22 MR. SULLIVAN: Yes, I actually don't have an
23 objection to the party status. I would like to clarify that
24 everything in their stated materials paints them as a party
25 in support, and not a party in opposition. So, if you read

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1 the materials, they say repeatedly in their statement that
2 they support the special exception relief. This matters to
3 us because timing matters in this case for the order.

4 And a summary order is available to us if it's not
5 party in opposition. But obviously they are affected, but
6 their whole argument is that they don't want us to have a
7 parking space either.

8 CHAIRPERSON HILL: Okay, I've got -- hold on, give
9 me one second.

10 MR. SULLIVAN: And there's actually no daylight,
11 like I'm okay with everything they're requesting. So,
12 they're requesting, yes, please approve this with a
13 condition, and I'm okay with the approval, and with the
14 condition.

15 CHAIRPERSON HILL: Okay, I haven't gotten this far
16 yet, so give me a second.

17 MR. SULLIVAN: I know this is going to be an odd
18 one.

19 CHAIRPERSON HILL: Give me a second, hold on,
20 everybody's got their hand up. So, what I thought -- well,
21 Mr. Shenkman, you get to respond, you're the person asking
22 for party status, right? But before you respond, what I
23 thought the objection was about, the flexibility concerning
24 -- I thought it was flexibility concerning the easement, I'm
25 not sure exactly, I have to go back and look. But Mr.

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1 Shenkman, do you have a comment concerning Mr. Sullivan's
2 comment?

3 MR. SHENKMAN: Thank you, Mr. Chairman, I would
4 love for this at some future time to be in the agreed world,
5 I don't think we are completely in the agreed world, hopeful
6 as I am from prior conversations with Mr. Sullivan, and
7 appreciate his professionalism, and dialogue on that, and
8 also seeing the successful result from the last case. Our
9 concern relates to foot note one of the applicant's
10 statement.

11 And I think -- I want to let Mr. Sullivan
12 characterize it as he sees fit, but we have some tension in
13 the position here. I agree with his point, we don't want to
14 get in the way of there not being a parking space, where the
15 issue as you probably gather, is that a parking space that
16 has been variously proposed would interfere with an easement
17 we have, and cause problems for us as a building.

18 Which as a quick sidebar, it's a real issue of
19 maintenance access, and emergency ingress and egress, it's
20 a large mixed use development adjacent to the applicant's
21 property, and that's why we're concerned about not trying to
22 be difficult in any way. The applicant's statement in foot
23 note one tries to reserve the right to have the parking space
24 without any further return to the board.

25 And I understand from Mr. Sullivan, maybe he

1 doesn't now think that's necessary, but that's our issue.

2 CHAIRPERSON HILL: Give me a second, give me a
3 second. So, and I saw your hand again, Mr. Blake. So, first
4 of all I doubt the board is going to approve the flexibility
5 issue, but we haven't heard the argument yet, right? So,
6 what I suggest is at this point we're starting this whole
7 conversation, and Mr. Shenkman, you used such a good word,
8 what did you use, you used something about how you didn't
9 agree with somebody, and the word you used was great, what
10 was it, do you remember?

11 A tension, there was a tension in the discussion,
12 I am going to remember that, there is a tension in our
13 discussion, that's a good one. So, let's see, I would
14 suggest you go ahead and be a party in opposition at this
15 point, because I guess we're going to go through this whole
16 hearing, and at the end of the hearing we can see whether or
17 not you're still a party in opposition. That would be my
18 suggestion. Mr. Blake, you had your hand up.

19 MEMBER BLAKE: I think that's the issue, thank
20 you, you covered it.

21 CHAIRPERSON HILL: Great. So, we are going to go
22 ahead, and I'm going to make a motion to grant Mr. Shenkman
23 party status in opposition, and ask for a second, Mr. Blake?

24 MEMBER BLAKE: Second.

25 CHAIRPERSON HILL: The motion made and seconded.

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1 Madam Secretary, would you please take a roll call?

2 MS. MEHLERT: And to clarify, you're granting
3 party status to Jenkins Row REA, right?

4 CHAIRPERSON HILL: Yes, thank you.

5 MS. MEHLERT: Please respond to the chair's motion
6 to grant party status in opposition. Chairman Hill?

7 CHAIRPERSON HILL: Yes.

8 MS. MEHLERT: Vice Chair Blake?

9 MEMBER BLAKE: Yes.

10 MS. MEHLERT: Commissioner Miller?

11 COMMISSIONER MILLER: Yes.

12 MS. MEHLERT: The staff will record the vote as
13 three to zero to two to grant party status in application
14 number 21372 on the motion made by Chairman Hill and seconded
15 by Vice Chair Blake.

16 CHAIRPERSON HILL: Great, thank you. So, Mr.
17 Shenkman, I can't remember, have you been with us before?

18 MR. SHENKMAN: I have not, no.

19 CHAIRPERSON HILL: So, just real quick, the
20 applicant is going to present, you're going to present, the
21 Office of Planning is going to present. You're going to have
22 a chance to ask questions of the applicant and the Office of
23 Planning, the applicant will have a chance to ask questions
24 of you. And then at the end of this we're going to have a
25 little conclusion from everybody, and then we'll see what

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1 happens.

2 So, the next item of business is Mr. Sullivan, can
3 you please go ahead and give us your client's presentation?

4 MR. SULLIVAN: Thank you, Mr. Chair. If Mr. Young
5 could please load the PowerPoint? The property is 1341
6 Pennsylvania Avenue Southeast. Next slide please. The
7 property is located in an MU4 zone, and is in the process of
8 being developed as a matter of right under an existing
9 building permit issued in 2023 for a new four story plus
10 penthouse nine unit apartment building with one required
11 parking space.

12 Although the rear triangular portion of the lot
13 which we'll see on a slide that I'm going to show could
14 physically accommodate the parking space, and that's how the
15 building permit was approved, Jenkins Row asserts that an
16 access easement prevents the applicant from placing a parking
17 space anywhere in that triangle. And Jenkins Row has
18 initiated litigation on that point, which may last more than
19 a year, and could prohibit the applicant from constructing
20 the parking space during that time.

21 Or worse, if the litigation succeeds, then the
22 applicant will be permanently prevented from providing the
23 required parking space. Because of this uncertainty, the
24 applicant seeks special exception relief to waive the
25 requirement for the one parking space. Next slide please.

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1 ANC 6B has voted unanimously in support of the requested
2 relief.

3 The Office of Planning recommends approval. DDOT
4 has no objection, but they did make a comment that the
5 project requires short term bicycle parking spaces, but
6 that's not actually correct. The regulations require one
7 short term bike parking space for each 20 dwelling units, and
8 because this is less than half of 20, there is no short term
9 parking requirement.

10 So, we do have a requirement for three long term
11 bicycle parking spaces, and that has been provided in the
12 plans, and it will be provided in the project, and the
13 project has received full zoning approval as well under
14 issuance of that building permit. Next slide please. There
15 is the subject property, and you see the Jenkins Row property
16 to the right there.

17 And that triangle in the back, the building takes
18 up nearly all of the property except for about eight feet in
19 the rear of the property. And so the eight feet in that
20 triangle is the space in which we can have a parking space.
21 Next slide please, I think I may have the plat here next.
22 There's photos, so this is the space back there where the
23 triangle is.

24 On the left you see the building, it's under
25 construction. To the right you see the Jenkins Row building,

1 and there is a fence there, and a retaining wall between the
2 applicant's property and the Jenkins Row property. Next
3 slide please. So, this is generally looking at the area of
4 the disputed easement, and on this property we would like to
5 provide a parking space.

6 But if the easement -- if Jenkins Row easement
7 argument prevails, we would not be able to provide a parking
8 space, and that's why we're asking for relief. Next slide
9 please. The special exception will be in harmony with the
10 general purpose and intent of the zoning regulations and
11 zoning maps, and will not tend to affect adversely the use
12 of neighboring property. The use itself, and the proposed
13 building bulk and density is permitted as matter of right.

14 The property has a walk score of 93, and is
15 located close to amenities such as grocery stores,
16 restaurants, shops, and it is about 500 feet from the metro
17 station. So, the lack of one parking space will not tend to
18 affect adversely the use of neighboring property. Next slide
19 please.

20 On the specific special exception requirements of
21 703.2, due to the physical constraints, party opponent
22 Jenkins Row claims that the applicant is not legally
23 permitted to park in the only place where the applicant may
24 provide a parking space. If that claim turns out to be
25 valid, then the applicant lacks the area available for a

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1 parking space, and the applicant has been unable to locate
2 any available parking spaces within 600 feet which do not
3 already satisfy another property's parking requirement.

4 Only one of these need to be satisfied, by the
5 way, for the special exception to satisfy the criteria. The
6 second is the use or structure is particularly well served
7 by mass transit, shared vehicle, or bicycle facilities. The
8 property is so well served by mass transit, it is
9 approximately 500 feet from the Potomac Avenue Metro Station,
10 providing access to the blue, orange, and silver lines.

11 In addition, there is multiple metro bus routes
12 running along Pennsylvania Avenue, with a bus stop located
13 less than .1 miles from the property. The property also
14 benefits from proximity to multiple Capital Bikeshare
15 stations, and improved bike lanes, and this exceptional
16 access to transit supports a car free lifestyle, and
17 satisfies this subparagraph.

18 Land use or transportation characteristics of the
19 neighborhood minimize the need for required parking spaces,
20 also this is similar to B, but it's a separate criteria. As
21 described above in B, the property is well served by
22 transportation, walking distance to amenities, grocery
23 stores, restaurants, and shops, and the metro station. Next
24 slide please.

25 703.3, reduction in the required number of parking

1 spaces is only for the amount the applicant is physically
2 unable to provide. Regarding demand for parking, as
3 discussed above, the applicant anticipates that the
4 transportation characteristics and amenities in the
5 neighborhood will likely attract residents without cars.
6 Additionally, the units are one or two bedrooms, not likely
7 to attract large families requiring cars.

8 And it is because of the easement, if as Jenkins
9 Row argues, the easement prevents parking there, that we are
10 physically unable to provide that parking space. Next slide
11 please. Regarding the opposition, and I think this will
12 apply to what I'm saying about, that they're not a party in
13 opposition, their opposition to parking relief is directly
14 averse to their stated interest.

15 They claim that they're the beneficiary of a
16 vehicular ingress and egress easement over this area, where
17 the applicant can otherwise provide the parking space. So,
18 Jenkins Row does not want the applicant to park here, and it
19 states in its opposition that it has no objection in
20 principal to the special exception from the requirement of
21 one parking space.

22 So, there's two possible outcomes, they're just
23 asking for a condition, they're asking for the board to --
24 and regarding my request for flexibility, I don't think
25 that's necessary, and I think I would withdraw that, I'm not

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1 asking for the flexibility. But there's two possible
2 outcomes here, Jenkins Row prevails in the litigation, and
3 the court rules that the applicant can't park here.

4 Then we need the BZA order, and we need this
5 approval in order to be able to get a C of O for the
6 property. If the applicant prevails in the litigation, then
7 the applicant can provide a parking space, and the BZA order
8 will be of no effect, because it will never be attached to
9 the building permit, and it won't be triggered, or
10 implemented at DOB.

11 So, anything the BZA states in a condition of
12 approval wouldn't have any effect on the property anyway.
13 Next slide please. I don't need to get into this, I'm
14 surmising here what the purpose of Jenkins Row supposed
15 opposition is. It's either possibly to gain leverage in the
16 negotiations in the litigation, or to ask the board to put
17 themselves in a place with the court, and prohibit parking
18 on this property, which the board can't do.

19 Rather than letting the easement litigation play
20 out, and I'm not getting into the easement at all, I know
21 that's not before the board, and not part of the special
22 exception. In any event, the purpose of the opposition is,
23 as admitted by the party opponent, not to oppose the granting
24 of the relief requested, and they haven't testified to any
25 adverse impacts of not having a parking space there.

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1 So, when it comes to party opposition, they
2 actually haven't qualified for that, they haven't even stated
3 anything on why they would be negatively impacted
4 distinctively from the general public by the absence of a
5 parking space. And I think they still hold that position,
6 that they actually don't want the parking space. Next slide
7 please.

8 There is the plat, finally. So, you see the
9 parking space that was approved there in the triangle, we're
10 actually still working with Jenkins Row, and hopeful that we
11 come to some sort of agreement regarding the easement where
12 there is room for parking and further access, but that's
13 separate from this request here. The time to apply for a C
14 of O is coming quickly, because the property is nearly
15 completed.

16 So, we need to know that we won't be stopped from
17 obtaining that C of O because of a lack of a parking space.
18 If DOB were to ascertain that the easement prevents us from
19 parking there as well, or prevents them from providing a C
20 of O because it puts a cloud on the issue of the required
21 parking space, and whether it will remain, so that's just the
22 issue that we're trying to clear up with this special
23 exception request.

24 Next slide please. I think that might be it.
25 There's just an elevation of the building, and front and rear

1 elevation on the next slide. That's it, thank you.

2 CHAIRPERSON HILL: Okay, so as I understand this,
3 again, I'm going to turn to you, Mr. Shenkman, to give us
4 your presentation. And what I would like to do again is kind
5 of point out what this person is here to do, is they're
6 applying for a special exception so that they don't have to
7 provide the parking space. So, if this gets approved as I
8 understand it, then they would have to -- and this is where
9 I have to find out later if I'm correct because I haven't
10 thought about this before.

11 But that if they are approved this special
12 exception, they would have to build it according to plans,
13 which means there is not a parking space there. So, they're
14 here just for the parking space, meaning approval not to have
15 one. And if they don't have one, they aren't going to be
16 able to put one there, they would have to come back, and I'm
17 going to clarify that in a minute later, but that's what I
18 understand. Mr. Shenkman, would you like to give us your
19 presentation?

20 MR. SHENKMAN: Mr. Chairman, I'm happy to be very
21 brief, because it sounds like we are on the right track, and
22 Mr. Sullivan notes that he is effectively withdrawing foot
23 note one, if I understand that right. Our request would be
24 exactly what you indicated. To be clear for the board's
25 perspective, that foot note one is not incorporated

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1 implicitly in any way.

2 In other words that the applicant is not getting
3 from the board the ability to have its cake and eat it too,
4 one parking spot, and pursue that, and create issues for us
5 there, so that's great. An alternative that would make sense
6 to me too is to tell the parties to go see if you can't end
7 up with a resolution. Mr. Sullivan and I were having some
8 productive discussions, and I understand that the applicant
9 -- this building is there, it is basically ready to go.

10 So, the applicant has a lot of interest to do this
11 as quickly as possible. I think that would be fine too. You
12 have in the written statement from Jenkins Row, the analysis
13 of why we think that it has to be done this way, that is with
14 the clear expression that the applicant is acknowledging that
15 they don't have a parking space in order to get the relief.
16 But I appreciate the board's attention to all of this, I
17 think you have this in hand. Happy to answer any questions
18 as it may make sense, but I don't want to use more time than
19 necessary.

20 CHAIRPERSON HILL: Thank you. Before I turn to
21 my board, I'm going to turn to the Office of Planning. Could
22 the Office of Planning please give us their thoughts?

23 MS. MYERS: Good afternoon. Crystal Myers with
24 the Office of Planning. The Office of Planning is in
25 approval, or support of this case, and we stand on the record

1 staff report. Thank you.

2 CHAIRPERSON HILL: Okay. Does the board have any
3 questions about the applicant or the party for the Office of
4 Planning? Okay, Mr. Young, is there anyone here wishing to
5 speak?

6 MR. YOUNG: Yes, we have one witness signed up.

7 CHAIRPERSON HILL: Okay, great, could you please
8 --

9 MR. YOUNG: And her name is Bethany McHaulic.

10 CHAIRPERSON HILL: Okay, Ms. McHaulic, can you
11 hear me? Ms. McHaulic, can you hear me? Can you all hear me?
12 Ms. McHaulic, can you hear me? Maybe if you unmute yourself,
13 or? Ms. McHaulic, can you hear me? Mr. Young, are you able
14 to unmute, or can you do anything?

15 MR. YOUNG: I can't unmute her myself, I can have
16 staff reach out to her real quick.

17 CHAIRPERSON HILL: Okay, why don't you have staff
18 reach out to her?

19 MR. YOUNG: So, she's going to be calling in by
20 phone, I'm just waiting for her number to call in to bring
21 her in.

22 CHAIRPERSON HILL: Okay.

23 MR. YOUNG: Okay, I believe she's in now, I'll
24 unmute.

25 CHAIRPERSON HILL: Great, Ms. McHaulic, can you

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1 hear me?

2 MS. MCHAULIC: I'm sorry, I'm getting a little bit
3 of an echo, give me just one moment. Okay, I think we'll be
4 fine now.

5 CHAIRPERSON HILL: Ms. McHaulic, can you hear me?

6 MS. MCHAULIC: Yes.

7 CHAIRPERSON HILL: Okay, great. So as a member
8 of the public you'll have three minutes to give your
9 testimony. There's a clock there on the screen, and you can
10 begin whenever you like.

11 MS. MCHAULIC: Sure. So, my name is Bethany
12 McHaulic, I live at 732 13th Street Southeast, which shares
13 an alley access with the project at 1341 Pennsylvania Avenue.
14 I'm speaking to oppose a requested variance for parking.
15 During the construction we have had repeated and consistent
16 issues with alley access being obscured. We have contacted
17 the non-emergency police line, the fire marshal, and the
18 Department of Buildings in attempts to get relief.

19 There have been many mornings where we could not
20 exit our garage, many evenings where we could not enter our
21 garage, and we have had substantial missed trash pickups
22 because the garbage truck did not have sufficient access.
23 I am extremely concerned about emergency vehicle egress and
24 access if something, God forbid, were to happen in the alley.
25 And what this underscores is that not providing parking does

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1 not mean that people will not park in the alley.

2 We regularly see three, four, five, six, I've
3 counted as many as eight vehicles at the 1341 Pennsylvania
4 project, and what it means is that it doesn't mean -- not
5 providing parking does not mean that people will not park in
6 the alley, it just means that they do so illegally, and
7 unsafely. And for that reason I oppose the requested parking
8 spot variance.

9 I didn't get my ducks in a row to submit things,
10 and I apologize, in writing I had pictures of our alley, and
11 the block access in our alley going back to March, from March
12 to November. I do not believe that this is limited to
13 construction, I do believe that once people live there we
14 will have the same issues. So, I oppose not providing at
15 least one parking spot.

16 Because what it means is that people will just
17 park in the alley, block the alley, and continue to provide
18 -- we're going to continue to have egress issues, and that's
19 why I oppose the requested relief.

20 CHAIRPERSON HILL: Okay --

21 (Simultaneous speaking.)

22 CHAIRPERSON HILL: That's okay. Is it like -- I'm
23 trying to picture this, you're having difficulty with the
24 people using the alley?

25 MS. MCHAULIC: Yes, so you can't -- our garage

1 exits into the alley --

2 CHAIRPERSON HILL: Do you have contact with the
3 building, or anybody at the building in terms of like have
4 you tried --

5 MS. MCHAULIC: We have tried, yes, we have had
6 many conversations. We have called various -- there are
7 numbers on the trucks that we've called, we have spoken
8 directly with the people who are working there, and I'll say
9 we had an issue with Jenkins Row, they had some work done,
10 and we had people parking, and it was resolved immediately.
11 And I don't know where they had their contractors parking,
12 but it was not in the alley anymore.

13 So, this is definitely, it is an issue that is
14 specific to this contractor, who doesn't seem to have a whole
15 lot of care for neighbors.

16 CHAIRPERSON HILL: Ms. McHaulic, are you talking
17 about the apartment building, or the new building that's
18 being constructed, or both?

19 MS. MCHAULIC: It's the new building. I'm sorry,
20 I had said for example in a previous issue we have had issues
21 with Jenkins Row, but they were rectified almost immediately
22 after we reached out. Versus here we have had issues with
23 the 1341 Pennsylvania Avenue project, we have spoken to
24 people on site, we have tried to contact the numbers on the
25 contractor's vehicles, and we have had to resort to calling

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1 city services. McHaulic, yes.

2 CHAIRPERSON HILL: It's more of an enforcement
3 issue than other things it sounds like you're trying to get
4 resolved. And I don't know if the applicant -- Mr. Sullivan,
5 has your client ever been in contact with this person?

6 MR. SULLIVAN: Not that I know of, but I can
7 certainly try to get him in touch with her.

8 CHAIRPERSON HILL: Great. Ms. McHaulic?

9 MS. MCHAULIC: McHaulic, and chair, I appreciate
10 you hearing from me, but I want to make sure that my message
11 hasn't been lost. My issue, the enforcement is certainly a
12 separate issue, but my point is that not providing parking
13 doesn't mean that people don't park in the alley. And that's
14 why I think there should be at least one parking spot so that
15 we do not have blocked alley access of people just illegally
16 parked.

17 CHAIRPERSON HILL: No, I got you. And Ms.
18 McHaulic, what I'm trying to convey is that whether or not
19 this gets approved for parking leave or not is something I
20 guess the board will have to look into. But it seems that
21 that would or wouldn't resolve your issue, and so what I'd
22 like to do is that the applicant could probably reach out to
23 you, and see if there's some way that they might be able to
24 provide some kind of a dialogue. Okay?

25 MS. MCHAULIC: I would be open to a dialogue, but

1 I also want to make clear that I think that there should not
2 be people moving into this building without at least one
3 parking spot.

4 CHAIRPERSON HILL: I understand, I understand,
5 you're in opposition.

6 MS. MCHAULIC: Okay, perfect.

7 CHAIRPERSON HILL: So, Ms. McHaulic, I'm going to
8 ask my office -- or the Office of Zoning, I shouldn't say my
9 office, the Office of Zoning to try to put you in contact
10 with the applicant so that there can be some kind of a
11 dialogue, okay?

12 MS. MCHAULIC: That sounds great, thank you,
13 chair.

14 CHAIRPERSON HILL: Thank you. All right, Mr.
15 Sullivan, if you can help facilitate that, that would be
16 great, okay?

17 MR. SULLIVAN: I sure will, thank you.

18 CHAIRPERSON HILL: Thank you. All right, let me
19 see. Okay, yeah, so, I forget, did the board have any
20 questions? No, okay. Mr. Shenkman, I don't think that --
21 I think that the foot note number one, I can clarify that
22 that's not going to take place if we do approve this order,
23 right? Given that, do you have any questions of the
24 applicant?

25 MR. SHENKMAN: I do not, thank you.

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1 CHAIRPERSON HILL: Okay. Mr. Sullivan, do you
2 have any questions of the party?

3 MR. SULLIVAN: No, I do not.

4 CHAIRPERSON HILL: Okay, Mr. Shenkman, given what
5 I just said, do you think it would be something to be able
6 to be a party, which means you'll still be getting all of the
7 relative information, but if I put you a party in support,
8 that will possibly facilitate some administrative issues.
9 Can I put you as a party in support?

10 MR. SHENKMAN: Mr. Chairman, the bottom line
11 answer is yes, I wonder in light of Ms. McHaulic's input,
12 whether further conversation with neighbors and between the
13 parties is most sensible here. But as long as the grant is
14 going to state clearly that the applicant is not representing
15 any right to park over the easement area, we are happy to be
16 in support of that.

17 CHAIRPERSON HILL: Okay. So, for the record we
18 are going to move you as a party in support. And then after
19 that, do you have any conclusion, Mr. Shenkman?

20 MR. SHENKMAN: Thank you to you and to the board.

21 CHAIRPERSON HILL: Thank you. Mr. Sullivan, you
22 don't have any conclusion, do you?

23 MR. SULLIVAN: No, I don't, thank you, Mr.
24 Chairman.

25 CHAIRPERSON HILL: All right, I am going to go

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1 ahead and close the hearing and the record, I'll excuse you
2 all, thank you so much. I'm looking at my fellow board
3 members, I have learned some good words today, tension in the
4 discussion, there's a little bit of a tension in the
5 argument, I'm going to use that. And then dialogue, I keep
6 forgetting dialogue is a good one too.

7 Sorry, I'm just having a little fun. Okay, I
8 think that it's actually relatively straight forward.
9 They're talking about one parking space, I think that they
10 are actually unable to provide that parking space if this
11 easement were to stay in effect, or if this easement were to
12 take place they're not able to provide the parking space, so
13 that's one thing.

14 The other is that I do think they're also very
15 close to transportation, public transportation, and I will
16 agree with the points that the Office of Planning has put
17 forward in their report that I'm looking at for the parking
18 relief. I would note that they did note that they are
19 providing three long term bike parking spots that are in the
20 plans, and that they are no longer requesting for flexibility
21 concerning the parking spot.

22 And that if we grant this without a parking spot,
23 I don't think they can put the parking spot there because of
24 the plan that they are submitting to us without the parking
25 spot, and if they were to do that, that would be a DOB

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1 enforcement issue, and that would be another way for the
2 party to have some recourse. So, given those things, I'm
3 going to be voting in favor of this application. Vice Chair
4 Blake?

5 MEMBER BLAKE: Mr. Chair, you have everything I
6 have, I support what you said on the application, I'll be
7 voting in favor of the application.

8 CHAIRPERSON HILL: Thank you. Commissioner
9 Miller?

10 COMMISSIONER MILLER: Thank you, Mr. Chairman,
11 yes, I agree with everything you said, and you may have noted
12 this now or earlier, but we do have an ANC report, ANC 6B,
13 eight to zero to zero to support this special exception
14 application to not provide the one parking space. And I like
15 the way that they put it, support without prejudice to the
16 status of the easement. And we're voting that way
17 essentially ourselves.

18 CHAIRPERSON HILL: Thank you, thanks Commissioner
19 Miller, I neglected to mention the ANC. And also I will ask
20 staff to help facilitate at least the phone numbers, emails,
21 whatever that is between the applicant and the witness that
22 was in opposition, Ms. McHaulic. I am going to make a motion
23 to approve application number 21372 as captured and read by
24 the secretary.

25 And make a note in the order as not a condition,

1 but a note that there is no flexibility being granted to this
2 application, and ask for a second, Mr. Blake?

3 MEMBER BLAKE: Second.

4 CHAIRPERSON HILL: Motion made and seconded.
5 Madam Secretary, take a roll call.

6 MS. MEHLERT: Please respond to the chair's motion
7 to approve the application. Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MS. MEHLERT: Vice Chair Blake.

10 MEMBER BLAKE: Yes.

11 MS. MEHLERT: Commissioner Miller?

12 COMMISSIONER MILLER: Yes.

13 MS. MEHLERT: Staff will record the vote as three
14 to zero to two to approve application number 21372 on the
15 motion made by Chairman Hill and seconded by Vice Chair
16 Blake.

17 CHAIRPERSON HILL: Okay, thank you. Okay, you
18 guys, I actually have to go out and get my lunch today, so
19 if it's okay, let's try 1:15, is that fair? Okay, thank you.

20 (Whereupon, the above-entitled matter went off the
21 record for a recess.)

22 CHAIRPERSON HILL: Madam Secretary, if you could
23 call us back in and also call our next case.

24 MS. MEHLERT: The Board is back from its break and
25 returning to its hearing session. The next case is

1 Application No. 21373 of H D 438 Park Road, NW, LLC. This
2 is a self-certified application pursuant to Subtitle X, §
3 901.2, for Special Exceptions; under Subtitle U, § 320.2, to
4 allow the conversion of an existing residential building
5 existing on the lot prior to May 12th, 1958, to a three-unit
6 apartment house under Subtitle C, § 703.2, from the minimum
7 vehicle parking requirements and of Subtitle C, § 701.5;
8 under Subtitle E, § 5201, from the rear yard requirements of
9 Subtitle E, § 207.1; under Subtitle E, § 204.4, from the
10 requirements of Subtitle E, § 204.1 to allow removal or
11 significant alteration of a rooftop architectural element
12 original to this building; and under Subtitle E, § 207.5, to
13 allow the rear wall of the building to extend farther than
14 10 feet beyond the furthest rear wall of any adjoining
15 principal residential building on any adjacent property.

16 This is for a front porch and three-story side and
17 rear additions to an existing semi-detached dwelling and
18 conversion to a three-unit apartment house. It's located in
19 the RF-1 zone at 438 Park Road, NW (Square 3044, Lot 53).
20 As a preliminary matter, there is a motion from the Applicant
21 to waive the filing deadline for supplemental materials that
22 are in the record in Exhibits 18 through 18E.

23 CHAIRPERSON HILL: Okay, great. Thank you. If
24 the Applicant can hear me, if they could please introduce
25 themselves for the record.

1 MS. WILSON: Hi, Alex Wilson from Sullivan &
2 Barros on behalf of the Applicant in this case.

3 CHAIRPERSON HILL: Okay, in terms of the filing
4 deadline, I think everything that you have put into the
5 record are things that the Board would like to be able to
6 take a look at and I don't have any issues with those being
7 added to the record. If the Board has any issues, please
8 speak up. Okay.

9 Ms. Wilson, if you want to go ahead and walk us
10 through your client's application and let us know how you
11 think you're meeting the criteria for us to grant the relief
12 requested and I'll put 15 minutes on the clock so I know
13 where we are and you can begin whenever you'd like.

14 MS. WILSON: Great, thank you so much. Mr. Young,
15 could you please pull up the presentation? Thank you so
16 much. Could you please go to the next slide? Thank you. The
17 property is located in the RF-1 Zone and it is currently
18 approved as a single family semi-detached three story
19 dwelling. The Applicant is proposing to construct a three-
20 story side addition and a partial two-story rear addition.
21 The Applicant is also proposing to convert the property to
22 three residential dwelling units.

23 This addition and conversion and design of the
24 building will be identical to the property next door at 436
25 Park Road which received BZA approval for similar areas of

1 relief, I think, in 2019.

2 As part of this proposal, the Applicant seeks the
3 following special exceptions for the side and rear additions.
4 For the partial rear addition, rear yard relief and the ten
5 foot rule are needed. It's two stories and about half the
6 width of the building, so that portion of the rear yard is
7 being decreased to about 6-1/2 feet. The majority will be
8 open and 20 feet and then that same portion will be 19 feet
9 past the neighboring wall, although it's only about 12 feet
10 past the covered porch. That is a two-story addition and so
11 it's for a portion of the rear.

12 For the changes to the front, relief from the
13 architectural element provisions are required and the
14 proposal again will look identical to the adjacent property
15 and, as demonstrated by photos in the slide, the renovation
16 was nicely done. It maintains the roof line and porches and
17 other defining elements, such as the cornice, whereas the
18 subject building actually has a non-original front addition.

19 This proposal will resolve any porch restoration
20 more in character with the other properties. The cornice on
21 the front is being maintained and the dormers are being
22 altered and that's one of the reasons for the relief. The
23 proposal is for two dormers instead of the existing dormer,
24 just like the one next door.

25 On the side as part of the addition, the bay

1 projection and existing cornice on the bay are being removed
2 and it's going to have a flat wall instead, but the semi-
3 detached nature and side yard are still being maintained.

4 With respect to the parking relief, there is an
5 alley, but it's extremely narrow. It ranges between 6 feet
6 to 8 feet and can't qualify as a legal access to a parking
7 spot.

8 Finally, the property will be converted from a
9 single family home to three units also requiring relief.
10 Next slide, please.

11 The Office of Planning recommends approval and C1E
12 voted unanimously to support the application. We were also
13 lucky to have one or two of the same commissioners from that
14 last project on this too. One of the members on the Zoning
15 Committee even mentioned the project next door, which was
16 done by the same general contractor here, was done really
17 well and so it's always good to work with the community. You
18 never know when you're going to do another project in the
19 same area and so to that end, we did seek a letter in the
20 record from a neighbor, who is a bit down the street, just
21 related to general construction concerns.

22 One positive about this project that hopefully
23 will relieve those concerns is that the team knows how to
24 navigate the area, given the experience next door, and is
25 always available if neighbors want to reach out. Again, we

1 presented to both the committee and the full ANC that we
2 attended.

3 In terms of additional neighbor outreach, the
4 Applicant has actively reached out to nearby property owners
5 about the proposed project. Certified notices were sent to
6 neighbors including all adjacent owners. Despite repeated
7 certified mails and in person attempts, the Applicant has
8 still been unable to reach the owner of 440 Park Road, next
9 door. It's not clear if anyone resides in the home, but
10 there were multiple repeated in person attempts to talk to
11 that neighbor by Ms. Phillips and the owners of the subject
12 property. The other adjacent owners at 436 Park Road, were
13 informed and raised no objections and the owner of 433 Park
14 Road expressed support and a letter of support is in the
15 record.

16 Finally, DDOT has no objection. They talked about
17 the transit rich neighborhood in relation to parking as we
18 are only a five minute walk from Georgia Avenue, which is
19 about a block and a half to the west and about a half mile
20 or a 10 minute walk to the Georgia Avenue Petworth Metro
21 Station. Next slide, please.

22 This is the subject property. To the east of this
23 block is the golf course and the Armed Forces Retirement Home
24 property associated with that course. You can also see the
25 relationship to the property east at 436 Park Road and the

1 existing one story accessory building on the subject
2 property. The proposed addition will be in the area
3 generally where the existing accessory building is located,
4 but it will be two stories whereas the accessory building is
5 one story. Next slide, please.

6 Here is another view showing the existing foliage
7 on site as well and you can see the property to the left, the
8 one that is attached, the one that is driving a 10 foot road
9 relief. It is already impacted by the existing one story
10 accessory building that is along the shared property line as
11 well as the tree.

12 While the shade study does show some additional
13 shade between the buy right condition and proposed condition,
14 it wasn't really possible to take these trees into
15 consideration as an additional factor. I did want to point
16 out that this is earlier in the morning, these sun shadows,
17 which is the primary time when the proposed addition has an
18 additional impact on the directly adjoining property.
19 There's existing shade there now so one could argue that
20 while a buy right addition and the proposed have some minor
21 differences in shading, the existing conditions on site are
22 already relatively shaded. This would further support that
23 there shall be no undue impact on the adjoining property in
24 terms of light.

25 This is also a view to show the existing accessory

1 structure along the alley and under the typical condition to
2 have the building close to or along the alley. Next slide,
3 please.

4 This is the subject property. There is a front
5 addition which appears to be non-original and it also has a
6 porch railing which is not a condition on this block. Next
7 slide, please. Thank you.

8 The proposal will look like the property at 436
9 Park Road, maintaining the same roof, refined cornice and
10 restore the original porch. The most major architectural
11 changes that are there will be two dormers and it will be
12 expanded, but still maintain that five feet of separation and
13 the semi-detached pattern on the block. Next slide, please.
14 Thank you. Next slide.

15 This just shows the narrow alley. Next slide.

16 This is a view from the corner of Park Road and
17 Park Place facing west. Again, the roof line of our property
18 will left as is and there will be no additional floors or
19 stories added. Next slide, please.

20 In terms of the general exception requirements,
21 the proposed addition complies with all lot occupancy and
22 side yard requirements. A portion of the rear yard still
23 meets the requirements and the height is not being changed
24 and also conforms. It also retains the property's semi
25 detached building form consistent with the block. The

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1 project replaces a non-original addition with a design that
2 is more compatible with the neighborhood character, a porch,
3 and mirrors the adjacent home to the west. It maintains the
4 existing setback as well as the existing cornice and roof
5 line and it concentrates the massing towards the rear along
6 the alley. A pattern that is typical of this alley, which
7 features narrow conditions, accessory structures and rear
8 building walls.

9 Overall, the proposal aligns with the development
10 pattern of the block and will not adversely impact the
11 neighboring properties. Given that the additional shade does
12 not rise to the level of undue. Next slide, please.

13 This is the existing site plan. Next slide,
14 please. This is the proposed site plan showing the extension
15 of the rear and side and the partial two story rear addition.
16 Next slide, please.

17 This is the existing front elevation. Next slide,
18 please. This is the proposed with expanded dormers and a
19 window pattern to match the adjacent property and the porch
20 restoration. Next slide, please.

21 This is the existing side elevation. Next slide,
22 please, and the proposed. Next slide, please. These are the
23 proposed floor plans for the first and cellar floor. Next
24 slide, please.

25 And these are the second and third floor. Next

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1 slide, please. Thank you. In terms of the shadow studies,
2 as noted, it's a two story rear addition approximately where
3 a one story accessory building is already located. There is
4 a tree on the site, all of which already cast shade on the
5 adjoining property. Here, we're comparing the buy right
6 versus proposed and the only time there is additional shade
7 on the adjoining property is in the morning and this is when
8 the spring and fall equinox and it's gone by noon. Next
9 slide, please.

10 There is a similar impact in the summer, but it
11 is shifted by the afternoon. Next slide, please. There is
12 no additional shade in the winter due to the angle of the
13 sun. Next slide, please.

14 The shade studies are, of course, related to the
15 rear addition relief. I thought photos would be more helpful
16 for the architectural elements and in this case we benefit
17 from having the view of the existing converted property that
18 we're trying to match available on this block to see how it
19 fits in with the context of this block.

20 Here, we're on the corner of Park and Warder
21 heading east towards the property. Next slide, please. This
22 relief is somewhat subjective as what rises to the level of
23 a substantial visual intrusion. I don't think the regulation
24 was meant to prohibit peaceful updates, maintaining the
25 characteristics, but then the question is what rises to the

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1 level of undue and I do think this house here on the right
2 down the block from the subject property, may be close to
3 that level of the substantial visual intrusion so it's a good
4 comparison for the subject property. Next slide, please.

5 CHAIRPERSON HILL: Ms. Wilson, do you know when
6 that beige thing was built?

7 MS. WILSON: I'm not sure when that was built, but
8 I would assume it would have been built prior to --

9 CHAIRPERSON HILL: The change.

10 MS. WILSON: Yeah, the change. I don't think that
11 would have been approved.

12 CHAIRPERSON HILL: Okay.

13 MS. WILSON: I'd have to check.

14 CHAIRPERSON HILL: All right, thank you.

15 MS. WILSON: Good question. Next slide, please.
16 We're getting a little bit closer here and it looks
17 relatively seamless, maybe the paint's a bit fresher compared
18 to the brick, but the roof line is identical. The mansard
19 pattern is retained as is the cornice detail and general
20 pattern. Next slide, please.

21 Then, as we get closer, it's actually the subject
22 property in its current condition that stands out with the
23 front roof deck and porch railing, but you can imagine that
24 once complete the new porch will be an overall improvement
25 while maintaining the critical elements that define the

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1 street. This is certainly a nicer design than a box item
2 mansard roof or a pop up type of style. Next slide, please.

3 In terms of the requirement, I've largely gone
4 over this in my presentation with sun studies and photos.
5 As a summary, the rear yard and 10 foot rule relief for the
6 additional two stories will not have an undue impact on light
7 and air as demonstrated by the shadow studies and by the fact
8 that there are existing conditions on the site now that shade
9 the rear of the adjoining property.

10 None of the requested relief shall compromise the
11 privacy of adjacent properties. There are no west facing
12 windows and while there is a back column above this, at the
13 rear on top of the second story, they will be character
14 walls. There is no opportunity to look over onto the
15 adjacent property. There are no west facing windows along
16 the shared property line. There will be a five foot side
17 yard and maintained open space to the east on the other side.
18 The rear yard and 10 foot rule relief will be consistent with
19 the structures along the alley and as demonstrated by the
20 photos, the proposal for the architectural changes will not
21 create a substantial visual intrusion. Next slide, please.

22 With respect to the parking relief, we're only
23 required to meet one. It is well served by mass transit.
24 There's Georgia Avenue to the west with a number of high
25 priority bus stops and the metro is a half mile to the north,

1 but primarily there's no physical way to provide legal
2 parking due to the alley. Next slide, please.

3 And with respect to the conversion, the
4 requirements are safely met as this is a building constructed
5 prior to 1958 so that leaves 900 square feet of land area per
6 unit.

7 That concludes my presentation, but I'm happy to
8 answer any questions and I believe members of the ownership
9 team are also on the line if there are any questions for
10 them.

11 CHAIRPERSON HILL: Okay, great. Thank you, Ms.
12 Wilson. Let's see what we get. Can I go ahead and turn to
13 the Office of Planning?

14 MR. JESICK: Thank you, Mr. Chairman and members
15 of the board. This is Matt Jesick presenting testimony in
16 this case. The Office of Planning can largely rest on the
17 written record of our report that has been submitted to the
18 record.

19 I will make one brief update. Noted in the new
20 plans that the Applicant proposes a trash storage area at the
21 front property line. We would just ask that the Applicant
22 consider replicating what has been done at the adjacent
23 property on the east, which is to pull that trash storage
24 area away from the front property line and place it along the
25 side of the building. That might lessen the impact on the

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1 streetscape, but that does not impact our overall analysis
2 and we continue to recommend approval of the application.
3 Thank you.

4 CHAIRPERSON HILL: Okay, thank you. Ms. Wilson,
5 were you aware of this request by the Office of Planning?

6 MS. WILSON: The reason we moved the trash back
7 to the front -- because we did have it at the rear
8 originally, was based on discussions with the ANC that
9 thought that would be very impractical and that it would end
10 up in front because trash pick up is from the front. There
11 are window wells on either side and so each property only has
12 a five foot side yard for the window well and so getting the
13 trash from the rear to the front would be difficult. That
14 was actually recommended through discussions with the ANC to
15 have it up front.

16 MR. JESICK: If I could just clarify briefly, Mr.
17 Chairman.

18 CHAIRPERSON HILL: Sure.

19 MR. JESICK: Yeah, I was not recommending putting
20 it back by the alley, just pulling it away from that very
21 front property line.

22 MS. WILSON: Oh, sure, yes.

23 MR. JESICK: So it's not impacting the streetscape
24 quite as much. Exhibit 18 is showing a trash enclosure right
25 at the front property line, but it might benefit from being

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1 pulled back away from the street a little bit.

2 CHAIRPERSON HILL: Exhibit 18, which one, Mr.
3 Jesick?

4 MR. JESICK: Exhibit 18 B2, I believe. Yes and
5 it's sheet A100. The adjacent property has it pulled back.

6 CHAIRPERSON HILL: Where does the adjacent
7 property have it?

8 MR. JESICK: It's not shown on the drawing, but
9 it's back along the side of the building, further towards the
10 window well.

11 CHAIRPERSON HILL: Ms. Wilson, do you know where
12 that is?

13 MS. WILSON: Yes and we would agree to that and
14 pull it back. It's the same contractor too who is working
15 with these owners to develop the property so they would be
16 able to do what they did on the property to the east of them.

17 CHAIRPERSON HILL: Do you know, Ms. Wilson, if you
18 can put that on a plan somehow?

19 MS. WILSON: Sure, we could update this plan and
20 get it back into the record quickly.

21 CHAIRPERSON HILL: Do you have the architect with
22 us here now?

23 MS. WILSON: We do not. She was unable to meet
24 here today.

25 CHAIRPERSON HILL: Is she unavailable today?

1 MS. WILSON: She is unavailable today but there
2 may be someone from the team who could update that.

3 CHAIRPERSON HILL: Before the end of the day?

4 MS. WILSON: Yes.

5 CHAIRPERSON HILL: Okay. All right, thank you,
6 Mr. Jesick. Does the board have any questions of the
7 Applicant or the Office of Planning? Okay. Mr. Young, is
8 there anyone here wishing to speak?

9 MR. YOUNG: We do not.

10 CHAIRPERSON HILL: Okay. Ms. Wilson, if you could
11 reach out to your team. We don't have a lot of cases left.
12 We have two more, it's just one sheet and so if you can just
13 do that to reflect the neighboring property as the Office of
14 Planning has requested and then we'll come back -- I can
15 close the hearing on the record except for that, okay?

16 MR. WHITEHEAD: Wonderful, thank you.

17 CHAIRPERSON HILL: I'm going to close on the
18 record except for that one item and then once that item is
19 here, we can come back and deliver it. I'm going to close
20 the hearing on the record and we can come back for a
21 deliberation at the end of the day after that one sheet has
22 been added to the record. Thank you. Okay, if you all will
23 just give me one minute, I just have to grab my files.
24 Actually, I have to get some files from another room. I'll
25 be back in a minute. I've got them. Okay. Madam Secretary,

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1 if you can please call our next case.

2 MS. MEHLERT: The next case is Application No.
3 21375 of Roberto A. Cecray and Maria Victoria Cerdenia. As
4 amended this is an application pursuant to Subtitle X, §
5 901.2 for a special exception from Subtitle D, § 5003.1 to
6 allow an accessory building with a maximum building area
7 greater than 450 square feet. This is for a new two story
8 accessory building with an accessory apartment in the rear
9 of an existing detached two story principal dwelling unit.
10 It's located in the R-2 zone at 6122 Sligo Mill Road, NE
11 (Square 3720, Lot 6) and I will just note that the OP report
12 is in Exhibit 26.

13 CHAIRPERSON HILL: Okay, thank you. All right,
14 if the Applicant can hear me, if they please introduce
15 themselves for the record.

16 MS. CERDENIA: Yes, good afternoon, Mr. Chairman
17 and board members. My name is Maria Victoria Cerdenia. I'm
18 co-owner of the property and my husband, Roberto A. Cecray,
19 is here as well.

20 MR. CECRAY: Hello.

21 MS. CERDENIA: He's off camera.

22 MR. CECRAY: You can't see us, I guess, but I'm
23 here too, Roberto A. Cecray.

24 CHAIRPERSON HILL: Okay, great. If your camera
25 doesn't work that's fine. Do you know if your camera is not

1 working?

2 MS. CERDENIA: What happened to the camera?

3 MR. CECRAY: I don't know. I thought maybe --

4 CHAIRPERSON HILL: That's okay, that's okay.

5 MS. CERDENIA: Okay.

6 CHAIRPERSON HILL: Ms. Cerdenia, Mr. Cecray,
7 whoever is going to present, if you could please -- I know
8 that there have been some changes to your application in
9 terms of the information you got from the Zoning
10 Administrator --

11 MS. CERDENIA: Yes.

12 CHAIRPERSON HILL: And so if you want to go ahead
13 and tell us about your project and what you're trying to do
14 and we'll see how we work through this today.

15 MS. CERDENIA: All right, Mr. Chairman. We are
16 building on an existing concrete slab, which is 672 square
17 feet, that's a 24 x 20 one story garage that was built in
18 2017 and last year, in mid July, we had a freak wind storm
19 and the tree in our backyard fell on the garage and insurance
20 subsequently called the structure unuseable so it was
21 demolished. I was using the garage as my storage for my
22 inventory and I realized that I couldn't even have a home
23 office built into a garage, so with the structure down and
24 we're now rebuilding, we decided to do an EBU so I can have
25 a home office and have other use for the building. It can

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1 also subsequently add value to our property. If it can have
2 livable space.

3 Basically, we had filled out the application last
4 August and we found out we need variances, variance relief.
5 First, it was a height variance and we discussed with the
6 reviewer and he said it will be a problem to have the 22 foot
7 structure because it would be 5 feet over the required
8 maximum because we were 5 feet over the slope line at the
9 alley line, because we're on a slope.

10 We discussed with our builder that we'll just
11 reduce it to 17 feet to be in compliance with the height
12 requirement, so we do not need to apply for an area variance.
13 We submitted the new plans, which should be in one of your
14 exhibits, I believe 22. It's a still a two story structure,
15 but it's just, yes, the second floor would just be storage.

16 We don't have a liveable space there anymore
17 because our builder said that that can't be habitable anymore
18 with that amount of space we have on the second floor. I
19 said I'm fine with that because really we need the storage
20 so long as I have that, we're fine. So, I believe the
21 variance or special exception that we need right now is just
22 for the area because for our zoning, it was a maximum of 450
23 square feet and we already have a concrete slab of 672 square
24 feet, so we just want to build on the existing concrete slab.
25 I believe you have pictures there too as one of the exhibits.

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1 CHAIRPERSON HILL: Yeah, no, we see everything.
2 Thank you, Ms. Cerdenia.

3 MS. CERDENIA: All right.

4 CHAIRPERSON HILL: Okay, I understand what you're
5 trying to do. All right before I turn to board today, can
6 I hear from the Office of Planning please?

7 MR. MITCHUM: Yes, this is Joshua Mitchum of the
8 Office of Planning. After speaking with the Applicant, we
9 are prepared to recommend approval for the special exception
10 request for the maximum area. We believe they've met the
11 burden of proof and any questions about the zoning that the
12 application took between now and then we're happy to answer
13 any questions you have. Thank you.

14 CHAIRPERSON HILL: Okay, thank you. Ms. Cerdenia,
15 at the ANC meeting, you guys presented, correct?

16 MS. CERDENIA: I reached out to them several times
17 and I was not able to reach the ANC itself, but Ms. Jinin
18 Berry of 4B10, we have been exchanging emails and she said
19 she had no problem with it, except, I think, 4D had a problem
20 with that height, but we have settled that already.

21 CHAIRPERSON HILL: Yeah, the letter I'm getting
22 that's in the record, it says that they take no position.
23 It says at this time, they take no position at this time in
24 support of your application, meaning -- I assume that means
25 they're taking no position either way, but you did -- so what

1 was received back again? I'm sorry, that you got from the
2 ANC.

3 MS. CERDENIA: Per Ms. Jeanne Barry too, I believe
4 speaking for the ANC, they were also concerned about the
5 height variance, but we have settled that. We have agreed
6 to put it to 17 feet. So, there should be no problem with
7 the height variance.

8 CHAIRPERSON HILL: Okay.

9 MS. CERDENIA: Because that would have been in the
10 original letter, but if you noted there was a new letter from
11 the -- the new referral memo from zoning which now just
12 addresses the building area not the height anymore. That is
13 not a problem.

14 CHAIRPERSON HILL: I understand. It seems as
15 though they're taking no position that's all I was trying to
16 clear up and that's what's in the record. Does the board
17 have any questions of the Applicant or the Office of
18 Planning?

19 COMMISSIONER MILLER: No questions. I would just
20 note for the board's edification if you're not already aware
21 that we have an omnibus zoning text amendment pending and one
22 of the several, many changes that are being proposed are to
23 increase the square footage of the area for an accessory
24 dwelling in the lower density residential zones from 450, I
25 believe, to 650 so we would still need --

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1 (Simultaneous speaking.)

2 MS. CERDENIA: Oh yes.

3 COMMISSIONER MILLER: The application would need
4 the approval under what we're considering. I recall that
5 there were dozens of cases of where the BZA has been
6 considering these and approving them with ANC no objection
7 or approval and no problem or objections from adjacent
8 neighbors. The average square footage of what the BZA has
9 approved, I think, in 30-some cases where there's no
10 objection or support was 700 square feet and I did ask the
11 Office of Planning at the hearing why don't we just go to 700
12 square feet, which in this case would obviate the need for
13 this BZA relief, but just note all that for the record. We
14 may get less of these in the future. They haven't been
15 controversial.

16 CHAIRPERSON HILL: Thank you, Commissioner
17 Miller. Mr. Blake, did you have a question? Okay, you're
18 shaking your head no. Mr. Young, is there anyone here
19 wishing to speak?

20 MR. YOUNG: We do not.

21 CHAIRPERSON HILL: Okay. Ms. Cerdenia, Mr.
22 Cecray, I'm sorry if I'm not pronouncing that right, you guys
23 have a nice day, okay.

24 MR. CECRAY: Okay.

25 MS. CERDENIA: Excellent, so we're good, sir?

1 CHAIRPERSON HILL: It seems like it. Let's go
2 ahead and take a vote. Okay?

3 MR. CECRAY: All right.

4 MS. CERDENIA: All right.

5 MR. CECRAY: Thank you. Thank you.

6 CHAIRPERSON HILL: Have a nice day. Closing the
7 hearing on the record. Okay. I think, Mr. Miller, that's
8 kind of interesting that they didn't go to 700 square feet,
9 but as you mentioned, they would still need this even with
10 your omnibus work that you guys are doing. I don't have an
11 issue with this application. I will agree with the analysis
12 that the Office of Planning has provided.

13 The ANC, it seems like they might have had a
14 concern about if it were going to be the height that they had
15 originally proposed, but they got it down to something that
16 could be done through this manner. So, I'm going to be voting
17 in favor of this application. Mr. Blake, do you have
18 anything you'd like to add?

19 MEMBER BLAKE: Mr. Chairman, I don't have anything
20 to add. I'm in support of the application.

21 CHAIRPERSON HILL: Commissioner Miller?

22 COMMISSIONER MILLER: I concur.

23 CHAIRPERSON HILL: Okay, thank you. I'm going to
24 make a motion to approve Application No. 21375 as amended and
25 read by the Secretary and ask for a second, Mr. Blake.

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1 MEMBER BLAKE: Second.

2 CHAIRPERSON HILL: Motion made. Executive Madam
3 Secretary, take a roll call, please.

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

6 CHAIRPERSON HILL: Yes.

7 MS. MEHLERT: Vice Chair Blake?

8 MEMBER BLAKE: Yes.

9 MS. MEHLERT: Commissioner Miller?

10 COMMISSIONER MILLER: Yes.

11 MS. MEHLERT: Staff would report the vote as 3 to
12 0 to 2 to approve Application No. 21375 on the motion made
13 by Chairman Hill and seconded by Vice Chair Blake.

14 CHAIRPERSON HILL: Okay, great. Thank you. Madam
15 Secretary, if you can call our next case, please.

16 MS. MEHLERT: Next is Application No. 21380 of The
17 Board of Trustees of the Leland Stanford Junior University.
18 This is a self-certified application pursuant to Subtitle X,
19 § 1002 for an area variance from Subtitle I, § 509.3 to allow
20 a non-residential FAR in excess of 3.5 and pursuant to
21 Subtitle X, § 901.2 for Special Exceptions under Subtitle C,
22 § 1506.1 from the penthouse setback requirements of Subtitle
23 C, § 1504.1 and under Subtitle I, § 205.5 from the rear yard
24 requirements of Subtitle I, § 205.1. This is for a new
25 penthouse and rear stairway addition to an existing four

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1 story attached building for office and/or institutional use.
2 It's located in the D-2 zone at 1128 16th Street, NW (Square
3 183, Lot 91).

4 CHAIRPERSON HILL: Great, thank you. If the
5 Applicant can hear me, if they can please introduce
6 themselves for the record.

7 MR. KADLECEK: Hi, good afternoon. Cary Kadlecek
8 from the law firm of Goulston & Storrs on behalf of the
9 Applicant.

10 CHAIRPERSON HILL: Okay, great. Thank you, Mr.
11 Kadlecek. If you want to go ahead and walk us through your
12 client's application and why you believe you are meeting the
13 criteria for us to grant the relief requested. I'm going to
14 put 15 minutes on the clock so I know where we are and I can
15 see that there are other people here from you or your team.

16 If you do happen to go to any of those team
17 members, if those team members could please introduce
18 themselves when they speak for the record that would be
19 helpful and/or Mr. Kadlecek if you don't need them, then we
20 can proceed as you see fit. So, please, Mr. Kadlecek, you
21 can begin whenever you'd like.

22 MR. KADLECEK: Thank you and yes, other members
23 of my team will be speaking, so I'll let you know when it's
24 their opportunity to speak.

25 Again, Cary Kadlecek on behalf of the Applicant.

1 We're today on behalf of Stanford University to present the
2 application for special exception and variance relief to
3 allow the renovation and minor expansion of a historic
4 formally residential four story building in the D-2 zone in
5 downtown Washington.

6 This building will be the new Washington home of
7 the Hoover Institution, a public policy think tank and
8 research center located at Stanford. The proposed project
9 involves careful renovation and adaptive readings of the
10 building to accommodate Hoover's needs which include offices,
11 research and perhaps most importantly hosting event such as
12 speakers, panel discussions and the like, most of which will
13 be open to the public and will bring greater activation to
14 downtown.

15 The space necessary to accommodate these events
16 is the most critical part of this project. In order to
17 facilitate this prominent project, this application requests
18 special exception relief for penthouse setbacks and rear yard
19 and a small area variance, 0.18 FAR, from the nonresidential
20 FAR.

21 We are pleased to have the support of the Office
22 of Planning, DDOT and ANC 2C. With that, I will turn it over
23 to Jeffrey Jones of the Hoover Institution just to give you
24 a brief background and introduction.

25 MR. JONES: Thanks, Cary. My name is Jeff Jones

1 and I am an associate director at the Hoover Institution
2 which is a department of Stanford University in California.
3 I just want to say that we really appreciate the opportunity
4 to present our project to the board. Thank you for your
5 time. Hoover is a public policy think tank based at an
6 institution of higher education and really all I want to say
7 is we're excited by the opportunity to invest in the downtown
8 both in the economic as well as the intellectual vibrancy of
9 downtown Washington, DC.

10 We have selected a team of architects, we are
11 working with who you will hear from in a minute, who really
12 understood the program and our goals of being able to provide
13 educational resources to the communities and to continue to
14 invest in the nation's premier, obviously, area of public
15 policy. It's thrilling for us to be able to invest in this
16 way and we're excited to offer programming, have staff based
17 in downtown DC and with that, I'll just turn it over the rest
18 of my team to carry on. Thank you.

19 MR. KADLECEK: Thanks, Jeff. I'll next turn it
20 over to Ralph Cunningham of Cunningham Quill Architects,
21 which are the project architects for this. Mr. Young, if you
22 could please bring up our presentation.

23 MR. JONES: Ralph, I show you as muted.

24 MR. CUNNINGHAM: There we go.

25 CHAIRPERSON HILL: Mr. Cunningham, if you could

1 also introduce yourself when you get a chance.

2 MR. CUNNINGHAM: Yes, sir. My name is Ralph
3 Cunningham. I'm an architect and principal at Cunningham
4 Quill Architects here in Washington, DC. We have been before
5 you on other occasions and we are delighted to be here
6 representing the Hoover Institution and Stanford University.

7 CHAIRPERSON HILL: If you want him to advance the
8 slide, Mr. Cunningham, you just have to ask Mr. Young to
9 advance the slide.

10 MR. CUNNINGHAM: Okay, thank you. All right,
11 again, we're delighted to be here. We have been working with
12 Stanford and with Hoover for quite some time to find an
13 appropriate site for this program. We believe that we have
14 found really the ideal building. Obviously, 16th Street is
15 an important, almost avenue in the District of Columbia.

16 This is also in a cultural corridor that includes
17 National Geographic which you see to the north or above our
18 site, which is listed in red, 16th Street is on the right.
19 The Jefferson Hotel is also on this block as well as the
20 Russian ambassador's residence. Next. Sorry, University
21 Club Jefferson. The Jefferson Hotel is on the next block up.

22 Here you see our site, what's probably important
23 here is that you see the relatively diminutive scale of this
24 building compared to its neighbors. This building is a
25 survivor. It was built as a residence in 1908 and when we

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1 looked at this building, we really thought that it was fairly
2 ideal for this setting and I'll explain why in a minute. As
3 Cary mentioned, we have passed the Historic Preservation
4 Review Board, support from the ANC and from the Office of
5 Planning.

6 Again, you see here that it is at the corner of
7 16th and an alley called Sumner Row and some of the
8 development we'll be talking about will be actually on that
9 alley. Next.

10 The contest here and you see that this is an area
11 with very, very large buildings. Our building is
12 considerably smaller than the neighbors in both height,
13 width, length, so that has caused the need for this small
14 amount of relief that we're asking for today. Next.

15 Here are photos of the building. It is a very
16 handsome limestone and brick building. You can see it on the
17 left slide number one. On number two, you see the beginning
18 of Sumner Alley. Slide three, you see the part that ends in
19 the alley and slide four, you see the nonconforming rear yard
20 and as I mentioned, we've passed HPRB. We're putting on an
21 absolutely first class preservation project here to restore
22 the building to close to its original appearance.

23 One unique thing about this building which we'll
24 be talking about in a minute is that it was always designed
25 with a main living level one floor up, a piano nobile, so

1 that has the highest ceilings and we have selected that floor
2 to place our convening space which we're going to be looking
3 in a few minutes. Next.

4 Here you see the beautiful details of this
5 building. Most of the original details remain. The only
6 place where this building was significantly altered was on
7 the roof and in the rear where we're going to be moving new
8 pieces. Again, in terms of the front, we're going to be
9 doing a first class preservation project.

10 It's important to note on the right the interior
11 stair which is original to the building and is intact because
12 that will become relevant as we sort of look through what
13 we're trying to do here. Next.

14 So, here you see our site and you see how
15 absolutely constricted it is. We have a small site that is
16 attached to adjacent buildings on the south and on the west
17 with the alley to the north. Next.

18 This is an axonometric which shows what we're
19 proposing to do here. We're proposing two additions to the
20 building. One is a penthouse. The institution would like
21 to use this roof for events and you can imagine the views
22 from up here looking up 16th Street towards the White House
23 are pretty spectacular. Then we have a small addition on the
24 rear and that is to create a new egress there in order to
25 support a new convening room, which is this 1,000 square foot

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1 space that we're going to see in a minute. Next.

2 Here it is. This is the second floor plan of the
3 piano nobile level. There's an existing conference room on
4 the right which is largely going to be intact. On the left,
5 we are clearing out many, many partitions, office spaces to
6 create this 1,000 square foot convening room and you can see
7 here the new stair on the far left and that is to create the
8 egress capacity for this room which will hold 100 guests.

9 You also see in this plan, the original stair
10 which is plan south as well as the new elevator which is
11 directly opposite it. That elevator causes some issues for
12 the penthouse that you'll see in a moment. Next.

13 Here is the placement of the penthouse addition.
14 You see the angle there which would be what would actually
15 be required. This is a small exception to that and it's
16 really because the elevator needs to be in that location to
17 work properly in the middle of the plan. Also, on the right,
18 which is a view from the rear, you see the allowed height of
19 the rear addition with the 100 percent lot occupancy and the
20 area of relief in the pink above that. The pink areas are
21 the areas that we need relief. Next.

22 Same thing here, you see why we can't set the
23 penthouse back one to one because of the elevator and again
24 the pink area is the area of relief we're requesting. You
25 also see here this section that on the second floor the

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1 ceiling height is significantly larger or higher, which is
2 why we looked at many buildings for this institution and this
3 one really fit the program the best. Of course, the location
4 on 16th Street is really wonderful for a university. Next.

5 Here, we see the penthouse plan. You see the
6 elevator that I've been talking about in the previous slides.
7 Again, the elevator is shown in pink. We have a terrace
8 space on 16th Street which is on the right side of the plan.
9 We have a lobby, a bathroom and then we have the mechanical
10 enclosure in the back. All relatively normal pieces of a
11 building like this. Next.

12 Here is why the elevator is where it is and really
13 so there's an existing elevator in the building which is
14 shown in pink on the left of the main stair. That elevator
15 is much too small, does not meet the modern building code,
16 doesn't meet stretcher requirements, et cetera, et cetera,
17 so that elevator cannot be reused. You can see here the
18 significant increase in the size of the elevator based on
19 modern requirements and so it's located there because it is
20 opposite the main stair between the existing conference room
21 on the 16th Street side and then the new large convening room
22 on the other side. Next.

23 Here, we're explaining why we need this addition
24 in the back. There's an existing fire stair that is on the
25 upper part of this plan, but in order to create the

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1 multipurpose room which you see again in the pink, we need
2 to move the stair outside and into this little rear niche
3 that we have available to us. We're transferring the stair
4 above the multipurpose room into this new addition and that
5 causes the slight increase in height. You see the dimension
6 here, you know, 4 feet on the alley side. Again, as you look
7 at these drawings and you look at the pink pieces, in general
8 that's what we're asking for. Next.

9 Here, a question was asked to us about well, what
10 would you do instead if you couldn't do this and you see the
11 effect of the egress there where it would go. It takes up
12 a significant amount of the multipurpose room which kind of
13 defeats the purpose of our program. The rear niche is filled
14 with trash cans and it's effectively unuseable for human
15 habitation so we felt that it was quite logical to move the
16 stair into that niche. Next.

17 We looked at other alternatives too. You could
18 think it putting it in the front which would then destroy the
19 nobile because the front is largely preserved with its
20 original windows. That is a very important room on all
21 levels of the building. You could put it next to the stair
22 but again that really limits the usefulness of the
23 multipurpose room.

24 The other alternative would to be remove the
25 existing stair which we did not want to do for preservation

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1 reasons and that's something that we discussed the Historic
2 Preservation Office. Next.

3 This just shows other alternate locations and I
4 think that you can see the plan logic here between two
5 relatively large rooms, one on 16th Street and one in the
6 rear and why we would want to push that stair out into the
7 rear. Next.

8 I should also point out that would have also
9 resulted in significant structural changes to the building.
10 We are fortunate with this building that it's never really
11 been heavily renovated in a structural way. There are
12 partitions in it but in general, most of the spaces are
13 intact so having a sense of that history of the building is
14 very important to our client and to make this a welcoming
15 place for their guests. But in the pink you see other
16 alternate locations for that stair. I should point out the
17 one on 16th Street which is on the left would be completely
18 unacceptable to HPS. Next. All right.

19 MR. KADLECEK: That's back to me, so I'm just
20 going to summarize. Thank you, Ralph. I'm just going to
21 summarize the relief. This is all, of course, in our
22 exhibits, but just to summarize for the board, the relief
23 that we're seeking and justifications. Again, one of the
24 first special exceptions we're seeking is the penthouse
25 setback for both the elevator overrun and the mechanical

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1 screening setback relief is from the rear. The elevator
2 overrun is from the north to the alley meeting the criteria
3 of Subtitle C § 1506.1.

4 Demonstration of reasonable efforts. I think
5 Ralph demonstrated the multiple considerations for the
6 placement of the elevator and all the interior sort of
7 building blocks that had to be shifted around to make it work
8 and so there are a lot of difficulties in being able to
9 access the roof with the elevator and make it setback in
10 accordance. The placement of the elevator has been done in
11 such a way that minimizes the amount of setback relief, but
12 at the time allows the space and particularly the second
13 floor space where the largest gathering areas would be to be
14 the most functional and most useful for the Hoover
15 Institution.

16 Again, it's been reviewed and approved by the HPRB
17 and the setback relief for both of those elements, as
18 discussed, will not have any adverse impacts on light, air
19 or visual intrusion on neighboring properties. Next slide,
20 please.

21 The next special exception as discussed that we're
22 seeking is for rear yard relief. As mentioned, it's for the
23 area of the proposed rear stair that's above 25 feet in
24 height, which is only actually 9 feet and 3 inches of height
25 that we're actually seeking relief. I won't go through all

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1 of these specific standards where those are all articulated
2 in our written pleadings and summarized here, but it won't
3 violate any of the provisions for rear yard relief and most
4 importantly, the space that's currently the rear yard that's
5 only 8-1/2 feet is already nonconforming, so a lot of these
6 conditions couldn't be met in any event, but certainly no
7 conditions will be exacerbated and won't violate any of these
8 criteria as stated in Subtitle I, § 205.5. Next slide,
9 please.

10 Now, turning to the area variance for the small
11 amount of nonresidential FAR, again the amount of FAR relief
12 that's being sought here is for 0.18. The existing building
13 as mentioned at the top is originally built as a residential
14 building in 1906. It's the only one really of its kind that
15 sort of exists anymore in the neighborhood. It's a long and
16 narrow building that's quite different than most of the other
17 commercial buildings that exist in the neighborhood and in
18 downtown Washington currently.

19 It's nonconforming to its nonresidential FAR
20 already, so that really limits the ability to do anything to
21 expand the building, despite the fact that it is conforming
22 to residual FAR.

23 It's also, as Ralph mentioned, a contributing
24 building in the 16th Street Historic District, which of
25 course, limits the ability to do anything to the building on

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1 its exterior that would allow us to somehow remove FAR. And,
2 most importantly, I think, are the many outdated and non-code
3 compliant features of the building. As Ralph mentioned, the
4 current egress stair does not conform to building code.
5 There's a lot of interior demising that brights up the
6 spaces. It doesn't meet accessibility requirements and
7 particularly the 70-year-old elevator is non-code compliant
8 and not accessible in many regard.

9 Those confluence of factors are what meet the
10 first prong of the variance test for an exceptional or
11 extraordinary situation. Next slide, please.

12 Turning to the practical difficulty, I won't go
13 through all of this, it's a lot of text, but I just wanted
14 to summarize it all for the board to have available. This
15 is, of course, in our written pleadings as well. The
16 practical difficulty really arises from the programmatic
17 needs of the Hoover Institution.

18 As Ralph mentioned, an approximately 1,000 square
19 foot gathering space is really critical to the function and
20 the utility of this building for the Hoover Institution.
21 It's really what drives the design. It's really what drove
22 pretty much everything and every design decision that was
23 made is to have this 1,000 square foot multipurpose room
24 because of the frequency and the importance of hosting
25 events, speakers, panel discussions, etc., to the Hoover

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1 Institution's mission.

2 That comes from what they deem to be sort of the
3 typical number of people that then, of course, dictates the
4 code requirements that sort of accompany that, resulting in
5 the code compliant stairway that needed to be provided, which
6 must have certain dimensions and must be separated by at
7 least 22 feet or approximately 22 feet.

8 When you combine all those factors and the
9 programmatic requirements that the Hoover Institution has for
10 this particular space, it's really what drives the ability
11 to only place the stair as proposed at the rear of the
12 building in a way that doesn't basically obliterate what the
13 programmatic utility is of this building for Hoover
14 Institution.

15 I think Ralph covered pretty adequately how
16 different scenarios were contemplated here. I know that, of
17 course, the standard for practical difficulty is not
18 impossibility, but I think we clearly demonstrated that
19 multiple scenarios were studied in terms of moving the stairs
20 into different locations to what the impacts on the program
21 and the structure of the building, particularly with regard
22 to the existing stairway, that's historic. Removing that not
23 only has preservation implications but there are structural
24 implications to removing an original feature of this historic
25 building that's 120 years old.

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1 All those things together really drove this, the
2 only way to really accommodate all of these particular
3 requirements, based on all these factors, these exceptional
4 conditions that contribute to the building, result in the
5 need for that small amount of FAR relief to build that rear
6 stairway. Next slide, please.

7 Finally, the last prong of the variance test no
8 substantial detriment to the public good or interference with
9 the zone plan. The building complies with residential FAR
10 requirements. So, in terms of just the overall massing of
11 the building that's deemed to be consistent with the area
12 with the zone. It's also worth mentioning again that many
13 of the surrounding buildings are much larger than this
14 building so certainly it is not creating a building that is
15 bigger than anything around it and it will still remain
16 considerably smaller than the context.

17 The stair relief doesn't result in any more
18 gathering space. It's not adding more gathering space at the
19 rear of the building. It is purely for a secondary egress
20 stairway. It is also is the minimum amount of relief
21 possible. As you saw, the stairway goes back inside the
22 building above this second floor and that is to, again,
23 minimize the amount of stairway that's going to be added to
24 the back of the building and it's to preserve that second
25 floor multipurpose space that is so critical to the program

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1 that will be run in this building.

2 Then finally, it's just worth mentioning as Jeff
3 mentioned at the top, there's a real economic development
4 benefit in terms of investment in downtown Washington,
5 bringing visitors to this area, patronizing the restaurants
6 nearby, staying in nearby hotels. Allowing this relief that
7 will allow the Hoover Institution to move into this building
8 will really be something really helpful and useful to
9 downtown Washington in this area.

10 With that, we conclude our presentation. We very
11 much thank the board for their time and we're happy to answer
12 any questions.

13 CHAIRPERSON HILL: Okay, thanks, Mr. Kadlecek.
14 Before I turn to the board, could I hear from the Office of
15 Planning?

16 MR. JURKOVIC: Good afternoon, Chair Hill and
17 members of the board. This is Michael Jurkovic, Development
18 and Review Specialist with the Office of Planning. OP is in
19 support of the Applicant's request for relief for the
20 penthouse, rear yard and FAR requirements of the D-2 zone.

21 With respect to the requested area variance, the
22 maximum nonresidential FAR, OP is largely in support due to
23 the historic nature of the property and the interrelated
24 difficulties in meeting egress requirements without the
25 requested relief. We otherwise stand on the record of our

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1 report and I'm here to answer any questions. Thank you.

2 CHAIRPERSON HILL: Thank you. Does the board have
3 questions of the Applicant and/or the Office of Planning?
4 Go ahead, Commissioner Miller.

5 COMMISSIONER MILLER: Thank you, Mr. Chairman and
6 thank you to the Hoover Institute team, Mr. Kadlecek, Mr.
7 Cunningham and was it Mr. Jones? Yes. For bringing this
8 application forward. I just had a question. The 1,000
9 square foot, Mr. Cunningham, the attractiveness of yet
10 another adaptation that sensitive to the historic
11 preservation building and properties, is very appreciated and
12 commendable. The 1,000 square foot multipurpose room is that
13 on the first floor or is that penthouse communal space?

14 MR. CUNNINGHAM: In the package, that's on the
15 second floor, so one floor up from the ground floor.

16 COMMISSIONER MILLER: Okay, thank you and do you
17 know what the square footage is of the penthouse? How about
18 the habitable space portion of the penthouse? The communal
19 space?

20 MR. CUNNINGHAM: We'll have to measure that and
21 David Coxson is the principal in our offices. He is also
22 attending, so maybe we can put him on here.

23 COMMISSIONER MILLER: I didn't need an exact
24 number, I just -- it's a very --

25 (Simultaneous speaking.)

1 MR. COXSON: It's --

2 COMMISSIONER MILLER: It can't be that much, but
3 yes, Mr. Coxson?

4 MR. COXSON: Thank you, Mr. Miller. I'm David
5 Coxson with Cunningham Quill. It is a small space. It's
6 under 600 square feet total in addition -- with the
7 combination of the outdoor terrace and the penthouse lobby
8 itself.

9 COMMISSIONER MILLER: So, the reason why I was
10 asking is because normally penthouse habitable space triggers
11 an inclusionary zoning, affordable housing contribution
12 either to the Housing Production Trust Fund or if it's a
13 residential building, a unit in the building at 50 percent
14 AMI or something, but this is only 600 square feet. Mr.
15 Kadlecek, do you know does it trigger an IZ requirement?

16 MR. KADLECEK: Well, there is for the habitable
17 space, there's the payment requirement, yeah, but there's no
18 IZ requirement in terms of the unit because it's not a
19 residential building.

20 COMMISSIONER MILLER: Yeah, I know it's not a
21 residential building, but habitable space, even in
22 nonresidential buildings, I thought generally would trigger
23 an affordable housing contribution to the trust fund.

24 MR. KADLECEK: It does, yes, I agree with that.
25 What I'm saying though is there is no IZ contribution,

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1 there's no actual unit.

2 COMMISSIONER MILLER: Right, right. That's what
3 it is, does the 600 even meet the threshold of what would be
4 needed or argued? Can you do -- is there a calculation
5 that's going to be made based on that space on square
6 footage?

7 MR. KADLECEK: It's based on square footage, yeah.

8 COMMISSIONER MILLER: Yes, so is that part of the
9 plan that there would be that calculation made and that
10 contribution made?

11 MR. KADLECEK: Yeah, that's part of the building
12 permit application that's all included in that part on our
13 application papers.

14 COMMISSIONER MILLER: Thank you. I know that's
15 not before us now, but it's something that's always top of
16 my mind with the project. I have no questions about the
17 relief being submitted. I believe it provided a lot of
18 justification for issuance. I have no questions on that.

19 CHAIRPERSON HILL: Thank you. Mr. Blake?

20 MEMBER BLAKE: I have no questions.

21 CHAIRPERSON HILL: Okay, Mr. Kadlecek, I was just
22 curious how come you guys didn't take the stairwell outside
23 the whole way from the top down?

24 MR. KADLECEK: I'll let Mr. Cunningham answer
25 that, but I think in short it's because it minimizes the

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1 amount of stairway that's on the exterior of the building.
2 As we mentioned, this is a preservation project in addition
3 to a renovation and so the less that goes on the outside of
4 the building, the more of the original building that you can
5 see and is shown. I don't know if I addressed it adequately
6 from Mr. Cunningham's point of view, but please jump in.

7 MR. CUNNINGHAM: You did. Of course, we want the
8 addition to be subordinate to the original building and I
9 think it clearly is. We thought it best to just really
10 minimize it and the issue to get to your actual question,
11 Chairman Hill, the issue it can go back inside above the
12 convening space, above that 1,000 square feet. It's
13 perfectly fine with us in plan. It wasn't -- we didn't need
14 it above where we have it now.

15 CHAIRPERSON HILL: Okay, all right, Mr.
16 Cunningham, I mean I never know exactly what's going on
17 obviously in the discussions before people come before us,
18 but Mr. Cunningham, you've obviously come before the Zoning
19 Commission before and I'm sure they'd love to hear that you
20 are doing the best you can to ask for the least amount of
21 relief that you need for your client's program, which seems
22 to be the answer.

23 MR. CUNNINGHAM: Correct.

24 CHAIRPERSON HILL: Okay, great. Let's see, Mr.
25 Young, is there anyone wishing to speak?

1 MR. YOUNG: We do not.

2 CHAIRPERSON HILL: Okay. All right, Mr. Kadlecek,
3 do you have anything at the end?

4 MR. KADLECEK: Nothing further. Thanks again for
5 the board's time and consideration of the application.

6 CHAIRPERSON HILL: Okay, thank you guys and thank
7 you all for the presentation. The presentation was very nice
8 and obviously, you know, it's a wonderful addition to the
9 city.

10 MR. KADLECEK: Thank you.

11 CHAIRPERSON HILL: Thank you. Mr. Young, if you
12 would please excuse everyone, I'm closing the hearing and the
13 record. Okay, I mean the FAR being asked for is so small,
14 but that's why I was kind of like a little confused. I
15 shouldn't say I was a little confused, I was curious as to
16 why they didn't try to take the stairwell all the way out.

17 I think it's nice if that's the actual reasoning
18 for it, which I do believe the Applicant -- I do believe what
19 they're saying and so I would agree with the argument as to
20 why they're meeting the criteria for that area variance, for
21 that increased FAR and then I also will agree with the
22 presentation as it was concerning the two other items of
23 relief that are being requested. I thought it was a well put
24 together presentation and particularly showing where the
25 relief was needed and why and then also the stairwell

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1 couldn't be put in different locations and why.

2 They actually did take the time to look at that
3 or at least propose it to us and show us why. I will agree
4 with the analysis that the Office of Planning has put forward
5 as well as that of the support of the ANC has me voting in
6 favor of this application. Mr. Blake, do you have anything
7 you'd like to add?

8 MEMBER BLAKE: Mr. Chairman, I definitely agree
9 with your analysis. I think the Applicant has met the burden
10 of proof for all areas of the requested relief. I give great
11 weight to the Office of Planning's recommendations for
12 approval and also give great weight to ANC 2C who is in
13 support of the application as well. I'll be voting in
14 support.

15 CHAIRPERSON HILL: Thank you. Commissioner
16 Miller?

17 COMMISSIONER MILLER: Thank you, Mr. Chairman.
18 Yeah, I agree with the analysis and conclusions of both you,
19 Mr. Chairman, and Board Member Blake.

20 CHAIRPERSON HILL: Thank you. All right, I'll
21 make a motion to approve Application No. 21380 as captured
22 and read by the secretary and ask for a second, Mr. Blake?

23 MEMBER BLAKE: Second.

24 CHAIRPERSON HILL: The motion made has been
25 seconded. Take a roll call, please.

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

3 CHAIRPERSON HILL: Yes.

4 MS. MEHLERT: Vice Chair Blake?

5 MEMBER BLAKE: Yes.

6 MS. MEHLERT: Commissioner Miller?

7 COMMISSIONER MILLER: Yes.

8 MS. MEHLERT: The staff would record the vote as
9 3 to 0 to 2 to approve Application No. 21380 on the motion
10 made by Chairman Hill and seconded by Vice Chair Blake.

11 CHAIRPERSON HILL: Thank you. You guys, they did
12 put in the record the items that we requested for Application
13 21373 and so if you guys want to take a look at that real
14 quick. While the secretary, Madam Secretary, if you can just
15 call our decision.

16 MS. MEHLERT: Sure, so this is going back to
17 Application No. 21373 of H D 438 Park Road, NW, LLC. This
18 is a self-certified application pursuant to Subtitle X, §
19 901.2, for Special Exceptions; under Subtitle U, § 320.2, to
20 allow the conversion of an existing residential building to
21 a three-unit apartment house under Subtitle C, § 703.2, from
22 the minimum vehicle parking requirements of Subtitle C, §
23 701.5; under Subtitle E, § 5201, from the rear yard
24 requirements of Subtitle E, § 207.1; under Subtitle E, §
25 204.4, from the requirements of Subtitle E, § 204.1 to allow

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1 removal or significant alteration of a rooftop architectural
2 element original to the principal building; and under
3 Subtitle E, § 207.5, to allow the rear wall of the building
4 to extend farther than 10 feet beyond the furthest rear wall
5 of any adjoining principal residential building on any
6 adjacent property.

7 This is for a front porch and three-story side and
8 rear additions to an existing semi-detached principal
9 dwelling and conversion to a three-unit apartment house.
10 It's located in the RF-1 zone at 438 Park Road, NW (Square
11 3044, Lot 53).

12 CHAIRPERSON HILL: Okay, great. Thank you. So,
13 it was a lot of relief that's being requested; however, I
14 think that the Applicant did walk us through how they're
15 meeting the criteria for each piece of that relief. I
16 appreciate that there is still the five feet separation, it
17 is still a semi-detached project.

18 I also appreciate the outreach that the Applicant
19 has put forward to the community and it seems as though the
20 Applicant had mentioned that the developer has had experience
21 in that neighborhood and the fact that the ANC is approving
22 this would indicate to me that they at least comfortable with
23 the experience they have had with this developer before.
24 Whereas, hopefully, that then would then appease -- there was
25 a letter in opposition -- appease the people in opposition

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1 or the letter in opposition about this particular project and
2 that they, I think, the Applicant has shown how they have
3 been adhering to all of the regulations in terms of notice
4 and also, again, going through the ANC process.

5 I did want to see the final plans that they had
6 with the Office of Planning in terms of where they were going
7 to pull that trash back and it is a fenced enclosure for the
8 trash and recycling that now is in the plans that we would
9 be approving if we were to approve this project.

10 With that, I will also note that we did have the
11 analysis of the Office of Planning had put forward whom we
12 are to give great weight to and I would agree with their
13 analysis as well as that of the ANC, as I mentioned before,
14 and their recommendation of approval. I will be voting in
15 favor of this application. Mr. Blake, is there anything
16 you'd like to add?

17 MEMBER BLAKE: Mr. Chair, I think you've covered
18 everything. I think this is a lot of relief, but I do think
19 the Applicant did walk through it very thoroughly and I also
20 believe that the Office of Planning confirmed many of the
21 assertions that the Applicant made and I will be voting in
22 support of the application.

23 CHAIRPERSON HILL: Thank you. Commissioner
24 Miller?

25 COMMISSIONER MILLER: Thank you, yes, I agree and

1 support the application for all the reasons that each of you
2 have stated.

3 CHAIRPERSON HILL: Thank you. All right, may I
4 make a motion then to approve Application No. 21373 as
5 captioned and read by the secretary and ask for a second.
6 Mr. Blake?

7 MEMBER BLAKE: Second.

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

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

12 CHAIRPERSON HILL: Yes.

13 MS. MEHLERT: Vice Chair Blake?

14 MEMBER BLAKE: Yes.

15 MS. MEHLERT: Commissioner Miller?

16 COMMISSIONER MILLER: Yes.

17 MS. MEHLERT: The staff would report the vote as
18 3 to 0 to 2 to approve Application No. 21373 on the motion
19 made by Chairman Hill and seconded by Vice Chair Blake.

20 CHAIRPERSON HILL: Thank you. Madam Secretary,
21 is there anything else before us today?

22 MS. MEHLERT: Nothing else from staff.

23 CHAIRPERSON HILL: Mr. Blake, on behalf of the
24 Board of Zoning Adjustments, please wish your daughter a
25 happy birthday.

1 MEMBER BLAKE: Thank you.

2 CHAIRPERSON HILL: All right. We are adjourned.

3 Thank you, everyone. Bye-bye.

4 (Whereupon, the above-entitled matter went off the
5 record.)

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C E R T I F I C A T E

1
2 This is to certify that the foregoing transcript was duly
3 recorded and accurately transcribed under my direction;
4 further, that said transcript is a true and accurate record
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9 employed by the parties, and I am not financially or
10 otherwise interested in the outcome of the action.

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17 Court Reporter

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