

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

OCTOBER 22, 2025

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

ANTHONY J. HOOD, Chairperson

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

SHEPARD BEAMON
PHILIP BRADFORD
MAXINE BROWN-ROBERTS
MATTHEW JESICK
JOSHUA MITCHUM

1 OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

2 SARAH BAJAJ, ESQ.
3 CARISSA DEMARE, ESQ.
4 CHLOE SELLERS, ESQ.
JORDANE WONG, ESQ.

5 The transcript constitutes the minutes from
6 the Regular Public Hearing held on October 22, 2025.
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P-R-O-C-E-E-D-I-N-G-S

(10:05 a.m.)

MS. MEHLERT: The first case in the Board's Hearing Session is Application No. 21354 of National Bankers Association.

This is a self-certified application, pursuant to Subtitle X § 901.2 and Subtitle U § 420.1(a), for a special exception under Subtitle U § 203.10 to allow use of an existing residential building by a nonprofit organization for the purposes of the nonprofit organization, and pursuant to Subtitle X § 1002, for an area variance from the building area requirement of Subtitle U § 203.1(o)(2) to allow use of an existing residential building with less than 10,000 square feet of gross floor area by a nonprofit organization.

It is located in the RA-2/DC zone at 1513 P Street NW, Square 194, Lot 3.

BZA CHAIR HILL: Okay, great. Thank you.

If the Applicant could hear me, if they could please introduce themselves for the record?

MS. BATTIES: Good morning. Can you guys hear me?

BZA CHAIR HILL: Yes.

MS. BATTIES: Okay, good morning. Leila Batties and Madeleine Williams at Holland & Knight, on

1 behalf of the Applicant, the National Bankers
2 Association.

3 I'm also joined by Ms. Michelle Davis, who
4 is the Chief Operating Officer of the National Bankers
5 Association. And also on the call, Mr. Young, if you
6 want to pull him up, is Sheldon Clark with Cline
7 Architects, which designed the proposed building
8 addition for this property.

9 So the application seeks special exception
10 approval to allow a nonprofit organization to use the
11 existing residential building at 1513 P Street NW. And
12 then the application also includes an area variance from
13 the minimum 10,000-square-foot requirement under
14 Subtitle U § 203.1(o)(2).

15 This application was supported by ANC 2B
16 twice, both for HPRB review and this BZA hearing. The
17 Office of Planning issued a report in support. There
18 are no objections in the record, and the HPRB approved
19 the design of the building addition.

20 And given that, I'd like to propose that we
21 rest on the record and be available to answer any
22 specific questions that the Board may have.

23 BZA CHAIR HILL: Okay. Ms. Batties, are you
24 not going to go through your PowerPoint? Which is fine.
25 I just want to understand.

1 MS. BATTIES: We can, but in the interest of
2 time, given the record, I was proposing that we rest.

3 BZA CHAIR HILL: Okay. Sure, no problem.

4 All right. Okay, let's see. So we'll go
5 ahead and turn to the Office of Planning, please.

6 MR. BEAMON: Good morning. This is Shepard
7 Beamon with the Office of Planning.

8 The Office of Planning has reviewed the
9 application for the requested special exception and area
10 variance relief from the use permission requirements
11 and finds that the request has met the criteria for
12 Subtitle X.

13 The proposed expansion would -- sorry -- the
14 proposed extension would not change the existing use
15 of the building and should not adversely impact adjacent
16 properties. Therefore, OP recommends approval.

17 And with that, I can stand on the record and
18 take any questions.

19 BZA CHAIR HILL: Okay. Mr. Young, is there
20 anyone here wishing to speak?

21 Okay. Does the Board have any questions of
22 the Applicant or of the Office of Planning?

23 Okay, all right. Ms. Batties, I guess you've
24 got an efficient one today. Nice to see you.

25 MS. BATTIES: Nice to see you.

1 BZA CHAIR HILL: Let's see. Mr. Young, you
2 said there's nobody here wishing to speak, right?

3 MR. YOUNG: Correct.

4 BZA CHAIR HILL: Okay, great. Thanks.

5 Okay. Now I'll go ahead and close the hearing
6 and the record. You all have a good day.

7 Okay, all right. I've also had a chance to
8 flip through the Applicant's PowerPoint. And I will
9 agree with the argument that they're putting forward
10 concerning the relief that's being requested.

11 I'll also give great weight to the Office of
12 Planning and their report in approval, as well as the
13 feedback that we received from ANC 2B in support, and
14 vote in favor of this application.

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

17 VICE CHAIRPERSON BLAKE: I would agree with
18 you. I believe that the Applicant has met the burden
19 of proof for both the special exception and area
20 variance.

21 This organization has been operating at this
22 location for nearly three decades without an adverse
23 impact. The proposed third-story addition is modest,
24 is consistent with the character of the block, and has
25 received concept approval from the Historic

1 Preservation Review Board. ANC 2B unanimously supports
2 the project, as does the Office of Planning, and DDOT
3 has no objection.

4 Given the impossibility of meeting the
5 10,000-square-foot threshold on this small lot, I find
6 that a practical difficulty definitely exists, and
7 granting relief will allow the nonprofit to continue
8 its mission-driven work in harmony with the Zoning
9 Regulations and without undue effect on neighboring
10 properties. So I'll be voting in support of the
11 application.

12 BZA CHAIR HILL: Great. Thank you.
13 Chairman Hood?

14 ZC CHAIR HOOD: I don't have anything to add.
15 I think the record in this case warrants my vote of
16 approval. Thank you.

17 BZA CHAIR HILL: Thank you.

18 All right. I'm going to make a motion to
19 approve Application No. 21354, as captioned and read
20 by the Secretary, and ask for a second.

21 Mr. Blake?

22 VICE CHAIRPERSON BLAKE: Second.

23 BZA CHAIR HILL: The motion has been made and
24 seconded.

25 Madam Secretary, would you take a roll call?

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

3 BZA CHAIR HILL: Yes.

4 MS. MEHLERT: Vice Chair Blake?

5 VICE CHAIRPERSON BLAKE: Yes.

6 MS. MEHLERT: Chairman Hood?

7 ZC CHAIR HOOD: Yes.

8 MS. MEHLERT: Staff would record the vote as
9 3-0-2 to approve Application No. 21354 on the motion
10 made by Chairman Hill and seconded by Vice Chair Blake.

11 BZA CHAIR HILL: Okay, great. Thank you.
12 You may go ahead and call our next case.

13 MS. MEHLERT: Next is Application No. 21355
14 of Robert and Rachael Loper. This is a self-certified
15 application, pursuant to Subtitle X § 901.2, for a
16 special exception under Subtitle E § 5201 from the lot
17 occupancy requirements of Subtitle E § 210.1.

18 This project is for a front porch addition
19 to an existing two-story, attached, principal dwelling.
20 It's located in the RF-1 zone at 916 D Street NE, Square
21 937, Lot 83.

22 BZA CHAIR HILL: Great, thank you.

23 If the Applicant can hear me, if they could
24 please introduce themselves for the record?

25 MS. LOPER: Rachael Loper. I'm also here

1 with the architect, Dorothy Murdoch, on the project.

2 BZA CHAIR HILL: Okay, great. Ms. Loper, if
3 you want to go ahead and walk us through your project,
4 and, if you can, explain why you believe you're meeting
5 the relief that's being requested?

6 I realize you're not a zoning attorney,
7 probably. And so, you just need to tell us about your
8 project and what you're trying to do, and then we'll
9 walk through this as best we can and see if anybody has
10 any questions.

11 And if so, we can ask any of your architect,
12 but we won't need them unless we need them, okay?

13 MS. LOPER: Okay, sure. So this property is
14 at 916 D Street. My husband and I have lived there since
15 1998. It doesn't have a, it's a flat front with old,
16 with metal stairs up to the door.

17 I've gone to the library to look at the
18 original permit for the house, and it originally had
19 a front porch. The houses across the street also have
20 front porches.

21 Our house is kind of an in-fill. Most of the
22 houses on our block are from the 1880s. This house is
23 1924, so that's why it's set back further. So the idea
24 is to just put on a front porch and make it a little
25 more welcoming and look like the rest of the houses

1 across the street.

2 So you can see evidence on the front of the
3 house where the brick is sort of chopped up where the
4 original porch was attached.

5 I've also included in -- I'm trying to share
6 my PowerPoint.

7 BZA CHAIR HILL: No, that's okay. Actually,
8 Ms. Loper, I've got to tell you, I've gone through now
9 these plans a little bit. So I'm going to actually move
10 us along a little bit here.

11 MS. LOPER: Okay.

12 BZA CHAIR HILL: So go ahead, Mr. Blake.

13 VICE CHAIRPERSON BLAKE: Ms. Loper, I do want
14 to ask you one quick question. Where exactly are you
15 with the HPRB in this process? Have you gone through
16 the preliminary reviews? Are you done with that?

17 I read something in the document. It wasn't
18 clear.

19 MS. LOPER: I'll let Dorothy answer that.

20 MS. MURDOCH: Sure. Can you hear me?

21 BZA CHAIR HILL: Yes. Could you introduce
22 yourself for the record, Ms. Murdoch?

23 MS. MURDOCH: Yes. My name is Dorothy
24 Murdoch, and I am the architect for Bob and Rachael
25 Loper.

1 We reached out to the Historic Preservation
2 Board immediately when we started the project and sent
3 all of the drawings, and we heard back from them. And
4 they were completely on board with the project and said
5 it was very much in keeping with what the house would
6 have been originally and that it would be a staff
7 sign-off project.

8 VICE CHAIRPERSON BLAKE: Thank you.

9 BZA CHAIR HILL: Okay. Thanks, Mr. Blake.

10 May I hear from the Office of Planning?

11 MS. BROWN-ROBERTS: Good morning, Mr.

12 Chairman and members of the BZA. Maxine Brown-Roberts
13 from the Office of Planning. I still don't know why
14 my picture isn't showing, Mr. Hood.

15 But I want to stand on the record of our report
16 also. They have met all the requirements of Subtitle
17 E § 5201 and also Subtitle X § 901.2.

18 I just want to make one correction in our
19 report. In Section 2 of the Location and Site
20 Development, I had that the square footage of the
21 building is 2,358. It's actually 1,350 square feet.

22 However, that doesn't change our recommendation or
23 change the analysis of the project.

24 In addition to that, I did speak to the
25 Historic Preservation staff. They also confirmed for

1 me that it will be a staff sign-off at permitting. So
2 there's no need to go to HPRB.

3 With that, I will stop. And I'm available
4 for questions.

5 BZA CHAIR HILL: Okay. Thank you, Ms.
6 Brown-Roberts.

7 Does the Board have any questions for the
8 Office of Planning?

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

11 MR. YOUNG: We do not.

12 BZA CHAIR HILL: Okay, all right. Ms. Loper?

13 MS. LOPER: Yes.

14 BZA CHAIR HILL: Loper? Okay. Do you have
15 anything you'd like to add at the end?

16 MS. LOPER: I guess not. I've got a lot of
17 neighbors who've signed off, and we're excited to get
18 started.

19 BZA CHAIR HILL: Okay, great. Thank you.

20 All right. I'm going to go ahead and close
21 the hearing and the record. I hope you guys have a nice
22 day. Bye-bye.

23 Okay. This one I actually thought was pretty
24 straightforward. So I am happy that it is so neat and
25 tidy.

1 I agree with the Applicant in terms of what
2 they're trying to do and how they're not conflicting
3 with their regulations. Also, I agree with the Office
4 of Planning's report and giving them great weight, as
5 well as that of the ANC.

6 I will also note that the Capitol Hill
7 Restoration Society was in approval, as well as other
8 people in support. And I'm going to be voting in
9 approval of this application.

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

12 VICE CHAIRPERSON BLAKE: Mr. Chair, I'm going
13 to agree with your analysis and give great weight to
14 the Office of Planning's recommendation for approval
15 and great weight also to the written report of ANC 6A.

16 This is a fairly straightforward case, as you
17 pointed out. The design follows the guidance from the
18 HPRB and is consistent with other porches in the block.

19 So I will be voting in favor of the application.

20 BZA CHAIR HILL: Okay, great. Thank you.

21 Chairman Hood?

22 ZC CHAIR HOOD: Chairman, I think with the
23 groundswell of support, and also meeting our
24 requirements under Subtitle X and Subtitle E as well,
25 I will be supporting this application. Especially with

1 all the eyes that have looked at this and there are no
2 issues, I too will be supporting this, as well. Thank
3 you.

4 BZA CHAIR HILL: Thank you.

5 All right. I'll make a motion to approve
6 Application No. 21355, as captioned and read by the
7 Secretary, and ask for a second.

8 Mr. Blake?

9 VICE CHAIRPERSON BLAKE: Second.

10 BZA CHAIR HILL: Motion has been made and
11 seconded.

12 Madam Secretary, will you take a roll call?

13 MS. MEHLERT: Please respond to the Chair's
14 motion to approve the application.

15 Chairman Hill?

16 BZA CHAIR HILL: Yes.

17 MS. MEHLERT: Vice Chair Blake?

18 VICE CHAIRPERSON BLAKE: Yes.

19 MS. MEHLERT: Chairman Hood?

20 ZC CHAIR HOOD: Yes.

21 MS. MEHLERT: Staff would record the vote as
22 3-0-2 to approve Application No. 21355 on the motion
23 made by Chairman Hill and seconded by Vice Chair Blake.

24 BZA CHAIR HILL: Okay, great. Madam
25 Secretary, there's a request for a postponement on the

1 next case; is that right?

2 MS. MEHLERT: That's correct.

3 BZA CHAIR HILL: Let me look. Give me a
4 second. Okay. Do you want to call it, and then let's
5 hear from the parties?

6 MS. MEHLERT: Sure. The next case is
7 Application No. 21330 of Paul Pike.

8 As amended, this is a self-certified
9 application, pursuant to Subtitle X § 901.2, for a
10 special exception under Subtitle E § 5201 from the lot
11 occupancy requirements of Subtitle E § 210.1.

12 This is for a new accessory structure in the
13 rear yard of an existing, attached, principal dwelling
14 located in the RF-1/DC zone at 1818 15th Street NW,
15 Square 191, Lot 63.

16 Party status in opposition was previously
17 granted to Jacqueline Gale and John Jacobson on June
18 18th. The hearing was also postponed on July 30th at
19 the Applicant's request.

20 As mentioned, as a preliminary matter, the
21 Applicant filed a motion to postpone last night.

22 BZA CHAIR HILL: Okay, great. Thank you.

23 If the Applicant can hear me, if they could
24 please introduce themselves for the record?

25 MR. SULLIVAN: This is Marty Sullivan with

1 Sullivan & Barros, on behalf of the Applicant.

2 BZA CHAIR HILL: Hello, Mr. Sullivan.

3 Could the party opponent please introduce
4 themselves for the record?

5 MS. FERSTER: Good morning. This is Andrea
6 Ferster. I'm appearing on behalf of the party
7 opponents, the Jacobson Family.

8 BZA CHAIR HILL: Hi, Ms. Ferster.

9 Okay. Mr. Sullivan, I just see what's in the
10 record, so I don't need to actually -- it's fine. I'm
11 fine. I just need to bring everybody in, unless my Board
12 has any questions.

13 Madam Secretary, when can we come back here?
14 That's the problem.

15 MS. MEHLERT: I would recommend either
16 November 19th or December 3rd.

17 BZA CHAIR HILL: Mr. Sullivan, Ms. Ferster,
18 how much time do you guys think you may need to see
19 wherever you get next?

20 MR. SULLIVAN: I think that should be plenty
21 of time.

22 BZA CHAIR HILL: Meaning November 19th?

23 MR. SULLIVAN: Sure. I defer to Ms. Ferster,
24 but either one of those days works for us.

25 BZA CHAIR HILL: Ms. Ferster, does November

1 19th also work with you guys? I can't hear you, Ms.
2 Ferster, sorry. I think you're on mute.

3 MS. FERSTER: Yes. My client, Jackie
4 Jacobson, is on the line. Let me just check with her
5 about the date.

6 BZA CHAIR HILL: Sure.

7 MS. FERSTER: She's in the room. Can she be
8 admitted?

9 BZA CHAIR HILL: I'm sorry, you're bringing
10 her in. Okay, I'm sorry. I thought you were talking
11 to her on your phone separately.

12 MS. FERSTER: No, she's in the Zoom room.

13 BZA CHAIR HILL: Got it. Ms. Jacobson, can
14 you hear me?

15 MS. JACOBSON: I can hear you.

16 BZA CHAIR HILL: Can you introduce yourself
17 for the record?

18 MS. JACOBSON: Yes, one second. Okay, I
19 turned my video on. Hi, yes. I'm Jackie Jacobson, a
20 party opponent to this application.

21 BZA CHAIR HILL: Got it. Does November 19th
22 work for you in terms of getting back here?

23 MS. JACOBSON: Yes, that works.

24 BZA CHAIR HILL: Okay, great. Madam
25 Secretary, when do we -- how many cases do we have on

1 the 19th?

2 MS. MEHLERT: There's seven, but one has a
3 pending postpone request. So there will be six.

4 BZA CHAIR HILL: Okay. And do we have one
5 on the 26th?

6 MS. MEHLERT: No. That's Thanksgiving week.

7 BZA CHAIR HILL: Okay, great. So I'm just
8 checking to make sure we're not closed.

9 All right. Okay, great. Then we'll see you
10 guys on November 19th. Thank you.

11 MS. FERSTER: Thank you.

12 BZA CHAIR HILL: Thank you. Good luck.

13 Thank you, Mr. Young.

14 All right. Hold on. Okay, well are you guys
15 all right? Do you want to take a break, or do you want
16 to do a case?

17 ZC CHAIR HOOD: You decide.

18 BZA CHAIR HILL: Okay. Let's do a case, then.

19 All right. Go ahead and call our next one,
20 Madam Secretary.

21 MS. MEHLERT: Okay. Next is Application No.
22 21303 of Jamal Ahmed.

23 As amended, this is a self-certified
24 application, pursuant to Subtitle X § 1002, for an area
25 variance from Subtitle U § 301.5(b) to allow an increase

1 in the number of units in an existing apartment house
2 with less than 900 square feet of plot area for dwelling
3 unit, and pursuant to Subtitle X § 901.2, for a special
4 exception under Subtitle C § 703.2 from the minimum
5 vehicle parking requirements of Subtitle C § 701.5.

6 This is for the creation of two additional
7 dwelling units in the cellar of an existing, four-unit
8 apartment house in a two-story building. It's located
9 in the RF-1 zone at 1631 A Street SE, Square 1086, Lot
10 804.

11 This hearing was postponed twice and last
12 heard on September 24th, and the Board requested
13 additional submissions. Participating originally were
14 Vice Chair Blake, Board Member Smith, and Chairman Hood.

15 As a preliminary matter, the Applicant
16 submitted a motion to waive the filing deadline for a
17 post-hearing statement, which is in the record in
18 Exhibit 45A.

19 BZA CHAIR HILL: Okay. First of all, can the
20 Applicant introduce themselves for the record?

21 MS. WILSON: Alex Wilson from Sullivan &
22 Barros, on behalf of the Applicant in this case.

23 BZA CHAIR HILL: Okay, that's number one.
24 Number two, I have read into the case. So I'm fully
25 up to speed as to what is going on as to where you guys

1 are right now.

2 In terms of, Ms. Wilson, what you wanted to
3 add to the record, what did you want to add to the record?

4 MS. WILSON: We just forgot to file one
5 document that was initially supposed to be with our
6 package. I think we submitted it the next day.

7 BZA CHAIR HILL: Okay, let's see. Okay.
8 Unless anybody has any issues, I'd like to go ahead and
9 see what the Applicant has put forward in the record.

10 Does anyone have any issues? If so, please
11 speak up.

12 Okay, we'll go ahead and allow that into the
13 record. Let's see. That's number one.

14 Number two, so Ms. Wilson, why don't you tell
15 me what happened since last time you were here, what
16 the Board was interested in seeing, and what you brought
17 forward?

18 MS. WILSON: Sure. I believe the discussion
19 was related to the third prong. And so we submitted
20 some additional information as to how the Board and even
21 the DC Court of Appeals has reviewed the third prong
22 related to the integrity of the Zoning Regulations.

23 I believe the Board was more interested in
24 hearing from OP on that specific prong. And so, maybe
25 I'll defer that discussion to OP.

1 I do have an oral presentation, just
2 specifically on what I submitted that I think is helpful.

3 I'll go ahead and read through that and just give a
4 little refresher since there are a number of these cases.

5 BZA CHAIR HILL: Okay.

6 MS. WILSON: So as a refresher --

7 BZA CHAIR HILL: I'm sorry, Ms. Wilson. As
8 you're doing that, if you could -- the thing that I just
9 wanted to hear a little bit more about is why that
10 basement can't be used as, like, a gym or party space
11 or something. Why does it need to be used for what you
12 guys are proposing? And so if you can kind of put that
13 in there as you're kind of going through your argument?
14 And you can begin whenever you'd like.

15 MS. WILSON: Sure. So I'll just continue
16 with my presentation. So this is a purpose-built
17 apartment building with four units constructed in the
18 early 1900s, prior to the adoption of the
19 900-square-foot rule or the 1958 regulations.

20 The building has been modernized, and the
21 laundry facilities have been moved, and the basement
22 space is vacant. It's above grade, and it can be
23 utilized for apartments without any regrading or
24 exterior modifications.

25 It's a highly visible corner lot in a

1 transit-rich neighborhood, very close to the Metro and
2 RFK. This has created security and maintenance issues,
3 and those things can't be resolved by a gym or a vacant
4 party space. It could be used for a party space now,
5 but it doesn't resolve the security issue.

6 So the Applicant is requesting to add two units
7 in the existing vacant space. While this is a block
8 full of apartment buildings, the property is unique
9 relative to even those apartment buildings, as all of
10 those buildings are fully utilizing all of their floors,
11 including basements if they have them, but the apartment
12 building context and proximity to transit make the area
13 different from a traditional RF-1 neighborhood where
14 you might expect rows of row dwellings made up of
15 single-family dwellings or flats.

16 In our last submission, in Exhibit 45A, I
17 submitted transcripts from Case No. 20289. This is a
18 nearly identical fact pattern except that case was R-3,
19 and we're located in the RF-1, which actually allows
20 purpose-built apartments to expand as a matter of right
21 subject to the 900-square-foot rule.

22 And in that case, they had an existing illegal
23 apartment that they were trying to make legal. The
24 other case of mine has that condition, but this case
25 is simply asking to put units in existing vacant space.

1 So again, 20289 had both conditions: an existing
2 illegal apartment they were trying to make legal, and
3 then requesting two additional units.

4 And so the Board members on that vote included
5 Chairman Hill, Board Member Smith, and Chairman Hood,
6 and former Vice Chair John, who voted to grant the
7 application. I'm going to read from that transcript.

8 The building was constructed in the early
9 1900s. It's a purpose-built apartment building. When
10 the Applicant purchased the property, the C of O was
11 only for 14 units, even though there are 15 units in
12 the existing building. So this condition has existed
13 for quite a while where the building has a 15th unit
14 that's on the C of O. And we're requesting to make that
15 15th unit legal, which requires a variance because we
16 do not have 900 square feet existing or proposed.

17 In addition to making the 15th unit legal,
18 we're also requesting to add two units in existing vacant
19 space in the cellar. That space is not being used for
20 any purpose right now and has proven difficult to
21 maintain.

22 Even though it's zoned R-3, the building
23 fronts on Pennsylvania Avenue. It's at the
24 intersection of Pennsylvania, Seward, and 4th Street.

25 It's surrounded by commercial uses. The fronts on

1 Pennsylvania Avenue on this corner combined with the
2 fact that it's a purpose-built apartment building that
3 became legally non-conforming creates a unique
4 condition.

5 And there is existing idle cellar space
6 adjacent to those existing units. There was a
7 modernization of the building, and so all of the units
8 now have in-unit laundry. And the space is currently
9 vacant.

10 There have been instances where someone
11 actually broke into the building, so this space has
12 become difficult to maintain. It is a security issue
13 due to its high visibility on the corner. And because
14 of the commercial uses in the area, it's a relatively
15 high-traffic area.

16 There's already been a security issue. There
17 are proven issues with maintaining this space. And so
18 instead of leaving it vacant, which would present
19 additional maintenance and security issues that they've
20 already had, the Applicant is proposing to take idle
21 space and put it to a higher and better use as additional
22 housing.

23 And the Applicant can do all of that without
24 the need for addition, so it's not disruptive to the
25 adjacent neighbors. It does not involve exterior

1 construction.

2 That is a nearly-direct quote from pages 9
3 to 11 of the transcript for 20289.

4 OP also testified and noted:

5 The building is a purpose-built apartment
6 house. It was constructed prior to 1958. We do often
7 see this issue with modernizing these buildings over
8 time where it does create some issues with the floor
9 plan.

10 In particular, the Applicant has mentioned
11 the issues of maintaining that space because it's not
12 being used for anything. So in this case, all of the
13 laundry has been relocated. There's this awkward space
14 in a prominent location of the building that's difficult
15 to maintain.

16 The Applicant has provided floor plans showing
17 the location of load-bearing walls. And then combining
18 with upper units would create an issue as well, because
19 these are small enough that a lot of the space would
20 be eaten up by circulation. It would defeat the purpose
21 of incorporating that space into some of the other units.

22 And then with respect to the third prong, OP's
23 report states:

24 The addition of three units in an existing,
25 14-unit, purpose-built apartment house should not cause

1 substantial harm to the Zoning Regulations. The
2 apartment house predates the 1958 Zoning Regulations
3 and is an existing non-conforming building.

4 The requested relief would allow the Applicant
5 to make use of otherwise-unusable space in the cellar
6 to create two additional dwelling units in a mixed-use,
7 transit-accessible neighborhood.

8 An existing unit that is not permitted by the
9 Certificate of Occupancy has been in existence for
10 several years and has been occupied, so the impact to
11 the neighborhood would be negligible.

12 There are no exterior modifications proposed
13 for the building. So BZA Application 20289, the height
14 and the massing of the structure would be appropriate
15 for the neighborhood in which it's located.

16 And then in the deliberations, Chairman Hill
17 states:

18 I would agree with the analysis that the Office
19 of Planning has provided. I will also agree with the
20 analysis and argument that the Applicant has made in
21 terms of how they're meeting the standard for us to grant
22 the application. I'm going to be voting in favor.

23 Chairman Hood stated:

24 I would agree with your assessment. I think
25 Ms. Elliott's report really convinced me. I'm glad

1 we're able to mitigate some of the actions. Okay, he's
2 -- in this, they were talking about the text amendment
3 that was made.

4 I will also incorporate the Office of
5 Planning's recommendation, as you mentioned, as well,
6 the Applicant's response to moving forward with this
7 case. That's all I have on this.

8 Board Member Smith stated:

9 I'll second both of your comments. I think
10 Ms. Wilson did a great job of articulating the practical
11 hardship of using that space in the basement. And also,
12 one of the units was a personal apartment constructed
13 prior to the implementation of the 1958 Zoning
14 Regulations.

15 And Vice Chair John stated:

16 I will give great weight to OP's analysis.
17 With respect to the first prong, the exceptional
18 condition that this is a purpose-built apartment
19 building from the 1900s and that this excess space is
20 created because of an attempt to modernize the building
21 and remove some of the utilities from the basement, which
22 a more efficient use of building.

23 And so I believe that there are a number of
24 factors that create this exceptional condition. And
25 I believe the Applicant has met the requirement for the

1 regulation, for relief on the regulation.

2 So those deliberations are on 15 through 17
3 of the transcript. Given this information, the
4 question here is, why would the standard move for this
5 particular property that has the same conditions related
6 to vacant basement space?

7 In terms of security, it's identical.
8 There's also been a break-in here, and as I mentioned
9 earlier, a gym, which would likely remain vacant.

10 I think I stated on the record last time some
11 additional difficulties with the gym just in terms of
12 use and that space, but it's still a vacant space most
13 of the time, even if you had a gym or a party space.

14 So those issues with security would still remain.

15 This is arguably more unique than the
16 surrounding uses. It is in a zone that can handle
17 apartments, unlike Case 20289, which is R-3. And it
18 has the same issues of combining units above and
19 continued practical difficulties related to security
20 and vacancy.

21 Adding two units in the basement of a pre-1958,
22 purpose-built apartment building unit for the block does
23 not impair the purpose of the Zoning Regulations and
24 is in line with the District's overall goals.

25 The Board appeared to be struggling with the

1 third prong in the case record when I reviewed it. OP
2 noted this in their supplemental filing as well.

3 A variance is an inherent deviation from the
4 Zoning Regulations, so a variance will likely never meet
5 the intent of the regulations. And so the standard is
6 not that a variance meet the intent, but rather it not
7 substantially impair the intent.

8 We provided some information as to how the
9 Court of Appeals has reviewed this or the Board and other
10 orders. They look at neighborhood context and actual
11 impact. And this is in line with some of the context
12 that was also provided in, I believe, Exhibit 32A for
13 Case No. 1411, and then what OP has also provided in
14 its supplemental report and in previous reports.

15 This is a purpose-built apartment building
16 in a block with other apartment buildings with many
17 units, who utilize all space on all floors. It's
18 extremely close to the Metro, and it can be converted
19 without any alterations to the exterior. It's all an
20 interior change.

21 This is likely the type of case the variance
22 procedure was created to address. It's a building that
23 was constructed prior to the regulations. The drafters
24 of regulations could predict what unique challenges
25 would be faced.

1 Denying this case after granting a nearly
2 identical one would not somehow protect the integrity
3 of the regulations, as this is a specific fact pattern
4 that comes up once every five to ten years with a specific
5 purpose-built apartment vacant basement scenario.

6 All a denial would do is increase costs for
7 the owners and eventually get passed on to tenants,
8 increasing housing costs overall, while undermining
9 administrative consistency for the owners and
10 consultants who rely on Board decisions when investing
11 in the District.

12 And so, for these reasons, we respectfully
13 request that the Board approve the application. And
14 we also request that the Board give great weight to OP
15 and the ANC, who are both supporting relief in this case.

16 Thank you for your time.

17 BZA CHAIR HILL: Okay, thank you,
18 Let's see. Let me hear from the Office of
19 Planning, please.

20 MR. BEAMON: Good morning again. For the
21 record, Shepard Beamon with the Office of Planning.

22 OP has reviewed the application, as well as
23 the new material submitted by the Applicant, where they
24 requested special exception relief and area variance
25 relief from the minimum parking and use permission

1 requirements to add two units to the cellar of an
2 existing, four-unit apartment house, and finds that the
3 proposal meets the criteria for Subtitle C though X,
4 as the owner has upgraded the existing units and the
5 cellar is no longer used for communal amenity space.

6 The conditioned cellar space has become vacant and,
7 according to the Applicant, remains unusable without
8 the variance approval.

9 The proposed units would not result in the
10 expansion of the existing building footprint.

11 Alternatively, the enlargement or the expansion of the
12 existing dwellings into the cellar level would lead to
13 disruption for the existing units or tenants.

14 Lastly, the property is located less than a
15 half a mile from a Metro real station, which mitigates
16 the need for parking.

17 Since this case was last heard by the Board,
18 OP has submitted additional documentation to Exhibit
19 46 to review the purpose and the intent of the minimum
20 900-square-foot requirement and finds that the
21 requirement is intended to limit density in the RF zone.

22 However, OP finds that the proposal should
23 not impair the intent of the RF-1 zone, nor disrupt the
24 character of the surrounding neighborhood. Therefore,
25 we continue to recommend approval of this application.

1 And I can take any questions.

2 BZA CHAIR HILL: Okay, great. Thanks.

3 Before I turn to questions from the Board,
4 Mr. Young, is there anyone here wishing to speak? Okay,
5 thanks.

6 All right. Does the Board have any questions
7 for -- I have questions, but does the Board have any
8 questions for the Applicant or the Office of Planning?

9 I can start with my questions first, if you'd like,
10 whatever.

11 VICE CHAIRPERSON BLAKE: Mr. Chair, it can
12 go either way.

13 Ms. Wilson, I have a question for you with
14 regard to the 20289 comparison, which I thought was very
15 helpful.

16 I also want to say, before I even begin that,
17 I want to thank the Office of Planning, Mr. Beamon and
18 others, for the work they've done in trying to give us
19 the background on the intent.

20 Ms. Wilson and Mr. Sullivan, again, thank you
21 very much for that information. I actually found it
22 very helpful to help with the context of it. It showed
23 us a couple of issues, which we'll probably bring up
24 later, that I think are very helpful, at least in
25 understanding the context for what we have done

1 historically and what we respectively could do.

2 With regard to 20289, I guess my big question
3 is, that I believe the magnitude -- even though the zone
4 is different, I agree, the magnitude of the increase
5 resulting from this is fairly different.

6 In that case, I believe one unit was added.

7 In this particular instance, I think you're adding two
8 units, three units. The magnitude, though relative to
9 the existing base, is a little greater, I believe.

10 Am I misinterpreting that?

11 MS. WILSON: 20289, three units were added.

12 In our case, we're requesting two units. And I think
13 we had --

14 BZA CHAIR HILL: There were three additional
15 units adding to the 14.

16 MS. WILSON: Correct.

17 BZA CHAIR HILL: And this one is going from
18 four to six.

19 MS. WILSON: Correct. Thank you.

20 BZA CHAIR HILL: So that's what Mr. Blake's
21 trying to say.

22 VICE CHAIRPERSON BLAKE: So on a relative
23 scale, this is a much greater add on a scale basis.

24 Second, my question is, why two units, not
25 one? They both are residential units, which is a

1 permitted action, but why two units, not one?

2 MS. WILSON: It has to do with what we
3 submitted. It's probably just buried in our pages and
4 pages of supplemental.

5 So there's a wall in between, and that wall
6 would have to be -- it's a structural wall. That wall
7 would have to be demolished somehow to create one space
8 right now. It's separated naturally.

9 So above, it's one unit, one unit, one unit,
10 one unit. We're following that pattern. It's the same
11 structural wall. If the Board is interested, we could
12 submit something more detailed on that and a further
13 explanation about the gym.

14 Just for the record, in terms of the test,
15 it's an area variance, not a use variance. So there's
16 a little bit of hesitation to getting into, well, we
17 could do this, we couldn't do this, just because of the
18 actual request. But if the Board is interested in this
19 as a critical element in your decision, we could submit
20 something supplemental.

21 VICE CHAIRPERSON BLAKE: Well, thank you, Ms.
22 Wilson. I think that the wall is a good explanation.
23 It doesn't necessarily require the documentation as
24 to the expense associated with that, but I think the
25 wall is a reasonable explanation. I appreciate that.

1 Thank you.

2 MS. WILSON: And if I may --

3 BZA CHAIR HILL: Where is the wall again?

4 I'm looking through your original PowerPoint.

5 MS. WILSON: Let me look at the plans here.

6 I do want to note just really quickly before I forget,
7 20289, the land area per unit was only 202 square feet
8 of land area. So I understand what you're saying.
9 You're adding three units to a 14-unit building.

10 I guess I'm not sure of the relevance of that
11 because it's still the same type of proposal. You're
12 adding two units in existing vacant space. But I did
13 want to note that it was only 202 square feet of land
14 area per unit proposed in that, so a very small amount.

15 Let me look at the plans here on page 9. So
16 if you look at the proposed floor plan in Exhibit 9,
17 where the dark -- it's on page 2. Those dark walls there
18 are the structural walls, and that's where the staircase
19 is. So in order to combine the space --

20 BZA CHAIR HILL: Which page?

21 MS. WILSON: On page 2.

22 BZA CHAIR HILL: Yes.

23 MS. WILSON: The structural wall. So in
24 order to combine, we'd have to somehow eliminate
25 portions of those walls. And then there would be a large

1 staircase in the middle of the single unit. So it would
2 be impractical in a number of different ways and
3 practically difficult to do.

4 BZA CHAIR HILL: Okay, all right. I have a
5 couple questions, but since I have some other questions
6 with legal, I want to do an emergency meeting, number
7 one.

8 And I think there's a technical issue that
9 I have to deal with, actually, wherein we might need
10 -- there's a technical thing going on.

11 Ms. Wilson, I'm thinking about your argument.
12 And I missed the first hearing, so I wasn't here live.
13 It's different reading through the record versus this.

14 This is now -- I don't know if it's the first
15 time per se, but there's a lot of stuff that's being
16 brought into the record about what the Board did before,
17 and I feel a little uncomfortable, as if that's now
18 something that the Board has to adhere to.

19 Meaning, we look at these cases individually.
20 And I appreciate the information that had been put
21 forward that maybe even the Board had asked for. So
22 I'm not exactly clear, but I just want to let you all
23 know because you guys do this a lot.

24 What we had said before might not necessarily
25 apply to this case or every case, and so it makes me

1 a little uncomfortable. I just want to let you know.

2 It's not like we're --

3 It might kick me back a little bit farther
4 because now, what I have to do is I have to go back and
5 look at all those cases and be like, is this exactly
6 what they're trying to do? And is the context of what
7 my quote is being put forward in, is that accurate to
8 what I thought I was trying to say?

9 So I'm just trying to share my thoughts, okay?

10 MS. WILSON: Sure. And I apologize if
11 reading direct quotes has made anyone uncomfortable.

12 The point of me reading from the transcript was to show
13 -- and I understand there's no precedent, but if there
14 is a fact pattern that is nearly identical, then there
15 needs to be some additional justification as to why this
16 one would get denied compared to that one.

17 When I'm reviewing these cases that the Board
18 has approved in the past, and I say, okay, it has all
19 of the exact same factors, specifically with this one
20 security being a huge issue and leaving this space vacant
21 --

22 BZA CHAIR HILL: I've got you.

23 MS. WILSON: Yes.

24 BZA CHAIR HILL: I'm not trying to have a big
25 discussion only because --

1 MS. WILSON: Okay.

2 BZA CHAIR HILL: -- only because I don't want
3 to continue to have kind of this discussion in that,
4 for example, that one that you mentioned, again, there
5 was 14 units.

6 One was already there, and you were adding
7 two more. Percentage-wise, it's not a big percentage
8 compared to going from four to six. So it is different.

9 And I know Mr. Sullivan's watching or
10 listening. And I know the two cases, they're coming
11 up after this.

12 And also, just to let you guys know, I don't
13 like being in this position wherein they look like good
14 units to me. Nobody seems to care. It seems to be
15 great. And then I have to get thrown into this
16 regulation thing where I'm supposed to find out whether
17 or not they meet the variance test. I don't like denying
18 any of these things.

19 Anyway, okay. Just to finish, and I'll turn
20 you to Mr. Hood, just to finish because I know now my
21 wife always jokes that I'm on the record. And I was
22 like, I never realized it really mattered, but now I'm
23 on the record.

24 So to follow up that statement is that I don't
25 want to necessarily just approve everything either.

1 I'm just here to look at the regulations the way that
2 I'm supposedly to do them and have been trained to do
3 them. And that's why I struggle with this job on
4 occasion.

5 However, I appreciate your job and what you're
6 trying to do for your client and that you do an analysis
7 before you come forward with this, saying, this is what
8 happened in the past. These are your chances. This
9 has how much it's going to cost you. Do you want to
10 take that bet?

11 So I understand how that works as well, and
12 I respect that. And also, what you and Mr. Sullivan
13 do and all the attorneys, they try to figure it out
14 beforehand. But at the same time, this is an imperfect
15 system, and you don't know.

16 Okay, there you go. Chairman Hood?

17 ZC CHAIR HOOD: Thank you, Mr. Chairman. I,
18 too, want to thank everyone who submitted -- the Office
19 of Planning, Ms. Wilson, and everyone who submitted the
20 transcripts.

21 Let me just first of all say, I am not
22 intimidated about whatever I said in another case
23 because there's definitely a difference. This is R-3
24 versus R-1. I get that. And I know that these are not
25 apples-to-apples comparisons.

1 While I know sometime legal counsel will come
2 down and try to shift it and say, well, you said it this
3 way -- I've been dealing with that for years -- what
4 happens in one -- each case stands on its own. We don't
5 mix them together.

6 Whatever Hood said in another case, as the
7 Chairman just said and, I think, Vice Chair Blake, we
8 look at the regulations, and we try to interpret. So
9 you have to help us get to where somebody else got us
10 to. That's the way I look at it.

11 Let me ask you this, though. On these two
12 units in the basement, what was the square feet of each
13 one? I know it says somewhere. I just don't feel like
14 looking through all this and getting to find it. What
15 was the square footage of each one, Ms. Wilson?

16 MS. WILSON: I believe one is 600, and the
17 other one is 700. I'll have to text my client to double
18 check the square footages, as well.

19 ZC CHAIR HOOD: Okay. So probably, in those
20 other cases, there wasn't that much of a dip. It might
21 have been. I just don't remember all of them, but there
22 was a lot of caveats that we looked at.

23 I know if you read the case law, I noticed
24 when I looked at what the Zoning Commission's
25 conversation was, I noticed what was supplied versus

1 what really happened. The difference was I was there,
2 and I had those conversations.

3 And it's always good to parch out the part
4 that goes to your case. That's just what you do. I
5 think you represent your client well when you do that.

6 But I know that there was a lot more
7 conversation going on besides what was presented because
8 I, too, looked back at the transcript. I, too, had staff
9 send me some of the transcript of what we did, from the
10 legal conversations that we had, what we were thinking
11 about, what the Commission discussed when we started
12 dealing with this, I guess, in 2014 or whenever it was.

13 Anyway, I'm going to leave it at that. I'm
14 waiting to hear from others. Let's see what the
15 Chairman and Vice Chair have to say.

16 Thank you, all, for what you submitted, but
17 I just don't believe that this is an apples-to-apples
18 comparison. But I appreciate you making a
19 justification, and I will deal with it accordingly.

20 Thank you, Mr. Chairman.

21 BZA CHAIR HILL: Thank you.

22 MS. WILSON: I'll just add, we're matching
23 the units above. I thought that was relevant to note
24 that the units above are those -- we're just matching
25 the exact same footprints.

1 BZA CHAIR HILL: Yes, that's helpful. That's
2 helpful. Thank you, Ms. Wilson.

3 All right, I'm going to do an Emergency Closed
4 Meeting. I'm Fred Hill, Chairman of the Board of Zoning
5 Adjustment for the District of Columbia. This is --
6 no, that's the wrong one. All right.

7 As Chairperson of the Board of Zoning
8 Adjustment for the District of Columbia, and in
9 accordance with 407 of the District of Columbia
10 Administrative Procedure Act, I move that the Board of
11 Zoning Adjustment hold a Closed Emergency Meeting on
12 10/22/2025 for the purposes of seeking legal counsel
13 on Case 21303 and/or deliberate upon, but not vote on,
14 Case 21303.

15 Is there a second, Mr. Blake?

16 VICE CHAIRPERSON BLAKE: Second.

17 BZA CHAIR HILL: As it appears the motion has
18 passed -- oh, wait. Go ahead, Madam Secretary. Could
19 you take a roll call?

20 MS. MEHLERT: Motion to hold an Emergency
21 Closed Meeting with legal counsel, Chairman Hill?

22 BZA CHAIR HILL: Yes.

23 MS. MEHLERT: Vice Chair Blake?

24 VICE CHAIRPERSON BLAKE: Yes.

25 MS. MEHLERT: And Chairman Hood?

1 ZC CHAIR HOOD: Yes.

2 MS. MEHLERT: It passes.

3 BZA CHAIR HILL: Thanks.

4 As it appears the motion has passed, I hereby
5 give notice that the Board of Zoning Adjustment will
6 recess this procedure at 10/22/2025, at 10:53 a.m., to
7 hold a Closed Emergency Meeting pursuant to District
8 of Columbia Administrative Procedure Act. A written
9 copy of this notice is posted on the Jerrily R. Kress
10 Memorial Hearing Room at this time.

11 Okay, you guys. We'll see you all in a little
12 bit. Thank you.

13 (Whereupon, the above-entitled matter went
14 off the record at 10:54 a.m. and resumed at 11:14 a.m.)

15 BZA CHAIR HILL: Okay, great. Madam
16 Secretary, could you call us back in, please?

17 MS. MEHLERT: The Board is returning from an
18 Emergency Closed Meeting with legal counsel and
19 returning to Application No. 21303 of Jamal Ahmed.

20 BZA CHAIR HILL: Okay, great. Thank you.

21 Ms. Wilson, can you just kind of summarize
22 for me a little bit the exceptional condition meaning
23 that's leading to the practical difficulty, which I get
24 it. Can you just give me a summary of it?

25 MS. WILSON: Yes. So this building was

1 constructed in the early 1900s with four units prior
2 to the adoption of the 900-square-foot rule. Relative
3 to the other apartments on this block, it is unique.

4 All of those apartment buildings, even if
5 they're corner lots, don't have a basement level. And
6 they are all -- all of the units in those buildings
7 occupy every level. So there's no vacant space in the
8 existing apartment buildings on the block.

9 This Applicant modernized the building. They
10 moved some of the utilities and the in-unit laundry
11 facilities, so there is now vacant space. And they have
12 had break-ins and security issues, and that's been
13 documented.

14 Because of the unique condition related to
15 them having corner visibility, too, it's increased these
16 security issues. And that was an item present in 20289.

17 It's close to the Metro, and it's also close to RFK
18 Stadium.

19 And so without this relief, they are going
20 to have consistent vacant space that they will have to
21 maintain, including persistent security issues. You
22 can only do so much with additional bars and locks.
23 There's people who were trying to break in one time.

24 So they've just had these consistent issues. And
25 again, that is also consistent with 20289.

1 This will not impair the intent of the Zoning
2 Regulations, given that it is a purpose-built apartment
3 building. It has existing units. The proposed units
4 are just matching the footprints of those above.

5 And there's no way to combine the units, as
6 there are structural issues with trying to demolish
7 those walls. And then we create issues with tenant
8 displacement.

9 So again, for these reasons, we respectfully
10 request that the Board approve the application. And
11 we request that the Board give great weight to OP and
12 the ANC, who are both supporting the relief in this case.

13 BZA CHAIR HILL: Okay, great. Thank you.

14 All right. Does anybody have any questions?

15 Okay. All right, Ms. Wilson, thank you so
16 much for your time. I hope you have a good day. I'm
17 going to close the hearing and the record.

18 Okay, all right. So I've been having a little
19 bit of difficulty with this one, as you can tell because
20 I went and had an emergency closed meeting, getting to
21 where I think this is unique; with the first prong,
22 basically.

23 I guess for the confluence of factors that
24 has been put forward in terms of the basement level had
25 units -- I'm sorry -- the basement level had a laundry

1 system. And then they modernized the building,
2 clearing out that laundry system.

3 Because of that, again, the argument that the
4 Applicant is making that there are increased security
5 issues -- those are what has been put forward -- that
6 there's been security issues that are now on the record.

7 Again, the uniqueness, it being a corner lot, that's
8 something, I guess, that is adding to the security issues
9 as they're putting forward.

10 And also, I think that after looking at the
11 plans, that support wall, it would create a practical
12 difficulty to have to turn that into a larger space for
13 meetings or a workout space. And I think that it would
14 be, again, a practical difficulty for them to be able
15 to do that. I say this because there has been more and
16 more discussion about what we've done in the past being
17 put forward.

18 Now, I think this is not the strongest case,
19 but I'm going to vote in favor of it for the reasons
20 that I've put forward. That's kind of, I guess, all
21 I have to say, I suppose. And we'll just see how this
22 goes.

23 The Office of Planning, I know that we're going
24 to have some discussions about what the Office of
25 Planning is moving forward with the 900-square-foot

1 rule, but those are the items that I would like to put
2 forward for discussion and deliberation.

3 I will be voting in favor of this application.

4 And I also agree with -- I am going to give great weight,
5 I guess, to the Office of Planning, although I am a little
6 bit confused about their report as well, and also the
7 ANC being in support.

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

10 VICE CHAIRPERSON BLAKE: Thank you, Mr.
11 Chair. I agree with the comments you made with regard
12 to the extraordinary condition and the practical
13 difficulty, the two elements of the first prong.

14 With regard to the second prong, I would just
15 add that I do not think it will be a substantial detriment
16 to the public good because there's no exterior
17 construction. And it'll have minimal impact on the
18 neighborhood, given the modest increase in density
19 overall.

20 With regard to the final prong, the impairment
21 of the zoning integrity, I just don't think it actually
22 is in conflict with the Zoning Regulations and Maps.

23 As the structure is a non-conforming structure, it will
24 remain compatible with the area character, and it has
25 met the test for the first prong.

1 So for that reason, I do believe that the
2 Applicant has met the burden of proof. I give great
3 weight to the recommendation of the Office of Planning
4 and also great weight to the report provided by the ANC.

5 I'll be voting in favor of the application, as well.

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

7 Chairman Hood?

8 ZC CHAIR HOOD: Thank you, Mr. Chairman. I
9 would agree with both of my colleagues. I don't think
10 this was the strongest-made case. And that gives me
11 pause, but I think, Mr. Chairman, you captured it, which
12 helped me get there.

13 I don't think that cases previously that were
14 decided upon by the BZA, for me, carry any weight in
15 this decision-making. Actually, I think it did an
16 injustice when you try to compare something that's not
17 even comparable. It's similar, but it's not comparable
18 because there are different nuances in the case that
19 it was being compared to.

20 So I will be voting in favor of it. I still
21 will say, this is not -- if you want to come back and
22 use this one for another case, I don't think this case
23 is the strongest case.

24 But I think, Mr. Chairman, you captured it,
25 you and Vice Chair Blake have captured it to the point

1 that I will be voting in favor. Thank you.

2 BZA CHAIR HILL: Thank you.

3 All right. I'm going to make a motion to
4 approve Application No. 21303, as captioned and read
5 by the Secretary, and ask for a second.

6 Mr. Blake?

7 VICE CHAIRPERSON BLAKE: Second.

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

10 MS. MEHLERT: The motion to approve the
11 application, Chairman Hill?

12 BZA CHAIR HILL: Yes.

13 MS. MEHLERT: Vice Chair Blake?

14 VICE CHAIRPERSON BLAKE: Yes.

15 MS. MEHLERT: Chairman Hood?

16 ZC CHAIR HOOD: Yes.

17 MS. MEHLERT: Staff would record the vote as
18 3-0-2 to approve Application No. 21303 on the motion
19 made by Chairman Hill and seconded by Vice Chair Blake.

20 BZA CHAIR HILL: Okay, great. Do you guys
21 want to take a ten-minute break? Okay, take a
22 ten-minute break. We'll see you back.

23 (Whereupon, the above-entitled matter went
24 off the record at 11:23 a.m. and resumed at 11:35 a.m.)

25 BZA CHAIR HILL: Madam Secretary, could you

1 call us back in and call our next case, please?

2 MS. MEHLERT: Yes. The Board is back from
3 a quick break and returning to its Hearing Session.
4 The next case is Application No. 21319 of 1332 HARVAR,
5 LLC.

6 This is a self-certified application,
7 pursuant to Subtitle X § 1002, for an area variance from
8 the minimum lot area requirement under Subtitle U §
9 301.5(b) to allow one additional dwelling unit and an
10 existing three-unit apartment house. It's located in
11 the RF-1 zone at 1332 Harvard Street NW (Square 2855,
12 Lot 66).

13 This hearing began on July 23rd with Chairman
14 Hill, Vice Chair Blake, and Chairman Hood, and was
15 continued to September 24th with Vice Chair Blake, Board
16 Member Smith, and Chairman Hood. The Board requested
17 additional submissions and continued the hearing.

18 Also, the Applicant submitted a motion to
19 waive the filing deadline for a post-hearing statement,
20 which is in the record in Exhibit 38A.

21 BZA CHAIR HILL: Okay, great. Thank you.

22 Could the Applicant please introduce
23 themselves for the record?

24 MS. WILSON: Alex Wilson from Sullivan &
25 Barros, on behalf of the Applicant in this case.

1 BZA CHAIR HILL: Hi, Ms. Wilson. Let's see.
2 Just for the record again, I got a little confused as
3 to when I was and wasn't on this, but I've read the whole
4 record and am now up to date.

5 And so Ms. Wilson, if you wouldn't mind, if
6 you could just tell us what happened since the last time
7 you were here and what things the Board may have asked
8 you of?

9 MS. WILSON: Sure. So the last time we were
10 here, the hearing concluded with the Board requesting
11 more information about the 900-square-foot rule. I
12 think that was primarily directed towards the Office
13 of Planning.

14 However, we did do some additional research
15 and put some additional information into the record as
16 to how the Court of Appeals, Office of Planning, and
17 the Board have previously reviewed the third prong
18 regarding the substantial impairment and intent of the
19 Zoning Regulations as it relates to the variance test.

20 So I'm happy to give a brief oral summary of
21 our variance argument just to get everyone on the same
22 page, if the Board would like.

23 BZA CHAIR HILL: Sure, that'd be great. Go
24 ahead.

25 MS. WILSON: Great. Thank you.

1 So this is a purpose-built apartment building.
2 And it was constructed with three units, one on each
3 floor, constructed in the early 1900s, predates the 1958
4 Zoning Regulations. There is also a fourth basement
5 unit.

6 These units are all very large. They're about
7 1,600 to 1,700 square feet. The building footprint also
8 existed prior to the 1958 Zoning Regulations as well,
9 and the basement was presumably used for laundry and
10 tenant storage prior to the addition of the basement
11 unit.

12 There are three owners involved, so to speak.
13 There's the original owner, a second owner, and the
14 current owner. The original owner was mid-renovation
15 of the building when the second owner purchased the
16 property. This is in 2008.

17 We can now assume that the permit was only
18 for the upper three units, not the basement unit that
19 was being newly added, but in 2010, there were
20 inspections. They closed out, and these units were
21 rented for over a decade. Specifically, that fourth
22 basement unit was rented for over a decade.

23 A few years ago, the property was purchased
24 by the current owner. They were unaware that there
25 could even be an issue with these units. The building

1 has been in the same configuration for decades. These
2 units have been successfully rented, and there had been
3 inspections and closeouts prior. So they purchased the
4 property, or took ownership of the property, assuming
5 everything was in order.

6 When there is a change of ownership, you are
7 required to update the C of O to include the new owner
8 name. Not everybody does this, but it is a requirement.
9 So they were trying to do everything above-board.

10 Within six months or a year of that ownership
11 change, they filed the paperwork. They thought it was
12 routine paperwork to change the C of O from Owner A to
13 Owner B, and that was not the case. They discovered
14 the C of O was only for three units.

15 They thought again, okay, we will just request
16 to add the fourth unit. But in order to do that, there
17 has to be a permit submission and application so that
18 DOB can make sure everything is up to code in order to
19 add units, which makes sense.

20 So they hired design professionals to draw
21 the as-built plans. And at this point, it's been some
22 time since they tried to do the routine paperwork. They
23 think they're on a path to approval through DOB, but
24 then eventually learned at the very end of the permit
25 process, when just about everything else is signed off,

1 they need relief and variance relief to add that fourth
2 unit because they don't have 900 square feet per unit.

3 Eventually, they reached out to consultants
4 to find a zoning attorney. They came to our firm, and
5 we filed the relief for them.

6 I just point this out because probably at every
7 step of the journey, they could have stopped the process,
8 tried to keep renting this perfectly up-to-code unit.

9 It's a beautiful, large, two-bedroom, basement level.

10 It rents at a price point equivalent to an IZ unit,
11 so it's relatively affordable.

12 Even knowing that the end result of this could
13 be demolishing this unit at great cost expense, loss
14 of rental income, and impact to tenants, they still
15 wanted to come forward and do this above-board.

16 In terms of the practical difficulty, and this
17 is in the record, it would cost about \$300,000 to combine
18 the basement unit with the one directly above. And it
19 would result in a four-bedroom, 3,000-square-foot unit
20 in an area where you can't even find a comparable for
21 that size.

22 It would effectively be a luxury unit on the
23 basement and first floor, which is odd, and it would
24 be in place of two relatively affordable units. At this
25 point, the only option, if this is denied, is to

1 completely demolish this unit if they wish to continue
2 to legally rent the other units.

3 In terms of the last prong, no work is
4 proposed. This, again, is a purpose-built apartment
5 building. The other buildings constructed around this
6 time have units in their basements. It is near other
7 large apartment buildings, and a commercial zone is
8 extremely close to the Metro.

9 The unit has existed for over a decade. Even
10 when it was created, no exterior work was done to the
11 bulk. And the Applicant is proposing to simply maintain
12 an existing unit of housing in this neighborhood
13 context, so it will not impair the intent of the Zoning
14 Regulations.

15 Again, the rental price is equivalent to a
16 two-bedroom IZ unit, which is not necessarily a
17 determinative factor but is an overall positive worth
18 mentioning, especially given the alternative is a loss
19 of an affordable unit, which does go to practical
20 difficulty.

21 And of course, we request that the Board give
22 great weight to OP and the ANC, both supportive of the
23 relief in this case. Thank you for your time, and we're
24 happy to answer any questions.

25 BZA CHAIR HILL: Okay. Ms. Wilson, how short

1 are they on the square footage; do you know?

2 MS. WILSON: I can find out quickly. The
3 property has 2,543 square feet, so it's 635 square feet
4 per unit.

5 BZA CHAIR HILL: Okay, that's one. And I
6 appreciate you going over the background.

7 I'm sorry, my fellow Board members, because
8 you guys have already done this.

9 So the original owner had it, and the original
10 owner went ahead and did the updates and created the
11 fourth unit, correct?

12 MS. WILSON: Correct.

13 BZA CHAIR HILL: And then when did this owner
14 buy this unit, buy this building?

15 MS. WILSON: Mr. Jordan was on originally,
16 but I believe it was either 2020 or 2021.

17 BZA CHAIR HILL: That's okay. I just need
18 a --

19 MS. WILSON: Around that time frame, yes.

20 BZA CHAIR HILL: That's fine. Okay. Right,
21 okay. You're saying that the owner might either
22 demolish the unit and have to incorporate it into the
23 unit above, or it just lays dormant; is that what you're
24 telling me?

25 MS. WILSON: No. So we would not be allowed

1 to just keep it as is because they still have to change
2 the Certificate of Occupancy, and now they're in the
3 middle of permitting with DOB. And so DOB won't approve
4 an apartment house that has an existing fourth unit that
5 hasn't been --

6 BZA CHAIR HILL: I understand.

7 MS. WILSON: Yes, we'd have to just demolish
8 the unit.

9 BZA CHAIR HILL: Right. Either you'd
10 demolish it or you would incorporate it into the one
11 above?

12 MS. WILSON: Correct, yes. At \$300,000 cost,
13 correct.

14 BZA CHAIR HILL: I don't know this about DOB.
15 So you're saying it's \$300,000 to incorporate it into
16 the one above?

17 MS. WILSON: Correct. They'd have to -- I
18 think you'd have to effectively gut both units. We put
19 this in the --

20 BZA CHAIR HILL: I'm sorry to interrupt you.
21 You can tell me where it is in the record. Or they
22 have to demolish the unit in order to get the C of O?

23 MS. WILSON: Correct.

24 BZA CHAIR HILL: They just have to tear it
25 out, empty it out? It just has to be empty space?

1 MS. WILSON: Correct, yes. It would have to
2 be in a state where the whole building could be approved
3 by DOB. And the only way to do that, given that you're
4 not allowed to have a fourth unit, would be to gut the
5 unit.

6 BZA CHAIR HILL: Yes. I forget how the unit
7 thing works. If there's no stove in there, they could
8 remove the stove or something and it turns into something
9 else, or no? I can't remember.

10 MS. WILSON: No, I don't think it's as simple
11 as removing the stove for this. You're certainly not
12 allowed to have a second kitchen. I guess you could
13 technically remove just the back half or just the part
14 where the kitchen is, but I don't know if DOB would
15 approve it with all of the other items in place.

16 If it were to be incorporated technically into
17 the third unit, you would still have to somehow find
18 a way to connect -- sorry -- the first-floor unit, you'd
19 have to find a way to connect the basement level to the
20 first floor. And so you'd have to bring all of that
21 up to code as well.

22 So the options really are: completely gut the
23 unit so that there's nothing there or find a way to
24 combine it somehow. And at that point, you might as
25 well make it look nice so that it can be rented on both

1 levels.

2 BZA CHAIR HILL: Okay, all right. Does
3 anybody have any more questions for the Applicant before
4 I turn to the Office of Planning?

5 Okay. Can I turn to the Office of Planning,
6 please?

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

10 As we noted at the previous hearings, OP is
11 recommending approval of this application and felt that
12 the application met the three-part variance test.

13 In response to Board request, we did submit
14 a supplemental memo getting into some of the history
15 of the 900-square-foot rule, as well as the intent of
16 the rule and how that intent is interpreted today.

17 I think our big take-away from that report
18 is, yes, while we agree with the Board that every case
19 does stand on its own, and we tell that to applicants
20 all the time, we do look to pass decisions for guidance.

21 And in this instance, just because an
22 applicant proposes to deviate from the 900-square-foot
23 rule, that does not automatically mean that granting
24 the variance would impair the intent of the Zoning Regs.

25 There are a number of ways that those applications can

1 still meet the intent of the regs, both the RF-1 zone
2 and the overall intent of the Zoning Regulations.

3 So I'm happy to answer any more questions about
4 that supplemental memo or the overall application.

5 Yes, I'm happy to take questions. Thank you.

6 BZA CHAIR HILL: Okay, thanks.

7 And you guys, just bear with me, if it's okay,
8 because again, I wasn't here at some point when you guys
9 went through this.

10 So Mr. Jesick, I'm glad you're here because
11 I've been here now a long time with you. And by the
12 way, the every case stands on its own, now that I remember
13 you saying that, yes, I learned that from OP. That's
14 how I learned that every case stands on its own.

15 Whenever I had to turn to you guys on the dais,
16 you were like, every case stands on its own. I was like,
17 okay, so that's the answer. Okay, great.

18 I think this, again, terrible situation. So
19 is the exceptional situation the fact that they bought
20 it the way it is?

21 MR. JESICK: Yes. I think that's essentially
22 it, that this condition has existed for 17 or so years
23 and that the current owner bought it, became aware of
24 it only when they went to update the C of O for the
25 ownership change.

1 And since that time, I believe the unit has
2 been vacant, and they've been trying to legalize it.

3 So they've been working in good faith to get the unit
4 in compliance.

5 So yes, the exceptional condition is that it's
6 been in existence for all those years. And this owner
7 was not aware of it, bought the property, and is now
8 trying to rectify the situation.

9 BZA CHAIR HILL: Okay. That sounds somewhat
10 reasonable.

11 So what if, and I'll go back to -- all right.

12 I know the answer I'm going to get from OP on this
13 already as I'm saying it, but if somebody built it and
14 they built it illegally, and then five years later, they
15 sell it to their friend, and then the friend shows up
16 and says, I didn't know, it's in the same situation?

17 I don't know if I really did that well.

18 MR. JESICK: I'd hate to --

19 BZA CHAIR HILL: That's okay. That's all
20 right. Don't answer it. It's okay.

21 MR. JESICK: Okay.

22 BZA CHAIR HILL: I'm trying to -- it's a
23 hypothetical that you're going to tell me you won't have
24 an answer for it anyway.

25 So okay. Mr. Blake, you had your hand up?

1 VICE CHAIRPERSON BLAKE: Mr. Jesick, could
2 you just go through exactly what you're saying is the
3 extraordinary condition?

4 I want to make sure I'm clear on what that
5 first element of the first prong is. So could you just,
6 in your words, give me exactly as you see today what
7 that is?

8 MR. JESICK: Sure. Thank you. And just
9 going back to our initial report -- I don't have the
10 exhibit number, I'm sorry, but the current owners bought
11 the property in 2020. And they had no role in the 2008
12 renovation or the fact of renting it out over all those
13 intervening years.

14 So they had no knowledge that the Certificate
15 of Occupancy was only for three units and that it
16 specified that those units were on floors 1 through 3.
17 They only discovered that discrepancy after the 2020
18 purchase.

19 And as I mentioned, they discovered it during
20 what is typically a routine process of changing the C
21 of O to a new owner. Once they discovered that, the
22 current owners did begin the process of legalizing the
23 unit. That ultimately resulted in this present BZA
24 application.

25 But that's the exceptional condition, that

1 this unit has existed. The present owners had no
2 knowledge of it and had no role in renting it out over
3 all those intervening years.

4 VICE CHAIRPERSON BLAKE: Okay. Ms. Wilson,
5 could you correct me if I'm wrong on this? Maybe I'm
6 getting my cases a little screwed up here, but the
7 current owner was a partial owner in what we're calling
8 the original ownership team; is that right?

9 MS. WILSON: Mr. Jordan can clarify, but I
10 believe they had a small ownership stake and possibly
11 never even saw the property. It was his nephew that
12 owned the property.

13 VICE CHAIRPERSON BLAKE: So it wasn't exactly
14 completely separate? There was some knowledge of the
15 property, right?

16 MS. WILSON: The 2008 owner who did the
17 renovation was completely unrelated.

18 VICE CHAIRPERSON BLAKE: Unrelated in terms
19 of blood, or are you talking unrelated in terms of
20 ownership?

21 MS. WILSON: Unrelated in terms of blood,
22 unrelated in terms of ownership, just a completely
23 separate person was the 2008 owner who did the initial
24 renovation.

25 VICE CHAIRPERSON BLAKE: Ms. Wilson, I think

1 it's important to note, though, this is a situation where
2 even if it was a train of self-creation, this is an area
3 variance. So that wouldn't necessarily prohibit it.

4 The question would end up being, if this is
5 the only basis for your exceptional condition, that
6 might be an issue because I think there is an element
7 of that being the issue.

8 Are there any other things that create a
9 confluence of factors, or is this the pure basis of your
10 --

11 MS. WILSON: It's not the pure basis. It
12 could also be reviewed de novo, in a similar way to the
13 purpose-built apartment building case where, in 2008,
14 when the original owner gutted the basement, there were
15 other utilities. The in-unit laundry was -- their
16 laundry facilities were moved up as well.

17 So it would be also under that same fact
18 pattern where you have existing vacant space in a
19 purpose-built apartment building and the other two
20 apartments directly adjacent, the other buildings, are
21 utilizing their basement space. And so even at that
22 time, it would have cost the same amount to combine the
23 upper floor and the lower floor.

24 So that could also be part of it, but I do
25 think that purchasing a property that is mid-renovation

1 or, should I say, purchasing a property that was
2 converted two owners ago, and then thinking that
3 everything was in order and having to rectify the
4 situation, combined with the fact that this is a
5 purpose-built apartment building that predates the
6 Zoning Regulations, has a larger footprint, has these
7 large floors.

8 And so even if you did have this existing
9 vacant basement space, it would not make sense to combine
10 it just to maintain three units. Combined that is the
11 confluence of factors to create the exceptional
12 condition in this case.

13 BZA CHAIR HILL: I'm now looking at my fellow
14 Board members. I'm almost having a little bit of a
15 deliberation right here, but I am going to talk to Ms.
16 Wilson just to make a different point.

17 Again, going from three to four is different
18 to me than going from 14 to 17 or whatever was the early,
19 early example of this. And even going from four to six
20 is different from going from three to four.

21 And then the part that I'm having difficulty
22 with the Office of Planning -- again, I wish that I wasn't
23 having this discussion at all -- with the Office of
24 Planning is that if the intent was -- the reason why
25 I'm now more conflicted with it, like I tell my Board

1 members, is because of the situation they're in, the
2 way they bought it.

3 Now they're just trying to fix the situation
4 that they're in. And it's all kinds of weird and maybe
5 impractical as to how they're trying to do it.

6 But the intent, Mr. Jesick, the intent was
7 that you have to have 900 square feet for this stuff,
8 right? Or I guess you can ask for the area variance,
9 which is what they're here for, correct?

10 MR. JESICK: Yes, that's correct. But as we
11 noted in our supplemental memo, we concluded that
12 deviation from the 900-square-foot rule does not
13 automatically mean that you're violating the intent of
14 the regulations, that there are other ways to meet the
15 intent.

16 BZA CHAIR HILL: There are other ways to meet
17 the intent. What do you mean there are other ways to
18 meet the intent?

19 MR. JESICK: Well, just looking at page 4 of
20 our supplemental memo, again, not saying that the Board
21 has to do what was done in past cases, but just drawing
22 guidance from those cases, the Board has concluded
23 previously that additional density does not
24 automatically impair the intent of the RF zone.

25 The intent of the regulations can, in part,

1 be met by improving the property's condition. The size
2 of the building, which is not a factor here because
3 they're not expanding the size, but as long as the size
4 is generally compatible with its context, that's an
5 important factor regardless of the number of units
6 inside the building.

7 The Board has also found that small apartments
8 are not atypical of the RF zone. And in fact, small
9 apartment buildings are consistent with the overall
10 residential nature of the RF zone. They've also found
11 that housing is an important priority of the regulations
12 and that variance relief can be consistent with the
13 general intent of the RF zone.

14 I'm also quoting from the report here that:
15 the RF zone is intended to recognize and reinforce the
16 importance of neighborhood character, walkable
17 neighborhoods, housing affordability, aging in place,
18 preservation of housing stock, improvements to the
19 overall environment, and low and moderate-density
20 housing being important to the overall housing mix and
21 health of the city.

22 So I think there are a variety of ways that
23 the Board can look to the regulations and find --

24 BZA CHAIR HILL: Where are you reading that
25 line? I'm sorry, Mr. Jesick.

1 MR. JESICK: Sorry, I jumped back to page 3
2 of the report, which is a quote from the Zoning
3 Regulations.

4 BZA CHAIR HILL: Where on page 3?

5 MR. JESICK: Kind of right in the middle.
6 It's indented. It's Purpose of the RF Zone.

7 BZA CHAIR HILL: Okay, I've got it. Okay,
8 great. Okay, thanks.

9 Okay, my Board members?

10 Go ahead, Chairman Hood.

11 ZC CHAIR HOOD: My question is for Mr. Jesick.
12 I appreciate the Chairman's questions, and I appreciate
13 you pointing out 404 in your report.

14 Is it safe to say that the Office of Planning
15 is rewriting the legislative history of the Zoning
16 Commission? If I put that out there to you like that,
17 would you say that that's what we're doing?

18 MR. JESICK: I'm sorry, I missed the question.
19 Could you repeat that, please?

20 ZC CHAIR HOOD: I'm going to change my
21 question. I said, is it safe to say, but it's never
22 safe to say this.

23 Is the Office of Planning changing the
24 legislative history or the intent of the Zoning
25 Commission because of past rules by the Board? Are we

1 changing the intent of the 900-square-foot rule?

2 MR. JESICK: No, I don't believe that we are.

3 ZC CHAIR HOOD: So you're saying some
4 additional density does not automatically impair the
5 intent of the RF zone. I get that. The intent of the
6 regulations can, in part, be met by improving a
7 property's condition.

8 So all that's part of the legislative history?
9 Those are the things that were considered by the Zoning
10 Commission?

11 MR. JESICK: I can't comment on the full
12 legislative history and what the Zoning Commission
13 discussed. Again, as we talked about in our report,
14 the 900-square-foot rule goes back to 1958.

15 ZC CHAIR HOOD: Right.

16 MR. JESICK: So we don't have that full
17 history of what was discussed at that time.

18 ZC CHAIR HOOD: It was also revisited. I
19 can't remember if it was 2014 or before that, but it
20 was also revisited. It might have been after that.

21 But either way, the way it looks like, it looks
22 like we're trying to -- let me ask you this. With these
23 types of cases and scenarios that come up, is it safe
24 to say that maybe the Office of Planning should look
25 at a tax amendment as opposed to keep putting the BZA,

1 Ms. Wilson, and all the rest of us through this?

2 MR. JESICK: I think we may be considering
3 that. I'd have to check with Ms. Steingasser and Mr.
4 Lawson on that.

5 ZC CHAIR HOOD: Check with them quick now.
6 Let me just say that. As a matter of fact, check with
7 them today.

8 BZA CHAIR HILL: Yes, go right now. Go over
9 to their desks right now.

10 ZC CHAIR HOOD: Ms. Wilson, you know now, if
11 you see an issue, applicants can provide to the
12 Commission a tax amendment, because I'm sure that the
13 Chairman and the Vice Chair would love not to have to
14 deal with these and grapple with this.

15 So I'm just putting that out there. I'm not
16 asking anybody for any actions, but I'm just letting
17 you know that applicants can do that as well.

18 Thank you, Mr. Chairman.

19 BZA CHAIR HILL: Thank you.

20 Mr. Sakinejad, can you hear me?

21 MR. SAKINEJAD: I sure can, Mr. Chair.

22 BZA CHAIR HILL: Thanks. Ms. Wilson, who is
23 the owner? Who is the name of the owner?

24 MS. WILSON: Wayne Jordan is here
25 representing the owner.

1 BZA CHAIR HILL: Great, Wayne Jordan. Mr.
2 Jordan, can you hear me?

3 MR. JORDAN: Yes, I can. Thank you.

4 BZA CHAIR HILL: Could you introduce
5 yourself, Mr. Jordan?

6 MR. JORDAN: Okay, I am Wayne Jordan. I am
7 a former resident of Washington, DC. I live in Oakland,
8 California today. And I am a real estate developer.

9 BZA CHAIR HILL: Okay, great. Mr. Jordan,
10 how did you come to this property?

11 MR. JORDAN: Well, back during the financial
12 crisis, my nephew was looking for properties in DC.
13 He found a few, and we bought them. I was his major
14 investor in the project, but it was his project. He
15 did it.

16 My involvement didn't start until he needed
17 to take resources out to move on to something else.
18 And I bought the properties from him in 2020.

19 BZA CHAIR HILL: Okay. And how did he -- Mr.
20 Jordan, I'm sorry. I don't mean to really put you on
21 the spot, but a little bit like, how did he get the
22 property? Were there four units there when he got the
23 property?

24 MR. JORDAN: As far as I know, there were four
25 units being built when he bought the property. Yes.

1 BZA CHAIR HILL: Okay.

2 MR. JORDAN: Renovated, I should say, instead
3 of built, but renovated in that building at the time
4 that he purchased the property.

5 BZA CHAIR HILL: Okay. And that was back in
6 '08?

7 MR. JORDAN: That is correct.

8 BZA CHAIR HILL: Okay. Anybody got any
9 questions of Mr. Jordan?

10 Okay. All right, Ms. Wilson. I think we're
11 going to probably come back with the decision on this
12 one. I know I'm going to chew on it a little bit more
13 because now I'm thinking more about, after your
14 presentation, what I originally had thought coming in.

15 So Mr. Sakinejad, is there anyone here wishing
16 to speak?

17 MR. SAKINEJAD: We do not have anyone.

18 BZA CHAIR HILL: Okay, all right. Mr. Blake,
19 Chairman Hood, do you have any final questions before
20 I ask Ms. Wilson, because she looks like she's about
21 to say something? No, all right.

22 Ms. Wilson, you wanted to say something?

23 MS. WILSON: May I do a closing?

24 VICE CHAIRPERSON BLAKE: Yes, sure. Go
25 ahead.

1 MS. WILSON: Great. So I'll just note this
2 current owner had no knowledge of this issue with the
3 units, or else why would he have purchased this property
4 from his nephew and tried to be above-board on all of
5 this?

6 I think the record evidence is there was no
7 sneakiness in trying to get this done this way. No one
8 would want to go through this just to eventually gut
9 their unit.

10 There's no work currently proposed. No work
11 was originally done to expand the building's footprint
12 in 2008. This was purpose-built in this configuration
13 as an apartment building, and the other buildings
14 constructed around this time have units in their
15 basements. It is a small apartment building,
16 consistent with the residential nature of the RF-1 zone.

17 It is near other larger apartment buildings,
18 too, and a commercial zone extremely close to the Metro,
19 and has existed for over a decade. The context in terms
20 of proximity to the Metro, other apartment buildings,
21 and the commercial zone is important in terms of the
22 third prong of substantial impairment to the Zoning
23 Regulations.

24 Again, there's no additions or changes to the
25 bulk. The Applicant is proposing to maintain an

1 existing unit of housing that's existed here for over
2 a decade.

3 It will not substantially impair the intent
4 of the Zoning Regulations governing the 900-square-foot
5 rule to allow this additional unit of housing to be
6 maintained in an area that's transit-rich with other
7 apartment uses close to a commercial zone.

8 Again, the proposal does not have to meet the
9 intent of the regulations, just not substantially
10 impair. The rental price is equivalent to a two-bedroom
11 IZ unit, which is, again, not a determinative factor
12 but overall positive given that the alternative is a
13 loss of affordable housing.

14 And of course, we request that the Board give
15 great weight to OP and the ANC, both supporting the
16 relief in this case. Thank you again for your time
17 today.

18 BZA CHAIR HILL: What did you say again, not
19 meet but substantially what?

20 MS. WILSON: The third prong, we don't have
21 to meet the intent of the Zoning Regulations. The
22 language states that the request must not substantially
23 impair the intent of the Zoning Regulations and Zoning
24 Maps.

25 Which I think is an important distinction

1 because most variances won't meet -- they won't meet
2 the intent necessarily because you're asking for
3 deviations from what was stated in the Zoning
4 Regulations, which is why the standard is it must not
5 substantially impair the intent.

6 BZA CHAIR HILL: Okay. Go ahead, Mr. Blake.

7 VICE CHAIRPERSON BLAKE: Could you again --
8 I ask Mr. Jesick this. Could you again explain to me
9 the exceptional condition or situation?

10 The way I was reading it, I keep seeing several
11 owners as being the exceptional condition. So could
12 you, again, just give me a clarification on what the
13 exceptional condition is?

14 MS. WILSON: Sure. The several owners was
15 mentioned just to discuss the ownership chain, but in
16 2008, this was converted to four units by a previous
17 owner. It was then purchased by Mr. Jordan's nephew.

18 In 2020, Mr. Jordan purchased it with this
19 exceptional condition, which is an existing unit that
20 is not on the C of O. And so that's exceptional. Most
21 apartment buildings don't come with a fourth unit that's
22 on the C of O.

23 We see these cases come up typically
24 infrequently. I know there are two today, but beyond
25 these two today, I think we've seen maybe 15 in the last

1 10 to 15 years. So they do not come up frequently.
2 It is a unique situation.

3 For example, the properties next door that
4 were built around the same time have units in their
5 basements potentially predating the 1958 regulation,
6 whereas this one was done illegally by a previous owner.

7 BZA CHAIR HILL: Mr. Jesick, can you hear me?

8 MR. JESICK: Yes, Mr. Chairman.

9 BZA CHAIR HILL: Thanks. I guess what Mr.
10 Blake is also just trying to find some clarification
11 with is, again, its exceptional condition. So you would
12 agree with what Ms. Wilson just put forward?

13 MR. JESICK: Yes, we agree with that.

14 BZA CHAIR HILL: Okay. And I'll let Mr. Blake
15 ask about -- have you got a follow-up, Mr. Blake?

16 VICE CHAIRPERSON BLAKE: I don't. I would
17 like -- no, I really don't. I'm still struggling with
18 that exceptional condition only because there should
19 be -- I just don't see it, but I'm going to try to see
20 if I can see a little bit more meat on this bone of
21 exceptional situation.

22 BZA CHAIR HILL: Okay. So Mr. Jesick, we're
23 aware of the situation in your office. I'm very sorry
24 that that is happening, meaning, people are leaving.

25 However, if any of those people are going to

1 be around or if they can -- whoever goes next, if they
2 can help figure this out a little bit, because it's like,
3 it all makes sense to me.

4 I wasn't there for when the regulations were
5 put together. I wasn't there for the arguments with
6 the RF-1 zone, and I've now heard a lot of history about
7 it.

8 But it seems as though the Office of Planning
9 is okay with these things, and the ANC is okay with these
10 things. The envelope's not changing. It's not really
11 doing much of anything. It's affordable housing. It
12 all seems in line with what I've understood over the
13 past ten years that I was here.

14 I'm trying to convey something. I'm not the
15 Zoning Commission Chairman. I'm not the Zoning
16 Commissioner. And Mr. Jesick, you're pretty good at
17 conveying information. I'm just conveying information
18 that if this could be -- if there could be another way
19 to do this, that would be helpful to me.

20 MR. JESICK: We certainly understand you.
21 I think that would be a benefit to everyone involved.
22 We can definitely pass that message along.

23 BZA CHAIR HILL: Great, because I want to
24 point out, I'll bet there's a lot of other people in
25 this situation. And so if you kind of fix this little

1 thing, you might find some things that you probably know
2 are there, and you'll fix them.

3 Anyway, okay. All right. I got to say
4 something, okay. And that's on the record, so you all
5 can prop that back to me later.

6 All right. Anything else before we go?

7 Okay. Mr. Jordan, I hope the weather's good
8 out there. And I wish you luck, okay?

9 MR. JORDAN: I thank the Board for the work
10 that you guys are doing. I greatly appreciate it.

11 BZA CHAIR HILL: Thank you.

12 All right. I'm going to close the hearing
13 and the record.

14 Chairman Hood, are you with us?

15 ZC CHAIR HOOD: Yes, I'm with you. I'm here.

16 BZA CHAIR HILL: Okay, great.

17 ZC CHAIR HOOD: I had my camera off for a
18 moment. I'm here, though.

19 BZA CHAIR HILL: If you all don't mind, I'm
20 going to put this off for decision until next week.
21 Is that okay?

22 Is next week enough time, Mr. Blake? Okay.

23 Chairman Hood, are you available next week?

24 ZC CHAIR HOOD: Yes, I am. I'm available.

25 BZA CHAIR HILL: Okay. We'll do it first,

1 Chairman Hood.

2 ZC CHAIR HOOD: Thank you.

3 BZA CHAIR HILL: Okay, all right. I don't
4 know what you all want to do. The next case is basically
5 almost this case. Is this the one? Yes.

6 Anyway, do you all want to take lunch, or you
7 want to do the case?

8 ZC CHAIR HOOD: Let's keep going.

9 BZA CHAIR HILL: Okay, let's keep going. All
10 right. Let's do this next case, and then we're going
11 to have to take lunch because I didn't get to do anything
12 about food.

13 All right. Madam Secretary, call the next
14 case?

15 MS. MEHLERT: The next case is Application
16 No. 21307 of Henry Tam and Lan Tran.

17 It's a self-certified application, pursuant
18 to Subtitle X § 901.2, for a special exception under
19 Subtitle U § 320.2 to allow the conversion of an existing
20 residential building to a three-unit apartment house;
21 pursuant to Subtitle X § 1002, for an area variance from
22 the minimum lot area requirement of Subtitle U § 320.2(c)
23 to allow conversion to an apartment house use with less
24 than 900 square feet of land area per each existing and
25 new unit; and pursuant to Subtitle X § 901.2, for a

1 special exception under Subtitle C § 703.2 from the
2 minimum vehicle parking requirements of Subtitle C §
3 701.5.

4 This is the conversion of an existing
5 residential building to a three-unit apartment house
6 located in the RF-1 zone at 725 Hobart Place NW (Square
7 2888, Lot 197).

8 This hearing also began on July 23rd with
9 Chairman Hill, Vice Chair Blake, and Chairman Hood, and
10 was continued to September 24th with Vice Chair Blake,
11 Board Member Smith, and Chairman Hood. The Board
12 requested submissions and continued the hearing.

13 BZA CHAIR HILL: Okay, great. If the
14 Applicant can hear me, if they can please introduce
15 themselves for the record?

16 MR. SULLIVAN: Board members, Marty Sullivan
17 with Sullivan & Barros, on behalf of the Applicant.

18 BZA CHAIR HILL: Okay, great. Mr. Sullivan,
19 I think you guys should just get a desk somewhere in
20 the BZA. Just get that over with.

21 Okay, so let's see. Mr. Sullivan, first of
22 all, I've read into the record. I'm up to date. As
23 you can tell by the last case and the case before that,
24 I'm up to date.

25 So if you, Mr. Sullivan, would like to give

1 a summary of what you think about this case and also
2 what happened since the last time, because I guess the
3 Board asked for things of you. Let's see what happens.

4 MR. SULLIVAN: Yes. Thank you, Mr. Chairman
5 and Board members. So I think I'd like to start off
6 with -- I don't want to get philosophical, but I want
7 to talk about the variance test.

8 The regulations on the variance test and how
9 they're applied to a specific situation is ambiguous
10 at best. I always say that I'll retire not really fully
11 understanding the whole thing, but we do the best we
12 can. We're all working hard on it.

13 It's just -- it's the Board using -- and the
14 Board is the final say on what the Zoning Regulations
15 say, what they mean, and how it's interpreted, even more
16 so than the Zoning Administrator. The only way we know
17 how the variance test is interpreted, or what the
18 regulations mean in that regard, is by what the Board
19 has said about those regulations.

20 And just like the Board asked for legislative
21 history twice now, in both of the post-hearing
22 submissions, it was requested for more input on the
23 legislative history. The Board obviously intends to
24 use legislative history to try to interpret the
25 regulations as it applies in the variance case for these

1 set of facts.

2 BZA CHAIR HILL: I don't know if I
3 particularly agree with that statement, but I'll let
4 you continue.

5 MR. SULLIVAN: Okay. I'd like to hear
6 feedback on that because I'm a little in the dark on
7 some of the hesitancy.

8 BZA CHAIR HILL: Your statement, Mr. Sullivan
9 -- we're a little bit off the track here a little bit
10 also, but I'm going to go with it for a minute because
11 I missed the first hearing, right? What you just said
12 was that the Board tends to use legislative history to
13 determine what it's going to do now.

14 And so I'm kind of disagreeing. I personally
15 am disagreeing with that statement. I've never
16 necessarily used legislative history to make my
17 decision. I've used what I think is the interpretation
18 of the regulations, but that's why I'm pushing back on
19 that statement with regard to myself.

20 MR. SULLIVAN: Understood. And I meant it
21 specifically just for this case. I didn't mean that
22 --

23 ZC CHAIR HOOD: Let me push back on that, Mr.
24 Chairman.

25 Mr. Sullivan, I'm going to push back on that,

1 too. The reason why we're asking for legislative
2 history is because some people come down and present
3 cases, and they're so off kilter.

4 We want to make sure that we all narrow back
5 down and zero out all the other factors that people try
6 to build their case. And let's get on the same page,
7 because the Board knows their assignment, but people
8 come down and present a lot of fluff. And we want to
9 make sure that people stay on track. That's it.

10 So no, it's not going to necessarily be
11 legislative history, but it's bringing people back down,
12 back to where they need to be, focused on what's in front
13 of the Board. That's my point. Thank you.

14 MR. SULLIVAN: Yes, understood. I accept
15 that and stand corrected. The point I was trying to
16 make was that the only way we know how the variance
17 regulations are interpreted are what the Board tells
18 us about those.

19 We don't mean to say precedent decides all
20 cases. We mean to say there's been a way that I know
21 certain things are exceptional, practical difficulties
22 because of what the Board has said in the past about
23 them.

24 BZA CHAIR HILL: Mr. Sullivan, I don't want
25 to get my fellow Board members all terribly excited.

1 I do know fellow Board members that if they hadn't had
2 lunch before, it's a bad idea. Fortunately, that person
3 is no longer here, but there was a person that if that
4 person hadn't had lunch, you might as well just give
5 it up.

6 MR. SULLIVAN: Okay.

7 BZA CHAIR HILL: We can go back and forth and
8 go back and forth, but I guess what I'm trying to get
9 at, because I wasn't here for the previous thing, and
10 I'm still going to be here, I guess, for a little while
11 longer, is that in order to -- I'd like a summary, which
12 is number one, because you want to have a discussion.

13 If we were somewhere, I'd be happy to have a discussion
14 with you.

15 Again, I will reiterate what I did say with
16 your colleague, which is that in order for me to go back
17 and look at all the stuff that I said on a particular
18 case, I have to go back, re-read, find out where we were,
19 find out what's going on, because your job is to make
20 your case. You're going to bring everything out that
21 makes your case.

22 So I have to go back and kind of figure out
23 what exactly was intended by all that. And then what
24 was the other thing? And then kind of figure out --
25 I'm sorry.

1 There being a full order versus a summary order
2 does make things easier to kind of follow along with,
3 but even then, I still think, as the Office of Planning
4 has always told me and the Zoning Adjustment people have
5 always told me, each case is its own case.

6 So I'm not disagreeing with how you all
7 probably do some analysis for your clients. You're
8 like, hey, this is what I think your chances are. But
9 at the same time, Mr. Sullivan, as you've said, this
10 is not a perfect system. This is a Board.

11 I know you don't go to your clients and say,
12 you're going to win. You don't say that. You say, this
13 is what I think your chances are, okay? And so that's
14 where we are right now.

15 I appreciate everything you're doing. I
16 appreciate what you're saying. Everything's in the
17 record. I see the transcripts. I see the full orders
18 and the summary orders.

19 We can go back on those a little later if you
20 want, but if you wouldn't mind just summarizing why you
21 think this should be granted, what's making it
22 exceptional, how is it meeting the prongs, that would
23 be helpful for me.

24 MR. SULLIVAN: Yes. I didn't mean that to
25 be the bulk of my argument. It was just a precursor.

1 I'd like to home in on the area variance test for this
2 case and the facts in this case.

3 BZA CHAIR HILL: I'm sorry. Mr. Blake has
4 his hand up.

5 VICE CHAIRPERSON BLAKE: Yes. While you're
6 on that topic, Mr. Chairman, I want to just again stress
7 to Mr. Sullivan some of the points made earlier about
8 quoting past history.

9 The last time we had this case, you presented
10 a series of briefs of other cases. And in one slide,
11 slide 17, which Chairman Hood and I had a fair amount
12 of debate about that slide.

13 I just want to make sure it's clear that in
14 the future, we should do our best to make sure that we're
15 quoting the right cases. The excitement that goes with
16 it and what it leads to when we misquote cases is pretty
17 challenging.

18 So I'll just try to set you to slide 17 in
19 your presentation last time, and we'll move on. Thank
20 you.

21 MR. SULLIVAN: Okay, I'll take a look at that.

22 So in this case, we have a property that was
23 the exceptional, practical difficulty. First of all,
24 the area variance argument requires that we show
25 essentially four things. There's three prongs. One

1 of the prongs has two parts to it: an exceptional,
2 practical difficulty.

3 The exceptional difficulty for this property,
4 or the exceptional condition, first of all, for this
5 property is that the owner, who's not a developer, by
6 the way, he purchased this investment property not
7 knowing that the number of units, as was advertised when
8 he purchased it, it was not properly approved as three
9 units.

10 I'm a little hamstrung by not being able to
11 talk about how the Board has interpreted the regulations
12 in the past because every case is decided on its own
13 merits. Not on its own; on its own merits.

14 BZA CHAIR HILL: Mr. Sullivan, go ahead and
15 make your argument. You can go ahead and make your
16 argument, and you can bring up the other things that
17 you want to. I'm just saying you don't have to bring
18 up ten of them or whatever it is.

19 MR. SULLIVAN: Yes.

20 BZA CHAIR HILL: Go ahead and make your
21 argument.

22 MR. SULLIVAN: Okay. I'm saying the Board
23 has consistently found that an exceptional condition
24 can be considered when a good-faith purchaser purchases
25 a building not knowing that it's not compliant and then

1 comes back, and his only recourse is to seek a variance
2 or his only recourse to avoid an unnecessarily
3 burdensome activity.

4 So then the practical difficulty, we get to
5 the practical difficulty. Again, Mr. Tam and his wife,
6 Ms. Tran, are not developers. They're employees of an
7 unrelated business. They're parents of young children.

8 And after purchasing the property, Mr. Tam,
9 while navigating COVID and the birth of his children,
10 when he came up for air from that, after purchasing in
11 2019, he discovered that his legal compliance for the
12 property was off and that he didn't have the proper
13 documentation to be three units. And on his own,
14 without enforcement prompting him, he reached out to
15 us and said, how do I make this legal?

16 And so the impact on him now to obtain strict
17 compliance, meaning the practical difficulty, is that
18 he must evict at least two, if not all, of his three
19 tenants. One of those tenants' residency predates Mr.
20 Tam's ownership of the property. And this is assuming
21 that he can even legally do that, if one of these tenants
22 tried to challenge that eviction.

23 He must spend and/or forego tens, if not
24 hundreds, of thousands of dollars to reconfigure the
25 property into two units and to re-rent to new tenants.

1 And he must forego rental revenue for the period of
2 vacancy and for reconstruction, as well as foregoing
3 the rental value of that third unit forever.

4 Those three things have been noticed in the
5 line of cases that we submitted in two additional briefs
6 that are in the file. I'm not saying just go look at
7 these. We provided all that information in submissions
8 in detail.

9 BZA CHAIR HILL: Where is that in the record?

10 MR. SULLIVAN: Well, we filed a brief in
11 response after the first hearing and then after the
12 second hearing. And all those cases are in the record,
13 along with argument and detail on those.

14 And in those cases, those were all specific
15 things noted as practical difficulties. Loss of rent,
16 cost to reconfigure --

17 BZA CHAIR HILL: I got it. Okay.

18 MR. SULLIVAN: -- and eviction of tenants.
19 I'm sorry I don't have the specific page number.

20 BZA CHAIR HILL: No, I've got it. I've got
21 it.

22 MR. SULLIVAN: It's a lot of information.
23 We've never had to submit this much information for one
24 of these cases. So it's a lot there, I know.

25 If the Board had specific questions and wanted

1 us to highlight some, I could certainly come back with
2 even more specific detail. So just to say that those
3 are very clear and distinct categories which the Board
4 has consistently accepted as valid and meaningful
5 factors in establishing the practical difficulty.

6 And again, this is an area variance. Its
7 practical difficulty is a lower standard, and that's
8 according to the Court of Appeals and also according
9 to the regulations themselves.

10 In 2016, this particular relief was
11 specifically called out as an area variance in the
12 regulations. Before that, it was just the Court of
13 Appeals' opinion that made this an area variance.

14 Regarding prong 3(a), there's no substantial
15 detriment to the public good. We have zero opposition.
16 We have unanimous ANC support from 1E.

17 I'll note that 1E did not rubber stamp this.
18 And 1E is in the area where a lot of these have taken
19 place over the last ten years. They're very familiar
20 with this kind of application.

21 When we went to 1E the first time, they looked
22 at it very critically and asked for more evidence of
23 the good-faith purchase by the Applicant. They asked
24 us for an affidavit from the tenant, and we provided
25 that.

1 There was a tenant whose residency predated
2 the purchase of this property by the Applicant. He
3 provided an affidavit, which is in the file, noting that
4 it was already configured as three units when the
5 Applicant purchased it.

6 The ANC unanimous support and the great weight
7 that goes with that hasn't really been mentioned
8 prominently yet in these three hearings now, but I think
9 that support aligns with the rest of our argument.

10 I think they're knowledgeable about this, so
11 it's not just a question of whether or not it's good
12 for the community. They see something that obviously
13 also doesn't substantially impair the intent of the
14 Zoning Regulations.

15 Speaking of which, prong 3(b), this can be
16 granted without substantially impairing the intent,
17 purpose, and integrity of the Zone Plan as embodied in
18 the Zoning Regulations and Map.

19 First, I'd say that who knows better on what
20 might impair the intent, purpose, and integrity of the
21 Zoning Regulations than the Office of Planning. And
22 at the end of their most recent report, they stated in
23 past cases that have been approved, the Board has found
24 that the request for variance from the 900-square-foot
25 rule do not impair the intent of the regulations.

1 Second, the RF zone contemplates more than
2 two units in certain situations, which is starkly
3 different than asking for two units in an R-1 zone, for
4 instance. Third, as I've stated, this is not a use
5 variance.

6 And finally, I think that's it. I would just
7 like to -- in some of these other cases, I think the
8 practical difficulty is way beyond unnecessarily
9 burdensome.

10 VICE CHAIRPERSON BLAKE: Mr. Sullivan?

11 MR. SULLIVAN: Yes, sir.

12 VICE CHAIRPERSON BLAKE: Mr. Sullivan, before
13 you go to that, I just want to be clear on the exceptional
14 condition that you discussed in these, quote, as you
15 have called it, the inherited cases, which is a term
16 you created. I would be curious to know if you felt
17 that the level of buyer sophistication is a factor in
18 interpreting that.

19 MR. SULLIVAN: I don't think it's ever been
20 discussed. And I think cases have been approved that
21 did have what may be called sophisticated buyers in
22 comparison to this particular applicant.

23 But if that was a factor, I would argue that
24 this buyer is not a sophisticated purchaser. They're
25 not in the real estate business. This was a first-time

1 investment purchase that they made in this regard.

2 VICE CHAIRPERSON BLAKE: When people acquire
3 properties, do you anticipate that they rely on --
4 certainly, we've had cases in the past where clearly
5 there's a reliance on something that came from the
6 District or a District official that confirmed something
7 that led someone to believe X, Y, or Z.

8 That's absent in this case, but I'm just trying
9 to make sure I can see if there are any other factors
10 that may have contributed to the -- I think you've
11 indicated that the real estate professionals indicated
12 to them that it was a multi-unit property, different
13 things. I just want to make sure I'm clear as to what
14 other factors I might use to support that.

15 MR. SULLIVAN: Yes. We have submitted
16 information to the case file, including the -- I don't
17 know if it's Zillow or whatever, how this was marketed
18 as three units prior to purchase.

19 VICE CHAIRPERSON BLAKE: But we wouldn't rely
20 on Zillow for our zoning decisions, though, would we?

21 MR. SULLIVAN: No. It's all just evidence
22 and testimony. It's up to the Board to determine what
23 the weight is. I would say that an affidavit from the
24 tenant is more than the Board has seen in these cases
25 in regards to sufficiency of testimony.

1 Typically, the Board hears, okay, I didn't
2 know about this, and I purchased it while it was already
3 three units. And there's information submitted in this
4 case. There's number of meters, things like that.

5 But in this case, we actually have testimony,
6 signed testimony, notarized, from a tenant saying that
7 this was three units, and then I had a new landlord.

8 So showing that this was definitely fully three units
9 before Mr. Tam purchased the property.

10 VICE CHAIRPERSON BLAKE: Thank you.

11 BZA CHAIR HILL: Okay, Mr. Sullivan. Is that
12 it?

13 MR. SULLIVAN: Yes, that's it. Do you have
14 any other questions?

15 BZA CHAIR HILL: Okay, thanks. We're just
16 working through this.

17 Office of Planning, can you please help us
18 out?

19 MR. BRADFORD: Hi. Good afternoon, Chairman
20 Hill and members of the Board. Philip Bradford with
21 the Office of Planning.

22 OP concurs with the Applicant's testimony and
23 analysis of how this case meets the variance test,
24 especially in regard to the exceptional condition. OP
25 submitted additional information regarding the history

1 and intent of the 900 square-foot rule, which is in the
2 record at Exhibit 36.

3 OP does not believe the approval of this
4 application would impair the intent of the Zoning
5 Regulations and we continue to support the application.
6 Thank you, and I'm available for any questions.

7 BZA CHAIR HILL: Okay. Mr. Bradford, did you
8 hear all the stuff that we talked about with the last
9 one?

10 MR. BRADFORD: Yes.

11 BZA CHAIR HILL: Okay. So you all listen?

12 MR. BRADFORD: I watch the hearing from start
13 to finish every Wednesday, even if it's not my case.

14 BZA CHAIR HILL: That's great. So
15 everybody's kind of on the same page over there. So
16 Mr. Lawson is somewhere listening, perhaps?

17 MR. BRADFORD: Perhaps. I know he's busy
18 with other things this week.

19 BZA CHAIR HILL: All right. I just wanted
20 to know if I had to repeat any of the stuff that I said
21 before, and apparently not.

22 Mr. Blake and/or Chairman Hood, do you have
23 any questions of the Office of Planning?

24 Go ahead, Mr. Blake.

25 VICE CHAIRPERSON BLAKE: Mr. Bradford, again,

1 just help me out a little bit with the exceptional
2 condition. Is there anything else that you would add?

3 How would you describe the exceptional condition in
4 this case? I want to be crystal clear on that.

5 MR. BRADFORD: What I think is interesting
6 about this case is that the information in the record
7 kind of does point to the time line that the Applicant's
8 talking about.

9 They got their BZA relief in -- when is that,
10 what year? I don't want to misquote.

11 MR. SULLIVAN: 2014.

12 MR. BRADFORD: 2014. Assuming the
13 permitting and construction time line, the Zillow
14 listing looks like that's what was built after BZA.
15 So they kind of -- they didn't build it to the approvals.

16 I don't get why that wasn't caught during the
17 inspection and C of O, given they have a valid one that
18 was issued after that. If that was caught at that time
19 in 2015, maybe we wouldn't be here today, and they would
20 have had to redo it or come to BZA then.

21 I don't want to speculate about how and why
22 that happened, but given that time line, it really does
23 kind of confirm this owner had nothing to do with it.

24 They inherited this situation.

25 If you're not a seasoned buyer, you think you

1 have a C of O for something that's approved, but maybe
2 you wouldn't catch the nuance of the zoning that wouldn't
3 permit the third unit based on a square-footage basis.

4 So based on that, I think that that's where
5 I'm at in terms of the exceptional situation here.

6 VICE CHAIRPERSON BLAKE: Mr. Bradford, you
7 said you had a C of O. There's a C of O?

8 MR. BRADFORD: There is, yes. It was issued
9 in 2015. They had their final inspection in 2014, and
10 the C of O was in --

11 VICE CHAIRPERSON BLAKE: Is that in the
12 record, the 2015 C of O?

13 MR. BRADFORD: Let me see if that's in the
14 record. I just looked that up, but I'm not sure if it's
15 in the record.

16 VICE CHAIRPERSON BLAKE: And what is it for?

17 BZA CHAIR HILL: You all, keep looking for
18 that. I've got to step away for one minute. I'll be
19 right back.

20 MR. BRADFORD: Give me one moment.

21 VICE CHAIRPERSON BLAKE: Mr. Sullivan, do you
22 have that information?

23 MR. SULLIVAN: I'm looking for it. I'm sure
24 I have it. I don't know if we submitted it or not, but
25 I assume it would have been two units. It's not in the

1 record. We'll find the C of O if we don't have it.

2 VICE CHAIRPERSON BLAKE: It would be a pretty
3 critical piece of information, I would think.

4 MR. SULLIVAN: Well, it would be two units.
5 That's why we need -- it's definitely not three units.
6 We know that.

7 MR. BRADFORD: Yes, it says two-family flat.

8 VICE CHAIRPERSON BLAKE: Okay. So at the
9 time of purchase, the Applicant would have seen that?

10 MR. SULLIVAN: No. If he had seen that, he
11 wouldn't have purchased it. That's the whole point.

12 If he knew that that was something he was
13 supposed to look for, he would have done that and avoided
14 this, which is not -- there's no way that any of this
15 process has been worth it for him to do that. He would
16 have not done it, or he would have tried to get compliance
17 sooner.

18 VICE CHAIRPERSON BLAKE: Mr. Bradford, why
19 are you saying that the time line would make sense for
20 him not to have caught that?

21 MR. BRADFORD: The C of O was issued under
22 the previous owner. If the new owner is buying it,
23 they're probably assuming that that's all fine because
24 it happened several years prior to the purchase in the
25 construction.

1 VICE CHAIRPERSON BLAKE: Okay, thank you.

2 BZA CHAIR HILL: It's okay, Mr. Bradford.

3 I'm also just trying to follow along.

4 You say that something would have been caught
5 when the C of O was put forward, meaning DOB would have
6 seen that there's a third unit, and they would have asked
7 for something then?

8 MR. BRADFORD: In theory, yes. There in the
9 notes, I can't see the whole thing, but it just says:
10 two-family flat, BZA 18754, renovation to
11 non-conforming structure to add third-floor addition.

12 I don't know what they look at. Do they go
13 internal or external? It matches on the exterior, but
14 on the interior, it doesn't match the plans.

15 BZA CHAIR HILL: I'm sorry, Mr. Bradford.
16 What are you looking at?

17 MR. BRADFORD: I'm just looking at Scout,
18 which is what I looked at to get my history and time
19 line on this case straight.

20 BZA CHAIR HILL: Okay. I don't even know if
21 I need it or not, but Mr. Sullivan, can you show me
22 whatever Mr. Bradford's looking at, or do you know how
23 to submit that?

24 MR. SULLIVAN: We could submit it.

25 BZA CHAIR HILL: If you don't think it's

1 necessary, that's all right.

2 MR. SULLIVAN: Well, as all this happened,
3 in 2014, the previous owner got BZA relief for -- I
4 believe it was lot occupancy. He put rear stairs in
5 or something like that, not related to the number of
6 units. And then he did some work, or he would have done
7 some work at that point. And that work should be
8 inspected by DOB.

9 So the assumption, or the inference from that
10 that we can take, is that he probably got it inspected,
11 did the work. And then he went and did some additional
12 work after the inspection, converted it into three
13 units, and then represented it as three units, sold it
14 as three units, leaving my client holding the bag.

15 BZA CHAIR HILL: Okay. And I appreciate that
16 you went through all this with the ANC.

17 In the record with the ANC, it says that they
18 went through all this, and they were satisfied that your
19 client didn't know that he was getting something that
20 he -- he didn't know he was buying into this problem.

21 And so what I'm just trying to follow along
22 with here is, again, what Mr. Bradford is saying. And
23 also then adding a layer of this, which is, if there's
24 somewhere along the way that DOB maybe should have caught
25 this also is what I'm just trying to understand.

1 And Mr. Bradford, you're saying maybe DOB
2 would have seen something and should have gone, hey,
3 you've got three units, not two; you're in the wrong
4 here?

5 MR. BRADFORD: Possibly, if it happened at
6 the same time. There's definitely grey area as to
7 whether they built it not according to plan at that time,
8 or a year or two later, they altered the stairs and the
9 landing to create that additional third unit, and then
10 moved the kitchen and the bathroom.

11 I've looked at the floor plan of the past BZA
12 approval and then what's in the record as the floor plan,
13 and the pictures in the Zillow listing. Things
14 definitely changed. It's within a year of what they're
15 saying that is.

16 Regardless of what happened, it just generally
17 supports the time line and the fact that this Applicant
18 was kind of left with this situation rather than had
19 any part in converting it. Whether it's relevant or
20 not, I just feel like it supports the time line and the
21 overall exceptional situation for the current owner.

22 BZA CHAIR HILL: Well, thanks, Mr. Bradford.
23 And I appreciate -- we only see the Office of Planning
24 for a brief minute or two, and then we read the report.
25 It's helpful to know all the research that you've done

1 to get to this point to give us the report.

2 Okay, who's next? Anybody?

3 MR. SULLIVAN: Mr. Chair and Board, if I might
4 add -- and this might go to the part of the exceptional
5 condition -- the location of the property is really close
6 to Georgia Avenue, an MU zone. There's an apartment
7 building one property away, two properties away.
8 There's also an apartment building in the other
9 direction in the zone, a non-conforming apartment
10 building.

11 So that might also be something that would
12 lead somebody to think, okay, I can do this. And while
13 I would love every person to come to me first before
14 they purchase a property, and we can explain to them
15 everything, clearly, it doesn't happen.

16 I'm sure there's a lot of situations out there
17 where people are holding onto existing three-units,
18 because a lot of times, when people come to me, they
19 say, well, this guy did it, this guy did it, and this
20 guy did it. So why can't I?

21 And I say, well, there might be reasons for
22 that. It might be that they don't have approval for
23 that, but it doesn't come up often that people move
24 forward to correct that.

25 I think it's important and helpful to note

1 that he would have to go through this. If this gets
2 approved, then he has to go get a building permit
3 application. Then they're going to review it, make sure
4 everything is done correctly, and then get a C of O to
5 be in full compliance, which he wants to be. That's
6 what he's trying to get.

7 And there's no way out for him, as in there's
8 no text amendment to be had. There's no alternative.

9 He loses a lot if he can't get out of this. And nobody,
10 in my opinion, is incentivized by an approval on this.

11 There's not a lot of these. There's enough.

12 As we've said, there's a consistent line of
13 interpretation on this in about seven cases over the
14 last ten years.

15 People are not knocking down the doors,
16 cheating, and then coming to the Board saying, oh, give
17 me approval now because I didn't know what I was doing.

18 It's not a strategy to pursue, for sure. It's not in
19 your best interest to do it.

20 It's more, we're here now. How do we get to
21 strict compliance without losing hundreds of thousands
22 of dollars, evicting tenants, and experiencing all the
23 financial somewhat-catastrophic difficulty that comes
24 with that?

25 BZA CHAIR HILL: Okay. Okay, all right.

1 Does anybody have any other -- well, first of all, Mr.
2 Sakinejad, is there anybody here wishing to speak?

3 MR. SAKINEJAD: No.

4 BZA CHAIR HILL: Okay, great. Thanks.

5 All right. Does the Board have any final
6 questions? Again, I don't think I'm going to be able
7 to decide this now. I think we're going to do it until
8 next week again when Chairman Hood is coming back for
9 the other ones, but anybody got any final questions?

10 Go ahead, Chairman Hood.

11 ZC CHAIR HOOD: I'm just going to throw it
12 out to you, Mr. Sullivan, as well. With all this going
13 on, I know you said there's not a major demand for it,
14 but again, applicants and legal counsel in the field
15 can also introduce something to help correct this or
16 make a recommendation to the Office of Planning.

17 I don't know how you do it. I don't know.
18 I can't even give you advice on it, but that's something
19 you may want to think about.

20 MR. SULLIVAN: I think this one's more
21 difficult than the other cases of units in a basement.

22 That one has perhaps a path. What I would recommend
23 would probably put me out of business if I was asked
24 to say too much on the Zoning Regulations.

25 ZC CHAIR HOOD: You know what? When I asked

1 you that just now, I thought about that. So anyway,
2 I'll just leave it at that.

3 MR. SULLIVAN: It's about the Applicant. And
4 this is a DC resident, and he's in a tough situation.
5 Obviously, it's not about my workload.

6 But it's hard for me to see a path to how you
7 fix a 900-foot rule unless you have a special exception
8 for relief from the 900-foot rule based on certain
9 criteria, but I'd leave that to the Office of Planning.

10 ZC CHAIR HOOD: So in other words, if there's
11 no path -- and I'm just saying this out here for the
12 future. So there's no path. This situation, we won't
13 come down and say, look, you did it before, so you're
14 going to go through something similar from here going
15 forward.

16 That's all I want to say. I'll leave that
17 alone. Thank you.

18 BZA CHAIR HILL: Okay. For the Office of
19 Planning, I think a special exception on how to fix this
20 would be wonderful, okay? So that's my two cents.

21 Okay. Mr. Sullivan, I think you've said it
22 all, but do you want to say anything at the end?

23 MR. SULLIVAN: No, I don't have anything else.
24 Thank you, Board members. I appreciate your time and
25 consideration of this.

1 BZA CHAIR HILL: Okay, great. All right, I'm
2 going to just make one comment, which is for the
3 Applicant. I'm sure they're listening.

4 This is a big struggle for the Board. It's
5 not something that we take lightly, and it takes a lot
6 of time to figure out. So thank you all very much.
7 And I'm going to close the hearing and the record.

8 Okay, so a decision. Again, next week, which
9 is 11/29, that sounds great.

10 Okay, do you guys want to -- Madam Secretary,
11 did you hear that? Is that okay?

12 MS. MEHLERT: October 29th.

13 BZA CHAIR HILL: Oh, yes. I wrote down 11
14 on both of them. Okay, right. October 29th, right.

15 Do you all want to take lunch? It's 12:50.

16 I don't know. Do you want to try to do -- how many
17 do we have left? We have two left. Do you want to take
18 a quickish lunch? Do you want to try 30 minutes? Okay.

19 ZC CHAIR HOOD: That's fine.

20 BZA CHAIR HILL: Okay, thank you.

21 (Whereupon, the above-entitled matter went
22 off the record at 12:51 p.m. and resumed at 1:36 p.m.)

23 BZA CHAIR HILL: Okay, great. Madam
24 Secretary, can you call our next case?

25 MS. MEHLERT: Yes. The Board is back from

1 its lunch break, returning to the Hearing Session. Next
2 is Application Number 21326 of Ehsan Jazini.

3 As amended, this is a self-certified
4 application, pursuant to Subtitle X § 901.2, for special
5 exception under Subtitle D § 207.5 to allow the rear
6 wall of a row building to extend farther than ten feet
7 beyond the farthest rear wall of any adjoining principal
8 residential building on any adjacent property, and under
9 Subtitle U § 253.4, to allow an accessory apartment on
10 the second floor of a new accessory structure.

11 This is for a new third floor and three-story
12 rear additions to an existing, two-story, attached,
13 principal dwelling and accessory apartment on the second
14 floor of a new, two-story accessory structure in the
15 rear yard. It's located in the R-3/GT zone at 3546
16 Whitehaven Parkway NW, Square 1296, Lot 384.

17 To review, there are two parties in
18 opposition: Peter and Allison Courtois and Robert
19 Winthrop Huffman. The hearing began on October 1st and
20 was continued with the Board requesting submissions from
21 the Applicant and parties in opposition. Participating
22 are Chairman Hill, Vice Chair Blake, and Chairman Hood.

23 And as a preliminary matter, there is a motion
24 from the Applicant to waive the filing deadline to submit
25 supplemental information in the record in Exhibit 54A.

1 BZA CHAIR HILL: Great. If the Applicant can
2 hear me, if they could please introduce themselves for
3 the record?

4 MR. SULLIVAN: Thank you, Mr. Chairman and
5 Board members. This is Marty Sullivan, on behalf of
6 the Applicant.

7 BZA CHAIR HILL: Great, thank you.

8 Unless the Board has any issues, I'm going
9 to go ahead and allow the information into the record
10 because I want to see where we are with everything.
11 And does my Board have any issues?

12 Okay. Hearing none, go ahead, Madam
13 Secretary. I know it's in the record here. I'm just
14 kind of noting what it is.

15 Let's see. Mr. Courtois, could you introduce
16 yourself for the record?

17 MR. COURTOIS: I'm Peter Courtois, and I'm
18 a neighbor at 3548 Whitehaven Parkway in opposition.

19 BZA CHAIR HILL: Okay, great. Mr. Huffman,
20 could you introduce yourself for the record?

21 MR. HUFFMAN: Win Huffman. I am the
22 adjoining neighbor in 3544 Whitehaven Parkway.

23 BZA CHAIR HILL: Great, thank you. One
24 second.

25 Okay, all right. I know that you all know

1 this is a continued hearing based on some of the
2 discussions and information that the Board had at the
3 time. So, I'm going to go around the table and see what
4 has happened or what's new since the last time, what
5 submissions there are.

6 Mr. Sullivan, could you please bring me up
7 to date?

8 MR. SULLIVAN: Yes. Thank you, Mr. Chairman.
9 So, the request for the Applicant was to file something
10 showing a location of a skylight and a sight line to
11 that skylight. And we have filed that. I believe it
12 was Exhibit 49, 49A, and 49B.

13 BZA CHAIR HILL: Yep. Okay, I remember that
14 request. Before I turn to questions, that was the only
15 request, wasn't it, Mr. Sullivan? I can't remember.

16 MR. SULLIVAN: Yes.

17 BZA CHAIR HILL: Okay. Mr. Courtois, were
18 you also asked to submit something, or could you bring
19 me up to date as to what happened on your side since
20 we last met?

21 MR. COURTOIS: Yes. We had the same request
22 to provide information about privacy and also any other
23 comments on some of the new plans that were introduced
24 is our understanding of the request. So, we submitted
25 information on the 8th, I believe, was the first date

1 of the request for information and then final responses
2 on the 15th. And we've done that.

3 BZA CHAIR HILL: Okay, great. Mr. Huffman,
4 could you tell me what we asked of you, if anything?

5 MR. HUFFMAN: I was also to provide photos
6 highlighting the privacy issues, including the
7 skylight, which I submitted on October 8th. The file
8 sizes were too large or not in PDFs, so I converted them.
9 And it is into the record, I think, either a day or
10 two after.

11 BZA CHAIR HILL: Okay, great. Okay. I don't
12 really -- Mr. Blake and Chairman Hood, you know, again,
13 what had happened is we had a pretty full hearing on
14 the merits. And then, as I recall, there was some issues
15 and questions concerning the skylight and privacy
16 issues.

17 And then, I think, Mr. Huffman, I thought that
18 you, right, you weren't sure about some of the plans,
19 I thought, or something. And so, we wanted to give you
20 more time to take a look at them. I think that was also
21 what I remember the discussion being about, correct?

22 MR. HUFFMAN: Correct. The follow-up email
23 I received was specifically for privacy and skylights,
24 so I didn't -- I thought we were narrowly focused on
25 that.

1 I'd love to cover some of the inaccuracies
2 in the plans, if you guys have time, so. And, very
3 prepared to do that.

4 BZA CHAIR HILL: Okay, all right. Mr. Blake,
5 do you have any questions before I get to maybe Mr.
6 Huffman's comments?

7 VICE CHAIRPERSON BLAKE: Thank you very much
8 for the pictures from all the different angles on the
9 skylight issues and on the privacy issues.

10 My first objective was to determine whether
11 the skylights were at risk or not, which is a comment
12 that Mr. Sullivan had made earlier in the hearing. The
13 skylights are not at risk. Therefore, they are not
14 excluded from our evaluation.

15 That said, the other issue that came up for
16 me was privacy. I had had a personal experience that
17 caused me to be relatively sensitive to privacy issues
18 with regard to voyeurs. So to some extent, I think that
19 I appreciate the information that was provided. It
20 helped me get some better insights as to the privacy
21 issues in terms of the skylight, as well as, the rear.

22 And if there are any additional comments, it
23 would be helpful. Thank you.

24 BZA CHAIR HILL: Okay, thanks.

25 Chairman Hood, do you have any questions right

1 now?

2 ZC CHAIR HOOD: I don't have any questions
3 or comments, but I too want to thank everyone for
4 submitting the additional information that we had asked
5 for and the pictures, as well. Thank you.

6 BZA CHAIR HILL: Okay, great. Thank you.

7 Let's see. Mr. Huffman, you said you think
8 there's some discrepancies between the plans?

9 MR. HUFFMAN: Not between the plans. It's
10 the plans and mainly where the balcony is shown on the
11 chart. It's actually much farther down. It shows the
12 balcony stopping before the grade goes down.

13 The grade shown on the plan is inaccurate.
14 It kind of has a sloping downgrade, and the balcony is
15 back before the grade slopes. The reality of that, when
16 it's 23 feet out, it's much farther. And it's almost
17 -- I mean, I'm looking at it right now. It's down after
18 the grade has already completed, finished.

19 So, the idea that there will be no in-fill
20 or retaining wall now just doesn't make any sense. Even
21 the farthest-out first-floor balcony, by design, will
22 have to be at least towering over us by 20 feet.

23 BZA CHAIR HILL: Okay. And Mr. Huffman, I
24 appreciate that you're looking at the plans. I mean,
25 you're not an architect, correct?

1 MR. HUFFMAN: Correct.

2 BZA CHAIR HILL: Okay. And neither are you,
3 Mr. Sullivan. However, if you -- I don't know if I need
4 your architect to try to explain, or if you guys have
5 kind of talked. Like, I just want to make sure there's
6 no discrepancy.

7 And so first, maybe I'll see, Mr. Huffman,
8 do you know which exhibit you were looking at to try
9 to make your claim?

10 MR. HUFFMAN: Yes, I apologize. Give me one
11 second. It's Exhibit 66, Slide 3 -- excuse me -- Slide
12 4.

13 BZA CHAIR HILL: Give me a second.
14 Sixty-six?

15 MR. HUFFMAN: Sure. It is -- oh, excuse me,
16 I apologize. It is 52A and -- 52A, yep.

17 BZA CHAIR HILL: Okay, so, I'm sorry. I see
18 a picture in Exhibit 52A. Is that the one?

19 MR. HUFFMAN: I have 52A as Elevations with
20 Proposed Screening.

21 BZA CHAIR HILL: Oh okay, I'm sorry. I
22 clicked the wrong one.

23 MR. HUFFMAN: Sure.

24 BZA CHAIR HILL: Okay, Elevations with
25 Proposed Screening. Okay.

1 Mr. Sullivan, your architect's not with you,
2 are they?

3 MR. SULLIVAN: Mr. Gordon?

4 BZA CHAIR HILL: Great. Mr. Gordon, could
5 you introduce yourself for the record, please?

6 Mr. Sakinejad, could you bring up -- what's
7 Mr. Gordon's first name, Mr. Sullivan?

8 MR. SULLIVAN: George.

9 BZA CHAIR HILL: Okay, great. Mr. Gordon,
10 can you hear me?

11 MR. GORDON: I can hear.

12 BZA CHAIR HILL: Great. Could you introduce
13 yourself for the record, please?

14 MR. GORDON: Yes. I'm George Gordon,
15 architect for the project.

16 BZA CHAIR HILL: Okay, great. Mr. Sakinejad,
17 could you please pull up Exhibit 52A?

18 MR. SAKINEJAD: Up in just a second.

19 BZA CHAIR HILL: Yep.

20 (Pause.)

21 BZA CHAIR HILL: That's 53A. That's the one
22 that I clicked on, I think. You're one up, Mr.
23 Sakinejad.

24 MR. HUFFMAN: Chairman, while we actually
25 have that slide up, do you mind -- that actually might

1 also highlight in a concise manner what I'm talking
2 about.

3 BZA CHAIR HILL: Okay. Do you want to pull
4 that up real quick? Okay, great.

5 MR. HUFFMAN: So, this is -- sorry, go ahead.

6 BZA CHAIR HILL: No, go ahead. Just explain
7 your comment.

8 MR. HUFFMAN: This is just a rendering,
9 obviously. We took the house that was grandfathered-in
10 and just put it overlapped next to mine and moved it
11 out, which is around where the balconies will be
12 extending. It'll actually be a little worse.

13 So, if you see the top of those stairs, of
14 the first flight of stairs -- excuse me, the second,
15 that's where the grade actually begins. On the
16 Applicant's property, it's just a steep slope. So,
17 they're proposing no retaining walls and just a wood
18 fence, but by design, that's just not making sense.

19 On their actual plans, if we switch back to
20 the designs, if you notice that, the first patio will
21 in reality be much farther out than that if you do the
22 distance. It does not start where the grade begins.

23 It ends after the grade is finished.

24 In term -- in summation is another explanation
25 of, you know, it's so far out that the Applicant merely

1 has to turn his head, and he sees directly into almost
2 every aspect of my home and especially Mr. Courtois',
3 directly into his bedroom.

4 BZA CHAIR HILL: So Mr. Gordon, can you hear
5 me?

6 MR. GORDON: Yes.

7 BZA CHAIR HILL: I'm just having a little --
8 I just wanted to be able to visualize what Mr. Huffman
9 thinks he's seeing. Do you understand what he thinks
10 he's seeing?

11 MR. GORDON: Not exactly. I don't know.
12 Honestly, I don't know. The relationships to grade,
13 certainly, at the front of the house are accurate.

14 I mean, I'm wondering if it's just a question
15 on where the site section is cut, whether we're talking
16 about the relationship of the first-floor level to the
17 rear yard.

18 You know, the slope of the site is
19 inconsistent. From just a graphic point of view, it
20 depends on where you're going to cut that section.

21 MR. HUFFMAN: Mr. Gordon, so, the first-floor
22 level, that's flat. And it's shown as just kind of a
23 meandering slope. On your diagram, when you get to the
24 last post of the first-floor deck, that's actually where
25 the grade begins. Then there's a steep drop-off.

1 And as you can see in the pictures I submitted,
2 we have a, kind of, two-tiered with a retaining wall,
3 so it's, kind of, almost two plots. The Applicant's
4 property, it's lawn right now with that grade going all
5 the way down. The plan design has it stopping before
6 the grade does that steep drop, but the reality is it's
7 substantially farther than that.

8 MR. COURTOIS: Mr. Hill, this is Pete
9 Courtois. If you go on that exhibit that's up now and
10 show the other view that shows my property, I think I
11 can help add to the discussion.

12 BZA CHAIR HILL: It's the next one down.
13 Okay.

14 MR. COURTOIS: That one right there. If you
15 look at the grade from my side of the property, what's
16 not accurate is the retaining wall on my property is
17 four and a half feet high from the grade.

18 So, if you take the space that's between my
19 building -- the home itself and the retaining wall to
20 the right, it is completely level. And it's only four
21 feet down from the top of that, four and a half feet
22 down from the top of that retaining wall, rather than,
23 you know, I can't see the scale exactly on this image.

24 It doesn't have any slope there. It is
25 completely straight. And that flat, level area goes

1 all the way across into the Applicant's area at that
2 same point, and then from there slopes down
3 considerably, as Win is discussing. And so it's just
4 not accurate.

5 And I don't know where these grade lines come
6 from, or these elevations of the ground because
7 obviously, at the building, they touch each other. So,
8 there's no grade there by the building except below the
9 basement, so it would be level.

10 Like I said, in that space where the porches
11 are shown, it is absolutely level on my property and
12 on the Applicant's property. And it slopes down
13 significantly from there.

14 MR. HUFFMAN: And I do, again, want to just
15 highlight, you know, the crux of what I'm saying is that
16 it's actually much farther out. And I think the photos
17 that I submitted make it relatively clear that the
18 farther out the decks go, the deeper they can see inside
19 into our houses.

20 MR. COURTOIS: Absolutely.

21 BZA CHAIR HILL: Okay. All right, let me see.
22 Mr. Gordon?

23 MR. GORDON: Yes.

24 BZA CHAIR HILL: I don't know what I'm going
25 to do with this just yet, but do you understand where

1 they may be having a discrepancy in thought?

2 I'm just trying to understand. I'm not having
3 an argument. Do you think you know what they're talking
4 about?

5 MR. GORDON: As I understand it, I think
6 they're talking about the way that a slope of the
7 property is shown in these drawing sections.

8 I mean, I can tell you that the dimension from
9 the face of the building or the property lines to where
10 those decks are, those dimensions are accurate. The
11 comparison with how far the deck extends toward the rear
12 yard is really based on where the property lines are
13 located, not on how the slope of the land is represented.

14 BZA CHAIR HILL: Okay. Okay, I understand
15 that statement. All right.

16 MR. HUFFMAN: Mr. Gordon -- sorry. If I could
17 ask Mr. Gordon a question?

18 BZA CHAIR HILL: Yeah, sure. Go ahead.

19 MR. HUFFMAN: Based on the measurements in
20 the diagram, the front porch will be much farther out
21 on Pete's, where you can see Pete's retaining wall.
22 If you're looking at my diagram, it's much farther down
23 the fence, almost halfway down the slope line.

24 So, you know, you could adjust the plans and
25 fix them. I understand that. I'm just trying to point

1 out that this doesn't particularly show the scale and
2 depth accurately of those deck projects and then also
3 just the actual impact that it will have on our privacy,
4 which I tried to do with the photos.

5 That's where it actually will end by
6 measurement, versus this is a different -- that's not
7 accurate.

8 BZA CHAIR HILL: Okay, all right. That's all
9 right. I'm just trying to think this through, Mr.
10 Sullivan.

11 So, the plans are what the plans are in terms
12 of what Mr. Gordon has provided us. And so, that has
13 where the end of their property line is and where they
14 say the deck is going to go out to, and that is what
15 the architect has said.

16 And what you're saying, Mr. Huffman, is you
17 think it goes out further than that?

18 MR. HUFFMAN: If you take a tape measure and
19 you measure out those exact dimensions, it is --
20 especially on, you know, I'll speak to my property, it
21 is not where the grade begins to lower. It is almost
22 half -- it's about halfway between that fence on the
23 slope.

24 BZA CHAIR HILL: Okay. All right.

25 MR. HUFFMAN: It's just not shown to scale.

1 It's actually much farther out. I'm not saying the
2 measurement, you know, the dimensions are wrong, but
3 the way that it's displayed on this diagram is not
4 accurate.

5 BZA CHAIR HILL: Mr. Huffman, I can't believe
6 your statement, meaning that this is what an architect
7 has put together for us to look at and review.

8 So, I can see how maybe it looks different
9 to you as opposed to what you think is where the grade
10 is, and I don't know. I'm just kind of -- I'm thinking
11 this through for the first time in this way, right.

12 I mean, an architect has provided me with some
13 drawings. And that's what their job is, to know where
14 the property line is and what's going to happen. This
15 is what they're going to have to build if this were
16 approved. So, I just need a minute to kind of think
17 through this a little bit and also let my Board think
18 through this.

19 MR. HUFFMAN: I apologize to interrupt. Ms.
20 Juppenlantz did address this on our October 1st. She
21 was a witness, and she provided some slides that did
22 show this, so.

23 BZA CHAIR HILL: Okay. All right. I'm
24 sorry. Mike, can you just drop the slide deck? Thanks.

25 Okay. Go ahead, Mr. Blake.

1 VICE CHAIRPERSON BLAKE: Mr. Huffman, what
2 would you think the implications are of your concern
3 with the slope? The fact -- if it is slightly greater
4 than you thought, what exactly would that do to hurt
5 you? How could that be adjusted -- addressed?

6 MR. HUFFMAN: There are a few points with
7 that, mainly that those will be 20-foot-high wood
8 planks, you know, that are extending pretty far out with
9 no -- they've stated no ground leveling and no retaining
10 wall.

11 You know, based on the measurements in that
12 diagram, that's not going to make sense. That's a
13 different structure than they're showing here.

14 VICE CHAIRPERSON BLAKE: So your concern is
15 the structural integrity; is that what you're saying?

16 MR. HUFFMAN: No, sorry. My main concern is
17 the distance that it's going out. If you look at the
18 pictures, you realize every foot that they're going
19 distance out, that they're asking for a special
20 exception for, gives them substantially more views
21 directly into all of our homes.

22 So, if this was accurate and that, you know,
23 patio stopped, say, at the end of my patio, that's
24 different. But it is extending very far out into the
25 backyard, which, again, just gives them full view of

1 --

2 VICE CHAIRPERSON BLAKE: So a quick question.
3 When you talk about direct views into your home, would
4 that be a situation where you would go to the edge and
5 wrench your neck around and look into your place? Or
6 would it be some casual way you would just have to look
7 into your -- how would --

8 MR. HUFFMAN: Based on this design and in
9 general, they would just -- if you were leaning your
10 elbows on the left side and looked to your left, you
11 would have full views.

12 VICE CHAIRPERSON BLAKE: And how far would
13 your home be from that viewpoint?

14 MR. HUFFMAN: It's 39 feet.

15 VICE CHAIRPERSON BLAKE: It would be 39 feet
16 from that viewpoint?

17 MR. HUFFMAN: Yes.

18 MR. COURTOIS: That's the furthest out?

19 MR. HUFFMAN: No, I'm sorry. Pete, is that
20 --

21 MR. COURTOIS: It's in range of --

22 MR. HUFFMAN: Actually, no, yeah. I'm sorry.
23 It is.

24 MR. COURTOIS: Well, at the very end of the
25 deck, you're 39 feet out. When you are at the -- these

1 decks are, you know, what? I think they're 16 feet wide.
2 And so, depending on what level you're on and where
3 you look, you know, you're 12 feet away from looking
4 into my bedroom, for example.

5 VICE CHAIRPERSON BLAKE: Okay. So, the gap
6 would be about 12 feet at minimum and 40 feet otherwise?

7 MR. HUFFMAN: Correct.

8 MR. COURTOIS: Numbers in that range. I'd
9 have to look at them again.

10 Clearly, the pictures that I showed of the
11 view inside my bedroom, I was standing sort of about
12 where the beginning of the deck was. It's not there
13 right now, so, you know, within a foot or two. I was
14 standing where the deck would begin, and you could look
15 straight in.

16 And then if you're putting a third deck up
17 -- a third floor on top of it, you would have more of
18 a view. It's another foot in where you could
19 potentially see even more into there because you also
20 have a deck up there.

21 So it's just a matter of turning around, not,
22 hey, I'm going to try to sneak in, like peeping Tom or
23 something. You just turn around.

24 VICE CHAIRPERSON BLAKE: I think I have a
25 rough understanding of what you're saying. I just think

1 in a row house environment, you are pretty close, period.
2 Even in our residential zones, you're going to be at
3 eight, you know, you're not that significantly spaced
4 between properties, so there tends to be an element of
5 this.

6 And I know in row houses, typically, if you
7 don't have windows in the side yards where you're facing
8 back, we don't anticipate necessarily that you're
9 looking around to see in people's homes.

10 Okay, thank you very much.

11 BZA CHAIR HILL: Okay, thank you.

12 All right, let me see. Mr. Sullivan -- or
13 actually, the architect's here, Gordon.

14 You know, like, so you guys, that deck, the
15 roof deck, right, that is a matter of right, meaning
16 -- you're here for the extension, right. So, does that
17 roof deck go all the way out to the end? Right? And
18 if -- I'm just asking a hypothetical. I'm asking a
19 question.

20 If you guys took the roof deck, meaning just
21 a fence, if you have the fence out to whatever the matter
22 of right thing is, would you still be able to look into
23 that skylight?

24 MR. SULLIVAN: I'm sorry. From what point
25 are you saying?

1 BZA CHAIR HILL: I'm trying to look at -- and
2 I wish I could come up with a diagram here. Hold on.

3 MR. SULLIVAN: There's no way I could see
4 anybody looking into that skylight down. You'd need
5 a periscope view. You'd be going back at least 30 feet.
6 And then you'd have to make a right turn and look down
7 into a box that's about three feet before you get to
8 open up into the space.

9 All the addition is matter of right. The top
10 story addition's completely a matter of right.

11 BZA CHAIR HILL: I know you've mentioned the
12 top story addition is matter of right, but the
13 extension's not matter of right. So, it would only go
14 out so far on the third floor, and that's what I'm trying
15 to just quickly understand.

16 And I understand you're saying that it's an
17 incredible difficulty to do what this person is
18 concerned about. I just was trying to understand. I
19 can figure it out now, I guess, myself.

20 MR. SULLIVAN: Yeah. You'd be on a deck on
21 the second -- you'd be on the third story, what becomes
22 a balcony at that point. It's the roof of the second
23 story. And you'd be even with the skylight and about
24 30-some feet away from it.

25 BZA CHAIR HILL: Okay, I've got it. Okay.

1 I've got my answer on that one. Okay.

2 MR. HUFFMAN: Mr. Sullivan, did you say the
3 second or third story deck is -- yeah, okay. All right,
4 I've gotcha.

5 BZA CHAIR HILL: Okay, let's see. Does the
6 Board have any other questions of anybody? Okay. So,
7 you guys, I mean --

8 MR. SULLIVAN: I'd like to respond a little
9 bit that I've been holding.

10 BZA CHAIR HILL: That's right. I forgot
11 about the rebuttal. Okay, give me a second. Give me
12 one second. I forgot about the rebuttal.

13 Before I do that, the Office of Planning, you
14 guys don't have anything to add, do you, from the last
15 time?

16 MR. MITCHUM: Hi. This is Joshua Mitchum
17 with the Office of Planning. We have no new
18 information.

19 BZA CHAIR HILL: Okay, thank you.

20 Mr. Sullivan, before you give your rebuttal
21 -- Mr. Blake, you have your hand up?

22 VICE CHAIRPERSON BLAKE: It's for the parties
23 in opposition. The Applicant has proposed a couple of
24 things to mitigate some of the privacy issues,
25 specifically some screening. Part of that was

1 retracted because of an agreement they made otherwise.

2 Had you reviewed the project with the
3 screening in place, and how does that address some of
4 the issues you have?

5 Mr. Huffman, you can go first.

6 MR. HUFFMAN: There's a lot of ways to skin
7 a cat, and this is just, you know, another way to still
8 have an expansive deck that's intruding on privacy.
9 And, you know, lattice, you can put lattice up, that's
10 then going to have an effect on the light and air.

11 It's just part of an overall broader point
12 of, this is a very invasive and massive project that
13 they're asking for the special exceptions. And I'm not
14 seeing the reasons why they should be granted.

15 VICE CHAIRPERSON BLAKE: Well, no. Our goal
16 is to -- we'll determine that, but we need to figure
17 out if they can mitigate some of the potentially adverse
18 effects, right.

19 So, I'm asking you, is the screening they put
20 up -- and there are many ways to skin a cat, as you say.

21 Our goal is not to impose the most expensive way to
22 skin a cat. If we can do it in an inexpensive way that
23 fits the bill, we prefer to do that, right.

24 So, back to what we said about Mister -- is
25 there, the screening that they proposed did address some

1 of the issues, particularly from the third-floor
2 balcony, I believe; is that right?

3 MR. COURTOIS: I'd like to comment first.
4 Win, you can add if you -- if I don't address everything.

5 I think it just changes the problem. We've
6 raised concerns from the beginning, one, with air and
7 light and that impact on us, two, with significant
8 privacy issues, and the whole, you know, use of the
9 property and the character of the neighborhood. Those
10 have been our concerns from all along.

11 If they add some screening, they can contend
12 that it doesn't have the same impact on our privacy,
13 but then it makes the air and light issue even more
14 severe. So it's, again, skinning a cat a different way.

15 It doesn't address our overall concerns with air and
16 light, privacy and enjoyment, use of our property. It
17 changes the entire character of it.

18 And I'm not even addressing whether, you know,
19 it looks cheap. We haven't seen enough about the actual
20 construction of it, so, you know. Is it going to be
21 tacky just to try to address part of a concern that
22 doesn't fully address it? It gets more involved than
23 just saying, oh, that solves everything. It doesn't
24 solve, really, anything.

25 VICE CHAIRPERSON BLAKE: Okay, thank you.

1 BZA CHAIR HILL: Gentlemen, the way this now
2 works, Mr. Sullivan has an opportunity to rebut the
3 things that were said. And then you guys can have any
4 questions you might have concerning his rebuttal, but
5 only his rebuttal. And then we're going to have
6 conclusions from everyone, and the Applicant gets the
7 last conclusion.

8 And so Mr. Sullivan, you had some rebuttal?

9 MR. SULLIVAN: Just a little bit, yes. I have
10 a question for Mr. Gordon.

11 Mr. Gordon, is the representation of the
12 proposed addition in relationship to the existing
13 buildings adjacent to it accurate, regardless of the
14 grade below it?

15 MR. GORDON: Yes. We took all of that off
16 of the survey that was performed locating the adjacent
17 buildings and the property lines, as you would usually
18 expect from a land survey.

19 MR. SULLIVAN: The other thing I'll note is
20 we had some grading planned and retaining walls planned
21 in previous plans, but that was taken out at the request
22 of Ms. Collin, the property owner to the east at 3544.

23 Regarding the screen, some clarification.
24 We are proposing, if the Board sees that as mitigative,
25 a lattice-like screen which lets light through but

1 disrupts views on the first half of the balconies on
2 the second and third story so that the Applicant still
3 has a view out.

4 When we asked Ms. Collin, the property owner
5 at 3544, Mr. Huffman's landlord, they said they don't
6 want that screen. So, that was the reason for the late
7 submission. We originally proposed screens on both
8 sides, and then we pulled back the east side. So we're
9 proposing a screen only on the west elevation and not
10 on the east.

11 I'll note, there was a rendering put up by
12 Mr. Huffman, which I think was not representative of
13 the proposal. It has us much higher than the large
14 addition two doors down. And it has our accessory
15 building larger than that accessory building, which is
16 huge. So, I don't think that that was accurate. And
17 I think that's all I have.

18 Regarding privacy, privacy, you know, it's
19 relative in an urban setting. It's not possible to have
20 100 percent privacy between properties that are so close
21 together.

22 We have pointed out previously that the
23 current situation with privacy is, we have Mr. Courtois
24 looking back at us from his addition that goes well past
25 the current rear wall of the Applicant's house.

1 And then it's almost, like, the same space
2 with Mr. Huffman when you look to the left of the existing
3 porch and look into his property. So, the relative
4 privacy is significantly improved from the existing
5 situation, in our opinion, in that sense.

6 And no views into any skylights, of course.

7 The Applicant's not interested in peering into a
8 neighbor's property. If they were, they'd find a way,
9 I'm sure. Anybody could in an urban setting.

10 So, the purpose of this is to not have proposed
11 addition, the relief part of the proposed addition,
12 changing the privacy situation in such a way that it
13 makes it, say, impossible not to be looking into that
14 neighbor's property, I would say.

15 BZA CHAIR HILL: Mr. Sullivan?

16 MR. SULLIVAN: That's all I have. Thank you.
17 Yes?

18 BZA CHAIR HILL: No, that's okay. I just
19 wanted to make sure we didn't get to conclusions with
20 whatever your rebuttal was.

21 Go ahead, Mr. Blake.

22 VICE CHAIRPERSON BLAKE: Which exhibit, just,
23 I want to compare the two, has the screening on both
24 sides and which one has it -- would give me an example
25 of without?

1 MR. SULLIVAN: So one exhibit has -- we
2 submitted a screen, one elevation at, I think it was
3 42 -- 52A has both sides. It has the screening on both
4 elevations.

5 And then the elevation that doesn't show the
6 screening would be -- well, I guess it was the most recent
7 elevation before the hearing, 39C.

8 VICE CHAIRPERSON BLAKE: So you're saying 52A
9 has both elevations with screening?

10 MR. SULLIVAN: Yes.

11 VICE CHAIRPERSON BLAKE: But 39C does not have
12 the screening?

13 MR. SULLIVAN: It doesn't have either.

14 VICE CHAIRPERSON BLAKE: Because you removed
15 it?

16 MR. SULLIVAN: No, I'm sorry. There's
17 nothing in the file -- and we would update it or could
18 update it. I don't think we have an elevation.

19 So what we're saying is, the west elevation
20 that we've submitted -- the east elevation that we've
21 submitted will not have a privacy screening. So, that's
22 in there at 39C. The west elevation we're proposing
23 screening is 52A.

24 VICE CHAIRPERSON BLAKE: Okay. Which -- 52A
25 has -- okay, which one has screening on both elevations?

1 There must have been -- you put out an earlier one that
2 had screening --

3 MR. SULLIVAN: That's 52A.

4 VICE CHAIRPERSON BLAKE: Fifty-two is the
5 complete?

6 MR. SULLIVAN: Yeah. And actually, I don't
7 think we have an elevation showing only one screen.
8 I'm sorry. No, we do. I'm sorry. So, there's two
9 drawings within 52A.

10 VICE CHAIRPERSON BLAKE: Can you pull them
11 up? Is that possible?

12 BZA CHAIR HILL: Sure, go ahead.

13 Mr. Sakinejad, could you just pull up 52A,
14 please?

15 MR. SULLIVAN: And while he's pulling them
16 up, because there are two drawings, this is the east
17 elevation. So, what we're saying is, you can disregard
18 this elevation and use the Exhibit 39 elevation that
19 was already in the file.

20 And as to the west elevation that's in this
21 same exhibit, that's what we're proposing. I'd be happy
22 to clarify it with a cover letter in follow-up or
23 separate filings.

24 Our correction to this was just to send a
25 letter saying that the owner of the property at 3544

1 was not in favor of the screening provided on the east
2 elevation and that we were withdrawing that proposal
3 just as to the east elevation.

4 VICE CHAIRPERSON BLAKE: Okay, thank you.

5 BZA CHAIR HILL: All right. Mr. Sakinejad,
6 if you could drop that?

7 ZC CHAIR HOOD: I have a quick question.

8 BZA CHAIR HILL: Go ahead, Mr. Hood.

9 ZC CHAIR HOOD: I want to ask Mr. Huffman and
10 Mr. Courtois, if -- the way situations are right now,
11 and I know we're talking hypothetically here, can they
12 see in your place right now, as it is right now?

13 MR. HUFFMAN: No.

14 ZC CHAIR HOOD: So they can't see in your place
15 right now? If I go stand back there, I can't stand there
16 and just look in your place?

17 MR. HUFFMAN: Correct.

18 ZC CHAIR HOOD: Okay. Mr. Courtois, is it
19 the same way --

20 (Simultaneous speaking.)

21 MR. HUFFMAN: My bad.

22 BZA CHAIR HILL: That's all right. I haven't
23 had that happen since the very beginning of COVID.

24 ZC CHAIR HOOD: All right, thank you. Maybe
25 I shouldn't have asked that question. Thank you.

1 BZA CHAIR HILL: Okay. Mr. Sullivan?

2 MR. SULLIVAN: Yeah. We've submitted photos
3 to the file that --

4 BZA CHAIR HILL: No, no.

5 MR. SULLIVAN: -- shows the privacy
6 situation. Go ahead, sorry.

7 BZA CHAIR HILL: Why did the person not want
8 the screening? You don't know?

9 MR. SULLIVAN: Yeah, I have it in an email
10 from Ms. Ferster. And I can find it in a second. I'll
11 find it in one second. It was just the visual. They
12 didn't want to look at the screen.

13 BZA CHAIR HILL: All right, she didn't want
14 it. Okay, all right.

15 Mr. Huffman, do you have any questions for
16 anyone based on the rebuttal?

17 MR. HUFFMAN: I do. Mr. Sullivan stated that
18 our, you know, the granting of the special exceptions
19 will enhance our privacy from what we have now. I've
20 submitted photos specifically for you guys to be able
21 to see that that is demonstrably false. The view that
22 --

23 BZA CHAIR HILL: Mr. Huffman, I'm sorry. I'm
24 trying to understand your question. You'll get an
25 opportunity to do a conclusion.

1 There's not really a whole Lot of rebuttal
2 that Mr. Sullivan kind of threw out, but did you have
3 any questions concerning his rebuttal?

4 MR. HUFFMAN: Yes, in the sense that, you
5 know, I'm glad that Ms. Collin came to an agreement in
6 the first place and doesn't want privacy screening.
7 None of that was communicated with me.

8 So, you know, I have a two-year additional
9 lease here. I am the affected party. And I mean this
10 in the nicest way. Ms. Collin's a fantastic woman, but
11 I live here. She lives in Seattle. So, for all this
12 -- okay.

13 BZA CHAIR HILL: That's all right. You don't
14 have a question in there?

15 MR. HUFFMAN: No, just a rant.

16 BZA CHAIR HILL: Okay, that's all right.
17 Okay. We still might -- let me think.

18 Anyway, the Board can do it. The Board has
19 the ability to ask for things that they think might help.

20 However, what I'm not clear on is whether the privacy
21 screening would now make Ms. Collins -- was it Collins
22 -- withdraw, I mean, come back as a party in opposition.

23 Mr. Sullivan, she withdrew her party status,
24 right -- I'm sorry, she withdrew her opposition? And
25 you don't know if that screening --

1 MR. SULLIVAN: She did, subject to plans that
2 we agreed on that did not include screening. So, I
3 reached out to her counsel because we would need her
4 okay to change that agreement.

5 BZA CHAIR HILL: Right, I understand.

6 Mr. Huffman, would you like the screening?

7 MR. HUFFMAN: I would actually like the
8 special exception to be denied.

9 BZA CHAIR HILL: No. That much I got, Mr.
10 Huffman. That's the whole reason why you're here.
11 Would you like the screening?

12 MR. HUFFMAN: No.

13 BZA CHAIR HILL: Okay. All right, there you
14 go.

15 Okay. Mr. Courtois, do you have any
16 questions, and I apologize if I'm butchering the name,
17 questions about the rebuttal?

18 MR. COURTOIS: You got it right that time.
19 Thank you. I don't have any questions.

20 If you're going to ask me the same. If you're
21 going to ask me the question about the screening, it's
22 an unsettled answer now. I think screening comes into
23 play once we know what's going to happen with the special
24 exception because --

25 BZA CHAIR HILL: If this were approved -- I

1 don't know what's going to happen, you guys. I haven't
2 done the debate yet. Would you want the screening?

3 MR. COURTOIS: We would have to have some time
4 probably to talk with the architect and figure out what
5 they're really going to do with the screening.

6 I'm trying to balance two problems. Privacy,
7 for one, and air and light because there's a significant
8 air and light impact on us. So which one's worse, I
9 can't answer that fully.

10 BZA CHAIR HILL: Okay.

11 MR. COURTOIS: It doesn't solve it.

12 BZA CHAIR HILL: Okay. Mr. Huffman?

13 MR. HUFFMAN: Sorry, a quick question for Mr.
14 Gordon or Mr. Sullivan. Did I hear you say that there
15 will be no screening on the first-floor uncovered
16 balcony/porch?

17 MR. SULLIVAN: The plans are as submitted,
18 yes.

19 BZA CHAIR HILL: I'm saying she didn't want
20 any screening. So there's no screening on the front
21 porch.

22 MR. SULLIVAN: She didn't want any screening,
23 right.

24 MR. HUFFMAN: I believe Mr. Sullivan said that
25 regardless, the screening would only be on the second

1 and third-floor porches. Is that --

2 MR. SULLIVAN: The second and third stories.

3 MR. HUFFMAN: Right. So, that first-floor
4 porch will have no screen. They're saying will have
5 no screen. Which, if you look at --

6 MR. SULLIVAN: Correct.

7 MR. HUFFMAN: -- you know, my photo from 53B,
8 that's the view that they will still have, directly into
9 --

10 MR. SULLIVAN: Yes. If they turned around
11 and craned their necks and stared into your house with
12 all the lights on, like you showed in the photos, we
13 would have a view. Yes.

14 BZA CHAIR HILL: Okay, look. I hate when this
15 happens this way. So yes, Mr. Sullivan, Mr. Huffman
16 thinks they're going stand at the end of the basement
17 and whatever, turn around, and look into the house.
18 And so that's what he's claiming, right?

19 MR. SULLIVAN: Yes.

20 BZA CHAIR HILL: And so go ahead, and Mr.
21 Huffman -- anyway, basically, yeah. There is no
22 screening on that first-floor patio; that's the correct
23 answer?

24 MR. SULLIVAN: Correct.

25 BZA CHAIR HILL: Okay, thank you.

1 All right, let's see. Okay, so, if I can --
2 before we begin conclusions --

3 MR. COURTOIS: Is there screening on our side
4 for the first floor? Because, it shows on the diagram,
5 but I've heard discussion that there was none on the
6 first floor, but it is in there.

7 BZA CHAIR HILL: Mr. Sullivan, do you know?
8 Or Mr. Gordon?

9 MR. GORDON: We could put that slide -- we
10 could put the slide back up.

11 BZA CHAIR HILL: Okay. Is it 52A?

12 MR. COURTOIS: It shows screening on the first
13 floor.

14 BZA CHAIR HILL: Okay, 52A.

15 MR. COURTOIS: In discussion, there's none
16 on the first floor.

17 MR. SULLIVAN: There's a screen porch on the
18 first floor. There's the small square of additional
19 lattice screening on -- proposed on the second and third
20 stories, which is the third and fourth levels of the
21 building. So basement, one, two, three.

22 MR. HUFFMAN: If you could go to the slide
23 that shows the east side from 3544? So on that
24 first-floor extended patio, there will be no screening,
25 period, correct?

1 MR. SULLIVAN: Correct.

2 MR. HUFFMAN: Right. So, it's still, if you
3 look at 53C -- excuse me, 53B, from the photo I submitted,
4 that's the elevation and the distance out of where that
5 patio is. And it does look deep into our household.

6 I know that, you know, it's easy to say that's
7 not going to happen, but I am losing a vast amount of
8 my privacy, and he is gaining all of it. I'm just at
9 the whim, hoping that he doesn't look over.

10 BZA CHAIR HILL: Okay, all right. Let's move
11 on here, because the Board's going to have to do what
12 the Board's going to have to do, which is have a
13 deliberation. And I don't even know it's going to
14 happen today.

15 So let's see. Can you drop that for me, Mr.
16 Sakinejad? Great, okay.

17 So, I'm going to do conclusions, okay? And
18 usually, the way this works is the Applicant gets the
19 conclusion. Actually, I don't know why I keep saying
20 that. I like to hear from everybody just at the end.

21 So, if you could just give us a summary, Mr.
22 Huffman? We've been here a long time. This has been
23 a very long hearing because this is a continued hearing.

24 And so if you want to give us your final thoughts?

25 And then Mr. Courtois, I'll give you a chance

1 for your final thoughts.

2 And then Mr. Sullivan, you'll get your final
3 thoughts.

4 Mr. Huffman, could you go ahead and tell us
5 your summary?

6 MR. HUFFMAN: Sure. I'll try and keep it
7 short. I appreciate all the time you guys have given
8 us.

9 Throughout this entire process, we have
10 continually provided clear evidence that the special
11 exceptions, especially the depth of the balconies and
12 the overall house, really have a rough impact on our
13 light, air, and privacy. We've gone out of our way to
14 show evidence of that.

15 So, I'll ask that you give strong
16 consideration to a number of things, but mainly the ANC's
17 unanimous decision to oppose this for all the reasons
18 that we've stated, you know, throughout the last few
19 months, our continued opposition, the Applicant's
20 failure to meet any of the burdens of proof.

21 It's just been somewhat continually pivoting
22 from the evidence that we've provided. A good example
23 is, you know, privacy is enhanced with the special
24 exceptions when that's not the case. So, I just ask
25 each one of the chairmen to not grant the special

1 exceptions, especially for the depth of the house.

2 BZA CHAIR HILL: Okay. Thank you, Mr.
3 Huffman.

4 Mr. Courtois?

5 MR. COURTOIS: I did provide, I think, Exhibit
6 58. It's just a couple, three or four slides. And it
7 just --

8 BZA CHAIR HILL: Yeah. I saw that, Mr.
9 Courtois. You're kind of repeating the stuff from the
10 previous case.

11 MR. COURTOIS: And so in those slides,
12 basically, what I'm emphasizing is that Zoning
13 Regulations put proof on the Applicant to demonstrate
14 that their special exceptions do not adversely affect
15 us.

16 Through the course of all of this, the evidence
17 clearly shows there are negative impacts on the
18 neighborhood. We believe the opposition has
19 effectively demonstrated that the Applicant has failed
20 to meet its burden to show that there is no impact.

21 In that slide, and we've talked about it many
22 times, there's issues of negative impacts on life.
23 There's negative impacts on the invasion of privacy.

24 Even in the apartment, you know, it's
25 substantially incongruent with the character, scale,

1 and pattern of the homes in the alley. There's 60 homes
2 in that alley. This is the only one, with the exception
3 of the one that's grandfathered because it's been there
4 for 40 to 50 years.

5 Essentially, in conclusion, one, the ANC has
6 voted unanimously to oppose. We want to underscore the
7 importance to the Board of protecting the community
8 interests and adhering to the zoning rules.

9 We feel we've presented substantial evidence
10 against these special exceptions, and we respectfully
11 request that you deny these exceptions. Thank you.

12 BZA CHAIR HILL: Thank you, Mr. Courtois.

13 I'm sorry, Mr. Blake. You have your hand up?

14 VICE CHAIRPERSON BLAKE: I apologize. I did.

15 You mentioned the ANC. And we do have a
16 statement from the ANC, which is not in support of the
17 project, but unfortunately, I didn't see anything that
18 talked a little bit about the rationale behind that,
19 nor the issues or concerns that were raised at the ANC
20 meeting.

21 Having both parties in opposition, Mr.
22 Sullivan, here, perhaps you guys could just give us your
23 understanding of what took place at that meeting and
24 kind of where the ANC landed and how.

25 BZA CHAIR HILL: Okay. Before we do that,

1 let me at least go in steps. Did you all go to the ANC
2 meeting? And if so, raise your hand. Okay, great.

3 Mr. Huffman, can you tell us what happened
4 at the ANC meeting?

5 MR. HUFFMAN: It was long. But, in general,
6 I gave them the same presentation that I've been kind
7 of giving to you guys or telling and trying to
8 communicate. Highlighted privacy issues, you name it,
9 all the aspects that I've hit on here.

10 And especially at that point, with the ANC
11 being, operating in the role that they do, again, the
12 language around communicating with your neighbor, being
13 in touch, and working towards a solution, none of that
14 has happened, absolutely none. Very brief
15 communication. And as we discussed on the October --

16 BZA CHAIR HILL: Mr. Huffman, hold on a
17 second. Hold on a second. I don't want to re-go back
18 to, you know, what I'm trying to understand and what
19 Mr. Blake is trying to understand, and Mr. Sullivan will
20 be able to also articulate this in some way, the letter
21 from the ANC doesn't really specify what necessarily
22 was their issues with it.

23 Do you recall from the meeting what
24 necessarily was their issues with it?

25 MR. HUFFMAN: They didn't particularly give

1 a reason. I presented, and they voted.

2 BZA CHAIR HILL: Okay. Mr. Courtois, do you
3 remember if there were specific -- I'm going to you next
4 -- if there were specific things that you remember that
5 they had issues with?

6 MR. COURTOIS: The issues focused on our
7 discussions of the impact on air and light. We
8 especially talked about privacy quite a bit.

9 There was another witness at the ANC that
10 talked extensively about the auxiliary unit and the
11 apartment, standing up against how this violated the
12 character of the neighborhood. There was a lot of stand
13 against that, those auxiliary apartments.

14 BZA CHAIR HILL: Okay. Now, so --

15 MR. COURTOIS: So, those were the issues that
16 were talked about. Whether Mr. Sullivan agrees with
17 that, those were the issues.

18 And they did not give us very specific, other
19 than the unanimous decision against it, but those were
20 the discussions. Privacy, air and light, and the nature
21 of the auxiliary building.

22 BZA CHAIR HILL: Okay. Now I've just
23 realized the problem with this one is a little bit like,
24 you know, who heard what and how people heard things.

25 I'd have to get something from the ANC.

1 But nonetheless, Mr. Sullivan, do you remember
2 what their issues were?

3 MR. SULLIVAN: My recollection is they didn't
4 say. They just voted. And this was when Ms. Collin
5 was still a party opponent, as well.

6 BZA CHAIR HILL: Okay. Mr. Blake, is there
7 some way --

8 MR. HUFFMAN: That's not true.

9 (Simultaneous speaking.)

10 BZA CHAIR HILL: Give me a second, give me
11 a second.

12 MR. HUFFMAN: All right.

13 BZA CHAIR HILL: What I've got from both of
14 your all's testimony is there wasn't a whole lot of
15 specificity. Mr. Courtois is saying they were talking
16 about light and air.

17 And Mr. Huffman, you're saying they kind of
18 just took a vote. I hear that they took all the
19 testimony. I don't know if they did a lot of
20 deliberation before they took the vote.

21 And now Mr. Sullivan has his hand up. Go
22 ahead, Mr. Sullivan.

23 MR. SULLIVAN: Just to pre-empt Mr. Huffman,
24 I think I was incorrect about that. I think we secured
25 agreement with the neighboring property owner that day,

1 before the ANC meeting. So, I was inaccurate in that.

2 BZA CHAIR HILL: That's all right. Mr.
3 Blake, did you get any clarification?

4 VICE CHAIRPERSON BLAKE: Yes, I did. Thank
5 you very much.

6 BZA CHAIR HILL: Okay, all right. Mr.
7 Sullivan, would you like to give us a conclusion?

8 MR. SULLIVAN: Sure. Thank you, Mr. Chairman
9 and Board members. In closing, I would just like to
10 reiterate, the evidence submitted showed -- the shadow
11 study showed a minimal impact on light and air, certainly
12 not undue.

13 Regarding privacy, for the reasons submitted,
14 privacy is not -- I didn't say it was drastically
15 improved. It's somewhat improved. And there's no
16 windows on the addition, on the sides, looking at the
17 properties.

18 There are decks. This is a small house and
19 a small property. At the end of the day, building area
20 here, not counting even the deck or the accessory
21 building or the screen porch, is something like 35
22 percent lot occupancy. It's a narrow lot.

23 It's hard to get a full, single-family,
24 family-sized house out of this, and that's what the
25 Applicant's intending. It's his house. It's going to

1 be his family home. So, he was trading, in a sense,
2 a screen porch and some deck for building.

3 That's why we were able to come to agreement
4 with the property owner, Mr. Huffman's landlord. Not
5 to speak negatively of his tenancy, but this probably
6 doesn't get a building permit for another 18 months yet.

7 We were working with the property owner, who
8 has a superior interest, and she has control over that.

9 We've come to an agreement with our construction
10 management agreement and other specifics that she was
11 concerned about, including whatever her concerns were
12 for property value as it relates to privacy.

13 As to character, scale, and pattern, you've
14 seen the massive accessory building, the retaining wall,
15 Mr. Courtois' property, and the large addition a couple
16 doors down. This fits in line with it. And we're not
17 asking for relief for the accessory building at all.

18 So, that's it, in closing. That's all I have.
19 Thank you.

20 BZA CHAIR HILL: Okay. Thanks, Mr. Sullivan.

21 All right. Does my Board have any final
22 comments before I close the hearing?

23 Okay. All right, thank you all very much.
24 I know it's a very long process, and I'm sorry that it's
25 that way. So, I'm going to close the hearing and the

1 record, and I hope you all have a nice afternoon.

2 MR. SULLIVAN: Thank you.

3 BZA CHAIR HILL: Okay. I hate to throw this
4 at you again, Chairman Hood, but if it's okay with you,
5 I need a minute to kind of, like, get my head around
6 stuff.

7 So, can I bring you back again next week, and
8 we'll do all three cases?

9 ZC CHAIR HOOD: Yeah, I'll be here anyway.
10 I probably need to rest and try to figure this one out
11 myself, as well, so.

12 BZA CHAIR HILL: Okay, great. All right.
13 So, we'll do a decision next week on 10/19.

14 Madam Secretary, is that okay?

15 MS. MEHLERT: Yes.

16 BZA CHAIR HILL: Okay, great. Let's see.
17 Do you want to call our last case?

18 MS. MEHLERT: Yes. The last case is
19 Application Number 21352 of Anakainosis, LLC.

20 This is an application, pursuant to Subtitle
21 X § 901.2, for a special exception under Subtitle E §
22 204.4 from the rooftop or upper floor element
23 requirements of Subtitle E § 204.1 to allow the removal
24 of a rooftop architectural element original to an
25 existing, two-story, principal row building.

1 It's located in the RF-1 zone at 828 12th
2 Street NE, Square 981, Lot 821.

3 BZA CHAIR HILL: Great. If the Applicant can
4 hear me, if they could please introduce themselves for
5 the record?

6 MR. SAKINEJAD: Chair, I'm not seeing that
7 person on right now. I'm not sure.

8 BZA CHAIR HILL: Okay, great.

9 MR. SAKINEJAD: Maybe the Secretary can reach
10 out or?

11 MS. MEHLERT: Yeah, I don't see the Applicant
12 either in the list. Staff will follow up right now.
13 Just give us a second.

14 BZA CHAIR HILL: I'm very happy to end right
15 now, if you want to. I'm good. We'll give it a minute.
16 I'll put it on mute and give it a minute.

17 Madam Secretary, can you hear me? Okay. Why
18 don't you call me when you get them, okay? And we'll
19 just take a break until then.

20 MS. MEHLERT: Okay.

21 BZA CHAIR HILL: Thanks, you guys.

22 (Whereupon, the above-entitled matter went
23 off the record at 2:37 p.m. and resumed at 2:51 p.m.)

24 BZA CHAIR HILL: All right, Madam Secretary,
25 could you please reintroduce the case?

1 MS. MEHLERT: Sure. This is Application
2 Number 21352 of Anakainosis, LLC.

3 This is an application, pursuant to Subtitle
4 X § 901.2, for a special exception under Subtitle E §
5 204.4 from the rooftop or upper floor element
6 requirements of Subtitle E § 204.1 to allow removal of
7 a rooftop architectural element original to an existing,
8 two-story, principal row building.

9 It's located in the RF-1 zone at 828 12th
10 Street NE, Square 981, Lot 821.

11 BZA CHAIR HILL: Great, thank you.

12 If the Applicant could hear me, if they could
13 please introduce themselves for the record? If you're
14 on mute -- maybe you're on mute.

15 Can you all hear me? Okay.

16 Madam Secretary, are they there?

17 MS. MEHLERT: I think we got them on. I don't
18 know if there's an issue with her sound or audio. We
19 can try reaching out to her again.

20 BZA CHAIR HILL: Okay, I'll tell you what.
21 Try reaching out to her again. And if it doesn't work,
22 we're just going to -- in fact, let's just -- what's
23 next week look like?

24 ZC CHAIR HOOD: Next week should be full.
25 I'm not a secretary, and I can tell you that.

1 BZA CHAIR HILL: Oh, I forgot. Next week,
2 oh, my God, the decisions. I know there's now three
3 decisions, but what --

4 ZC CHAIR HOOD: That's fine, Mr. Chairman.
5 I was just joking. Whatever you do is fine.

6 BZA CHAIR HILL: Well, I mean, how many --
7 I'm asking Ms. Mehlert because nothing seems to be
8 happening, and I'm getting ready to go.

9 MS. MEHLERT: Yeah. We're trying to text her
10 right now to see what the issue is.

11 Next week, you have those decisions plus an
12 expedited review, and then there are five hearing cases.
13 Currently, there's an appeal scheduled.

14 BZA CHAIR HILL: I love how that says
15 currently, Ms. Mehlert. I hope that currently is for
16 real. Otherwise, we got some serious problems.

17 Okay. Let's go ahead and just put this on
18 for next week, okay?

19 Chairman Hood, do you want to just stay on
20 it since you got on it?

21 ZC CHAIR HOOD: Yeah, I could stay since I'm
22 -- we haven't heard the merits, so my --

23 BZA CHAIR HILL: I know you can pass. It's
24 up to you. Anyway, you decide.

25 We'll put this case first, Ms. Mehlert, after

1 the decisions. Do you know what I'm saying?

2 ZC CHAIR HOOD: Okay, I may stay for that.
3 I'll stay.

4 BZA CHAIR HILL: Okay?

5 ZC CHAIR HOOD: Okay.

6 BZA CHAIR HILL: Okay, 10/29. Okay, Ms.
7 Mehlert?

8 MS. MEHLERT: Okay, yep.

9 BZA CHAIR HILL: And I'm sorry. We tried.
10 Okay, you all have a good day. We are
11 adjourned.

12 (Whereupon, the above-entitled matter went
13 off the record at 2:55 p.m.)
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1 C E R T I F I C A T E

2 This is to certify that the foregoing transcript was
3 duly recorded and accurately transcribed under my
4 direction; further, that said transcript is a true and
5 accurate record of the proceedings; and that I am neither
6 counsel for, related to, nor employed by any of the
7 parties to this action in which this matter was taken;
8 and further that I am not a relative nor an employee
9 of any of the parties nor counsel employed by the
10 parties, and I am not financially or otherwise
11 interested in the outcome of the action.

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