

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

FEBRUARY 25, 2026

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Videoconference, pursuant to notice at 9:36 a.m. EST, Carl Blake, Vice Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

CARL BLAKE, Vice Chair
BRITTNEY DRAKEFORD, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ROBERT MILLER, Commissioner
GWEN WRIGHT, Commissioner
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

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

1 OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

2 SHEPARD BEAMON
3 PHILIP BRADFORD
4 MAXINE BROWN-ROBERTS
5 MICHAEL JURKOVIC
6 JOSHUA MITCHUM
7 CRYSTAL MYERS
8 KAREN THOMAS

9 OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

10 SARAH BAJAJ, ESQ.
11 CARISSA DEMARE, ESQ.
12 JORDANE WONG, ESQ.

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14 The transcript constitutes the minutes from
15 the Regular Public Hearing held on February 25,
16 2026.

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C-O-N-T-E-N-T-S

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

2 10:32 a.m.

3 VICE CHAIR BLAKE: Okay, Madam Secretary,
4 please call us back.

5 MS. MEHLERT: The Board is back from a
6 quick break, and is now entering its hearing
7 session. The next case is Appeal No. 21314 of
8 Burleith Citizens Association. This is an appeal
9 pursuant to Subtitle X, Section 1100 from the
10 decision made on February 14th, 2025 by the
11 Department of Buildings zoning administrator to
12 issue Building Permit No. B2308807.

13 This permit was for four new lighting
14 poles, 80 feet in height, installed at a public
15 recreation facility. It's located in the R3/GT zone
16 at 1700 38 Street Northwest, Square 1307, Lot 859.
17 This hearing was originally scheduled for September
18 17th, 2025, and was postponed several times, or had
19 been rescheduled. And persons reading are Chairman
20 Blake, Commissioner Wright, and I believe Board
21 Member Drakeford has read into the record.

22 VICE CHAIR BLAKE: Okay, excellent, thank
23 you very much everybody. If the appellant is here,
24 or the appellant's rep, would you please introduce
25 yourself for the record?

1 MR. MCDUFFIE: May it please the Board, my
2 name is Michael McDuffie, and I represent the
3 Burleith Citizens Association in this matter.

4 VICE CHAIR BLAKE: Thank you, Mr. McDuffie.
5 Who do we have here for the appellee? DOB, who do
6 we have for DOB?

7 MR. HARESIGN: Good morning, Chris
8 Haresign, assistant general counsel with the
9 Department of Buildings, and we are also joined by -
10 - or should be joined by Zoning Administrator
11 Cathleen Beeton. I do not see her having been
12 promoted.

13 MS. FREEMAN: Hello, and this is Thennie
14 Freeman, I'm sorry, director of DPR as a witness.

15 VICE CHAIR BLAKE: Okay, and we have the
16 director of DPR, okay. And Ms. Moldenhauer, are you
17 representing the property owner?

18 MS. MOLDENHAUER: Correct. Good morning,
19 Chairman Blake, and members of the Board. Meridith
20 Moldenhauer from Cozen O'Connor here on behalf of
21 the intervener, the property owner DGS, and
22 representatives from DPR. As indicated, Director
23 Freeman is here, as well as Mr. Peter Nohrden from
24 DPR as a witness.

25 VICE CHAIR BLAKE: Okay, so both of them

1 will be on your side of the ledger then, actually.
2 Okay, so as you know, this is a typical appeal, long
3 is expected, but we're going to go through it. The
4 hearing procedures here are going to be conducted
5 pursuant to Section Y506 and 507. The appellant
6 will present its case, and then we'll hear from the
7 appellee and the property owner after that, the
8 intervener.

9 We'll then have rebuttal, and we'll
10 conclude with closing remarks from each of the
11 parties. And at the end of everybody's formal
12 remarks you will have an opportunity to cross
13 examine, that is ask questions of the presenter with
14 regard to those remarks. And then the Board should
15 certainly feel free at any point to ask questions
16 throughout the presentation.

17 So, Mr. McDuffie, I see you have a
18 presentation, so if you want to pull up your slide
19 deck, that's fine. We're going to give the party,
20 the appellee an equal amount of time as you to
21 speak, so we're going to begin with that. So, can we
22 start the clock just so we have a sense of how much
23 time it takes? And you may begin when you like.

24 MEMBER DRAKEFORD: I'm sorry, Chair Blake,
25 I also just wanted to note for the record that I

1 have read into the record.

2 VICE CHAIR BLAKE: Okay, thank you very
3 much.

4 MR. MCDUFFIE: Does Mr. Young bring up the
5 presentation? I apologize.

6 VICE CHAIR BLAKE: Yes, he does.

7 MR. MCDUFFIE: Okay, perfect. All right,
8 well, may it please the Board, my name is Michael
9 McDuffie, and I represent the Burleith Citizens
10 Association on this zoning appeal. Next slide
11 please. The Burleith Citizens Association was
12 founded in 1925, it's a citizen's association that's
13 a non-profit that represents 150 member families,
14 has a long history of advocating on behalf of the
15 Burleith neighborhood.

16 And has numerous members within 200 feet of
17 the subject property, which is 1700 38th Street
18 Northwest, otherwise known as Ellington Field, and
19 including six property owners directly across the
20 street from the field. Next slide please. This
21 appeal is in keeping with the authorization in the
22 bylaws for the Burleith Citizens Association, who
23 has sought since its outset to advocate on behalf of
24 the neighborhood.

25 I just want to take a moment to note that

1 intervener DGS continues to contest standing in this
2 matter. My understanding is that the Department of
3 buildings did not join that particular aspect of
4 their brief, so it is merely DGS that is contesting
5 standing here. Next slide please. So, the subject
6 property was originally known as Western High School
7 Athletic Field, but now is known as Duke Ellington
8 Track and Field.

9 The land on which this property sits was
10 originally slated to be part of the Burleith
11 neighborhood. It was acquired by the developer,
12 they had plans to build homes on this property, but
13 the District sought to condemn the property by
14 eminent domain, and was ultimately successful over
15 nuisance objections of the nearby landowners on the
16 basis that the proposed athletic field would be
17 acquired for use accessory to and a part of the
18 Western High School.

19 So, that is how the property eventually
20 came into the hands of the District. Next slide
21 please. This is a diagram of the proposed
22 renovations. The renovations are pretty broad, but
23 the narrow challenge that the Burleith Citizens
24 Association has is with respect to the lighting
25 poles that are on the extreme sides. The lighting

1 poles as have been identified are slated to be 80
2 feet tall, but are much closer to the property lot
3 line than those 80 feet.

4 Which we'll address here in a second. Next
5 slide please. So, the key issue in this appeal is
6 whether lighting poles are structures, because if
7 lighting poles are structures, then they are subject
8 to certain height requirements. And in the case of
9 80 foot lighting poles, which exceed the otherwise
10 applicable 35 foot height limit in the zone, they
11 would have to be set off equal to their height.

12 So, if lighting poles are structures, then
13 they need to be set off appropriately. So, here is
14 the definition of structure. Anything constructed,
15 including a building, use of which requires permit
16 location on the ground, or anything attached to
17 something having a permanent location on the ground,
18 and including among other things radio or television
19 towers, viewing stands, platforms, flag poles,
20 tanks, pens, gas holders, fridges, and retaining
21 walls.

22 And then there is a specific carve out
23 right after that, the term structure shall not
24 include mechanical equipment, but shall include the
25 supports for mechanical equipment. So, you have a

1 very broad definition that has some explicitly non-
2 exhaustive language, including, and even the more
3 definitive, including among other things. Next
4 slide please.

5 So, this matters because the only way you
6 can erect 80 foot poles in the R3/G5 zone, if they
7 are structures, if they are set off sufficiently
8 from the lot lines. And that's set forth in D203.5.

9 It can be erected to a height not exceeding 90
10 feet, provided that it's removed from the lot lines
11 equal to the height of the structure. So, next
12 slide please.

13 So, the language matters here. So, here
14 are the definitions of some of the key terms in the
15 definition of structure for the purposes of the
16 zoning regulations. Anything, anything whatever,
17 any such thing, and this is from Webster's
18 Dictionary, including to place, list, or rate as a
19 part of a component or of a larger group, class, or
20 aggregate.

21 And finally, among other things, in
22 addition to things that are not specifically
23 mentioned. Next slide please. So, let's read that
24 in context. Anything, anything whatever, any such
25 thing constructed, including a building, the use of

1 which requires a permit location on the ground. Or
2 anything whatever, any such thing, you are beginning
3 the definition with incredibly broad language.

4 And there is this great turn of phrase in
5 Scalia and Garner's Reading Law, which is a
6 persuasive treatise on reading legal language,
7 anything comes as a stranger to the reader, you're
8 invited to take it at its broadest meaning unless
9 told otherwise. And in fact you're not told
10 otherwise, because anything constructed, including a
11 building, and what do we know about including?

12 It means to place, list, or rate as part of
13 a larger group or class. So, they are just
14 providing an exemplar, and why would you do that?
15 Well, you would do that as a belt and suspenders
16 approach, and again, this is described in the Scalia
17 and Garner treatise. You would do that because it
18 shows that the term has content, it's not some
19 abstract term.

20 And also you can serve to show the breadth
21 of the provision, and you see this so well done here
22 in the later part of the definition, including among
23 other things. And again, among other things means
24 in addition to things that are not specifically
25 mentioned. And then it goes through a wide litany,

1 it's a heterogeneous grouping. Radio or television
2 towers, flag poles, coal bins, gas holders,
3 chimneys, bridges, and retaining walls.

4 This is meant to be read as an extremely
5 broad term, and this listing of items is just an
6 illustration of that, and the way they show you that
7 is they say including, and then among other things,
8 among other things that are not listed. And then
9 that's finally confirmed so well in this last piece.

10 There is a carve out, if there's something that's
11 not supposed to be brought within this definition,
12 there's a carve out.

13 And they said the term structures will not
14 include mechanical equipment. So, this is a
15 textbook way with a belt and suspenders approach to
16 show how broad this term is supposed to be read, and
17 if there's something that doesn't fit, they told
18 you. Now, this reflects the drafter's essential
19 ingenuity in the 1950s, that they couldn't conceive
20 every possible thing that would be a structure.

21 And so they drafted a broad term, and they
22 gave you some illustrative examples, but the term
23 isn't meant to be limited by those, because they
24 couldn't conceive of every possible thing that would
25 be there. So, lighting poles certainly fit within

1 the definition of a structure, and any contention to
2 the contrary is violative of the language there.

3 Next slide please. So, now I'm going to go
4 through the process by which the zoning
5 administrator, and the Office of the Zoning
6 Administrator reached the conclusion here that
7 lighting poles were not structures. So, the
8 building permit was originally filed in July of
9 2023. I reached out to the Office of the Zoning
10 Administrator upon receiving notice that they had
11 approved zoning for the entirety of the permit.

12 And specifically raising this issue that
13 lighting poles need to be set off if they're going
14 to exceed the height limitations of the zone, by
15 their height from the lot lines. And I received a
16 response from the supervisory zoning technician.
17 I've reviewed the proposed lighting pole, and I'm in
18 agreement with you for potentially violating the
19 provisions.

20 And then he's asking the zoning review be
21 added back. Next slide please.

22 MS. MOLDENHAUER: Can we put forward an
23 objection here?

24 VICE CHAIR BLAKE: Okay, go ahead, Ms.
25 Moldenhauer.

1 MS. MOLDENHAUER: The process upon which
2 the decision is made is not an issue at appeal, it's
3 just simply the decision that was made. And so I
4 would just simply object to testimony regarding the
5 process.

6 VICE CHAIR BLAKE: Okay.

7 MS. MOLDENHAUER: Thank you.

8 VICE CHAIR BLAKE: All right.

9 MR. MCDUFFIE: The flawed process by which
10 this particular decision was made is important to
11 understanding why lighting poles are indeed
12 structures. It shows an unusual pattern that
13 reached this conclusion, and should be part of the
14 Board's consideration, and is part of the record.
15 All right, so the zoning review is assigned to
16 another reviewer who had never been involved in the
17 case.

18 It gets approved, and then I reached out
19 again to the Office of Zoning, and asked what gives.

20 And so I received a response from the program
21 analyst, a zoning enforcement case has been opened,
22 and may include soliciting information and documents
23 for our review, investigation, and site visits,
24 which can be lengthy. And so we'll follow up with
25 you.

1 Next slide please. Ultimately I followed
2 up again, and received a phone call very early in
3 the morning from that program analyst, and then a
4 follow up email that said thank you for taking the
5 time to meet with me this morning. OZA is
6 collaborating with DPR and DGS to alert them of the
7 zoning violation, and provide a compliance patch to
8 ensure the project complies with 203.5.

9 So, this is a communication to a third
10 party that a zoning violation had indeed been found,
11 and my conversation with the program analyst also
12 included her efforts to contact both the contractor
13 that had been hired by DGS, as well as DGS, and DPR
14 staff. Next slide please. So, a few days later I
15 follow up again to inquire as to the status, and I
16 received a response from Kathleen Beeton, the zoning
17 administrator.

18 A very formal response, and ultimately the
19 punch line here is because the definition of
20 structure does not include lighting poles among the
21 items specifically listed, the Office of Zoning
22 Administration does not consider the proposed light
23 poles to be structures, and therefore are not
24 subject to the setback requirements in D203.5. And
25 here the language is important.

1 She says among the items specifically
2 listed, so the first position that is taken by the
3 Office of Zoning Administration is that because
4 lighting poles aren't specifically listed, they
5 don't count, and they're not structures. Next slide
6 please. So, then I followed up with the zoning
7 administrator. If a mid-block rowhome owner like
8 myself in the same zone, wanted to build 89 foot
9 lighting poles in my back yard, was it OZA's
10 position that the setback requirement does not
11 apply?

12 And I could do by right. And to my endless
13 shock, I received a response that said yes, a
14 homeowner like yourself in this zone could go ahead
15 and build an 89 foot light pole in their back yard
16 without meeting the setback requirement. And that
17 is such an absurd consequence of both the
18 interpretation taken by the zoning administrator
19 initially here.

20 Which is that just because the words
21 lighting pole weren't in the definition, that meant
22 that it wasn't a structure. And that actually also
23 extends to the various positions the intervener has
24 taken. Next slide please. So, the intervener, when
25 confronting this issue of whether 89 foot light

1 poles could be built in the back yard of residences,
2 their response is there's no record in any pending
3 application, and no decision applying the ZA's
4 interpretation of such a case.

5 And the Board doesn't need to concern
6 itself with the consequences of the interpretation
7 that's being offered. So, what you have here is
8 clear language, and a flawed process leading to a
9 flawed decision with absurd consequences. IE that
10 there is essentially no limit other than 90 feet on
11 how you can build a lighting pole in the District.

12 Next slide please. So, this is not an
13 issue of first impression for the BZA. The BZA
14 under the prior zoning regulations, which are
15 substantially similar, I mean closely analogous to
16 those at play today, confronted this issue in a case
17 involving Gonzaga High School. And under those
18 zoning regulations, the Board said that it was
19 requiring the applicant to satisfy the burden of
20 proving the elements necessary to establish the case
21 for area variance and height requirements for 4
22 approximately 90 foot tall mounted pole light
23 arrays.

24 So, in the only written decision that I've
25 seen filed in this case that's analyzed the issue of

1 whether lighting poles are structures, the BZA
2 treated lighting poles as structures, as did OP in
3 its report issued in that case. Now, I don't want to
4 overstate the significance of this. Obviously the
5 BZA is free to change its mind, it was indeed a
6 summary order in a self-certified application.

7 But the essential importance of that
8 decision is that it highlights that this is not some
9 novel interpretation, indeed, this is the only
10 interpretation that any counsel has found regarding
11 whether lighting poles are structures in incredibly
12 closely analogous circumstances. Next slide please.

13 So, now moving up to more or less present day.

14 This appeal was filed in April 2025.
15 Following the filing of that appeal, the Office of
16 Planning proposed certain changes to the zoning
17 regulations, and specifically in their first cut at
18 it, they were going to exempt lighting poles from
19 the definition of structure. And so you can see the
20 way they did that, they did it in the carve out.
21 It's not that they trusted that the language itself
22 didn't include lighting poles.

23 They added it specifically to the carve
24 out, and again, that was filed June 30th, 2025, our
25 appeal was filed in April, before the filing of that

1 amendment. Next slide please. Ultimately while
2 Office of Planning actually revised the proposed
3 amendment as part of that zoning case, 2512, and so
4 they instead of just exempting all lighting poles
5 from the structures, they say unless specifically
6 provided for in this title, light poles are not
7 considered structures.

8 And then they do something very
9 interesting, and this was in October of 2025. Next
10 slide please. They actually add it back, they say
11 okay, but unless specifically provided lighting
12 poles aren't structures, but guess what, lighting
13 poles serving public recreation community centers
14 are structures for the purposes of Subtitle D203,
15 and may be erected to a height not exceeding 90
16 feet.

17 Now, the Zoning Commission considered these
18 changes at a hearing on November 25th. And
19 ultimately what happened in that hearing is Mr.
20 Lawson, on behalf of the Office of Planning,
21 withdraws these proposed amendments. But it's only
22 after substantial negative commentary from multiple
23 commissioners, and the chairperson as part of the
24 Zoning Commission.

25 And that is after receiving a lot of

1 testimony about the concerns of being able to erect
2 lighting poles up to 90 feet by right. And that is
3 fundamentally the issue here with the interpretation
4 that's been offered by the zoning administrator, as
5 well as intervener DGS. So, as I said, there were
6 numerous testimony.

7 But when it came to reviewing this,
8 Commissioner Wright stated I do not think allowing
9 lighting poles of this type by right is a good idea,
10 and so I do not support this particular amendment.
11 I think additional analysis would be fine, if it
12 wants to come back at some point in the future, you
13 can try to come up with some arguments to persuade
14 me. But at this moment in time, I do not support
15 allowing these poles by right.

16 Following on that, Vice Chair Miller states
17 I agree with Commissioner Wright's statement, and
18 then he goes on to recount some of the background
19 why the Office of Planning said it was proposing the
20 amendments. And then suggests well, what about a
21 special exception? Making light poles of this kind
22 subject to a special exception. And the response
23 from Mr. Lawson is I think this issue requires a bit
24 more of an in depth study.

25 And I would prefer at this point to

1 withdraw this from our proposal, then bring forward
2 kind of a new proposal, somewhat on the fly like
3 that. And then ultimately Chairperson Hood chimes
4 in and states clearly but I also think, and I know
5 Mr. Lawson is listening, I also think that
6 Commissioner Eckenwiler's testimony was very
7 persuasive to me in this case.

8 So, hopefully as we, the Office of
9 Planning, looks forward to bringing that back to the
10 Commission at some point, that we also review his
11 testimony, and other testimonies in this case that
12 was presented. And Commissioner Eckenwiler I
13 believe is from 6C, and he testified very
14 persuasively about the concerns and externalities of
15 lighting poles.

16 Because lighting poles don't just involve
17 light, they involve noise, and traffic, and numerous
18 other considerations that come into play. So, what
19 we have here is a rejection, or at least concerns
20 expressed about the idea of just permitting lighting
21 poles by right, but that is exactly what the ZA is
22 urging here, and that is what the intervener, I
23 believe is urging here.

24 Next slide please. So, ultimately what the
25 Burleith Citizens Association is asking for here is

1 actually very limited. We are asking for this Board
2 to exercise its authority to modify the permit at
3 issue to remove approval for the lighting poles.
4 And what's the practical consequence of that? That
5 means that because lighting poles are structures,
6 the DGS and DPR, or whoever is in charge of the
7 renovation can seek an area variance.

8 And part of that process is interacting
9 with the community in a real way. And there's a
10 turn of phrase in the supplemental filing from
11 intervener DGS that I think highlights the real
12 issue here. They refer to concerns about the
13 regulatory friction of a proper interpretation that
14 includes lighting poles as structures. That
15 regulatory friction is dealing with the community,
16 having a real discussion about how those lighting
17 poles are used.

18 The BCA is not -- the Burleith Citizens
19 Association is not taking the position that lighting
20 poles should never be erected on a field. It's a
21 much simpler position, which is that DGS and DPR
22 need to go through the proper process, the process
23 that Gonzaga High School went through, where they
24 set forth why it wasn't a detriment to the public
25 good, and followed the rules.

1 So, ultimately in sum, this is a case about
2 red flags. The interpretation that has been offered
3 by the ZA and by now DGS, it just violates the
4 language, the language is clear here. And to adopt
5 the interpretation that's been offered by ZA, and by
6 DGS necessarily entails taking this position that
7 lighting poles can be just sort of erected anywhere,
8 that they're not subject to the setback requirement.

9 And that violates common sense. Just
10 sitting back, thinking of the reasonable human
11 being, does it make sense that someone should just
12 be able to erect a 90 foot lighting pole by right
13 without getting some kind of additional approval?
14 No. This interpretation, this process was the
15 result of a flawed process at the OZA level. There
16 was a lot of discussion back and forth, there was
17 communication to third parties about a zoning
18 violation.

19 And then a very quick decision that is not
20 necessarily consistent with the position that DOB
21 and DGS are now taking. It's also contrary to the
22 only case that's been shown to address this issue,
23 which was 19293, and which this Board dealt with
24 this issue before, and treated lighting poles as
25 structures. So, ultimately the Burleith Citizens

1 Association requests that this Board modify the
2 permit at issue.

3 Removal approval for the lighting poles,
4 and if DPR and DGS want to proceed, which I believe
5 they do, they can seek an area variance as Gonzaga
6 High School was required to do. Thank you.

7 VICE CHAIR BLAKE: Thank you very much.
8 Does anybody from the Board have any questions for
9 the appellant? Does anyone from the Board have any
10 questions for the appellant? Yes, go ahead,
11 Commissioner Wright.

12 COMMISSIONER WRIGHT: Thank you, I think
13 you have laid out your argument very clearly. One
14 of the issues that is weighing on my mind is the
15 fact that this policy about lighting poles has been
16 in place for a very long time. And there are
17 lighting poles at a whole variety of facilities,
18 D.C. government owned facilities, and perhaps other
19 facilities, I don't know, that have been permitted.

20 And if we make a finding that that
21 interpretation was flawed, and that light poles are
22 structures, we are throwing a whole group of
23 properties into non-conformance. What is your
24 reaction to that argument?

25 MR. MCDUFFIE: A few different thoughts. I

1 mean, I don't think it -- clearly Gonzaga High
2 School is in compliance. This is an issue that's
3 happened before with this Board, I was involved in a
4 case of lower stakes admittedly, but of front
5 vestibules violating the front setback requirement.

6 And that has not created a huge problem, or a flood
7 of issues that followed from it.

8 But ultimately this Board is charged with
9 being the final arbiter of the zoning regulations.
10 And simply because the District has apparently
11 adopted an interpretation that is contrary to the
12 clear language doesn't absolve this Board of its
13 responsibility to interpret it consistent with the
14 zoning regulations.

15 So, I don't understand, I don't think there
16 is going to be some flood of petitions to challenge
17 lighting poles on various District properties that's
18 going to result from this. It certainly hasn't with
19 respect to the front vestibule issue, which I was
20 involved in previously. So, but at the end of the
21 day this Board has the final authority over the
22 interpretation of the zoning regulations, and the
23 zoning regulations are clear. So, that's how I
24 would respond.

25 COMMISSIONER WRIGHT: Okay, thank you for

1 that response.

2 VICE CHAIR BLAKE: I have a question for
3 you as well. With regard to the case you cited,
4 19293 Gonzaga, that's a self-certified application
5 as you pointed out, it's also a summary order, and
6 it's also a private school, which is subject to
7 private school planning requirements and so forth.
8 Do you have any cases that you could use as directly
9 comparable that are not summary orders, that are not
10 private schools that we can use for comparative
11 purposes?

12 MR. MCDUFFIE: As far as I'm aware, there's
13 three sets of counsel, you've got Cozen O'Connor,
14 you've got me, and you've got the Department of
15 Buildings in house counsel. This is the only case
16 that's addressed this issue specifically, and I just
17 want to be clear, it didn't turn on the fact that it
18 was a private high school. It was a clear
19 interpretation of the language then in place with
20 respect to what a structure was.

21 VICE CHAIR BLAKE: Well, I mean it's
22 difficult to say from a summary order what the case
23 turned on, because there tend to be a whole lot of
24 issues that are specific to that case, and the
25 special exception that they did was under the school

1 plan. So, it kind of -- you can't say exactly from
2 that, I'm not trying to rebut you, I'm just saying
3 I'm trying to get a better gauge to use to control
4 this.

5 I just want a better comparable. It's
6 interesting, because over the many years that this
7 has been an issue, it never came up. So, if this is
8 the one case we have to do it, I was just curious
9 why there's only one case. That was my question, I'm
10 just trying to see if there was another case that
11 might have addressed that issue. Was the setback an
12 issue, just to your knowledge, in that case, or was
13 it just the height?

14 MR. MCDUFFIE: Yes, it was the -- I mean it
15 wouldn't have qualified otherwise, but for getting
16 an exemption for the setback. The language was
17 virtually identical to the language here. And in
18 fact Goulston & Storrs represented Gonzaga High
19 School, this was a subjected briefing, they took
20 testimony from concerned neighbors about concerns
21 about the height of the light poles flashing into
22 their homes.

23 There were some discussions about insects,
24 I mean this wasn't just sort of blown by, this was
25 considerate.

1 VICE CHAIR BLAKE: Was the topic the
2 height, or the setback, or both?

3 MR. MCDUFFIE: Well, I mean the two are
4 related, right? You can only have the height if you
5 have the setback, the setback was at issue. Let's
6 see, yeah, so 400.1 there was the height, and then
7 400.7 was the setback requirement. But that was the
8 issue in the case.

9 VICE CHAIR BLAKE: Thank you. Are there
10 any other questions from the Board? Okay, go ahead,
11 Commissioner Wright, and we'll come over to you, Mr.
12 Drakeford, I see that.

13 COMMISSIONER WRIGHT: So, this is not a
14 question about the legal issue that you're raising,
15 but it's just information that would be helpful and
16 interesting to me. The lights on this field are up,
17 they exist, correct?

18 MR. MCDUFFIE: Correct.

19 COMMISSIONER WRIGHT: And as a community
20 group, a citizens association, I'm sure you all have
21 been monitoring the impact of these lights upon your
22 neighborhood. Do you all have feedback on whether
23 these lights have been problematic for your
24 neighborhood?

25 MR. MCDUFFIE: So, Commissioner Wright, the

1 field is still under construction. So, the lights
2 haven't been in use for their intended use. They
3 were briefly turned on for, I think some dark sky
4 compliance, and that raised some concerns with
5 neighbors. But we're too early, there isn't sort of
6 a track record here so to speak of the lights being
7 used for their intended purpose, because the
8 facility is still under construction.

9 I will also point out just one additional
10 point, that the light poles were actually delivered
11 to the site many months before construction began,
12 and before DGS and DPR actually got the building
13 permit.

14 COMMISSIONER WRIGHT: I understand. Thank
15 you for that information. And again, I am clearly
16 stating that I just wanted that as background
17 information, not that it really relates to the very
18 specific zoning interpretation issue that is before
19 us, but I just wanted it as background.

20 VICE CHAIR BLAKE: Thank you very much.
21 Board Member Drakeford?

22 MEMBER DRAKEFORD: Yes, I just wanted to
23 make sure, I'm again, just trying to make sure I'm
24 clear on your argument. So, you mentioned that, or
25 you referenced the definition of structure,

1 indicating that in 1953 the drafters of the zoning
2 code, of how they defined a structure as anything
3 constructed to ensure flexibility for future items
4 they couldn't conceive of.

5 However, at the time, athletic fields
6 lighting, and street poles were certainly well in
7 common use, but the drafters did not explicitly list
8 -- while they explicitly and specifically listed
9 flag poles, they did not list anything relating to
10 lighting. Would you think that suggests that it was
11 a deliberate intention to treat light poles
12 differently, rather than a lack of foresight if the
13 technology was already current, and prevalent,
14 however it was not specifically listed in the code
15 at the time?

16 MR. MCDUFFIE: No, because the effort again
17 is to be illustrative, they couldn't conceive of
18 every possible thing. I don't know how -- I'll be
19 honest with you, I don't know how common light poles
20 were in the 1950s that were 90 feet tall, or 80 feet
21 tall. But the idea that they intentionally excluded
22 things, and the way you know that for sure is they
23 have a carve out, right?

24 They carved out mechanical equipment, and
25 so they knew how to carve things out if there was

1 something specific they wanted to carve out. But
2 this definition has every hallmark of trying to
3 apply extremely broadly. You come broad with
4 anything, you include explicitly non-exhaustive
5 language, and you can't even be more definitive than
6 including among other things, that is text books.

7 And then you do this belt and suspenders
8 approach where you provide a wide heterogeneous set
9 of examples just to make sure that you know how
10 broad the definition is. So, I don't have data on
11 how prevalent lighting poles were, I'm not aware of
12 anything where they considered whatever history
13 there is associated with it, where they considered
14 that issue specifically.

15 But the definition is written to apply
16 extremely broadly, and it doesn't include other
17 things that should be structures like artificial
18 trees or giant statues. So, I don't think you can
19 take from it sort of an *expressio unius, exclusio*
20 *alterius* view simply because they didn't put light
21 poles specifically in there, so the definition
22 doesn't apply.

23 Because then a lot of other things don't
24 apply, and that's going to create more
25 indeterminacy than I think this Board wants to

1 create.

2 MEMBER DRAKEFORD: Thank you. Just another
3 question, so I believe you also mentioned that the
4 new light poles will draw additional traffic, that
5 was one of the things that I think I heard you
6 mention. And this is currently an existing
7 recreational site that would be undergoing
8 renovation, is that correct?

9 MR. MCDUFFIE: So, let me be very clear.
10 It was a DCPS site that is now currently undergoing
11 renovations, and the management of it was
12 transferred to DPR.

13 MEMBER DRAKEFORD: Okay. Is there any
14 specific evidence, or data that you might be able to
15 provide, or show the board that the presence of the
16 lights alone, rather than the change in the actual
17 field's use or capacity will create a traffic
18 impact, or a transportation impact?

19 MR. MCDUFFIE: So, a couple things. One,
20 that's definitely outside the scope of this zoning
21 appeal, right? This is about the interpretation of
22 zoning regulations, not some broad assessment of
23 what the impacts would be, that's an area variance,
24 that's what DGS wants to talk about, is the impacts
25 of it. But that's part of a different proceeding.

1 I mean it's undeniable that the institution
2 of lights is going to increase the use of the field,
3 and indeed, DPR has repeatedly told the community
4 that they intend to increase the use of the field.
5 So, do I have data that shows, or projections that
6 show increased traffic because of the lights? No.
7 But I also think that is outside the scope of this
8 hearing.

9 MEMBER DRAKEFORD: Okay, I just wanted to
10 make sure I was understanding. And then you also
11 mentioned that you all aren't necessarily opposed to
12 the lights being there, but rather to the lack of
13 public process just to ensure that they aren't a
14 detriment to the public good. If the Board
15 determines that the light poles are not a structure,
16 and therefore no variance or -- if we determine that
17 light poles are not a structure.

18 Are you suggesting that the building permit
19 process in and of itself is insufficient to protect
20 the community, or is your argument strictly that the
21 zoning regulations were intended to force a public
22 hearing for these particular structures -- for the
23 light poles themselves.

24 MR. MCDUFFIE: I mean the process here is
25 to -- I mean it's just common sense, you can't erect

1 90 foot things in a zone that has a 35 foot limit on
2 the height that have effects outside of the
3 property, right? When you have lights the effects
4 are light spillage, you have increased traffic,
5 particularly in this situation, you have noise,
6 which has been completely left unaddressed.

7 But ultimately those are issues for an area
8 variance, which the District is free to seek. But
9 you can't shoehorn, you can't misinterpret the
10 zoning regulations to avoid public process. I mean,
11 part of the comprehensive plan is to encourage
12 public process. So, I don't think we should be
13 shortcutting public process in this situation.

14 VICE CHAIR BLAKE: Okay, do you have
15 another question?

16 MEMBER DRAKEFORD: No, those are all my
17 questions for now, thank you.

18 VICE CHAIR BLAKE: Okay, along those lines
19 I want to just ask one last question of you, Mr.
20 McDuffie. Your concern, as was said, was the fact
21 that it needed public input. Can you just -- your
22 understanding of -- I just want to have a better
23 understanding of the context. Who or what agency
24 regulates these lights, or has oversight for the
25 most part of these lights?

1 And have you had an opportunity for your
2 client to speak publicly to the body, and express
3 their concerns?

4 MR. MCDUFFIE: So, they would be managed by
5 -- again, I think this is, just to reiterate the
6 point I made before, this is an appeal about the
7 zoning regulations. What discussion my client has
8 had with DPR, or DGS isn't relevant to the strict
9 issue here. My understanding is DPR would be the
10 agency responsible. They do not -- they have
11 certain -- they have a permissive handbook that has
12 some sort of preparatory language about how lights
13 are supposed to be used.

14 But again, I don't think that's directly
15 relevant to the issue before the Board right now
16 that it has jurisdiction over, which is the
17 interpretation of the zoning regulations relevant to
18 the zoning appeal here. That kind of issue would be
19 the kind of thing that you would expect to address
20 at an area variance, which emphasizes the need that
21 the District should have applied for an area
22 variance here.

23 COMMISSIONER WRIGHT: And just to clarify
24 that, I want to make sure that I heard what you just
25 said correctly. The Department of Rec, and the

1 various offices have actually provided a list in the
2 record of many meetings that they had with the
3 community about the planning for renovations at this
4 field. And they list a whole variety of community
5 meetings that have taken place, and you're not
6 arguing that those did not happen, and that there
7 was community discussion about the renovation of the
8 field.

9 What you are arguing is a strict zoning
10 issue, which is that this is a structure, and thus
11 requires something beyond a building permit, a by
12 right building permit, and that again, using the
13 Gonzaga example, what it might require is a
14 variance, or special exception, or maybe both. But
15 that you aren't arguing that there wasn't public
16 outreach on the renovation of the field.

17 What you are saying is from a zoning
18 perspective there needed to be a specific action
19 taken to permit these poles, is that correct?

20 MR. MCDUFFIE: So, Commissioner Wright, the
21 argument is that the outreach is not relevant to the
22 zoning issue. I can certainly get into the issues
23 with the outreach, I can get into the lack of
24 responsiveness from DPR, I can get into all of that.

25 But that is outside the scope of a zoning appeal.

1 And I will tell you, the Burleith Citizens
2 Association isn't filing this appeal because DPR was
3 communicating clearly about how this field was going
4 to be used, how impacts were going to be mitigated.

5 But again, this is a zoning appeal, it doesn't turn
6 on whether what meetings DPR had with my client or
7 the community. It turns on the language of the
8 zoning regulations.

9 And I don't think it's worth getting into a
10 blow by blow of how I didn't get a response to X
11 email or how we didn't get Y meeting at the end of
12 the day, because the language is clear.

13 VICE CHAIR BLAKE: Mr. McDuffie, I have one
14 question with regard to that. The reason that I
15 think that I got kind of interested in that was
16 because you indicated your desired disposition was
17 that we remove the poles from the permitting process
18 so that they could interact with the community in a
19 meaningful way, and go through the proper process.
20 So, you kind of indicated that's what the
21 aspirational goal was at the end of the day for the
22 disposition.

23 So, I mean, it kind of spoke to, and why I
24 was curious did you have interaction at all, were
25 you completely denied that as a result of this?

1 Because I wonder if our expertise is actually
2 appropriate to determine that other than the
3 setback, which like you said, very clear from a
4 language standpoint. I'm just trying to make sure I
5 understand what your goal was in that particular
6 thing. And I think I got that question answered,
7 thank you.

8 Okay, do we have any more questions for the
9 appellant? I'm sorry, Ms. Moldenhauer, yes, you
10 have the right to ask questions, yes, you do. Go
11 ahead, we have a question from DOB, or a question
12 from the intervener. Go ahead, who has a question
13 for -- anybody -- Mr. Haresign?

14 MR. HARESIGN: Ms. Moldenhauer, go ahead.

15 MS. MOLDENHAUER: I was going to defer to
16 Mr. Haresign, but --

17 MR. HARESIGN: I will go, I don't have very
18 many questions. Mr. McDuffie, nice to see you
19 again, speak with you again. You mentioned some
20 emails with Mr. and Mrs. Walker that you were
21 relying on in support of your appeal, are either of
22 those individuals the zoning administrator?

23 MR. MCDUFFIE: Not to my knowledge.

24 MR. HARESIGN: And their emails in response
25 to you, they were induced by your laying out a legal

1 argument with respect to the issue that you've
2 identified?

3 MR. MCDUFFIE: They were in response to
4 outreach of concern over the lighting poles, yes.

5 MR. HARESIGN: Okay. And we can agree that
6 those are not zoning administrator communications,
7 right?

8 MR. MCDUFFIE: I don't know whether they
9 were communicating the position to the zoning
10 administrator or not, I don't know what
11 conversations were had, so I can't comment on that,
12 Mr. Haresign.

13 MR. HARESIGN: You didn't appeal those
14 emails, right?

15 MR. MCDUFFIE: I did not appeal those
16 emails, correct.

17 MR. HARESIGN: And focusing on your reading
18 of the definition, so in your estimation and
19 argument, the only exemption to the definition of
20 structure is mechanical equipment?

21 MR. MCDUFFIE: That is the explicit carve
22 out. I mean, if you're asking me to speculate as to
23 other things, I don't know what, I'm not going to go
24 into a long speculation. But there is an explicit
25 carve out that applies to mechanical equipment.

1 MR. HARESIGN: But you're saying that
2 things that are not explicitly carved out do fall
3 within the definition, that's your position?

4 MR. MCDUFFIE: I mean, if they meet the
5 other requirements of the definition, I mean it's
6 there. I think this calls for speculation, Mr.
7 Haresign.

8 MR. HARESIGN: I'm asking you about your
9 argument, not if you're speculating about your own
10 argument. I just want to -- so, the other elements
11 you mentioned, that is anything constructed, so in
12 your estimation that's all things requiring a
13 permanent location on the ground, those are the
14 elements you're referring to?

15 MR. MCDUFFIE: I mean, the definition
16 speaks for itself.

17 MR. HARESIGN: Is that a yes?

18 MR. MCDUFFIE: The definition speaks for
19 itself. Are you asking me whether things are in the
20 definition? Those are words that appear in the
21 definition, yes.

22 MR. HARESIGN: Okay. And do you or your
23 neighbors have fences in your yard?

24 MR. MCDUFFIE: Relevance, objection. Sure.

25 MR. HARESIGN: Okay, and these fences are

1 not naturally occurring, right?

2 MR. MCDUFFIE: I mean in some cases they
3 may be, I mean I have hedges in the front, I don't
4 know if those are naturally occurring. But there
5 are non-natural fences in the neighborhood, yes.

6 MR. HARESIGN: So, they would be things
7 that are constructed?

8 MR. MCDUFFIE: I mean I would have to
9 analyze it in the context of the zoning regulations,
10 that's not at issue in this case.

11 VICE CHAIR BLAKE: Anymore questions, Mr.
12 Haresign?

13 MR. HARESIGN: No, I have none at this
14 time.

15 VICE CHAIR BLAKE: Okay, I'm going to move
16 to Ms. Moldenhauer, do you have any questions for
17 the appellant?

18 MS. MOLDENHAUER: I just have a very few
19 number of questions. Mr. McDuffie, are you a
20 licensed architect?

21 MR. MCDUFFIE: No.

22 MS. MOLDENHAUER: Are you a licensed
23 engineer?

24 MR. MCDUFFIE: No.

25 MS. MOLDENHAUER: Did you try and consult a

1 licensed architect to provide expert testimony on
2 behalf of your case?

3 MR. MCDUFFIE: On behalf of my zoning
4 appeal case? No.

5 MS. MOLDENHAUER: Are the zoning
6 regulations the only regulations relevant to the
7 issuance of the building permit?

8 MR. MCDUFFIE: Honestly probably not,
9 there's probably other regulations, but they're the
10 most important ones in this case.

11 MS. MOLDENHAUER: Did you or your client
12 attend any of the presentations provided by DPR on
13 the project?

14 MR. MCDUFFIE: Yes.

15 MS. MOLDENHAUER: Did you and your client
16 understand, started in 2021 that the project would
17 propose light poles?

18 MR. MCDUFFIE: I don't recall the specific
19 date, but at some point it was suggested that
20 lighting poles were going to be considered, and
21 certainly by 2024 it was very clear that DPR wanted
22 to erect light poles.

23 MS. MOLDENHAUER: And when you understood
24 in 2024, years before this appeal was filed, that
25 light poles were going to be constructed, that they

1 were going to be tall light poles?

2 MR. MCDUFFIE: I understood that they were
3 going to be light poles to serve the athletic field,
4 I'm not sure what I knew specifically around height,
5 but I would have assumed that they would be large.

6 MS. MOLDENHAUER: In your description of
7 the case, and discussing the word structure, you a
8 couple of times said to the Board that it was clear
9 that the regulations had to be really broad, that
10 they wanted it to be the broadest possible, is that
11 correct, is that your argument?

12 MR. MCDUFFIE: No, that is not what I said,
13 that is a mischaracterization. As broad as
14 possible? My argument is that it's meant to be read
15 broadly, I didn't say broadest possible.

16 MS. MOLDENHAUER: Then my question would be
17 if the regulators were writing the regulations, and
18 they wanted it to be broad, wouldn't they have used
19 the word just pole, and not flag pole, but the word
20 pole to then encompass both light poles and flag
21 poles?

22 MR. MCDUFFIE: No, because again, the way
23 this definition is structured, there is a broad
24 term, and then there is an effort in a non-
25 exhaustive list, explicitly non-exhaustive,

1 including among other things cannot be more clear
2 that they're just providing examples to show you how
3 broad the definition is. Just because they chose to
4 put flag pole instead of pole has nothing to do with
5 how that definition is structured. I mean, no.

6 MS. MOLDENHAUER: So, my last and final two
7 questions. You mentioned that your civic
8 organization, BCA, has six people that are impacted,
9 do we have six letters identifying that those people
10 are within 200 feet? Is there anything in the
11 record, in evidence documenting those individuals
12 and where they live?

13 MR. MCDUFFIE: Yes, there is a foot note, I
14 believe in the reply brief that documents their
15 names and their addresses.

16 MS. MOLDENHAUER: Does it have letters from
17 them in the record?

18 MR. MCDUFFIE: No, because that's not
19 necessary to establish standing. I mean, there's an
20 explicit acknowledgment just in the fee structure
21 itself that says citizens associations have
22 standing.

23 MS. MOLDENHAUER: So, just because they are
24 members of your organization that doesn't per se
25 mean that they are in agreement of your argument.

1 MR. MCDUFFIE: Have I cross examined each
2 and every person within 200 feet to ask whether they
3 agree that lighting poles are structures? I have
4 not, it has certainly been discussed by the Burleith
5 Citizens Association, and as a representative
6 association, the board felt it necessary to bring
7 this appeal.

8 MS. MOLDENHAUER: And you are aware that
9 there's an Exhibit No. 37 in the record from a
10 member of the Burleith Citizens Association that
11 actually is not supportive of this appeal, and wants
12 to see the light poles erected?

13 MR. MCDUFFIE: Exhibit No. 37, I am not
14 aware of that, I'm happy to take a look at it. I
15 only --

16 MS. MOLDENHAUER: The letter will speak for
17 itself in the exhibits, and your lack of knowledge
18 of the members filing that is also relevant, but I
19 have no other questions, Mr. Blake, thank you.

20 VICE CHAIR BLAKE: All right, thank you.
21 We are going to proceed now with the presentation of
22 the appellee. Mr. Haresign, you can go into your
23 formative arguments.

24 MR. HARESIGN: Thank you. I'll be brief,
25 because we want to make sure that the Board has an

1 opportunity to hear from Zoning Administrator
2 Beeton. Again, thank you very much. You understand
3 the issue, what's being raised here is a challenge
4 to the issuance of a permit for field improvements
5 at Duke Ellington Field, and a related determination
6 that the definition of structures does not include
7 light poles.

8 You have heard the BCA make their arguments
9 that well, it's anything constructed that has a
10 permanent location on the ground. And respectfully
11 that's not what's in the definition. The appellant
12 is asking the Board to overrule the determination,
13 the determination that's been consistently applied
14 throughout the city in many contexts since the
15 zoning regulations were promulgated in '58.

16 We have some slides, but in the interest of
17 time, it's just the different iterations of the
18 definition of structure, it hasn't changed since the
19 Zoning Commission adopted the '58 regs. I think it
20 is worth noting that the '58 regs area product of
21 the Lewis Report, I'm sure you're familiar. And the
22 initial proposed definition of structure from Mr.
23 Lewis was far more in line with the argument
24 offered.

25 The very simplistic, overly broad reading

1 of the word structure, and that changed. For the
2 life of me, we went back through, combed through the
3 records, and could not find the specific transcripts
4 related to that, it's not in the first seven
5 volumes, I'll tell you that much. If you look at
6 analogous definitions of the word structure, the
7 building code defines structure in six words.

8 That which is built or constructed. That
9 is not our definition, the zoning definition uses 89
10 words to define the word structure, and it includes
11 a list, and it signals the intentionality to
12 indicate that not all things are structures. Not
13 all things constructed and attached to the ground
14 are structures. The appellant encourages us to hone
15 in on single words, and sort of have us fail to see
16 the forest for the trees.

17 That's not how the zoning regulations work.
18 I mean, with all due respect to Ryan Garner and the
19 late Justice Scalia, we don't live inside law books,
20 we live in the real world, and the zoning
21 regulations have to keep that in mind, the
22 interpretation has real world impacts. And we can
23 see this, I think the Board is familiar with this.
24 One example that springs to mind very quickly is in
25 the cannabis context.

1 The zoning regulations are completely
2 silent on cannabis, there was a case a couple years
3 ago, 2654, where the Board was called upon to
4 evaluate the zoning administrator's determination
5 that cannabis growing wasn't agriculture. If you
6 look at the definition of agriculture, word for word
7 the activity of growing cannabis would fit that
8 definition.

9 But there, the Board ended up agreeing with
10 the zoning administrator, and taking a holistic
11 approach to the manner of cultivation, the impacts
12 that it can have, and agreed that it was actually
13 more akin to a light manufacturing, and again,
14 that's 2654. So, there again, and we urge you here
15 today, to agree with the zoning administrator's
16 determination.

17 The reading of the definition of structure
18 is more reasonable when it is read to not be
19 universally comprehensive as the BCA would have you
20 believe. Now, Mr. McDuffie did mention a couple of
21 times what he thought the process of making this
22 determination was, but we have Kathleen Beeton here
23 today.

24 And so I would like to call Ms. Beeton to
25 give you a description of generally what goes into

1 the determinations, and specifically this one. So,
2 Ms. Beeton, are you able to turn your camera on?

3 MS. BEETON: I am, thank you very much. I
4 am able to turn my camera on.

5 VICE CHAIR BLAKE: Welcome, Ms. Beeton, how
6 are you doing?

7 MS. BEETON: I'm doing very well, Chair
8 Blake, how are you today?

9 VICE CHAIR BLAKE: Great, looking forward
10 to your testimony, thank you.

11 MR. HARESIGN: Ms. Beeton, can you just
12 state your name for the record?

13 MS. BEETON: Sure, my name is Kathleen
14 Beeton.

15 MR. HARESIGN: And what's your current
16 position with the District of Columbia?

17 MS. BEETON: I am the zoning administrator.

18 MR. HARESIGN: Okay, and how long have you
19 been serving in that role?

20 MS. BEETON: Since November 2023.

21 MR. HARESIGN: Prior to that, what did you
22 do?

23 MS. BEETON: I was the deputy zoning
24 administrator for 12 years.

25 MR. HARESIGN: So, all in, zoning

1 administrator, deputy zoning administrator for 15
2 years?

3 MS. BEETON: That's right.

4 MR. HARESIGN: Okay, and can you just
5 briefly describe your duties and responsibilities as
6 zoning administrator?

7 MS. BEETON: Sure. So, I supervise a team
8 of people who are responsible for administering,
9 interpreting, and enforcing the zoning regulations.
10 We primarily do that through the review of building
11 permit applications for zoning compliance. We
12 review certificates of occupancy, home occupation
13 permits, subdivisions. We provide technical
14 assistance to property owners to help them navigate
15 the zoning regulations, the wording of them, the
16 language.

17 Some people have questions about building
18 additions or particularly use questions, and so I
19 spend my time talking with those customers, and my
20 staff spends time helping them understand the
21 regulations. We provide training, both internally
22 to staff, externally to the public. We have a
23 series of interpretations that are written and
24 posted on our website to help people understand when
25 questions are asked repeatedly about a particular

1 regulation so it's clear. And we participate in
2 appeals such as these -- I participate in appeals
3 such as these.

4 MR. HARESIGN: You mentioned permit
5 applications. Do you know how many permit
6 applications the Department of Buildings reviews
7 each year?

8 MS. BEETON: Sure. So, roughly, in the
9 last fiscal year we issued 54,000 permits, all types
10 of permits, so a large number.

11 MR. HARESIGN: And, to your knowledge, how
12 many of those permit applications included zoning
13 review for light poles?

14 MS. BEETON: For light poles, none.

15 MR. HARESIGN: And are you familiar with
16 the property located at 1700 38th Street Northwest?

17 MS. BEETON: I am.

18 MR. HARESIGN: And what is it?

19 MS. BEETON: It's Duke Ellington Field.

20 MR. HARESIGN: And are you familiar with
21 the building permit that's being appealed in this
22 matter?

23 MS. BEETON: I am, yes.

24 MR. HARESIGN: Okay. What's the purpose of
25 that permit?

1 MS. BEETON: The purpose of the permit is
2 to do field renovations, renovate a field house, and
3 install some light poles.

4 MR. HARESIGN: And did you issue a
5 determination in conjunction with the issuance of
6 that permit?

7 MS. BEETON: I did.

8 MR. HARESIGN: Okay. What was that
9 determination?

10 MS. BEETON: That determination was in
11 response to a note from Mr. McDuffie regarding
12 whether light poles are considered structures.

13 MR. HARESIGN: And what was your
14 determination?

15 MS. BEETON: My determination was that they
16 are not, and that that has been a long standing
17 practice of the Office of Zoning administration,
18 stretching back to the prior zoning administrator,
19 Matt LeGrant, and representative of the conversation
20 we had earlier today, I would say probably prior
21 zoning administrators as well. This is not a new
22 interpretation of the definition of structure, or
23 whether we consider light poles to be structures.

24 MR. HARESIGN: Okay. You mentioned
25 consulting the prior zoning administrator, generally

1 when you are called upon to issue a determination,
2 can you just describe to the Board your process in
3 making a determination?

4 MS. BEETON: Sure, this happens frequently,
5 with staff who have questions about how to apply the
6 zoning regulations, or a particular member of the
7 public has a question about the specific writing of
8 a regulation. So, I read the language carefully,
9 word for word, try to understand the context of the
10 regulations, what they are seeking to achieve.

11 If I have questions about the intent, the
12 zoning administrator doesn't write the zoning
13 regulations, that is done by the Office of Planning,
14 with approval by the Zoning Commission. So, if
15 there is a question about intent, I very often reach
16 out to the Office of Planning to seek guidance from
17 them, whether they are aware of the intent of the
18 particular regulation.

19 I look at past BZA cases, and there are
20 some referenced, the single BZA case that was found
21 related to light poles that Mr. McDuffie mentioned
22 earlier. In this case we do have the prior zoning
23 administrator who lives not far away, who I remain
24 friendly with, so I reached out to him also to
25 confirm what I thought I knew, but just to verify

1 that we had in fact not considered light poles to be
2 structures.

3 And then just kind of our applications,
4 have we considered this regulation before, how have
5 we applied it in the past? It's important to be
6 consistent in the application of the zoning
7 regulations so that property owners understand how
8 they are applied, and can build their building
9 permits and certificates of occupancy accordingly.

10 MR. HARESIGN: So, you mentioned a number
11 of steps there, is any one step dispositive of your
12 determination?

13 MS. BEETON: No, I think they are all
14 important, and they're also interrelated, to
15 understand the words as they're written, the context
16 of the regulations, the applicability, how we've
17 applied them in the past, the intent of the drafters
18 of the regulation, whether there have been appeals,
19 or prior cases have had a particular regulation. I
20 think all of that is important to consider when
21 making a determination.

22 MR. HARESIGN: And do you consider the
23 effects of the determination on the city, any
24 alternative things that could occur?

25 MS. BEETON: Yes, absolutely. I understand

1 that I'm not writing the zoning regulations here,
2 I'm interpreting them.

3 MR. HARESIGN: And so it's a little bit
4 general, a little bit specific, so that is the basic
5 process that you follow every time you're called
6 upon to make a determination?

7 MS. BEETON: Yes, that's right.

8 MR. HARESIGN: And that's the process that
9 you followed in reviewing this question of whether
10 or not light poles are included in the definition of
11 structure?

12 MS. BEETON: Yes, that's correct.

13 MR. HARESIGN: All right, and you said you
14 started with reviewing the specific language of the
15 zoning regs, what did you determine from that
16 review?

17 MS. BEETON: So, there's general language,
18 and then some specific examples are provided about
19 what is deemed to be considered a structure, and I
20 think we have gone over those previously, but flag
21 poles, coal bins, viewing stands, a variety of
22 different items. Notably missing from that list is
23 light pole, or pole, or utility pole. Flag pole is
24 mentioned, yes, and it's mentioned in context of
25 viewing stands, and other sort of ceremonial grand

1 stands, those types of items.

2 So, yes, I looked at the words
3 specifically, and the examples that were provided.

4 MR. HARESIGN: Okay, and your
5 determination, your process didn't stop there, did
6 it?

7 MS. BEETON: No, it did not.

8 MR. HARESIGN: Okay. And you mentioned
9 reaching out to the Office of Planning, did you do
10 that in this case?

11 MS. BEETON: Yeah, I did, yes. I spoke
12 with the team there about it.

13 MR. HARESIGN: And did that aid you in
14 making your determination in this case?

15 MS. BEETON: It helped me understand the
16 interpretation that we had been operating under,
17 meaning that light poles aren't considered
18 structures, is something that they felt was also
19 consistent in their reading of the definition of
20 structure. And, in fact, earlier language in one of
21 the staff reports that went to the Zoning Commission
22 talked about the regulations that they were putting
23 forward were to codify current interpretation of the
24 regulations. So, at least in one staff report that
25 was provided to the Zoning Commission.

1 MR. HARESIGN: You mentioned, and you've
2 heard mention of, the Gonzaga case?

3 MS. BEETON: Yes.

4 MR. HARESIGN: Did that come up at any
5 point during your determinative process?

6 MS. BEETON: Yes. As I said before, I do
7 take a look back to see if there have been cases
8 related to that particular regulation assigned to
9 the Board of Zoning Adjustment, or appeals, or any
10 sort of history with that. And there was one case,
11 the Gonzaga case, where Gonzaga's attorney, self-
12 certified, meaning they hired an attorney or
13 architect licensed in D.C. to identify if the relief
14 was necessary, and that included light poles.

15 MR. HARESIGN: If, instead of self-
16 certifying, the Gonzaga applicants had come to you
17 for a referral memo, would you have identified that
18 as an area that required relief?

19 MS. BEETON: No, we would not have.

20 MR. HARESIGN: You mentioned reaching out
21 to understand historical context. Why is historical
22 context important?

23 MS. BEETON: I think, as I said earlier,
24 being consistent in the application of zoning
25 regulations is important, people need certainty.

1 Everybody needs certainty in their lives, right?
2 Particularly people who are making decisions about
3 whether to buy a piece of property, to expand their
4 home, to operate a new business. If today I decide
5 one thing and next week I decide something else it's
6 very confusing for the public, and it's hard to make
7 investment decisions.

8 So, we want to be consistent in our
9 application, we don't want to be arbitrary or
10 capricious, those are the big legal terms that I
11 use, we want to do things that are predictable, and
12 consistent.

13 MR. HARESIGN: Thank you. And with respect
14 to the real world consequences, do you consider the
15 consequences of making a determination that light
16 poles are included in the definition of structure?

17 MS. BEETON: Yes, I did, I considered that.

18 MR. HARESIGN: And how did that inform your
19 determination?

20 MS. BEETON: Well, the strict application
21 of determining that light poles are structures, they
22 would need to be setback a minimum distance relative
23 to their height. In this case I believe that the
24 poles are 90 feet tall, so we would be requiring a
25 90 foot setback. So, this field is large, but not

1 enormous, and so setting four poles back 90 feet
2 would probably, most likely mean that those poles
3 would be located in the center of the field, or in
4 the middle of the field.

5 Which would make it one, extremely
6 difficult to play on the field. And two, the
7 illumination that's being proposed, the reason it's
8 at the perimeter is to provide lighting of the
9 entire field, not a specific portion of the field.
10 So, those would be the real world implications. And
11 not just from this particular field, but fields
12 across the city.

13 I think we talked a little bit before about
14 these, they're not the only light poles in the city,
15 and similar hardships would occur in parking lots,
16 other areas that are illuminated by light poles.

17 MR. HARESIGN: So, if light poles are not
18 considered structures for zoning purposes, are you
19 aware of any other ways in which they are regulated?

20 MS. BEETON: Yes. So, the building code
21 regulates light poles, and the green building code
22 does too. From the building code standpoint,
23 they're looking at things like how the light pole is
24 anchored into the ground, the pole itself, the look
25 at the specifications to make sure that it is

1 constructed properly, that it withstands wind loads,
2 and other sorts of environmental hazards.

3 The power that's provided to it, the
4 electrical diagrams, and the supply of that is
5 reviewed for safety reasons. And then the green
6 building code looks specifically at shielding of
7 lighting. In addition to those building code
8 regulations that come into play, there is also, to
9 my understanding, regulations that DPR has for
10 lighting, and it's (audio interference) host of
11 other things that Department of Parks and Recreation
12 looks at when they're looking at lights for fields
13 or rec centers.

14 MR. HARESIGN: Thank you, Ms. Beeton, I
15 have nothing further.

16 MS. BEETON: Thank you.

17 VICE CHAIR BLAKE: Does the Board have any
18 questions for the zoning administrator? Okay, well
19 I have one. What regulations in ZR12 do control
20 light bulbs, or which ones would apply to the light
21 poles, or the lights on them?

22 MS. BEETON: The light poles or the lights
23 on them, so my position is they're not considered
24 structures, therefore they're not subject to the
25 setback and height requirements. So, effectively no

1 zoning regulations for light poles.

2 VICE CHAIR BLAKE: Is there something in
3 Chapter 8? Don't we have something about
4 illumination and light, something like that?

5 MR. HARESIGN: You may be referring to
6 parking, I think there is a provision about parking
7 lighting being directed downward, that may be what
8 you're referring to, that's in the subtitle.

9 VICE CHAIR BLAKE: That would not pertain
10 to these lights though, only to parking --

11 MR. HARESIGN: Parking lot lighting?

12 VICE CHAIR BLAKE: Yeah.

13 MR. HARESIGN: Yeah, if that's the
14 provision you're thinking of that I think you may be
15 thinking of, that is specific to parking spot
16 lighting.

17 VICE CHAIR BLAKE: Okay, is there any
18 provisions in the code otherwise that addresses
19 light poles directly?

20 MR. HARESIGN: That's a good question, the
21 only thing I could find was related to when light
22 poles are used as stealth structures, so when they
23 are housing a cellular tower, when the light pole
24 itself, that cellular tower is enclosed in the light
25 pole, then there are regulations in Chapter 13,

1 antennas, about stealth structures. And those are
2 required to meet setbacks and height limitations.

3 VICE CHAIR BLAKE: Okay.

4 MR. HARESIGN: But these light poles are
5 not cellular towers.

6 VICE CHAIR BLAKE: Okay, thank you. Okay,
7 Mr. Haresign, does that complete your -- I'm sorry.

8 COMMISSIONER WRIGHT: I have a question.

9 VICE CHAIR BLAKE: Commissioner, go ahead.

10 COMMISSIONER WRIGHT: Thanks. I just
11 wanted to follow up on something you mentioned.
12 First of all, hello, Ms. Beeton, many years ago we
13 worked together in Alexandria, Virginia. You
14 mentioned cell phone towers, clearly when this was
15 drafted in the 50s there were no cell phone towers,
16 and I do understand that most cell phones at this
17 point are antennas that are attached to some other
18 pre-existing tower.

19 That's what most cellular companies do at
20 this point. However, if a cellular company said I
21 want to build a cell tower, and let's just assume
22 it's 80 feet or 90 feet in height just for
23 discussion purposes, and I want to build that cell
24 tower on a piece of land that is privately owned,
25 it's not owned by the government, and it doesn't

1 meet setbacks, in terms of one for one setback.

2 Would that be something that you believe
3 would not be within the definition of structure, and
4 thus would be permitted with a building permit as a
5 by right use under the zoning code?

6 MS. BEETON: So, Chapter 13 describes
7 antennas in detail, there's a bunch of regulations
8 about setback requirements and height limitations
9 for cell towers. So, unlike the definition of
10 structure, which we were talking about how I
11 determined light poles are not considered to be
12 structures, I would say that cell towers, antenna
13 towers, even the towers with antennas on those
14 towers, the monopoles themselves that have antennas
15 are all regulated under that chapter.

16 And apart from, I believe PDR zones, a
17 special exception is required for cell towers that
18 don't comply with the setbacks and height
19 limitations. So, I would say they're not exempt
20 from being considered a structure, they are actually
21 regulated differently in the zoning regulations.

22 COMMISSIONER WRIGHT: So, again, and I'm
23 not trying to be argumentative, but it's clear that
24 a variety of towers are regulated, whether they be
25 the radio and television towers mentioned in the

1 definition of structure, or cell towers, cell phone
2 poles that you mention are regulated through Chapter
3 13. Flag poles are mentioned again also in this,
4 why would light poles not be similar to all of these
5 other things that are defined as structures?

6 MS. BEETON: That's a very good question,
7 Commissioner Wright. And my view of light poles is
8 that they are more of a utility feature, or utility
9 equipment like telephone poles specifically, but
10 there are other things too that aren't listed in
11 structures that we also don't regulate as a
12 structure. So, fences, I think Mr. Haresign was
13 mentioning fences earlier, railings, lamp posts,
14 mailboxes.

15 There's a variety of thing that get
16 erected, that one could argue permanently, but
17 they're not considered structures, and that aren't
18 subject to height limitations or setback
19 requirements.

20 COMMISSIONER WRIGHT: Okay, that's very
21 helpful. You're sort of saying as a utility, a
22 light pole is more like our telephone poles, which
23 we don't require anything other than, I assume, a
24 building permit. I don't even know whether the
25 utility companies have to get building permits to

1 put up new poles in neighborhoods. But you're
2 saying that you view it as again, a little different
3 than other structures because it's a utility.

4 MS. BEETON: Yes, that's exactly what I'm
5 saying, thank you, Commissioner Wright, for helping
6 me clarify my response. Yes, that's exactly it.

7 COMMISSIONER WRIGHT: Thank you, that's
8 very helpful.

9 MS. BEETON: You're welcome.

10 VICE CHAIR BLAKE: Speaking along those
11 lines, what structures have you seen this provision
12 apply to? Which structures have used this setback
13 one to one of larger structures, which ones have you
14 actually apply that to?

15 MS. BEETON: Larger structures, sorry.
16 That's a good question as well, so houses, homes,
17 new construction of buildings, accessory buildings,
18 other things that get constructed. I guess those
19 things come easily to mind, hyperbolas are similar
20 structures out there that we would regulate as
21 structures, and so would be subject to height and
22 setback requirements.

23 VICE CHAIR BLAKE: Okay, but of the list
24 that we saw there, I was interested, the list you
25 indicated on that illustrative list, many things

1 there you do not regulate as part of zoning, you
2 exclude. So, it's not that they're not structures,
3 they just would not -- we just don't focus on them,
4 is that it? So, a six foot fence is not set back
5 six feet from the property line.

6 MS. BEETON: That's correct. And so fences
7 are a good example of something that's regulated by
8 the building code. So, earlier Mr. Haresign asked
9 me about light poles regulated by building code
10 requirements or considerations, and I said yes, the
11 building code does look at the way the poles are
12 mounted in the ground, the wind loads, there's a
13 bunch of engineering specifications that they look
14 at to make sure that the poles are going to be
15 installed safely.

16 So similarly fences, how high a fence can
17 be, the location of the fence, the material, apart
18 from barbed wire I will say there is a note in the
19 zoning ordinance that you cannot install barbed
20 wire. But apart from that there is no requirement
21 that it be a certain height, location, width,
22 material, no, we don't regulate fences.

23 VICE CHAIR BLAKE: Okay. Is there another
24 example you can give me?

25 MS. BEETON: I mentioned railings, railings

1 are another one, those are also regulated by the
2 building code. So, the railings that you have coming
3 in and out of your house, or around a deck, or
4 publicly located, hospitals, libraries, they have
5 railings, we don't regulate those. Lamp posts, the
6 smaller type of lamp posts, people have those
7 decorative lamp posts in their yards or other
8 places, we don't regulate those.

9 Mailboxes, free libraries, I didn't mention
10 the free libraries, but we were thinking as a group
11 of what are the other things that we don't regulate,
12 so you'll see some neighborhoods have those little
13 wooden boxes where people put books in, that's
14 something else we don't regulate. And it's
15 interesting that Mr. McDuffie brought up statues. I
16 don't believe that we've ever considered a statue a
17 structure either, and required it to meet setbacks,
18 or apply height limitations.

19 So, I know for a fact art we don't, like
20 public art, that's something that we don't regulate.

21 So (audio interference) other statues that happen
22 to be about, but that's the list that I could come
23 up with when I was thinking about what are other
24 things that one might consider structures that we
25 don't regulate, and I would actually say we don't

1 consider them to be structures.

2 VICE CHAIR BLAKE: Okay, thank you. Any
3 other questions from the board?

4 MEMBER DRAKEFORD: I did have a question,
5 it's just a clarifying question of an exchange that
6 happened, I want to just make sure I heard it
7 correctly. Can you just clarify for me, I believe
8 Commissioner Wright had brought up the example of
9 utility equipment. Can you just clarify for me what
10 that approval process is, or what that is?

11 MS. BEETON: Not sure if I can clarify the
12 approval process for utilities. But her question to
13 me what I had to do with what I consider light
14 poles, and I responded by saying I consider them to
15 be like utility poles, like telephone poles, and
16 that sort of thing. Generally, I believe if you're
17 installing when you need the building permit, I'm
18 not 100 percent certain on that.

19 So, I don't want to say unilaterally that
20 all utilities have to get permits for poles, I do
21 not know that factually.

22 MEMBER DRAKEFORD: Okay, thank you.

23 MS. BEETON: You're welcome.

24 VICE CHAIR BLAKE: All right, let's see,
25 Mr. McDuffie, do you have any questions for the

1 zoning administrator, or Mr. Haresign?

2 MR. MCDUFFIE: I do, for Zoning
3 Administrator Beeton. Thank you for being here
4 today. I think you mentioned in your testimony that
5 you've been involved in D.C. zoning for about 15
6 years, is that right?

7 MS. BEETON: That's correct.

8 MR. MCDUFFIE: And in connection with this
9 application though, you felt it necessary to contact
10 the former zoning administrator, is that correct?

11 MS. BEETON: I didn't necessarily feel it
12 was necessary, but I do often talk with him, and I
13 wanted to confer with him about this, yes.

14 MR. MCDUFFIE: It was part of your process,
15 is that correct?

16 MS. BEETON: It was part of my process,
17 yes.

18 MR. MCDUFFIE: Okay. Is the interpretation
19 that he told you, relating to lighting poles not
20 being structures written down anywhere?

21 MS. BEETON: Not to my knowledge, no.

22 MR. MCDUFFIE: Okay. All right, let's move
23 on to the zoning. Can a homeowner in the R3/GT zone
24 erect an 89 foot light pole in their backyard
25 without meeting the setback requirement of D203.5?

1 MS. BEETON: That is a question you asked
2 me before, and I responded to it affirmatively,
3 right? So, I will affirmatively say again, is it
4 possible that someone could do that? It is
5 possible. There are other regulations that I noted
6 previously would also apply here, like the building
7 code, and the green building code, so there are
8 things that would have to be met apart from zoning
9 regulations.

10 MR. MCDUFFIE: And then -- sorry go ahead.

11 MS. BEETON: That's okay, go ahead, I'm
12 done.

13 MR. MCDUFFIE: And then let's say I wanted
14 to erect an 89 foot Titanosaurus statue in my
15 backyard, am I correct in understanding that as a
16 zoning matter, I could do so without meeting the
17 setback requirement of D203.5?

18 MS. BEETON: I suppose you could, although
19 I will say most of what I see come in for back yard
20 installations are additions, decks, and accessory
21 structures. Usually basketball court, but not so
22 much tall statutes.

23 MR. MCDUFFIE: And then are artificial
24 trees structures?

25 MS. BEETON: That's a question I've never

1 been asked. Artificial trees, are they concealing a
2 cellular tower? If it's a stealth structure, I
3 would say yes, if not, then no.

4 MR. MCDUFFIE: No antenna.

5 MS. BEETON: No antenna, then it's not a
6 stealth structure.

7 MR. MCDUFFIE: Just an artificial tree.

8 MS. BEETON: Just an artificial tree.

9 MR. MCDUFFIE: So, it is a structure or not
10 a structure?

11 MS. BEETON: We don't -- I would say no, I
12 would not regulate an artificial tree as a
13 structure.

14 MR. MCDUFFIE: Okay, 89 foot artificial
15 tree, okay. What about a tight rope, 89 foot tall
16 tight rope apparatus, structure or not structure?

17 MS. BEETON: You mean like the platform
18 that somebody stands on?

19 MR. MCDUFFIE: Exactly, and the rope in
20 between, is that a structure, or not a structure?

21 MS. BEETON: Well, you're asking me to
22 speculate about things that you weren't speculating
23 about earlier. I've never been asked about a tight
24 rope platform, we have been asked about play
25 equipment in the back yard, and I have also said

1 that I don't consider play equipment to be a
2 structure, and therefore play equipment isn't
3 required to be setback.

4 So, I suppose using that logic, one could
5 say that a tight rope platform would also not be
6 required to be setback.

7 MR. MCDUFFIE: Okay, and so let me follow
8 up on that. Let's say you've got an 89 foot slide
9 that spirals down in your back yard, is that a
10 structure, or not a structure?

11 MS. MOLDENHAUER: I would just object,
12 calls for speculation. Ms. Beeton is not requesting
13 to make decisions on the fly here, I think that
14 she's already given a lot of good examples.

15 VICE CHAIR BLAKE: I agree. Thank you very
16 much, Ms. Moldenhauer. Mr. McDuffie, do you have
17 any other questions?

18 MR. MCDUFFIE: No further questions.

19 VICE CHAIR BLAKE: Okay, thank you. Ms.
20 Moldenhauer, do you have questions? Go ahead.

21 MS. MOLDENHAUER: Not a lot. Ms. Beeton,
22 have you ever seen anyone take this regulation to
23 any extreme as Mr. McDuffie has articulated here in
24 your experience?

25 MS. BEETON: I have not, no.

1 MS. MOLDENHAUER: If the board were to find
2 in favor of Mr. McDuffie's interpretation, we talked
3 a lot about the question of height and setbacks, but
4 I want to ask you in your professional opinion, are
5 there other sections of the regulations that have
6 design requirements such as side yards, or open
7 spaces that would also become an issue here if the
8 board did find that light poles are structures?

9 MS. BEETON: Yes, potentially, not
10 exempting them in other words, requiring that they
11 not be located in side yards, or require a variance
12 potentially, yes, I would say that could be also a
13 concern.

14 MS. MOLDENHAUER: And to your knowledge, do
15 you know if the Gonzaga case asked for relief from a
16 side yard, or the open space requirement, is that --
17 sorry, go ahead.

18 MS. BEETON: Sorry, forgive me.

19 MS. MOLDENHAUER: You were jumping right in
20 there, go ahead.

21 MS. BEETON: I'm sorry. No, to mind, I
22 looked at the order actually while the exchange was
23 going on about what was requested, and there was no
24 relief for side yards, or yards, just height
25 related. And again, the notion of private school,

1 is that really for the private school. So, nothing
2 related to yards.

3 MS. MOLDENHAUER: I think I heard earlier
4 at one point Mr. McDuffie making the comment that
5 Gonzaga would be in compliance if the Board made
6 this decision. Is that an accurate statement? Not
7 doing a full analysis, but is that an accurate
8 statement to your knowledge?

9 MS. BEETON: Right, without doing a full
10 analysis, I mean to caveat that, they didn't get
11 setback relief, so if it happens to be violating a
12 setback, then yes, they would run afoul of this
13 interpretation by the BZA, the Board of Zoning
14 Adjustment, and might otherwise need relief.

15 MS. MOLDENHAUER: And I know you were
16 throwing out some examples, I have two other
17 questions. In the context of DPR fields, which is
18 more relevant here, do you deem a goal post, or a
19 soccer post that kind of blocks soccer balls from
20 flying into streets for public safety reasons, do
21 you believe those to be structures under the
22 regulations?

23 MS. BEETON: No, I do not.

24 MS. MOLDENHAUER: And let's take it down to
25 a smaller, more reasonable relative perspective. If

1 somebody took a metal pole, and poured it into
2 concrete with a sign that said no parking, or
3 reserved parking, and that was standing four feet,
4 one inch tall, and that was located somewhere in a
5 required rear yard, would that be permitted if this
6 interpretation was affirmed by Mr. McDuffie?

7 MS. BEETON: No, it would not, because it
8 would be considered a structure.

9 MS. MOLDENHAUER: No other questions, thank
10 you.

11 VICE CHAIR BLAKE: Okay, so with that, Ms.
12 Moldenhauer, do you want to move to your formal
13 remarks?

14 MS. MOLDENHAUER: Thank you so much, yes.
15 If Mr. Young could pull up our presentation? We
16 have two witnesses. You can go to the next slide.
17 We have DPR Director Freeman, who will provide a
18 brief remark, and then we will have testimony from
19 DPR Project Manager Peter Nohrden, and then I will
20 make a brief legal argument. Next slide. I'll turn
21 it over to the director.

22 MS. FREEMAN: Good afternoon everyone.
23 Good afternoon, vice chairperson, members of the
24 Board of Zoning Adjustment, and members of the
25 public joining us today. I am Thennie Mac Freeman,

1 director of the D.C. Department of Parks and
2 Recreation. I strongly object to the appeal filed
3 with the Burleith Citizens Association alleging that
4 light poles should be classified as structures under
5 the current zoning regulations.

6 D.C. Code Section 10-213 directs DPR to
7 provide a comprehensive system of public recreation
8 throughout the District. We operate an extensive
9 inventory of amenities across 80 recreation centers,
10 35 pools and aquatic centers, 20 dog parks, 107
11 playgrounds, 110 athletic fields. For decades the
12 District has planned, constructed, and operated
13 these facilities with the shared understanding that
14 field lighting is a standard component of athletic
15 infrastructure, and is not subject to dimensional
16 zoning regulation.

17 That understanding has allowed DPR to
18 deliver recreational facilities consistently,
19 predictably, and equitably across all eight wards.
20 The appeal before you seeks to upend that long
21 standing practice through adjudication, even though
22 the zoning regulations do not clearly compel that
23 result.

24 With the support of Mayor Muriel Bowser,
25 and Deputy Mayor for Education Paul Kihn, we are

1 guided by our mission to provide D.C. residents with
2 equitable access to high quality recreation
3 programs, services, and facilities across all eight
4 wards. We are proud of that, for the last five
5 years the Trust for Public Planning has ranked our
6 park system number one in the nation.

7 And that DPR is also an accredited parks
8 and recreation agency under the National
9 Recreational Parks Association Commission for
10 Accreditation of Parks and Recreation Agency.
11 Having met 90 to 100 percent of the Commission's 151
12 standards for excellence in operation of service.
13 DPR's ability to deliver those facilities depends on
14 predictable, coordinated regulation.

15 DPR is also planning for building through
16 the future through our Ready2Play master plan.
17 Released in December of 2023, Ready2Play was
18 developed over multiple years through engagement of
19 over 30000 residents, and rigorous data analysis.
20 It is important to understand that DPR's blueprint
21 for the next 20 years on how we will invest in parks
22 and recreation with the strategic goals of one,
23 creating a unified and equitable park system.

24 Two, fostering inclusive, resilient design
25 and stewardship. Three, developing responsive,

1 diverse programming. And four, maintaining
2 transparent, efficient, and engaged operations. The
3 Ready2Play master plan provides not only a blueprint
4 for the future, but also a framework for DPR's
5 assets and amenities. For instance, as part of the
6 Ready2Play master plan process, DPR refined its park
7 classifications to clarify the acreage and square
8 footage of sites.

9 Enabling more detailed analysis for our
10 inventory. The classifications allow us to evaluate
11 access, identify service gaps, and plan for more
12 equitable park systems. The Ready2Play master plan
13 is a living document that we continue to use to
14 track our progress against detailed recommendations
15 from the report.

16 Building on that regular engagement through
17 the development of the Ready2Play master plan, we
18 have launched quarterly ward level construction
19 updates on each project in that ward. Maintaining
20 this kind of coordinated, predictable planning,
21 depends on regulatory continuity, which is why this
22 appeal should be denied, rather than used to
23 introduce a novel zoning classification with city
24 wide consequences.

25 In 2020 the ANC voted unanimously in favor

1 of the transfer of Ellington Field from DCPS to DPR,
2 and requested that funds be made available to
3 renovate and improve the field, and its associated
4 facilities to make Duke Ellington Field a first
5 class recreational asset. DPR and DGS undertook
6 this renovation following years of community
7 engagement, published project materials, and
8 coordination with District agencies.

9 DGS and DPR community engagement concerning
10 the project met on the following dates. April 6th,
11 2021, there was a park renovation presentation.
12 July 21st, 2021, there was a community meeting
13 presentation. September 29th, 2021, another
14 community meeting presentation. November 8th, 2021,
15 a lighting fixture review with the community
16 members, ANC, and Burleith at Takoma Soccer Field.

17 November 15th, 2021, a community meeting
18 presentation. September 7th, 2023, a community
19 meeting presentation. And last but not least,
20 September 12th, 2024, a community meeting
21 presentation. Critically, DPR did not rely on
22 minimum permitting requirements in the installation
23 of Duke Ellington Field lights.

24 As my colleague Peter Nohrden will testify
25 to, the lighting installed at Duke Ellington Field

1 meets internationally recognized dark sky standards,
2 and has been independently certified under the
3 International Dark Sky Association's outdoor sports
4 lighting program. Additionally, Peter will discuss
5 everything DPR is doing to protect the public's
6 investment, and enjoyment in the public facilities
7 while balancing best practices in lighting.

8 The concerns raised in this appeal relate
9 primarily to hours of use, permitting, and
10 neighborhood activity. Those issues are governed
11 through DPR's robust permitting and operational
12 controls under 19 DCMR Section 725. DPR has the
13 authority, and conditional permits addressing hours
14 of operation, crowd size, activities, noise, and
15 site management.

16 DPR monitors permitted use through on site
17 staff, and urban rangers, retains authority to
18 modify or revoke permits if conditions are not met,
19 and adjusts lighting schedules seasonally, with
20 lights programmed to turn off at a set evening hour.

21 These are the tools specifically designed to
22 address the concerns raised here, and they provide
23 no basis for reclassifying athletic field light
24 poles as zoning structures.

25 For these reasons, the Board should deny

1 the appeal. DPR acted with its statutory authority,
2 followed established planning and technical
3 standards, engaged the community extensively, and
4 exceeded baseline requirements for minimizing
5 lighting impacts. There is no basis for
6 reclassifying athletic field light poles through
7 this appeal, and no public benefit to doing so.
8 Thank you for the opportunity to appear before you
9 today.

10 MS. MOLDENHAUER: Thank you so much,
11 Director Freeman. Next slide please. So, this
12 appeal is specifically based on DCPS DGS owned
13 property that is the subject of Duke Ellington
14 Field. Next slide. I'm going to turn it over now
15 to Peter to walk through some of the background
16 information on this field, and the lights. Next
17 slide please.

18 MR. NOHRDEN: Thank you very much,
19 Meridith. Yeah, so today I wanted to put together
20 some slides to just give some context, and some of
21 the details we went through, both in public
22 engagement, but also in some of the technical
23 details we did to make sure that we were responding
24 to the community concerns. So, just for some
25 background, the overall project actually started

1 with funding, and the design from DPR in our
2 planning, once we knew we had this facility in our
3 inventory in 2019 when it was transferred from DCPS.

4 So, at that time we put together a plan for
5 the funding of this project, and worked with counsel
6 to secure the funding. In 2020 we hired a design
7 build contractor to help us put together a plan to
8 renovate this park, and ensure that it's done within
9 the budget. Finally, we started engaging the
10 community in 2021, and with that you can see one of
11 our early plans here, this is just an overview of
12 the plan which will give you some sense of the scope
13 of where we are today.

14 So, we will be renovating the track, a
15 track we tore out and put all new track, it's a
16 little bit larger than before. This allows us to
17 have a full size regulation soccer field in the
18 middle of the field. And then we also did some
19 light renovations to the field house, so they will
20 have public access to a restroom. The other
21 renovations we did were new drinking fountains,
22 seating outdoors, and trash, other soil
23 stabilizations, and landscaping.

24 At this time we are nearing completion of
25 the track, and we hope to have the project completed

1 by late spring, and open to the public hopefully
2 before summer. Next slide. Okay, so I thought this
3 would be helpful, to have an aerial view just to
4 give you a sense of the context of the neighborhood.

5 So, if you were a bird here looking down,
6 you would be actually hovering above Georgetown
7 Hospital looking across Reservoir Park looking
8 north. So, this gives you a sense of what the pre-
9 existing condition of the field was, you can see the
10 field was very worn. The track was actually not
11 only non-regulation size, but an odd length, it was
12 320 meters.

13 So, in the new plan we are expanding it to
14 350 meters, which is still not a competitive track,
15 a competitive track is 400 meters, so this would not
16 be able to host large track meets, but will at least
17 be a nice amenity for the community, and allow high
18 school sports for D.C. Public Schools, as well as
19 Parks and Rec to have places for kids to train in
20 track and field sports.

21 As you can see on the far right of the
22 field is the pre-existing historic field houses,
23 they were built in the 1930s. They were originally
24 built for the high school that was here as men's and
25 women's lockers. And part of the renovation will be

1 that those can be used for public restrooms, that
2 was one of the main things we heard from the
3 community, was that there were no restrooms on the
4 site.

5 Other things to think about in the context
6 of this site is you see it's actually a little bit
7 of an island. It's one entire block with no housing
8 on it, and there's streets surrounding all four
9 sides, and to the west, north, and east there's
10 residential homes. But the other thing is that in
11 this view it's kind of a fall view, you can see that
12 there's trees surrounding the park, giving a real
13 nice, natural context, and buffer from the
14 community.

15 So, there's trees to every direction
16 including south, but specifically on the west,
17 north, and east, there's actually trees on both
18 sides of the streets, which provide a little more
19 buffer to the community. Next slide. Okay, so --

20 MR. MCDUFFIE: Mr. Chair, may I object?
21 We're getting very far afield from the zoning issue
22 here. We have heard from Director Freeman, we have
23 now heard from Mr. Nohrden, he intends to go into
24 dark sky certifications, we are way far away from
25 what Ms. Moldenhauer said was what matters, was the

1 zoning administrator's March 7th, 2025 determination
2 that lighting poles are not structures.

3 VICE CHAIR BLAKE: Noted. Ms. Moldenhauer,
4 I understand kind of where you're going, but I
5 understand it is a little bit off map, you are kind
6 of showing the process, and so forth, and what has
7 taken place, if you can -- yeah, thank you very
8 much, if you can move on if you could a little bit,
9 that would be fine.

10 MS. MOLDENHAUER: I would also say that
11 this goes to three different issues, one, it goes to
12 whether or not the parties are aggrieved, which is
13 whether or not they have standing for the appeal.
14 Two, whether or not there was clear knowledge of the
15 light poles within a certain period of time in
16 advance, and then background. But if we can
17 continue with the presentation? Thank you.

18 MR. NOHRDEN: Thank you, yeah, I'll try to
19 be brief on this --

20 MR. MCDUFFIE: Can I just have my objection
21 noted for the record, Mr. Chair?

22 VICE CHAIR BLAKE: Yes, sir, thank you.

23 MR. MCDUFFIE: Thank you.

24 MR. NOHRDEN: Thank you, and I'll try to
25 keep this brief. I know that our director already

1 talked about public engagement, as you can see,
2 we've engaged the community more than half a dozen
3 times, which is actually more than we view as a
4 standard practice for typically rec centers. So,
5 from that I'll move on to the next slide. So, here
6 was an early concept design, the reason I wanted to
7 show this slide was this one is dated September
8 30th, 2021.

9 This was shown to the community at a
10 community meeting, this was an early concept, as you
11 can see. There were some other amenities, which we
12 heard from the community they were not interested
13 in, such as pickleball, volleyball, and a dog park,
14 so those were pulled from the program. However, at
15 this time we also show four light poles that were
16 conceived at this time.

17 So, just to kind of record that that was
18 shown to the community even back as early as
19 September of 2021, and just for the record, that's
20 there. And from there I'll move to the next one.
21 Next slide please. And then again, for context of
22 the neighborhood, you remember the overview and
23 aerial view we saw of the park, if you look at the
24 plan on the far left, I know it's a little confusing
25 to read, but all those circles you're seeing are

1 just trees and their canopies.

2 But the track itself you can see overlaying
3 the aerial view of the old track, just to give you a
4 context of size. And what we had our lighting
5 designers do is design the field to class four
6 recreational lighting, which is the lowest lighting
7 level possible to have useful play on the field.
8 So, it's about 30 foot candles per any square foot
9 on the field as an average, but the lighting is at a
10 high point of 42, and a low point of 28, so that's
11 at the bottom of your screen.

12 And then the plan on the right hand side
13 shows that the lighting we used, which are shielded
14 lights, will have minimal to no effect on the
15 neighboring properties. It may be hard to see on
16 the map, but the plan on the right shows that the
17 design lighting levels would actually be basically
18 immeasurable, 0 to 0.001 foot candles at the homes
19 surrounding the park.

20 And that is not including the blocker you
21 get from trees during the season when there's
22 leaves. Next slide. And yes, so then back into
23 some of the concerns we had from the community, and
24 how we reacted to them. We knew that there was some
25 concerns in the community about the lights, so what

1 we did is we challenged our design team to go and
2 get the most state of the art lighting.

3 This is actually the first for D.C. Parks
4 and Rec, we put in lights which are fully shielded.

5 Fully shielded lights means that you have minimal
6 back light, you have zero up light, lighting up the
7 sky above the horizon of the lights, and then you
8 have fully shielded down, meaning that you have no
9 glare in your peripheral vision if you're around the
10 park.

11 So, if we look at the plans -- sorry,
12 photos in the bottom left, that's what it looked
13 like before we had grass on the field, but we were
14 doing the dark sky compliance testing. And there
15 you can see the light in the distance, but it isn't
16 glaring in your eye, to give a little more context.

17 The photo in the middle shows you the light off in
18 the distance at the street.

19 You can see the field itself is well lit,
20 enough to play, but you actually can see your
21 typical Washington globe DDOT street lights, which
22 these traditional lights are unshielded, there you
23 can see how bright that light that is, even though
24 it's a photo, it gives you a sense of what the glare
25 is. Whereas the light off in the distance has no

1 glare in your eye.

2 And then the same thing would be true of
3 the bottom right photo. So again, these photos were
4 taking during the testing of dark sky compliance.
5 Next slide.

6 MS. MOLDENHAUER: Thank you very much. So,
7 the issue here before the board is whether or not
8 light poles are structures under the zoning
9 regulations. We've already heard testimony from Mr.
10 McDuffie, as well as Ms. Beeton regarding how they
11 both view, and read this section of the definition
12 in different ways. Ms. Beeton gives credit to the
13 specific list that's provided here, among other
14 things.

15 And identifies that there are certain
16 things within the zoning regulations that do not
17 require zoning regulation review, as stated. Next
18 slide. Mr. McDuffie would have the Board believe
19 that if you do not deem light poles to be a
20 structure, that pure mayhem would ensue in the
21 District of Columbia. I think that we have 30, 40
22 years of experience to say that this has been a
23 longstanding interpretation, and mayhem has not
24 ensued.

25 We do not have unnecessary types of

1 structures being constructed in the back of private
2 residences. We believe that the definition however
3 is ambiguous, and that there are multiple ways
4 potentially to review it. And therefore, as the
5 Zoning Commission noted, and as Mr. McDuffie read
6 many sections from the Zoning Commission, there was
7 a discussion about whether or not the current
8 regulations are confusing.

9 There was conversations obviously by OP to
10 try and regulate it. Any text amendment or change
11 to the regulation is within the Zoning Commission's
12 control, and the Office of Planning. This Board
13 however has to determine whether or not the zoning
14 administrator erred, and interpret the regulations
15 not to determine what's the best interpretation of
16 the regulations.

17 But whether or not the zoning
18 administrator's interpretation here is reasonable
19 given the ambiguity, and is reasonable based on the
20 evidence before you. And we believe that you would
21 find that it is not deemed to be a structure. Next
22 slide. This is missing some of our notes here, but
23 there's a whole list of -- for decades the D.C.
24 zoning has not treated light poles as structures.

25 And it has not treated them to be reviewed

1 under the zoning regulations. That does not mean
2 that there is not other regulations that exist in
3 the District of Columbia that specifically have code
4 sections that review, and that require a building,
5 and other oversight. We have the D.C. green
6 building requirements under Section 409, this
7 section specifically talks about site lighting.

8 It oversees issues regarding 409.1, light
9 pollution and control, it's the print out that you
10 see on the right hand side of the clip here, which
11 also includes exterior lighting. It addresses
12 concerns of light trespass and light glare. There
13 are also specific code sections under Code Section
14 10307, which regulate by the mayor, and regulate
15 DPR's oversight of DPR fields, and regulations.

16 And so if the Board were to find that there
17 is -- that the structure is applied to light poles,
18 it would create a misalignment, and redundant
19 regulations here, and would not be consistent with
20 the long standing practice. Next slide.

21 Furthermore, there are other impacts other than just
22 the height that has been mentioned by Mr. McDuffie,
23 and the setbacks.

24 The zoning regulations in most instances
25 apply design requirements to the word building only,

1 but there are a certain number of sections that
2 apply zoning dimensional requirements to both
3 buildings, and structures. And that comes into play
4 under required yards, and required open spaces. As
5 indicated, you can see here by the definition of
6 side yard, it applies to both the entirety of a
7 structure.

8 And so you would have to have then a side
9 yard requirement for any potential light poles or
10 structures in this broad interpretation that Mr.
11 McDuffie is trying to articulate. Additionally, as
12 discussed in questions with Ms. Beeton, Section 324,
13 which requires open spaces, open spaces are required
14 then for any rear yard or side yard going from the
15 property line to the required yard.

16 And there are only A, B, and C exemptions
17 from that, and obviously since light poles are not
18 regulated, they are not exempted. And if you
19 interpret it this broad way that Mr. McDuffie is
20 arguing, you would create a situation in which if
21 somebody even wanted to build a four foot one inch,
22 or a five foot tall street light for a rec center,
23 for a grocery store, for a parking lot, for an
24 apartment building rear parking lot, none of those
25 would be able to comply.

1 And those interpretation would create an
2 absurd result, because at the end of the day where
3 do we put light poles? We typically put light poles
4 around the periphery of a site, and of a property in
5 order to provide protection. I have been driving up
6 and down the city since this case started, and with
7 the delays I got to see a lot more examples, and
8 different opportunities.

9 But if you drive into a McDonald's where
10 you might have a parking lot, you have light poles
11 that are surrounding the exterior of that site, that
12 would not comply then with the open space
13 requirement if you apply Mr. McDuffie's
14 interpretation. You have fields -- next slide --
15 that also show different requirements. So, in our
16 original presentation we included actually slides 9
17 through 17 on Exhibit No. 40.

18 But here are just a few examples of
19 projects that have light poles, they're the red dots
20 in the orange images, or the yellow images at the
21 top, and you can see them constructed here. This is
22 a long standing practice that would create a
23 challenge for non-conformity. The right hand image,
24 which is not showing up here, I'd ask you to look at
25 your printed exhibits on the case docket, which I

1 think it does show.

2 But the right hand image here is a private
3 development, a warehouse in a PDR zone that has a
4 parking lot around it. And you can see the location
5 of those specific X's, and the fact that that would
6 not comply with potentially the side yard, open
7 spaces, or setback from height. Next slide. We
8 believe that the appellant's interpretations, and
9 canons that he's articulated to you today fail.

10 In his written brief he made an argument
11 that you have to apply the more restrictive reading,
12 there are no conflicting statutes or regulations
13 that are applicable here. We've had back and forth
14 in regards to just because there is the word
15 anything, does that mean that it has to be
16 everything? We believe as Ms. Beeton testified to
17 as the zoning administrator, that you have to look
18 at this as a broad clause.

19 And look at that clause's additional
20 language as specifically providing that guidance,
21 and that representation. We've already articulated
22 the issue of absurdity, identifying the fact that
23 this would potentially create more of an absurd
24 result than the fact that there has been no such
25 cases that have created any challenges over the last

1 50 years in the way that the zoning administrator
2 has interpreted it.

3 Additionally, as noted, the one case that
4 Mr. McDuffie can find is a summary order, it is
5 self-certified. The summary order specifically notes
6 that it does not evaluate the relief being
7 requested. And as Ms. Beeton noted, if the light
8 poles were deemed to be a structure, even that
9 project may not even be in compliance today. Next
10 slide.

11 We also did some research, and tried to
12 pull evidence. I inquired with Mr. McDuffie as to
13 whether he had any experts in the record to provide
14 evidence to you, to be able to provide information
15 for which you can make a decision. We have provided
16 examples, we have Ms. Beeton as an expert in zoning,
17 and we also have other examples here.

18 There is no reasonable finding that the
19 zoning regulations regulate lighting when you look
20 in comparison to Fairfax County and Montgomery
21 County, that have multiple detailed sections. It is
22 clear that our one sectioned structure definition is
23 not intended to regulate light poles. That is not to
24 say that the District does not have ample
25 regulation, and we do not need a duplicative

1 regulation.

2 If the Zoning Commission deems otherwise,
3 we will allow them to take their legislative review.

4 But right now there are plenty of other
5 regulations, including the green building code, and
6 other D.C. code sections that do regulate light
7 poles, and should provide the Board with a level of
8 comfort that they are providing a safe and reviewed
9 process. Next slide.

10 So, in conclusion we do not believe that
11 the appellant has carried their burden to
12 demonstrate that the zoning administrator's
13 interpretation is clearly erroneous. We believe that
14 her interpretation is reasonable, and it is
15 supported by the evidence. The evidence her is the
16 holistic reading, and the explanation that she
17 provided, as well as a long stemming practice, and
18 evidence in the record.

19 In addition to that there are examples of
20 cases that have gone through the Zoning Commission,
21 four PUDs that now have constructed lights that
22 would not be compliant in regards to the open space
23 requirement, or the rear yard requirement that were
24 never reviewed. And so this is a long standing
25 practice that we are asking the board to affirm.

1 In addition to that, treating light poles
2 as structures would create an extra application, as
3 in that regard, as the setbacks in yards, and we
4 believe that the status quo is the best for this
5 decision, and obviously as OP indicated, they are
6 going to be bringing back something for the Zoning
7 Commission to legislate, but that this Board should
8 affirm the status quo moving forward. We are now
9 available for any questions, thank you.

10 VICE CHAIR BLAKE: Okay, I want to do a
11 couple things here, we're running a little bit short
12 on time, we've got a very long day today actually.
13 Does anyone from the Board have any questions for
14 the intervener? Okay. Commissioner Wright, you
15 good?

16 COMMISSIONER WRIGHT: Well, there's a lot
17 to take in here, and --

18 VICE CHAIR BLAKE: Before you do, I do,
19 just to let you know, ANC 2E is on the line, and I
20 do want to hear from ANC 2E before we go too far.
21 We do also have questions from everyone here on the
22 Board, as well as the party, the appellant, they can
23 ask questions of Ms. Moldenhauer, so I do want to
24 get that done as quickly as possible. So, just want
25 to let you know.

1 COMMISSIONER WRIGHT: Sure, let's move
2 forward with that. I'm sure the folks on screen
3 will still be around if I have questions farther
4 down the line. So, that's fine.

5 VICE CHAIR BLAKE: Okay, Mr. McDuffie, do
6 you have anything you want to ask?

7 MR. MCDUFFIE: Yes. Ms. Moldenhauer, just
8 pretty short questions. Ms. Moldenhauer, your
9 position ultimately is that the definition of
10 structure is ambiguous, is that correct?

11 MS. MOLDENHAUER: There have been multiple
12 parties that have presented multiple interpretations
13 of the definition today, and we believe that the
14 Board can rule based on that, that the zoning
15 administrator did not err.

16 MR. MCDUFFIE: But your position
17 specifically is that it's ambiguous, correct?

18 MS. MOLDENHAUER: Sorry, Mr. Blake, the
19 director has to drop.

20 VICE CHAIR BLAKE: All right.

21 MS. MOLDENHAUER: I just want to make sure
22 that that's okay. Mr. Nohrden will stay present,
23 and will be able to answer any questions on behalf
24 of the DPR, but she has another -- we were lucky to
25 get her today, I just wanted to make sure it's okay.

1 VICE CHAIR BLAKE: Okay, thank you very
2 much, go ahead.

3 MR. MCDUFFIE: Okay, so let's try this
4 again. I mean, you said it in your slides, so that
5 your position is that the definition of structure is
6 ambiguous, correct?

7 MS. MOLDENHAUER: If I have already said it
8 in my slides, I don't know what --

9 MR. MCDUFFIE: Okay, good. One question
10 for Mr. Nohrden, hopefully this will be an easy one.
11 Mr. Nohrden, are you an expert on the
12 interpretation of zoning regulations?

13 MR. NOHRDEN: I am not.

14 MR. MCDUFFIE: Okay, thank you, Mr. Chair.

15 VICE CHAIR BLAKE: Are there any more
16 questions? Okay, the ANC 2E is on the line. If
17 anyone on the Board has any questions for the ANC,
18 we can entertain them now. Do we have any questions
19 for ANC 2E?

20 COMMISSIONER WRIGHT: Would they like to
21 speak, and just state their position for the record?

22 VICE CHAIR BLAKE: I don't know if they --
23 why don't we find out. Commissioner, are you there?
24 Could you pull up --

25 MR. PUTTA: Yeah, can you hear me?

1 VICE CHAIR BLAKE: I can hear you now, is
2 your camera working?

3 MR. PUTTA: Yes, I think so. Let me try
4 again, I'm trying to start the video maybe, yes. I
5 saw something a second ago, sorry.

6 VICE CHAIR BLAKE: It's okay.

7 MR. PUTTA: Camera, sorry guys, I am trying
8 to do the video, there we go.

9 VICE CHAIR BLAKE: There you are, okay,
10 great. Thank you very much for joining us.

11 MR. PUTTA: Thanks everyone for the robust
12 discussion. I'll start right off by answering the
13 last question, I am by no means a zoning expert, I
14 say this all the time at our ANC meetings as well.
15 I am here to answer any questions, if the question
16 was did I have any experience to share with you all,
17 it would only be that the lights were on back in
18 November.

19 And I didn't know they were on, but I did
20 get a message from a colleague passing by that the
21 lights were on at the field. My colleague was
22 walking by the field, and he's an ANC colleague,
23 stated that the streets and homes surrounding the
24 field didn't seem any brighter because of the
25 lights. In fact he said the street lights were much

1 brighter sources of lights for the streets and the
2 homes than the field lights.

3 The already long existing street lights, is
4 what my colleague said. So, I went down to see for
5 myself, and I agree. In addition, I have been ANC
6 commissioner now for seven years, elected, and re-
7 elected, and I regularly receive comments and
8 complaints from neighbors. All I can say is when
9 those lights on, I did not receive any complaints
10 about the lights, or the glare.

11 I actually did receive feedback from two
12 neighbors that they were impressed how little glare
13 there was. But anyway, I'm not here to be any
14 official witness, or an expert at all. I'm just
15 telling you what I saw, what my neighbors saw, and
16 that I did hear that they did receive this dark sky
17 certification. And that kind of jives with I did
18 also see one other thing, DPR, and Mr. Nohrden did
19 show me similar lights years ago.

20 I'm going to venture it was probably 2021,
21 2022, years ago that I went across time to Takoma to
22 see similar lights, and was impressed by how little
23 impact there was. And then these lights seem to be
24 years later, far more advanced technology than even
25 back then, just feet off of the field you couldn't

1 see any light anymore. So, obviously this is not a
2 zoning opinion.

3 Obviously this is not about the regs and
4 all that stuff, but I just want you to know that
5 there's any significant negative impact to my
6 constituents. And I wanted to let you know that in
7 case you were interested.

8 VICE CHAIR BLAKE: Okay, thank you very
9 much. Does anyone have any questions for the
10 commissioner? Okay, yes, Commissioner Wright, go
11 ahead.

12 COMMISSIONER WRIGHT: So, thank you so much
13 for your testimony. I think that just again,
14 talking broadly, and not about the zoning issues
15 related to this case, I think that lighting ball
16 fields is very important, and needs to be done so
17 that young people and others in our city can have
18 the most use possible of these very precious
19 resources.

20 It is -- we don't have enough playing
21 fields in the cities, and it is very important that
22 they can be used to their maximum extent. And
23 again, I appreciate all the information about the
24 care that the Department of Recreation has gone into
25 to try to make sure that lights do not have a

1 negative impact on the surrounding neighborhood.
2 And I definitely appreciate all of that.

3 I am still digesting, and trying to make
4 sure that I focus on the actual zoning question.
5 And so for the ANC commissioner, and this may put
6 you on the spot, I don't intend to do that, but do
7 you have, or does your ANC have a concern about a
8 major new element being added to your neighborhood
9 like tall light poles with no formal public review
10 process?

11 Again, I understand DPR has gone out to the
12 community, has talked to them extensively, and I
13 applaud their efforts in doing that. But as an ANC
14 representative, do you have a concern about it going
15 forward with no formal public process?

16 MR. PUTTA: Thanks for the question.
17 Again, just speaking on behalf as a representative
18 of the neighborhood, also I am a longstanding,
19 before I was ANC, and to this day, a proud member of
20 the Burleith Citizens Association. I appreciate
21 very much all their work, good work for the
22 community, and Mr. McDuffie, Michael is a
23 constituent of mine who I know very well.

24 Our kids go to elementary school together,
25 our kids are friends, I respect his intellect, and

1 passion, and care for our community. I do, Michael.

2 Listen, our ANC has issued many resolutions on Duke
3 Ellington Field. We have always been generally
4 supportive of lights, but we always ask that we be
5 able to work with DPR to work on all of the field's
6 general impacts.

7 But we have been supportive of improving
8 the field as was mentioned, we have been supportive
9 of the lights. And know we saw the lights on in
10 November, and it seemed okay.

11 VICE CHAIR BLAKE: Thank you, commissioner,
12 appreciate your testimony. Does anyone have any
13 other questions for the commissioner? Let's see,
14 Mr. McDuffie, do you have any questions for the
15 commissioner?

16 MR. MCDUFFIE: I do not.

17 VICE CHAIR BLAKE: Okay. Mr. Haresign, do
18 you have any questions for the commissioner?

19 MR. HARESIGN: No, thank you, Commissioner
20 Putta.

21 VICE CHAIR BLAKE: Okay. Ms. Moldenhauer,
22 do you have any questions for the commissioner?

23 MS. MOLDENHAUER: No questions, thank you
24 very much.

25 VICE CHAIR BLAKE: Okay, thank you very

1 much for your testimony, we appreciate that very
2 much. Now, we were going to have Mr. McDuffie pose
3 any questions he might have to Ms. Moldenhauer, I
4 believe that was where we were a minute ago.

5 MR. MCDUFFIE: I posed my one question to
6 Ms. Moldenhauer.

7 VICE CHAIR BLAKE: Okay, that's done. All
8 right, so at this point I'm going to ask the Board.

9 Mr. Haresign do you have any -- you don't, that's
10 fine. I'm going to ask the Board if they have any
11 final questions here. My next step is to do the
12 rebuttal by the appellant. Okay, go ahead, Mr.
13 McDuffie.

14 MR. MCDUFFIE: Sure. Well, this will
15 probably sound more like a summation than a
16 rebuttal, this has gone on for a very long time. We
17 have heard a lot of irrelevant testimony. DPR's
18 level of engagement, dark sky certifications don't
19 have anything to do with the zoning issue at play.
20 Those are all things that are properly part of an
21 area variance proceeding, or if the regs are
22 changed, a special exception.

23 But those are not directly relevant to the
24 zoning issue here, which is whether lighting poles
25 are a structure. So, I want to respond to a couple

1 of things that Ms. Moldenhauer said. First, there's
2 this strain throughout their supplemental statement
3 that this Board just needs to rubber stamp what the
4 zoning administrator is doing, and if it's kind of
5 in the strike zone, that's okay.

6 And as long as she did her due diligence,
7 Zoning Administrator Beeton did her due diligence,
8 that's okay. No, no, no, this Board knows it has
9 the obligation as the final arbiter of interpreting
10 the zoning regulations before there is a legal
11 challenge in the D.C. Court of Appeals. So, it's
12 not the case that you simply can just rubber stamp
13 the work that's been done by the zoning
14 administrator.

15 There's also this argument about there's
16 these side yards, and it'll create endless issues.
17 None of those have anything to do with lighting
18 poles. That's an issue with those particular
19 provisions, and are subject to the interpretive
20 principles embodied within the zoning regulations.
21 If there's some absurd result, there's a way of
22 mediating conflict between provisions.

23 But what's not been said is that the
24 interpretation that's going to be offered, which
25 counsel has admitted makes a seven year old

1 definition ambiguous, it's going to create
2 indeterminacy. We are not going to know exactly
3 what is or what isn't a structure. Where as a clear
4 reading of the regulations, as this Board already
5 did once, admittedly in a summary order, admittedly
6 on a self-certified application, but it's the only
7 situation where this has actually been addressed.

8 VICE CHAIR BLAKE: Thank you. All right,
9 let's see. I guess what I would say in the Hill
10 tradition, we're going to have some closing remarks
11 from everyone real quick -- and Ms. Moldenhauer, you
12 were going to raise your hand on something?

13 MS. MOLDENHAUER: I wanted to provide
14 rebuttal before closing, there was one comment that
15 was made that I wanted to rebut.

16 VICE CHAIR BLAKE: Okay, go ahead.

17 MS. MOLDENHAUER: Sorry. Mr. McDuffie said
18 that the Gonzaga case is the only case that the
19 Board has reviewed that is relevant or provides
20 guidance here. That is not the case. One, the lack
21 of review on this issue is, I think quite abundantly
22 clear in the fact that he could only find one case.
23 Two, I've noted in my brief, and I'll just kind of
24 expand upon this, the Board has in numerous projects
25 reviewed both the Board of Zoning Adjustment, and

1 the Zoning Commission.

2 So, I will go to the Zoning Commission
3 cases, because they review projects and plans in a
4 lot more detail at times, they go into longer
5 hearings, one night for one case, right? Versus you
6 guys have to do six cases in one whole day, right?
7 But for McMillan, everyone knows McMillan, everyone
8 is very familiar with that case, it went up and down
9 with the Court of Appeals three different times.

10 It went back and got reviewed. I went and
11 walked that site the other day with my family.
12 There are light poles that are all around the rec
13 field that were not part of the plans, that were not
14 discussed as structures, but were, and are
15 constructed. That is a clear example of the fact
16 that the Board and the Zoning Commission have not
17 reviewed them in the past.

18 There is also a UDC campus plan
19 application, where if anyone is familiar with the
20 UDC tennis courts, they have lights on them. That
21 went through a campus plan application as well.
22 There was no conversation with Office of Planning in
23 the filing of that application about the height or
24 the setback of those light poles, because they were
25 never deemed structures by the very experienced

1 architects that reviewed that application, and were
2 part of that application.

3 They did have conversations with the
4 neighbors about the hours of operation that was part
5 of that application. But again, If you look at
6 that, they were talking about potentially the hours
7 of operation, but not whether or not they were
8 structures, or whether their height was compliant,
9 or whether their setbacks were compliant.

10 And so I would say think about other
11 projects and cases in which there are lights, they
12 may not be 90 foot lights, they may be 5 foot or 6
13 foot lights that have been reviewed or accepted, and
14 not reviewed as structures. Thank you.

15 VICE CHAIR BLAKE: Ms. Moldenhauer, while
16 you're there, actually where we are, you're actually
17 at the point where you would do your closing
18 remarks. So, do you want to use that as your
19 closing remark and we go on, or you have some more
20 you want to say?

21 MS. MOLDENHAUER: I always have more, am I
22 first up for closing?

23 VICE CHAIR BLAKE: Yes, you would be first,
24 yes.

25 MS. MOLDENHAUER: Okay. So, I will be

1 brief, but I wanted to simply summarize some of the
2 different issues, so I will start my closing, I
3 appreciate it, Board Member Blake. So, one, we
4 believe that the Board here has the ability to
5 review the definition, and you are looking to
6 determine whether or not the zoning administrator
7 erred in her decision.

8 You're looking at, it's not a one line
9 definition of a structure like Mr. Haresign pointed
10 out is in the building code regulations, but rather
11 it is a long definition that includes a laundry list
12 of potential uses, and the zoning administrator said
13 it is her interpretation that there are things,
14 there are things in this world that are not reviewed
15 by the zoning regulations.

16 That does not mean that they are not
17 reviewed by any regulations in the District of
18 Columbia. We have shown that there is ample
19 evidence that light poles are regulated by other
20 agencies, we just do not believe that they are
21 regulated by the zoning regulations at this time.
22 Similar to the Montgomery County, and the Fairfax
23 regulations that we showed, where they had detailed
24 regulations in the zoning.

25 Here in the District we have those

1 regulations in our green building, in the DPR
2 regulations for permitting, as explained through
3 that process. And the remedy for which Mr. McDuffie
4 is seeking is part of the DPR regulations for
5 community engagement, and requirements for
6 permitting. We also believe that there is a
7 question of standing. The appellant here has
8 indicated that there are six people.

9 There is no specific letters in the record
10 from them signed by them that identify that they are
11 aggrieved. We have heard from the ANC commissioner
12 that people are not aggrieved, that the lights seem
13 really good. We have heard from the DPR
14 representatives here that there is a 0.0 light
15 spillage at the property line based on the testing
16 done, and that was publicly available for the
17 community.

18 We do believe that the zoning regulations,
19 if they are changed, and they are revised, that that
20 is under the purview of the Zoning Commission, and
21 the Office of Planning, but that this Board we think
22 should uphold the evidence that's in the record,
23 that supports a long standing interpretation, and
24 that Mr. McDuffie has failed his burden. He provided
25 no architect that in the last 20 or 30 years

1 evaluated light poles as a structure in their plans,
2 or in their filings.

3 He provided no engineer, or no other expert
4 to support his evidence. We have provided multiple
5 evidence and multiple information in the record to
6 support that it is a reasonable decision to not find
7 that the zoning administrator was in error. Thank
8 you.

9 VICE CHAIR BLAKE: Thank you. Mr.
10 Haresign?

11 MR. HARESIGN: Thank you. I'm not going to
12 be able to improve on what Ms. Moldenhauer said by
13 too much. I did actually want to mention something,
14 as we've discussed, the zoning regulations don't
15 regulate light poles, they are as objects, well
16 regulated. And though there may not be a formal
17 zoning review process, any (audio interference) they
18 are regulated by the construction codes.

19 And the construction codes provide a formal
20 review process, and review path through the Office
21 of Administrative Hearings, and then to the Court of
22 Appeals. So, there is a formal review process for
23 the installation of light poles if they are done
24 contrary to the regulations that currently exist.
25 There's a lot of trying to nail down canons of

1 construction, is it ambiguous, is it not?

2 One of the cases that the intervener
3 actually cited reminds us that even in the formal
4 lawyer speak world, you can't focus in on any
5 particular word, ambiguities can arise at any stage
6 of the review. So again, chopping up the language
7 of the definition to reform it in your own vision to
8 support your own arguments, that's not how the Court
9 of Appeals reviews, and engages in constructive
10 exercises when it comes to statutes and regulations.

11 The word absurd keeps getting thrown around
12 by the appellant, and we are talking about objects
13 that are not considered structures for the purposes
14 of zoning, they are ubiquitous throughout the city,
15 the vast majority of them are in public space. And
16 what seems a little odd is that it's a vociferous
17 objection, the difference of one inch over the
18 property line makes them objectionable, I understand
19 that's a jurisdictional question.

20 But we are talking about ubiquitous
21 objects, and again, adopting the appellant's
22 preferred definition, or reading of the definition
23 of structure, that is what leads to absurd results.

24 Because by making it so rigid, then you have an
25 entire category of additional things that become

1 regulated. The Board should not disturb the
2 longstanding practice of the zoning administrator.

3 Create dozens of non-conformities
4 throughout the city, and frankly, all of a sudden we
5 have to get variance relief to install a mailbox, or
6 anything else that can meet the definition if the
7 Board adopts this definition. So, one final note, I
8 think we all agree that our open spaces in this
9 urban environment are precious as green spaces.

10 And the zoning administrator's
11 interpretation of the definition of structure
12 operates in the real world, again, not on the page,
13 but in the real world to promote the intent of the
14 zoning regulations as a whole. And for the reasons
15 that Ms. Moldenhauer explained, for the reasons
16 stated when Ms. Beeton was discussing the process,
17 and the considerations that we're taking into
18 account.

19 And coming to this determination, we'd ask
20 the Board to find that this reading of this
21 particular provision is reasonable in light of
22 everything else beyond the words on the page. So,
23 we'd ask you to deny this appeal.

24 VICE CHAIR BLAKE: Okay, thank you very
25 much. Mr. McDuffie, you have the last, last word,

1 okay?

2 MR. MCDUFFIE: Okay, I'll be brief. Thank
3 you for your time addressing this issue. Ultimately
4 this is -- the relief being requested here is simply
5 that the District seek an area variance to present
6 exactly the kind of evidence that they have tried to
7 shoehorn into a hearing about the proper
8 interpretation of zoning regulations. That's what's
9 being asked here.

10 No one is taking the position that light
11 poles should never be erected anywhere in the
12 District. There just needs to be process around it,
13 and that vein of there needs to be process around it
14 is throughout the Zoning Commission's brief
15 consideration of the proposed changes by the Office
16 of Planning. The language here is clear, lighting
17 poles are structures.

18 That requires additional process on the
19 part of government agencies to make sure it's not
20 creating undue impacts. It looks like DGS and DPR
21 are ready to present that, because they tried to
22 present it here. So, let's move forward, let's have
23 a clear definition that doesn't lead to absurd
24 results, where even the zoning administrator really
25 isn't sure what qualifies as a structure.

1 What can be erected in someone's
2 residential backyard. So, that's what's
3 fundamentally being asked here, just more process.
4 Thank you.

5 VICE CHAIR BLAKE: Thank you all, thank you
6 very much everybody, for your testimony today. So,
7 I am going to close the hearing, and the record, and
8 dismiss everybody. Thank you very much for coming.

9 MS. MOLDENHAUER: Thank you for your time.

10 MR. HARESIGN: Thank you.

11 VICE CHAIR BLAKE: Board members, it's a
12 busy day. We can look, I want to kind of survey and
13 see where we are. Commissioner Wright, what are
14 your thoughts?

15 COMMISSIONER WRIGHT: Well, this is a very
16 difficult case, and I'm sort of wearing three
17 different hats. Certainly I'm serving today on the
18 BZA, but I'm also on the Zoning Commission, and was
19 involved with the omnibus bill where there was
20 language presented that attempted to basically just
21 solve this by saying light poles are not structures,
22 making that there, because I think what's in the
23 code now is ambiguous.

24 And I think everyone has actually sort of
25 admitted that it's ambiguous. But back when that

1 was considered, I had some concerns about the lack
2 of potential process. Again, we have processes not
3 to try to hold back the normal good intentioned
4 efforts, but to deal with those unusual issues that
5 come up of someone deciding to put a light pole in
6 their back yard for no apparent reason that's 80
7 feet tall.

8 We have a process to try to deal with those
9 things. And my third hat is really as a planning
10 professional, and I know the issue of lights on
11 playing fields has been a big issue in every
12 jurisdiction that I've worked in, that is always a
13 significant issue. I want to again reinforce what I
14 said, which is I actually support lights on playing
15 fields.

16 Because I think it's important to use those
17 rare public resources appropriately, and as much as
18 possible. But I also am a big believer in
19 transparent processes to consider things that are
20 major changes in communities. And although I
21 appreciate all the community meetings that have
22 happened, what we're doing here with this public
23 hearing is my sort of view of what is a transparent,
24 deliberative process.

25 The bottom line is for me today, I have

1 heard a lot of important information, and I actually
2 feel like I need more time to absorb, and think
3 about this, and in my own mind deliberate on it
4 before actually taking a vote. So, I don't know,
5 Mr. Blake, if you were thinking about whether we're
6 voting today or not. But I think this has been a
7 very, very fruitful, important discussion.

8 But I just feel like I need time to sort of
9 absorb it a bit more. So, those are my thoughts.

10 VICE CHAIR BLAKE: Thank you very much,
11 Commissioner Wright. Board Member Drakeford, what
12 are your thoughts?

13 MEMBER DRAKEFORD: I would agree that we
14 definitely heard a lot of really important
15 information as it pertains to the particular appeal,
16 as well as to some of the concerns. I think that --
17 sorry, I'm just going through my notes. I do think
18 that there were a few clarifications that I found
19 somewhat helpful, particularly around DOB's
20 clarification around just the long standing
21 administrative practice.

22 And then also particularly around the notes
23 that lighting is a peripheral necessity, and
24 thinking about that. For me, and Commissioner
25 Wright, I certainly hear the comment around public

1 engagement, and the importance of community
2 engagement in that process. I do believe -- and
3 from what I've heard in the process, and
4 understanding that there was the extensive outreach
5 that DPR has done.

6 As well as also even understanding through
7 the master planning process through the Ready2Play
8 plan, that there has been extensive amounts of
9 community engagement completed around this. I do
10 somewhat feel comfortable, but I also respect if
11 Commissioner Wright needs additional time to make a
12 decision, I also respect that as well.

13 VICE CHAIR BLAKE: Okay, Madam Secretary,
14 are you there? Okay, so we've heard from the Board.

15 I think it would be helpful if we had a couple of
16 weeks to think through this. If you would be able to
17 put us on a decision in a week or two, that would be
18 great. What do you have available?

19 MS. MEHLERT: If you'd like we could put it
20 on the March 11th meeting agenda.

21 VICE CHAIR BLAKE: Okay, let's do that.
22 Okay, are we set with that?

23 MS. MEHLERT: Yes.

24 VICE CHAIR BLAKE: All right, that took a
25 lot longer than I thought, and we do have a great

1 deal to cover. So, what I'd like to do is take a --
2 how much of a break do you guys need? Speak first,
3 anybody.

4 COMMISSIONER WRIGHT: Maybe 15 minutes to
5 eat a quick lunch.

6 VICE CHAIR BLAKE: 15 minutes, are you good
7 with that, Board Member Drakeford?

8 MEMBER DRAKEFORD: Yes, that's fine.

9 VICE CHAIR BLAKE: Okay, so we're going to
10 take a 15 minute break. Actually we'll be back at
11 1:30, be back at 1:30, that's when we'll come back,
12 and we'll continue. We've got a lot to do, so 1:30.
13 Thank you.

14 (Whereupon, the above-entitled matter went
15 off the record at 1:10 p.m. and resumed at 1:30
16 p.m.)

17 VICE CHAIR BLAKE: Okay. Madam Secretary,
18 will you please call us back?

19 MS. MEHLERT: The Board is back from a
20 lunch break and returning to its hearing session.
21 The next case is Application No. 21361 of Moshood
22 Olayinka. As amended, this is a self-certified
23 application pursuant to Subtitle X, Section 901.2
24 for special exceptions under Subtitle E, Section
25 207.5 to allow a rear wall in a row building to

1 extend farther than 10 feet beyond the farthest wall
2 adjoining principle residential building on any
3 adjacent property.

4 And under Subtitle U, Section 320.2, to
5 allow the conversion of an existing residential
6 building existing on the lot prior to May 12th, 1958
7 to a four-unit apartment house. This project is a
8 new third story and rear addition to an existing
9 two-story semidetached principle dwelling and
10 conversion to a four-unit apartment house. It's
11 located in the RF-1 zone at 1253 Morse Street,
12 Northeast, Square 4069, Lot 58.

13 This hearing began on October 29th and was
14 continued on December 10th, 2025. The Board
15 requested submissions and scheduled a continued
16 hearing. Participating are Chairman Blake,
17 Commissioner Wright, and I believe Board Member
18 Drakeford has read into the record. And I just want
19 to know. I believe we are expecting a letter of
20 authorization for one of the parties in opposition
21 to have the other party represent her at the
22 hearing.

23 MEMBER DRAKEFORD: And yes, I did want to
24 note, Chair Blake, for the record, I have read into
25 the record.

1 VICE CHAIR BLAKE: Okay. Thank you very
2 much, Board Member Drakeford. All right. So where
3 we are is -- let's see. We last heard this case in
4 November -- December 10th.

5 We asked the applicant to provide an
6 updated presentation, invited responses from the ANC
7 and other parties. The applicant submitted a
8 revised set of plans. I think in Exhibit 75A in
9 response to the ANC and updated burden of proof in
10 75B.

11 The applicant has also submitted a revised
12 PowerPoint presentation. So let's see. Can
13 everyone please introduce themselves for the record
14 so we know who's here? Let's start with the
15 applicant.

16 MR. CARBALLO: Adam Carballo.

17 VICE CHAIR BLAKE: Okay.

18 MR. CARBALLO: Yes, Adam Carballo,
19 applicant and architect of record.

20 VICE CHAIR BLAKE: Okay. Will anybody be
21 joining you today?

22 MR. CARBALLO: Yes, I have Shima Safinia
23 who is also part of my team or the architect
24 applicant. We also have Mr. Moshood Olayinka who's
25 the property owner. And I believe Mr. Olayinka's

1 daughter is also on the call as well.

2 VICE CHAIR BLAKE: Okay. Will they be
3 taking questions? Or you'll be just basically doing
4 the whole presentation?

5 MR. CARBALLO: I'll do the majority of the
6 presentation. Mr. Olayinka may want to say a few
7 words and Ms. Safinia may also interject and add
8 some additional testimony from the architect
9 applicant.

10 VICE CHAIR BLAKE: Okay. Thank you very
11 much. Who do we have from the parties in opposition
12 who's here?

13 MS. MARTINEZ: My name is Natalie Martinez.
14 I'm at 1257 Morse Street. Andrew Karay, that's my
15 husband who at the past date had the time to testify
16 and at this time is not on the call.

17 (Simultaneous speaking.)

18 VICE CHAIR BLAKE: Okay. All right. Okay.
19 And --

20 MS. MARTINEZ: And if I may note, I know
21 that we have the individual who called 51 --

22 VICE CHAIR BLAKE: Who's speaking? I'm
23 sorry. Go ahead.

24 MS. MARTINEZ: The individual who wasn't
25 able to sign up as a party because they purchased

1 the house after at 1251 Morse is a person who has
2 signed up to testify. And I know that given the
3 delay that we've had, she only has about 15 more
4 minutes to participate. So just noting that there
5 is another individual neighbor who would like to say
6 a few words, but of course --

7 VICE CHAIR BLAKE: Okay, great. From the
8 ANC, who's here from the ANC? We've got --

9 MS. ROBLIN: I am. Hi, I'm Anna Roblin.

10 VICE CHAIR BLAKE: Good to see you,
11 Commissioner.

12 MS. ROBLIN: You too.

13 VICE CHAIR BLAKE: Okay, great. So we have
14 both of you here.

15 MR. KEATS: And I'm Skip Keats. I'm the
16 co-chair of the zoning and development committee in
17 ANC 5D.

18 VICE CHAIR BLAKE: Excellent. Okay. All
19 right. So I think -- except let's see. We have --

20 MS. ROBLIN: Ms. Dawn Boutelle also
21 unfortunately couldn't make it off work today. But
22 I have routinely represented our matching views on
23 the matter.

24 VICE CHAIR BLAKE: Okay. And are you going
25 to get an authorization from her to represent her

1 views, correct? We're going to have that submitted
2 to the record. Is that correct? I'm going to make
3 that assumptions.

4 MS. ROBLIN: She just submitted it to the
5 record. We're get it in.

6 VICE CHAIR BLAKE: Great. Okay, great. So
7 we're all set then. All right. So what we'll do, I
8 kind of said what we did before. We heard the case
9 on the 10th of December.

10 We've gotten a couple of pieces of
11 information, incremental supplements addressing some
12 of the issues and some revised plans. So if we
13 could just have the applicant kind of walk through
14 the presentation, kind of let us know what's new
15 and what's happened since we last met, I'd
16 appreciate it. And then we'll go from there.

17 We'll have the -- everyone else, we'll have
18 a typical regular hearing. We'll go through each
19 party having the opportunity to speak and so forth.

20 But I'd ask that we kind of stick to -- in the
21 interest of time, we kind of stick to the topic at
22 hand which we -- the revised plans and the update as
23 opposed to kind of revisiting stuff that we've
24 already covered as we already have a fairly
25 extensive record. Okay. So with that, Mr.

1 Carballo, if you would begin your presentation.

2 MR. CARBALLO: Yes, sir.

3 (Simultaneous speaking.)

4 MR. CARBALLO: Okay. Yeah, thank you for
5 allowing me to present this project. As you
6 mentioned, we originally presented this case on
7 October 29th and again on December 10th. So this is
8 our third time returning. And you mentioned, we
9 have made some adjustments to our design that we
10 have put in the record. Am I allowed to share? Or
11 are you -- or do you --

12 VICE CHAIR BLAKE: No, your presentation is
13 in the record. Mr. Young, pull it out for us,
14 please.

15 MR. CARBALLO: Yeah, if my presentation
16 could be shared, that would be helpful. And I'll
17 walk through some of the changes that we've made.
18 Just starting at the top, we're here seeking relief
19 for two special exception items, the first one being
20 the residential conversion requirements to Subtitle
21 U, 320.2, pursuant to Subtitle X, 901.2

22 Specifically, looking at the lot size of
23 the property, again, our property is 1253 Moore
24 Street, Northeast. That relief seeks to change --
25 to allow for apartment units in an RF-1 zoning

1 district. The specific title requires 900 square
2 feet of lot area per dwelling unit.

3 Our lot is 3,633 which is more than enough
4 to support four dwelling units. That request -- and
5 that's for a conversion of an existing residential
6 building prior to May 12th, 1958. Our structure was
7 built prior to that date.

8 And we sufficient meet the lot area for
9 that property. A second request that we're coming
10 before the board is a special exception for rear
11 addition requirements for Subtitle E, 207.5,
12 pursuant to Subtitle X, 901.2. That is also
13 referred to as the 10-foot rule in RF-1 that limits
14 rear additions to 10 feet beyond the adjoining or
15 abutting property.

16 As you noticed on 1255, that is an
17 unimproved structure. Currently, if we were to be
18 held by that requirement, we would not be able to
19 provide any type of addition to our property given
20 that term. Certainly, when 1255 is ultimately
21 renovated which I would imagine would happen at some
22 point in time, they would be able to build back 10
23 feet beyond our property as a matter of right.

24 To talk specifically about what has changed
25 since our original presentation on October 29th and

1 our last presentation on December 10th, we've made
2 significant change to our design, simplifying the
3 property in a number of ways. In our original
4 presentation as you can see in this slide as well as
5 if you go to the next slide, we have -- it says that
6 the current is February 4th. I think we didn't have
7 a quorum on February 4th, so here we are on the
8 25th.

9 We originally were requested relief for the
10 side yard setback. We've actually removed that
11 relief request from our application entirely. So
12 we've gone from three requests down to two requests.

13 We are in compliance with the side yard
14 setback as a matter of right. So we made that
15 significant change. We've also if you go to I
16 believe the next slide -- sorry, two -- one after
17 this one if you don't mind.

18 You can see in the center image, we had a
19 series of piers with a second and third floor
20 overhang that we've actually removed from the design
21 of the property. And now we are -- instead of
22 having the cantilever, we have a modest side
23 addition that does comply with zoning setbacks that
24 simplifies the overall design. And there is no
25 cantilever.

1 There isn't any part of this property
2 that's built on piers. We've also eliminated a rear
3 stairwell and landing off the back of the property,
4 again, further simplifying the design so that
5 there's less of a setback. Lastly, we've also taken
6 into consideration the neighbor that's, excuse me,
7 at 1251.

8 That was a structure that had a renovation
9 and addition project to it that was approved by the
10 Board last year or maybe two years ago. There's
11 sort of a modest light well at the center of that
12 property. That property built out entirely to their
13 property lines.

14 There's not a single window on the entire
15 side of that property. However, as you can see in
16 this center picture, we had a window that was
17 looking into that light well. We agreed to shift
18 the window over so there would not be a window sort
19 of aligned with that light well, thus sort of
20 increasing the privacy of that structure.

21 As far as other changes, there was some
22 minor changes if you go to the first page in our
23 presentation. We originally had a trash enclosure
24 that was sort of in the middle of the yard. Even
25 with the proposed addition, we have nearly a 64 foot

1 rear yard setback, if you go to the second page of
2 the presentation.

3 We've shifted that to the rear of the
4 property adjacent to the parking, maintaining that
5 64 foot 4 inch rear yard setback and sort of
6 consolidating those elements. Not to sort of
7 belabor this. But we have made significant changes
8 to reduce the scale of the project.

9 Lastly, we also -- because we reduced the
10 side yard setback and removed that from the relief,
11 we went from a three bedroom density down to a two
12 bedroom density for the entire building. So there's
13 much fewer bedrooms in this proposed update which
14 obviously would reduce the population of the
15 building but provide still adequate two bedroom
16 apartments in the building.

17 Did I leave anything out on our changes
18 from last time around?

19 PARTICIPANT: I don't believe so. I think
20 you've covered everything.

21 MR. CARBALLO: Okay. And I think with
22 that, I'll sort of limit -- and also, with -- one
23 final item is that with the reduction in the side
24 yard addition now that it is compliance with matter
25 of right, we're actually only proposing 35 percent

1 lot coverage whereas in an RF-1, I'm technically
2 allowed up to 60 percent. So I'm nearly half of the
3 allowable, even with this what I would consider a
4 modest addition of 10 feet beyond our current
5 footprint or 20 feet beyond the current footprint of
6 1255. I think I'll end there.

7 VICE CHAIR BLAKE: Do I have question from
8 the Board or the applicant? All right,
9 Commissioner.

10 COMMISSIONER WRIGHT: It appears that
11 you've had additional conversations with the
12 neighbors and the ANC. And it appears that you've
13 made some changes based upon their recommendations.
14 Could you describe those conversations and the
15 changes that you've made most recently based on
16 those conversations?

17 MR. CARBALLO: Certainly. We've met with
18 the ANC extensively since July. And our latest
19 conversations with the ANC from December 10th, I
20 can't remember if we have met with them maybe twice
21 or at least members of the ANC, maybe not
22 necessarily the full ANC. But we have made changes
23 such as shifting the window over.

24 One of the requests that they had was --
25 and I've I'm able to -- can my presentation be

1 brought up and go to page 2? Is that possible? If
2 you notice here, we are approximately -- at our
3 property at 1253, we would extend approximately 3
4 feet beyond the property at 1257 which is two doors
5 down and not in any way physically attached to our
6 property and it is 28 feet away.

7 They requested that we align the back of
8 our addition with the back of their property which
9 was improved previously. And they would drop their
10 opposition. Taking 3 feet out of our property and
11 limiting us to a 7 foot addition would just simply
12 make the bedroom practically unusable in that
13 property.

14 That was a sticking point that we were not
15 willing to bend on. I feel like we've met them more
16 than halfway by simplifying the design on the side
17 yard setback, shifting the window location so they
18 don't impede the light well at 1251. We even talked
19 about possibly reshaping part of the roof near the
20 light well.

21 We talked about first that there was a
22 request for landscaping along the property line that
23 is shared with 1255, even though there's a lot of
24 mature trees in the backyard of 1255 and there's an
25 8 foot fence between 55 and 57. We added trees. We

1 removed trees.

2 I feel like we've gone above and beyond
3 trying to meet the ANC halfway. But obviously,
4 there's a lot of members of the ANC here today that
5 are still in opposition of this despite the fact
6 that 1251 was approved less than three years ago.
7 That extends 15 feet beyond where we're proposing to
8 build.

9 And they've built to the property line.
10 We're not proposing something nearly as extreme as
11 that. But I guess they can speak in their own words
12 as to why.

13 (Simultaneous speaking.)

14 VICE CHAIR BLAKE: Okay, great. All right.
15 I'm going to take a little detour here from our
16 normal course. We have, let's see, testimony from
17 the public which we need to take for a couple
18 reasons. So I'm going to do that. Mr. Young, can
19 you make that -- bring this person in?

20 MR. YOUNG: I do not see Ms. Offreda on
21 anymore. We can have staff reach out.

22 MS. MARTINEZ: I'm communicating with her.
23 I know that there was some difficulties with work
24 and the timing of this hearing. But I just reached
25 out and see if she's available to hop back on.

1 VICE CHAIR BLAKE: Okay. So she's not
2 available, right?

3 MS. MARTINEZ: I can't see the -- like, the
4 people who aren't --

5 (Simultaneous speaking.)

6 VICE CHAIR BLAKE: Okay. So let's do this
7 then. I'm going to go -- is the Office of Planning
8 here? Yes, Crystal Myers. Okay. I'm going to go
9 to the Office of Planning and then we'll come back
10 to that. Go ahead. How are you?

11 MS. MYERS: For the record, Crystal Myers
12 with the Office of Planning. We're in support of
13 this case. We're still in support of this case and
14 can say on the record the staff report. I did go
15 through our report, I believe, last time. But I can
16 do it again if you would like.

17 VICE CHAIR BLAKE: It would be helpful if
18 you would just reference the update to your report
19 in the context of the changes that were made to the
20 plans. If there's anything there that would impact
21 your opinion in any way, that would be helpful.

22 MS. MYERS: Certainly. The Office of
23 Planning continues to be support of the applicant.
24 Changes reduces what the Office of Planning
25 originally reviewed. We were in support of the side

1 yard relief which is no longer needed.

2 The rear extension is still 20 feet which
3 is what we were supportive of. We thought it did
4 meet the special exception, the general special
5 exception as well as the specific special execution,
6 the 5201 review. And we were supportive of the
7 conversion as well. So we can continue to be in
8 support of these case.

9 VICE CHAIR BLAKE: Okay. Thank you very
10 much. All right. Does anyone have any questions
11 for the Office of Planning? Okay. We're going to
12 move now to the ANC. Ms. Roblin, do you --
13 Commissioner Roblin, do you want to speak or --

14 (Simultaneous speaking.)

15 MS. ROBLIN: Yes, thank you. Oh, yes. I'm
16 sure Mr. Keats wants to speak as well. Thank you
17 for your time. My name is Anna Roblin. I'm a
18 single member district ANC for this case.

19 I'll address a few issues here. One, why
20 we opposed. Two, Ms. Offreda's lack of response
21 from Carballo. Three, issues regarding the sun
22 study. Four, what happened with the revised burden
23 of proof plans and sun study not getting into the
24 case in a timely manner, causing our commission to
25 not have updated information at the time that we

1 voted.

2 Number four is rebuttal to Carballo's first
3 point in response to our commission report. And
4 five, what happened in a meeting we had with
5 Carballo, the Olayinkas, and community members. So
6 first, I owe everybody an apology.

7 It was my fault that we didn't get our
8 commission's report in until the 4th rather than the
9 28th. For some reason, I just was sure it was due
10 on the 5th with the other items, and I completely
11 didn't remember that you all had said the 28th for
12 it. And I told everyone it was the 5th. So I'm
13 very sorry for the difficulties that that caused.

14 So number one, why we oppose, our ANC voted
15 to oppose for the following reasons. The community
16 is unhappy with this project. Neighbors are very,
17 very, very opposed. The 1100 and 1200 blocks of
18 Moore Street, Northeast are in a family oriented
19 neighborhood.

20 The character of the block is historically
21 composed of small family scale rowhomes and semi
22 detached homes. And many people have been living in
23 their homes for 10 to 30 years as has Mr. Olayinka.

24 As we said in our report, transforming these homes
25 to multifamily units threatens the integrity of

1 remaining family sized homes.

2 It accelerates displacement pressure and
3 erodes architectural cohesion. The Moore Street
4 community has clearly stated their desire to
5 maintain housing appropriate for families and long
6 term residents. And this development is creating
7 more precedent in the neighborhood for high density
8 conversions.

9 1253 is set to host multifamily rental
10 units, bringing a more transient natured building to
11 a block where a lot of neighbors have lived for many
12 years and where new arrivals likely move in, in
13 large part, because of the non-transient nature of
14 the neighborhood. I believe that long term single
15 family homes are a feature of the RF-1 zone that
16 neighbors strongly want to keep on their street.
17 Yes, there are a few other multifamily units on the
18 street as Carballo has said.

19 But I believe many of those have been
20 recently developed and are not longstanding. Three
21 more street BZAs have been heard by our commission,
22 1251, 1154, and this case. And we have opposed all
23 of them.

24 They are all being developed within the
25 last -- have all been developed within the last two

1 or three years or less or fewer years. We have been
2 trying hard to preserve the family orientation of
3 the 1100 and 1200 blocks of Moore Street. I
4 personally feel that the BZA does not really
5 consider this type of neighborhood transformation to
6 be a serious problem.

7 And yet it's a devastating process to so
8 many neighbors who see their single family
9 neighborhood with all the same neighbors they've
10 known and live next to for so many years wrapped by
11 incoming transient buildings and more and more of
12 them until the nature and ambience of their
13 neighborhood is greatly changed. They're fighting
14 it tooth and nail. I believe that this Board
15 choosing not to oppose based on this kind of damage
16 to neighborhood character is one of the biggest
17 factors in the destruction of family oriented
18 neighborhoods in the District and across the
19 country.

20 As the ANC, it's clear to me that this is
21 what neighbors believe and want this Board to do.
22 This has been said to me many times in many
23 different ways over and over by constituents. With
24 all due respect, I don't believe that this Board is
25 sufficiently protecting neighborhoods from this type

1 of loss of family orientation and character.

2 It seems as though you support developments
3 without regard for what this type of erosion of
4 family orientation is doing to them whereas I
5 believe that as probably the most important -- it's
6 probably the most important feature of the RF-1
7 zone. It deserves full protection as being such.
8 And exceptions should probably only be made for a
9 third unit and not more.

10 Here is an AI overview of the RF-1 zone
11 that I googled. I know we all don't need to hear
12 this really. But my point is that it seems as
13 though the Board routinely minimizes this issue
14 while to many residents the issue is everything to
15 them.

16 I apologize, but I feel compelled to speak
17 to the elephant in the room here. Okay. This is
18 the googled quote. The RF-1 zone in D.C.,
19 Residential Flat-1, is for low density rowhouse
20 neighborhoods aiming to preserve historic character,
21 promote walkability, and allow up to two dwelling
22 units, often a main house and a cellar accessory
23 unit on small lots supporting housing affordability
24 and aging in place.

25 The first purpose of RF-1 that they list is

1 to preserve character to maintain the low scale
2 rowhouse aesthetic and neighborhood feel. So I
3 really hope that this Board would consider shifting
4 their orientation to being much more protective of
5 RF-1 and similar zone's character because losing the
6 character of a neighborhood that is basically single
7 family residences really devastates residents. This
8 aspect of their neighborhood's character means
9 everything to them. I believe that this is the main
10 reason --

11 VICE CHAIR BLAKE: Miss?

12 MS. ROBLIN: Yes.

13 VICE CHAIR BLAKE: Just do me a favor.

14 MS. ROBLIN: Yes.

15 VICE CHAIR BLAKE: Your testimony that
16 you're reading on is in the record. So if you could
17 focus on the points regarding the sun study and so
18 forth you specifically got, it would be very
19 helpful. Thank you.

20 MS. ROBLIN: Oh, sure. Of course. Thank
21 you. The issue regarding the sun study, it was very
22 disappointing. I had to strongly ask for a more
23 thorough sun study two or three times before
24 Carballo said that they would do one. They told us
25 that they would do it while meeting to discuss

1 issues on November 11th.

2 I then asked Mr. Carballo who would do the
3 shadow study, and he said that he would do it. I'm
4 not at all trying to cast dispersions. I'm sure as
5 Mr. Carballo said that he would not do anything that
6 would affect his reputation.

7 However, a former zoning committee co-chair
8 of ours told me that it's not best that a developer
9 do their own shadow study. It's always best that
10 it's taken to a third party professional. Ms.
11 Martin and Mr. Karay GOVERNOR LEE: that the sun
12 study has several inaccuracies, incorrect
13 dimensions, inconsistent modeling of adjacent
14 buildings, and flawed shading assumptions that
15 render the results inconclusive.

16 So I ask that if possible the Board analyze
17 this sun study for whether there is reason to
18 believe the study should not be taken at face value.

19 I think that would be the most important thing like
20 you said. Thank you.

21 VICE CHAIR BLAKE: Okay. Thank you very
22 much. Let's see. Commissioner, you had the -- I'd
23 like to hear from you as well.

24 (Simultaneous speaking.)

25 MR. KEATS: Do you need me?

1 VICE CHAIR BLAKE: Yes.

2 MR. KEATS: I'm not technically a
3 commissioner. I'm the co-chair of the Zoning and
4 Development Committee. As noted, the sun study is a
5 concern to the immediate neighbors there.

6 I would like to commend Mr. Carballo and
7 his team for the revisions they made in light of
8 what the neighbors requested, particularly for 1251.
9 Thereby the windows have been shifted, et cetera.
10 I understand why they want the extension.

11 I also know that the neighbors don't want
12 the rear extension. Because if it doesn't happen,
13 then their bedroom count goes down further. But the
14 surrounding neighbors are opposed to that and the
15 committee represents -- well, we try to strike a
16 balance.

17 But in this case, we are supporting the
18 position of the ANC which was that it's not to go
19 ahead. They oppose it because of the neighborhood
20 disagreement on the matter. I do believe I disagree
21 with Commissioner Roblin about the sun study being
22 insufficient.

23 I believe to me at least, it was adequately
24 explained why there appear to be discrepancy,
25 although I'm not an expert on it. So it's possible

1 that what Andrew Karay and Natalie Martinez say is
2 possibly true. They live there, so they're more
3 aware of how the sun placed on things.

4 I'm sorry for my slightly scratchy voice.
5 I've been fighting a cold. But to enumerate things
6 that were removed, the letter we discussed, Liza
7 Offreda wanted it -- said it wasn't necessary. So
8 that's been removed.

9 The shrubbery has been readjusted, removed
10 per Natalie and Andrew's request. And for that, I
11 thank Mr. Carballo. Then, of course, the general
12 concerns that have been expressed by the
13 Commissioner, we are concerned about the
14 neighborhood changing from predominately single
15 family homes to units with flats because it would
16 change the tenor of the neighborhood.

17 That is true and that is of great concern
18 in Trinidad. Those are my remarks. The rest of it
19 is in the testimony I've already submitted.

20 VICE CHAIR BLAKE: Thank you very much.
21 Does anyone from our Board have any questions for
22 the ANC representatives? Mr. Carballo, do you have
23 any questions for the ANC representative?

24 MR. CARBALLO: I don't have any questions
25 specifically to the ANC members. If I'm able to

1 respond to some of their comments.

2 VICE CHAIR BLAKE: We can do that a little
3 bit later on in the rebuttal section. Okay.

4 MR. CARBALLO: I'll hold my comments.

5 VICE CHAIR BLAKE: Thanks. I appreciate
6 that. Let's see. We'll now hear from the parties
7 in opposition. I see Ms. Boutelle, you joined us
8 now. Is that right?

9 MR. YOUNG: Commissioner, you may wish to -
10 -

11 VICE CHAIR BLAKE: Who's this? Who's here?
12 Let's see. Of the parties in opposition, I see two
13 people here but no one is saying anything. Let's
14 see. Who's under Andrew Karay?

15 MR. KARAY: Hi, yes. I am Andrew.

16 (Simultaneous speaking.)

17 MR. KARAY: Dawn is saying that she's
18 unable to unmute her mic.

19 VICE CHAIR BLAKE: Dawn, you can't -- okay.
20 You cannot unmute your mic. So why don't we begin.
21 Who wants to speak between the two of you first?
22 You're here, so I guess you can go first.

23 MR. KARAY: Yeah, I can speak. And I
24 believe Dawn has sent a letter to Mr. Reed that
25 whatever we say she's behind. So, thank you,

1 members of the Board. I've spent a lot of time on
2 this case. Your feedback prompted our applicant to
3 correct several major deficiencies. But we believe
4 that significant issues remain unresolved. We
5 think, from the beginning, that the applicant's
6 filing contains persistent errors, whether they're
7 measurements, incorrect adjacent property
8 information, descriptions.

9 These inaccuracies continue to be in C-Vote
10 (phonetic) and made it difficult for the neighbors
11 to understand and evaluate the proposal itself. We
12 repeatedly had to correct the record just to keep
13 the process accurate. After the October hearing, we
14 met with the applicant on November 11th.

15 In that conversation, we made it clear that
16 our support the unit conversion -- that we would
17 support unit conversion and withdraw our opposition
18 if the rear addition were reduced to a more modest
19 RF-1 appropriate depth. Our concern has always been
20 the massing, not the multi-unit use. And the
21 applicant has repeatedly declined to make that
22 adjustment.

23 The updated submissions still do not meet
24 the burden of proof in our opinion. As required
25 regulations, they are self iterative. They

1 constantly conform to themselves.

2 We think the sun study had errors in it,
3 whether it be heights, setbacks, model conditions
4 when there actually was no sun. And the applicant
5 submitted edited real estate listing photos of my
6 own personal home to imply lighting conditions which
7 are naturally altered for marketing purposes and do
8 not depict actual site conditions. And I personally
9 believe that was very inappropriate and in poor
10 taste.

11 Lastly, the applicant did not disclose to
12 the ANC or neighbors that they were seeking a 20-
13 foot rear addition special exception. That was a
14 material omission at a critical stage of review.
15 And several statements to neighbors including that
16 the applicant planned to live in the unit conflicts
17 what is now being represented.

18 Under Subtitle E, 5201-4, the applicant has
19 not demonstrated the prognosis for the impacts to
20 light and air or that it would visually intrude into
21 the rear pattern of the block. The three story, 20
22 foot extension is not in harmony with the purpose of
23 RF-1, and it will adversely affect neighboring
24 properties contrary to Subtitle X. We entered this
25 process with modest compliance additions.

1 And unfortunately, we are still left with
2 an oversized proposal supported by a tangle of
3 massive filings in the record as I know you all are
4 well aware of that we think were made unreliable.
5 And for these reasons, we respectfully ask that the
6 Board deny the request for relief. Thank you.

7 VICE CHAIR BLAKE: Thank you very much.
8 Does anyone have any questions for the -- any
9 members of the Board have any questions for the
10 party in opposition? Sure. Commissioner, go ahead.

11 COMMISSIONER WRIGHT: So my understanding
12 and this also was in materials that I saw that Mr.
13 Keats submitted is that there had been a proposal
14 that if the applicant reduced the length of the
15 building by 3 feet that that would be considered
16 acceptable and that there would be support for the
17 application. I would like to understand. A
18 building of this size, I honestly think 3 feet is
19 going to be somewhat imperceptible.

20 And I do understand the idea of -- which I
21 learned today is the goal was to have it line up
22 with the house. I don't know if that's your home or
23 not, the house that's one house away. Yeah. And so
24 what's magic about the 3 feet? That's just my
25 question because I think it's probably pretty

1 imperceptible.

2 MR. KARAY: Sure. So if you were to look
3 on Google images of Moore Street Northeast. So on
4 our block, you'll notice that there are several
5 types of single family homes. So on the east side
6 of Moore Street towards Trinidad Ave., there is a
7 block of, I believe, I think I want to say eight
8 rowhomes.

9 Some have the additions that are 17 feet.
10 Some have more. Some of the extension but some of
11 them less. Usually they are no more than 17 feet.
12 The property that we're talking about, 1251, is only
13 attached to 1253.

14 And historically, there were always two
15 sets of almost homes that had opening spaces on
16 both. So you two blocks, space, space, two blocks,
17 space, space, two blocks. On that 3 feet, what that
18 is doing is adding shade to spaces in between the
19 homes that were meant for increased air, light, and
20 privacy.

21 So unlike most rowhomes where it's kind of
22 a consistent block across the street, these gaps
23 were very intentional in creating a more airy feel
24 to the street or genuine single family use. That is
25 why we think at least lining it to the nearest block

1 would be more appropriate as opposed to the massing
2 of, I believe, 1251 which was a controversial kind
3 of build. Because not only the side yard addition
4 but the rear and the top.

5 The issue that we're running into now is
6 that when you add the third floor which in right, at
7 the basement which is in right, go back within
8 certain feet within right. But now you add the 10
9 feet. You're not just adding 10 feet on two floors
10 like most historic homes. Now you're adding 10 feet
11 on three stories which is creating this, like,
12 compounding impact of the building itself.

13 And it's no longer these individual asks,
14 one by one. It's tough to read off. But they are
15 compounding each other, right? It's taller. It's
16 deeper. And the third floor is also going back that
17 same amount. And so it's the compounding impact of
18 this that is really the concern.

19 COMMISSIONER WRIGHT: Yeah, I mean, I would
20 say that the newer -- is it 1251 that was approved a
21 couple of years ago and has now been built out? I
22 will tell you I think is not something I would ever
23 have voted for. It's much, much too big.

24 I do think that they have simplified and
25 made their proposed addition a bit smaller. And I

1 understand that you all have seen that happen also.
2 But the last sticking point was sort of can they
3 pull it in another 3 feet. And so, again, I just
4 sort of wanted to know where the 3 feet came from.
5 But I appreciate your explanation.

6 MR. KARAY: Yeah, and I appreciate that and
7 respect that. I think it's important to note that
8 1251 I don't think was actually approved by the ANC
9 either. It just kind of bulldozed the bully on the
10 block. Like Anna said, one of our biggest concerns
11 is just continual compounding of more floors, my
12 depths, expanding and slowly taking over the block.

13 COMMISSIONER WRIGHT: Yeah, I mean, I will
14 say I am sympathetic to the idea of converting some
15 single family rowhouses into multiple units. I
16 mean, I as a young person in Washington, D.C. in
17 1994 was able to move into a building in Dupont
18 Circle that had been one single family house but had
19 been converted into four flats. And that was great
20 for me as a young person who was engaged but not yet
21 married, had not yet had children.

22 It allowed us to have a space that we did
23 stay in after we got married, after we had a child.

24 We never would've been able to move into a single
25 family house. It gave us -- and we were very family

1 oriented. We were a family.

2 But it gave us the opportunity to be in the
3 neighborhood and move into something we could
4 afford. Before, we could save money to buy a single
5 family house. And so I'm sympathetic to the idea of
6 creating opportunities for perhaps very small
7 families or new families to move into a neighborhood
8 that doesn't necessarily mean moving into a single
9 family house.

10 So I did want to address that because I
11 know that Commissioner Roblin brought that up. I do
12 think flats can be family oriented, especially for
13 young families that are just starting out. And I'm
14 still trying to wrestle with does the 3 feet that
15 you've asked as a reduction, does that make or break
16 the project? And I'm still trying to wrestle with
17 that. But thank you for your response.

18 MR. KARAY: Yeah, and if I may answer. The
19 3 feet is trying to come to a reasonable conclusion.

20 We understand what the applicant is trying to do.
21 We appreciate all the work that's come into this.

22 That's more of an effort of us trying to
23 find some middle ground. Frankly, if it was, you
24 know, completely up to us, you know, they build,
25 right. They can do the 10 feet, build three floors,

1 great. But unfortunately, that isn't what's being
2 asked here.

3 We also do have smaller apartment buildings
4 not on Moore Street but along West Virginia Ave.,
5 along Florida Ave., certainly within the Trinidad
6 neighborhood along those busier commercial
7 corridors, not a continual reduction of the limited
8 single family stock that exists that as our ANC has
9 alluded to is longtime residents that slowly but
10 surely kind of get weeded out over the years as
11 these projects take over.

12 VICE CHAIR BLAKE: Okay. Thank you.
13 Commissioner, do you have any other questions?
14 Board Member Drakeford, do you have any questions?

15 MEMBER DRAKEFORD: No, not at this moment.

16 VICE CHAIR BLAKE: Okay. All right. Let's
17 see. Mr. Young, is there anyone that wishes to
18 speak? Okay. So what we're going to do now is
19 we're going to go on to Mr. Carballo's rebuttal.
20 You've heard a lot of testimony, Mr. Carballo, from
21 several folks. And if you have any questions or
22 comments you'd like to make about that, please do in
23 your rebuttal.

24 MR. CARBALLO: Certainly. I guess in
25 response, I've heard a lot about the nature and

1 scale of the area in the Trinidad, specifically the
2 1100 and 1200 block of Moore Street Northeast. I'll
3 remind the Board and everyone listening that we are
4 in an RF-1 zoning district. RF stands for
5 residential flats.

6 It is the intention of the zoning of the
7 District to allow areas for the development of
8 residential flats or apartments. This is sort of
9 the cornerstone of the RF-1 zoning district. So
10 we're not here to necessarily debate whether
11 apartments should be allowed or not. They are.

12 They are allowed as a matter of right.
13 Specifically for overdevelopment or this notion of
14 overdevelopment, there are checks and balances put
15 in place with respect to lot area and lot size. We
16 meet the minimum lot requirements to provide for
17 dwelling units.

18 Our property is 3,633 square feet, allowing
19 rightfully so 900 square feet of lot area per
20 dwelling unit. We meet that regulation and the
21 burden of proof for a special exception as a matter
22 of right. Further that, there are some questions
23 about our sun study.

24 We conducted a 26-page extensive sun study.
25 We built a three dimensional model, a digital model

1 of three houses up, three houses down based on GPS
2 in a program called Revit, an extensive sun study
3 that showed no substantially adverse effect to any
4 of the properties. I think the issues that people
5 are pointing out on our sun study is that they did
6 not like the results of the sun study and called
7 into question the sun study itself.

8 The sun study was taken at various
9 different times of year, different times of day.
10 And as a check, we removed every single tree in the
11 back yards of 1255, 1257, 1253, 1251, et cetera, to
12 show worst case scenario if someone would come
13 through and remove all of those mature trees.
14 That's not actually reality. There's lots of mature
15 trees.

16 So I think that -- and again, I think we've
17 gone well above showing this information. And as
18 Commissioner Wright questioned, this whole 3 feet
19 notion, we're talking about 3 feet that's -- that 3
20 foot bump out is 28 feet away from the two
21 neighboring properties away. I just don't see how
22 that's going to affect anybody.

23 And it seems unreasonable for me to only be
24 able to go back a 7 foot addition which is less than
25 the length of a sheet of plywood to build the

1 addition off the back where our current footprint
2 is. We're simply asking for 10 feet beyond our
3 existing footprint. The adjoining property at 1255
4 which is currently unimproved could build to that
5 point as a matter of right tomorrow if they got
6 their building permit, of course, and not have to go
7 through the Board.

8 We're simply just asking to do what our
9 only physically adjoining neighbor would be allowed
10 to do as a matter of right. Even with that modest
11 addition, we're at 35 percent lot coverage. RF-1
12 allows 60.

13 We have a 64 foot 4 inch rear setback that
14 we're providing. RF-1 allows 20 feet for the rear
15 setback. This is not an overreach. This is not an
16 example of what occurred on 1251 which incidentally
17 goes 15 feet beyond where we are proposing to go
18 back on.

19 This is by no means a land grab. Or we are
20 trying to make modest two bedroom apartments here
21 that a family could enjoy. And as Commissioner
22 Wright mentioned, like, if I take 3 feet out of a
23 bedroom that's 12 feet deep, I have a 9 foot
24 bedroom. That's not great.

25 It almost makes it unusable. Now I'm going

1 from a two bedroom down to a one bedroom. One
2 bedroom apartments really don't serve families.
3 When I was a kid, I lived in a two bedroom apartment
4 and it was plenty for my brother and my parents and
5 I. But it's not a long-term solution to live in a
6 one bedroom apartment.

7 Two bedrooms, at least you can support a
8 family in that space. So we're trying to provide
9 good space for residents. Mr. Olayinka, my client,
10 he's owned the property since 1990.

11 He's lived at the property. His brother
12 lives at the property currently. He's finally able
13 to afford to improve this property. And this is
14 something that he's been part of this community for
15 36 years.

16 He is not trying to get any more than he
17 deserves, so to speak. I mean, he's not trying to
18 negatively impact the neighborhood. He is trying to
19 improve this property so that it can be enjoyed for
20 another 36 years for that matter. So that's really
21 all I'll say.

22 VICE CHAIR BLAKE: Okay. Thank you very
23 much. All right. Well, we're kind of almost here.

24 But I'm going to do this just to close it out. Mr.
25 Karay, do you have any -- the parties in opposition,

1 do you have any closing remarks, very brief closing
2 remarks?

3 MR. KARAY: I'm sorry. Can you repeat that
4 one more time?

5 VICE CHAIR BLAKE: Do you have any very
6 brief closing remarks?

7 MR. KARAY: No, not necessarily closing
8 remarks. I think everyone has said everything they
9 could to the point of exhaustion.

10 VICE CHAIR BLAKE: Okay. Thank you very
11 much. Mr. Carballo, do you want to add any closing
12 remarks?

13 MR. CARBALLO: I don't believe so. But Mr.
14 Olayinka, if you have any words. I'm not sure if
15 it's appropriate for him to speak now. But I think
16 I've stated everything that I can, and I think that
17 we met the burden of proof for both special
18 exceptions we're seeing today. And I'll close on
19 that record.

20 MR. OLAYINKA: Yes, Commissioner. I have a
21 written statement, but I'm going to make it very
22 short. Since Mr. Carballo also raised, talk about a
23 couple of things about me. Okay. Yes, my wife and
24 I, we own this property at 1253 Moore Street since
25 1995 precisely.

1 And then previously, we operated a
2 community residential facility, CRF, in this house.

3 I also served as a teacher at Eliot Junior High
4 School. And most of my students live in this
5 neighborhood in the '90s.

6 So I'm aware that there's a significant
7 demand for housing in D.C. And we are simply taking
8 a reasonable zoning relief to allow us to continue
9 using this property. So we have worked through the
10 zoning and ANC process in good faith towards this
11 process.

12 We made multiple, a couple of revisions and
13 adjustment in response to feedback. So the proposal
14 before you today reflects a moderate and thoughtful
15 design that we believe is appropriately within the
16 surrounding neighborhood. We are simply trying to
17 make reasonable improvements to a long held family
18 property.

19 Our family has been here for decades. And
20 we intend to remain here for generations to come.
21 So we respectfully request the Board's
22 consideration. Thank you.

23 VICE CHAIR BLAKE: Thank you very much, Mr.
24 Olayinka. Thank you very much. We have
25 unfortunately a little bit of another little change

1 here. We have one person from the public, I
2 believe, which I believe is actually a nearby
3 resident that wishes to speak. Mr. Young, could you
4 bring her in, please? Hello? Ms. Offreda? Okay.
5 Is she on the line and muted?

6 MS. OFFREDA: Hello. Are you able to see
7 me today? Thank you so much. I'm teaching -- I've
8 been teaching all day long. I've been popping in
9 and out of the class to try to follow along.

10 Thank you so much for giving me the
11 opportunity to speak today. I'm not sure if you're
12 able to pull up my slides, my Exhibit No. 67. It's
13 the PowerPoint that I submitted.

14 VICE CHAIR BLAKE: Let me say this before
15 we begin. I understand you're new here. But as the
16 member of the public, you'll have three minutes to
17 present. We actually can allow you to put your
18 slide presentation in, but you have three minutes to
19 present your (audio interference). So, Mr. Young,
20 if you can pull that up, we can do that. But we
21 have to keep it relatively short. Okay?

22 (Simultaneous speaking.)

23 MS. OFFREDA: Sure. I'm ready as long as
24 the interpreter can see me okay. Are you ready for
25 her to begin presenting?

1 VICE CHAIR BLAKE: Yes, we are. Mr. Young,
2 could you please pull up that slide?

3 (Simultaneous speaking.)

4 MR. YOUNG: Yes, what was the exhibit?
5 What was the exhibit number?

6 MS. OFFREDA: 67. Are you ready for me to
7 present?

8 VICE CHAIR BLAKE: Yes.

9 MS. OFFREDA: Okay, great. Thank you so
10 much. So this PowerPoint summarizes the impact of
11 the neighboring building changes.

12 VICE CHAIR BLAKE: Just a second. Just a
13 second. I don't see the PowerPoint. Okay. There
14 we go. Go ahead.

15 MS. OFFREDA: And I've lost my interpreter.
16 Okay. Now I can see her. So my PowerPoint is a
17 summary. And if you could advance the slides,
18 you'll be able to see the pictures. There's an
19 impact that you'll be able to see from the
20 construction.

21 I just bought the property. So as you can
22 see from my pictures, the light well is
23 significantly impacted. It's a big benefit of my
24 property which is 1251. The light well is a
25 significant part of my property.

1 And by adding the extension to the approved
2 -- to the approve the extension of the other
3 building will block my light from the light well.
4 If you don't mind moving on to the next slide. As
5 you can see here, the back has trees with light
6 coming through.

7 The extension of the building adjacent to
8 mine would block that. If you can advance the slide
9 again. You can see the sunlight is coming through
10 the window there. And his light study, the sun
11 study, what I call the light study said that there
12 would be no significant impact to my light or no
13 impact to my light at all. But that's not true.

14 As you can see, I have plenty of light
15 coming through my window now. If you can advance
16 the slide again. So you can see the light coming in
17 the full kitchen and the living space. It's a huge
18 light well. If you can advance the slide again.

19 As you can see, there's light on my
20 property. Without that addition, the height and
21 length of the building, I would completely lose all
22 of my light in that space. If you can advance the
23 slide again.

24 This is another view of the light well that
25 you can see. This is where the planned basement

1 stairs or access stairs to the basement would be
2 would affect my privacy as well. It would affect
3 both my privacy and my light.

4 They said that there would be no impact on
5 my privacy and light. You can advance the slide
6 again. So this mentions my brief request. It's a
7 summary of the impact on my home and my living
8 conditions which would be quite significant if the
9 building is built both up and out.

10 I tried to get it in as quickly as
11 possible. That's all from me. Thank you so much
12 for allowing me the opportunity to speak. I really
13 love this community and I really hope -- and I'm
14 sorry. When the slides went down, the interpreter
15 lost her view. So I'm going to have her repeat her
16 last sentence again.

17 Thank you so much for giving me the
18 opportunity to be able to speak. I love this
19 property and I really want to be able to enjoy
20 living there and not having that negative impact on
21 my light and my life and my living space and my
22 privacy. Thank you.

23 VICE CHAIR BLAKE: Thank you. Thank you
24 very much. Do my Board members have any questions?

25 Okay. Thank you very much. Does anyone from the -

1 - Mr. Carballo, do you have any questions for the
2 witness?

3 MR. CARBALLO: I think maybe just a point
4 of clarification. I never said there would be no
5 impact. I think the term is no substantial adverse
6 impact. My simple question is as a new resident, I
7 believe this neighbor purchased their condo within
8 the last six months.

9 This is the 1251 building that has a light
10 well at the center of the property that measures 5
11 foot 11 by 11 foot. If light was that important to
12 this owner, why did they purchase a property located
13 on the lowest part of the building that had zero
14 windows along the entire side of the property and
15 their only light was through a very small light well
16 that was in the middle of the property and the
17 property was built to the property line? Our
18 addition, the third floor addition is done as a
19 matter of right. I question the pushback
20 considering the context.

21 VICE CHAIR BLAKE: Okay. That wasn't quite
22 a question, but I understand the rebuttal. Does
23 anyone in the Board have any other questions? Okay.

24 So I'm going to close the hearing, close the
25 record. I'm going to dismiss the witnesses. Thank

1 you all very much. I appreciate the input. Okay.
2 That's everybody in place.

3 THE INTERPRETER: As a point of
4 clarification, would you like the closed session to
5 remain interpreted for the record?

6 VICE CHAIR BLAKE: It's not closed. It's
7 open.

8 THE INTERPRETER: Thank you.

9 VICE CHAIR BLAKE: Okay. Having reviewed
10 this, we're going to move on to our deliberations or
11 we'll see where we are. I'm going to start with
12 Commissioner Wright. What are your thoughts?

13 COMMISSIONER WRIGHT: Thank you. This is a
14 hard case, and I really appreciate how so many
15 people in the neighborhood are very committed to
16 their neighborhood. We're only really being asked
17 for two things. Again, I think as was just
18 mentioned, adding another floor is allowed by right.
19 That can happen without ever coming to us.

20 They are doing a request for an exception
21 on the side yard. They're meeting the side yard as
22 required by design code. The two things that
23 they're asking for is allowing the conversion to
24 four units -- to a four unit apartment house and
25 secondly allowing the rear wall to extend farther

1 than 10 feet beyond the farthest rear wall of any
2 adjoining principle residential building.

3 And it is going 10 feet beyond the property
4 that is next door. And it's 20 feet -- I'm sorry.
5 It's 20 feet beyond the building to the east. I've
6 thought about this a lot.

7 I was initially very concerned about the
8 very first proposal that we saw. I again said I
9 don't think I would ever have voted for something
10 like 1251. I think that's much too big.

11 And I appreciated that this applicant did
12 work to simplify and reduce their proposal. I think
13 the fact that in conversation with some of the ANC
14 and neighbors, it came down to can you reduce it
15 another 3 feet. I just feel like that 3 feet is
16 essentially imperceptible. And although I feel like
17 this is pushing the envelope a bit in terms of what
18 I would find acceptable, I'm ready to support the
19 application with the changes that have been made.

20 VICE CHAIR BLAKE: Okay. Thank you very
21 much, Commissioner. Board Member Drakeford.

22 MEMBER DRAKEFORD: Yes, I would agree. I
23 do appreciate the applicant's willingness to work
24 with local community stakeholders to make
25 adjustments to the project as well as Commissioner

1 Wright indicated as well what the primary focus is
2 of our review today. And I also would align myself
3 with her comments and prepared to support the
4 application.

5 VICE CHAIR BLAKE: Okay. Thank you. Okay.

6 I too want to first acknowledge the effort made by
7 the ANC 5D to voice the community's concerns. I'll
8 also note that the Commission's effort to reach a
9 compromise between the parties, holding the
10 meetings, and making sure that they had the
11 conversations.

12 It was a little rough at one point or
13 another. I note that several of the concerns raised
14 by the ANC while understandable from a community
15 perspective are not directly tied to legal standards
16 governing this application. Concerns about broader
17 neighborhood trends, perceived shift from family
18 ownership to rental occupancy, precedent setting
19 implications, and the dissatisfaction with
20 applicant's communication of filing timely are
21 policy and process issues rather than criteria under
22 which the Board has authority to act. The Board's
23 task is really limited to evaluating whether the
24 specific proposal as designed meets the applicable
25 special exception standards for requested relief.

1 The criteria for U 320.2 is really
2 straightforward. The building existed prior to May
3 1958. The structure remains in place at the time of
4 committing. The lot contains 3,633 square feet
5 which exceeds the square foot requirement and the
6 proposal includes the required IZ unit.

7 So under E 207.5, the rear yard extension
8 and side yard -- the rear yard extension is
9 considered under X 901.2 with the removal of the
10 side yard requirement which means the Board must
11 determine whether the addition has substantial
12 impact on the neighboring properties with regard to
13 actually as it still turns out light, air, and
14 privacy, less so visual intrusion. And I think the
15 legally relevant concerns raised by both the ANC and
16 the parties in opposition center around the 20 foot
17 rule -- 20 foot extension and 3 story addition.
18 Specifically rather, the depth and massing unduly
19 affect light and air, particularly at the light well
20 on 1251.

21 And also whether the proposed basement and
22 upper level windows compromise privacy. Whether
23 rear mass visually intrudes upon the character and
24 scale of pattern is another issue that we consider
25 but less so under the general standard. So I

1 believe these concerns are largely considered under
2 the analysis that was provided with E 5201 and 901.

3 And as for the light and air, the record
4 indicates that the proposed rear wall would align
5 with the rear massing of the adjacent property which
6 is previously expanded at a similar depth. The
7 neighboring property at 1255 does not contain
8 windows facing the subject property. Based on the
9 plans and geographical representations in the
10 record, it doesn't appear that the extension would
11 unduly diminish available light or air to adjacent
12 dwellings on privacy.

13 The applicant revised plans to shift down
14 bedroom windows to avoid direct alignment with the
15 light well at 1251 and removed other elements raised
16 by neighbors. The side yard although reduced
17 remains open and does not introduce windows directly
18 facing into 1255. Considering these factors, I do
19 not think the privacy of neighboring properties
20 would unduly be compromised.

21 Together, these findings lead me to
22 conclude that the proposed addition should not have
23 a substantially adverse effect on the use or
24 enjoyment of any abutting or adjacent dwellings.

25 And the proposals appears to be in harmony with the

1 general purpose and intent of the RF-1 zone. So
2 based on these findings, I don't find the advice of
3 ANC 5D persuasive, and I believe the applicant has
4 met the burden of proof to be granted the requested
5 relief.

6 We agree with the Office of Planning's
7 analysis and give great weight to the recommendation
8 for approval. I'll also be voting in support of the
9 application. So with that, I'm going to make a
10 motion to approve the amended application as written
11 and captioned by the Secretary and ask for a second.

12 Board Member Drakeford.

13 MEMBER DRAKEFORD: I second.

14 VICE CHAIR BLAKE: The motion has been made
15 and seconded. Madam Secretary, would you please
16 conduct the roll call vote.

17 MS. MEHLERT: Please respond to the chair's
18 motion to approve the application. Chairman Blake.

19 VICE CHAIR BLAKE: Yes.

20 MS. MEHLERT: Board Member Drakeford.

21 MEMBER DRAKEFORD: Yes.

22 MS. MEHLERT: Commissioner Wright.

23 COMMISSIONER WRIGHT: Yes.

24 MS. MEHLERT: Staff would report the vote
25 as 3 to 0 to 2 to approve Application No. 21361 on

1 the motion made by Chairman Blake. It's seconded by
2 Board Member Drakeford.

3 VICE CHAIR BLAKE: Okay. Thank you all.
4 All right. We are going to go on to our next case
5 of the hearing session.

6 MS. MEHLERT: Next is Application No. 21360
7 of M & Potomac Streets Associates as amended. This
8 is a self-certified application pursuant to Subtitle
9 X, Section 1002 for area variances from the lot area
10 requirements at Subtitle D, Section 202.1, the lot
11 occupancy requirements of Subtitle D, Section 210.1,
12 and the rear yard requirements of Subtitle D,
13 Section 207.1. This is a principle dwelling a new
14 semi-detached building.

15 It's located in the R-3/GT zone at Prospect
16 Street, Northwest, Square 1206, Lot 832. This
17 hearing began on October 29th. It was complete on
18 January 21st, 2026. The Board began deliberations
19 on January 28th and continued the meeting to
20 February 11th.

21 On February 11th, the Board also granted
22 the applicant's request to reopen the record and
23 schedule a further hearing. Participating are
24 Chairman Blake, Board Member Drakeford, Commissioner
25 Wright. Also before the matter the party in

1 opposition has filed or included a motion and a
2 response to strike some level of submission or a
3 motion to dismiss the application.

4 VICE CHAIR BLAKE: Okay. Let's see if the
5 -- I want to first do the introductions. If the
6 applicant is here, would you please introduce
7 yourself for the record and anybody else who will be
8 joining you.

9 MR. KEARLEY: My name is Gregory Kearley,
10 and I'm with Inscape Studio. And I'm a prospective
11 purchaser of this property. And the current owner,
12 I believe, is also present. He will be here to
13 answer questions as necessary. But I will be
14 presenting.

15 VICE CHAIR BLAKE: Okay. Let's see. Is
16 the party in opposition here? Yes. Would you
17 please introduce yourself for the record?

18 MS. PERKOWSKA: Good afternoon. Joanna
19 Perkowska joining from the 1220 Potomac Street,
20 Northwest, party in opposition.

21 VICE CHAIR BLAKE: Welcome, Ms. Perkowska.
22 All right. So we're all here. We began
23 deliberating this application back on the 28th of
24 January. But we weren't really able to read a
25 decision.

1 The applicant simply asked the Board to
2 reopen the record for supplemental materials. The
3 Board approved that request in its February 11th
4 meeting session. The supplemental findings are now
5 in the record in Exhibit 56 A through D and include
6 a revised self-certification form withdrawing the
7 request for an area variance for side yard relief
8 and updated architectural plans and elevations
9 showing the proposed structure with compliance side
10 yards.

11 The party in opposition and ANC required
12 notice in a period of 6 days to respond to the
13 supplemental material. Further in lieu of the
14 decision meeting, the Board scheduled a limited
15 virtual public hearing to address the supplemental
16 materials scheduled for today. Notice of that
17 hearing was sent out more than 10 days prior to the
18 date set for the hearing.

19 I didn't see in the record a response from
20 the ANC. But there is a filing from one of the
21 parties in opposition, Ms. Perkowska. The first
22 item that submission is a motion to strike the
23 February 5th, 2026 supplemental submission as
24 procedurally improper.

25 I just went through kind of what transpired

1 in terms of notification. So I see no basis for
2 this as a procedure with regard to the submission.
3 They were all compliant with the post-hearing
4 procedure sent out in Subtitle Y, Chapter 6.

5 So as the presiding officer, I'm going to
6 deny that motion. The party in opposition also made
7 a motion to dismiss the amended application without
8 prejudice for failure to comply with procedure
9 requirements. I'm personally against dismissing the
10 amended application as, again, the procedure
11 complied with the provisions of Chapter 6, Subtitle
12 Y.

13 But I'm going to turn to my Board to
14 discuss this and see what happens. So we're going
15 to around the Board. Commissioner Wright, what are
16 your thoughts on the motion to dismiss the amended
17 application?

18 COMMISSIONER WRIGHT: I do not agree with
19 that. I think that projects evolve. And what is
20 important is that there is sufficient opportunity
21 for all parties to have a chance to speak in favor
22 or in opposition to the project as it evolves. And
23 so the hearing that we're having today is an
24 opportunity for the parties to speak and to discuss
25 the application as it has changed. And so I do not

1 see that there is any reason to deny the additional
2 submission.

3 VICE CHAIR BLAKE: Okay. Board Member
4 Drakeford, your thoughts.

5 MEMBER DRAKEFORD: I would agree. And I am
6 -- I would agree. And yes, I would agree.

7 VICE CHAIR BLAKE: Okay. Then I'm going to
8 make a motion to deny the party in opposition's
9 motion to dismiss the amended application and ask
10 for a second. Board Member Drakeford.

11 MEMBER DRAKEFORD: Second.

12 VICE CHAIR BLAKE: Okay. The motion has
13 been made and seconded. Madam Secretary, would you
14 please conduct the roll call vote?

15 MS. MEHLERT: Please respond to the chair's
16 motion to deny the party in opposition's motion to
17 dismiss. Chairman Blake.

18 VICE CHAIR BLAKE: Yes to deny.

19 MS. MEHLERT: Board Member Drakeford.

20 MEMBER DRAKEFORD: Yes.

21 MS. MEHLERT: Commissioner Wright.

22 COMMISSIONER WRIGHT: Yes.

23 MS. MEHLERT: Motion passes 3 to 0 to 2. A
24 motion made by Chairman Blake and seconded by Board
25 Member Drakeford.

1 VICE CHAIR BLAKE: Okay. The third motion
2 was made by the party in opposition was to deny the
3 application for failure to meet Subtitle X 1002 on
4 the variance standards. Having not yet conducted
5 the continued hearing, I think it's a bit premature
6 to address this. So we're going to put that on the
7 back burner and come back to it a little bit later.

8 Okay. So having dispensed with these
9 preliminary issues, let's move on to the hearing.
10 We do have a fairly extensive report. The scope of
11 this hearing actually is limited to the amended
12 request, and we should address the -- and really to
13 address the supplemental materials.

14 Now we want to hear comments. The comments
15 are not limited to just -- it's not just a paper
16 filing. And you have the ability to comment.
17 That's why we're having this hearing.

18 But the scope of the hearing, it is the
19 supplemental materials submitted and the amended
20 request. So we're going to conduct this like a
21 regular hearing. We're going to have the applicant
22 speak, the Office of Planning, ANC, the party in
23 opposition. And we will take testimony from the
24 public if there's any.

25 And we'll have rebuttal from the applicant.

1 And then we'll have closing remarks. So with that,
2 I'm going to turn over to the applicant. You have
3 15 minutes on the clock. You can tell us how your
4 amended project fits the criteria for approval, what
5 exactly has been amended, and how you believe you
6 meet the criteria for approval. Begin whenever you
7 like.

8 MR. KEARLEY: All right. Thank you. We
9 meet again. So I think we've been doing this for a
10 few months, but I think we're down towards the end
11 here. I'm going to really limit my conversation
12 today about the changes that were made.

13 So the change I made was shifting the
14 building 9 inches to the west which eliminated any
15 relief needed for side yard. And that was really a
16 direct response to some of the conversations that
17 the Board and everyone had over the past couple
18 months about whether or not we could have less
19 relief. Just one thing to note that there were no
20 other changes made.

21 I don't know if you can bring up -- let me
22 tell you which one it is. It would be 56C. Those
23 are the plans and elevations. I can take us through
24 this fairly quickly if we can -- I think it would be
25 helpful to see the site plan.

1 VICE CHAIR BLAKE: If you could pull it up.
2 Mr. Young, can you pull up that exhibit?

3 MR. KEARLEY: Thank you.

4 VICE CHAIR BLAKE: Mr. Young, are you able
5 to find the exhibit?

6 MR. YOUNG: Yeah, was that 56C?

7 MR. KEARLEY: 56C, I believe, are the plans
8 and elevations that I'm looking on, on the BZA
9 website for -- yeah, that's it. So next slide,
10 please. Next slide. So just one thing to note.

11 When we're looking at the heights and
12 relationship between the neighboring properties and
13 the scale of the project, that has not changed.
14 Next slide. This is the existing site plan. Go to
15 the next slide. This should be the proposed site
16 plan.

17 So you can see that we shifted it over 9
18 inches to the right. And that is really the only
19 change we made to the drawings. And that eliminated
20 one of the four areas of relief. We still need
21 relief from lot occupancy, lot area, and rear yard.

22 But we no longer have -- we have 6 feet 1
23 to the east and we're on the property line to the
24 west. So we have a semi-detached, and we meet the
25 requirements for both. You don't need a side yard

1 on the attached side. And we need a minimum of 5
2 feet on the detached side. And we're providing both
3 of those.

4 So we believe that by eliminating one of
5 the four areas of relief and now having the three
6 areas of relief that the uniqueness of the property
7 warrants the relief. There's no way to do a house
8 without having the lot area requirement relief
9 because we can't make this lot any bigger. The lot
10 occupancy and the rear yard really stem from the
11 uniqueness of the property, the slope down to the
12 rear, the shape of the property with the Sawtooth at
13 the back. So I don't know how much farther you want
14 me to go because we're really limiting it to that
15 elimination of the relief.

16 VICE CHAIR BLAKE: I want to just be clear
17 on something. You said the lot area requirement,
18 you kept it, I think, at 4,000. I believe it drops
19 down because you're doing some of these at 3,000.
20 Is that correct?

21 MR. KEARLEY: I can look at that. But -- I
22 can check that out. Then the relief would be less
23 if it's 3,000. But I did not add that into the
24 presentation, so --

25 VICE CHAIR BLAKE: Okay. I believe that to

1 be the case. Okay. You can just check with the --
2 if we go through -- do you have a second? We can
3 take a look at it just to confirm. Okay?

4 MR. KEARLEY: Yeah, I'm going to be doing
5 that as we speak.

6 VICE CHAIR BLAKE: Were there any other
7 changes or anything like that, that you want to
8 reflect here?

9 MR. KEARLEY: I did on the Form 153,
10 clarify the proposed deviation which is 19 percent.

11 It hasn't changed. But you had brought that up at
12 the last hearing. There was a couple of different
13 notes that contradicted.

14 So I just want to be clear. It was the 59
15 percent which you have indicated at the last
16 hearing. And I made sure that all the documents
17 reflected that, that the relief being sought is 19
18 percent and not greater.

19 VICE CHAIR BLAKE: Okay. So the next one I
20 have for you is a little bit different. Did you
21 have an opportunity to meet with the neighbors to
22 discuss this proposal during this time?

23 MR. KEARLEY: I sent letters to every
24 neighbor during the OGB process for the design. And
25 I did talk to a number of the neighbors. So I have

1 a copy of that letter that I sent. But I actually
2 hand delivered a letter inviting all the neighbors
3 to speak with me about this. I had a chance to
4 speak with the neighbors of Eton Condos behind me.
5 I actually met with them at a restaurant in D.C. and
6 had a conversation with them about it and then
7 through the ANC process.

8 (Simultaneous speaking.)

9 VICE CHAIR BLAKE: Have you spoken to them
10 since you revised the plans in the --

11 MR. KEARLEY: No, I haven't.

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

13 Do any members of the Board have any questions?

14 Yes, ma'am. Go ahead.

15 COMMISSIONER WRIGHT: I just want to
16 confirm. In your revised application, what is the
17 width of the walkway to the east?

18 MR. KEARLEY: It's now 3 feet 3 inches.

19 COMMISSIONER WRIGHT: I'm sorry. I think
20 that may be the one --

21 (Simultaneous speaking.)

22 MR. KEARLEY: To the west. When I shifted
23 over 9 inches.

24 COMMISSIONER WRIGHT: No, I'm asking about
25 the other side, the walkway to the condominium that

1 people use to get from Prospect Street to the
2 condominium. It had been in your previous
3 submission 5 feet some inches.

4 (Simultaneous speaking.)

5 MR. KEARLEY: Yeah, if we can bring up the
6 site plan again, I can walk you through that very
7 quickly. So if we can bring up 56C one more time.
8 So I don't know if you can zoom in on that a little
9 bit.

10 And yeah, so you can see the walkway. We
11 have to -- I'm going to pull it up. I can't really
12 that very well, but I have it in front of me in my -
13 - on the property itself, on our property itself, we
14 have a proposed side yard of 6 feet 1 inches.

15 And the actual path to navigate to the Eton
16 Condos, I'm going to do a measurement for you. It's
17 a little deceiving because part of that pathway is
18 actually on the neighboring property. There's a
19 wall.

20 But I'm going to pull that up right now
21 just doing that. On the property in question, it's
22 4 feet and one-half inches to the planter. So
23 that's a clear path. And to the wall is 5 feet six
24 and half inches.

25 So you go back a couple of -- to the photos

1 at the beginning of this set. Keep going. Okay,
2 stop. You can see on the top left photo, do you see
3 that shadow that's being cast down on that pathway?

4 That is basically on the neighbor's property even
5 though their wall, that brick wall, is sort of a
6 mark for the property.

7 That shadow area is basically on -- is on
8 the neighbor's property. So from the planter to my
9 property line -- well, possibly my property line if
10 this goes through -- there's 4 feet and a half inch.

11 So plenty of room for people to navigate. And to
12 the wall is 5 feet 6 and one-half inches. Does that
13 communicate what you were asking?

14 COMMISSIONER WRIGHT: Yes, thank you. And
15 again, while we have these images, the middle top
16 image shows the walkway that is to the west.

17 MR. KEARLEY: That'll end up being 3 feet 3
18 inches by shifting it over the 9 inches. So it's
19 still enough for people to navigate and get access
20 to their rear yards.

21 COMMISSIONER WRIGHT: Right.

22 MR. KEARLEY: So it goes from 4 feet.
23 Shifting it the 9 inches, we're left with 3 feet 3
24 inches.

25 COMMISSIONER WRIGHT: And as an architect,

1 I assume you know what, like, ADA requirements are
2 for pathways and hallways which I believe is 36
3 inches.

4 MR. KEARLEY: It's 36. And I usually do it
5 at 38 inches if you need to do some type of handrail
6 or whatnot. But it has to be -- and then the pinch
7 point can go no less than -- I believe it's 34
8 inches, like, with a door. Because when you swing a
9 36 inch door, you have that thickness of the door.

10 COMMISSIONER WRIGHT: Suffice it to say,
11 the remaining walkway on the west would be --

12 MR. KEARLEY: Accessible.

13 COMMISSIONER WRIGHT: -- more than 36
14 inches.

15 MR. KEARLEY: Correct. Thirty-nine inches
16 is what they would be.

17 COMMISSIONER WRIGHT: Okay. Thank you.
18 That answers my question.

19 MR. KEARLEY: Which is actually wider than
20 the standard trash bins that D.C. gives you. So
21 someone could wheel -- basically, it's used for
22 trash and mostly for people to be able to take their
23 trash out to the street. And so it would be plenty
24 of room for someone to wheel the recyclable or the
25 trash bins.

1 VICE CHAIR BLAKE: Okay. Thank you. Is
2 there any other questions for the applicant? Okay.
3 Is the -- sorry. Is the Office of Planning here?
4 Mr. Bradford.

5 MR. BRADFORD: Good afternoon, Chair Blake,
6 Commissioners. Philip Bradford with the Office of
7 Planning. The Office of Planning continues to
8 support the application. Granted, some of the
9 changes that are now on the record do alter some of
10 the things in the report.

11 But we were not asked to submit a revised
12 or supplemental for this. It seems that the lot
13 occupancy has been corrected and it removes the need
14 for the side yard relief. But otherwise, we still
15 remain in support and I'm here for any questions.

16 VICE CHAIR BLAKE: Okay. Does anyone have
17 any questions for the Office of Planning? I have
18 one. Could you just address that question I had
19 about the lot requirements as a semi-detached?

20 MR. BRADFORD: Yeah, I was just looking at
21 that. Unless there's something I'm missing in the
22 code because I was just trying to see if those are
23 separate for R-3/GT which I think this is in, yes.
24 But for R-3 as a semi-detached, yeah, it would take
25 the lot area down to 3,000 square feet and a minimum

1 lot with 30 feet instead of 40 feet and 4,000 square
2 feet. So it's less of a deviation.

3 VICE CHAIR BLAKE: Okay, excellent. Thank
4 you for confirming that. Any other questions for
5 the Office of Planning?

6 MS. PERKOWSKA: I'm sorry. Chair Blake, if
7 you could refresh. What is the order? So, I will
8 still have a chance to cross examine an applicant
9 after I present. I just want to make sure I am not
10 missing an opportunity.

11 VICE CHAIR BLAKE: Actually, I apologize.
12 You have the ability to ask a question of the
13 applicant and of the Office of Planning. I
14 should've done that. But you're actually teed up
15 next to do your presentation. But --

16 (Simultaneous speaking.)

17 MS. PERKOWSKA: After the presentation?

18 VICE CHAIR BLAKE: No, you're teed up next.
19 You spoke just when you were about to speak. So
20 what I'm going to say is I'm about to say it's your
21 turn to speak. But what you can do now since you're
22 here, you can ask. If you have any questions for
23 the applicant or the Office of Planning, why don't
24 you do that first. And then if you have any
25 comments, your comments, your formal remarks to the

1 Board, you can make that after you do that. It
2 won't count against your time. Okay. My
3 apologizes.

4 MS. PERKOWSKA: Thank you, Chair Blake. So
5 let me start with the applicant and ask several
6 quick questions. So thank you. Each one will be
7 yes or no or numeric. First question, do you have a
8 party wall agreement of structural engineering and
9 showing actual integration with adjoining building
10 wall to support semi-detached classification?

11 MR. KEARLEY: That is done during the
12 permitting process and it's not a zoning issue.

13 MS. PERKOWSKA: So the answer is no at this
14 state. Thank you. And so your plans show erased
15 plan for in the east side yard. Measure to the
16 order or edge of the planter what is a clear side
17 yard dimension. You were just calculating that. I
18 just want to kindly ask to repeat if my notes is
19 correct.

20 MR. KEARLEY: The side yard --
21 (Simultaneous speaking.)

22 MS. PERKOWSKA: I'm talking about east. So
23 it's below 5 feet.

24 MR. KEARLEY: That's not true. The side
25 yard is 6 feet 1 inch. So the planter is within the

1 side yard. So --

2 MS. PERKOWSKA: So it's encroaching in the
3 side yard.

4 MR. KEARLEY: It's not encroaching --

5 MS. PERKOWSKA: My understanding --

6 MR. KEARLEY: -- in the side yard. It is
7 within the side yard. Typically, if things are a
8 landscape or below 4 feet towards lot occupancy and
9 rear and side yards, it's within the side yard. But
10 it is not diminishing the side yard.

11 MS. PERKOWSKA: So I examined your drawing
12 and then the pictures. And it specifically shows
13 it's raised and attached to the wall. So based on
14 the law, it would have to be calculated from the
15 other edge of the planter.

16 MR. KEARLEY: That's not true. That's not
17 true. It sits within the side yard, but the side
18 yard, is not diminished because of that 12 inch
19 planter.

20 MS. PERKOWSKA: Next question. So Chair
21 Blake said after deliberation began, I don't think
22 I'm going to reopen the record for redesign. And
23 your new application and shift to develop a semi-
24 detached label after that statement, correct?

25 Again, yes or no question. We can speed it.

1 MR. KEARLEY: My life isn't as simple as
2 yes and no. I need to understand. What is the
3 question?

4 VICE CHAIR BLAKE: Let me address that.
5 The applicant has the right at any point to request
6 an reopening of the record. And that statement that
7 I made, I also have the ability to reopen the record
8 because there was concern amongst the Board members
9 about they weren't necessarily comfortable to
10 resign.

11 I have the ability to reopen the record at
12 that point to request that. But I did not feel it
13 was appropriate for me to request that. So I opted
14 not to reopen the record and request that from the
15 applicant. The applicant does have the right at any
16 point to request us to reopen the record, and that's
17 what he did. So procedurally, it was consistent
18 with what we're supposed to do, just to be clear on
19 that.

20 MS. PERKOWSKA: Thank you, Chair Blake. I
21 appreciate it. So to applicant, have you submitted
22 any engineering analysis of those buildability
23 studies showing now reasonable complying house can
24 be built on this lot? Answer yes or no.

25 MR. KEARLEY: I don't know how to answer

1 that yes or no.

2 (Simultaneous speaking.)

3 MS. PERKOWSKA: I will rephrase my question

4 --

5 MR. KEARLEY: Let me finish.

6 (Simultaneous speaking.)

7 MS. PERKOWSKA: -- so it will be yes or no.

8 So the question is in the current record, there is
9 a document that could qualify as engineering
10 analysis or buildability studies showing no
11 reasonable compliant house can be built on this lot.

12 MR. KEARLEY: I really don't understand
13 this. When you go to permit, I will have all of the
14 engineering drawings. And it's very simple
15 engineering to build this house. So it would comply
16 fully with all the Department of Building
17 requirements for a house or I would not get a
18 permit.

19 (Simultaneous speaking.)

20 MS. PERKOWSKA: So the answer to this
21 question is there is no such document. Next
22 question. What is the material factual change in
23 BZA Order 14854 from 1985 denying relief on the same
24 lot justify different treatment today? This is to
25 applicant.

1 (Simultaneous speaking.)

2 MR. KEARLEY: I was not around for the 1985
3 hearing. So I cannot speak to that. It's a
4 different design, right? The zoning regulations
5 have changed since 1985.

6 They went from 1958 regulations to the 2016
7 regulations. So you have a different design. You
8 have different regulations from zoning. So it's a
9 different application.

10 MS. PERKOWSKA: So let's just go ahead. So
11 --

12 VICE CHAIR BLAKE: How many more questions
13 do you have?

14 MS. PERKOWSKA: The decision from 1988,
15 it's the same regulation. So just quickly clarify.

16 You say the design is different. But under
17 controlling D.C. case law, including Palmer and
18 Gilmartin, the standard is tied to the land itself.

19 What about this physical characteristic has changed
20 since BZA Order 14854 --

21 (Simultaneous speaking.)

22 MR. KEARLEY: I can't speak to something
23 that was from the 1980s.

24 MS. PERKOWSKA: I haven't even able to
25 finish my question. I wish I could --

1 VICE CHAIR BLAKE: What's your question
2 exactly? I think your question -- let me speak. I
3 think your question is --

4 MS. PERKOWSKA: I just want to finish the
5 question, and I think it will be easier to
6 articulate --

7 (Simultaneous speaking.)

8 MS. PERKOWSKA: So what about the most
9 physical characteristic has changed since that
10 order, 14854, denying the relief on this exact same
11 substandard tax law? Is this size? Is this the
12 shape? Is it topography? Is it surrounding
13 condition? Is this the zoning regulation or it's
14 just nothing?

15 So you are asking the Board to overrule its
16 own 1988 precedent based solely on your preferred
17 massing. My question will be simple. Can you build
18 a smaller compliant structure, yes or no?

19 MR. KEARLEY: No.

20 MS. PERKOWSKA: So you are testifying on
21 the record. So you are telling this Board that this
22 1,437 square foot lot cannot support any reasonable
23 code compliant single family house without variance.
24 That is your sworn testimony.

25 MR. KEARLEY: My sworn testimony is that is

1 true because you cannot make this lot bigger. Could
2 you have a different design? Of course you could
3 have a different design.

4 But you would still need a variance because
5 the lot area would not meet the requirement. So
6 it's not as simple as saying, can you do this or
7 that. The project that was presented to the Board
8 is very specific, and that's what they will be
9 ruling on. So could you do something as a matter of
10 right with a single family home on this property?
11 No, because you would need relief at a minimum for
12 the lot area.

13 MS. PERKOWSKA: There is no buildability
14 study that support this. So the zoning regulation,
15 they only require you to build your dream house,
16 correct? They only require a reasonable compliant
17 use. And under Gilmartin, strict compliance enables
18 reasonable development. No variance is --

19 (Simultaneous speaking.)

20 VICE CHAIR BLAKE: Are you asking a
21 question or are you doing your statement now? Or
22 are you asking a question?

23 MS. PERKOWSKA: I'm asking the question.
24 So --

25 VICE CHAIR BLAKE: Okay. Why don't you do

1 a couple more. How many more questions do you have?

2 (Simultaneous speaking.)

3 VICE CHAIR BLAKE: How many more questions
4 to you have?

5 MS. PERKOWSKA: I will have no further
6 questions after that one, Chair Blake. Thank you so
7 much. And then I can move to --

8 VICE CHAIR BLAKE: Okay. Now it is your
9 opportunity to --

10 (Simultaneous speaking.)

11 MS. PERKOWSKA: My question is the zoning
12 regulation, don't it require the applicant to build
13 the dream house, correct?

14 MR. KEARLEY: Are you asking me this?

15 MS. PERKOWSKA: Yes.

16 MR. KEARLEY: I don't know to answer these
17 questions because we submitted an application to the
18 BZA for relief which you have a right to do when
19 you're doing this. It's the BZA's job to either
20 grant the relief or not grant the relief. So I
21 don't know how to deal with --

22 (Simultaneous speaking.)

23 VICE CHAIR BLAKE: Here's what I want you
24 to do. Ms. Perkowska, it's your opportunity to do
25 your formal presentation. Now --

1 (Simultaneous speaking.)

2 MS. PERKOWSKA: No further questions.

3 VICE CHAIR BLAKE: I don't have any
4 questions. It's your opportunity to do your formal
5 presentation. It's your opportunity to do your
6 formal presentation. Would you like to do that now,
7 please?

8 MS. PERKOWSKA: Yes, Chair Blake. Thank
9 you. Chair and members of the Board, my own prior
10 filings are incorporated and nothing stated today
11 waives any objection. Nothing about this lot has
12 changes. Nothing about the surrounding build
13 environment has changed.

14 Nothing about zoning regulations has
15 changed. Only the applicant's theory and labels
16 have changed repeatedly, four times now, with
17 preserving essentially the same massing.

18 A variance proceeding is not a design
19 workshop. It is a process based on evidence under a
20 fixed three-prong test. And the burden remains
21 entirely with the applicant. Prong one, no
22 extraordinary condition. There is no inherent NLN
23 (phonetic). Small irregular lots are common in R-3
24 Georgetown.

25 What is different here is self-created. A

1 voluntary subdivision that produce 1,437 square foot
2 tax lot already denied variance relief in Order
3 14854 in 1988. There has been no changes since that
4 order.

5 A subdivision create a condition that has
6 already failed a variance applicant cannot be
7 repackaged as extraordinary simply by attaching a
8 new label. Prong two, no practical difficulty, the
9 record contains no evidence that any reasonable
10 complying dwelling is not feasible. There is no by
11 right massing study, no compliant alternative, no
12 engineering constraint.

13 The difficulty comes entirely from
14 development choices. A semi-attached label without
15 structure or documentation, elimination of the west
16 side yard, approximately 60 percent lot occupancy
17 where 40 percent is permitted, that is nearly a 50
18 percent expansion beyond the zone limit. And
19 approximately 12 foot rear yard where 20 feet is
20 required, that is a reduction of more than 40
21 percent.

22 On this undersized lot, the dimensional
23 pressure is design driven. Reducing the massing and
24 the hardship disappears. That is a textbook self-
25 created condition which cannot satisfy the practical

1 difficulty prong as a matter of law.

2 The February submission does not cure this.

3 There is no substantial evidence supporting semi-
4 detached classification, no parting wall agreement,
5 no structure integration drawing, no lull showing
6 the details. Without that evidence, the structure
7 is detached and requires two side yards. On the
8 west, the yard is zero.

9 The applicant right now is saying he can do
10 something furthering the process. And he assumes
11 the legality and usability without any
12 documentation. Approval on that basis would rest on
13 speculation.

14 On the east, the yard is claimed to be 6.1
15 feet. He has the plans that depict a raised planter
16 within that yard. The required response remains
17 substantially free and open. The fixed, raised
18 planter counts toward the structure measured to its
19 outer edge. The rear yard is under 5 feet. That
20 was confirmed. It's 4 feet plus by document. The
21 structure requires a variance on the east.

22 Prong three, substantial detriment proven.

23 The opposition record identifies parcel (audio
24 interference), lots of light, air, privacy, and
25 safety.

1 And a reduction of a longstanding prospect
2 of open separation and access condition of
3 approximately 9 feet 7 inches by nearly half,
4 creating an extremely narrow, almost alley like
5 condition without any fire safety or emergency
6 access analysis. Against that, the applicant offers
7 limited shadow diagrams preferred for a prior
8 configuration without methodology duration analysis,
9 correction of adjoining properties errors. That is
10 not substantial evidence sufficient to outright
11 sworn site specific testimony.

12 From the zone plan question, this proposal
13 stacks every core dimensional controls, elimination
14 of a side yard, occupancy pushed to nearly 60
15 percent, rear yardage by more than 40 percent, all
16 under substandard tax law created by a voluntary
17 subdivision by this applicant. The R-3 framework
18 relies on coordinated dimensional limits, the scale
19 development on single parcels. Granting cumulative
20 major variances here would functionally nullify the
21 proportional system and transfer the impacts of
22 other built adjoining properties.

23 The record contains nonsubstantial evidence
24 justifying the departure from R-3 framework. Prong
25 three fails as a matter of law.

1 Under controlling D.C. case law, including
2 Palmer, Russell, Gilmartin, LW, self-created
3 submission conditions -- I'm sorry -- self-created
4 subdivision conditions and design driven dimensional
5 conditions do not satisfy the extraordinary
6 condition or practical difficulty prong and
7 substantial parcel specific detriment compels
8 denial.

9 If the court intends to depart from Order
10 14854 on this same parcel, it must identify on the
11 record this specific factual changes and the legal
12 basis for a different outcome. Absent that,
13 approval would lack a reasoned explanation required
14 under substantial evidence review. On this record,
15 the applicant has not carried its burden and has
16 failed to satisfy any prong of the area variance.

17 Again, under controlling D.C. case law,
18 self-created subdivision conditions and design
19 driven dimensional pressure do not constitute the
20 extraordinary condition or practical difficulty
21 required for the area variance. And substantial
22 requires a specific detriment to neighboring
23 properties and to the zone plan compel the denial.
24 The cases I mentioned require a truly extraordinary
25 property based condition, a non-self-created

1 practical difficulty that makes strict compliance
2 unreasonably burdensome, and the record showing no
3 substantial detriment and no zone plan impairment.

4 On this record, none of those elements
5 satisfy. And grant of relief would be contrary to
6 controlling D.C. case law and vulnerable under the
7 substantial evidence and arbitrary and capricious
8 standards. The applicant submitted false
9 deliberation new application.

10 And that is what we are evaluating right
11 now. He admitted on the record that he didn't
12 bother to contact neighboring property owners to
13 discuss that new placement of the proposed building.

14 Let me remind you that lot has been open for 40-
15 plus years.

16 So the alley that the applicant was stating
17 measuring 3 feet on the west will be eliminated from
18 the open lot space to 3 feet. From the east side
19 will be narrowed to 4 feet. There is no evidence in
20 the record showing that that will not carry an
21 impact.

22 Contrary, the testimony in the first
23 hearing in October 2025 by Tom Spouse, that wasn't
24 addressed, his serious concern about safety and
25 security. Ms. Cassagnol will talk today. Ms. Penna

1 will talk today about real effect of this proposed
2 development on our properties.

3 The applicant has not carried its burden
4 and has failed to satisfy any prong of the area
5 variance test. The request of the opposing party is
6 that the requested variances be denied. On this
7 record, denial is not merely an option. It is
8 required. Thank you.

9 VICE CHAIR BLAKE: Thank you. Does anyone
10 have any questions for the party in opposition from
11 the Board? Go ahead, Commissioner.

12 COMMISSIONER WRIGHT: Ms. Perkowska, can
13 you cite the part of either the zoning code or the
14 building code for the District of Columbia that says
15 that a low planter is not allowed to encroach into a
16 side yard and needs to be counted as where the side
17 yard starts?

18 MS. PERKOWSKA: Would you kindly repeat
19 that question?

20 COMMISSIONER WRIGHT: Could you cite for me
21 any portion of the zoning code or building code that
22 states that a low planter cannot encroach into a
23 side yard but rather needs to be where the
24 measurement of the side yard begins?

25 MS. PERKOWSKA: I cannot respond

1 substantially without the review. I am happy to
2 submit my response after this hearing. Thank you,
3 Commissioner Wright. I would also request that the
4 applicant specify exactly the dimensions of those
5 planters because that's not clear from the drawings
6 attached in the record. There is no height
7 specified based on the visual representation.

8 COMMISSIONER WRIGHT: Yeah, that would be
9 helpful to account the height specified. I also
10 understand -- and again just looking at the law
11 under Subtitle B, Section 100 definitions. It's B
12 100.2, that there are definitions of a detached
13 building, a row building, and a semi-detached
14 building.

15 And the definition for a semi-detached
16 building says it is a building that has only one
17 side yard. Where is the information that you had
18 raised about the need for an engineering study?
19 What part of the code is that contained in?

20 MS. PERKOWSKA: I would submit that with my
21 response.

22 COMMISSIONER WRIGHT: Okay. Thank you.
23 Those were all my questions.

24 VICE CHAIR BLAKE: Board Member Drakeford,
25 do you have any questions for the party in

1 opposition?

2 MEMBER DRAKEFORD: Not at this moment.

3 VICE CHAIR BLAKE: All right. Mr. Young --
4 oh, I'm sorry. Mr. Kearley, do you have any
5 questions for the party in opposition? You're
6 muted. I can't hear you.

7 MR. KEARLEY: Sorry about that. I do not
8 have any questions for the opposition.

9 VICE CHAIR BLAKE: Okay. Thank you very
10 much. Okay. Mr. Young, is there anyone that wishes
11 to speak?

12 MR. YOUNG: Yes, we have two witnesses.

13 VICE CHAIR BLAKE: Would you please admit
14 them? Okay. Hello, Ms. Penna. Welcome. As a
15 member of the public, you have three minutes to give
16 your presentation. Please begin by stating your
17 name and address. And we'll begin whenever you
18 like.

19 MS. PENNA: Hi, my name is Cassandra Penna.
20 I am the owner of 1222 Eton Court. For
21 perspective, my address is the two upper layers once
22 you enter the gate off Prospect into Eton.

23 The first thing I want to know is that the
24 applicant stated, and I quote, he could not make his
25 walk bigger. That is a lie. The applicant is the

1 developer. They developed this lot back in the
2 '80s. I believe the purchase was originally in the
3 '70s -- late '70s.

4 And the lot was all the way from Prospect
5 Street through M Street. That is the applicant
6 today. He is the developer. And M & Potomac
7 Streets Associates developed this land.

8 I don't think it's been very clear to the
9 Board that we're talking about the same party here.

10 They could have made that lot any size they wanted.

11 Whether it was an error on the architect they had,
12 engineer, I don't really know how that works. I'm
13 not an expert in this.

14 But whether it was an error on their part
15 or it was intentional, there's no way for them to
16 build a structure on it now. But they did create
17 that lot. They created the lot to be that specific
18 size.

19 It was 100 percent in the control of the
20 applicant, nobody else. And it has been since the
21 land was purchased. Again, all the way from
22 Prospect to M Street, that entire lot was there's
23 and has been. It's been in the same control since
24 the '70s, late '70s, early '80s.

25 I would like to note very importantly that

1 notice of the public hearing was not posted 15 days
2 prior on the lot. So a lot of neighbors didn't know
3 about this hearing. Specifically, the owner of 1238
4 Eton Court didn't know about it in a timely manner.

5 And she had a purchaser back out of
6 purchasing her property because of the sale of this
7 lot. But again, because notice wasn't posted 15
8 days prior for the public, she couldn't attend.
9 There are other people who didn't know about it.

10 So I think that another hearing must be
11 held so that people who want to testify can be here.

12 I'm currently at work because I couldn't take the
13 day off. But I also want to note that it's
14 insufficient for the Office of Planning,
15 specifically Mr. Bradford, to have testified in the
16 past that because he visits the neighborhood, it
17 doesn't require a walkthrough of the property.

18 He said he spends weekends walking the
19 neighborhood and that's sufficient. He needs to go
20 to the property if he's going to make a fully
21 informed statement on whether or not this is
22 accurate. I personally in my statement have
23 provided pictures, and I enjoy full privacy on the
24 Prospect side of my unit.

25 Nobody can see in. I can see trees. It's

1 great. So I think that it's kind of a slap in the
2 face to us that the Office of Planning hasn't
3 visited because I understand it's a nice
4 neighborhood. Everybody walks around Georgetown,
5 but that doesn't make up for the fact that they
6 haven't visited the lot or the property. And that's
7 all I have time for. Thank you.

8 VICE CHAIR BLAKE: Okay. Well, thank you
9 very much for your testimony. Does anyone have any
10 questions for the witness? Okay. Mr. Young who
11 else do we have?

12 MR. YOUNG: Sabrina Cassagnol. Oh, yes.
13 Ms. Cassagnol, you were here with us before. Please
14 go ahead. Are you there?

15 MS. CASSAGNOL: Yes, I'm here. Thank you
16 very much.

17 VICE CHAIR BLAKE: Is your screen working?
18 Is your screen working?

19 MS. CASSAGNOL: It is.

20 VICE CHAIR BLAKE: There you are. Okay.
21 All right. As a member of the public, you have
22 three minutes to provide your testimony. Would you
23 please begin by stating your name and your address?
24 And you can begin whenever you like.

25 MS. CASSAGNOL: Okay. Sabrina Cassagnol,

1 and my address is 3260 Prospect Street. And my
2 property directly abuts the property in question.
3 Thank you for allowing me to testify today and
4 incorporate my written opposition and testimony
5 already in the record.

6 My opposition to the project remains. My
7 property has relied on the existing open space for
8 light, visibility, safety, and security for over 45
9 years, conditions that would be materially altered
10 to my significant detriment by the position of the
11 proposed structure. The applicant's statement that
12 the light and air to neighboring properties which
13 have east-west exposures shall not be unduly
14 affected by the construction of a 24 foot high by 23
15 feet wide structure where none has existed simply
16 defies logic.

17 The moving of the structure to the west by
18 9 inches doesn't materially change this. The move
19 to the west will more significantly impact the
20 light, air, and privacy of property at the corner of
21 33rd and Prospect Streets which has a deck on the
22 back side that the submitted sun study which lacks
23 elevation drawings and independent analysis fails to
24 reflect. The shift of the structure to the west
25 also exacerbates the safety and security of the side

1 walkway by replacing open space with a solid way.

2 It created an extremely narrow alley and
3 thereby creating foreseeable safety risk and adverse
4 impacts on the neighboring properties on the 33rd
5 Street side. The current submission now refers to
6 the proposed building as semi-detached. However,
7 there's no attachment to any other structure nor is
8 there any justification for this revised
9 classification.

10 Submission request relief from a regulation
11 that would request in particular but peculiar and
12 exceptional practical difficulties to the owner of
13 the property. However, the regulation does not
14 permit relief from self-created conditions which is
15 the well documented case here. Current submission
16 reflects a change in the width of the existing
17 passageway to Eton Court from 9 feet 7 inches,
18 inclusive of my property, to a width which is
19 inadequate to accommodate its historically
20 continuous use by movers, emergency vehicles,
21 delivery vehicles, and residents as the most heavily
22 trafficked entrance to Eton Court.

23 In fact, the plans requesting a relief did
24 not take into account the width of the attached
25 raised planters as part of the structure which would

1 further reduce the usable width by a full 13 inches
2 and reduce the side yard to below 5 feet. There's
3 no fire safety study emergency access evaluation or
4 independent plan specific shadow analysis that has
5 been provided for the current proposals. And I
6 reiterate the Board of ANC 2E's unanimous opposition
7 to the project and the 11 letters of opposition from
8 neighbors to which the Office of Planning fails to
9 give the great weight or any weight that it
10 historically consistently gives to other
11 applications.

12 Nor does it address the complete lack of
13 any support whatsoever from any affected party. In
14 the interest of transparency and fairness, I believe
15 that the Office of Planning owes the neighbors and
16 the ANC an explanation for this. However, it offers
17 none.

18 I therefore respectfully ask the Board to
19 deny the requested variances and thank them for
20 their consideration. And I have just one more
21 thing. In the zoning handbook that I'm looking at,
22 it defense building semi-detached as a building that
23 abuts or shares one wall on a sideline with another
24 building on an adjoining lot and where the remaining
25 sides of the building are surrounded by open areas

1 or street lot lines. That's the definition I'm
2 seeing in the zoning handbook. Thank you very much.

3 VICE CHAIR BLAKE: Thank you. Thank you
4 very much. Does anyone have any questions?

5 MEMBER DRAKEFORD: I do just have one
6 question, Chair Blake. And thank you so much for
7 providing your comments and your feedback today.
8 One of the things you mentioned in your statement
9 was that there are potential safety issues that may
10 arise or be present with the creation of the
11 amended side yard. Could you just provide some
12 additional clarification around what types of safety
13 concerns may be present under the proposed side yard
14 that aren't present today with the current open
15 space?

16 MS. CASSAGNOL: I think darkness is a huge
17 issue. Right now, it's pretty open space. So
18 there's light from streetlights and moonlight, et
19 cetera. If you put in a 24 foot tall structure and
20 narrow the width of the path to 3 feet, I mean,
21 you're going to create a very dark alleyway.

22 MEMBER DRAKEFORD: Thank you. And then if
23 possible, could you just provide -- I just want to
24 make sure our reference -- understanding everything
25 spatially. Can you provide reference to where your

1 property is located in respect to the previous
2 testimony of Ms. Penna?

3 MS. CASSAGNOL: It's directly to the east.

4 So that wall that's along the walkway to Eton Court
5 is my wall. But my property line extends, I think,
6 15 or 18 inches outside that wall.

7 MEMBER DRAKEFORD: Okay. Thank you.

8 MS. CASSAGNOL: Thanks.

9 VICE CHAIR BLAKE: Thank you for your
10 testimony. Are there any more questions? Okay.
11 Perhaps -- yes, Ms. Perkowska, you have a question
12 for any of the witnesses?

13 MS. PERKOWSKA: I still have a question to
14 the Office of Planning because I would like the
15 Office of Planning to point to evidence in the
16 record demonstrating the absence of substantial
17 detriment to the adjoining property under the
18 current configuration.

19 (Simultaneous speaking.)

20 VICE CHAIR BLAKE: I'm going to put you on
21 hold for a second because I was doing something
22 else. And I appreciate you coming in, in the middle
23 of it. Let me go ahead and dismiss these two
24 witnesses. And then we will come back to --

25 MS. PERKOWSKA: I actually have one

1 question to the first witness.

2 VICE CHAIR BLAKE: Well, why don't you ask
3 that.

4 MS. PERKOWSKA: Yes, the first witness can
5 speak about the process and how actually this
6 project was communicated. It was not communicated
7 as Ms. Penna already mentioned that notice was not
8 provided. That's why a lot of neighbors that would
9 like to speak were not aware of that.

10 But before the first application in
11 October, there was a string of emails sent. And
12 there was really a particularly way that the
13 developer was conducting this process that goes to
14 credibility, that goes to fairness. And Ms. Penna
15 can speak about that briefly.

16 MS. PENNA: So the way this was initially
17 communicated to the owners of Eton Court is that the
18 applicant represented by Greg but normally by Peter
19 Mallios who isn't here today. He's been in the
20 other hearings. Peter at the time and continues to
21 be the president of Eton Court.

22 He sent an email to owners saying that Greg
23 wanted to meet with us and would be willing to meet
24 with us. And in exchange for our support as an
25 association, he would continue to maintain our

1 walkway. And if we didn't support it, we would have
2 no more walkway.

3 Eventually, it got real heated. We met
4 with Greg at a restaurant. We met at a burger place
5 that's part of Eton and it was very heated, very
6 heated. There was a lot of screaming, a lot of
7 yelling.

8 And I believe the following week or two
9 weeks later was the ANC hearing. And myself and the
10 owner of 1238 received an email along with my then
11 fiancé, now husband from Mr. Mallios, again, a
12 representative of the applicant, M & Potomac Streets
13 Associates, saying if you do not support this today,
14 I am going to take away the walkway forever, replace
15 it with a parking lot. Greg has been looped in on
16 all this from the beginning. He also represents the
17 applicant.

18 They're working hand in hand. But yeah,
19 essentially if Eton Court does not support this, we
20 would no longer have a walkway. All of this is in
21 my written testimony. It's over 25 pages long.

22 I understand that the Board would not be
23 reading the written testimony based on prior
24 transcripts that I read. So at this time, I'd just
25 like to make it known all of this is documented in

1 my written statement. And I am happy to provide.
2 The emails are there too, photographs, everything
3 you need.

4 But that's how it was communicated to Eton
5 Court at least. Since then, there has been really
6 little communication -- there's been no
7 communication via host mail about notice of any of
8 these hearings. And like I said, there wasn't even
9 15 days notice for this hearing today. So nobody
10 could really come.

11 VICE CHAIR BLAKE: Ms. Penna, I have a
12 question for you. You said that you have a filing
13 in the record but it's not going to be read. Is
14 that what you said?

15 MS. PENNA: Yeah, so there is transcripts -
16 -

17 VICE CHAIR BLAKE: Is it in the record?

18 MS. PENNA: Oh, it's in the record. But
19 the transcripts from the Board stating that it would
20 not be read. The written testimonies in opposition
21 would not be read by the BZA. That's written down
22 in the testimony from the first hearing.

23 VICE CHAIR BLAKE: Say that -- I'm sorry.
24 Say that again. You have a written from someone who
25 says they will not read your testimony?

1 MS. PENNA: I have a written statement.
2 There is written testimony from the October hearing,
3 I believe, says that the BZA would not review the
4 written opposition and that we were required to
5 speak. This is why we know everybody -- we're all
6 in an email chain where this has been quoted time
7 and time again.

8 MS. CASSAGNOL: The prior chairman I
9 believe did say that in that October hearing.

10 (Simultaneous speaking.)

11 MS. CASSAGNOL: It wasn't -- yeah, it
12 wasn't --

13 (Simultaneous speaking.)

14 VICE CHAIR BLAKE: Okay. We'll come back
15 to that. Okay. So it's in the record in Exhibit
16 28. Are you familiar with -- I mean, if you can
17 pull up Exhibit 28, I think it's there.

18 MS. CASSAGNOL: I see it.

19 VICE CHAIR BLAKE: So if it's there, then
20 it would be read because it's in the record. Okay.

21 All right. Thank you. Are there any more
22 questions for --

23 MS. PERKOWSKA: Yes, I would like Ms.
24 Cassagnol just explain what happened during ANC
25 meeting and how forcefully united their position

1 was.

2 (Simultaneous speaking.)

3 MS. PERKOWSKA: -- just for your
4 impressions. And also a peculiar statement by this
5 applicant when was asked if by the chair of ANC if
6 it had some, quote, magic plan (phonetic) for this
7 case. The answer to that was it's a different board
8 which is perplexing. Like, I would like to hear
9 more about that from applicant. But I guess I want
10 to hear about this more. Please, Ms. Cassagnol, if
11 you could explain how united their position is and
12 ANC position for this too. And why Office of
13 Planning is not addressing it for this application.

14 MS. CASSAGNOL: That is my question. I
15 mean, the Board -- the ANC meeting was very well
16 attended. There were two commissioners there. I
17 think one of the commissioners was not. She was on
18 vacation, Mimsy Lindner.

19 But we had spoken -- I had spoken to her
20 about it before the ANC meeting. And actually, she
21 facilitated a meeting between me and Mr. Kearley and
22 Mr. Mallios that was back in July. But there was
23 just complete and utter opposition from anyone who
24 commented.

25 There was no support at all. There was a

1 letter that had been reportedly from the board of
2 Eton Court that was then withdrawn because -- and I
3 think Ms. Penna can speak to that. But the
4 commissioner said basically they'd never seen such
5 vehement opposition and such overwhelming opposition
6 to a project.

7 (Simultaneous speaking.)

8 VICE CHAIR BLAKE: Okay. Commissioner
9 Wright, you had a question?

10 COMMISSIONER WRIGHT: Yeah, I'm curious.
11 Is anyone from the ANC in attendance at this
12 hearing? We're hearing that there is vehement
13 opposition. But I would really like to hear
14 directly from the ANC. Is there anyone here?

15 MS. CASSAGNOL: I think their letter
16 addresses that.

17 COMMISSIONER WRIGHT: I mean, the letter
18 that --

19 MS. CASSAGNOL: The recommendation --

20 COMMISSIONER WRIGHT: -- we received was I
21 would say -- I would not constitute it as vehement.

22 It expressed concern about the variance request for
23 lot area and lot occupancy. It said it generally
24 supported the rear yard and side yard variance
25 request. But I mean, you all were at the meeting.

1 I wasn't there.

2 But it sounds like if they were as vehement
3 as you're describing, we would probably have someone
4 here at this hearing. I mean, it's a very active
5 ANC to speak up. And that's why I was wondering.

6 We have 31 attendees on our list that are
7 probably for future cases. But I just wanted to
8 know if one of those attendees happened to be the
9 ANC representative for this project. And I guess
10 that's a good question really for the staff. Is
11 there any ANC representative here?

12 MS. MEHLERT: No, the ANC did not sign up
13 to testify for this case.

14 COMMISSIONER WRIGHT: Okay. Thank you. I
15 mean, again, I'm sure they're very, very busy. And
16 we're all very, very busy. And they may not just
17 been able to make it to this particular meeting.
18 But I was just wondering if they were on the call.

19 (Simultaneous speaking.)

20 VICE CHAIR BLAKE: What? Do you have
21 something to say --

22 (Simultaneous speaking.)

23 MS. PERKOWSKA: I just have one comment
24 which is this is a completely new application. And
25 that should be evaluated, a new one by ANC. ANC

1 should have a chance to evaluate this project with
2 all correct information, not with letters that were
3 later withdrawn because there was no authorization
4 by this developer to write that letter and claiming
5 it represent Eton.

6 (Simultaneous speaking.)

7 MS. PERKOWSKA: This applicant said on the
8 record that it has full support of the neighborhood.

9 (Simultaneous speaking.)

10 VICE CHAIR BLAKE: What we're trying to do
11 today is focus on the amended application. You're
12 rehashing stuff from three hearings ago. Now I've
13 indulged you on this quite a bit. But again, we
14 were going to focus on the requested relief and the
15 amended application.

16 You touched on that briefly. But now
17 you're back at the ANC meeting. All this we covered
18 already. And you can tell by the number on the
19 exhibits that we're looking at. I mean, we're at a
20 whole different point right now. So I appreciate
21 your diligence.

22 MS. PERKOWSKA: Yes.

23 VICE CHAIR BLAKE: But we're trying to --
24 we want to get this done. We're trying to get this
25 done. We're putting the time in to understand the

1 situation, to understand the regulation that you're
2 trying to apply. I'm understanding it.

3 I have one quick question for you. Are you
4 saying that -- just a quick question. On your
5 creation -- self-creation issue, what are you saying
6 the controlling case is that you're citing? I want
7 to make sure I understand what that is. That's one
8 question I have for you right now --

9 (Simultaneous speaking.)

10 MS. PERKOWSKA: Well, you have a question
11 to me, Chair Blake, right? But can I close that ANC
12 --

13 (Simultaneous speaking.)

14 MS. PERKOWSKA: Exhibit 58, that was my
15 written --

16 VICE CHAIR BLAKE: You're not going to
17 answer my question.

18 MS. PERKOWSKA: And that touches on ANC as
19 well. And back to your question, Chair Blake. You
20 are asking me about self-creation. A case law,
21 governing case law, D.C. precedent, Palmer,
22 Gilmartin, and others, are clear. And those cases
23 require a non-self-created practical difficulty that
24 makes strict compliance unreasonably burdensome.

25 Thank you.

1 VICE CHAIR BLAKE: So you're going to
2 strike your prior comment which was on Taylor. Your
3 prior basis was on Taylor. So you've evolved your
4 analysis. Is that what you're saying?

5 MS. PERKOWSKA: Excuse me?

6 VICE CHAIR BLAKE: You had based your prior
7 analysis on Taylor. So I want to make sure -- I'm
8 going to be very clear what you're saying to me
9 because I'm listening to you. You said a lot. So
10 I'm trying to make sure I capture what you're saying
11 because it matters.

12 (Simultaneous speaking.)

13 VICE CHAIR BLAKE: -- and in the writings,
14 you used Taylor as your controlling case. And I
15 just want to make sure I understand that you're now
16 saying that's not what you're looking at. You're
17 actually looking at the -- are you looking at all of
18 it?

19 (Simultaneous speaking.)

20 VICE CHAIR BLAKE: I understand. Okay.

21 MS. PERKOWSKA: Yes, I incorporate
22 everything. And my prior filings are incorporated
23 and nothing stated today raise any objections, so
24 all of the written submission, all the testimony.
25 And again, it's very hard right now to manage this

1 case because it's in effect became design workshop
2 for this applicant. He redesign --

3 (Simultaneous speaking.)

4 VICE CHAIR BLAKE: Could you hold for a
5 second? Can you hold on a second? I'm going to
6 dismiss the witnesses. Thank you, Ms. Penna and
7 thank you, Ms. Cassagnol. Thank you very much.

8 Let's see. Let's see where we are now.
9 Let's see. Yeah, I think we can at this point if
10 anyone else on the Board has any questions for the
11 applicant, we can have that. If not, I'm going to
12 have the applicant with closing remarks and we're
13 going to close the hearing.

14 MS. PERKOWSKA: But I ask the Office of
15 Planning, right? The question was not related to
16 them. That was on the record.

17 VICE CHAIR BLAKE: The period when we're
18 asking that question has passed. What is your
19 question to the Office of Planning? You have one
20 quick --

21 (Simultaneous speaking.)

22 VICE CHAIR BLAKE: Oh, it's in the report.
23 It's in the report.

24 MS. PERKOWSKA: Can Office of Planning
25 point to any substantial evidence in the record

1 demonstrating an absence of substantial detriment to
2 the adjoining property under the current
3 configuration?

4 VICE CHAIR BLAKE: Now you do realize that
5 the Office of Planning said that they did not
6 respond to the current configuration. They're
7 already in support of the application. They said
8 they did not respond to that. That was an answer
9 they gave.

10 They said they did not respond because I
11 did not request that of them. Now it was open for
12 comments from everyone. But the Office of Planning
13 was not requested specifically to provide comments.

14 Mr. Bradford, do you want to address Ms.
15 Perkowska's question?

16 MR. BRADFORD: There is nothing about the
17 application that I believe to have in the record, by
18 plans or burden of proof, to be a substantial
19 detriment to the public good. It is generally in
20 line with the purpose and intent of the R-3/GT zone.
21 And it does not negatively impact the adjacent
22 structures in a significant way, yes, versus a
23 vacant lot.

24 VICE CHAIR BLAKE: Ms. Perkowska, could you
25 please mute your microphone so we don't get the

1 feedback?

2 MS. PERKOWSKA: I'm sorry.

3 MR. BRADFORD: Certain aspects such as
4 light, air, privacy will be reduced but isn't
5 substantial. So there's nothing I have in the
6 record that would support that this is a substantial
7 impairment of the public good -- or excuse me,
8 detriment to the public good.

9 VICE CHAIR BLAKE: Thank you, Mr. Bradford.
10 Does that answer your question?

11 MS. PERKOWSKA: So if I understand Office
12 of Planning, it's never -- well, is there -- maybe
13 this way. Maybe it's not in the record that there's
14 some notes. Maybe there is some internal document
15 that evaluated how stacking several variances on
16 this standard tax lot impacts adjoining properties.

17 Because right now is an open space. It's been open
18 space for 40-plus years.

19 What's proposed is a massing on the almost
20 entire envelope of this lot with side yard, 4 feet
21 on one side and 3 feet on the other side. Rear yard
22 reduced over 40 percent. And it's a tall building.

23 So I would like Office of Planning to supplement
24 the record by specific analysis, also taking into
25 account all the written parcel specific evidence

1 provided by adjoining owners and also taking in
2 account ANC opposition.

3 VICE CHAIR BLAKE: Okay. Ms. Perkowska,
4 one quick question. Just clarify something. Mr.
5 Bradford's job is not to convince you, but it's the
6 Board that makes this decision.

7 I don't want that information. So, he's
8 not going to submit that for the record. Okay. The
9 Board is making a decision. And if we have enough
10 evidence, if you -- you can say we don't have it, we
11 have it, what have you.

12 We've asked you three questions. You're
13 going to have to go back and find. And they're very
14 straightforward questions. So what I would say is
15 this. We don't need the information.

16 He doesn't have to convince you. He has to
17 convince us. And if we feel we need that
18 information, we'll ask for it. But as of now, I
19 don't need it. Do you need it, Commissioner? She's
20 nodding no. Board member Drakeford, do you need
21 that information?

22 MEMBER DRAKEFORD: No.

23 VICE CHAIR BLAKE: No? Okay. So we don't
24 need that information. So we're good for now.
25 Okay? So we're going to move.

1 MS. PERKOWSKA: If I understand -- Chair
2 Blake, if I understand Office of Planning, shifting
3 the building --

4 (Simultaneous speaking.)

5 VICE CHAIR BLAKE: Are you still
6 testifying? We really are going to move on from
7 this.

8 MS. PERKOWSKA: I am just trying to
9 understand.

10 VICE CHAIR BLAKE: You don't need to
11 understand. We need to understand. And I don't
12 think you're going to be able to pick up the essence
13 of the zoning regulations in this moment in time.
14 I've listened to the points you made, and there's a
15 lot of stuff that you are not going to be able to
16 pick up right this minute and get answers to.

17 It just takes -- it takes time to get
18 through all the paperwork. I have a question for my
19 Board. I'm going to take that and then we're going
20 to move on. Ms. Drakeford.

21 MEMBER DRAKEFORD: This is actually for OP.
22 Thank you, Philip. Can you just clarify for me the
23 difference or if there's any type of distinguishment
24 between how D.C. -- the classification of open
25 space? It may be a vacant lot that's undeveloped.

1 MR. BRADFORD: I'm not quite sure if there
2 is a difference. But this would definitely not be,
3 like, open space under, like, use. It's a vacant
4 lot.

5 MEMBER DRAKEFORD: Okay. And can you just
6 remind me and clarify what the actual zoning -- what
7 the zoning classification is for this parcel?

8 MR. BRADFORD: Yeah, it is a residential
9 house zone. And it is R-3.

10 MEMBER DRAKEFORD: Thank you.

11 MR. BRADFORD: R-3/GT specifically. And
12 the purpose of that zone is to allow for rowhouses
13 and rowhouses co-mingled with detached houses, semi-
14 detached houses, and groups of three or more
15 rowhouses.

16 MEMBER DRAKEFORD: Okay. Thank you. I
17 just wanted to make sure I was clear on that.

18 VICE CHAIR BLAKE: Any more questions from
19 the Board? Okay.

20 MS. PERKOWSKA: I have a question for
21 Office of Planning.

22 VICE CHAIR BLAKE: I'm sorry? What did you
23 say? I'm going to go to --

24 MS. PERKOWSKA: Chair Blake, I'm not sure
25 that was directed to me.

1 VICE CHAIR BLAKE: What?

2 (Simultaneous speaking.)

3 MS. PERKOWSKA: I have a question to Office
4 of Planning. Since the -- he was just speaking
5 about R-3 framework. And that framework relies on
6 coordinated dimensional limits to scale development
7 on small parcel. This is a small parcel. Yet this
8 applicant is granting cumulative major variances
9 here that would functionally nullify that
10 proportional system. So Office of Planning, I would
11 like you to evaluate how the stacked variances
12 impact --

13 VICE CHAIR BLAKE: Okay.

14 MS. PERKOWSKA: -- the neighborhood, the
15 zone plan.

16 VICE CHAIR BLAKE: Okay. So here's what
17 we're going to do.

18 (Simultaneous speaking.)

19 VICE CHAIR BLAKE: You're not helping us
20 get through this. If you want to make an argument
21 for that, the report has been put in. I got it.
22 You want to make an argument for that, we heard your
23 argument and we have to consider that.

24 Now it's been made. The point has been
25 made. We understand your concern, your issue. I

1 heard it clear. So the other Board members heard
2 it. So we're factoring that in. If we need further
3 information on it, we'll get clarification on it.

4 But I think we have a picture on that. Now
5 I'm going to go to this and have the -- does anyone
6 else have any questions? I'm going to move on.

7 Okay. I want the applicant. Do you have a closing
8 statement?

9 MR. KEARLEY: I have a very brief closing
10 statement. I think we've met the burden of proof.
11 I think by eliminating one of the four variances
12 that we've reduced the relief necessary to be
13 granted.

14 There was concerns about life safety.
15 Everything that we will do with the building permit
16 will meet the criteria for life safety. That's not
17 the role of zoning. The role of zoning is density.

18 And the building permit deals with life
19 safety. But we will meet that. So I don't want to
20 go into the definition of a semi-detached. I think
21 you guys know that completely.

22 So I'm comfortable with that. But I do
23 feel that we have a unique property that creates a
24 burden on who would be the future owner which would
25 be myself and that we would -- we do meet the

1 criteria for relief. And I appreciate your time and
2 consideration. So thank you.

3 VICE CHAIR BLAKE: Thank you very much.
4 Okay. So we're going to close the hearing and the
5 record and dismiss the witnesses. Thank you very
6 much.

7 MS. PERKOWSKA: And my closing statement?

8 VICE CHAIR BLAKE: I'm sorry?

9 MS. PERKOWSKA: Chair Blake, if I may have
10 my closing statement.

11 VICE CHAIR BLAKE: The applicant has the
12 last word. So I think we're done. Okay. So what
13 I'd like to do is I'd like to see where we are. I
14 actually probably need about a five minute break to
15 regroup.

16 But if you guys want to continue and have
17 deliberations now, we can. Or we can take a few
18 minutes or we can do it at another point. What
19 would you prefer?

20 COMMISSIONER WRIGHT: Five-minute break
21 sounds good. And then I think we should deliberate.

22 VICE CHAIR BLAKE: Okay. Board Member
23 Drakeford, are you in the same camp?

24 MEMBER DRAKEFORD: Yeah, I am. Thank you.

25 VICE CHAIR BLAKE: Okay. So let's do this.

1 It's 4:22. Let's take a break till 4:35 and then
2 come back and go through this.

3 (Whereupon, the above-entitled matter went
4 off the record at 4:22 p.m. and resumed at 4:44
5 p.m.)

6 VICE CHAIR BLAKE: On the record.

7 MS. MEHLERT: Yes, the Board is back from a
8 quick break and returning to -- supposed to go into
9 the meeting session. Commissioner Miller, I think
10 he's --

11 VICE CHAIR BLAKE: No, actually we're going
12 to finish up the deliberations on this case.

13 MS. MEHLERT: Oh, right.

14 VICE CHAIR BLAKE: To see what infringes.

15 MS. MEHLERT: So, now, yeah, returning to
16 Application No. 21360 and Potomac Streets
17 Associates.

18 VICE CHAIR BLAKE: Okay. So, what I would
19 like to do is we had a lot of discussion on this
20 topic. We've had numerous hearings and a lot of
21 discussion in and around the merits of the case. I
22 mean, to a large extent we've talked about things
23 that are irrelevant. We've talked about things that
24 don't necessarily fit the criteria for approval.
25 But, nonetheless, we've gone through this.

1 And I'm going to ask Commissioner Wright to
2 kick off the discussion and the deliberations.

3 COMMISSIONER WRIGHT: Thank you.

4 So, this is a very, very difficult case.
5 And we have spent a lot of time talking about it.

6 And, you know, I have looked at it from a
7 whole bunch of different perspectives. But what I
8 come back to is what I said at the previous hearing,
9 which is that to me we should grant variances when
10 there is clearly a practical difficulty, and
11 adhering to the normal requirement.

12 I think the lot area is the lot area. This
13 cannot go to 3,000 square feet for a semi-detached
14 building because there is only 1,437 square feet in
15 this lot. And there is no additional land nearby to
16 acquire to increase the size of the lot.

17 So, I think that this -- and because even
18 at 1,437 square feet the size of this lot is not
19 significantly smaller than many of the lots that are
20 adjacent. So, I am comfortable with the variance on
21 the lot area requirement.

22 I am also comfortable with the variance on
23 the rear yard requirement because it is an unusually
24 shallow lot with that sort of sawtoothed cutout in
25 it that is an unusual size. And I think there would

1 be a real practical difficulty in doing a 20-foot
2 rear yard setback. I don't think you would end up
3 having enough depth because of the shallowness of
4 the lot to actually construct it there

5 So, I think having a variance of the rear
6 yard requirement is appropriate.

7 The third part about lot occupancy, at this
8 point, as I understand it with the numbers, there is
9 a 40 percent maximum lot occupancy. And they are
10 proposing 59 percent lot occupancy. I think in an
11 urban environment that is not inappropriate.

12 I think that this is really a relatively
13 small building. I mean, it is not an enormous
14 building. Its footprint, if it's 59 percent of a
15 lot that is 1,437 square feet, its footprint is
16 about 847 square feet. That is not much larger than
17 what we've contemplated, than what we've
18 contemplated for accessory dwelling units in our
19 recent omnibus zone zoning.

20 So, you know, this is a small structure.
21 Could it, you know, get a little smaller? You know,
22 sure. But to actually meet the lot occupancy
23 requirement of 40 percent, I believe it would -- I
24 did the calculation -- I think it would have to be,
25 like, let me do it again, 1437 times -- it would

1 have to be 575 feet in footprint.

2 575 feet in footprint is an accessory
3 dwelling unit. It is not, you know, I don't think
4 it's reasonable to say that that's what they must do
5 for a new residence.

6 So, you know, again, I, I do understand the
7 neighborhood concerns. And I really do understand
8 that the open lot that has been there for many, many
9 years has become, you know, a beloved part of the
10 immediate neighbors' life. And they have been able
11 to enjoy that.

12 I think that this applicant is trying to
13 introduce a really relatively small new semi-
14 detached house, only 24 feet in height, which is not
15 going to be taller than the surrounding buildings.
16 Maintaining that access on the east side for the
17 condominium property, which is not something they
18 are not required to do, but they are offering that
19 to do.

20 And, you know, again, I'm, I'm pretty
21 certain that the planter is not to be counted within
22 the side yard setback. And so, I think they are
23 meeting their side yard setback on the east. They
24 have no sideyard setback on the west. And they are
25 getting, they are asking for a reduced rear yard

1 setback.

2 All of those things I think are, are
3 reasonable.

4 There's a question about, you know, sort of
5 layering variances. And I actually have been
6 concerned. I felt like the application that
7 included a request for a variance on the west side
8 for the side yard setback was too much, that it was
9 making a change that was more by choice than by
10 necessity, or creating a variance situation that was
11 more by choice than by necessity. So, they
12 eliminated that.

13 I do think that the other three variances
14 are, are not just choices. You know, they're,
15 they're a reasonable way of adding a single family
16 house in this, a semi-detached single family house
17 in this neighborhood. And, again, I'm stating this
18 all sort of in the vernacular, not in the legalese
19 terms of variances, but I, I basically -- I feel
20 comfortable that they have met the test of, you
21 know, is this, is this reasonable.

22 Is this a variance that will allow for a
23 house to be built but that does not in a
24 irreversible or negative way reduce the light, air,
25 and enjoyment of the nearby residences, particularly

1 because their backyards face -- it's all backyards
2 facing this existing open lot.

3 And when this comes in there will still be
4 a lot of--this 24-foot-tall building, there will be
5 a lot of space between it and the back walls of any
6 of the adjoining residences.

7 So, you know, I, I just, again, I've
8 struggled with it a little bit but I, I would be
9 prepared to support the three variance requests.

10 VICE CHAIR BLAKE: Thank you very much,
11 Commissioner.

12 Could you, please -- Hang on one second.

13 I'm sorry. Would you please, Board Member
14 Drakeford, would you please tell us your thoughts?

15 MEMBER DRAKEFORD: Yeah. I would agree
16 with Commissioner Wright. I do believe that the,
17 both the information that was provided today, or
18 joined as discussed today, as well as information in
19 the record really helps to establish this subject
20 property's exceptionally small size. And given the
21 regular history, really create an inherent practical
22 difficulty.

23 And as the applicant testified, that there
24 is no viable development that could occur without
25 some sort of relief for this particular site.

1 And I think this difficulty is particularly
2 acute regarding the rear yard setback where the lot
3 shallow depth and unique geometry makes strict
4 compliance difficult, while also maintaining the
5 functional building footprint.

6 I also want to add, I think as Commissioner
7 Wright indicated as well, that the applicant, you
8 know, has amended the proposal to eliminate some of
9 the relief request as originally came in, really
10 demonstrating their commitment to minimize
11 deviations and maintaining corridors for use by
12 neighbors.

13 They have also provided information, some
14 studies to provide information that the relief does
15 not necessarily cause undue harm, and also showing
16 that the proposal represents some of the minimum
17 relief needed to allow for a reasonable and
18 historically compatible use of the site that would
19 otherwise go undeveloped.

20 So, I am also prepared to vote in support
21 of this, of this application.

22 VICE CHAIR BLAKE: Thank you very much,
23 Board Member Drakeford.

24 I, too, agree with the applicant. I
25 believe the applicant has met the burden of proof to

1 be granted relief.

2 There are a number of issues that came up
3 in this discussion. I want to kind of touch on a
4 few things before I get into my read on the three
5 prongs of the variance test.

6 First of all, talking about self-creation.

7 I think the opposition initially cited Taylor vs.
8 BZA, BZA as a reason to deny relief. I did not find
9 Taylor controlling here because Taylor was actually
10 a use variance case. And the court applied more
11 stringent undue hardship framework.

12 Which is, to a large extent, the kind of
13 discussion that we had when we said nothing, you
14 know, you have to build something much smaller in
15 order to build. That is a, you know, a situation of
16 an undue hardship we would think. If nothing else
17 could be built, then it's okay. But you could, in
18 fact do something.

19 What's interesting about this case is that
20 you do need to give some relief to do anything. It
21 doesn't unbuild the lot, but it does need to be, it
22 does need some relief to get something done.

23 So, this case is not a use variance, it's
24 an area variance which is governed by the practical
25 difficulty standard. And it's a more flexible

1 analysis recognizing cases like Gilmartin.

2 More broadly, the court felt creation of a
3 line of cases, Bernstein, Capitol Hill Restoration,
4 and Lange, and also reaffirmed by Roth, does not
5 establish -- does establish an important principle:
6 the Board cannot grant relief simply to legitimize
7 an illegal condition or allow applicants to
8 bootstrap their own wrongdoing into a hardship.
9 That law is real, and the Board must respect it.

10 But this is not an illegal use,
11 legalization case like Roth. This is a vacant lot.

12 It was actually created through -- well, it may,
13 the actual history of this case is unclear. It's
14 unclear also from the record that was provided to us
15 how the initial, the larger parcel with Eton was
16 created. As a theoretical lot or what have you,
17 this lot was part of a record lot. It was not a
18 record lot in itself to begin with.

19 So, it's unclear that -- It is clear that
20 ultimately the creation of the -- it's ultimately
21 clear that this thing may have been a different size
22 at one point when it went through the additional.
23 And it has gone through three different cases:

24 The first when it was approved;

25 The second when it was not approved. So,

1 it's not that this is -- why does the second one not
2 agree with the first one?

3 But the Board is being asked here not to
4 legalize an unpermitted unit of unlawful
5 construction. But we're going to look under Title X
6 and the area variance standard, looking at the
7 physical attribution in the context of the parcel to
8 justify the dimension relief.

9 On self-creation the record includes
10 disputes over whether the parcel should be licensed
11 as a tax lot, doing a voluntary legal condominium
12 subdivision process. I'm not making, I'm not
13 making, I do not need to make a definitive finding
14 about the mechanics of lot creation to decide the
15 variance.

16 Under the variance standard the relevant
17 question is whether the hardship we're analyzing
18 adheres to the property as it exists today, and
19 whether the practical difficulty flows from a
20 physical constraint, not from the desire to profit
21 or, profit or benefit from an unlawful condition.
22 That approach is endorsed by Gilmartin, even where
23 there is some history that might be characterized as
24 voluntary.

25 The Board may grant this area variance if

1 the present difficulty arises from the property's
2 physical condition and the relief will not harm the
3 public good or the zone plan.

4 So, what we do here is we look at it as
5 Commissioner Wright did accurately on a de novo
6 approach. That means you just treat the site as a
7 vacant parcel in its current configuration and ask
8 whether the strict application of the dimension
9 standard would impose a peculiar and exceptional
10 practical difficulty given the lot's physical
11 characteristic and its developed surroundings.

12 During the first prong it's pretty clear
13 the applicant must show an exceptional condition
14 affecting his property. In this case I find an
15 exceptional condition based on the confluence of
16 property-specific physical characteristics and
17 content, not merely the fact that it's a small lot.

18 This is an interior vacant lot, about 1,400
19 square feet. It's got a sawtoothed rear line and
20 variable shallow depth that runs anywhere from 28 to
21 35 feet. It's fully bound by developed properties,
22 row dwellings to the east and west, Prospect Street
23 to the north, and Eaton Condominiums to the south.

24 The parcel cannot be enlarged, dissembled,
25 or reasonably reconfigured. These are not

1 generalized neighborhood conditions, these are
2 physical constraints of this lot.

3 Granted, small and irregular parcels exist
4 throughout Georgetown. But the standard is not
5 whether some other small lots exist, it's whether
6 the conditions affect this specific parcel in a way
7 that creates an exceptional situation. So, I
8 believe the combination of the lot's shallow depth,
9 irregular rear configuration, and fully developed
10 surrounding context creates the exceptional
11 conditions.

12 The second prong requires a showing that
13 the strict application of the zoning regulations
14 would cause a peculiar and exceptional practical
15 difficulty.

16 Here I find practical difficulty because
17 the simultaneous application of the minimum lot
18 area, lot occupancy, and rear yard requirements,
19 effectively no reasonable pathway to develop a
20 minute single family home on this parcel.

21 As Commissioner Wright pointed out, even in
22 a 500 -- Actually, you can't do anything without a
23 variance of some sort. But even if you just do the
24 rear yard together with lot occupancy, you end up
25 with a 500 square foot footprint.

1 But, again, this is not an undeveloped lot.
2 It's a lot that's of similar size within the
3 context of the neighborhood. In fact, it's the only
4 lot, it's the only, it's going to be the only
5 building on this lot on this side of Prospect. And
6 it also is designed in such a way that it kind of
7 mirrors the end units in terms of its, its
8 presentation.

9 So, you know, and here it's not about
10 maximizing development. I mean, you could if you
11 wanted to maximize development, which was a factor
12 in the earlier cases, you would have built a row
13 dwelling lot to lot. And that row dwelling would
14 have had a minimum lot requirement of 2,000 square
15 feet. But it also would have made the Eaton Condo
16 access more challenging. So, this was an attempt to
17 do that.

18 Also, the other side with the other
19 configuration when we had the west lot line moved in
20 9 inches, actually allowed to provide a 4-foot path.

21 So that, you know, and arguably that could
22 have been, you know, designed to it. But it wasn't
23 a design choice that necessarily enhanced the value
24 of the property. We shifted the -- the applicant
25 shifted the exact same square footage to the west 9

1 inches. On a square foot basis it's the same house
2 that's going to have the same value. It didn't
3 increase in value by doing that, by making the path.

4 What it did was it actually just made that path a
5 little smaller for the occupants along 33rd Street.

6 Which, unfortunately, but it did remove a
7 lot, you know, a degree of relief that was required.

8 So, in that sense it wasn't, like, a benefit,
9 financial benefit by doing this.

10 I think that, and again like I said, when
11 you apply Gilmartin, this is not an economic loss of
12 profit or desire for more money. This actually what
13 they did ultimately in doing this was not maximizing
14 profit. It was a reasonable request. It was what
15 they requested. From a design perspective we could
16 not say shrink it down to, you know, a size. That
17 was not, that was not what we were going to take.

18 So, again, understanding you've got a fully
19 built out block. You know, you've got strict
20 dimension compliance which would really be
21 impossible to develop a good, reasonable dwelling.

22 And so, again, I'm comfortable with that.

23 I think the record also demonstrates that
24 extending the building to the lot line reduces but
25 not materially, and adversely affects established

1 access patterns, including longstanding pedestrian
2 and emergency access enjoyed by Eaton, as well as
3 the functional side yards relied upon by the
4 adjoining properties to the west.

5 I think that Commissioner Wright was very,
6 very emphatic in explaining and bringing out in
7 discussion that you still have 39 inches of width on
8 the west side and, you know, a fairly sizeable
9 access on the -- for the Eaton Condominiums.

10 And, you know, again the flower pot thing
11 does not actually count toward lot, a side yard. I
12 shouldn't because likely because of the side. And
13 if it did, they would have to make it smaller, but.

14 And I do think the third prong, again, does
15 not substantially affect the zoning plan integrity.

16 If you looked at light, air, and shadow, the
17 opponents claim that the loss of light and air, and
18 they challenged the shadow site. I'm not persuaded
19 that the record demonstrates substantially adverse
20 impacts rising to the level required to deny the
21 variance. I mean, while they can -- they, they said
22 the shadow study was inadequate, they didn't provide
23 an alternative shadow study. They simply said, I
24 don't like the one that they provided.

25 The proposal, you know, the proposal is

1 mainly materially under a maximum permitted height.

2 The shadow study shows that in the record that
3 while the opponents dispute the completeness, the
4 board had no alternative but to determine that the
5 impacts are not substantial.

6 Privacy-wise, I think that there was no,
7 there was really no concerns about windows close in
8 proximity. The application also proposes limiting
9 windows adjacent neighbors, and design measures to
10 maintain privacy. So, while privacy concerns are
11 legitimate, I don't find substantial adverse impact
12 beyond that which is typical for residential in-fill
13 in this context.

14 So, let's see. There are a number of
15 issues, some issues that came up in this case that
16 may or may not have been relevant.

17 For example, the opponents, opposition and
18 the ANC emphasized the loss of local space and
19 trees, and claimed that the product disrupts the
20 historicalism of Prospect Street. And I understand
21 the concern. However, the zoning regulations do not
22 cede a permanent right to the continuation off a
23 vacant lot as open space.

24 The question is whether the proposed
25 residential structure, as designed, substantially

1 impairs the zone plan or causes substantial
2 detriment. The proposal is residential, it's
3 consistent with the R-3/GT zone intent, and the
4 applicant has presented plans, elevations,
5 photographs, and renderings showing compatibility
6 with the surrounding developments.

7 The fact that the lot has remained open for
8 decades is not by itself a zoning bias to prohibit
9 development when the use is permitted and impact --
10 the use is permitted.

11 So, I want to just talk for a second now.
12 And this is taking way too long. I just want to, I
13 want to give great weight to ANC 2E's unanimous
14 opposition, particularly its concern that the lot
15 area and lot occupancy variance are accepted.

16 But just to be clear, great weight is not
17 controlling weight here. It's just that I have to
18 sit there again and provide, discuss it, and explain
19 why I am or am to persuaded by the ANC's advice.

20 The ANC's opposition is largely premised on
21 the magnitude of the numerical deviations,
22 specifically as Board Member Wright, Commissioner
23 Wright pointed out, they said they were
24 uncomfortable with the lot area variance and they
25 were uncomfortable with the rear yard.

1 But the variance test is not a percentage
2 test, it's a property-specific inquiry on a
3 constrained parcel. And the numerical deviations
4 will appear large because the denominator is so
5 small. The correct question is whether the physical
6 conditions create a practical difficulty and whether
7 proposed relief is necessary to allow reasonable
8 use.

9 Secondly, ANC's analysis relies heavily on
10 preserving the lot as an open space. That is an
11 understandable neighborhood preference. But it is
12 not in itself a zoning standard. The zoning
13 framework contemplates residential zone in this
14 district. The Board's job is to apply subtitle X's
15 prong, not to permit a free vacant parcel.

16 Third, the ANC did not impose the rear and
17 side yard relief in concept. The most accurate,
18 concrete concern raised with access is addressed in
19 this structure because they don't have a side yard
20 and you maintain access on both sides.

21 So, I think that you have, you know, the
22 support there. And, also, we actually don't focus
23 zoning relief on necessarily the legal standard
24 there on that type of access for relief. That's
25 governed by other areas like the building code.

1 The applicant also did address the Board's
2 prior denial in Order 14854 in 1988. I also want to
3 be clear that this is not the first case, as I said
4 before, there was one prior to that in 1981 which
5 the applicant -- which was approved.

6 The applicant argued -- the opponent argued
7 that the Board had to either follow the denial or
8 distinguish it with evidence. And I find the
9 record, current record actually supports a different
10 conclusion under today's area variance framework
11 because the surrounding context and the record
12 impact have changed and they are more fully
13 developed.

14 So, since the area is bigger than it was
15 and more developed, the condominium's in place,
16 everything's built up around it, and besides the
17 site has remained vacant for decades, the
18 neighborhood context is now fully established and
19 the applicants produced a detailed record, plan,
20 elevations, and impact information. So, it is
21 developed.

22 So, for those reasons I think a finding to
23 do the area variance, area variance is correct. The
24 property is affected by an exceptional condition
25 deriving from its irregular shape, shallow depth,

1 and fully built-out context.

2 The strict application of the dimension
3 standards would be impacted by preventing reasonable
4 residential development of a permitted use. And the
5 requested relief can be granted without substantial
6 detriment to the public good and without impairing
7 the zone plan, particularly in this, in this
8 instance.

9 And, again, it preserves the pedestrian
10 emergency access and, you know, and this really does
11 mitigate the privacy impacts.

12 So, I am, too, in support of the
13 application.

14 Let's see. So, that's where I am. So, I,
15 too, am in support of the application.

16 As I said, I think there is a lot to
17 discuss here in part because the party in opposition
18 threw so many different things into the mix. None
19 of -- not that they were actually germane or
20 relevant to, or legally relevant to our decisions.
21 But there are a lot of things in there. And I hope
22 that the legal staff is able to sort through all of
23 that in the final order. Because I can't think
24 about it.

25 Let's see. So, with that, I'm going to

1 make a motion to approve the application as written
2 and stated by the -- in the written attachment by
3 the Secretary, and ask for a second.

4 Ms. Drakeford?

5 MEMBER DRAKEFORD: I second.

6 VICE CHAIR BLAKE: Okay then, the motion
7 has been made and seconded.

8 Madam Secretary, could you please take a
9 roll call vote?

10 MS. MEHLERT: Please respond to the chair's
11 motion to approve the application.

12 Chairman Blake?

13 VICE CHAIR BLAKE: Yes.

14 MS. MEHLERT: Board Member Drakeford?

15 MEMBER DRAKEFORD: Yes.

16 MS. MEHLERT: And Commissioner Wright?

17 COMMISSIONER WRIGHT: Yes.

18 MS. MEHLERT: Staff would report the vote
19 is 3 to 0 to 2 to approve Application No. 21360 on a
20 motion made by Chairman Blake and seconded by Board
21 Member Drakeford.

22 VICE CHAIR BLAKE: Okay. Now, let's see.

23 What is, let's see, we have, we have an
24 enormous number of cases ahead of us at this time.

25 I would -- and I hate to do this at 5:18, but I want

1 to take just 10 quick minutes and then we will come
2 back and begin the next case.

3 Which, which, Madam Secretary, which case
4 is the next one up?

5 MS. MEHLERT: This would be the meeting
6 session case of Commissioner Miller.

7 VICE CHAIR BLAKE: Oh, okay.

8 Okay. Is Commissioner Miller available?

9 COMMISSIONER MILLER: I'm here.

10 VICE CHAIR BLAKE: Okay, why don't we do
11 that then. We'll do that case and then we'll take a
12 brief break, brief break before we go back into the
13 hearing session cases.

14 Hello, Commissioner Miller.

15 COMMISSIONER MILLER: Hello. You all have
16 had a very long day, and it isn't over. And I am
17 just watching it.

18 VICE CHAIR BLAKE: And I agree. I'm
19 exhausted just watching us, too.

20 Let's see. Let's see, what we have before
21 us is a decision. So, we're going to have the
22 Secretary, if you would call this, would you call
23 the next case?

24 MS. MEHLERT: Yes.

25 This will return to the Board's meeting

1 session.

2 Next case is Application No. 21384 of
3 Adetokunbo Harrison. This is an application
4 pursuant to Subtitle X, Section 901.2, for a Special
5 Exception under Subtitle E, Section 207.5, to build
6 a rear wall to semi-detached building to extend
7 farther than 10 feet beyond the farthest rear wall
8 and adjoining physical building on an adjacent
9 property.

10 This is a two-story rear addition to an
11 existing two-story, semi-detached principal
12 dwelling. It is located in the RF-1 zone at 630
13 Randolph Street, N.W., Square 3233, Lot 77. This
14 hearing was completed on January 21st. And at the
15 February 11th meeting the Board postponed its
16 decision and requested additional information.

17 Participating are Chairman Blake, Board
18 Member Drakeford, and Commissioner Miller.

19 VICE CHAIR BLAKE: Okay. We recently heard
20 this case. And we received the testimony which
21 raised a lot of concerns about the general impact
22 the project would have on the use and enjoyment of
23 the neighbor's property.

24 At the conclusion of the hearing the Board
25 asked the applicant to provide additional

1 information, including renderings and shadow sites
2 depicting the addition's impact on the neighbor Ms.
3 Williams' property.

4 The applicant did provide a narrative of
5 the shadow study. It's a little different, a
6 narrative of the shadow study. And a light study
7 report. And photographs of the rear yard of the
8 property showing the applicant's house and Ms.
9 Williams' property to the east.

10 The applicant also submitted some
11 properties of the neighborhood which we didn't ask
12 for. But, nonetheless, we didn't receive any
13 comments from the ANC or the Office of Planning in
14 that time.

15 On the 11th, a couple weeks ago, the
16 decision meeting, some of the members of the Board
17 expressed concern over the submission and requested
18 more renderings, and again encouraged the dialog
19 between the neighbors. The Board then postponed
20 this decision until today.

21 The applicant has added some supplemental
22 filings to the record. These filings include
23 statements with regard to the neighborhood outreach
24 and 3D exterior renderings of the proposed addition,
25 illustrating street facing and the rear yard

1 perspectives.

2 The applicant proposed adding landscape-
3 style painting treatment as well, or a decorative
4 finish to soften the visual impact.

5 So, I want to just turn it over to Vice
6 Chairman Miller to address your concerns or how you
7 feel about the project at this point.

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

10 I think you've summarized where, where
11 we've been and where we are on this case.

12 And, yes, I appreciate the applicant
13 submitting the illustrative renderings of the
14 addition, of the rear addition. I found them to be
15 very helpful and helped me understand the
16 relationship between that rear addition and the
17 adjacent property owner Ms. Chavis Williams, who
18 opposed the -- opposes the project.

19 And I also appreciate the effort, the good
20 faith effort to communicate with that adjacent
21 property owner. And the applicant detailed that
22 narrative, as well as the narrative about the
23 illustrative renderings in Exhibit 37, which we
24 have. We have the illustrative renderings in
25 Exhibit 38-A1 and A2.

1 I am now satisfied that, enough to move
2 forward with this application. We previously had
3 stated at previous hearings that it had the support
4 of ANC, I think it's 4C, 4C, and Office of Planning
5 as well. And so, we give great weight to that.

6 And I'm ready to move, I'm ready to move
7 forward. The illustrative renderings really were
8 very helpful to me. That's what I was hoping to get
9 with the original request. We got photographs
10 instead, which just didn't help me personally. So,
11 this did help me.

12 And I appreciate that effort to the
13 intention to add, as you said, the landscape-style
14 painting treatment or other attractive finish
15 improvements on that blank wall that's going to be
16 part of the addition adjacent to the property, next
17 door property owner.

18 I guess my only question is should we --
19 well, I don't know where you all are necessarily on
20 this, but if we were to move forward do we want to
21 include any kind of condition that -- it's a very
22 vague description about the -- I mean, we have an
23 illustration of the example of a landscape-style
24 painting treatment, which actually looks very
25 attractive, to me personally. In addition to the

1 green buffer that's there.

2 Do we want to make any reference to that
3 green buffer, or is that already there, and/or to
4 the landscape-style painted treatment or other
5 similar finishing? Do we, do we want to do that or
6 need to do that if it's appropriate to do that.

7 That's the only question I would pose to my
8 fellow Board members. But I'm ready to move
9 forward.

10 VICE CHAIR BLAKE: Thank you very much.
11 Thank you very much, Vice Chair Miller.

12 Board Member Drakeford, what are your
13 thoughts on this project and on the conditions that
14 Vice Chair Miller mentioned?

15 MEMBER DRAKEFORD: Yeah, I would be
16 supportive of the condition that Vice Chair Miller
17 mentioned.

18 I also, you know, agree with the comments
19 around I appreciate the applicant's outreach to the
20 neighboring property owner and the detailed, the
21 detailed note of that in the update to the record,
22 and also the subsequent design adjustments like the
23 decorative wall which helps to mitigate some of the
24 visual intrusion of the extension.

25 I do believe, as well, that the renderings

1 were helpful in demonstrating the project's spatial
2 relationship with the abutting lot. And then the
3 sun study helps to provide some additional evidence
4 around some additional evidence.

5 And so, I am also prepared to vote in
6 support today.

7 VICE CHAIR BLAKE: All right. Okay, let's
8 see where I should start with my thoughts.

9 Well, first of all I wanted to say that the
10 standard for relief here is E207.5, which is -- uses
11 the subtitle X, Chapter 9, and subtitle E 5201, if
12 applicable.

13 In this particular situation it's not
14 applicable because there's no additional relief
15 being sought for lot occupancy, courtyards, or
16 previous exceptions.

17 So, we're going to look at E 520 -- we're
18 going to look at the X one and two independently,
19 but being mindful that we do consider there issues
20 like air privacy, noise, et cetera, not so much
21 visual intrusion though.

22 So, in this, by this standard the Board has
23 determined if the granting of relief is in harmony
24 with the zoning maps and regulations, and whether
25 the proposal would meaningfully interfere with the

1 use and enjoyment of neighboring properties beyond
2 what the zone anticipates. So, the question is not
3 whether there is any adverse impact again but,
4 rather, the effect is undue. That is an exception
5 in degree, in context of the zone.

6 So, given the nature of this project, the
7 question, you know, is will the -- will the impact
8 of light yield any potential adverse impact
9 significantly greater or more intrusive than a
10 development that's submitted as a matter of right,
11 which in this case in an addition extending back 10
12 feet beyond the rear wall of the adjoining property.

13 So, this is a big addition, though. It's
14 27 feet rear yard addition. So, it's not just
15 beyond the 10. But it's a deep yard. And I think
16 that it meets the development standard otherwise.

17 So, it kind of fits the lot it's on. The
18 nearby residents have raised a range of concerns
19 that are zoning considerations, including rear yard
20 instruction, light, air, privacy. They also talk a
21 little bit, again, about visual intrusion, which is
22 why the applicant's proposed that mural.

23 But, again, the property meets all of the
24 right development standards.

25 When I look at the photographs in the

1 record, the massing is not out of scale with the
2 other additions in the vicinity. The light shadow
3 study shows that the impacts will be in the context
4 of what is anticipated and will not rise to an undue
5 level.

6 And I agree with the Office of Planning's
7 analysis, which I found pretty informative and
8 helpful. I mean, the Office of Planning did provide
9 the analysis based on E 5201, so it went through a
10 more detailed analysis. And it focused well on
11 visual intrusion.

12 So, I'm not really suggesting that there is
13 no impact on the abutting property, because there
14 will be some, but the record does not show that the
15 impacts will be unduly adverse, or materially
16 greater, or more intrusive than that would have
17 resulted from the addition extending only 10 feet.

18 As to the condition, the proposed mural, I
19 am actually not comfortable including that as a
20 condition of the order. A) because it is somewhat
21 vague. There are a lot of different things that
22 could end up on that wall.

23 And we also have not made a finding in our
24 analysis that it is visually intrusive. It's a nice
25 suggestion. And it would be good if they would do

1 something. But what if the neighbor doesn't like
2 the mural that they put up?

3 What if the future -- you know, this, this
4 travels with the land, so what if future owners
5 don't want to have a mural, or they don't, you know,
6 they don't, they don't like the design of the mural?

7 So, I think this might be a little bit more than
8 the Board could do, especially since we don't really
9 have a finding of an adverse impact in the record.

10 So, I would not be inclined to include
11 that.

12 But I do -- I would reference the fact that
13 the applicant has indicated a willingness to, to do
14 that, to put up a mural on the wall to ease the
15 aesthetic in the rear. And if there is some also
16 plantings or things like that, that would help as
17 well, that would be attractive, that, you know,
18 again could be referenced in the, in the order.
19 Because we really don't have -- we haven't proven
20 that there is, we don't have substantial evidence
21 suggesting that there is an issue that needs to be
22 addressed from a privacy perspective or from a
23 visual intrusion perspective, which is not actually
24 100 percent in the standard for this.

25 That said, I give great weight to the

1 Office of Planning's recommendation, approval. I
2 also give great weight to the report of the ANC 4C
3 which supports the application and states no issues
4 or concerns.

5 So, I will be voting in favor of the
6 application.

7 Again, referencing not including that
8 condition.

9 What are your thoughts on that,
10 Commissioner?

11 COMMISSIONER MILLER: Thank you, Mr.
12 Chairman.

13 I don't disagree with much of what you
14 said. I would be more comfortable -- I mean, and
15 I'm, and I'm -- we've encouraged and the applicant
16 has now shown a willingness and intention in the
17 record to work with the neighbor to put up something
18 that they might -- that might help mitigate
19 potential adverse impacts from such a large
20 addition.

21 But I think you made some good points about
22 a mural, putting that as a condition in the order.

23 But the green landscaping buffer that goes
24 along the whole addition, and then further between
25 the two yard -- two properties, on the applicant's

1 property as I understand it, I think that could be
2 included as a condition. I think that helps
3 mitigate potential adverse impacts upon privacy and
4 the use and enjoyment of that deep rear yard, as you
5 said.

6 But I think that that helps. I can't
7 remember in the actual photographs whether that is
8 currently there or not. But I would be more
9 comfortable if we had some reference, and maybe
10 leave it to our counsel to adopt the appropriate
11 conditional language, that there is a green buffer,
12 green landscaping buffer between the applicant's
13 property and the adjacent property owners on their,
14 on the applicant's property.

15 So, I don't know if you would be
16 comfortable with that or what Board Member
17 Drakeford's views are on this topic as well.

18 VICE CHAIR BLAKE: Well, from our
19 perspective I do, I do agree with the -- it could
20 enhance the privacy issue.

21 Did we determine that there is a privacy
22 issue that is listed, though?

23 COMMISSIONER MILLER: I think there are
24 potential adverse impacts. I'm not sure we made it
25 -- we, I think we have testimony on record from the

1 adjacent neighbor that says there are adverse
2 impacts. I think, I think there is a potential,
3 given the size of the, of the rear addition of
4 potential adverse impact on privacy and use and
5 enjoyment of the adjacent neighbor's yard.

6 I also want to note before I forget, I
7 meant to mention in that, in the applicant's letter
8 they did not only outreach to the adjacent property
9 owner that opposed it but to other neighbors on
10 their -- which their letters states. It's a 37-
11 page, too, that they spoke with neighbors who were -
12 - and they were supportive of the project, including
13 neighbors to their left at 632 Randolph, to the rear
14 at 3819 7th Street, and the far right at 626
15 Randolph Street.

16 So, I think it's important that we note
17 that it's in the record of other neighbors, nearby
18 neighbors supporting it, as well as the ANC of
19 course. But --

20 VICE CHAIR BLAKE: Well, tell me this: how
21 would you feel about the option of vegetation or a
22 fence, privacy fence to the privacy issue?

23 COMMISSIONER MILLER: Yeah, I'm fine, I'm
24 fine with that.

25 VICE CHAIR BLAKE: Okay. Board Member

1 Drakeford, what are your thoughts?

2 MEMBER DRAKEFORD: Yeah, I mean, if there
3 is any type of screening, whether it be vegetative
4 or a fence, I would be in support of that. Yeah, I
5 have no opposition.

6 VICE CHAIR BLAKE: Okay. So, so okay,
7 let's think about it. So, do we want to go with
8 vegetation or a screening, vegetation screening or a
9 fence of some sort to provide privacy, okay, --

10 COMMISSIONER MILLER: I'm okay.

11 VICE CHAIR BLAKE: -- for the neighboring
12 property?

13 MEMBER DRAKEFORD: Yes.

14 VICE CHAIR BLAKE: Okay, that sounds good.

15 All right. All right, well, with that, I'm
16 going to make a motion to approve the application as
17 captioned and read by the Secretary, with one
18 condition included, that they include a privacy
19 fence, vegetation, or screening that provides, that
20 adds a degree of privacy between the properties.

21 And ask for a second, Ms. Drake -- Board
22 Member Drakeford?

23 MEMBER DRAKEFORD: I second.

24 VICE CHAIR BLAKE: Okay. The motion's been
25 made and seconded.

1 Madam Secretary, would you please call,
2 conduct a roll call vote?

3 MS. MEHLERT: Please respond to the Chair's
4 motion to approve the application with conditions.
5 Chairman Blake?

6 VICE CHAIR BLAKE: Yes.

7 MS. MEHLERT: Board Member Drakeford?

8 MEMBER DRAKEFORD: Yes.

9 MS. MEHLERT: And Commissioner Miller?

10 COMMISSIONER MILLER: Yes.

11 MS. MEHLERT: The staff will record the
12 vote as 3 to 0 to 2 to approve Application No.
13 21385, with a condition, on the motion made by
14 Chairman Blake and seconded by Board Member
15 Drakeford.

16 You're on mute, Mr. Chair.

17 VICE CHAIR BLAKE: Okay, thank you very
18 much, Vice Chair Miller.

19 Are you going to be with us or are you done
20 for the day?

21 COMMISSIONER MILLER: I'm done for the day.

22 I appreciate that Commissioner Wright is there.
23 And I had prepared in case she needed to leave. But
24 I'm sure she didn't think it was going to be at 5:40
25 these additional seven cases would come up.

1 But I'll get off. Thank you.

2 VICE CHAIR BLAKE: All right, thanks so
3 much.

4 COMMISSIONER MILLER: Goodbye.

5 VICE CHAIR BLAKE: Thank you.

6 All right, Madam Secretary. Let's see, I
7 thought we'd take -- I think, Leslie, you've had a
8 break just now, Commissioner.

9 Board Member Drakeford, what do you say, do
10 you want to do a couple or do you want to take a
11 break?

12 MEMBER DRAKEFORD: No, I mean, I'm fine
13 with moving.

14 VICE CHAIR BLAKE: This is going to go on
15 for a while now.

16 MEMBER DRAKEFORD: Are you telling me I
17 should take a break?

18 VICE CHAIR BLAKE: I'm just saying, this is
19 going. This is not, you know, not at the end.

20 MEMBER DRAKEFORD: Okay. Well, let's -- I
21 mean, let's, I'm fine to move forward. Yeah, I'm
22 fine to move forward.

23 VICE CHAIR BLAKE: There you have it.

24 Madam Secretary, would you please call our
25 next hearing session.

1 MS. MEHLERT: The next in the Board's
2 hearing session is Application No. 21346 of Daniela
3 Serrano Pavon. This is an application pursuant to
4 Subtitle X, Section 901.2, for a Special Exception
5 under Subtitle E, Section 5201 under rear yard
6 requirements of Subtitle E, Section 207.1.

7 And pursuant to Subtitle X, Section 1002
8 for an area variance from requirements of Subtitle
9 E, Section 207.1.

10 This is for a rear deck addition to an
11 existing two story principal dwelling located in the
12 RF-1 zone at 1130 4th Street, N.E., Square 773, Lot
13 72.

14 This hearing began October 1st and has been
15 postponed twice. Originally participating, Chair
16 Blake and Chairman Hood. Also, I should note that
17 the applicant amended their application and
18 submitted a revised self-certification form
19 withdrawing variance relief. However, they've also
20 filed a motion to (audio interference) requirements
21 of Subtitle Y, Section 300.6B, which requires that
22 the work be certified by a registered architect or a
23 licensed attorney.

24 VICE CHAIR BLAKE: Okay. I'm going to need
25 2 seconds and I'll be right back afterwards. Give

1 me 2 seconds.

2 (Pause.)

3 VICE CHAIR BLAKE: I told you we should
4 have taken a break anyways.

5 Commissioner Wright, are you there?

6 COMMISSIONER WRIGHT: Yes.

7 VICE CHAIR BLAKE: Okay. I just assumed
8 that, literally. Somebody's at the door.

9 All right. Is the applicant here? Would
10 you please introduce yourself for the record?

11 MR. LESTOCK: Yeah, thanks.

12 My name is Jake Lestock. I'm the husband
13 of Daniela Serrano, and fellow applicant.

14 VICE CHAIR BLAKE: Okay. Is anybody here
15 with you today --

16 MR. LESTOCK: Huh?

17 VICE CHAIR BLAKE: -- presenting? Or will
18 you be presenting yourself?

19 MR. LESTOCK: I think it's just going to be
20 me.

21 Well, I guess Flora is here. She is also a
22 part of our, our application. But I think I can
23 handle most of the speaking points.

24 VICE CHAIR BLAKE: Okay. But Flora is
25 there, is she? Okay, she is there.

1 Would you, would you unmute yourself and
2 put your camera on for us, because I may have to
3 pull you in here for a minute.

4 Okay. In this particular application the
5 Board has pushed this off, the applicant as well, in
6 anticipation of a text amendment that would negate
7 the need for relief. This is basically a rear deck,
8 but this application is, this is still not
9 complete.

10 So, the DA requires that the applicant do
11 an area variance from Title E, Section 210.1, for
12 lot occupancy, and a special exception under E 201
13 for a 10-year -- for the 10 rear yard.

14 Now, in this particular instance the -- if
15 the applicant still needs the, is going to, is
16 seeking to -- actually, the applicant has withdrawn
17 the area variance request. And really in
18 anticipation of the implementation of 25-12 which
19 would make the variance unnecessary.

20 So, in the most recent self-cert, which is
21 in Exhibit 66A, it lists the relief requested as a
22 special exception under E 5201 for rear yard, for
23 10-foot existing, 20-foot required, and no, nothing
24 opposed.

25 Now, the Board has a couple options here

1 because the Board can -- first of all, the Board has
2 to determine if the special exception, if we can
3 allow the applicant to submit a self-certified
4 application without the signature of an architect or
5 a licensed attorney.

6 It is waivable. And, Flora Jurrell
7 (phonetic), are you there? You are. All right,
8 then she's a licensed interior designer who is
9 familiar with zoning regulations. And as we've gone
10 back and forth with this, it seems pretty much that
11 you guys are starting to get a handle for it as
12 well.

13 So, if we do decide to allow them to waive
14 that right and self-certify for this, we would be
15 able to proceed. If we proceed with this
16 application we will then have to make a decision if
17 we do allow for the area variance, the applicant
18 then has to take the risk of not being -- of the
19 omnibus bill being accepted and passed so that they
20 will be able ultimately to do without the approval.

21 Currently, right now, you cannot do the
22 deck you want to do.

23 And it's clear from the BZA's memo that we
24 cannot, that the current regulations will not allow
25 you to do it, even if we give you the special

1 exception. And, typically, we don't give special
2 exceptions or grant the relief unless we believe
3 there is a good chance you will get a project done.

4 So, if we do grant you relief we're not
5 saying that you think you got a thumbs up. What
6 we're saying is you're going to assume the risk
7 because you're not going to get a permit to do your
8 deck until the omnibus bill is done.

9 Now, I'm going to ask the Commissioners to
10 help me a little bit with this.

11 Since the special exception is, is really
12 is not dependent upon the lot occupancy we can
13 approve it. Because we can, we have to basically
14 approve anything that the applicant requests of us.

15 If it's one request, two requests, four requests,
16 they can all be aggregated and you can, you have to
17 really respond to each item. So, you can in part
18 deny and in part approve.

19 But, again, if we did that then the
20 applicant would actually have to come back and
21 withdraw the denied ones that the order be correct.

22 This way it's cleaner. It's a done, it's a done
23 deal and they basically could move forward.

24 I'd like to get a little color because this
25 is a unique situations. We don't typically do

1 this. This is, this is out of the ordinary. And if
2 we did do it, we then have to, you know, just to be
3 clear, it's on, the risk is on you, the applicant.

4 How close are we on this portion of 25-12
5 for the ZC? Because, you know, it matters. A lot
6 of times you do these things and, you know, it may
7 or may not have the wrong way out. It could not
8 happen. It may not happen. It may come out very
9 different.

10 Do you know where we are on this case and
11 does it make sense to do this?

12 COMMISSIONER WRIGHT: I think you're asking
13 me.

14 VICE CHAIR BLAKE: Yes.

15 COMMISSIONER WRIGHT: And you're making --
16 the Office of Planning can also respond.

17 I believe that the Zoning Commission has
18 taken their action to make all their recommendations
19 on the omnibus. That is complete.

20 How quickly it is that that legislation can
21 then be officially added to the code, that I don't
22 know. I mean, this is my first omnibus bill. So, I
23 don't know if the Office of Planning can address
24 that or not.

25 But we have taken our final action on the

1 omnibus.

2 Commissioner Miller may have more knowledge
3 than I have as well. But we, we've done what we are
4 supposed to do. And I, I don't know the next steps.

5 VICE CHAIR BLAKE: Okay. Let's see.

6 Let's do this, let's turn to the Office of
7 Planning and get a feel for it.

8 The reason I'm trying to be careful about
9 this is I don't want to -- this is, again, a very
10 unique situation. The request has a couple kinks,
11 so I want to make sure that we're doing it in a --
12 if we do it, I want to make sure we're aware of
13 where we are and, you know, if it does, does make
14 sense. I don't want you to put yourself in a, the
15 applicant, I don't want you to put yourself in a
16 situation that's disadvantageous.

17 So, and but I know you've tried to postpone
18 it long enough to come back. But it, you know, and
19 you're trying to be efficient. I get that.

20 So, Mr. Beamon, if you could come back and
21 give us some color on 25-12 and your expect -- what
22 you believe may happen there, I'd appreciate that.

23 Chairman Miller has come back.

24 COMMISSIONER MILLER: Only because I
25 prepared for this case in the event that

1 Commissioner Wright was not able to. I did ask our
2 counsel and our zoning, also zoning legal division
3 that supports the Zoning Commission and Secretary
4 Schellin where we were.

5 The proposed rulemaking likely, which
6 includes the omnibus, text amendments including the
7 rear deck, text amendment which would obviate the
8 need for variance in this case, that proposed
9 rulemaking is likely to be published in either next
10 week's Register, D.C. Register, or the following
11 week.

12 And there's a comment period that's open.
13 But the, our counsel said that the final rulemaking
14 likely won't, it probably won't be published -- it
15 will be published within 90 days is what they, is
16 what they estimated.

17 So, I just wanted to provide that
18 information on the record. There is not a true
19 Zoning Commission participating here, but I thought
20 I'd be more prepared than the Office of Planning to
21 answer that question because I did our OCLD that
22 just got this this morning, I think.

23 COMMISSIONER WRIGHT: Thank you.

24 VICE CHAIR BLAKE: Well, thank you. Thank
25 you very much, Vice Chair Miller.

1 COMMISSIONER WRIGHT: Can I also just
2 mention?

3 VICE CHAIR BLAKE: Yes.

4 COMMISSIONER WRIGHT: If I'm not mistaken,
5 assuming we even act on this today, because the
6 Office of Planning did not recommend in favor,
7 they're recommending denial, wouldn't this -- this
8 wouldn't be a summary order. It would have to be a
9 full order; right?

10 VICE CHAIR BLAKE: No. Actually the, if we
11 -- Okay, first of all, the applicant has withdrawn
12 the variance request. So, it's off the table. And
13 they can do that without, you know, the licensed
14 architect or attorney. So, that, that's done.

15 So, the application itself, the amended
16 application just for the special exception for rear
17 yard.

18 The issue is, A) can we allow -- can we
19 give, what is the right, waive it so they can make
20 that change without going back to get an attorney or
21 an architect. That's the first lesson.

22 But if they were to do that, they would
23 not, it would not be an issue because it's just a
24 special exception.

25 And, again, if we look at the 90-day time

1 frame the question would -- if you think it's going
2 to be 90 days does it make sense to do that and take
3 that open risk? If it comes back different, you may
4 or may not still be able to get this done.

5 I mean, I remember we went through this
6 change. And the likelihood of getting the area
7 variance is very low based on, you know, the high
8 standard, the bar for the deck.

9 So, the special exception approach that the
10 Commission is doing, it's kind of like it has really
11 actually grown out of the fact that a lot of people
12 come here with decks. They want to get them done.
13 And we always run into the same issue. It's a
14 variance that's hard to meet a variance standard for
15 a deck. So, in fact it's almost impossible.

16 So, in this case, I mean, it does address
17 one issue, as long as the deck is small enough it
18 will probably make that, you know, fit inside that
19 box that they've allowed for. The question is
20 timing.

21 So, does that -- that's a little more than
22 I think you wanted to hear, but that's kind of where
23 we're at, the time issue.

24 So, do we want to make that, make the
25 choice and do this today? And I mean part, so our

1 first decision, do we allow the applicant to adjust
2 and self-cert that way?

3 The second question is I'm going to then
4 talk to the applicant and say, do you want to take
5 this risk? Do you understand what you're taking?
6 If you're comfortable with it, and I'm comfortable,
7 you know, I may be comfortable doing it, what, what
8 do my Board members think?

9 Commissioner, you're up first.

10 COMMISSIONER WRIGHT: Me, I am, I am
11 comfortable to allow the self-certification to move
12 forward. I think that was your first question.

13 And, you know, in terms of the second
14 question regarding timing, you know, again as
15 Commissioner Miller described it, we are going to be
16 acting, the government, the city is going to be
17 acting pretty quickly, I mean, 90 days is pretty
18 quickly, on the, on the omnibus text amendment. I,
19 I honestly think it would be great to be able to
20 wait till that's resolved.

21 But, but that's up, you know, that's up to
22 the applicant to some degree, too.

23 VICE CHAIR BLAKE: Okay. Let me just,
24 before I go to you, Board Member Drakeford, from the
25 Office of Planning is, let's see, Maxine Brown-

1 Roberts around?

2 MR. BEAMON: Here. But they need to bring
3 up separate.

4 VICE CHAIR BLAKE: Okay.

5 MR. BEAMON: If you want to put up Maxine
6 Brown, you can if you want to. She's here.

7 VICE CHAIR BLAKE: Okay, yeah, that's what
8 I was thinking. If she's here, could you put her
9 in? I think she's more familiar with 25-12.

10 There you are.

11 MS. BROWN-ROBERTS: Good evening, Mr.
12 Chairman.

13 VICE CHAIR BLAKE: Hey.

14 MS. BROWN-ROBERTS: That was the UCA.

15 VICE CHAIR BLAKE: Okay. Are you, are you
16 familiar with 25-12? What's your, what's your take
17 there?

18 MS. BROWN-ROBERTS: I'm not sure, which
19 section is that?

20 MR. BEAMON: So, that's for the omnibus --

21 VICE CHAIR BLAKE: Omnibus.

22 MR. BEAMON: -- text amendment.

23 MS. BROWN-ROBERTS: I'm not very familiar.

24 But I'm not sure what your question is. I can
25 bring it up.

1 VICE CHAIR BLAKE: Well, the question was
2 we had was the -- where we were, the status of it,
3 the likelihood that the timing of getting 25-12 done
4 for this deck portion.

5 MS. BROWN-ROBERTS: Uh-huh. I think I
6 agree with what Commissioner Miller said. That is
7 out of the Office of Planning hands right now. It's
8 all being done through OCLD on the timing and not,
9 it's not part of the Office of Planning's process.

10 That is Zoning Commission, it's really just
11 a Zoning Commission decision and OCLD, who is
12 preparing the, the document.

13 So, I think what I know of is the same
14 thing that Commissioner Miller said.

15 VICE CHAIR BLAKE: Okay, thank you.

16 MS. BROWN-ROBERTS: Okay. Thank you, Mr.
17 Chairman.

18 VICE CHAIR BLAKE: Mr. Beamon, I'm assuming
19 you have nothing else you want to add on that point
20 either?

21 MR. BEAMON: I do not.

22 VICE CHAIR BLAKE: There's nothing else you
23 would like to add either?

24 MR. BEAMON: No. No, sir.

25 VICE CHAIR BLAKE: Okay. I'm going to go

1 to Board Member Drakeford for your thoughts.

2 MEMBER DRAKEFORD: Around the self-
3 certification waiver, I mean, I think generally I'm
4 comfortable with it. But would just be, would, you
5 know, want to make sure we're clear from the
6 applicant maybe just the reason -- at least having
7 some kind of rationale or reason why, from the
8 applicant, why they would, they would like to have
9 that waiver.

10 VICE CHAIR BLAKE: Okay. Well, I'm going
11 to, now I'll turn it to the applicant.

12 You understand the circumstances and what
13 we're talking about, what our concerns are. What's
14 your, what's your strategy here and what are you
15 trying to accomplish?

16 MR. LESTOCK: Yeah. So, the idea was we
17 spoke with the Office of Planning on this and we're
18 just trying to figure out what our options would be.

19 We knew that the area variance was very, there was
20 a very small chance we were going to get approved
21 for that.

22 It was really just waiting to see what
23 happened with the omnibus bill text amendment.

24 And we heard that the portion on decks was
25 heard and approved. And we're just waiting on the

1 process of it rolling out and then being taken up in
2 the rulemaking, as was mentioned, and then being
3 filed on the record, or whatever that's called,
4 documented and recorded, or whatever.

5 And so, the idea was, I mean, we're just
6 trying to build a really small deck. This isn't a
7 huge project. When it comes to waiving the
8 architect or the attorney, we have a construction
9 company that Flora represents. She's an architect -
10 - or not an architect, interior designer. The plans
11 are submitted.

12 And it's, again, it's a 10-foot deck, not
13 even 10 by 10. It's very tiny. We're just trying
14 to go through the correct process versus most of our
15 neighbors who just have illegal decks built.

16 So, we figured that removing the area
17 variance and then just submitting the special
18 exception would be the fastest because then I'd have
19 approval from you all and I could just wait until
20 the rules were put into effect from the omnibus text
21 amendment. And then I could go to Department of
22 Building to get the permits.

23 That was the idea of it, rather than having
24 to wait for it to go into effect, come back to you
25 all, and then go to the Department of Building for

1 the permits. It was just trying to speed up the
2 process because I started this last February.

3 VICE CHAIR BLAKE: Okay.

4 MR. LESTOCK: And I would note that the OP
5 denied, had a denial recommendation of a denial for
6 the area variance, but they did approve, submit
7 recommendation for approval on the special
8 exception, special exception component.

9 VICE CHAIR BLAKE: Yes. We, I sat in on
10 the case. We did review the application. Chairman
11 Hill, Vice Chair -- Chairman Hood was on it as well.

12 And I think that the conclusion, you know,
13 we came up with is that it's a very reasonable thing
14 you're asking for, but I don't think you had enough
15 support for the variance. But the applicant's
16 special exception, you know, was, was relatively
17 reasonable, even though it was fairly substantial.

18 Okay. Well, I tell you what, have, let's
19 see, have both members of the Board read into this
20 case? You read into it?

21 COMMISSIONER WRIGHT: Yes.

22 VICE CHAIR BLAKE: Okay. Both
23 Commissioners indicating yes.

24 Would you be -- Okay. All right.

25 Okay, I'm going to go back. This time I'm

1 going to take the claims up now. Just to the
2 applicant, do you understand the risk that you'd be
3 taking by doing this right now?

4 MR. LESTOCK: Yeah, I understand that if
5 the omnibus text is not approved and submitted into
6 the record that I still couldn't build the deck.

7 VICE CHAIR BLAKE: Okay. And so, you're
8 taking on the full risk of that responsibility?

9 MR. LESTOCK: Yes.

10 VICE CHAIR BLAKE: And us, at this point us
11 approving, if we do approve the special exception,
12 it doesn't mean that we have approved your project.
13 You understand?

14 MR. LESTOCK: Right.

15 VICE CHAIR BLAKE: Okay. Board members,
16 you understand what he thinks, so I'm going to ask
17 what do you think?

18 I think you told me, Commissioner Wright, I
19 think you said you'd rather wait. But if it's going
20 to be 6 months, that's quite a, that's some, that's
21 something.

22 COMMISSIONER WRIGHT: Yeah. No, you know,
23 again, I'm, I'm fine on the waiver about the self-
24 certification. And, you know, after hearing all of
25 this discussion and understanding that the applicant

1 has a clear understanding that if we move forward on
2 the special exception and for whatever reason 25-12
3 doesn't go through, that he still would not be able
4 to build the deck.

5 But if we act on the special exception and
6 then 12-25, the omnibus, goes through -- I'm sorry,
7 25-12, the omnibus, goes through then he would be
8 able to move forward.

9 As long as he understands that, yeah, I'm
10 fine. Let's just, let's just move forward on the
11 special exception.

12 VICE CHAIR BLAKE: Okay. Board Member
13 Drakeford, your thoughts?

14 MEMBER DRAKEFORD: Yeah, I would agree of
15 moving on with the special exception.

16 VICE CHAIR BLAKE: So, just again to the
17 applicant, make sure you understand. So, I'd pay
18 close attention to the, to the bill, the amendment.

19 If they change the regulations, I'd make sure your
20 deck is scoped in a way that fits that. Because
21 what you're trying to do means that, you know, if
22 they change it and they make it smaller, something
23 like that, you're going to have to make that
24 adjustment, too. So, just be aware that that's kind
25 of where we stand.

1 Okay. So, I'm going to make a motion to
2 approve the request for a waiver for the self-cert
3 form and ask for a second.

4 Board Member Drakeford?

5 MEMBER DRAKEFORD: I second.

6 VICE CHAIR BLAKE: Okay. The motion's been
7 made and seconded.

8 Would you please take a roll call vote,
9 Madam Secretary?

10 MS. MEHLERT: Please respond to the chair's
11 motion to grant the applicant's waiver request.

12 Chairman Blake?

13 VICE CHAIR BLAKE: Yes.

14 MS. MEHLERT: Board Member Drakeford?

15 MEMBER DRAKEFORD: Yes.

16 MS. MEHLERT: Commissioner Wright?

17 COMMISSIONER WRIGHT: Yes.

18 MS. MEHLERT: Staff will record the vote as
19 3 to 0 to 2. The motion passes.

20 VICE CHAIR BLAKE: Okay. So, now we're
21 going to take, deliberate on this.

22 Now, we've all read into the case. But the
23 merits of the case were heard. Requests for the
24 special exception were heard. There's a report in
25 the --

1 In fact, you know what we can do, let's
2 just go ahead real quick and have the Office of
3 Planning, Mr. Shepard. Mr. Beamon, are you there?

4 MR. BEAMON: Yes, I'm here.

5 VICE CHAIR BLAKE: Can you just give us
6 kind of like a review of the special exception
7 recommendation you have?

8 MR. BEAMON: Sure.

9 VICE CHAIR BLAKE: Because I think it was
10 contingent if we did answer. And if you can do
11 that, I'd appreciate.

12 MR. BEAMON: Yeah, okay.

13 And so, for the record, Shepard Beamon from
14 the Office of Planning.

15 The Office of Planning has reviewed the
16 application for the special exception, as amended,
17 for the rear yard relief. And we find that the
18 request used the criteria for Subtitles E and X.

19 And, yeah, we'll stand on the record of
20 report in Exhibit 65. Again, we are aware of the
21 applicant's removal of the variance which we were
22 recommending denial for. So, applicant has
23 discussed this with the Office of Planning and we
24 are okay to proceed with the special exception just
25 for the rear yard relief.

1 VICE CHAIR BLAKE: Okay. All right.

2 So, to go back to our deliberation, I'm
3 comfortable and support the application, the
4 recommendation of the Office of Planning. I agree
5 with the analysis.

6 And, again, I've looked at this before.
7 So, I, I do think the special exception relief is
8 met.

9 This is an unusual situation. Probably
10 we'll get in trouble for it at some point in the
11 future. But it makes sense. Let's give it a shot.

12 But it's unusual. I do think that where
13 that omnibus text amendment is in -- kind of with
14 this particular non-controversial subject it's
15 fairly far along. There are some that we thought
16 would happen that didn't. I think we had that
17 conversation earlier today.

18 So, you know, just because it's there
19 doesn't mean it's going to happen. But this does
20 seem to be a non-controversial item that's fairly
21 far along in its evolution.

22 So, I'm in support of the request. And I
23 will vote to approve the special exception.

24 Commissioner Wright, can I have your
25 deliberation?

1 COMMISSIONER WRIGHT: Sure. I've reviewed
2 the Office of Planning's staff report and the
3 information in the record. And I think that the
4 special exception is appropriate and I am prepared
5 to support it.

6 VICE CHAIR BLAKE: Okay.

7 Board Member Drakeford?

8 MEMBER DRAKEFORD: Yes, I will also agree
9 and align myself with the comments of both
10 Commissioner Wright and you, also, Chair Blake. I'm
11 going to give great weight to the response and
12 report provided by the Office of Planning.

13 VICE CHAIR BLAKE: Okay, thank you.

14 Okay, thank you.

15 Madam Secretary, okay, with that, I'm going
16 to make a motion to approve the amended application
17 and submitted application for 21346, and ask for a
18 second.

19 Board Member Drakeford?

20 MEMBER DRAKEFORD: Yes. Or second. Sorry.

21 VICE CHAIR BLAKE: That's quite okay. Any
22 answer is good.

23 Madam Secretary, the motion's been made and
24 seconded. Would you please conduct a roll call
25 vote?

1 MS. MEHLERT: Sure. And just to clarify,
2 the record is, the hearing is closed? We have not
3 said that yet.

4 VICE CHAIR BLAKE: Sorry, yes.

5 The record and hearing are closed. That's
6 right, I apologize.

7 MS. MEHLERT: Great.

8 Please respond to the chair's motion to
9 approve the application.

10 Chairman Blake?

11 VICE CHAIR BLAKE: Yes.

12 MS. MEHLERT: Board Member Drakeford?

13 MEMBER DRAKEFORD: Yes.

14 MS. MEHLERT: Commissioner Wright?

15 COMMISSIONER WRIGHT: Yes.

16 MS. MEHLERT: Staff would report the vote
17 as 3 to 0 to 2 to approve Application 21346 on the
18 motion made by Chairman Blake and seconded by Board
19 Member Drakeford.

20 VICE CHAIR BLAKE: Okay. I'm starting to
21 slip now.

22 Okay, let's get to -- Oh my god. Okay, the
23 next one on -- Let's take a 10-minute break because
24 the next one is going to take a little bit of time.

25 It's going to take a little bit -- a lot of time.

1 Okay, let's take a 15-minute break.

2 (Whereupon, the above-entitled matter went
3 off the record at 6:10 p.m. and resumed at 6:44
4 p.m.)

5 MS. MEHLERT: Can you hear me okay?

6 VICE CHAIR BLAKE: Can't hear you.

7 MS. MEHLERT: You can't hear me?

8 VICE CHAIR BLAKE: I can hear you now.

9 MS. MEHLERT: Okay. The Board is back from
10 break and returning to its hearing session.

11 The next case is Application Number 20643-B
12 of the Maret School. This is a request pursuant to
13 Subtitle Y, Section 704 for a modification with
14 hearing of the order issued in Application Number
15 20643 to modify approved plans and to add, pursuant
16 to Subtitle X Section 91.2 special exceptions under
17 Subtitle C, Section 1402.1 from the requirements of
18 Subtitle C, Section 1401.3 to allow portions of
19 retaining walls 64 feet in height, and from Subtitle
20 C, Section 1401.7 to allow tiered or terrace
21 retaining walls with the width of the area between
22 each retaining wall less than twice the height of
23 the lower retaining.

24 This project is for athletic facilities as
25 part of a private school use and this modification

1 seeks for these are already built retaining walls.

2 It's located in the R1-B zone at Nebraska
3 Avenue, Northwest, 42319, Lot 832.

4 This hearing was originally scheduled for
5 January 21st and postponed at the request of the
6 applicant and party in opposition.

7 VICE CHAIR BLAKE: Okay.

8 Okay, let's see, there are no preliminary
9 matters, so, if the applicant's here, if you could
10 please introduce yourself and who else will be with
11 you today?

12 MR. TUMMONDS: Yes, good evening, I'll take
13 away my good morning that I was purchased earlier
14 today.

15 My name is Paul Tummonds, the stores on
16 behalf of the Maret School, the applicant in this
17 case.

18 Also with me here this evening is Trey
19 Holloway, the associate head school for finance and
20 operations for the Maret School.

21 VICE CHAIR BLAKE: Excellent, okay

22 Let's see, let's see, do we have any -- do
23 we have -- is a Friends of the Field here? Anyone
24 representing Friends of Field?

25 Okay, Jonathan Axelrod's here, okay.

1 And do we -- let's see, anybody from the
2 ANC3 4G?

3 I can't hear you, Mr. Sherman.

4 (Pause.)

5 VICE CHAIR BLAKE: Okay, you're there I see
6 you. I got you. I got you. I got you. Okay. All
7 right, so everyone's here.

8 Okay, all right. Okay, so we can begin.

9 Let's see, where do we begin? Mr.
10 Tummonds, we're looking at this case and I wanted to
11 just -- one thing came to my mind as I saw there a
12 couple things I want to point out.

13 This is a modification of the order, but
14 the request itself will require a special exception,
15 which I believe you're seeking under C 1402.1.

16 My question is, are -- do you believe it's
17 necessary to also seek a special exception under
18 Subtitle X104? As this is a modification of the
19 campus plan which is part of the school plan.

20 Can you addressed that before we get
21 started?

22 MR. TUMMONDS: You know, I think, because
23 we're talking about the retaining walls, so,
24 perhaps, technically, but I think it did -- I don't
25 think it really has any impact on the specifics of

1 what we're discussing.

2 The request that we're seeing for the
3 special exception for the retaining walls was the
4 more specific nature.

5 If you believe that it's necessary to amend
6 to also, you know, say that, because the campus -- I
7 don't think we necessarily need it, but to make it
8 complete, I think that we'd be happy to amend the
9 application to do that. I don't think it's
10 necessary.

11 VICE CHAIR BLAKE: Great.

12 Okay, let's do that, out of abundance of
13 caution, let's go ahead and do that, amend it just
14 do change the self-cert to reflect that.

15 MR. TUMMONDS: Okay.

16 VICE CHAIR BLAKE: And what we'll do is,
17 we'll just touch on it briefly. I mean obviously
18 this is -- the relevant portion there is that we're
19 going to just look at it and how it would impact it,
20 but only to the incremental amount that's associated
21 with this special exception for the retaining wall.

22 So, it's actually not that much. You
23 really need to cover it, it's just the incremental
24 amount, right?

25 Okay, so, the second thing is, is I've read

1 the -- your commentary and it's good. The one thing
2 is the emphasis is on the costs associated
3 demolition, et cetera, et cetera.

4 But if we're going to look at -- and we do
5 want to use 14 -- C 1402.1, the applicant must
6 demonstrate that the conditions relating to the
7 building, terrain or surrounding area would make
8 full compliance unduly restrictive and prohibitively
9 costly or unreasonable.

10 So, what we like to do here, I think, is to
11 look at this, not so much from what we have, the way
12 we would have looked at this -- because don't forget
13 this is a matter of right, but it was represented
14 that this was going to be a matter of right.

15 So, to the extent it's not a matter of
16 right, we want to go through this 14 -- this --
17 these provisions and this criteria.

18 But the question is, as we would look at
19 that, we would look at it on a de novo basis.

20 So, as we were at the hearing today at
21 first time, we would say, why do you want a special
22 exception for the walls?

23 And I just need you to tie it in, not so
24 much to the cost of demolishing and replacing the
25 walls, but what issues are associated with the

1 terrain that is causing the need or for the walls
2 not to be matter of right?

3 So, I mean it could be, you know, you know
4 what I mean? If you could just focus on the terrain
5 elements --

6 MR. TUMMONDS: Sure.

7 VICE CHAIR BLAKE: on a de novo basis --

8 MR. TUMMONDS: Right, well, and --

9 VICE CHAIR BLAKE: I think that'd be a lot
10 more --

11 MR. TUMMONDS: I hear what you're saying,
12 and as I look at 1402.1, the applicant must
13 demonstrate to the condition's relating the
14 building, comma, terrain, comma, or surrounding
15 area.

16 And I think maybe I'll start with that and
17 then, we can --

18 VICE CHAIR BLAKE: I think so --

19 (Simultaneous speaking.)

20 VICE CHAIR BLAKE: We've been through a lot
21 of English stuff today, yes, just --

22 MR. TUMMONDS: I hear you, I hear you.

23 (Simultaneous speaking.)

24 MR. TUMMONDS: Yes, yes, yes, yes.

25 So, we'll start and we'll kind of get

1 through our discussion here and then, we'll kind of
2 address these additional matters.

3 So, as you noted, the applicant is seeking
4 special exception approval from the height and
5 setback requirements for a portion of the retaining
6 walls that were constructed from the athletic fields
7 approved by the Board in Case Number 20643.

8 The applicant completed construction on the
9 athletic fields last summer and final inspections
10 revealed that approximately 13.3 percent of the
11 linear footage of the retaining walls exceeded 4
12 feet in height.

13 Much of the walls by a de minimis amount,
14 2.6 to 7.5 inches.

15 And we're, therefore, not in compliance
16 with Section -- Subtitle C1401.3.

17 The inspections also determined that
18 approximately 14.25 percent of the linear footage of
19 the retaining walls did not satisfy Subtitle
20 C1401.7, which requires tube retaining walls,
21 because the tube codes have an area between the
22 walls that has the width of at least twice the
23 height.

24 We believe that a written statement details
25 our satisfaction and special criteria for this

1 relief.

2 We are pleased to note that the Office of
3 Planning agrees and supports this special exception
4 request.

5 Perhaps more importantly, we are pleased to
6 note that the applicant and the party opponent to
7 the original application, the Friends of the Fields,
8 have entered into a community service agreement
9 regarding the retraining walls and the operations of
10 Maret's athletic facilities.

11 This agreement was entered in the record
12 yesterday.

13 I will ask Mr. Holloway to discuss the
14 negotiation of that Community services agreement in
15 a second, while I address your concern.

16 I would say that with regards to the fact
17 that the retaining walls are built it kind of makes
18 it -- it's like from this de novo aspect, it's
19 prohibitively costly now to fix the walls as they
20 exist.

21 So, I would say that the existing condition
22 we have, the building, which I would say these
23 retaining walls, the terrain in the surrounding
24 area, we have to kind of accept that as a fact of
25 what exists now. This is the condition that exists.

1 So, what is prohibitively costly in terms
2 of dollars, in terms of impact to the adjoining
3 neighbors on 28th Street, and the costs to losing
4 these athletic fields to the community, and to D.C.
5 public schools and for use for youth sports
6 organizations, what is prohibitively costly is to
7 fix these portions of the wall, as they exist now.
8 That is what is costly.

9 That is why I say so to kind of take the
10 information that we've previously talked about
11 prohibitive costs, we need to recognize that those
12 walls are there. Those walls exist now.

13 So, to remove 2.6 to 7.5 inches along the
14 28th Street, that is what we believe is
15 prohibitively costly.

16 That is how we are taking that notion of
17 what is probably costing to what exists there now,
18 that is the building, that is the terrain, that is
19 the surrounding area.

20 And so, it's I think it's a little tough to
21 say, if we are doing this de novo, that we need to
22 recognize, here are the facts as they exist now.

23 So, with that, maybe I'll let you think
24 about that and then I will now have Mr. Holloway
25 discuss the community services agreement and the

1 dialogue that occurred with the Friends of the
2 Field.

3 Mr. Holloway?

4 MR. HOLLOWAY: Yes, thank you, Mr.

5 Tummonds, and I apologize in advance if I have kids
6 that run into the screen, I'm home by myself with my
7 six-year-old and ten-year-old and they are occupied
8 for the moment, but that may change.

9 I also had a good morning but good evening,
10 members of the Board.

11 So, as Mr. Tummonds said, Trey Holloway,
12 associate head of school for finance and operations
13 at Maret School.

14 I've been involved with this case on
15 Maret's behalf since the beginning and have been
16 engaged with both the local ANC and Chevy Chase as
17 well as the neighbors.

18 Maret has been pleased to develop these
19 fields and, as Mr. Tummonds said, brought them
20 online last fall.

21 Since that time, we've been able to play
22 football games and soccer games for our students.

23 In the coming days, we will begin to have
24 baseball, lacrosse practices, and games in addition
25 to our own programming.

1 We've been able to rent the fields out to
2 several youth sports groups for youth soccer, girls
3 flag football.

4 And so, we think that's been a really great
5 thing.

6 And then lastly, the community has made
7 significant use of the field since its opening.

8 I, personally, and a person has seen
9 families taking advantage of the recreation space
10 with their children and I've done the same with my
11 own children.

12 So, we're really proud of all that's been
13 brought along by the field.

14 At the same time, we also understand and
15 recognize that the experience for some neighbors
16 surrounding the field hasn't always been great. And
17 because of that, the project has faced opposition
18 and faced it from the start, which led to some tough
19 times, particularly when it was discovered that
20 portions of the retaining walls were not in
21 compliance.

22 But as Mr. Tummonds reported, we have
23 reached an agreement with the opposition party,
24 Friends of the Field, to address the wall condition
25 so that we prepare before you today without any

1 opposition to our app.

2 I'll give you a little bit of information
3 about that.

4 There were a number of issues that Maret
5 and Friends of the Field discussed that were in
6 addition to the walls.

7 I wasn't sure, Chair Blake, if you would
8 remember our case from four years ago, but your
9 reaction before the break, let me know that you
10 clearly remembered the case. There were a lot of
11 issues before this Board and many of those, we
12 talked about with Friends of the Field.

13 So, not just the walls, we talked about
14 traffic, hours of use, further sound mitigate,
15 occupancy levels for the field, really digging into
16 those topics gave both sides an opportunity to focus
17 on how we can communicate with each other as
18 neighbors and work with each other.

19 We think that was really important in
20 particular, because when we were before the Board in
21 2022, Maret had a long term lease for the field.

22 Since that initial zoning hearing, Maret
23 has purchased the property, so we have designs on
24 being there for a long time.

25 And it's important for us and the neighbors

1 in the homes there to have spent this time working
2 out this agreement and nailing things down.

3 Now, of course, the largest issue at hand
4 for this case is the walls. We spent a lot of time
5 sorting through the walls, how we can mitigate the
6 impact of our error in building them for those
7 neighbors.

8 And I don't know, can we pull up the
9 additional planning plan exhibit that Maret
10 submitted?

11 Paul, is now an okay time to do that?

12 MR. TUMMONDS: Yes, that'd be great.

13 MR. HOLLOWAY: Okay, if we could pull that
14 up and I'll talk about that a little bit.

15 So, these are the retaining walls along the
16 east end of the field. You'll see a circle there
17 that's at the bottom, that is kind of southeast
18 portion of the field.

19 And then, these are the retaining walls
20 that we have there.

21 Ultimately, what we settled on is a series
22 of plantings that are designed to provide additional
23 privacy and screening for the neighbors from the
24 field so they can maximize the enjoyment of their
25 properties even while the field is in use.

1 So, these plantings occur in three separate
2 locations.

3 So, at the top side of the wall there -- of
4 the retaining walls, kind of like to the north
5 basically, the top of the drawing is the north.
6 There are additional plantings that will go there.

7 And then, kind of in the middle there are
8 plantings that are planted as you curve from the
9 north-south retaining walls, so kind of those east-
10 west retaining walls there, there are plantings in
11 the top row there.

12 And those plantings then are on the ground
13 level, and they hide and obscure some of the taller
14 walls as well as a bioretention wall that we've
15 built.

16 So, what that does is that softens the
17 walls, it softens the view for the neighbors so that
18 they don't see them as much. And it also provides
19 the privacy that they desire.

20 I think that it's really important,
21 obviously, that we reach the agreement both for the
22 neighbors privacy, but also we put this to agreement
23 together in a way that addresses those concerns but
24 also preserves all the good that I outlined in my
25 opening related to Maret's use of the field and the

1 ability for kids in the neighborhood to get outside
2 play.

3 I think lastly, the largest benefit of this
4 agreement and why we're really requesting, you know,
5 our application be approved is that it doesn't
6 require any additional construction.

7 Construction on the site was very, very,
8 very disruptive for neighbors that lived along the
9 site, and we all agree, both Maret and the
10 neighbors, that additional construction is not good
11 for anyone, and neither is disruption to use of the
12 field.

13 So, I think that's all the information that
14 I have tonight.

15 I'll hand it back to Mr. Tummonds.

16 MR. TUMMONDS: Thank you, Mr. Holloway.

17 I would just conclude to note, and I think
18 Yuri did address it, that ANC3 4G adopted a
19 resolution in support of this application as well.

20 We are not aware of any opposition to this
21 application.

22 With that, we conclude our presentation
23 and/or be able to answer any additional questions
24 that you may have.

25 VICE CHAIR BLAKE: Yes, I do, I want to go

1 back a little bit to my question.

2 Maybe you can help me with what caused the
3 retaining walls to be different than what we
4 thought? Why did they, you know, exceed in some
5 places, the -- what caused that?

6 MR. TUMMONDS: So, I will save Trey from
7 having to answer.

8 There's like -- it was not -- it was
9 obviously not by choice.

10 It doesn't do us any good to construct a
11 retaining wall that's 2.6 inches too tall.

12 And so, I can only say that the
13 construction in the field was not as dutiful to what
14 they should have been doing and paying attention to.

15 And we, obviously, then, had this situation that
16 was not to our to our benefits, not to anyone's
17 benefits, and we apologize for that.

18 VICE CHAIR BLAKE: Would the -- was the
19 construction easier?

20 I mean it probably has a nice line to it,
21 right?

22 So, I'm thinking that maybe it was easier
23 for the construction contractors to keep it looking
24 level and smooth as opposed to going up and down
25 every couple, you know, that would look really -- I

1 mean does it look nice and smooth is that is that
2 the presentation we get as a result of that?

3 Or is it -- no, it looks bumpy.

4 How does it look as a result of that? And
5 if it weren't that way, would it look different?

6 MR. HOLLOWAY: I can speak to that.

7 So, the walls, what they do in certain
8 areas, because of the grade change -- so, as you go
9 from kind of the southeast corner of the field to
10 the northeast corner of the field, the terrain goes
11 up, right? So, you start to increase elevation.

12 And so, what the walls do is they start to
13 terrace a bit going from that south to north.

14 And so, they do step up as you go up that
15 north side.

16 And so, there -- it's not just a smooth
17 line all the way across the east end of the field.
18 So, they do step up and there were errors in
19 calculations when those step ups were made on the
20 walls.

21 VICE CHAIR BLAKE: Okay.

22 Are there -- is anything underneath --
23 anything -- are there any drainage systems or
24 anything connected to the walls that would make it
25 particularly difficult to do that? To kind of

1 rework them a little bit?

2 Because sounds like you need to chop
3 something --you know, chop some of them up here,
4 there.

5 But is it -- are some other issues that
6 would be disrupted as a result of that?

7 MR. HOLLOWAY: So, there is a drainage
8 system that's close to the top tier of the walls.

9 There's also irrigation systems that run
10 that would have to be disrupted.

11 The way the walls are constructed, they are
12 a three level terrace.

13 And so, they're very specific structural
14 engineering calculations that were done by our
15 structural engineer to make sure that the walls kind
16 of support -- one level supports the next level,
17 supports the next.

18 And so, there was not good indication from
19 our structural engineer that reducing the height of
20 the walls would be something that is an acceptable
21 thing to do.

22 That is an option that we explored because
23 they -- the walls have capstones on them. Like,
24 well, golly, can we just like remove some of the
25 capstones?

1 We had extensive conversations with DOB
2 about what may be acceptable to them.

3 Ultimately, they felt that it was best that
4 we come in front of the Board here to make any sort
5 of modifications that may be needed if that was the
6 direction that we wanted to go.

7 And we ultimately decided, let's seek
8 relief from the wall height as opposed to making
9 changes to the walls and potentially harming their
10 structural integrity.

11 VICE CHAIR BLAKE: So, the spacing for the
12 walls as they cascade up, you said that was
13 determined by engineering reports that those were
14 right spaces, correct?

15 MR. HOLLOWAY: Yes.

16 VICE CHAIR BLAKE: Is that different? Are
17 those spacings that exist now consistent with those
18 engineering plans?

19 MR. HOLLOWAY: Yes.

20 Yes, we had third-party inspectors that
21 inspected to ensure everything was built according
22 to the engineered plans.

23 VICE CHAIR BLAKE: So, but --

24 MR. TUMMONDS: And so, Commissioner Blake,
25 the issue we then is, when we had a four foot wall,

1 they were supposed to be an 8-foot setback being
2 between the two.

3 So, when our -- we cut that same 8-foot
4 setback, but when our wall became more than 4 feet,
5 became 4 feet 2 inches, that setback needed to
6 increase by 2X the height.

7 So, the walls are in the same location
8 where they're supposed to be, but because they were
9 a little taller, they don't meet the twice the
10 width.

11 The width is be twice the height because we
12 anticipated the height would always be 4, not 4.26,
13 47.

14 VICE CHAIR BLAKE: Okay, okay, that makes
15 sense.

16 Is there, again, I'm going to ask you, is
17 there anything about that terrain that would account
18 for the added height in certain points and places?

19 MR. HOLLOWAY: So, yes, I do think so.

20 In particular, in one place where the walls
21 get the highest, there was a heritage tree that was
22 retained in place that required a specialized
23 cantilevered wall without a foundation. And so,
24 that wall had to be specially constructed in order
25 to not harm the structural root zone.

1 So, before, when we came before the Board,
2 there was still open question about that tree,
3 whether or not it needs to be retained. We were
4 still working with the civil engineers.

5 And by the time we got all the way to the
6 point where you're doing your final engineering,
7 which is what you start to do when you're going for
8 permits, some things had changed with those walls,
9 and then, they didn't get double checked to make
10 sure that they -- that we were meeting all the self-
11 certification requirements for the wall heights and
12 the setbacks.

13 VICE CHAIR BLAKE: Okay, okay.

14 Does anyone else on the board have any
15 questions about this?

16 COMMISSIONER WRIGHT: I don't have a
17 question per say, I will say, you know, I've looked
18 over your -- yes, I'm sort of always a glass half
19 full kind of person.

20 And I understand how these kinds of
21 mistakes happen during construction. It's very,
22 very hard sometimes to avoid them, but you've come
23 up with an agreement with the Friends of the Field
24 about community access and so forth that I think is
25 actually a fantastic agreement.

1 So, this unfortunate construction situation
2 has had the positive result of you all working with
3 Friends of the Field, I think to come up with a
4 community agreement that is actually a very good
5 thing.

6 So, you know, I mean I understand that's
7 not the zoning criteria and that, you know, we need
8 to review this, you know, in accord with the zoning.

9 But I did want to say, I think that, you
10 know, this has been in a roundabout way a good --
11 there's been a good result.

12 So, I'll just say that and we can move on.

13 VICE CHAIR BLAKE: I have another question.

14 What percentage of the issue it resulted
15 from that section that had heritage tree?

16 MR. HOLLOWAY: If I had to put my estimate
17 on it, I would say probably 50 to 60 percent.

18 VICE CHAIR BLAKE: Okay, that's good, okay.

19 Okay, and again, it's because, with the
20 height differential it needs to be spaced back two
21 times the height.

22 So, if you're a little bit over you got to
23 go up a little bit higher.

24 Would that change -- if you did do that,
25 would that change the effectiveness of the retaining

1 wall?

2 Let's just say we went and said this is too
3 high, so we're going to push to that. What would
4 you -- what would be the easiest thing to do to
5 lower the wall and those odds spots or increase or
6 move the wall back?

7 Seems like -- or you just, like you said,
8 maybe try to shave something off the top of it to
9 kind of move it down or something that that would be
10 an easy way to fix it, right?

11 MR. HOLLOWAY: I mean, yes, if forced to
12 pick one of those options, yes, saving. Because
13 pushing the wall back to create that additional
14 space in between the levels of walls, I don't think
15 would be possible.

16 VICE CHAIR BLAKE: And aesthetically, if
17 you did do the shaving, how would that look? Would
18 that look weird or would that look -- would it be --
19 would it have a material impact on how it looked?

20 MR. HOLLOWAY: It -- I mean it would,
21 because the walls come with capstones. And so, the
22 capstones themselves are 4 inches tall, so in some
23 places you take the capstone off and, sure, right
24 then, you've got the 2 inches that you need.

25 But in some places, taking the capstone off

1 wouldn't be enough.

2 And then, what starts to happen, too, is
3 you get those lower walls, you start to lose some of
4 your organic material there that's holding plants in
5 place that are already there and to cause issues in
6 terms of runoff and things that we think we've
7 addressed as it relates to organic material and
8 water run off on the site.

9 So, I think it would cascade into some
10 other issues beyond even aesthetics.

11 VICE CHAIR BLAKE: Okay, thank you very
12 much, I appreciate that.

13 Okay, let's see, does anyone else have any
14 questions for the applicant?

15 (No audible response.)

16 VICE CHAIR BLAKE: Okay, we're going to now
17 go to the Office of Planning.

18 MS. THOMAS: Yes, could you hear me? Okay?

19 VICE CHAIR BLAKE: Yes, we can.

20 MS. THOMAS: Yes, okay, yes.

21 Good evening, Mr. Chair, members of the
22 Board, Karen Thomas with the Office of Planning.

23 And we have concluded that the requested
24 relief is appropriate.

25 We believe that the field is already

1 operational and the modifications would not alter
2 the nature or intent of the original approval.

3 The areas of noncompliance are very limited
4 and occur along property lines adjacent to the
5 neighbors, some side yards, and do not adversely
6 affect neighboring properties as built.

7 I would emphasize that full reconstruction
8 to achieve exact compliance could create unnecessary
9 disruption to nearby residents while jeopardizing
10 scheduled community and school athletic use of the
11 field.

12 The -- we were pleased that the applicant
13 continued discussions with neighbors and the ANC to
14 finalize an agreement which also helped to address
15 this relief.

16 And so, overall, we are supporting approval
17 of the modification and special exception, finding
18 that the relief is consistent with the intent of the
19 zoning regulations.

20 And I'd also like to point out that the
21 District agencies, including DDOT, have no objection
22 to the application.

23 And with that I will rest on the record of
24 our report.

25 Thank you.

1 VICE CHAIR BLAKE: Thank you.

2 Any more -- any questions for the Office of
3 Planning?

4 MEMBER DRAKEFORD: Just a quick question
5 Chair Blake.

6 I just wanted to make sure, and I think
7 this is clear in the testimony, but just wanted to
8 make sure I heard it explicitly.

9 So, the DCOP, so, like the additional
10 landscaping provided in the community agreement
11 helps to outweigh the technical violations of the
12 height limits?

13 MS. THOMAS: I believe the additional
14 landscape and, as Mr. Holloway said, and additional
15 bioretention features to help run off and to provide
16 aesthetics to the neighborhood.

17 This case, just for a little background,
18 was very contentious with the Friends of the Field
19 and coming up with community agreements.

20 And like Commissioner Wright just
21 referenced, although it doesn't actually speak to,
22 you know, zoning relief per say, but interactions
23 with the community in this instance and coming
24 together again to form an agreement with the
25 community that helps both the community and Maret,

1 we believe that this is an acceptable solution.

2 MEMBER DRAKEFORD: Thank you.

3 VICE CHAIR BLAKE: Okay, thank you.

4 Okay, we'd like the -- well, do you have
5 any comment from the -- let's see the ANC?

6 (No audible response.)

7 VICE CHAIR BLAKE: Okay, ANC is not
8 present.

9 So yes, I'm sorry, Mr. Sherman, I
10 apologize, please.

11 (No audible response.)

12 VICE CHAIR BLAKE: You're on mute or
13 something, I can't hear you.

14 (No audible response.)

15 VICE CHAIR BLAKE: I can't hear you.

16 (No audible response.)

17 VICE CHAIR BLAKE: You're not on mute,
18 perhaps is your microphone down or something?

19 MR. YOUNG: So, there should be -- do you
20 see next to your mute button? There's a little down
21 arrow? If you click that and you can change which
22 microphone you're using. You might have the wrong
23 one selected.

24 MR. SHERMAN: Can you hear me now?

25 VICE CHAIR BLAKE: Yes.

1 MR. SHERMAN: Okay, thank you.

2 Yes, so, again, I'm Bruce Sherman. I am
3 the Commissioner for Single Member District 02 and
4 C34G, where the fields are located.

5 I live directly across the street from the
6 fields and I was, prior to becoming a Commissioner,
7 a member of Friends in the Field, as it happens, and
8 helped represent the Friends of the Field case back
9 in 2022.

10 I've been, therefore, familiar with this
11 case from its inception.

12 The ANC has submitted a resolution for the
13 record, which all of you, I hope, have seen. The
14 ANC endorses the community service agreement.

15 We also support the recommendation to have
16 the fields be approved as built.

17 We only have one request, which is a rather
18 unusual circumstance in the memorandum of
19 understanding that the ANC previously executed with
20 Maret, it contained a provision that could only be
21 altered or amended by order of the BZA.

22 So, what we would like to ask that the BZA
23 do is vacate that MOU so that the new community
24 service agreement takes its place in full and that
25 becomes the way forward for the operations of these

1 fields.

2 Other than that, we have no further
3 comment, and we all are very pleased that the
4 parties have come to agree.

5 VICE CHAIR BLAKE: Okay. Mr. Sherman, I
6 have a question for you, question.

7 The BZA is not a party to that agreement.
8 But you're saying there's a provision in the
9 agreement that stipulates the BZA is required to
10 approve?

11 MR. SHERMAN: I will read it to you
12 verbatim. It's in Section 7 of the MOU.

13 It says it may, meaning the MOU, it may not
14 be altered or amended except by a BZA order.

15 Now, as to why that was inserted, I was not
16 part of the ANC at the time. I was not a
17 Commissioner, I don't know.

18 But it does create a bit of confusion if it
19 cannot be altered or amended, except by the order.

20 And yet there's a new community service
21 agreement that is taking its place.

22 So, there simply needs to be something
23 established in the record that the BZA poses no
24 objection to the CSA taking place, taking, in fact,
25 taking the place of the old MOU.

1 MR. AXELROD: And Mr. Blake, I may have to
2 provide some --

3 VICE CHAIR BLAKE: Can the -- well, can the
4 MOU be altered by mutual consent or it has to be --
5 the BZA can't -- is not -- can't do that.

6 So, I'm trying to think about what
7 alternatives we could have. I mean we have a new
8 order in place, so if you can do that by mutual
9 consent, we could certainly reference the new
10 agreement with the -- just as this one was
11 referenced, we could reference that and, you know,
12 to replace that understanding.

13 That would affect -- that might do that.
14 But I don't -- I -- that's the way we -- I don't
15 think we could not -- we're not parties to that
16 agreement, we really couldn't vote on or --

17 MR. SHERMAN: No, I understand, I
18 understand.

19 And again, I'm not clear as to why it was
20 entered into that agreement in the first place. But
21 if you could do that, my sense is, just a common
22 sense understanding, that would suffice.

23 VICE CHAIR BLAKE: Okay.

24 Well, let me just check and see how that
25 was referenced, I'm sure it was referenced. So,

1 we'll -- yes, we -- I'm sure it was referenced and
2 we could -- I'm going to see if I can reach out to
3 legal maybe we could see how that was referenced in
4 the prior agreement and how we can work through
5 that.

6 MR. SHERMAN: May I add one thing which is
7 that while this agreement, the new community service
8 agreement was executed between Maret and Friends of
9 the Field, it has broader implications for the
10 community at large.

11 Because the agreement now does establish
12 hours of operation and community use and a number of
13 provisions that benefit, not just the adjacent
14 neighbors, and again, I'm one of those neighbors, I
15 live right across the street from the field, but as
16 the ANC Commissioner for this district, representing
17 about 2,200 residents, many of them have reached out
18 to me concerning how they would be impacted by this
19 agreement.

20 And we have assured them that this
21 agreement will benefit the entire community, not
22 just Friends of the Field, although, of course, it's
23 been critically important for Friends of the Field
24 to get, also, its satisfaction relief by way of the
25 agreement.

1 I just wanted to add that.

2 VICE CHAIR BLAKE: Okay, thank you.

3 Does any other of the Board members have
4 any question for the ANC?

5 MEMBER DRAKEFORD: No.

6 VICE CHAIR BLAKE: Okay, okay.

7 Now we'd like to hear from Mr. Axelrod,
8 Friends of Field.

9 MR. AXELROD: We started as a party in
10 opposition. We decided we could gain more for the
11 community by negotiating the community service
12 agreement than by litigating.

13 And, as you know, we litigated in 2023 and
14 2024 and lost.

15 So, we've come to the conclusion that
16 negotiating a community service agreement was the
17 proper approach.

18 And we concluded that last Friday and got
19 the signatures on Monday and filed the agreement
20 Monday night.

21 So, we're very pleased and as part of that
22 agreement, we consent to the application that Maret
23 filed.

24 VICE CHAIR BLAKE: Okay.

25 And just to be clear, the new agreement

1 replaces the old agreement that exists with the ANC,
2 right? It replaces --

3 MR. AXELROD: That was the hope.

4 VICE CHAIR BLAKE: Go ahead.

5 MR. AXELROD: That was the hope by the
6 Friends of the Field and Maret.

7 But of course, Friends of the Field were
8 not party to the initial MOU.

9 VICE CHAIR BLAKE: Okay.

10 So now, you are a party to that, so all --
11 the new agreement has Maret, Friends of the Field
12 and the ANC, all three as parties?

13 MR. TUMMONDS: No, to be clear, it's -- the
14 agreement is executed between Friends of the Field
15 and Maret.

16 VICE CHAIR BLAKE: Okay.

17 MR. TUMMONDS: The ANC is referenced is
18 referenced and the agreement, insofar as the ANC
19 will, as previously contemplated in the MOU, the ANC
20 will receive periodic reports from Maret concerning
21 operations of the fields, but not -- it's not party
22 to the agreement.

23 This is between two private parties.

24 And while we have very experienced lawyers
25 on this call, let me just add something that I think

1 is critical here.

2 Subsequent to the execution of the MOU, the
3 ANC asked the Office of the Attorney General for a
4 ruling on an ANC's ability to enter into legally
5 binding agreements.

6 And the OAG came back and said, that as a
7 merely advisory body, ANCs, except in very unusual
8 circumstances, which I won't dilate in on those
9 particular exceptions, could not enforce -- legally
10 enforce an agreement.

11 Which meant that, for all intents and
12 purposes, it was a handshake agreement that it
13 turned out as an MOU and it served its purposes.

14 But here, between two private parties, they
15 have implemented, and Mr. Axelrod could speak to
16 this and so can Mr. Holloway, arbitration/mediation
17 provisions and even legal recourse, if need be, to
18 implement the terms of the agreement which the ANC
19 could not do, it that's clear.

20 VICE CHAIR BLAKE: I do understand, that's
21 what I thought. Thank you for clarifying that.

22 MR. AXELROD: In my view, the enforcement
23 provisions are the main advantage in addition to the
24 advances we made on behalf of the community.

25 But getting an enforceable agreement, which

1 the MOU was not, is very important.

2 VICE CHAIR BLAKE: Excellent, okay.

3 Okay does anyone else have any questions
4 for Friends of Field?

5 (No audible response.)

6 VICE CHAIR BLAKE: Okay, Thank you very
7 much.

8 Okay, let's see, do we have -- does anyone
9 have any questions for anybody?

10 (No audible response.)

11 VICE CHAIR BLAKE: Okay.

12 So, Mr. Tummonds, you have any closing
13 remarks?

14 MR. TUMMONDS: I do not.

15 I appreciate your time, I know it's been a
16 very long day. You still have a number of cases to
17 go and we appreciate that and we conclude our
18 presentation.

19 VICE CHAIR BLAKE: Thank you, thank you
20 very much.

21 Okay, I'm going to close the hearing and
22 the record and then dismiss the witnesses.

23 You all have a wonderful evening.

24 We'll be here.

25 MR. TUMMONDS: Thank you.

1 MR. AXELROD: Thank you, appreciate it.

2 VICE CHAIR BLAKE: Okay, let's see, okay,
3 I'm going to kick this off, there's some things I
4 want to make sure I cover. Just give me two
5 seconds.

6 Okay, all right, so I'm going to start this
7 off. I do believe the appropriate approach to this
8 is to look at it from a de novo basis, particularly
9 as we look at the compliance with C 1402.1.

10 In this case, again, the applicant must
11 demonstrate that conditions leading to the building
12 terrain or surrounding area would make full
13 compliance unduly restrictive, prohibitively costly,
14 or unreasonable.

15 And hearing the testimony today, I walked
16 away with a couple of things.

17 First of all, I do believe the terrain did
18 contribute to this, particularly with regard to the
19 50 or 60 percent of it that relates to the heritage
20 tree that was removed.

21 I believe that the result of that and the
22 implications would have led to a prohibitive cost
23 and it is unreasonable.

24 I think it would be ugly to kind of have to
25 shave it off like that and all that kind of stuff.

1 And I think that it would -- I think it's
2 unreasonable.

3 So, I attribute it to, yes, the terrain.

4 I would contribute it to the cost and to
5 the fact that it is unreasonable.

6 We talked to -- yes, because, yes -- so
7 that's where I am on that.

8 I do believe also, if we do link this to X-
9 104, I think that it is a -- there's nothing -- when
10 we're looking at, we're looking at the incremental
11 difference in the retaining walls for those two
12 areas for that amount.

13 And we then look at -- if we look at it
14 from X-104, you've got to think about it, does that
15 have an impact on, you know, noise or anything like
16 that, noise, aesthetics, that impact the
17 environment, things that you would looked at 104 --
18 X-104.

19 So, I do not -- I think that incremental
20 difference will have absolutely no impact
21 whatsoever.

22 So, considering that I do believe the
23 applicant has met the burden of proof to be granted
24 to request of relief, and I will be voting in
25 support.

1 As it relates to this agreement, I do think
2 I'm comfortable replacing in reference the new MOU,
3 which is in -- I'm not sure which exhibit is in the
4 report, but it is in our records, with that report
5 in acknowledging the discontinuation of the -- it's
6 replacing the other agreement that was referenced
7 and the other one no longer be referenced.

8 Commissioner?

9 COMMISSIONER WRIGHT: I agree with
10 everything you've said.

11 It really strikes me that the ways that the
12 as built differs from the approved are relatively
13 minimal. I mean, I think if it had been a foot
14 higher than had been approved or, you know, much
15 less distance between two retaining walls than was
16 required, if those had been the kinds of things we
17 were dealing with, I would have a completely
18 different perspective on this.

19 But I think that the changes are relatively
20 minor. And as I said, you know, something good has
21 come out of this, which is this new CSA.

22 And I fully agree with the idea, I guess it
23 would be through our order that the CSA is
24 referenced as the document that is -- that applies
25 and takes the place of the old MOU.

1 So, you know the right language to do that,
2 I'm sure it can be worked out by our attorneys.

3 But the idea is that we embrace the new CSA
4 in our order, so I'm fine with all of that.

5 VICE CHAIR BLAKE: Okay.

6 Board Member Drakeford?

7 MEMBER DRAKEFORD: Yes, I would also agree
8 with both the comments of you, Chair Blake, and then
9 also Commissioner Wright, really noting that the
10 existing terrain and geological features,
11 particularly that heritage tree has, you know,
12 impacted some of the changes from what was proposed
13 versus what was actually constructed.

14 And also noting that the -- as what came up
15 is that if there were any type of attempt to reduce
16 the existing height, right, that would have some
17 adverse impacts to the overall storm water runoff,
18 and not just the physical design, but also to the
19 overall purpose and structural integrity.

20 I also do appreciate the fact that it seems
21 that all parties have come together to develop a new
22 Community service agreement that seems to support
23 and benefit multiple parties, all parties, I'll say
24 multiple parties. And that's something that, of
25 course, I'm very excited, very excited to see that

1 that was able to work out in that way.

2 So, with that, I would definitely support a
3 vote in support of the application.

4 VICE CHAIR BLAKE: Okay, great, thank you.

5 And so, one thing I forgot to mention with
6 regard to -- I do give great weight to the
7 recommendation of the Office of Planning.

8 However, and I acknowledge the analysis
9 that they did, however, I do believe the Office of
10 Planning's analysis did not appropriately focus on
11 the de novo standard.

12 And I believe that that is the appropriate
13 -- the Board has typically used that as the standard
14 for the analysis.

15 So again, for the reasons that we stated, I
16 do -- I think the Office of Planning also focused on
17 the cost of construction, demolition and
18 construction, and I do disagree because that is
19 inconsistent with that approach.

20 But I do believe, nonetheless, the standard
21 has been met for both areas of relief.

22 And I'll acknowledge that just for the
23 record, the applicant -- I expect the applicant to
24 submit a remodified self-cert with X-104, but we do
25 acknowledge the verbal commitment to do that at this

1 point.

2 So, with that, I'm going to make a motion
3 to approve the application as captioned -- and
4 written and captioned by the Secretary, referencing
5 the new agreements between the Friends of the Field
6 and Maret, the applicant, in acknowledging that the
7 other one has been removed or what-- however you do
8 it -- we'll let legal make that last part of it --
9 and ask for a second.

10 Board Member Drakeford?

11 MEMBER DRAKEFORD: I second.

12 VICE CHAIR BLAKE: Okay, the motion is made
13 and seconded.

14 Madam Secretary, would you please take a
15 roll call vote.

16 MS. MEHLERT: Sure.

17 Just to clarify, your approval includes a
18 special exception under X1 -- Subtitle X-104, as
19 discussed previously as well?

20 VICE CHAIR BLAKE: Yes.

21 MS. MEHLERT: Okay, because that was not
22 included in the caption, so, I just wanted to
23 clarify.

24 VICE CHAIR BLAKE: I'm sorry, yes, and
25 include -- to include that, yes, I'm sorry.

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

3 Chairman Blake?

4 VICE CHAIR BLAKE: Yes.

5 MS. MEHLERT: Board Member Drakeford?

6 MEMBER DRAKEFORD: Yes.

7 MS. MEHLERT? And, Commissioner Wright?

8 COMMISSIONER WRIGHT: Yes.

9 MS. MEHLERT: Staff would record the vote
10 as three to zero to two to approve Application
11 Number 20643-B on the motion made by Chairman Blake
12 and seconded by Board Member Drakeford.

13 VICE CHAIR BLAKE: Okay, excellent.

14 Could you please call our next application?

15 MS. MEHLERT: Next is Application Number
16 21400 of Aidan Montessori School, as amended.

17 This is a self-certified application
18 pursuant to Subtitle X-1002 for an area variance
19 from the lot occupancy requirements of Subtitle D,
20 Section 210.1 and under Subtitle X, Section 901.2
21 for a special exception under Subtitle U, Section 2
22 of 3.1M to allow expansion of an existing private
23 school use.

24 This is for a two-story front addition to
25 an existing four-story building for use as a private

1 school.

2 It's located in the R-3 zone at 2700 27th
3 Street, Northwest for 2109, Lot 92.

4 This hearing was originally scheduled for
5 February 11th and postponed by the Board so the
6 applicant could revise the requested relief.

7 And I will also note that the applicant
8 just submitted an email from the Zoning
9 Administrator that they would like added to the
10 record, is not in the record yet.

11 VICE CHAIR BLAKE: Okay, all right.

12 Is everyone -- let's see would the
13 applicant please introduce yourselves for the
14 record?

15 MS. MOLDENHAUER: Good evening, Chairman
16 Blake, members of the Board.

17 My name is Meridith Moldenhauer on behalf
18 of Cozen O'Conner, here on behalf the applicant and
19 I have with me three members to introduce
20 themselves, please, that will be witnesses.

21 VICE CHAIR BLAKE: Would you please
22 introduce yourselves?

23 MS. RUE: My Name is Jamie Rue. I'm Jamie
24 Rue. I'm head of school at Aidan Montessori school.

25 VICE CHAIR BLAKE: Okay.

1 MR. ODUROE: I am John Oduroe, sorry,
2 architect with Big Tent Design Studio.

3 Thanks.

4 VICE CHAIR BLAKE: Okay.

5 MR. KATINAS: And I'm Phillip Katinas. I'm
6 the Chief Operations Officer at the school.

7 VICE CHAIR BLAKE: Excellent, okay.

8 Let's see, is there anybody here from the
9 ANC? Just give me a second to see. No, I think
10 we're good.

11 Okay, everyone's here. All right, great.

12 All right, first thing I want to do is
13 admit that document from the office -- from the
14 Zoning Administrator to the record. I want to see
15 what it says and perhaps this moment, however, you
16 can tell me, so I don't have to go pull it up right
17 now.

18 MS. MOLDENHAUER: So, the Board, at the
19 last hearing believed there was a potential that we
20 needed special exception release.

21 We obviously did modify our application,
22 out of an abundance of caution, but did also engage
23 with the Zoning Administrator.

24 And the Zoning Administrator, just
25 literally, like an hour ago, emailed back, which is

1 why we apologize for the late filing, but we have
2 just received it.

3 And did confirm that the special exception
4 relief is vested and has not expired and that, given
5 the fact that this is a very old order and does not
6 have a square footage or a reference to plan, that
7 those conditions are not prerequisite and,
8 therefore, the special exception is still valid and
9 might be, obviously, different in other projects in
10 other cases.

11 But given that there is no GFA or square
12 footage noted as a condition here, that the special
13 exception would not be needed.

14 VICE CHAIR BLAKE: Okay, well, that's good.
15 But you have made the adjustment in your
16 self-cert.

17 MS. MOLDENHAUER: We have.

18 VICE CHAIR BLAKE: And we're going to leave
19 it there as out of an abundance of caution, because
20 I don't necessarily agree with what the office --
21 the zoning -- what the ZA said in this particular
22 instance.

23 But it will be fine one way or the other.
24 I think it will be. We can work through unless --

25 MS. MOLDENHAUER: We can proceed,

1 obviously, we are fine with that. We can proceed to
2 the --

3 VICE CHAIR BLAKE: Proceed as is.

4 MS. MOLDENHAUER: So, Mr. Young can pull up
5 the presentation.

6 VICE CHAIR BLAKE: Just a second.

7 Vice Chair Miller, do you have a comment?

8 COMMISSIONER MILLER: No, no, I think we
9 should proceed and just -- yes, I think we should
10 proceed with the special exception. Just I haven't
11 read the recent submission, I'll look at that, but I
12 think we should proceed.

13 VICE CHAIR BLAKE: Absolutely.

14 Okay, well, it's already in play, so, we're
15 going to proceed.

16 So, and I do believe that, as I said, the
17 Board has interpreted it that way, so that might be
18 a question, but for now, we don't need to even go
19 that direction.

20 So, Ms. Moldenhauer, if you can continue
21 with your presentation?

22 MS. MOLDENHAUER: Absolutely, thank you,
23 Chair Blake. So, if we can bring up our PowerPoint
24 presentation, we'll go through this.

25 So, we are here today for Aidan Montessori

1 School. Next slide, please.

2 We've already introduced everybody, Ms.
3 Rue, Mr. Katinas, and John, architecture team.

4 Next slide. The site is located in the R-3
5 zone.

6 As you can see, it takes up the entire left
7 hand corner of the site and is located on 27th
8 Street and Woodley, and then is also surrounded by
9 two rear alleys and, thus, is an island per se as it
10 exists in the R-3 zone.

11 Next slide.

12 Here is an image just kind of showing the
13 aerial images of some of these surrounding area.

14 Obviously, given that it's kind of dead end
15 into the Woodley Road there with some larger
16 structures.

17 Next slide.

18 I'm going to turn it over now to Ms. Rue to
19 walk through a little bit of the history on the
20 school and provide you with a little bit of
21 background and context.

22 MS. RUE: Good evening, everyone.

23 So, just a little bit about Aidan, you
24 know, we are -- we were founded in 1961 and have an
25 international reputation in the Montessori world.

1 We moved to Woodley Park in 1995 and we're
2 very happy in our neighborhood. We're very -- we
3 really appreciating the -- appreciate being part of
4 such a strong community and a lot of our families
5 come from the community.

6 Next slide.

7 Just a little picture of what goes on
8 inside.

9 I know you've seen us around the
10 neighborhood, but, you know, our mission is to
11 really help our children become, you know, socially
12 responsible citizens of the world.

13 And having a facility that is inclusive and
14 promotes belonging is really important to us.

15 So, we're grateful to be here to live into
16 our mission and to continue to be strong neighbors
17 in the Woodley Park neighborhood.

18 We can go next slide.

19 MR. ODUROE: Okay, so I'm going to take it
20 from here and just walk you through our scheme a
21 little bit.

22 This slide shows the school, which, as you
23 can see, sits on a relatively compact site.

24 There are play spaces to the south and to
25 the east and, for context, north is faced to your

1 right.

2 The east facing facade, which is this long
3 facade along the kind of green playground area here,
4 is actually a multi-story window wall that brings
5 light and fresh air into classrooms. It's critical
6 that these windows remain unobstructed and in future
7 work.

8 On the right hand side, you can see a
9 monumental stair that provides access to the schools
10 made entrance.

11 As things stand, anyone with mobility
12 challenges so, wheelchair users, parents with
13 strollers, they're actually forced to enter the
14 building through the cellar level, which is the red
15 arrow on the left, then go through active
16 classrooms, find their way to the elevator, and take
17 the elevator up to access the rest of the building.

18 As it stands, the main entrances at the top
19 of the monumental stairs, so of course, it's a
20 challenge to access it.

21 Next slide, please.

22 So, we have a few images showing the
23 monumental stairs I just described from a couple of
24 angles, one from directly across 27th Street.

25 The image on the right shows what you see

1 of you're looking south down 27th Street.

2 In addition to the accessibility issues I
3 just described, these stairs also create real
4 challenges for the young children who use the
5 school.

6 It's not difficult to imagine how a small
7 child with small legs and a massive backpack may
8 have trouble navigating up and down these stairs
9 during drop offs and pick.

10 You'll also notice on the right that the
11 stairs project into the 27th Street right of way,
12 creating kind of an obstructed view around the
13 perimeter of the school, making it difficult for
14 staff to monitor what's happening along the school's
15 edge.

16 All these factors contribute to a more
17 complicated, more drawn out pick up and drop off
18 sequences.

19 And our proposal attempts to address these
20 challenges by creating a completely new entrance
21 that's safe and accessible to all students and
22 visitors.

23 Next slide, please.

24 Our plan starts by removing the monumental
25 stair and a raised kind of platform next to it on

1 the right hand corner of the building bottom right.

2 In its place, we will be creating a new
3 accessible entry plaza that will be flushed with
4 sidewalk grade. This new upper plaza is the start
5 of a fully accessible arrival sequence that aims to
6 welcome everyone through the same front door and the
7 same entrance, now located at the cellar level.

8 Next slide, please.

9 Here we can see in a little bit more detail
10 that a visitor coming down 27th Street would again
11 cross through the flush access into the upper plaza.

12 From here, they could take these steps down
13 to the new entry, or they can take this accessible
14 ADA rail all the way down to this new hard scaped
15 area.

16 Again, this brings all visitors to the same
17 entrance to enter the building with the same
18 experience.

19 These two plazas, this upper area and the
20 lower area, also contain outdoor seating, which
21 provides students, families, and staff members with
22 safe areas for gathering, for waiting for pickups,
23 you know, for general recreating, but all within the
24 property lines of the school, not in the 27th Street
25 right of way.

1 Next slide, please.

2 Here's a view of what that entrance may
3 look like with the canopy above to protect from the
4 rain.

5 On the right, you can see the bleacher
6 seating that, again, one of the options for waiting
7 for pickups.

8 Next slide, please.

9 And here, we show two renderings that show
10 what the completed project may look like.

11 With the stair, the patio removed, we're
12 able to add a modest two-story addition at the front
13 of the building. The addition will allow the school
14 to modernize the building, bringing the 60-year-old
15 structure up to current standards for an educational
16 facility.

17 Like the new entry sequence, most of these
18 modernization improvements will focus on
19 accessibility, for example, ADA compliant bathrooms
20 will be added throughout the building and in most
21 classrooms, big upgrade from where they are today.

22 Next slide.

23 Here's a mapping comparison looking at the
24 existing building on the left and our proposed
25 design on the right.

1 On the left, you can see the current raised
2 patio area from the bottom right corner of the image
3 next to the monumental stairs. You can see the kind
4 of wall and the massiveness that they create along
5 the 27th Street right of way.

6 Posts to the proposed scheme on the right,
7 that's more compact. That's more kind of pushed in
8 towards the interior of the site. Even the wall
9 along the alley is a little bit lower height which
10 is going to improve kind of traveling around this
11 intersection through the alley onto 27th Street.

12 Next slide, please.

13 This is an aerial comparison, makes the
14 transformation, you know, quite obvious.

15 Again, we're removing kind of massive walls
16 and the massive stairs, simplifying the connection
17 between the school and the streets.

18 You could see how this design creates a
19 much more inviting relationship between the school
20 and the street, rather than having a barrier as the
21 entrance.

22 At this point, I'll hand things back to
23 Meridith to talk through the specifics of the zoning
24 relief we're requesting. Thank you.

25 MS. MOLDENHAUER: Thank you so much.

1 Next slide. So, we are here asking for
2 variance relief. The variance relief is to increase
3 the lot occupancy.

4 The project is increasing the lot occupancy
5 from 44 percent to 47 percent which is 7 percent
6 deviation. The project is already 4 percent over
7 the existing lot occupancy.

8 The project complies with all other zoning
9 requirements.

10 Next slide. We believe that we satisfy the
11 three problem variance test, one, because the
12 property is affected by a confluence of factors that
13 qualifies for an exceptional condition.

14 One, the age of the property was
15 constructed in 1964 and requires modernization to
16 meet the current accessibility standards.

17 Two, the unique factors that the property
18 is surrounded by alleys on all sides as well as two
19 streets, not allowing for any additional
20 modernization or expansion to occur in the rear on
21 the side of the property.

22 In addition to that, the existing staircase
23 was original to the building and creates the
24 challenge for the modernization.

25 Next slide. The requested variance relief

1 would not create a practical difficulty if
2 compliance with the zoning requirements were
3 necessary.

4 The property is already over lot occupancy
5 and the property does have an existing building
6 restriction line which creates restraints on the
7 property.

8 Given that, the ability to turn the space
9 into an accessible structure, whereas, with working
10 within the existing footprint would be too
11 challenging and the inability to find any additional
12 expansions either into the front to the building
13 restriction line or into the rear given the alley
14 and the additional restrictions.

15 Next slide. The relief, however, if
16 granted, would not cause substantial detriment to
17 the public good. The scope is obviously within, was
18 not as limited to just simply this addition.

19 There would be no increases to the
20 enrollment, no increases to the intensity of the use
21 or the traffic to the site.

22 We believe the actual improvements will
23 improve accessibility, they will improve the
24 opportunity for drop off and pickup.

25 As we've indicated, we've already heard

1 testimony that removing the monumental stair and
2 providing an easier access for young children will
3 improve that.

4 The project has also gone through HPRB
5 review and received a design review on November
6 20th, 2025.

7 We also have Office of Planning support for
8 the variance and the special exception relief at
9 Exhibit 24, DDOT relief at Exhibit 26, and ANC
10 relief -- ANC support at Exhibit 15 that was a 7 to
11 0 vote.

12 Next slide. We have also modified the
13 application per the Board's request to request
14 special exception relief -- special exception relief
15 for the use and includes conditions under U 203.1M
16 as to any impact on noise, traffic, for students,
17 but confirm that there's ample parking and addition
18 parking that is required.

19 Next slide. So, you can see here that
20 under the special exception relief, you would be
21 harmonious with the zoning intent R-3 zone, it
22 expressly permits private schools by special
23 exception.

24 That property isn't operated as schools in
25 1964 and subject to a 1963 BZA relief, which was

1 confirmed by the Zoning Administrator 1994.

2 The addition does not alter the character
3 or increase the maximum permitted enrollment and
4 does generate actually an added benefit from the
5 traffic and would not have any adverse noise
6 impacts.

7 There's no adverse effect on the neighbors.
8 The physical scope is modest, it's a small addition.

9 The consent is obviously to keep a maximum
10 of 180 enrollment cap, although the BZA order, Order
11 Number 7184, permits a 240 student maximum
12 enrollment.

13 Aidan is willing to accept a binding
14 enrollment cap of 180 pursuant to an agreement with
15 the ANC a number of years ago. The ANC, as I did
16 note, did vote unanimously to support this
17 application.

18 And there would be no adverse impact to
19 noise, traffic or parking.

20 With that, we would conclude our
21 presentation, and I would also be happy to answer
22 any questions.

23 VICE CHAIR BLAKE: Okay, does anyone from
24 the Board have a question for the applicant?

25 Vice Chair?

1 COMMISSIONER MILLER: Thank you, the
2 Montessori team, for your application and
3 presentation at this late hour.

4 So, the existing -- I just -- while you
5 were talking, I had an opportunity to reheat the
6 Zoning Administrator submission that was submitted
7 today into the record. But we're going through this
8 process.

9 The previous 1963 pre-Home Rule BZA order
10 approving this use had a 240 and you're willing to
11 do 180.

12 So, I think we need to do something to add
13 to the 180 as the cap that you're willing to do
14 because you're only at 147 now, as I understand it.

15 So, do you have any comment on that? I
16 just -- I'm not sure I understand the total
17 implications of the -- where this fits in with the
18 special exception. I guess it's fixed in with the
19 special exception, so that's why I think I wanted
20 the special exception proceeding to continue,
21 because you were willing to do the 180 which you
22 agreed to with ANC 3C, which unanimously supports
23 the current application.

24 (Simultaneous speaking.)

25 MS. MOLDENHAUER: And we would be fine,

1 obviously, and we had a hearing earlier today --
2 never great to ask for relief if you don't need
3 relief, right?

4 And so, but, you know, I think at the end
5 of the day if we are asking for the special
6 exception relief in order to put a revised condition
7 on that special exception relief, we are 100 percent
8 agreement, which is why my email this evening said
9 to take the appropriate next steps. I did, in my
10 email to you this evening, I did not email you
11 saying and ask for a withdrawal of the special
12 exception I wanted to engage --

13 COMMISSIONER MILLER: I noticed that
14 phraseology.

15 MS. MOLDENHAUER: Yes. So, I agree that,
16 obviously, Aidan Montessori very truly wants to
17 honor its agreement, to tap it at a max of 180.

18 And so, we are here tonight and willing to
19 move forward with the special exception and the
20 variance application to include that.

21 COMMISSIONER MILLER: Okay, thank you for
22 that response. I'm familiar with the Montessori
23 school. My kids didn't go there, but I know
24 families that have sent their kids there and have
25 been very happy with their interaction there and the

1 neighbors who have supported it.

2 So, I'll look forward to hearing what --
3 and I know we have neighbors both in support and in
4 opposition that they're in the record.

5 Anyway, thank you.

6 MS. MOLDENHAUER: Mr. Blake, I think you're
7 on mute sir.

8 VICE CHAIR BLAKE: I see that, yes.

9 Any more questions for the applicant? If
10 not, we're going to go to the Office of Planning.

11 MS. MYERS: Good evening, Crystal Myers
12 with the Office of Planning.

13 The Office of Planning is in support of
14 both the area variance and the special exception
15 release. We issued a supplemental report about the
16 special exception related and we already had the
17 area variance in the record, our report for that.

18 We can stand on the record of the staff
19 report for both of our staff reports. Of course,
20 here for questions. Thank you.

21 VICE CHAIR BLAKE: Thank you. Any
22 questions for the Office of Planning?

23 Okay, Ms. Drakeford, you look like you
24 might want to say -

25 MS. MOLDENHAUER: Sorry, yes, the applicant

1 has no questions. Thank you for working with us.

2 VICE CHAIR BLAKE: Okay.

3 MEMBER DRAKEFORD: No, I don't have any
4 questions.

5 VICE CHAIR BLAKE: Okay, okay, thank you.

6 And Ms. Moldenhauer, would you please give
7 us your closing remarks?

8 MS. MOLDENHAUER: No closing remarks, thank
9 you.

10 VICE CHAIR BLAKE: Oh, wait, wait, wait --
11 I forgot, is there anyone here who wishes to
12 testify?

13 MR. YOUNG: Yes, we have two witnesses.

14 VICE CHAIR BLAKE: Okay.

15 Would you please admit them?

16 Ms. Jessup, as a member of the public, you
17 have three minutes to provide your testimony.

18 If you'd please leave it to your most
19 significant points, we appreciate it.

20 Please begin with your name and address.

21 MS. JESSUP: Good evening, my name is
22 Jennifer Jessup. My address is 2712 27th Street
23 which is immediately next to Aidan Montessori.

24 VICE CHAIR BLAKE: Okay, please begin with
25 your testimony, you've got three minutes.

1 MS. JESSUP: Thank you.

2 As I stated, I live immediately next door
3 to Aidan Montessori, only the alley is between us.

4 In almost every photo of the school you see
5 our house in the exhibits that were presented.

6 If you turn to Exhibit 2, page 30 to the
7 photo there as I speak and I explain the unique
8 situation of being next to the school.

9 To be clear, I absolutely support the
10 school. We love you all there, Aidan Montessori.
11 We love the living next to you. We say hi to John
12 every morning on the street.

13 The street's a bit chaotic at times, but we
14 have been able to manage through the unique
15 challenges up until now.

16 We definitely support the intent of the
17 construction to comply with modern accessibility
18 standards.

19 However, we do not agree with the placement
20 or the necessity of three full floors in a bump out.

21 There are several adverse impacts to our
22 family, who is immediately next door, excessively
23 undue impact on light, air, and privacy.

24 I am definitely concerned about the light,
25 artificial light coming into our property from the

1 new structure and shadows, natural light being
2 reduced, that the bump out will have on my property.

3 And the compatibility of the design and the
4 current neighborhood aesthetic, while it complies
5 with the new building of Carmel across the street,
6 it doesn't conform with the rest of the buildings on
7 our street.

8 Unlike the other houses on our street,
9 which are all in the warm and style, ours is
10 definitely unique.

11 We have three floors of bay windows that
12 are in the front, but most importantly, I'm
13 concerned that the bump out of those -- of the
14 windows -- the bump out, with its windows, will
15 allow the students there at the Montessori and staff
16 within the building to be able to look into the
17 interior of our property and interfere with our
18 privacy.

19 Additionally, even if the windows facing us
20 would be removed, we would be -- we would experience
21 visual intrusion.

22 Now, as we look out our windows to the
23 front of our house, we're going to be seeing a brick
24 wall due to the property at an angle from where we
25 are adjacent to Aidan.

1 So, this is -- the full intent of the
2 building restriction line, if you look up and down
3 our street, all the properties are in a row.

4 And so the bump out would be outside of
5 that line and that's where we would immediately see
6 the wall outside of our building.

7 So, it definitely would, in our view, would
8 be practically absurd. I've heard that phrase used
9 as I've listened to all of the hearings today.

10 If this addition is built where it's
11 designed, we were looking at the -- out our front
12 windows out of brick wall instead of the trees that
13 exist there today.

14 I'm still trying to understand the process.

15 I do note that I had -- had I known that ANC would
16 be voting to support this application in a meeting
17 in December, I would have contacted ANC Commissioner
18 prior to that meeting.

19 I would request that the applicant address
20 our concerns through additional conversations and
21 dialogue.

22 We definitely thank you for the opportunity
23 to speak and I appreciate you all staying super late
24 tonight.

25 And that concludes my testimony.

1 VICE CHAIR BLAKE: Thank you, thank you for
2 your testimony.

3 Do any of my Board members have any
4 questions for the witness?

5 COMMISSIONER MILLER: No, thank you for
6 your testimony, Ms. Jessup.

7 VICE CHAIR BLAKE: Okay, I don't know, Mr.
8 Wideome, is that -- would you please introduce
9 yourself and your address?

10 You have three -- as a member of public,
11 you have three minutes to testify.

12 Please begin.

13 MR. WIDEOME: Yes, my name -- thank you for
14 the opportunity to testify.

15 My name is Daniel Wideome. I am a
16 homeowner at 2711 Woodley Road, at just a half block
17 up Woodley Road from Aidan Montessori School.

18 I am -- have been a Woodley Park resident
19 and homeowner for five years and I'm a proud parent
20 of an Aidan Montessori first grader.

21 I just would like to speak to the role that
22 Aidan Montessori plays as a beacon and a leader in
23 the community.

24 It's really a place where families,
25 neighbors, and community members can congregate.

1 It's a wonderful neighbor that they help
2 clear a lot of the snow in the recent snowstorm.

3 Our child has had an amazing experience
4 there. Our family has had an amazing experience
5 there.

6 And really, I think the impetus for much of
7 this variance relief and for these renovations is to
8 live into the mission that Aidan Montessori espouses
9 and the reason why my family and many other families
10 send our children there, which is really to be an
11 open, inclusive, and accessible place, so that we
12 can help our children become self-involved and
13 responsible members of the D.C. area and of the
14 world at large.

15 One of the reasons -- several of the
16 reasons why I think this renovation in this area
17 variance relief is called for is, first and
18 foremost, not only does it not only -- not increase
19 the capacity or the enrollment of the school by any
20 means, but as the architect mentioned earlier, it
21 actually improves the traffic flow.

22 It will improve the flow of students into
23 and out of the building and it will allow
24 pedestrians to congregate off the sidewalk.

25 So, I think it will actually allow the

1 traffic flow to be much smoother and more efficient.

2 I think another benefit of this is also by
3 introducing internal improvements to the building,
4 including additional bathrooms and ADA accessible
5 bathrooms, will actually allow space on the ground
6 floor of the building to be accessible and open for
7 community use and community benefits, space that's
8 currently occupied by a classroom that cannot be
9 easily used for community purposes.

10 So, because Aidan Montessori has been a
11 fantastic pillar of our community, because it has
12 been a fantastic home for my child and for my family
13 and a fantastic neighbor, this area variance relief
14 and the proposed renovations only serve to enhance
15 the mission of the school so that the school can
16 continue to be an amazing neighbor, not just for my
17 family, but for families for literally decades to
18 come.

19 And so, I thank the Board for the
20 opportunity to offer my testimony for your
21 consideration, especially at this late hour.

22 VICE CHAIR BLAKE: Thank you very much for
23 your testimony.

24 Does anyone have any questions for this
25 witness?

1 (No audible response.)

2 VICE CHAIR BLAKE: Okay, I'm going to
3 dismiss the witnesses.

4 Thank you very much for your testimony.

5 Okay.

6 Ms. Moldenhauer, just in response to Ms.
7 Jessup's questions, would you -- I'd like to have
8 Mr. Woodrow just kind of address what she said.

9 I want to make sure I can understand what
10 perspective she was looking at that and how that
11 might impact her home.

12 MS. MOLDENHAUER: Yes, absolutely.

13 If Mr. Young could bring up first, Slide 8?

14 If he -- that's fine.

15 So, obviously, one, the Slide 8 would just
16 show that there are already three windows that do
17 currently face Ms. Jessup's property that are not
18 changing.

19 Obviously, we can have the project
20 architect talk about this a little more.

21 If we go -- that's seven -- if we go to the
22 next one.

23 So, if you look on the right hand side
24 here, Ms. Jessup's home is the first one with the
25 three-story light cream colored, you know, bay

1 windows here on the right.

2 And then, you can see these three windows
3 here that are obviously already kind of existing,
4 you know, that's not changing.

5 So then, if we go down and jump to Slide
6 12, and not PDF slide, but Slide 12 which I think is
7 PDF 13.

8 You can see here that, you know, there's
9 the majority of the windows are obviously facing the
10 front of the building and that there are obviously
11 these three -- the three that exist there.

12 And then, the two other new ones, that
13 they're in the same location as the other three were
14 previously.

15 And the property did go through HPRB review
16 as already identified, and this is a large right of
17 way in regards to the distance.

18 And I think if the project architect, I
19 know he spoke a little bit about materials, and, you
20 know, students not wanting to have them distracted
21 from being outside as well as not wanting to
22 obviously create privacy issues.

23 If you can maybe chime in and provide a
24 little of testimony in that regard.

25 (No audible response.)

1 MS. MOLDENHAUER: John?

2 MR. ODUROE: I'm sorry, yes.

3 So again, the idea is that we would simply
4 be adding these two windows on the side.

5 The addition can't really move in front of
6 the window walls in front of the classrooms because
7 that's the main source of light, that is the source
8 of light for the majority of classrooms in the
9 school as well as air when we're trying to keep that
10 open, keep views to the outside into nature clear.

11 This is kind of the single spot where any
12 additional space could be added to the building.

13 VICE CHAIR BLAKE: Okay.

14 And that space there, that's the alley
15 between Ms. Jessup's house and the school, is that
16 right?

17 MS. MOLDENHAUER: Correct, yes.

18 VICE CHAIR BLAKE: And what's the width of
19 that alley, again? I'm sorry.

20 MS. MOLDENHAUER: I don't have that.

21 John, do you have that?

22 MR. ODUROE: I don't have that in front of
23 me, but it is something we can provide.

24 Do you want to keep going forward and I'll
25 pull up the drawings and measure that.

1 MS. MOLDENHAUER: Yes, that'd be great.
2 Any other questions?

3 VICE CHAIR BLAKE: It's on the plat, the
4 survey.

5 MS. MOLDENHAUER: Yes, okay --
6 (Simultaneous speaking.)

7 VICE CHAIR BLAKE: So, I think it's 15 --

8 MS. MOLDENHAUER: I'm trying to put the
9 exhibit right now.

10 VICE CHAIR BLAKE: It's 15 feet.

11 Okay, never mind.

12 (Simultaneous speaking.)

13 VICE CHAIR BLAKE: Yes, okay.

14 Okay, does anyone else have any questions?

15 (No audible response.)

16 VICE CHAIR BLAKE: Okay, all right.

17 Ms. Moldenhauer, you can give your closing
18 remarks.

19 MS. MOLDENHAUER: So, we did work
20 extensively with the community, you know, Ms. Rue
21 and other members of Aidan Montessori went out and
22 met with individuals up and along the block.

23 As you can tell, even those that are
24 concerned obviously still very supportive of the
25 project.

1 We do believe that we'll continue to work
2 as it revolves around materials with neighbors, but
3 do believe that we've satisfied the legal standards
4 for the variance and the special exception and look
5 forward to bringing this, you know, long time
6 Montessori school into ADA modernization and
7 compliance.

8 And we thank you for your time this
9 evening.

10 VICE CHAIR BLAKE: Thank you.

11 Okay, we can we -- I'm going to close the
12 hearing and the record.

13 Mr. Young, if you'd dismiss the witnesses -
14 - excuse witnesses.

15 Okay, Vice Chair Miller, I'd love to get
16 your thoughts on this if you could.

17 COMMISSIONER MILLER: Okay, thank you, Mr.
18 Chairman.

19 I thank the Aidan Montessori team for
20 bringing this application forward to make that
21 school ADA complaint, which is, obviously, very
22 important.

23 And it's a very, in my own personal
24 opinion, a very attractive design. It replaces the
25 blank wall with a cross, not to say anything bad

1 about the cross, which I'm not, but I think it's a
2 very attractive design for the for the neighborhood.

3 I think the application meets the criteria
4 for the request, the standards, the criteria for the
5 request that's being requested under the area
6 variance, which is -- it's 44.7 -- 44 percent
7 existing and lot activity and 47 percent proposed
8 that's really de minimis.

9 And we need to -- I think we need to
10 proceed with the special exception, despite the 1963
11 -- 60 -- is that 63-year-old order? I mean that's a
12 long time.

13 That approved this use because they've
14 agreed that had a 240, I think enrollment cap, if
15 I'm remembering right from when I read this more
16 than 24 hours ago. So, they're willing to do the
17 180.

18 So, I think we need to include that within
19 whatever relief for -- as a condition within
20 whatever relief that we're granting in this case, if
21 we go forward with that.

22 Because that's -- the applicant agreed to
23 that and that's what they've previously agreed with
24 the -- even previous ANC that maybe had more
25 concerns than the current ANC 3C that unanimously

1 supported this particular application.

2 So, I'm ready to move forward. I haven't
3 covered all the particulars, I know you always do
4 that, Chairman Blake, so, I'm going to leave that to
5 you at this very late hour.

6 VICE CHAIR BLAKE: We'll see what happens.
7 Board Member Drakeford?

8 MEMBER DRAKEFORD: Yes, I would also agree
9 with Vice Chairman, Vice Chair Miller.

10 I do believe that the applicant has met the
11 burden of proof for an area variance by really
12 demonstrating that the existing build is non-
13 conforming status and the need for mode ADA
14 accessibility helped create a practical difficulty.

15 And seeing this houses at 3 percent
16 increase in the lot occupancy and is the minimum
17 relief necessary to provide for both a safe,
18 inclusive entrance.

19 Also, I do agree that the special exception
20 for the school expansion is supported by the
21 voluntary reduction of the enrollment cap, and would
22 agree with Vice Chair Miller that we should
23 definitely carry that forward as part of a
24 condition.

25 I will just note that I did have some

1 concerns around the potential light and privacy
2 impacts of the adjacent property owner, but I do
3 appreciate the illustrative renderings that the
4 applicant provided that shows some of the existing
5 conditions with regards to privacy concerns.

6 And I think that those illustrative
7 renderings were really helpful for me to see.

8 So, I appreciate them for showing that.

9 And with that, I would -- if we move
10 forward, I would be prepared to support the
11 application.

12 VICE CHAIR BLAKE: Okay, thank you very
13 much, Board Member Drakeford.

14 I, too, am in support of the application,
15 and I agree with the comments made by both Vice
16 Chair Miller and Board Member Drakeford as regards
17 to the application.

18 I do believe the applicant has met the
19 burden of proof for both the area variance as well
20 as the special exception.

21 I do agree with the Office of Planning's
22 reports, as I think that I do believe that, contrary
23 to what -- and I haven't gotten a chance to read
24 through the 10-page document in the record from the
25 Zoning Administrator.

1 But I do believe the approval review
2 2321.1M is necessary because I cannot possibly tie
3 together at minimal the enrollment to the area
4 variance.

5 So, I do believe that, and again, it's a
6 very old order and this is -- it's not an intensity
7 of use, it's not an increase, but it is a practice
8 that we've had historically with, you know, schools,
9 private schools, to do this.

10 We look at it under either X104 or U2 3.1.
11 This is a U2 3.1 agreement.

12 So therefore, that's why that more applies
13 than X because it wasn't under X104.

14 So, without increase in the intended use,
15 transportation impact remains stable, the
16 operational characteristics remain consistent with
17 historic use, any incremental change in bulk is
18 proportionate and visually subordinate.

19 There should be no sufficient --
20 significant shadow effects, and as the applicant
21 described, no intrusive window placement.

22 I was a little bit concerned when the
23 neighbor pointed out the concerns they had about
24 staring out at brick wall and so forth, but I do
25 know that they're usually not protected.

1 I also know that the 15-foot alley will
2 provide a degree -- will continue have the flows and
3 protect privacy.

4 And I again -- the residential character of
5 the area will remain unchanged.

6 So, I'll be -- all those things lead me to
7 be comfortable with the request.

8 And again, also, I do agree adding the
9 enrollment in cap at 180.

10 So, I'll give great weight to the work the
11 ANC 3C, which is to support and states no issues of
12 concern with the project.

13 I'll also note the DDOT has no objections
14 to the project and HPRP has given its separate
15 approval to the plans.

16 There are both letters of support and
17 opposition and concern, which is where Ms. Jessup
18 was, and rightfully so.

19 So, with that, I will be voting in favor of
20 the application.

21 So, that said, I'm going to make a motion
22 to improve -- to approve the application as
23 captioned and read by the Secretary and ask for a
24 second.

25 Board Member Drakeford?

1 MEMBER DRAKEFORD: I second.

2 VICE CHAIR BLAKE: The motion has been made
3 and seconded.

4 Madam Secretary, could please take a roll
5 call vote, if we're there?

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

8 Chairman Blake?

9 VICE CHAIR BLAKE: Yes.

10 MS. MEHLERT: Board Member Drakeford?

11 MEMBER DRAKEFORD: Yes.

12 MS. MEHLERT: Commissioner Miller?

13 COMMISSIONER MILLER: Yes.

14 MS. MEHLERT: Staff would record the vote
15 as three to zero to two to approve Application
16 Number 21400 on the motion made by Chairman Blake
17 and seconded by Board Member Drakeford.

18 VICE CHAIR BLAKE: Okay, Madam Secretary.

19 Vice Chair Miller, you're with us for
20 another one?

21 COMMISSIONER MILLER: Just one more.

22 VICE CHAIR BLAKE: Okay, well, then let's
23 get after it then.

24 Madam Secretary, please call our next case?

25 MS. MEHLERT: Next is Application Number

1 21368 of 505 L Street, Northeast, LLC, as amended.

2 This is a self-certified application
3 pursuant to Subtitle X, Section 1002 for area
4 variances from Subtitle E, Section 206.1 to allow
5 residential buildings without a front setback within
6 the range of existing front setbacks of all
7 residential buildings on the same side of the street
8 and the block where the buildings are proposed.

9 And from Subtitle B, Section 315.1C to
10 allow two interior lot row building to the building
11 facade facing a street lot line located further
12 forward or further back than the building facade of
13 one of the immediately adjoining building.

14 This is for two new three-story attached
15 residential buildings, each configured as its unit
16 plat on two adjoining lots.

17 It's located in the R-1 zone at 507 and 509
18 L Street, Northeast, Square 830, Lot 73 and 74.

19 And as a preliminary matter, the applicant
20 has filed a motion to waive the 15-day posting
21 requirement.

22 VICE CHAIR BLAKE: Okay, let's see, okay,
23 before we deal with the preliminary matter, I'm
24 going to have the applicant, would you please
25 introduce yourself and who is with you and for

1 today.

2 MR. SULLIVAN: Thank you, Mr. Chairman,
3 Board members, my name is Marty Sullivan with
4 Sullivan and Barrows, on behalf of the applicant.

5 And with us, today is the architect,
6 Michael Cross.

7 VICE CHAIR BLAKE: Okay, excellent.

8 The preliminary matter before us is to
9 waive the posting requirement.

10 Could you just give me a little bit of
11 sense as to why that request is being made?

12 MR. SULLIVAN: Yes, it was filed -- it was
13 posted a few days late because the property owner
14 unexpectedly had a family medical emergency out of
15 the country and we were trying to get it in touch
16 with him to post the property and when -- we weren't
17 able to do that until after the deadline for that.

18 We did go to the ANC, noticed there's no
19 ANC letter. I'm not sure what's up with ANC 6C, but
20 there's no letter in the file for any of these four
21 cases which are theirs.

22 They unanimously supported it with a vote,
23 but we were never able to get a letter for that.

24 So, we did go to the ANC, everyone knew about it.

25 It was posted, it's just a few days late.

1 So, and that was as a result of the owner's medical
2 emergency.

3 VICE CHAIR BLAKE: Okay.

4 Did you have pretty good attendance at the
5 ANC meeting?

6 MR. SULLIVAN: Yes.

7 And actually, we went to the committee
8 meeting, too. This was with Mark Eckenwiler and his
9 committee first and then, to the full ANC when we
10 were on the consent agenda for the full ANC.

11 Which is disappointing that they don't have
12 a letter in the file because Mr. Eckenwiler was an
13 enthusiastic supporter of the argument and the
14 application.

15 VICE CHAIR BLAKE: Okay, all right, thank
16 you very much.

17 If the Board is comfortable with it, I'm
18 comfortable waiving the posting requirement and
19 hearing the rest of the case.

20 Otherwise, we'd have to postpone it or
21 something like that, but I'd prefer not to do that.

22 Okay? Is that Board members -

23 COMMISSIONER MILLER: Yes, yes, I agree.

24 VICE CHAIR BLAKE: Okay.

25 MEMBER DRAKEFORD: Yes, yes, that's fine.

1 VICE CHAIR BLAKE: Okay, excellent.

2 So, we're going to just agree to that by
3 consent and we're going to begin to hear the case.

4 So, Mr. Sullivan, if you would tell us how
5 your client is meeting the conditions for approval.

6 I have a few questions. We could have you
7 -- I have a few questions with regards to the
8 placement of the tree, the exact tree.

9 There's some discrepancy between the DDOT's
10 report where they say the tree is located and where
11 the applicant has indicated the tree is located.

12 So, I want to make sure that's clear as to
13 where the heritage tree is located, and I have a
14 couple other questions, we'll get to those later.

15 MR. SULLIVAN: Okay, thank you, Mr. Chair,
16 and thank you to the Board for the waiver of the of
17 the posting affidavit.

18 And if we could load the PowerPoint please?

19 Next slide, please.

20 So, the -- I think, actually, could we go
21 forward about four slides to the first photo?

22 I think I'd like to see -- the Board to see
23 -- because this is constructed.

24 So, the property is built and the relief is
25 in regard to the two rowhouses in front of you, 509

1 and 507.

2 The four of these were built together by
3 the same developer.

4 These are the only homes on this block
5 facing this direction.

6 The buildings on the other side, there's a
7 large condo building to the left that faces the side
8 street and then, the building on the other side of
9 these four face that side street as well.

10 If we could go back to the first slide or
11 the second slide?

12 For quick summary, so, constructed these
13 two flats 507 and 509 and construction was nearly
14 completed, it was 98 percent completed when DOB
15 essentially retracted its approval from a year
16 previous.

17 As you noted, there is a heritage tree and
18 Mr. Cross can talk about the location of that and
19 its impact on this project.

20 At a meeting -- so, we have two arguments
21 and I'll go through the criteria for each of those,
22 but we have two variance arguments.

23 One is a reliance argument and the other
24 one is the heritage tree argument or de novo
25 argument.

1 At a meeting on June 11, 2025, the Zoning
2 Administrator directed the applicant that front yard
3 setback relief was required from both the operative
4 Provision E 206.2, which is the range provision,
5 that the building -- the front be within the range
6 of setbacks on the block.

7 And then, also, that we needed relief from
8 B 315.2C, which is the provision that a rowhouse
9 cannot be further forward or further back than an
10 immediately adjoining structure.

11 So, the applicant seeks area variance
12 relief from those provisions in order to maintain
13 the constructed setback in addition to the equitable
14 principle of estoppel, given the applicants
15 substantial and good faith reliance on DOB's
16 issuance of the valid permits.

17 The location of the heritage tree also
18 makes it impossible to meet the front yard setback
19 requirements.

20 Next slide, please.

21 The properties are within the R-1 zone.

22 The applicant was issued building permit on
23 July 19, 2023 and on August 10, 2023 for the two
24 properties and each permit authorized the
25 construction of a new two-unit flat and in that

1 exact location, construction commenced in August
2 2023 in full reliance on the permits.

3 And the applicant constructed both
4 buildings precisely in accordance with the approved
5 plans, including the 8-foot front setback.

6 And then, the approved wall test reports
7 for each property were then subsequently recorded
8 and the Office of the Surveyor confirming the as-
9 built conditions.

10 But then, on June 4th, 2025, after all the
11 inspections had been approved and the applicant had
12 submitted the C of O application, the applicant was
13 informed that the reviewer had denied the
14 application and then, the Zoning Administrator
15 meeting was shortly after that.

16 Next slide, please.

17 Office of Planning is recommending
18 approval.

19 As noted, ANC 6C did vote unanimously in
20 support, unfortunately, I don't believe we have a
21 letter in the file, yet.

22 DDOT had no objection and Capitol Hill
23 Restoration Society also submitted a letter in
24 support.

25 Next slide, please.

1 Next slide, please.

2 The two arguments, so, the de novo argument
3 is based on the heritage tree.

4 The heritage tree is in public space in
5 front of the property and prevents compliance with
6 the front yard setback.

7 The property had an existing building here
8 and the proposed development used the same
9 foundation wall, the front foundation. And removing
10 the foundation wall would threaten the survival of
11 the heritage tree root system.

12 And Mr. Cross, will talk about -- more
13 about that in his testimony.

14 The practical difficulty, the property is
15 not developable at all without the front setback
16 relief.

17 And there's no substantial detriment to the
18 public good.

19 The sole purpose of the building being
20 setback from the property line was to preserve the
21 heritage tree. And the setback does not affect
22 design quality or any other aspect of the public
23 good.

24 In fact, in the rear of the property was
25 not a one to one compensation for the front setback

1 going back, so this was strictly an accommodation
2 for the heritage tree.

3 The resulting condition meets the spirit
4 and intent of the front setback regulations, and
5 that each of the four rowhouses aligns with an
6 adjoined building.

7 And the two sets of the new rowhouses
8 actually set the range for all front setbacks on
9 this block.

10 I just want to point out that I disagree
11 with the Zoning Administrator's interpretation on
12 this, and I think it's clear to see how it could
13 have been approved by DOB in 2023 and that maybe it
14 wasn't a mistake when it was originally approved.

15 Next slide, please.

16 If you'll see the block, these were the
17 previously existing buildings, so what was built.
18 The buildings on either side, front on other
19 streets, so there's only four buildings.

20 These four buildings that both set the
21 range and are also immediately joined, so they meet
22 both requirements because they're both immediately
23 adjoining the building next to them and they set the
24 range as the only buildings -- new buildings on the
25 street.

1 Next slide, please. Next slide, please.

2 So, the reliance area variance argument is,
3 permit application and plans were provided in good
4 faith and associated permits were duly approved by
5 DOB.

6 As noted, the project was built in
7 accordance with those approved building permit
8 plans, including certain changes that did not affect
9 the character of the building or the application.

10 The project was never considered to be an
11 addition to the previously existing building, it was
12 always characterized as a full zoning raise, despite
13 the retention of the front foundation wall.

14 And then, when construction was complete
15 and the units were about to be sold, DOB refused to
16 issue the C of O, despite their building permit
17 approval, claiming that they mistakenly approved --
18 they admit that they mistakenly approved the
19 building permits when they should have cited
20 noncompliance with the front yard setback
21 requirement, according to them.

22 The practical difficulty is that the
23 property owner would suffer catastrophic seven-
24 figure losses without the variance relief. They
25 would have to tear down the building and nothing

1 could be built here then.

2 And the reason for the original design was
3 simply to preserve the heritage tree, as mentioned
4 in the de novo argument.

5 This is an extremely unique situation with
6 two independent justifications for the area variance
7 relief.

8 Without relief, the building will be
9 demolished, and the property will remain idle
10 indefinitely.

11 And the Board has looked at this reliance
12 argument several times in the past and has noted
13 that this can be an exceptional condition that
14 merits area variance relief.

15 Next slide, please.

16 I'll note, too, that we have an
17 administrative estoppel request in with the DOB for
18 which we get no response.

19 Sometimes they grant it, sometimes they
20 don't, and sometimes we get no response at all.

21 They're required to give that to us as
22 well, according to an appeal that the BZA heard
23 about 10 years ago.

24 But we struggle in getting those kinds of
25 decisions sometimes, even though DOB admits it was

1 their mistake.

2 So, I'll turn it over to Mr. Cross.

3 And Michael, if you could go through these
4 plans briefly and then, if you could, respond to
5 Chairman Blake's question about the heritage tree?

6 MR. CROSS: Can do, yes.

7 MR. SULLIVAN: Thank you.

8 MR. CROSS: So, Michael Cross, architect.

9 As Mr. Sullivan was pointing out, the two
10 properties that we're seeking variance for are 507
11 and 509.

12 Those properties are highlighted here as
13 part of a group of four buildings that were
14 originally designed and built together.

15 The two properties we're talking about
16 tonight are the ones setback a couple feet from the
17 face of the others.

18 Next slide, please.

19 So, the two kind of elements that we're --
20 we've been discussing is the heritage tree and the
21 front base of the building.

22 In this plan, the heritage tree is
23 highlighted in green, and this plan being the site
24 plan of the buildings, the original buildings on
25 site.

1 The original front wall of -- or the front
2 wall of the original building is highlighted in
3 yellow. You can see the adjacency of the tree and
4 that existing wall.

5 Next slide. So, in our proposed plan on
6 this slide, you can see that, again, in yellow, we
7 are maintaining the original line of the original
8 foundation so as to not disturb or encroach on the
9 roots of the heritage tree, that tree still shown in
10 green here.

11 Next slide, please. I think this slide
12 speaks most to Chairperson Blake's questions about
13 the placement of the tree relative to both the
14 property and public space.

15 The heritage tree that is in question is,
16 again, still highlighted in green here.

17 The large circle around it, also
18 highlighted in a dashed green is the critical root
19 zone. That's the area that we are trying to
20 minimize disturbance of.

21 And you can see how the front wall of what
22 was the original building, again, this is a survey
23 of the conditions prior to construction.

24 You can see that the front foundation
25 encroaches on that heritage tree.

1 And so, it was a design decision at the
2 outset of this project, when the heritage tree was
3 identified, working with both our arborist and in
4 conjunction with the D.C. Ward arborist to maintain
5 that existing front foundation so as to not disturb
6 or encroach upon the roots of the heritage tree.

7 And so, as you saw before, the project was
8 proposed and permitted to have its front facade
9 built atop of the original front foundation of the
10 existing building.

11 That's all I have for you. Happy to answer
12 any questions.

13 MR. SULLIVAN: And if I could just add one
14 last point, the -- this is sort of along the lines
15 of degree of relief.

16 The front setback under the omnibus will
17 become a special exception which just speaks to the
18 -- how the Office Planning and the Zoning Commission
19 look at the degree of relief for a front setback.

20 But within a few months, this would be a
21 special exception request rather than a variance
22 request.

23 And also note, Mr. Cross was essentially
24 project manager as well for this.

25 So, if you have any questions about the

1 process in regard to the permit issuance, he can
2 answer questions about that as well.

3 Thank you, and that's it for our
4 presentation, thank you.

5 VICE CHAIR BLAKE: All right, thank you
6 very much, Mr. Sullivan.

7 Does anyone from our Board have any
8 questions for the applicant?

9 COMMISSIONER MILLER: No real questions, I
10 was going to ask.

11 Thank you for the applicant for bringing
12 the case forward, and I was going to ask Mr.
13 Sullivan, but he addressed it in his last statement,
14 and I thought in the omnibus text amendment, which
15 we've done, proposed Rulemaking 4 was going to be
16 published shortly in the D.C. register that we did
17 address up front the set -- the front setback issue
18 which would affect this case, changing it from a
19 variance to a special exception.

20 So, that was going to be my question. So,
21 I thank you for bringing that up because that was, I
22 was wondering about that.

23 Thank you.

24 VICE CHAIR BLAKE: Okay, if we don't have
25 any more questions, we'll move to the Office of

1 Planning.

2 MR. MITCHUM: Hi, this is Joshua Mitchum
3 with the Office of Planning.

4 We are in support of the application and
5 recommend approval. And we are willing to rest on
6 the staff report in the record, and I'm available
7 for any questions.

8 Thank you.

9 VICE CHAIR BLAKE: Mr. Mitchum, could you
10 just -- I'd appreciate if you just go through your
11 variance analysis, just talk a little of that for
12 me. I'd appreciate it.

13 Thank you.

14 MR. MITCHUM: Sure.

15 So, the main argument, as Mr. Sullivan was
16 explaining, was the heritage tree.

17 I have confirmation after having dialogue
18 with the Urban Forestry Division of the Department
19 of Transportation, that there is an existing
20 heritage tree on site and that, per District law,
21 the applicant is required to maintain it on site.

22 And so, we factored that into the variance
23 test as it being a practical difficulty.

24 There are other arguments that the
25 applicant makes with regards to the setback being

1 established by buildings that are no longer there,
2 as well as it establishing the first precedent of
3 the setback on the property.

4 And we found that that was a sufficient
5 argument to make saying as there's not very many
6 rain -- there wasn't that big of a range to be set
7 by the existing homes on the boxes.

8 So, that was the main crux of our argument,
9 and we were in agreement and we found that it
10 satisfied the variant test.

11 VICE CHAIR BLAKE: Great, thank you,
12 thanks, excellent.

13 Let's see, any questions for the Office of
14 Planning?

15 (No audible response.)

16 VICE CHAIR BLAKE: Okay, Mr. Young, do I
17 have anyone wishing to speak?

18 MR. YOUNG: We do not.

19 VICE CHAIR BLAKE: Okay.

20 Mr. Sullivan, I appreciate you guys
21 presenting this today.

22 And again, you said that you did speak --
23 you did your community outreach was sufficient.

24 You did speak to -- you did present to the
25 Board as you -- the Commission. And you're as

1 shocked as I am that we don't have a report in the
2 file.

3 If you have any closing remarks, I'd
4 appreciate that.

5 MR. SULLIVAN: No, just thank you for your
6 time, Mr. Chairman and Board members, appreciate it
7 at this late hour and thank you.

8 VICE CHAIR BLAKE: Okay, thank you.

9 Mr. Young, if you would dismiss the
10 witnesses, close the record, and close the hearing,
11 we will begin deliberations.

12 Okay, first of all, I would say, I
13 appreciate the two pronged approach with the two
14 various variance analysis. I appreciate that you
15 didn't mix them up together.

16 The Zoning Act does not provide the Board
17 with equitable jurisdiction or authorized approval
18 of a variance, except when the Board determines that
19 the criteria stated in the Zoning Act are met.

20 So, while I understand the estoppel
21 argument, it is -- I do not believe it is within our
22 context to -- we can't really work with it.

23 The de novo analysis is, I think, more
24 appropriate and I am completely satisfied that the
25 presence of the protected heritage tree establishes

1 the extraordinary condition and the resulting
2 practical difficulty under the variance test.

3 There are no other lots in the block
4 affected by the tree situation, and compliance is
5 legally impossible, not merely inconvenient.

6 Strict application of the front setback
7 will -- would require constructing the property to
8 the property line.

9 However, doing so would damage required
10 removal of the protected heritage tree, and its
11 removal would be -- is prohibited by law.

12 So, I agree with the findings of the Office
13 of Planning's de novo analysis that the tree alone
14 supports relief.

15 Again, the Zoning Act does not provide the
16 Board with equitable jurisdiction, but I do think
17 that the applicant proceeded pursuant to validly
18 issued permits and completed substantial
19 construction in good faith reliance on those
20 approvals.

21 The fact that the approvals were lawfully
22 permitted and represents significant expenditures,
23 in my mind, this further supports the granting
24 relief in this case.

25 In other words, I find the zoning history

1 is the cherry on top, it's not, despite the cherry
2 on top.

3 So, there's no remedy to bringing in
4 compliance and so, I feel comfortable that the
5 applicant has met the burden of proof to be granted
6 to requested relief.

7 And I give great weight to the Office of
8 Planning's recommendations.

9 As I said, I also give great -- there's no
10 report from the ANC, but we know that, you know, as
11 I'm surprised as others that it's not available, but
12 the applicant has represented that they met with the
13 ANC, had a successful meeting there, and unanimous
14 support.

15 So, the DDOT is in, has no objection to the
16 project.

17 And I will be voting -- and I also know,
18 oh, yes, Capitol Hill Restorations did support as
19 well, which is unusual.

20 So, I will give great weight to -- I will -
21 - I'm going to be supporting the application.

22 I'm going to go to Chairman Miller.

23 COMMISSIONER MILLER: Thank you, thank you,
24 Mr. Chairman.

25 I agree with everything you've said and I

1 think that the case has been made for the variance
2 under the heritage tree additional argument.

3 I think the detrimental reliance issue on
4 the issuance of the permits, all the way up to the C
5 of O, is a factor that is relevant in our
6 consideration as well.

7 As you've pointed out, so, cherry on top,
8 you said, but I think it's I think it's both of them
9 are relevant.

10 So, I'm ready to support this application
11 this evening.

12 VICE CHAIR BLAKE: Thank you.

13 Board Member Drakeford?

14 MEMBER DRAKEFORD: I would align myself
15 with the comments provided by both Chair Blake and
16 Vice Chair Miller.

17 VICE CHAIR BLAKE: Okay.

18 With that, I'd like to make a motion to
19 approve the application as written and captioned and
20 ask for a second.

21 Board Member Drakeford?

22 MEMBER DRAKEFORD: Second.

23 VICE CHAIR BLAKE: Okay, the motion has
24 been made and seconded.

25 Madam Secretary, would you please take a

1 roll call vote.

2 MS. MEHLERT: Please respond to the Chair's
3 motion to approve the application.

4 Chairman Blake?

5 VICE CHAIR BLAKE: Yes.

6 MS. MEHLERT: Board Member Drakeford?

7 MEMBER DRAKEFORD: Yes.

8 MS. MEHLERT: Vice Chair Miller?

9 COMMISSIONER MILLER: Yes.

10 MS. MEHLERT: Staff would record the vote
11 as three to zero to two to approve Application
12 Number 21368 on the motion made by Chairman Blake
13 and seconded by Member Drakeford.

14 VICE CHAIR BLAKE: Okay, let's see, Vice
15 Chairman, I think you said you're done after this?

16 COMMISSIONER MILLER: I think Commissioner
17 Wright, thankfully, is back at 8:42 p.m.

18 So, I am going to, thankfully, leave and
19 sorry you are you still here, but keep going on
20 doing on, you're doing great stuff.

21 VICE CHAIR BLAKE: It's coming, we're
22 almost there, almost there.

23 Thank you, everyone.

24 COMMISSIONER MILLER: Yes.

25 VICE CHAIR BLAKE: Okay, let's see, before

1 we begin, Board Member Drakeford, do you need a
2 slight break? We have three to go.

3 MEMBER DRAKEFORD: Yes. May I take that?
4 Yes.

5 VICE CHAIR BLAKE: Okay, we're going to
6 take a -- and this is quick. For real, we're going
7 to get this done and we're going to be done.

8 So, okay, let's have a -- how long do you
9 need? What do you want?

10 MEMBER DRAKEFORD: I just need five minutes
11 just to -

12 VICE CHAIR BLAKE: Oh, we don't do five
13 minute break, ten minute break.

14 Thank you.

15 Ten minutes.

16 MEMBER DRAKEFORD: All right.

17 (Whereupon, the above-entitled matter went
18 off the record at 8:43 p.m. and resumed at 8:54
19 p.m.)

20 VICE CHAIR BLAKE: Okay, it looks like
21 we're all back.

22 Madam Secretary are you here?

23 (No audible response.)

24 VICE CHAIR BLAKE: Great.

25 Could you please call our next hearing

1 case?

2 MS. MEHLERT: Next is Application Number
3 21411 of Katherine and Timothy Carney.

4 This is a self-certified application
5 pursuant to Subtitle X, Section 901.2 for a special
6 exception under Subtitle E, Section 5201 from the
7 lot occupancy requirements of Subtitle E, Section
8 210.1.

9 This is -- give me one second -- this is a
10 self -- yes, this is for a two-story seller rear
11 addition to an existing principal dwelling located
12 in the RF1/C18 zone at 511 Third Street, Northeast,
13 4779, Lot 95.

14 And I will just note that the Architect of
15 the Capitol report is in the record in Exhibit 25.

16 VICE CHAIR BLAKE: Okay, all right.

17 Is the applicant here? If so, would you
18 please introduce yourself for the record and anyone
19 else you have joining you today?

20 MS. FOWLER: Hi, good evening, thank you
21 for hanging around for my cases tonight.

22 This is Jennifer Fowler. I'm the architect
23 representing the homeowners and it's just me
24 tonight.

25 VICE CHAIR BLAKE: Okay.

1 Let's see, so, before you start, I'm going
2 to ask you a quick question. What are you doing
3 with in terms of community outreach, what was your
4 experience with the ANC?

5 MS. FOWLER: Yes.

6 So, we did go to the ANC for this project.
7 I heard Marty -- Mr. Sullivan, mentioning that the
8 letters did not go into the case and I checked and
9 saw that we also did not get our letter from ANC.

10 But this was supported in committee
11 unanimously and it was approved on the consent
12 agenda at the full ANC as well.

13 VICE CHAIR BLAKE: Okay, great, thank you.

14 With that we -- if you could tell us how
15 you believe your client is meeting the burden of
16 proof to be granted the requested relief?

17 You have 15 minutes on the clock, you can
18 begin whenever you like.

19 MS. FOWLER: Okay, I'll try to keep this
20 nice and short.

21 This is for a lot occupancy request. We
22 are at currently 57.3 percent requesting 60.9.

23 Meets all the other requirements and
24 regulations.

25 So, it's a basically two-story addition

1 that has one-story plus a loft. We're replacing a
2 one-story, have partial width, mud room.

3 The new addition, 16 feet, 6 inches deep
4 and it maintains a 3 and a half-foot wide dog leg
5 along the property shared with 513 Third.

6 So, 513 Third is the one -- the house to
7 the north. It is really the only house that's
8 impacted by this project.

9 So, we do have a dog leg on that side and
10 it extends 6 feet, 6 beyond the rear wall of 513.

11 We also included a covered area for bike
12 storage that's in the dog leg. That's a low kind of
13 one-story structure.

14 While the addition will affect the light
15 enjoyed by 513, it's not an undue impact. And we
16 also shared the plans with that neighbor, and we
17 have a letter of support in the record.

18 So, we have 513 Third, which is the only
19 abutting neighbor because the alley runs along the
20 other side.

21 We also have a letter of support for 500
22 Groff's Court, which is across the alley and 304 E
23 Street, which is to the south, so across the other
24 alley, the neighbor alley.

25 As far as privacy is concerned, the first

1 floor windows won't allow views into 513 because of
2 the shed and the fence that's there.

3 And there's no windows on the alley side on
4 the first floor, because they want to use that space
5 for storage.

6 On the second floor, we will have some
7 windows looking out from the storage loft, but they
8 are be -- they'd be looking into the rear yards, and
9 also that's not really an occupied space, that's a
10 storage space.

11 So, in terms of privacy, there's really not
12 going to be any negative effect neighbors.

13 So, with that, I'll leave it open to
14 questions.

15 Again, it's a pretty straightforward case,
16 and it's been well received by the community and the
17 neighbors.

18 VICE CHAIR BLAKE: Okay, thank you very
19 much, Ms. Fowler.

20 Does anyone have any questions for the
21 applicant?

22 (No audible response.)

23 VICE CHAIR BLAKE: Okay, I don't have any.
24 Office of Planning?

25 (No audible response.)

1 VICE CHAIR BLAKE: The Office of Planning?

2 MR. ISAIAH: Thank you, Mr. Chairman.

3 For the record, this is Philip Isaiah,
4 Office of Planning.

5 I'm trying to get the video to work, it
6 appears I'm having technical difficulties.

7 But until then, staff stands on the record
8 of the report contained as Exhibit 20 of the record
9 dated February 13, 2026.

10 Thank you.

11 VICE CHAIR BLAKE: Okay, that was short and
12 sweet.

13 Does anyone have any questions for the
14 Office of Planning?

15 (No audible response.)

16 VICE CHAIR BLAKE: Okay, Ms. Fowler, do you
17 have any questions for the Office of Planning.

18 MS. FOWLER: No, sir, thank you.

19 VICE CHAIR BLAKE: Okay.

20 Do you have any closing remarks?

21 MS. FOWLER: No, I don't.

22 Just, again, thank you for putting in the
23 long day and hanging around for my case, I really
24 appreciate it.

25 VICE CHAIR BLAKE: Okay, thank you, have a

1 good one.

2 Oh, no, I think I'm going to see you again
3 in a second. Okay, see you in a minute.

4 Okay, I'm going to close the record in the
5 hearing and dismiss the witnesses.

6 Let's see, I mean, this is a fairly
7 straightforward application.

8 I do believe the applicant has met the
9 burden of proof to be granted the requested to
10 relief.

11 The big issues here are having the --
12 because it's located in the CAP R-1C P zone, you do
13 need to have some -- we do need to verify with the
14 Capitol -- Arbitrator of the Capitol, that this is
15 compatible with the neighborhood and consistent with
16 the Capitol Interest District.

17 And this was reviewed by the Architect of
18 Capital, as the Secretary said, in Exhibit 25.

19 Otherwise, I think the applicant has met
20 the burden of proof for E 5201.

21 With regard to light and air, the neighbor
22 probably should not be unduly affected.

23 Privacy is being protected to setbacks,
24 fencing, window placement, any addition will not be
25 visually intrusive given its relocation and

1 compatibility with typical alley facing additions in
2 the square.

3 I think the proposal is in harmony with the
4 intent in the zoning regulation because it maintains
5 the single-family residential use, doesn't increase
6 height or density beyond what's contemplating our
7 wind zone.

8 And again, the record demonstrate no one
9 first impact on neighboring properties.

10 So, I'll give weight, great -- I'll give
11 great weight to the Office of Planning's
12 recommendation for approval.

13 While there is no reporting record to
14 accord great weight from ANC 6C, which we do know
15 that the applicant did represent that they did meet
16 with the ANC. They received unanimous support and
17 approval from the committee and Zoning Committee,
18 and also, was approved on the consent calendar at
19 the full Commission.

20 So, I'll also note that there is a letter
21 from, again, the AOC, Architect of the Capitol, and
22 there are also letters in support from three
23 neighbors as well as Capitol Hill Restoration.

24 So, I'll be voting in support of this
25 application.

1 Commissioner Wright?

2 COMMISSIONER WRIGHT: Yes, I agree.

3 I think that this application is quite
4 straightforward and it has support from really, all
5 of the parties who have weighed in and I think we
6 should just move forward with it.

7 VICE CHAIR BLAKE: Okay.

8 Board Member Drakeford, your thoughts?

9 MEMBER DRAKEFORD: Yes, I would also agree
10 that this is definitely straightforward.

11 And I do believe that the evidence provided
12 both in the record and in the hearing today really
13 supports the special exception for special
14 exception.

15 I'm also, as mentioned, want to just note
16 that the Architect of the Capitol indicated that the
17 project is not incompatible with the Capitol Grounds
18 Master Plan.

19 And also, just noting the significant
20 support as well -- community support as well.

21 VICE CHAIR BLAKE: Excellent.

22 Okay, I'd like to make a motion to approve
23 the Application 21411 as written and captioned by
24 the Secretary and ask for a second.

25 Board Member Drakeford?

1 MEMBER DRAKEFORD: Second.

2 VICE CHAIR BLAKE: Okay, the motion is made
3 and seconded.

4 Madam Secretary, would you please take a
5 roll call vote?

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

8 Chairman Blake?

9 VICE CHAIR BLAKE: Yes.

10 MS. MEHLERT: Board member Drakeford?

11 MEMBER DRAKEFORD: Yes.

12 MS. MEHLERT: Commissioner Wright?

13 COMMISSIONER WRIGHT: Yes.

14 MS. MEHLERT: Staff would record the vote
15 three to zero to two to approve Application Number
16 21411 on the motion made by Chairman Blake and
17 seconded by Board Member Drakeford.

18 VICE CHAIR BLAKE: Excellent.

19 Okay, would you please call the next --
20 Madam Secretary, would please call the next
21 application?

22 MS. MEHLERT: Next is Application Number
23 21413 of Melissa Lim and Joel Patterson.

24 This is a self-certified application
25 pursuant to Subtitle X, Section 901.2 for special

1 exceptions under Subtitle E, Section 27.5 to allow
2 the rear wall of a row building to extend further
3 than ten feet beyond the farthest rear wall and
4 joining principal residential building, not any
5 adjacent property.

6 And under Subtitle E, Section 5201 from the
7 lot occupancy requirements of Subtitle E, Section
8 210.1.

9 This is for the removal of existing
10 accessory structure in the rear yard and to
11 construct a three-story rear addition to an existing
12 two-story attachment full dwelling.

13 It is located in the R-1 zone at 654 L
14 Street, Northeast for 855, Lot 197.

15 VICE CHAIR BLAKE: Okay.

16 Ms. Fowler, re-introduce yourself for the
17 record, and please begin your presentation and tell
18 us how you believe you're meeting -- your clients
19 meeting the burden of proof for the requested
20 relief?

21 MS. FOWLER: Okay.

22 Well, again, Jennifer Fowler, I'm the
23 architect representing the homeowners.

24 And this is a request for lot occupancy.
25 We're asking for 70 percent coverage, which includes

1 removing an existing garage, which we're currently
2 at 64 percent and going up to 70.

3 We're also asking for 8-foot extension
4 beyond the 10-foot maximum setback from the
5 neighboring property.

6 This house is an existing row dwelling with
7 a dog leg. The dog leg will be in-filled on the
8 first and second floor with a two-story rear
9 addition.

10 This portion is going to be within the
11 original length of the party wall.

12 So basically, filling in the space where
13 there's no windows attached to the neighbor next
14 door. So, that portion will have absolutely no
15 impact neighbors.

16 Beyond the rear wall, we're proposing a
17 three-story rear addition that's completely above
18 the addition, not over the main -- the original
19 house and it's full width and it will be 18 feet
20 deep.

21 And there's a roof deck on the upper roof -
22 - sorry, facing the turret at the front.

23 We're requesting 18 feet past 656 L and
24 it's 8-foot, 10 inches past 652.

25 The addition's on the north side of the

1 house, so all the impacts are limited to shadows
2 cast into the rear yards of 652 and 656.

3 There is a sun study in the record that
4 supports the fact that the impact is minimal.

5 For 652, the shadows are limited to the
6 morning hours only in the rear yard.

7 And for 656, the shadows are limited to the
8 afternoon hours in the rear yard as well.

9 Due to the north orientation, in the
10 winter, impacts are pretty negligible because most
11 of the yards are in shadow because of the sun being
12 so low.

13 Spring and fall, there's definitely some
14 more shadows cast, but again, only into the adjacent
15 yards.

16 652 L next door already has a third floor
17 addition, which is similar height to the proposed
18 addition, just not quite as deep as what we're
19 proposing.

20 Both 652 and 656 have reviewed the plans
21 and sign letters of support, and those are in the
22 record.

23 Regarding privacy, there's no windows on
24 the east or west walls facing either the two
25 neighbors or the houses on caddy corner.

1 The proposed windows that we have will only
2 be kind of looking out into the backyards, and
3 there's a -- there's windows facing the front of the
4 house, which will not offer being used into
5 neighbors windows.

6 Again, we have ANC support that is not in
7 the record, but we did present to the ANC and we
8 were supported in the committee as well as unanimous
9 support at the full ANC.

10 And so, with that, I will leave it open to
11 any questions.

12 VICE CHAIR BLAKE: Okay, thank you.

13 So, is there isn't any questions from the
14 Board, I'll go to the Office of Planning?

15 MR. JURKOVIC: Good evening, Vice Chair
16 Blake, and members of the Board.

17 This is Mike Jurkovic with the Office of
18 Planning.

19 OP you recommends approval of the request
20 for relief for the rear pop back as well as lot
21 occupancy.

22 As this is discussed in our report, we do
23 recommend a condition relating to the removal of the
24 garage, as discussed by the applicant in the overall
25 scope of work to maintain that the lot occupancy

1 will be below -- at or below 70 percent at the time
2 of completion of the building permit.

3 Other than that, we stand on the record of
4 our report and here to answer any questions.

5 Thank you.

6 VICE CHAIR BLAKE: Did the plans that you
7 saw reflect the demolition of the garage?

8 MR. JURKOVIC: Yes, it is noted -- can't
9 recollect exactly which exhibit, but is noted on the
10 plans that the garage is to be demolished.

11 VICE CHAIR BLAKE: Okay.

12 Commissioner?

13 COMMISSIONER WRIGHT: Thank you.

14 I know that there is -- and maybe this
15 could be for the architect or for the OP staff, but
16 there is a neighbor who has expressed concern about
17 the amount of shade that will be thrown on their
18 property and the privacy.

19 I also know we have a letter in opposition
20 from the Capitol Hill Restoration Society.

21 Did you look at the property owned by, I
22 guess it's Taylor Chung, who wrote in in opposition?

23 Did you look at that letter and what is your
24 reaction to that?

25 MS. FOWLER: I can respond to that if

1 that's okay.

2 I did see that letter today when I checked
3 the record and I looked at that property and it's
4 actually three properties away from this subject
5 property.

6 So, it's basically a house on, what is
7 that, 7th Street and the rear yard, about two
8 properties away.

9 And I looked back at the sun study and
10 definitely there's no -- impossible for the shadows
11 to make it to their rear yard, because by the time
12 the shadow -- the sun is far enough over and low
13 enough, there's fences and landscaping and things
14 like that that will not, you know.

15 So, the shadows cast on that property, if
16 any, will be minimal.

17 As far as privacy, we -- like I mentioned
18 in my previous testimony, we don't have windows on
19 the east or west sides.

20 The property for this neighbor is -- sits
21 to the to the east, so there would not be any
22 possibility of visibility into that into the
23 property as far as I can tell.

24 So, I think the sun study supports the fact
25 that that the shadows will not be reaching that far.

1 And the only other concern that they
2 mentioned was view shed, which is not part of the --
3 part of your required factors in making your
4 decision.

5 COMMISSIONER WRIGHT: And while you're at
6 it, did you want to say anything about the letter
7 from the Capitol Hill Restoration Society?

8 MS. FOWLER: With Capitol Hill Restoration
9 Society, they generally don't ever -- I've not
10 really had them ever support an addition that goes
11 past the 10 feet.

12 So, I think that that's kind of generally
13 what I've seen. So, that's about all I can say
14 about that.

15 VICE CHAIR BLAKE: Ms. Fowler, just go back
16 to that letter in the record.

17 The applicant -- the person also does have
18 some issues, some concern -- privacy concerns and
19 now, they say it's less than 50 feet away. That's a
20 long way.

21 My eyesight is not that good, but do they
22 have direct views into the patio first floor, second
23 floor, and third floor, and roof?

24 MS. FOWLER: I believe that -- I'm just
25 trying to look on my own plans here, but that house

1 sits --

2 Basically, if you're in the addition that
3 we're proposing, it's directly to the east.

4 And so, there -- it would be impossible to
5 -- because there's no windows along our east
6 property line. There -- it would be impossible to
7 look into their house.

8 I think the closest house that may -- we
9 may be able to look into a rear yard would be 1108,
10 because 1108 is just far enough north that there may
11 be like an oblique view.

12 But again, you're looking over to other
13 properties plus their rear yard.

14 So, I think 1106 in the way that it's
15 situated, I don't think that that's going to be.

16 And there's also a pretty deep addition at
17 658 L but if you at the block plan, you can see that
18 extends almost as far as 1106.

19 VICE CHAIR BLAKE: Okay.

20 And did you meet with this person when you
21 did your outreach?

22 MS. FOWLER: No, I just saw the letter
23 today and they also -- they did not attend the ANC
24 meetings, but we had no opposition at the ANC
25 meeting.

1 VICE CHAIR BLAKE: Okay, great, okay.
2 Thank you very much.

3 Let's see, any questions -- any more
4 questions for the Office of Planning or the
5 applicant?

6 (No audible response.)

7 VICE CHAIR BLAKE: Okay, Ms. Fowler, thank
8 you very much.

9 Michael, do you have any closing remarks?

10 MR. JURKOVIC: No, I don't. I really
11 appreciate your time. Thank you for your
12 consideration.

13 VICE CHAIR BLAKE: All right, thank you.

14 Okay, we'll close the hearing and the
15 record and you can excuse the witnesses.

16 Let's see, again, this is fairly
17 straightforward application.

18 And the main issue, to me, is just is
19 community outreach.

20 We're missing the ANC's report is a little
21 disappointing, but the applicant did represent that
22 they had met with the ANC committee level and at the
23 -- and had consent at the full Commission.

24 The -- they have two letters of support
25 from neighboring properties -- no, three, I'm sorry

1 three.

2 And they also have -- but they do have
3 letters of concern from a neighbor a few doors down
4 and also from the Capitol Hill Restoration.

5 On balance, I think that we can assess the
6 impact reviewing the applicants presentation. It's
7 relatively thorough with regards to the impact on
8 each individual of the nearby properties.

9 And I do believe that shadow study did show
10 limited morning shadows to the west and a little
11 shadow to the rest of -- it's east in the afternoon,
12 minimal amount in summer months, and basically,
13 seasonal shadowing that's pretty much consistent
14 with the rowhouse character -- impact of the
15 rowhouse environment.

16 I do think the removal of existing garage
17 reduces the bulk in the rear and the 10-foot public
18 alley at the north provides additional buffer for
19 light and air.

20 The Office of Planning -

21 Well, let me do this first, I do think that
22 the with the information provided -- I do believe
23 the Office of Planning's analysis and demonstrates
24 that there's essentially no substantially adverse
25 impact on light, air, or privacy beyond what's

1 anticipating the zone.

2 There are also no windows in the shared
3 walls, and I should also point out it's, again, it's
4 typical of the rowhouse environment.

5 The Office of Planning had made a condition
6 that suggested that they had -- we include a
7 condition to raise the garage, but I don't think
8 that's necessary because it is in the plans.

9 They will execute the plans as stated and
10 the -- he represented that he did see that in the
11 plans and Ms. Fowler also said it was reflected
12 there as well.

13 So, when it goes before the -- for
14 permitting, if it doesn't fit it, they'll have to do
15 something, you know, come back for release or raise
16 it.

17 So, that said, I have no issues with this
18 application. I'll be voting in support.

19 Commissioner Wright?

20 COMMISSIONER WRIGHT: Yes, I'm not as
21 enthusiastic about this application as the first one
22 we just saw a minute ago.

23 You know, it does seem like this one is
24 sort of pushing the envelope a little bit in terms
25 of lot coverage and height and it's not as graceful

1 a project.

2 But I think on balance, it is approvable.

3 I do agree that, although we may not need a
4 condition about removing the garage, I just think we
5 want to make very clear on the record that, the only
6 way to get to the percentage of lot coverage that we
7 are permitting through this special exception
8 action, is to remove the garage.

9 And that if they don't remove the garage,
10 then they can't build the extent of the addition
11 that they're proposing.

12 It's, you know, it's one or the other.

13 And so, I just want to, again, make sure
14 that that's clear on the record.

15 And you know, I, again, I will support this
16 application, although not as enthusiastically as the
17 one we saw just a moment ago.

18 VICE CHAIR BLAKE: Okay, thank you.

19 Board Member Drakeford?

20 MEMBER DRAKEFORD: Yes, I did find that the
21 sun study, for me, was very helpful and that was
22 provided in the record, to be particularly helpful
23 in evaluating the potential light and air impacts on
24 neighboring properties.

25 I do believe that the analysis provided

1 both by PCLP and also in the discussion presented by
2 the applicant, helps to demonstrate that there will
3 be limited effects on shadow patterns -- excuse me -
4 - limited effects on shadow patterns.

5 With that, I am prepared to support the
6 application.

7 VICE CHAIR BLAKE: Excellent, okay.

8 With that, I'm going to make a motion to
9 approve the application as written and captioned --
10 as read and captioned by the Secretary and ask for a
11 second.

12 Board Member Drakeford?

13 MEMBER DRAKEFORD: I second.

14 VICE CHAIR BLAKE: Okay, Madam Secretary,
15 the motion has been made and seconded.

16 Would you please conduct the roll call
17 vote?

18 MS. MEHLERT: Please respond to the Chair's
19 motion to approve the application.

20 Chairman Blake?

21 VICE CHAIR BLAKE: Yes.

22 MS. MEHLERT: Board Member Drakeford?

23 MEMBER DRAKEFORD: Yes.

24 MS. MEHLERT: And Commissioner Wright?

25 COMMISSIONER WRIGHT: Yes.

1 MS. MEHLERT: Staff would record the vote
2 as three to zero to two to approve Application
3 Number 21413 on the motion made by Chairman Blake
4 and seconded by Board Member Drakeford.

5 VICE CHAIR BLAKE: Madam Secretary, would
6 you please call our next application?

7 MS. MEHLERT: Next is Application Number
8 21414 of Christopher and Katie Hanley.

9 This is self-certified application pursuant
10 to Subtitle X, Section 901.2 for special exceptions
11 under Subtitle E, Section 27.5 to allow the rear
12 wall of the row building to extend further than 10
13 feet beyond the furthest rear wall of an adjoining
14 principal residential building and decent property.

15 And under Subtitle E, Section 5201 for the
16 lot occupancy requirements of Subtitle E, Section
17 210.1.

18 This is for a two-story post-seller rear
19 addition with a first floor deck and an existing
20 two-story post-seller principle line.

21 It's located in the R-1 zone at 218 F
22 Street, Northeast, 753, Lot 122.

23 VICE CHAIR BLAKE: Okay, if the applicant's
24 here, would please introduce yourself for the
25 record?

1 MR. BOYETTE: Hi, my name is Joe Boyette,
2 and I am an architect at Old City Design Studio.

3 VICE CHAIR BLAKE: All right.

4 So, will you be presenting by yourself
5 today?

6 MR. BOYETTE: I will.

7 I believe that one of the homeowners is on,
8 if necessary, but I will be presenting.

9 VICE CHAIR BLAKE: Okay.

10 Okay, well, you've got 15 minutes on the
11 clock, if you could tell us how you believe your
12 client is meeting the criteria for approval?

13 You can begin whenever you like.

14 MR. BOYETTE: I did submit a presentation
15 that someone could bring that up.

16 VICE CHAIR BLAKE: Okay.

17 Mr. Young, would you bring in the
18 presentation?

19 MR. BOYETTE: Thank you.

20 VICE CHAIR BLAKE: Okay.

21 MR. BOYETTE: So, 218 F Street, Northeast
22 is a single-family attached town, built in 1905.

23 And the current owners purchased the
24 property in 2018.

25 The proposal is for a two-story plus seller

1 addition to a two-story plus seller home.

2 The immediate neighbors to the east and the
3 west have each signed a letter of support.

4 We also have letters of support from
5 Architect of the Capitol, Capitol Hill Restoration
6 Society.

7 The ANC zoning committee did place this on
8 the consent calendar for the ANC. We do not have a
9 letter from them as we've noticed previously from
10 this ANC.

11 VICE CHAIR BLAKE: Where did you meet with
12 the ANC? When did you meet with the ANC?

13 MR. BOYETTE: I'm sorry?

14 VICE CHAIR BLAKE: When did you meet, the
15 date, when did you meet with the ANC?

16 MR. BOYETTE: When -- I don't know what the
17 date was, I can look it up while I'm while I'm
18 sitting here.

19 So, the ANC 6C meeting was January 14th.
20 And the -- I'm not sure when we met with the Zoning
21 Committee, but I think that was the full ANC meeting
22 was January 14th.

23 VICE CHAIR BLAKE: All right, thank you.

24 MR. BOYETTE: Yes.

25 VICE CHAIR BLAKE: Please proceed.

1 MR. BOYETTE: So, on the right side of the
2 page shows the block, which is a very -- this block
3 is right between 2nd and 3rd Street and F Street and
4 it's a very diverse block.

5 So, the properties -- all of the properties
6 to the west of the subject property have very small
7 lots.

8 And then, there are five lots that are very
9 similar.

10 And then, it changes again from there to
11 the east, where they're much smaller lots.

12 And then, to the north of the subject
13 property is a school.

14 And then, directly to the northwest of the
15 property is a parking lot behind those smaller lots.

16 So, I just wanted to point that out on the
17 site plan was on.

18 Next slide.

19 So, the left side of the slide is the
20 existing condition.

21 On the right side of the slide shows with
22 the hatching what the proposal is.

23 We're asking relief from the rear yard
24 requirements for an addition extending more than 10
25 feet beyond the neighbors rear wall and lot

1 occupancy above 60 percent.

2 So, the rear lot line of the neighbor to
3 the west aligns with the existing rear wall of the
4 subject property.

5 So, if we -- to put that plainly, if we
6 were to put a one-inch addition on this building, we
7 would have to go into the 10-foot rule.

8 So, we are -- we would have been here
9 regardless with any addition that we put on the
10 building.

11 The proposal is to in-fill the dog leg,
12 which is in-filling the property up until the
13 neighbors wall on the east side, and then, also
14 putting a 12-foot addition on the back and setting
15 that 5 feet off of the neighbors lot line to the
16 east.

17 The existing lot occupancy of the property
18 is roughly 54 percent, of this, 41 percent is the
19 house and 13 percent is the rear deck off the main
20 level of the home in the rear yard.

21 The proposal requests 64 percent lot
22 occupancy, but of this, 54 percent is for the home
23 and then, 10 percent is for the deck off of the rear
24 main level of the home.

25 So, the proposal spilling in the dog leg on

1 three levels and then, creating a new dog leg
2 condition on the same east side of the building with
3 an 11-foot wide and a 12-foot deep addition past the
4 existing rear wall.

5 So, the lot occupancy requirement, if we
6 were coming to you, say six months from now and ZC
7 2512 passed, we would only be coming for the 10-foot
8 LOL, we wouldn't be coming for the for the lot
9 occupancy requirement.

10 So, I just want to kind of put a finer
11 point on that.

12 Next slide. So, these are just some views
13 of the existing conditions. You can see that the
14 homes on the west side are setback significantly
15 from the existing rear wall of the property. And
16 that rear wall of the property aligns with their
17 existing property line and there's a parking lot
18 there.

19 That's important for the sun studies
20 because basically all of the sun study -- all of the
21 light that's going to fall on the properties to the
22 west are going to be well beyond what exists now.

23 Next slide.

24 And this is just existing conditions.

25 So, next slide?

1 Next slide.

2 Thank you.

3 On the lower level, on the left side, we
4 are creating an office and filling in the dog leg
5 for storage.

6 And on the right side of the slide, we are
7 creating a kitchen and a family room.

8 Next slide.

9 And then, on the upper level, enlarging the
10 bedrooms, moving the laundry up to that level to
11 give the family a little bit of space.

12 Next slide.

13 The facades are going to be consistent with
14 the historic district. We will have historic five-
15 inch lap siding.

16 We will have aluminum clad wood windows.

17 The -- on the main level, we'll do high
18 claret story windows to offer privacy to the
19 neighbor.

20 On the second level, and I'm looking at the
21 lower right image, on the second level, we do have
22 one large window, but that is an egress window for
23 that bedroom.

24 Next slide.

25 The sun studies, in the spring and the

1 fall, there's almost no difference in the shadow
2 studies between the existing and proposed.

3 Next slide.

4 In the summer solstice, there is additional
5 shadow paths in the parking lot to the west at noon.

6 There's no difference when the sun's
7 overhead.

8 And then, at 3:00 p.m., the shadows are
9 cast over the rear deck of the home to the west.

10 But shadows that are actually touching the
11 facade are unchanged, so there's no change to the
12 light entering the building.

13 Next slide.

14 During the winter, the north facades will
15 not be impacted by the addition because they're
16 facing north and the sun is too low in the sky.

17 And with that, I welcome any questions.

18 Thank you.

19 VICE CHAIR BLAKE: Okay.

20 Does anyone on the Board have any
21 questions?

22 COMMISSIONER WRIGHT: I will just ask a
23 quick question, which is, I note that you have
24 letters of support from 216 F Street and 220 F
25 Street, which are houses on either side, including

1 the smaller house that's going to have the most,
2 probably, impact by the addition, which I guess
3 would be a total of 28 feet from the back wall of
4 that smaller house, I think it's 216.

5 MR. BOYETTE: Yes, that's true.

6 But as far as light and air, there is no
7 impact because all of that is going to happen beyond
8 their property line.

9 COMMISSIONER WRIGHT: And they already have
10 a fairly significant wall as it as it is.

11 Do you want to comment at all on -- and you
12 have a letter of support from the Capitol Hill
13 Restoration Society.

14 I want to note that our previous architect
15 said they rarely approve.

16 MR. BOYETTE: I think this may be my first
17 approval from CHRS as such.

18 COMMISSIONER WRIGHT: From the 10-foot
19 rule, but in this case, they are recommending
20 approval from the 10-foot rule.

21 And I'm assuming this has gone through or
22 will go through the Historic District Review Board.

23 It's not in a historic district?

24 MR. BOYETTE: It is in a historic district.

25 COMMISSIONER WRIGHT: Okay.

1 MR. BOYETTE: This is this is a question
2 that came up with CHRS and came up with ANC, and
3 it's actually came up with another project that I
4 have where I really pushed to put it through
5 historic preservation review.

6 And, let me just talk about this case, I
7 sent the drawings to Mr. Jones. I sent images to
8 Mr. Jones of the site conditions, and he told me
9 that it does not need to go through historic
10 preservation review.

11 And that was a question that came up in the
12 ANC meeting and the Capitol Hill Restoration Society
13 and I shared the email that he sent me.

14 So, on my next project I really pushed for
15 it and actually applied for HPRB.

16 And then, after the application for HPRB, I
17 was told that I was not allowed to go to HPRB for it
18 and it was sort of a similar project.

19 So, I think that they are very much looking
20 at the right -- there was a point where they
21 expanded their -- it seemed they expanded their
22 review of our projects and we were taking very, very
23 small projects through HPRB.

24 And I think they have gone back to the
25 original criteria that they had for -- it has to do

1 with the gross square foot of the project and the
2 footprint of the project, and that is their
3 criteria.

4 And so, this does not meet either of the
5 criteria for gross square feet or footprint square
6 feet and so they, they are not going to review it.

7 And I've been in a situation before years
8 ago where I went to Board of Zoning Adjustment, and
9 we were told by HPRB, we did not go to HPRB and
10 then, through the BZA process there was some
11 opposition.

12 And then, HPRB be changed their tune and
13 told us that we had to go to HPRB. And that was a
14 very frustrating experience because it cost us -- it
15 cost my clients time, energy, money, you know?

16 And so, I've always -- I always very much
17 want to make absolutely sure that HPRB does not come
18 back after this process and make me go through it
19 again.

20 So, I've been very meticulous to try and
21 make sure that they are 100 percent on board and I
22 can tell you that they are going to review this at
23 the staff level.

24 COMMISSIONER WRIGHT: Great, okay. Well,
25 I've learned something new this evening. I did not

1 know that the Historic Reservation Review Board had
2 that kind of criteria for what goes before them and
3 what doesn't. Those were really my only questions.

4 I think it's a very nice design. I don't
5 think, again, that it is pushing the envelope or,
6 you know, you're only going to 63.6, which is
7 slightly above the 60 percent permitted, but I think
8 it's a great project.

9 So, I'm prepared to support it, thank you.

10 MR. BOYETTE: Thank you.

11 VICE CHAIR BLAKE: Do we have any questions
12 from anyone else?

13 Ms. Drakeford? No?

14 MEMBER DRAKEFORD: No, no question. I just
15 wanted to note that, and I appreciate Commissioner
16 Wright bringing up the question about Historic
17 Preservation Review.

18 In DCOP's letter, they did also indicate
19 that the addition would be compatible with the
20 historic district and that Historic Preservation
21 Review Board review is not required.

22 So, I also just wanted to just note that.

23 VICE CHAIR BLAKE: Okay, can we hear from
24 the Office of Planning?

25 MS. BROWN-ROBERTS: Oops, okay, sorry about

1 that. Let's see here, so, good night, Mr. Chairman
2 and members of the Board. Maxine Brown-Roberts,
3 again, from the Office of Planning.

4 I would just like to make a correction to
5 our report.

6 In the recommendation section, it states
7 that the rear extension is pursuing the Subtitle E
8 2205.1 but that should have been Section 27.4.

9 This error does not change our analysis or
10 recommendation of approval for the requested special
11 exception for the rear yard extension -- for the
12 rear extension and increase in the lot of occupancy.

13 So, as outlined in our report, the proposal
14 meets all the requirements of Subtitle E 5201 and
15 Subtitle X901. And, therefore, the Office of
16 Planning recommends approval of the requested
17 special exception.

18 Thank you, Mr. Chairman, and I'm available
19 for questions.

20 VICE CHAIR BLAKE: Okay. Does anyone have
21 any questions for the Office of Planning?

22 (No audible response.)

23 VICE CHAIR BLAKE: Okay. Thank you, Ms.
24 Brown-Roberts. Thank you very much.

25 MS. BROWN-ROBERTS: Okay.

1 VICE CHAIR BLAKE: Okay, if there are no
2 more questions -- oh, sorry, is there anyone here
3 that wishes to testify?

4 MR. YOUNG: We do not.

5 VICE CHAIR BLAKE: Just kidding, okay.

6 Okay, Mr. Boyette, do you have any closing
7 remarks?

8 (No audible response.)

9 VICE CHAIR BLAKE: Mr. Boyette, do you have
10 any closing remarks?

11 MR. BOYETTE: No.

12 VICE CHAIR BLAKE: Okay, thank you very
13 much.

14 Mr. Young, would you please close the
15 hearing and the record and dismiss the witnesses?

16 VICE CHAIR BLAKE: Ms. Wright, do you --
17 you got it.

18 COMMISSIONER WRIGHT: Yes, I think we're
19 ready to move forward on this case. I think it is
20 quite straightforward and a nice design. And it
21 looks like it has pretty unanimous support from not
22 only Capitol Hill Restoration and the ANC, but also
23 the neighbors on both sides.

24 So, I am ready to support a motion for
25 approval.

1 VICE CHAIR BLAKE: Okay, thank you.

2 Board Member Drakeford?

3 MEMBER DRAKEFORD: Yes, I would certainly
4 agree. Yes, I would have -- I don't need to make my
5 comments look lengthy at this time.

6 VICE CHAIR BLAKE: I hear you.

7 Here we go, I agree with the Office of
8 Planning's analysis as well.

9 I do believe the applicant has met the
10 burden of proof to be granted the requested relief.

11 And I'll just say, I do agree with the
12 Office of Planning's analysis and give great weight
13 to its recommendation.

14 I will also note, it's mention of the
15 historic preservation and report, as you pointed
16 out, Ms. Drakeford.

17 And DDOT it has no objections to the
18 project.

19 There are letters of support from abutting
20 properties as well as CHRIS, and I don't believe
21 there any statements of opposition.

22 There was, let's see, a report from the
23 Architect of the Capitol, but that is not
24 appropriate for the zone as this is not an RF-1 CAP
25 zone.

1 So, all that said, I am also in support of
2 the application, and will be voting for its
3 approval.

4 So, with that, I'll make a motion to
5 approve the application as written in caption -- as
6 read -- as captioned and read by the Secretary and
7 ask for a second.

8 Board Member Drakeford?

9 MEMBER DRAKEFORD: I Second.

10 VICE CHAIR BLAKE: Madam Secretary, the
11 motion has been made and seconded.

12 Would you please conduct the roll call
13 vote?

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

16 Chairman Blake?

17 VICE CHAIR BLAKE: Yes.

18 MS. MEHLERT: Board Member Drakeford.

19 MEMBER DRAKEFORD: Yes.

20 MS. MEHLERT: And Commissioner Wright?

21 COMMISSIONER WRIGHT: Yes.

22 MS. MEHLERT: Staff will record the vote is
23 three to zero to two to approve Application Number
24 21414 on the motion made by Chairman Blake and
25 seconded by Board Member Drakeford.

1 VICE CHAIR BLAKE: Fantastic.

2 Madam Secretary, do you have anymore -- any
3 other business for today or tonight?

4 MS. MEHLERT: Nothing else.

5 VICE CHAIR BLAKE: Fantastic. Thank you
6 all very much. 11-12 hours. Have a great day.
7 Thank you all so much.

8 MS. MEHLERT: Thank you, good night.

9 (Whereupon, the above-entitled matter went
10 off the record at 9:41 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
5 and accurate record of the proceedings; and that I
6 am neither counsel for, related to, nor employed by
7 any of the parties to this action in which this
8 matter was taken; and further that I am not a
9 relative nor an employee of any of the parties nor
10 counsel employed by the parties, and I am not
11 financially or otherwise interested in the outcome
12 of the action.

13

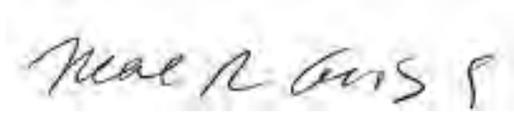
14

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A handwritten signature in cursive script, reading "Neal R. Gross", is written over a horizontal line.

19 Court Reporter

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