

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

SEPTEMBER 2, 2026

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The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video/Teleconference, pursuant to notice at 10:27 a.m. EDT, Michelle Pourciau, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MICHELLE POURCIAU, Chairperson
PAUL GOLDSTEIN, Vice-Chairperson
MELISSA LINDSJO, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

GWEN WRIGHT, District Resident Appointee
JOSEPH S. IMAMURA, PhD, AOC Designee

OFFICE OF ZONING STAFF PRESENT:

KEARA MEHLERT, Secretary
SARAH A. BARDIN, Director
TRACEY W. ROSE, Sr. Zoning Specialist
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

KAREN THOMAS
SHEPARD BEAMON
MATTHEW JESICK

1 OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

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

5 The transcript constitutes the minutes
6 from the Regular Public Hearing held on Wednesday,
7 September 2, 2026.
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P-R-O-C-E-E-D-I-N-G-S

(10:27 a.m.)

CHAIRPERSON POURCIAU: -- hearing session. Our first case is case number 21349-A. And I see Commissioner Imamura will be joining us for this case.

Madam Secretary, would you please read it into the record?

MS. MEHLERT: Yes.

Moving into the board's hearing session, as mentioned, this is application number 21349-A of Ed Fendley. As amended, this is a self-certified request pursuant to Subtitle Y, Section 704 for modification, with hearing, of the order issued in application number 21349 to add pursuant to Subtitle X, Section 1002, an area variance for Subtitle U, Section 301.1(c)(4)(c) to allow a principal dwelling in a new accessory structure without permanent access on an improved alley, at least 15 feet width and within a distance of 300 linear feet of a public street. (Inaudible) RF-1 zone at 628 15th Street, Northeast, square 1051, lot 113.

The public hearing began on June 17th, and participating are Board Chairman Lindsjo, Vice Chair Goldstein, and Dr. Imamura. And I believe Board Member Lindsjo has read into the record.

CHAIRPERSON POURCIAU: Thank you so much. I

1 think I want to begin by saying that this is one of many
2 cases that we're now seeing that, due to some of the
3 changes in the zoning provisions, the amendment, things
4 have changed. And so we're just -- we're trying to work
5 through how those changes affect each applicant
6 individually. I know we requested at our last hearing
7 that the applicant look at those provisions that were
8 still pending at the time, which have now been codified,
9 to see what changes might be necessary or desired. And so
10 I would like to hear from the applicant's agent now.

11 Ms. Schinder, I see you are on. Could you please
12 describe for us your findings and where you are now based
13 on what you've seen in the change in the zoning
14 provisions?

15 MS. SCHINDER: Thank you, Chairman Pourciau, for
16 this time.

17 I appreciate everybody's time starting this case
18 and helping us with the process. So we did go back. I
19 know this case has been going on for a long time.

20 To clarify, this is just for the -- a variance
21 for the existing width of the alley behind the property.
22 We made modifications designed to accommodate this
23 restriction in the historic alley. So we did look into
24 the Zoning Commission that -- the Omnibus Text Amendment.

25 I have it on a second screen. That's why I'm looking

1 away from the camera. That was approved in May of '26.
2 It's called the Omnibus Text Amendment. And it clarifies
3 provisions on parking, so as to remove parking
4 requirements as a promotion of more affordable and
5 achievable housing in the District of Columbia. That goes
6 along with the exemption that we already was approved for,
7 as to not provide parking, but also emphasizes the
8 interest of the District of Columbia at promoting housing
9 in restrictive sites. So that was the intention of the
10 Omnibus Text Amendment. And if it's not a ward-by-ward to
11 -- applicable to our case, it tells the intention of the
12 city.

13 The other regulation that we looked for was the
14 -- I have it open on my side. We also submitted this to
15 BZA, the Alley Lot Regulations Amendment. It's called
16 case 2506. And it -- again, it shows the intention of the
17 city to incentivize the -- and promote the development of
18 restrictive lots, fronting alleys only. Again, it's not
19 our specific case because our property faces both the
20 front and the alley, even if our lot is extremely
21 restrictive. It shows that the city is more welcome to
22 odd and restrictive alleys to receive housing even if it
23 doesn't comply with 100 percent of the zoning code until
24 now. So both of them show the intention of the city to
25 welcome a more creative approach of housing. Again, none

1 of them address the existing of 10-foot alleys, but I'm
2 just showing that the city has the intention of promoting
3 these type of structures.

4 And the third item that we looked into was the
5 comprehensive plan, also known as FLUM, the Future Land
6 Use Map. And again, the city also emphasizes the need to
7 increase housing opportunities, New York transit, and
8 commercial corridors. Our site is what's considered
9 residential medium density, so with -- and when this
10 comprehensive plan gets implemented, our lot is part of
11 that promotion of housing. Again, not every lot in the
12 city, particularly in the historic area, will comply by
13 the book, but the intention of every regulation from
14 zoning and from every amendment expressed so far shows
15 that the intention to promote housing while we try to
16 compensate for restrictive existing conditions is there as
17 an umbrella intention.

18 With this, I also want to emphasize that, so far,
19 with the information provided so far, we have not received
20 any opposition from any neighbors. We have also received
21 support from the ANC, not just our ANC, but the
22 neighboring ANC, which happen to sit on a street that
23 neighbors two. And then also, most importantly, the
24 Office of Planning has requested that -- has suggested
25 that they -- this project be approved as suggested. As we

1 promote -- even if we can't widen the alley from a private
2 ownership perspective, as the building sits from the
3 center line of the alley and it's so close to the alley
4 mount, they don't see any impediments for this project to
5 move forward.

6 We also have not received any opposition from any
7 safety officials, like emergency and agencies of that
8 type. And yes. So the general umbrella of the city is
9 the intention to promote more housing and create them in
10 areas that are hyper restrictive, like the one -- like the
11 one we're proposing. So that is the general approach of
12 the homework we were tasked to complete.

13 CHAIRPERSON POURCIAU: Thank you. I -- I'd like
14 to go in a little different order on this case today
15 because I want to -- I want to get all the background on
16 the record that we can. And you referenced Office of
17 Planning, and I think Ms. Thomas is on now. And I'm
18 looking at her report that's in the record, but I don't
19 believe it was updated since June 5th.

20 Ms. Thompson, are -- Ms. Thomas, are you able to
21 join or come on camera?

22 MS. THOMAS: Yeah.

23 CHAIRPERSON POURCIAU: Okay. Thank you.

24 MS. THOMAS: Yes. Hi.

25 CHAIRPERSON POURCIAU: Hi. How are you?

1 MS. THOMAS: Good morning --

2 CHAIRPERSON POURCIAU: And so --

3 MS. THOMAS: -- Madam Chair.

4 CHAIRPERSON POURCIAU: Good. I'm looking at Page
5 2 and 3 of your report, and I found your chart at that
6 time to be very helpful. It does reiterate in a chart
7 form what we've just heard from Ms. Schinder, which was
8 that the relief for parking and accessory building use has
9 -- was previously approved. And so the only thing we're
10 looking at today is what remains the variance relief
11 request. But I'm hearing from our legal counsel that may
12 not -- based on the changes to the zoning, that may not be
13 the best path for the applicant to receive the approval
14 that she's hoping for. Can you -- have you familiarized
15 yourself with the amendment, and can you speak to the
16 difference of what you stated back in June 5th and what
17 might be the case now? Are you comfortable with that?

18 MS. THOMAS: Not really. I -- the changes that
19 were made to the -- from my understanding and what was
20 told to me here by staff who worked on the alley lots
21 provision, the changes to the alley regulations would not
22 have affected the -- since this is not an alley lot, it's
23 an ordinary lot. It's a common lot. It's not an alley
24 lot. And that's my understanding, that the regulations
25 wouldn't have any impact on this. If there's something to

1 the contrary, I'd be happy to listen to that. I can
2 consult with the office of -- your office's staff -- legal
3 staff on that.

4 CHAIRPERSON POURCIAU: Okay. Thank you for that.

5 I would like to now go back to the board to ask
6 if -- ask for questions that you might have of the
7 applicant. And so I'd like to start with Vice Chair
8 Goldstein, please. Thank you.

9 VICE CHAIRPERSON GOLDSTEIN: Sure. Thank you
10 very much.

11 You know, in the previous hearing, I really tried
12 to prompt discussion of the Omnibus Text Amendment. And I
13 appreciate, Ms. Schindler, that you -- Schinder, that you
14 reviewed it. Did you review it also for the changes that
15 were made to Subtitle U, Section 301, which is the area of
16 the regulation that you are requesting relief from?

17 MS. SCHINDER: I did look into that. And to be
18 specific about our case, we look into GIS data, looking at
19 RF-1 parcels, just like ours, that back 10-foot alleys and
20 our lots. Lots that fall under that characteristic are
21 less than one -- they're between one and two percent. So
22 being such a sort of micropopulation of lots, the text
23 amendment -- there's no rule that any reasonable zoning
24 official would make to address such a small group of lots.

25 I mean, it's less than five percent of the lots. So

1 creating regulation for such a small type -- such a small
2 amount of types of lot -- that's why we are into this.
3 It's like we're so unique in where we are and the type of
4 lot we are. And everything we do to compensate for that
5 uniqueness, the regulations do not address our case. It's
6 good to be unique, but also we're left out of any
7 regulation that people write about.

8 VICE CHAIRPERSON GOLDSTEIN: No. I hear you.
9 And I -- I'm just trying -- I think my question was a
10 little bit more specific than that. Did you look at --
11 when you reviewed the Omnibus Text Amendment, did you look
12 at the changes that were made to Subtitle U, Section
13 301.1?

14 And this is the area of the regulations that
15 you're requesting area variance relief from. What I tried
16 to prompt in our previous hearing is for you to examine
17 the changes made that could relate to your project. You
18 looked at the parking, but you didn't look at the -- from
19 what I can tell, you didn't review the section that
20 involves the alley width provisions. So this has had some
21 consequences for your application.

22 Based on the omnibus, the section you requested
23 relief from no longer exists. Things are moved around.
24 Secondly, it appears from my point of view -- and I'd
25 like, you know, the Office of Planning, when they have an

1 opportunity to review it further -- it looks like it's a
2 special exception and no longer a variance. So the case
3 may have fundamentally changed, but your application still
4 seems to be asking for relief from a provision, not only
5 area variance relief, but from a provision that no longer
6 exists.

7 So that's, I think, a little bit what we're
8 struggling with. I know it's a form over substance issue,
9 but we're kind of dealing with the -- what you've applied
10 for, which is relief from something that does not exist in
11 the regulations anymore. So I -- I'm trying to think of
12 where to take this discussion.

13 MS. SCHINDER: So just to introduce --

14 VICE CHAIRPERSON GOLDSTEIN: Yeah.

15 MS. SCHINDER: So you're basically telling me
16 very good news because you're telling me that when the
17 Omnibus Text Amendment get finalized and incorporated into
18 the future zoning, if we were to come in with a case as
19 is, you know, considering our argument -- but the thing
20 is, like, we're in the middle -- we're in a ruling that is
21 about to be decided. But it's not in the code yet. It's
22 not in the law yet. So in a way, it is kind of good news.
23 We just have to wait until those regulations get
24 implemented.

25 VICE CHAIRPERSON GOLDSTEIN: Actually, I can go

1 through the timing a little bit more. So our hearing was
2 June 17th. The omnibus order was published a week later.

3 It became effective on July 10th. And then you
4 submitted, based on the old text, on July 20th. So I'm
5 actually very sympathetic in that you are -- you -- you're
6 in the midst of a changing regulation, one that actually
7 may be very helpful for you and your client, but your
8 application as submitted, and your relief request as
9 submitted, do not align with the way the regulations are
10 now written. So we're at a bit of a -- we're a bit stuck
11 in this hearing, that the ground has shifted some --

12 MS. SCHINDER: Okay.

13 VICE CHAIRPERSON GOLDSTEIN: -- I think in a
14 positive way for you -- because I think the variance
15 argument was still a challenging argument for you, but I
16 think that there's now better ammunition for your case
17 based on the changed language. And I would suggest -- and
18 there are a few other things I want to address too with
19 you, but -- that it may need an additional look on your
20 part about how your application could be styled to take
21 advantage of the rule changes that now exist. So there's
22 that piece. Two other things I'd like to ask -- oh, I'm
23 sorry. And I'll stop and let my colleagues jump in, but I
24 have two other things on my mind if -- unless --

25 CHAIRPERSON POURCIAU: Would you --

1 VICE CHAIRPERSON GOLDSTEIN: -- if my colleagues
2 want to --

3 CHAIRPERSON POURCIAU: Would you proceed? Yeah.
4 I think --

5 VICE CHAIRPERSON GOLDSTEIN: Oh, okay.

6 CHAIRPERSON POURCIAU: Okay. Thank you.

7 VICE CHAIRPERSON GOLDSTEIN: Sure.

8 I think in any -- as you review the case again
9 for relief, I just want to put a few other things on your
10 mind so that the record can be as clear as possible for
11 what you need. The plans have changed some from the
12 original approved order. I believe you set back the
13 accessory building maybe three feet. I don't know if I
14 have the exact right number. It's customary to request
15 relief to modify approved plans, so that would be one
16 thing I just want you to be aware of. The other thing is,
17 from the original order, I believe you got relief for the
18 ability to allow an -- a -- an accessory unit in an
19 accessory building. I would just want to make it clear
20 that you continue to want that relief as applied to your
21 project. I believe you probably do. And I think that
22 that rule numbering, I don't think has changed under the
23 latest zoning regulations, but I'd want you to reconfirm
24 that.

25 So on my mind, some of the outstanding issues for

1 you would be look at the regulations as they now exist.
2 Make -- see how they benefit your application. My belief,
3 but I want you to confirm it with the Office of Planning
4 and potentially the Office of Zoning administration, would
5 be that it's a special exception now under changed
6 numbering. And I just want to make sure that you also
7 apply for everything that you need so that we've got
8 everything before us in an approvable -- potentially
9 approvable state to really be able to, more substantively,
10 look at your case and less through formality in the
11 future.

12 MS. SCHINDER: Quick question. Because there
13 were two portions of exemptions that were already
14 approved, do you want me to include that as part of the
15 history of the case, or you want me to include them as
16 part for you guys to review it as well?

17 VICE CHAIRPERSON GOLDSTEIN: Yeah. No. That's a
18 great question. I don't know, and I -- I'd like my
19 colleagues to chime in that you need to re-argue anything.
20 I think it might be more that you just need to state that
21 that relief would be carried forward to --

22 MS. SCHINDER: Okay.

23 VICE CHAIRPERSON GOLDSTEIN: -- the new
24 application, but I kind of -- that may also be something
25 to talk about with OZ staff after the fact, but I just

1 want to make sure that the case record is as clear as
2 possible for the future. So maybe that's something that
3 could require a little back and forth.

4 MS. SCHINDER: Another question to clarify. Many
5 times, Office of Zoning, or most times, they like to issue
6 a memo -- a zoning memo. Would the zoning memo quoting
7 the Omnibus Text Amendment -- will that help you frame the
8 case as well? Or do you want us to request -- I'm happy
9 to request one of those.

10 VICE CHAIRPERSON GOLDSTEIN: I think it would be
11 very helpful for you to reach out. I know you've had some
12 communication with Office of Zoning administration staff
13 on this case. Given the changing landscape of the
14 regulations, I think it would be helpful for you to reach
15 out to them and also to engage with Ms. Thomas as well. I
16 really just want to make sure that this is -- that all the
17 formality of this is really buttoned up so that the next
18 time we discuss it, it's really about the substance of the
19 project and not these technical aspects.

20 MS. SCHINDER: I also want to clarify. Ms.
21 Thomas has been incredibly helpful and informative in all
22 of this process, so I just want to thank her for her work.
23 I want to make that public statement. The Office of
24 Planning has been incredibly helpful in this process.

25 VICE CHAIRPERSON GOLDSTEIN: Ms. Thomas is

1 terrific at her job, and I know she'll continue to be
2 helpful going forward.

3 CHAIRPERSON POURCIAU: Thank you both for that.

4 I want to make a couple of comments, and then I
5 want to call on my colleagues to hear what they have to
6 say. I want -- particularly, I want to thank you, Mr.
7 Goldstein, for so eloquently stating the conundrum we find
8 ourselves in. Where we are -- you know, we're going to
9 deliberate some more. The -- we -- I don't feel like we
10 can take a very positive action today on your case, and we
11 don't want to do something that wouldn't be positive if we
12 don't have to. So that's one option we have. We do have
13 a couple of other options, but that would include
14 continuing the case. But we would probably need to put
15 some kind of time frame on that. So I want you to think
16 about that as my colleagues weigh in with their thoughts.

17 Board Member Lindsjo, would you please offer your
18 comments?

19 MEMBER LINDSJO: Yes. I would first like to say
20 that I have been read into the record for this case, and I
21 do agree with what Vice Chair was speaking to about just
22 getting more clarity on exactly what you're asking for.
23 And then also what the chair was saying, that we would --
24 we -- I think we would be more beneficial for everyone if
25 we looked at your case maybe at a later date once we have

1 more clarity on what you're seeking. Thank you.

2 CHAIRPERSON POURCIAU: Thank you.

3 MEMBER IMAMURA: Thank you, Chair Pourciau.

4 I'm in agreement with Vice Chair Goldstein. I
5 think he articulated the issue quite well and clearly and
6 succinctly.

7 So Ms. Schinder, I think the tide is moving in
8 your direction here. Given the fact that the omnibus has
9 changed some of the language, I think coming back to us
10 with revisions that are applicable and based off of the
11 omnibus I think will be more suitable. And I think we'll
12 be prepared to hear your case again at a later date.
13 There's really not much we can do today at all. So I'll
14 leave it up to you and -- to decide on how we -- how you'd
15 prefer to move forward here, but whether we continue this,
16 I guess, could be up to the board here. But -- or
17 withdraw the case and then come back with a new case with
18 the appropriate special exception, I think, would be fine,
19 too.

20 CHAIRPERSON POURCIAU: Before I -- before we talk
21 more with you, Ms. Schinder, I just want to go through my
22 list here to make sure I haven't missed anybody. I don't
23 think I have, but I just want to call it off to make sure
24 we've heard from everybody who's here to talk today.

25 We've heard from Office of Planning, and there

1 are no other district government agencies present. The
2 ANC isn't here today, but they did submit something in the
3 record for approval, and there were no parties in support
4 or opposition or individuals in support or opposition. If
5 I miss anything, please let me know now, Mr. Young, or
6 anybody else who might know. All right. So that's
7 covered.

8 So Ms. Schinder, how would you like to proceed at
9 this time? Would you like to make a closing statement and
10 have us proceed into deliberation?

11 MS. SCHINDER: My only closing statement is I
12 appreciate everybody's time in the 10 years I've been
13 coming to Board of Zoning. This is the first time I get
14 caught in between a change of board and a change of zoning
15 rules, all under the same case. It has never happened
16 before. Fortunately, all my previous cases have been --
17 has been approved. So in a way, I'm glad that it -- the
18 zoning change was in our favor. I'm just sorry that
19 everybody's spending so much time on it. I'm glad that
20 we'll be able to document it differently.

21 And again, between the Office of Planning and all
22 the rest of the staff, I appreciate everybody's time and
23 helping us navigate the new board and navigate the new
24 rules. Again, it's kind of a double whammy. I didn't
25 know it was even possible, but I guess that even the

1 change of rule was implemented, like, after I submitted my
2 edited report to you. So I don't know if apologizing for
3 that or not. It's just like everything is to be happening
4 at the same time, but I will be working diligently to make
5 sure that everything is clear. I will work with Board of
6 Zoning -- with the zoning staff to make sure that -- how
7 we can remove all records for clarity. I don't know if
8 that's even possible to make everybody's job easier. So
9 again, I'll be -- I appreciate your time, and I'm sorry
10 we're all caught on all these changes.

11 CHAIRPERSON POURCIAU: Okay. So we will continue
12 this hearing. Madam Secretary, do we need to vote on
13 that, or do you -- I think you just kind of give us what
14 should happen next.

15 MS. MEHLERT: No vote is necessary. I would
16 suggest -- this is for a continued hearing, you said. You
17 could -- the board could come back on November 4th. I
18 know Dr. Imamura is back with the board that day, and that
19 could also give enough time for the applicant to perhaps
20 get the memo from the zoning administrator as well.

21 MS. SCHINDER: That's plenty of time for us.
22 Even if you want to move it forward, that's also fine.

23 CHAIRPERSON POURCIAU: Thank you. Thank you so
24 much, Ms. Schinder.

25 Thank you, Madam Secretary.

1 And good seeing you, Mr. Imamura, Mr.
2 Commissioner. We look forward to seeing you next time.

3 MEMBER IMAMURA: Very good. Thank you,
4 Chairperson.

5 Thank you, everybody. Have a great day.

6 MS. SCHINDER: See you soon. I hope to make it
7 easier next time for everyone.

8 MEMBER IMAMURA: Thank you.

9 CHAIRPERSON POURCIAU: Me, too.

10 MS. SCHINDER: Thank you.

11 CHAIRPERSON POURCIAU: Bye.

12 Okay. We will move on to our next case. Thank
13 you. Our next case is application 20974-B.

14 Madam Secretary?

15 MS. MEHLERT: Yes.

16 Next is application number 20974-B of DC
17 Chinatown Hotel Owner, LLC. As amended, this is a self-
18 certified request pursuant to Subtitle Y, Section 704 for
19 a modification with hearing of the order issued in
20 application number 9 -- 20974 to add, pursuant to Subtitle
21 X, Section 901.2, a special exception under Subtitle I,
22 Section 205.5 from the rear yard requirements of Subtitle
23 I, Section 205.1, and modify the approved plans, including
24 adding a 10th floor to the addition and increasing
25 setbacks on upper levels.

1 This is for a new 10-story building, previously
2 approved as nine stories, retaining portions of existing
3 three- or four-story buildings for lodging, retail, and
4 assembly uses. It's located in the D-4-R zone at 503 to
5 517 H Street, Northwest, square 485, lots 3, 30, 42, 43,
6 44, and 48. There are --

7 Do you want me to go forward with the preliminary
8 matters?

9 CHAIRPERSON POURCIAU: Yes, please. Thank you.

10 MS. MEHLERT: There are two preliminary matters.

11 First is the applicant submitted a motion to accept
12 delayed filing their transportation statement in Exhibits
13 28 through 28B. And then second, there are two proper and
14 expert witnesses. Peter Fillat is an expert in
15 architecture and design, who's not been previously
16 recognized. And Robert Schiesel is an expert in
17 transportation, who has been recognized by the board.

18 CHAIRPERSON POURCIAU: Thank you for that.

19 All right. I see the agent for the applicant,
20 Mr. Cohen, is here, and others. Would you like to
21 introduce yourself and those you are with and present your
22 case? We offer you 15 minutes to do that. Thank you.

23 MR. FREEMAN: Good morning, Madam Chair. For the
24 record, it's Kyrus Freeman. I'm a partner at the law firm
25 of Holland & Knight on behalf of the applicant. Can't

1 tell who else is on, but Chris Cohen is an associate here
2 helping on this case. So if he's on our team. May be
3 listed.

4 If you could please bring in Peter Fillat. He's
5 our project architect, who will be going through our
6 plans. Robert Schiesel is our transportation expert, who
7 is available to answer questions as they come up. And
8 Stephan Rodiger, who is the owner applicant, who's also
9 available to answer any questions as we go through this
10 hearing.

11 I will start. I will -- Mr. Young, if you could
12 please bring up our presentation. I will start and then
13 turn it over to the architect. So this slide just
14 indicates what we're here for and who our team is.

15 Next slide, please.

16 The project is in addition to existing historic
17 property on 503 to 517 H Street. And we're here today to
18 seek a modification to a prior approved BZA relief for
19 this.

20 Next slide, please.

21 This shows a little bit of context. We're in the
22 downtown zone, high-density zone, Chinatown neighborhood.

23 Next slide.

24 And just a little bit of specifics on our case.
25 So our original approval, BZA Order 20974, which became

1 final on May 9th, 2024 -- we recently got an extension
2 from this board extending that. It approved a nine-story
3 lodging use with ground cell -- ground floor retail, 6.85
4 FAR, 99.25 feet of building height. And we received rear
5 yard relief in that case. 10 feet was provided, whereas
6 20 feet and 10 inches was required. We received loading
7 relief, and there was one condition: implementation of the
8 TDM and loaded management plan.

9 We are here today seeking a modification of that
10 approval. We are increasing the number of units -- I'm
11 sorry, the number of lodging rooms. We are increasing the
12 height from 99.25 to 110 feet in height. It's important
13 to be clear. The height is a matter of right height. We
14 don't need zoning relief to go to 110 feet. That's a
15 matter of right height permitted in this zone. But
16 because the original approval was 99 feet, we are -- we're
17 needing a modification to those plans. We have increased
18 the density from 6.85 to 7.18, which is matter-of-right
19 density.

20 The building's been slightly redesigned. We're
21 going back to HPRB. It's within a historic district, and
22 we are continuing to maintain the 10-foot rear yard. So
23 again, the relief here is the modification of the plans
24 pursuant to Subtitle Y, Section 704. And the special
25 exception pursuant to Subtitle I, 205.5 regarding the rear

1 yard relief, as you kind of noted in the case that went
2 before us -- this was originally approved as a variance
3 with the omnibus. Rear yard relief is now a special
4 exception. So we updated our arguments. And today we're
5 solely focused on a special exception for essentially two
6 additional feet of rear yard relief.

7 And with that, if we could go to the next slide,
8 I will turn it over to our architect, Peter.

9 Do you see -- Mr. Young, do you see Peter online?

10 MR. YOUNG: Yes, he's on. He's just on mute, so
11 he just needs to unmute himself.

12 CHAIRPERSON POURCIAU: You want to come back to
13 his part? You want to -- it looks like -- you want to --

14 MR. YOUNG: He's on, and it looks like he unmuted
15 himself, but he might have to go to your audio options
16 because your microphone -- you might have a different
17 microphone connected. So next to your unmute button,
18 there's a little down arrow. And if you change which
19 microphone you're using?

20 CHAIRPERSON POURCIAU: Mr. Freeman, I suggest you
21 --

22 MR. FILLAT: Is that better?

23 CHAIRPERSON POURCIAU: -- and come back to -- oh,
24 there he is.

25 MR. YOUNG: Yes, we can hear you now.

1 CHAIRPERSON POURCIAU: Okay.

2 MR. FILLAT: Can they hear me?

3 MR. YOUNG: Yeah.

4 CHAIRPERSON POURCIAU: Yes. Yes, we can hear
5 you.

6 MR. FILLAT: Okay. So good morning. I can hear
7 you, but sorry for the confusion, I guess. All right. I
8 want to just walk you through the plans and the design.
9 The existing -- these are a series of images of the
10 project site, looking at the existing historic townhouses
11 on H Street, on the lower left-hand corner, and then a few
12 images from the corners of 5th and H, 6th and H, and 7th
13 and H.

14 Next slide. Okay. There you go. Thank you.

15 I don't know why this is not working properly,
16 really. Usually don't have technical difficulties. Let's
17 try this again.

18 John, are you able to help, here?

19 I can't -- I don't know if anybody can hear me.
20 I can't hear anyone.

21 VICE CHAIRPERSON GOLDSTEIN: I can hear you. I
22 don't know if you can hear me.

23 MR. FILLAT: Okay. Now I can hear you.

24 VICE CHAIRPERSON GOLDSTEIN: Okay. Great.

25 MR. FILLAT: Thank you. All right. Thank you.

1 All right.

2 So did you hear my -- what I said about this
3 particular page yet, or should I review it again? That
4 was a question.

5 VICE CHAIRPERSON GOLDSTEIN: I heard you.

6 CHAIRPERSON POURCIAU: We heard you.

7 VICE CHAIRPERSON GOLDSTEIN: I heard you.

8 MR. FILLAT: Okay. Thank you.

9 Next slide, then, please.

10 Okay. Is another series of images. These are
11 the images of the project from the alley. This is the
12 number -- it's very small on my screen, so I apologize. I
13 hope. Image number 6 is an image from the alley looking
14 to the north. Image number 10 is an -- the image of the
15 alley looking at the back of the site. All of this will
16 be demolished and rebuilt with a new tower. And the other
17 two images -- the other three images are both in the alley
18 looking at the rear of the site. And then the last image,
19 number 13, is the entrance of the alley from 6th Street.

20 Next slide.

21 This is a roof plan of the proposal. The dark-
22 shaded townhouse-like volumes along the bottom of the
23 pages is the -- are the existing townhouses to remain, and
24 the white volume is the roof plan of the new tower.

25 Next slide.

1 This is a plan of the 10th floor, which is the
2 new additional floor that we are proposing that's a
3 modification from the previous proposal. The pink are
4 guest rooms, and then on the -- either side of the pink
5 volumes are basically living rooms and little outdoor
6 terraces.

7 Next slide.

8 So this is an elevation of the building. You can
9 see that the townhouses will be fully restored and cleaned
10 up. New windows put in the whole -- in the entire facade.

11 There will be a new entrance in the light brown townhouse
12 that will be the entrance to the hotel. And then all the
13 way to the right is an existing building that will be
14 reconstructed with a new facade and a new storefront.

15 And then the balance of the project is the new
16 tower. It's actually -- like you could see on the
17 previous drawing, it's set back about 25 feet from the
18 front facade. And that -- the gray portion is intended to
19 sort of be a scalar device between the townhouses and the
20 volume of the tower. And then the upper two floors shows
21 both the height that it was, was one story of light
22 material, and then there's an additional 10th floor,
23 which, as you can see, steps back on the sides, sort of
24 creating a little stair step-like approach to the upper
25 level of the building.

1 Next slide.

2 This is the rear of the building, rear elevation.

3 We changed the materials to sort of reflect the adjacent
4 townhouse heights. So the lower portion of the building
5 is sort of a dark gray material, masonry material, that's
6 approximately 35 feet high. Then the balance of the
7 building is about 90 feet tall. And then the white
8 portion of the building rises up to the 110-foot height.

9 Next slide.

10 And then these are some, you know, beautiful
11 images of what we hope the block will become, you know,
12 activated, fully restored masonry buildings, beautiful
13 historic architecture, and then the hotel tower set way
14 back off the street, and -- as the major generator of the
15 development.

16 Next slide.

17 Again, another image from -- this is the corner
18 of 6th and H, and you can see, you know, how we propose to
19 bring these beautiful, historic row back to life. You can
20 also see, on this image, the way the tower sets back off
21 of 6th Street, and you can see the adjacent residential
22 building and townhouses where our building is actually set
23 back. I think it's set back about 45 feet from 6th
24 Street, and then about 25 feet from H Street. So in this
25 corner, the building is really kind of furthest back it

1 possibly can be. That's where our property line is as
2 well.

3 Next slide.

4 This is an image from the -- sort of the opposite
5 corner, the corner of 7th and H. Again, the building sets
6 back in the front, and also from the townhouse on the
7 right-hand side. So really, the high part of the building
8 sort of occupies the middle of the site sort -- in sort of
9 the -- in most ideal kind of conditions.

10 Next slide.

11 MR. FREEMAN: So this is back to me. I could --
12 Madam Chair, I'm going to probably need more than the two
13 minutes that are shown counted down on the clock. If you
14 could afford me, I don't know, five to ten more minutes?
15 We're almost through our presentation, but I know I'm in
16 --

17 CHAIRPERSON POURCIAU: Let's try five, okay?

18 MR. FREEMAN: Okay.

19 Just a quick question -- a quick point that I
20 want to make sure Peter mentions. So this project went
21 through HPRB, and the reason the building is set back
22 along the H Street frontage, Peter, if you could just talk
23 about that, that was because of HPRB wanting you to push
24 the primary addition back in a way from the existing
25 historic structures.

1 Is that the logic of that?

2 Okay. All right. So we --

3 MR. FILLAT: Yes.

4 MR. FREEMAN: Okay. Thank you.

5 So again, we're here for a modification. We just
6 have here -- what is the standard for the modification?
7 The nature of it is, we're adding one story. We're
8 refining the upper floor design of the setbacks. What's
9 the reason? Again, to enhance the project design and
10 expand the lodge and program. The concept has been
11 approved by HPRB. It is a limited modification requiring
12 only about 2 feet of additional rear yard relief. The
13 underlying site constraints in the previously approved
14 loading relief remain unchanged. In fact, the only
15 difference here is now that the rear yard relief is a
16 special exception instead of a variance, which is actually
17 a -- an easier standard, arguably. And the scope of this
18 hearing, again, is limited to the modification. Not the
19 full building, the modification.

20 Next slide, please.

21 So the rear yard relief, we state what the
22 requirement is. And 205.5 is the only standard for the
23 rear yard relief. The omnibus changed the rear yard
24 standard such that what the board has to look at is
25 whether the building provides adequate off-street service

1 functions, including parking and loading areas and access
2 points.

3 Next slide, please.

4 This section shows the area of the approved rear
5 yard relief. I know we tend to think of rear yard at the
6 ground, but in this case, the rear yard is measured in a
7 way from the center line of the alley, up 25 feet, and
8 then you sat back there. So what's shown in red is the
9 area of the rear yard relief. Again, at the time this
10 drawing was prepared, it was a variance. It's no longer a
11 variance. It's a special exception.

12 Next slide, please.

13 I think we all know the standard for a special
14 exception in 901.2. And generally, we know, if the
15 applicant meets the burden, the board must normally grant
16 the application, but --

17 Next slide, please.

18 Here is how we -- let me state, our -- the record
19 includes, in much more detail, much more specific
20 language, how we meet this standard. This is just a
21 summary here. The rear yard meets the relief as follows:
22 The rear yard facilitates a by-right hotel use in a high-
23 density mixed-use development while preserving and
24 contributing historic buildings. It's thus in harmony
25 with the stated purposes of the D4R zone, which is

1 consistent with OP's finding that the increase in height
2 and density are consistent with the zone. The relief will
3 not tend to adversely affect the neighboring property. I
4 know we have two letters in opposition. I assume they
5 will testify. But for now, I will say, it's the same 10-
6 foot rear yard previously approved by the board. The
7 existing alley separation remains. And again, OP
8 concluded that the additional shadowing should not
9 negatively impact the light and air to their surrounding
10 properties. I will quickly describe our shadow studies in
11 a moment.

12 The project provides adequate off-street service
13 functions. The loading facilities, access points, and
14 circulation remain unchanged. Our traffic expert, who's
15 available to testify and answer any questions, found that
16 the proposed modifications do not alter the provisions or
17 function of the site's transportation facilities, again,
18 which have previously been approved by the board and DDOT,
19 and DDOT determined that the proposed modifications will
20 not have adverse impacts on a transportation network. And
21 that's cited in DDOT's report at Exhibit 31.

22 Next slide, please.

23 The record includes an updated transportation
24 study that analyzed the modest modifications, i.e. the
25 additional story and the additional square footage. Study

1 found no changes to site access circulation or loading
2 operations from the approved project were needed or
3 required. The applicant will continue to implement the
4 approved TDM plan and the load and management plan. They
5 remain unchanged and will be implemented for the life of
6 the project. And therefore, the expert concluded that the
7 modifications are not expected to result in a detrimental
8 impact to the surrounding transportation network with --
9 which is the standard for the rear yard relief.

10 Next slide, please.

11 The Office of Planning, who you will hear from,
12 recommends approval of the application. The Department of
13 Transportation had no objection, subject to the continued
14 implementation of the approved TDM and loading management
15 plans, which we will do. The Historic Preservation Review
16 Board granted concept approval of the revised design in
17 March. Our ANC letter is in support, and that's at
18 Exhibit 34 in the record. We have multiple letters of
19 support in the record from various entities and people.

20 And -- next slide, please.

21 The original BZA case that was originally
22 approved included shadow studies. This application
23 includes shadow studies. What we are showing on these
24 shadow studies, I think, as the board is aware, shadow
25 studies generally show the worst case scenario, right?

1 They don't show the shadows cast every day, 365 days a
2 year. They showed kind of two primary peaks, winter
3 solstice and spring solstice. And what these shadow
4 studies show --

5 And I don't know, Mr. Young, if there's any way
6 for you to enlarge them.

7 What the shadow studies show is the nominal
8 negligible increase in shadow studies, so shadows cast.
9 So for example, spring solstice 9:00 a.m. The blue is the
10 additional shadow cast. Compare the, quote-unquote,
11 "approved shadow" that the board already reviewed and
12 approved when they approved the original building. The
13 blue is showing the incremental increase, which is a
14 nominal sliver of additional shadow cast as a result of
15 this modification. So you can see that at the spring
16 solstice at 9:00 a.m. You can see that additional nominal
17 shadow cast at the spring solstice at -- and I'm referring
18 specifically to the building to the north. The nominal
19 additional shadow cast at the spring solstice at 12:00,
20 and you can see there's no additional shadow cast spring
21 solstice 5:00 p.m.

22 Next slide, please.

23 I should say, the upper images are showing a kind
24 of aerial view. The lower images are showing it in
25 somewhat like a 3D -- 3D view.

1 Next slide, please.

2 And this is my -- I believe, my -- really my last
3 slide. The winter solstice at 9:00 a.m., almost
4 everything is in shadow, right? That's the case,
5 essentially, everywhere. Winter solstice at 12:00 p.m.
6 You can see some additional shadow cast, but that
7 additional shadow cast is nominal. And again, at winter
8 solstice 4:00 p.m., we're not seeing any new additional
9 shadow cast on the building to the immediate north. So
10 our next three slides are --

11 If you go to the next slide, Mr. Young.

12 I'm not going to speak to each of these, but
13 these are just blowups of the slides that I just went
14 through. And what you can see, again, is the nominal
15 negligible impact of additional shadows cast on the
16 additional existing building to the north. The zoning
17 regulations don't say you can't cast a shadow. The
18 regulations are looking at the impact of the shadow. And
19 in this case, the impact of the shadow as a result of this
20 modification is negligible.

21 So that concludes our direct presentation. We
22 may have some additional stuff in rebuttal, but we thank
23 you for your time, and are happy to answer any questions
24 that the board may have.

25 CHAIRPERSON POURCIAU: Thank you, Mr. Freeman.

1 Maybe, on your application, put "lead applicant". So I
2 want to apologize for calling on Mr. Cohen instead of you,
3 but it was --

4 MR. FREEMAN: Mr. Cohen --

5 CHAIRPERSON POURCIAU: I call the name that I see
6 first.

7 MR. FREEMAN: -- he's the brain -- he's the brain
8 behind them. I'm just a -- he's the brain. I'm just --
9 they just put my face --

10 CHAIRPERSON POURCIAU: Okay. Thank you.

11 I would like to ask if there are questions from
12 the board, and I would like to start with Vice Chair
13 Goldstein.

14 VICE CHAIRPERSON GOLDSTEIN: Thank you very much,
15 Madam Chair.

16 And thank you, Mr. Freeman, for the presentation.

17 Couple clarifying questions for you. The height
18 got taller, which then created a greater rear yard depth.

19 And I hope you can confirm this for me at the end of my
20 statement. A greater rear yard depth, you're maintaining
21 the same rear yard as previously approved, but you become
22 slightly more non-compliant for the rear yard measurement;
23 is that correct?

24 MR. FREEMAN: That is correct. So the original
25 required rear yard was 20 feet and 10 inches required. 10

1 feet was provided. As a result of the additional height,
2 the required relief is 22 feet and 10 inches. So it's an
3 additional -- and we're still provided 10 feet. So it's
4 -- if you think about -- it's an additional 2 feet of
5 relief, which is why we have the special exception for the
6 rear yard, right? We are asking -- re-asking for that
7 rear yard relief for that 2 feet.

8 VICE CHAIRPERSON GOLDSTEIN: Okay. And that non-
9 compliant rear yard also extends vertically up the new
10 floors in the same level of non-compliance; is that
11 correct?

12 MR. FREEMAN: Yes.

13 VICE CHAIRPERSON GOLDSTEIN: Okay. So the new
14 10-foot -- 10th floor, as well as, I believe, the
15 penthouse are both non-compliant with the rear yard?

16 MR. FREEMAN: I'd say that the 10th floor is non-
17 compliant. The penthouse, we don't necessarily measure
18 the rear yard, as you know, to the penthouse. The
19 building is non-compliant with (inaudible).

20 VICE CHAIRPERSON GOLDSTEIN: Okay. I think I saw
21 that in your section -- presentation, but that's -- yeah.

22 I don't have any knowledge of how that applies in the
23 context of the penthouse, though. Do -- there was a
24 statement, I think, in your submission that I was hoping
25 you could also clarify for me. It mentioned increased

1 setbacks along the east, west, and south elevations to
2 reduced perceived massing at the street level. There was
3 a -- and I guess that was in coordination with some of the
4 design changes that were made from the previous approval.

5 Could you explain that statement and how that manifested?

6 MR. FREEMAN: So I would ask Peter to come on. I
7 think that -- that's talking about the kind of treatment
8 of the facades of the building.

9 But, Peter, can you answer that question?

10 MR. FILLAT: Sure. For the main body of the
11 building, it -- there was no change, but we did step back
12 the upper two levels. So that's the change. So
13 basically, it's the stair stepping of the upper two
14 levels. That's what that's referring to.

15 VICE CHAIRPERSON GOLDSTEIN: And the upper two
16 levels, is that the previously approved ninth floor and
17 the new 10th floor?

18 MR. FILLAT: Correct.

19 VICE CHAIRPERSON GOLDSTEIN: Is that the levels?

20 MR. FILLAT: That's right.

21 VICE CHAIRPERSON GOLDSTEIN: Okay.

22 MR. FILLAT: Yep.

23 VICE CHAIRPERSON GOLDSTEIN: So in a sense, it's
24 the ninth floor was stepped back more than the original
25 approval, and then the 10th floor kind of continues those

1 stepbacks?

2 MR. FILLAT: Correct.

3 VICE CHAIRPERSON GOLDSTEIN: And I'm just
4 curious, how much stepback was it versus the --

5 MR. FILLAT: I think the sides are like 10 feet
6 for each step, and the front is less than that. I think
7 it's like 5 feet for each step. It's not the same on both
8 sides, but there is, you know, a -- sort of a wedding cake
9 effect.

10 VICE CHAIRPERSON GOLDSTEIN: Okay. So in some
11 ways, the shadow cast by the building, although it added
12 new shadow, based on the studies, because of the increased
13 height, I'm curious whether those setbacks reduced it in
14 any way as well?

15 MR. FILLAT: It did. It did. It reduced the
16 length of the shadows. Yeah.

17 VICE CHAIRPERSON GOLDSTEIN: Okay.

18 MR. FILLAT: I mean, let's put it this way: The
19 length -- this way, the length along the building, you
20 know, the building is -- it -- I'm going to say it's 100
21 feet, okay? It's not exactly 100 feet, but -- so as the
22 building moves up, it stepped back 10 feet. So that
23 shadow is now 90 feet, moved back another 10 feet. So
24 it's now the width of the building. It goes from 100 to
25 80 to 60 feet. That's the width of that shadow on the

1 southern side.

2 VICE CHAIRPERSON GOLDSTEIN: Okay. Thank you for
3 that. That's really helpful.

4 Madam Chair, I have one more set of questions,
5 unless any of my colleagues would like to ask anything, at
6 this point. I guess I'll continue on.

7 Mr. Freeman, I think that you started this
8 conversation, and I just wanted to hear a little bit more
9 from you or your clients. We do have those two letters in
10 opposition. I'm making an assumption, and I think this is
11 true, that the letter writers are in that building to the
12 north in which you show the blue additional shadow on.
13 Can you, first of all, talk about -- sort of respond to
14 their letter, not only -- I think I've heard you say that
15 you think it's a nominal additional impact, and I just
16 want to -- if you could expand on that a little bit, and
17 then also, on the topic of solar panels and what the
18 relevance of that is to this discussion.

19 MR. FREEMAN: So -- thank you. So when I talk
20 about the nominal degree of shadows, we -- I am putting
21 that in the context of what is before the board today.
22 What is before the board today is, when we -- when the
23 case was originally approved, the board reviewed shadow
24 studies, and dealt with that as part of the original
25 approval.

1 So what we're focused on today is, what is the --
2 what is the additional shadow cast by this -- the
3 additional 10 feet of height that this building will
4 create? And I went through slides comparing the shadows
5 cast -- so we're not taking the position that this
6 building isn't casting shadows, right? Like, the building
7 is casting shadows. I -- I'm in no way suggesting that
8 the building doesn't cast shadow.

9 The question is: Well, what is the board looking
10 at? The board is looking at, well, what is the additional
11 shadow cast by this additional 10 feet of height? And
12 when we go through the shadow studies that are in the
13 record that I just went through, that additional shadow is
14 nominal. It is -- I think the -- I think the -- for
15 example, one of the opponents talked about the loss of air
16 to the first, second, and third floor units. Well, that
17 would happen if we build a 50-foot building, right? Like,
18 there's a -- we have the -- I hate to say right, but the
19 zoning regulations allow a 110-foot building on this site
20 as a matter of right. We are not asking for zoning relief
21 to build a 110-foot building because we are allowed to do
22 that as a matter of right. So again, the point I'm making
23 here is, when you look at the standards for a
24 modification, the standard is, we're not revisiting all of
25 the shadows. We're just revisiting what is the

1 incremental impact of this additional height, and that is
2 the area that is in blue.

3 What I would also add is that the -- do these --
4 does the shadow somehow adversely impact the use of the
5 building in accordance with the zoning regulations and
6 zoning maps, right? So how -- what is the impact of these
7 shadows? Well, the impact of the shadows is that the
8 zoning regulations say it's a -- it's used for a
9 multifamily building. It's continued to be used in
10 accordance with the zoning regulations as a multifamily
11 building. They have the right to go to 110 feet,
12 presumably. I'd have to look at the regulations. I
13 haven't -- we're not doing anything that inhibit that
14 building's ability to comply with the zoning regulations,
15 or be used in accordance with the zoning regulations or
16 the zoning maps.

17 With respect to solar panels, solar panels are
18 not required. So the zoning regulations don't include any
19 provisions that say you have to have solar panels. The
20 zoning regulations don't include any provisions that
21 dictate buildings having to generate a certain amount of
22 solar energy. I've worked on PUDs where applicants have
23 done those types of commitments. That's not the case
24 here. So there's nothing in the zoning regulations that
25 require solar panels. And frankly, there's nothing in the

1 zoning regulation, other than R zones, right? The zoning
2 regulations include provisions regarding the protection of
3 solar panels in R zones. Those don't exist in any other
4 zones. Those definitely do not exist in the D zones. So
5 there's nothing in the regulations that regulate,
6 preclude, or otherwise say to you, board, hey, you can
7 stop a development from achieving its matter-of-right
8 height because it might impact solar panels on an adjacent
9 building. And I can go through that in more detail.

10 In fact, I can tell you that it is settled law in
11 the District of Columbia that an adjacent property does
12 not have an implied easement for light, air, or
13 ventilation across another person's property. That's the
14 Hefazi v. Stiglitz case, which has been cited multiple
15 times before the BZA. I can give you BZA case numbers.
16 Well-settled law. I gave you zoning commission cases
17 where the zoning commission has said -- and I can -- I may
18 be getting a little far. I may be getting into my
19 rebuttal, but I do want to make sure I'm answering your
20 question.

21 Mr. Goldstein, in addressing, for example, party
22 status request in opposition at the public hearing, the
23 party opponents asserted that the project will result in
24 the loss of daylight to homes, the loss of the use of
25 solar panels. The commission then said -- and kind of --

1 I hate to say, rejecting that argument, but in rejecting
2 that argument, the commission said, "However, the
3 commission finds that it is well-settled law in the
4 District of Columbia that a property owner is not entitled
5 to view light or air across another person's property
6 without an express easement, and the property owner has no
7 right to a view across another person's property. See
8 Hefazi v. Stiglitz."

9 So just even legally, as prepared, I think of the
10 solar panels almost as in the same legal posture as an at-
11 risk window. Absent some type of easement or agreement by
12 the owners regarding the existence of that, there is no
13 legal protection in a D zone here.

14 So I may have more to say in rebuttal, but
15 hopefully, I -- hopefully, I answered your question.

16 VICE CHAIRPERSON GOLDSTEIN: Thank you. That was
17 helpful. And I didn't mean for you to spill all of your
18 information before any rebuttal, but I appreciate that you
19 took the time. The last thing I wanted to ask about, at
20 this point, is the TDM conditions and loading, or anything
21 from the original order. It's your belief that those just
22 will carry forward as part of the original order without
23 -- it doesn't need to -- those just remain in place from
24 the original order; is that correct?

25 MR. FREEMAN: We -- they remain -- so we met with

1 DDOT. We described the modifications, and they said,
2 well, as long as you continue to implement those TDMs, we
3 have no objection. So we commit to, if you want to
4 include a condition that says, as part of this
5 modification, the applicant shall continue to implement
6 the TDM measures from 20974 and reference that, no
7 problem. Like, whether they continue over or you want to
8 add them as a condition, we will -- we are committed to
9 those conditions, those measures.

10 VICE CHAIRPERSON GOLDSTEIN: And nothing
11 meaningfully changed in those commitments?

12 MR. FREEMAN: Nothing.

13 VICE CHAIRPERSON GOLDSTEIN: I think you
14 mentioned they were updated, but the commitments
15 themselves are the same; is that right?

16 MR. FREEMAN: To be clear, they -- we -- the
17 project was updated, so we reviewed them to determine
18 whether there needed to be any updates. As a result of
19 the modifications to the plans, the determination was that
20 the commitments can continue as is, even for the modified
21 project.

22 VICE CHAIRPERSON GOLDSTEIN: Okay. Thank you
23 very much.

24 CHAIRPERSON POURCIAU: Thank you, Vice Chair.

25 Board Member Lindsjo, would you like to ask any

1 questions at this point?

2 MEMBER LINDSJ0: I have no questions at this
3 time. Thank you.

4 CHAIRPERSON POURCIAU: Okay.

5 Commissioner Wright, any questions or concerns?

6 MEMBER WRIGHT: My only questions -- I know we
7 have a couple of letters of opposition from the nearby
8 residential building. Could you tell us a little bit
9 about what outreach you have done? We also have a letter
10 in support, I believe, from the ANC, but could you tell us
11 a little bit about what outreach you've done?

12 MR. FREEMAN: Is Stephan Rodiger on?

13 MR. RODIGER: Stephan Rodiger, I'm here. Can
14 everyone hear me?

15 CHAIRPERSON POURCIAU: Yes, we hear you.

16 MR. RODIGER: Good. Good morning. We -- Rift
17 Valley has been working on this project for over --
18 really, over four years. So we have been engaged with,
19 you know, our adjacent property owners, as well as the
20 larger Chinatown neighborhoods. So we've been working at
21 this for a while. We did engage with the Condo, HOA, and
22 specific members over that time. Recently, I don't think
23 it was constructive -- a constructive conversation with
24 them about our project on this BZA case. I think they
25 support the project, but they were looking for

1 compensation, perhaps, you know, not based on -- just
2 based on what they felt like they needed to be compensated
3 for our project and what they thought were impacts on
4 their building. So we have engaged, but then we -- you
5 know, we kind of paused that engagement just because it
6 wasn't really that constructive.

7 Thank you.

8 MEMBER WRIGHT: That was my only question,
9 really. Again, I think that the change to the previously
10 approved project that we're seeing is really going to have
11 a relatively minor impact beyond the impact it was already
12 going to have. You know, the height and FAR are within
13 the -- are within the limits of the zone. And I think
14 actually the stepping on the upper floor is an
15 improvement. It gives the building an interesting, you
16 know, we always talk about base, middle, top. It gives
17 the building an interesting top. And so I don't have any
18 -- I don't really have any concerns.

19 CHAIRPERSON POURCIAU: Thank you. I did want to
20 note that you also have letters of support from the
21 Downtown Business Improvement District, which I think is
22 important. They represent all of your -- most of your
23 neighbors all around you, as well as Historic
24 Preservation. I do think the solar panel issue comes up a
25 lot in our cases, and I think solar panels have become a

1 more important element in, you know, cost savings and ways
2 to improve environmental conditions. So it might be
3 something that we need to request, you know, the board to
4 look at in the future.

5 Having said that, if there are more no more
6 questions right now, I'd like to call on Mr. Beamon from
7 the Office of Planning to present his report.

8 MR. BEAMON: Yes. And good morning. Bruce
9 Shepard Beamon with the Office of Planning. OP has
10 reviewed the application and finds that the requested
11 relief meets the criteria for Subtitles X and Y, and
12 therefore we recommend approval of the requested
13 modifications and special exception. OP can stand on the
14 record, and I'm open to any questions.

15 CHAIRPERSON POURCIAU: Thank you. Are there any
16 questions for Office of Planning? I'll go in the same
17 order.

18 Mr. Goldstein?

19 VICE CHAIRPERSON GOLDSTEIN: I don't have any
20 additional questions. Thank you.

21 CHAIRPERSON POURCIAU: All right.

22 Ms. Lindsjo?

23 MEMBER LINDSJO: I don't either. Thank you.

24 CHAIRPERSON POURCIAU: I see Commissioner Wright
25 shaking her head no.

1 MEMBER WRIGHT: No questions. Thanks.

2 CHAIRPERSON POURCIAU: Thank you.

3 All right. We'll go to our next items. There
4 are no other government agencies present. I do not
5 believe that ANC is present, although we do have support
6 in the record. There are no parties for this application,
7 but I do believe we have individuals in opposition.

8 And are -- Mr. Young, can you let them in? Very
9 good.

10 MR. YOUNG: Yes, we just have one.

11 CHAIRPERSON POURCIAU: Just one. Okay.

12 Ms. Russell, thank you for joining us today.
13 We'd like to hear from you. And if you can unmute and
14 give your name and address for the record, and you have
15 three minutes to voice your opposition. Thank you for
16 being here.

17 MS. RUSSELL: Good morning. Thank you for having
18 me. My name is Emily Russell. I am a resident and board
19 member of the Chinatown East Flats at 809 6th Street
20 Northwest, which is the building directly adjacent to this
21 project, as was previous previously discussed. I also
22 testified at the HPRB meeting in March and submitted
23 written testimony today. I am speaking in opposition to
24 the requested modification. As stated, the ask is for
25 more -- and a modification on what was previously

1 approved. The original approval already caused
2 significant harm to our building, so I'm noting here that
3 this additional strain with the height increase. I am
4 here representing the HOA and other residents in our
5 building because the applicant is now seeking this
6 additional relief, a 10th story on top of the previously
7 approved nine-story approval. I'm requesting that the
8 board not grant further relief while the impacts of the
9 existing approval remain unmitigated.

10 The -- we've talked about the shadow impact on
11 the residential units. So just to give a little bit more
12 from our perspective, there are multiple units in the
13 building, particularly Floors 1, to 3, that are facing the
14 alley, that would lose the most practical daylight under
15 the current approved design. The applicant's previous
16 shadow study confirmed this, and now seeing this more
17 recent study, which hadn't been shared, just confirms that
18 as well, in addition to additional shade impacts. The
19 study -- the previous study, which we had access to,
20 didn't analyze alley-facing residential windows. It's
21 just looking at the top. And again, these are the units
22 that are most severely affected. We provided our
23 architectural drawings to Rift Valley in March to support
24 a complete analysis, and no complete study was returned to
25 us. As Mr. Rodiger said, we haven't recently been in

1 contact with them after previous discussions.

2 Returning to the impact on our solar panels, our
3 building has rooftop solar panels that contribute to our
4 energy budget. The -- this building, and including the
5 additional tower, will materially reduce their output,
6 which has a direct financial impact and does harm to our
7 unit owners. At the March HPRB hearing, Rift Valley's
8 representative acknowledged the solar impact analysis was
9 underway. We have not seen this. And so that -- that's
10 -- that analysis still has not been shared with us or
11 entered into the BZA record.

12 The ask is to not grant this additional story
13 until a complete, independently verified shading and solar
14 study, covering alley-facing windows and our rooftop
15 array, is in the record and open for public comment. And
16 also the condition that any approval on the developer
17 offering concrete mitigation measures developed with input
18 from affected neighbors, not only our building, but other
19 buildings adjacent. We are engaging in good faith. We
20 simply ask that the record be complete before the board
21 acts. I'll just state that the BZA exists to ensure
22 zoning relief doesn't impose unreasonable burdens on
23 neighbors. The combination of additional height, rear
24 yard extension, and an incomplete impact analysis does not
25 clear that bar. That's what I have to say today. Thank

1 you.

2 CHAIRPERSON POURCIAU: Thank you, Ms. Russell.
3 Thank you for your concise and precise comments today. We
4 appreciate that.

5 Do board members have any questions or any
6 dialogue for Ms. Russell? Mr. Goldstein?

7 VICE CHAIRPERSON GOLDSTEIN: Thank you very much
8 for your testimony today. I -- I'm hoping that maybe you
9 can just help me a little bit. I mean, we're here to only
10 look at the additional floor, really, the modification of
11 the original approval. Were you involved in the first
12 case in which the building, this project was approved, or
13 was your homeowner's association involved in the original
14 case?

15 MS. RUSSELL: I was not. I was not on the board
16 at that time. I've only been on the board for the last
17 about six, nine months, and I'm not entirely sure of what
18 that communication was in the last. I know there was some
19 communication between the board and the developer. I
20 think it was somewhat limited.

21 VICE CHAIRPERSON GOLDSTEIN: Okay. Thank you.
22 And you're fully aware that, of course, the building was
23 approved for the nine stories, and we're here talking
24 about the incremental increase, and trying to think
25 through what the impacts are of just that change, the

1 additional height. Just to hear it again, your view is
2 that that additional height is somehow so -- it -- it's
3 not a nominal amount of impact to your building, it's
4 something greater; is that right?

5 MS. RUSSELL: That's right. And I appreciate the
6 shading study, the -- this modification that we're
7 showing. We again, we hadn't seen that in advance. I
8 would request that there would be additional analysis on
9 this. I question that nominal impact is accurate. I will
10 also state that when the last approval was in, we didn't
11 have those solar panels, so that wouldn't have been
12 mentioned in the public record as a detriment to that
13 previous approval. Again, I'm not sure of the discussions
14 that were had at the time, but yeah.

15 VICE CHAIRPERSON GOLDSTEIN: Thank you.

16 And I would just like to flag for the applicant,
17 I -- I'd just like you to address what information has
18 been shared about shadow studies when we get to that
19 point. Thank you. I don't have any further questions.

20 CHAIRPERSON POURCIAU: Thank you for that, Vice
21 Chair.

22 Yes, Commissioner Wright?

23 MEMBER WRIGHT: Yeah. Just a point of
24 clarification of what was just mentioned by Ms. Russell.
25 And again, I know you weren't on the board until more

1 recently, but this project was approved a number of years
2 ago and it's, you know, had to have extensions and so
3 forth. And you're saying that the solar panels were
4 installed after the original project was approved; is that
5 correct?

6 MS. RUSSELL: I believe so. I believe so.

7 MEMBER WRIGHT: And, you know, I think that's an
8 important point. It's a little bit like, you know, it was
9 mentioned about at-risk windows. You know, you install
10 something knowing that there's a project pending and that
11 that project may affect your, whatever it is that you've
12 installed, whether it be windows or solar panels. And now
13 the project is coming back for a little additional height,
14 not, you know, not a dramatically different project. I
15 have a hard time having as much concern, frankly, about
16 the solar panels, given that they were installed after
17 this project was approved at nine at, you know, nine
18 stories, which would also have affected the solar panels.

19 So I, you know, I just want to put that out there that
20 that, I think, is a very pertinent point.

21 CHAIRPERSON POURCIAU: Thank you.

22 Board Member Lindsjo, do you have any questions
23 for Ms. Russell?

24 MEMBER LINDSJO: I do not at this time. Thank
25 you.

1 CHAIRPERSON POURCIAU: Very good.

2 All right. Thank you so much, Ms. Russell. We
3 really appreciate your coming forward and your comments
4 and concerns.

5 With that, I'd like to ask the applicant if they
6 have any closing remarks they'd like to make at this time.

7 MR. FREEMAN: I thank you, Madam Chair. I do
8 have just a little bit of kind of rebuttal/closing. Just
9 a couple of facts. The -- our BZA application was filed
10 in June 2023. The solar permit was issued in June 2023.
11 But what -- what's also important to know is we were at
12 HPRB well before that, right? Like, we were at HPRB
13 showing this new building in February in 2023. So it --
14 there was actual knowledge, should -- knew or should have
15 known that we were building a building before this solar
16 permit application was filed or issued. I think that's an
17 important factual piece of information.

18 There was a comment that they -- and I don't want
19 to misstate or misquote the -- Ms. Emily, that they --
20 maybe she said we didn't share with them the shadow
21 studies. Okay. Well, that's an interesting choice of
22 words, because the solar studies have been provided -- the
23 -- I'm sorry. The shadow studies have been in almost
24 every presentation we've done. They've been in our HPRB
25 presentations. They're in the BZA record in June 2023.

1 They're in the record, we filed them on April 14th, 2026.

2 So if the argument is we might -- we didn't email them to
3 them or that they don't exist, those are two different
4 things. And in fact, they even say in their letter in
5 opposition, "The applicant's own shading diagram submitted
6 to the BZA as part of the original 2024 application
7 package," right? That's in what they wrote, right?

8 So the argument that they need more time to look
9 at the shadow study, I'm just not sure why they need
10 additional time because they've been -- they could -- they
11 -- these shadow studies have been out since at least
12 February of 2023. And again, I think you heard her say
13 that there -- that the concern is for -- is particularly
14 going to impact units on the first through third floors.
15 I think we just heard her say that. Well, that's the case
16 whether the building is 110 feet or 100 feet, right? The
17 shadows, the impact to those units that she keeps
18 mentioning is exactly the same from the original approval
19 and this approval. And the board is charged with just
20 looking at what are the incremental impacts?

21 So we believe that the shadow studies that have
22 been in the record since 20 -- 2013 (sic) and are in the
23 record now clearly indicate that there is a nominal
24 incremental impact by this proposed modification to the
25 building to the north, that the regulations do not include

1 any specific protections for solar panels, particularly
2 those solar panels -- a permit for which was issued after
3 folks knew what we were doing on this site. And
4 therefore, the only standard is whether the for rear yard
5 relief is whether we are providing adequate access for
6 parking, loading, et cetera. No parking is required. We
7 are providing adequate unloading facilities as confirmed
8 by the Department of Transportation, and we have agreed to
9 implement a load and management plan and a transportation
10 management plan as a part of this case.

11 And we believe the record is clear that the board
12 should hopefully approve this case. And I know I can't
13 ask for a summary order, but hopefully approve this case.

14 We've been working it for a long time. Commissioner
15 Wright, as you know, a BZA case is not a popularity
16 contest, but you did ask about community engagement. When
17 we did the first case, we had -- I tried to count on my
18 stock, we had maybe 40 to 50 letters in opposition in that
19 case. So Stephan and the development team have been
20 working hard to present a project that has support, as
21 minimal opposition as possible, in order to move forward
22 with the much needed development to help reactivate the
23 Chinatown neighborhood. So with that, I think the record
24 is clear. We meet the standards. I would ask the board
25 to approve our application as quickly as possible. Thank

1 you.

2 CHAIRPERSON POURCIAU: Thank you. Any follow-up
3 from the board for the applicant? I'd just like to say
4 that I do appreciate when you did the shadow studies for
5 this application, how you did focus on the building in
6 question. I know when I was looking through the file
7 earlier, I wasn't sure that that was the building, but I
8 kind of assumed it was. And so you focused on that in
9 your presentation and you didn't shy away from the issue,
10 and so I appreciate that. I do think it's unfortunate
11 that maybe earlier on that building, you know, was not
12 more outspoken about their concerns, but we can only work
13 with what we have today.

14 Having said that, do any other board members have
15 any last comments or questions for the applicant? No
16 questions or comments, so I think we will now close the
17 record and move to enter into deliberation.

18 I want to thank you all for coming today.

19 MR. FREEMAN: Thank you.

20 CHAIRPERSON POURCIAU: Very good. Thank you.

21 All right. Would we like to discuss this some?
22 I think I'd like to start with -- let's start with
23 Commissioner Wright on this.

24 MEMBER WRIGHT: Thank you. As I sort of said
25 previously, I see this as a relatively minor amendment to

1 an already approved project. It does bring things into
2 accord with the omnibus. It does, I think, provide better
3 architecture because the top is more stepped than it was,
4 and I think that's a good treatment. I think that the
5 shadow studies that were entered into the record at this
6 public hearing demonstrate that the overall impact, in
7 comparison with the previously approved project, is really
8 quite minimal. I also note, as we have already discussed,
9 that the adjacent property installed their solar panels
10 sort of knowing that this major project was coming,
11 whether it was technically approved, but they had been
12 before the Historic District Review Board and had been
13 talking about this project for a while.

14 So I -- all in all, I think this is a very
15 approvable project, and I would support moving forward
16 with it and, you know, in the conditions, just reinforcing
17 that they have already agreed to continue with the
18 District Department of Transportation conditions about the
19 TMD and so forth. So those are my comments.

20 CHAIRPERSON POURCIAU: Thank you.

21 Board Member Lindsjo, could we hear from you,
22 please?

23 MEMBER LINDSJO: Yes. Thank you. Yep. I
24 appreciate all of their answers to the questions that
25 especially Vice Chair had proposed to them, and then I

1 also appreciate hearing from the opposition. But I really
2 -- I see no, like, huge adverse impacts from this very
3 minor adjustment. And so I really believe that this
4 project is in harmony with the neighborhood, and it's --
5 with these minor tweaks, I think it's even more
6 beautifully designed with a much needed improvement to
7 this block in downtown D.C. So I -- I'm leaning towards
8 supporting this, and thank you.

9 CHAIRPERSON POURCIAU: Thank you.

10 Vice Chair Goldstein?

11 VICE CHAIRPERSON GOLDSTEIN: I would just like to
12 align myself with my colleagues. I think they've put it
13 well, and that the incremental increase or modification to
14 the plans meet the burden for relief. I'd also like to
15 just point out that I believe the applicant has met the
16 condition of I205.5, which is that the building shall
17 provide for adequate off-street service functions,
18 including parking, loading areas, and access points, based
19 on the DDOT submission and the continuation of their
20 commitments for the TDM and loading plan. So I -- I'm
21 supportive of this project as well. Thank you.

22 CHAIRPERSON POURCIAU: Thank you. I agree with
23 my fellow board members. The continuation of those
24 conditions is critical and glad they mentioned that on the
25 record, and that you did as well. It does really seem in

1 harmony with not only the historic nature of the area, but
2 the future, and redevelopment, and improved character. So
3 I'm very happy about that, that they've gotten so much
4 support, letters of support from individuals, as well as
5 the downtown BID and Historic Preservation are not
6 minimum. So that -- that's a really a good thing for this
7 application. And the solar panel issue, I just feel it's
8 unfortunate, but it's beyond our purview, and it is
9 something that I think needs more analysis and study
10 moving forward. So we can talk about that more at another
11 time.

12 Having said all that, I'd like to see if anyone
13 would like to offer a motion?

14 MEMBER WRIGHT: I can give it a try if you would
15 like. I just have to get to my notes. Okay. I move that
16 the BZA approve application number 20974B of D.C.
17 Chinatown Hotel Owner, LLC. And this is for modification
18 with hearing to our previous BZA order, and a special
19 exception from the rear yard requirements of Subtitle
20 I205.1 pursuant to Subtitle I205.5 and Subtitle X901.2.
21 And with this condition that previous conditions from
22 District Department of Transportation regarding the TMD
23 and loading plans carry forward.

24 MEMBER LINDSJ0: I second that motion.

25 CHAIRPERSON POURCIAU: Thank you.

1 Madam Secretary, would you please call the vote?
2 I should have asked if there was any discussion, but I
3 don't see anyone suggesting that. So yes, please call the
4 vote.

5 MS. MEHLERT: Please respond to Commissioner
6 Wright's motion to approve the application.

7 Chair?

8 CHAIRPERSON POURCIAU: Yes.

9 MS. MEHLERT: Vice Chair Goldstein?

10 VICE CHAIRPERSON GOLDSTEIN: Yes.

11 MS. MEHLERT: Member Lindsjo?

12 MEMBER LINDSJO: Yes.

13 MS. MEHLERT: Commissioner Wright?

14 MEMBER WRIGHT: Yes.

15 MS. MEHLERT: Staff would record the vote as
16 four, to zero, to one, to approve application number
17 20974B on the motion made by Commissioner Wright and
18 seconded by Board Member Lindsjo.

19 CHAIRPERSON POURCIAU: Very good. Thank you. It
20 is 12:05. We have two more cases. I'd like to take a
21 brief break at this point and see how it goes. Maybe we
22 can finish and not have to break for lunch. Is that good?
23 So why don't we reconvene here in five minutes at 12:10?
24 Thank you.

25 (Whereupon, the above-entitled matter went off

1 the record at 12:05 p.m. and resumed at 12:12 p.m.)

2 CHAIRPERSON POURCIAU: Welcome back. I believe
3 we're ready to proceed to the next case, number 21477.

4 MS. MEHLERT: The board is back from a quick
5 break returning to its hearing session. Next is
6 application number 21477 of Eric Salzberg and the
7 Bialystok Trust. This is a self-certified application
8 pursuant to Subtitle X, Section 901.2 for a special
9 exception under Subtitle -- section 5201 of occupancy
10 requirements, Subtitle E, Section 210.1. This is for a
11 first-floor rear deck addition to an existing two-story,
12 attached principal dwelling. It's located in the RF-1
13 zone at 1812 Kilbourne Place Northwest, square 2599, lot
14 64. And I'll just note that two late letters of support
15 and the applicant's PowerPoint were added to the record
16 today.

17 CHAIRPERSON POURCIAU: Thank you.

18 I see we have Mr. Hoffman here on behalf -- the
19 agent for the applicant.

20 MR. HOFFMAN: Yes. Hello.

21 CHAIRPERSON POURCIAU: Hello. How are you? Very
22 good. Do you have others you want to introduce or would
23 you like to go ahead and do your report at this time?

24 MR. HOFFMAN: Yeah, I think the homeowner, Eric
25 Salzberg, is here. If he is, he can introduce himself.

1 Or maybe not. He just got --

2 MR. SALZBERG: Hi, this is Eric Salzberg.

3 CHAIRPERSON POURCIAU: Uh-huh.

4 MR. HOFFMAN: All right. He just got off an
5 airplane.

6 MR. SALZBERG: Eric Salzberg is on as well, the
7 homeowner. I just want to thank everybody for their
8 attention to this matter. And Eric also will be leading
9 you all through this, so thank you to him as well.

10 CHAIRPERSON POURCIAU: Very good. Thank you.
11 All right. Please proceed.

12 MR. HOFFMAN: Okay. If we could bring up the
13 presentation, I'll make it very brief. Okay. This is --
14 oh, okay. This is the property in the Mount Pleasant
15 neighborhood of Washington, D.C. It's a row of similar
16 houses. Almost all the houses along the row are the same
17 builder, same age, same design.

18 Next. Here's the front of the house. We're just
19 proposing -- by the way, this is just to propose a rear
20 deck to the back of the house off the first floor. Next.

21 Here's the current condition with a small deck, which in
22 conjunction with the house and a garage, equal, like,
23 almost exactly 60 percent. So it was previously built to
24 exactly lot occupancy requirements. Next. Oh, sorry.
25 And I'll just point out that the -- yeah. And you can see

1 here, the house adjacent to it has a larger addition and a
2 deck off the back of the house, which was built maybe six,
3 seven years ago. Again, these are the same size lots,
4 same size houses.

5 Next. Here again, just another view of the yard.

6 Next. Here's the current plan. We're doing some
7 interior renovations as well, but the thing to kind of
8 look at here is just at the very rear of the first floor
9 plan. At the top of the page, you'll see the existing
10 deck and landings to be demolished.

11 Next. And then here's the proposed deck. It's
12 just a 10-foot projection off of the rear of the house,
13 and then the full width of the property. Next. And here,
14 just existing and proposed rear elevations. Next. And
15 the site section, existing above and proposed below.
16 Next. And here again is the plat just showing that deck
17 on the rear.

18 The reason we're asking for relief today is
19 because when we applied for this, the new zoning
20 regulation omnibus bill had not been passed yet. So we
21 were requiring -- or we were requesting special exception
22 relief because this deck would go up to 67.5 percent of
23 occupancy. So it would still be within the 70 percent
24 allowed as a special exception.

25 However, since then, Subtitle B, Section 312.4(h)

1 has been adopted by the BZA, which allows, you know, a
2 deck of less than 200 square feet on the -- off of the
3 principal level of the house to be as a by right without
4 zoning relief, as long as -- you know? And anyways,
5 sorry, I'm babbling here. Anyways, this would now be by
6 right, as I understand it, according to that new provision
7 that you guys all passed. However, and even though this
8 is now in for permit review with DOB, they have been
9 unwilling to review it yet or tell us, yes, this meets the
10 -- you know, the new regulations.

11 So because we don't have that guarantee from them
12 yet, and I hate to kind of waste your time today, but we
13 still need to go and ask for relief -- special exception
14 relief, just to have it on the record in case DOB somehow
15 misinterprets the new regulation that you guys have put
16 into place, so that we don't have to have these kinds of
17 reviews anymore. And I would also point out that we have
18 approval letters from -- or support letters, I should say,
19 from all of the adjacent neighbors, including myself, who
20 lives next door to this house. And we have no letters in
21 opposition, and the Office of Planning Report is
22 supportive as well.

23 And I think that's it, unless -- I'll take any
24 questions.

25 CHAIRPERSON POURCIAU: Thank you so much.

1 Any questions from the board? No. No.

2 Mr. Goldstein, any questions?

3 VICE CHAIRPERSON GOLDSTEIN: Well, first, I just
4 want to say I appreciate your explanation for why you're
5 still pursuing this relief. I think that makes a lot of
6 sense to take a more conservative approach. Also, I was
7 wondering if you were the neighbor who also sent in a
8 letter in support, so at that -- I'm glad you mentioned
9 that as well. I don't have any additional questions. It
10 looks like a fine project. I appreciate your
11 presentation.

12 CHAIRPERSON POURCIAU: Thank you for that.

13 And thank you, Mr. Hoffman, for your diligence.
14 Let me just see if there's anybody else here that we need
15 to recognize before we ask anything else. Office of
16 Planning is here, I guess. Office of Planning, we have
17 Karen Thomas.

18 MS. THOMAS: Yes.

19 CHAIRPERSON POURCIAU: Hi, Ms. Thomas.

20 MS. THOMAS: Hi.

21 CHAIRPERSON POURCIAU: How are you?

22 MS. THOMAS: Good. Fine, thank you. Good
23 afternoon, Madam Chair, members of the board. I would
24 rest on the record of this application. We think the
25 record is full. The applicant has done due diligence here

1 in trying to check on the omnibus. And, you know, as a
2 matter of timing when this became effective, and we have a
3 bunch of cases that in this situation right now. So out
4 of an abundance of caution, I would agree. Just let it go
5 through and we are in full support of this application.
6 Thank you.

7 CHAIRPERSON POURCIAU: Thank you. Anyone have
8 questions for Office of Planning? No, I'm not seeing
9 that.

10 Thank you so much, Ms. Thomas.

11 VICE CHAIRPERSON GOLDSTEIN: Thank you for your
12 report.

13 MR. HOFFMAN: Thank you.

14 MS. THOMAS: Thank you.

15 CHAIRPERSON POURCIAU: Okay. All right. And so
16 we have no other district agencies here. There were no --
17 the ANC is not present, but they have submitted on the
18 record. There are no parties and no individuals who are
19 here in support or opposition. The board seems pretty
20 settled.

21 Are there any closing remarks or a statement
22 you'd like to make, Mr. Hoffman?

23 MR. HOFFMAN: No. I think I'll let it rest on
24 the record. Thank you very much for your time.

25 CHAIRPERSON POURCIAU: Very good. Thank you

1 again for coming forward.

2 We -- at this time, I'd like to close the hearing
3 record so that we can deliberate and vote on this case.

4 Thank you again.

5 Okay. Hello, everyone. This case seems pretty
6 straightforward. Are there any items we have not
7 presented on the record thus far that we need to
8 deliberate on? Could I ask Vice Chair Goldstein if he
9 would mind entering a motion?

10 VICE CHAIRPERSON GOLDSTEIN: Sure. And I'll just
11 start by saying I view the applicant as having met the
12 burden of the special exception and the criteria under E
13 210.1 and Subtitle E 5201 and Subtitle X 901.2. So I
14 think they met their burden. And it's a modest-size
15 project. And I think I'm ready to make the motion.

16 So I would make a motion to approve Application
17 number 21477 from Eric Salzberg and Bialystok Trust for
18 the relief as captioned and read by the secretary. Thank
19 you.

20 MEMBER LINDSJO: I second that motion.

21 CHAIRPERSON POURCIAU: Thank you both so much.
22 And I want to welcome the assistant secretary, Tracey
23 Rose, who is here helping us close out the meeting.

24 Ms. Rose, would you please call the vote?

25 MS. ROSE: Good afternoon, Madam Chair, members

1 of the board. Certainly. Please respond to the motion
2 made by Vice Chair Goldstein to approve the application
3 when I call your name.

4 Chair Pourciau?

5 CHAIRPERSON POURCIAU: Yes.

6 MS. ROSE: Vice Chair Goldstein?

7 VICE CHAIRPERSON GOLDSTEIN: Yes.

8 MS. ROSE: Board Member Lindsjo?

9 MEMBER LINDSJO: Yes.

10 MS. ROSE: Commissioner Wright?

11 MEMBER WRIGHT: Yes.

12 MS. ROSE: Staff would record the vote as four to
13 zero to one, to approve the application. That would be on
14 a motion by Vice Chair Goldstein, seconded by Board Member
15 Lindsjo.

16 CHAIRPERSON POURCIAU: Thank you so much.

17 That didn't take up too much time, but things are
18 often necessary, even if not required, right? So we're
19 ready to move on to our last case.

20 Ms. Rose, would you please enter Case number
21 21478 into the record for us?

22 MS. ROSE: Yes. The last case is Application
23 number 21478 of Andrew Cooper for a special exception from
24 the lot occupancy requirements of Subtitle E, Section
25 210.1; pursuant to Subtitle E, Section 5201; and Subtitle

1 X, Section 901.2; and a special exception under the
2 penthouse height requirements of Subtitle C, Section
3 1501.1(c); pursuant to Subtitle X, Section 901.2; to
4 construct a third story plus penthouse and roof deck, a
5 three-story plus cellar rear addition, and convert to a
6 two unit flat an existing two-story plus cellar principal
7 row dwelling in the RF-1 zone at premises 912 5th Street
8 Northeast, square 0807, lot 0042.

9 CHAIRPERSON POURCIAU: Thank you so much.

10 And I see we're joined by the applicant's agent,
11 Ms. Fowler. How are you today, Ms. Fowler?

12 MS. FOWLER: Hi, I'm doing well. Thank you.

13 CHAIRPERSON POURCIAU: Great. Thank you. Are
14 you ready to present your report?

15 MS. FOWLER: Yes, I am. Thank you so much for
16 your time. So yeah, this is the project for at 912 5th
17 Street Northeast. We did a garage addition a few years
18 ago that required zoning permission to go up to 70
19 percent, and that was constructed a few years back. So
20 currently, the property is single family and it is built
21 -- at the main floor, it's 70 percent occupancy. So that
22 was a special exception at that point.

23 This current proposal is to basically build above
24 the existing footprint that's existing on the first floor.

25 There's a rear one-story addition. So the second floor

1 is currently less than 60 -- sorry, it's 61.2 percent.
2 And so we're proposing to expand that to 70 percent on the
3 second floor, which is an 8-foot, 3 and 5/8 inch addition.

4 And there's also a third-story component that is not
5 triggering relief in itself.

6 In addition to that, we have a penthouse that's
7 been proposed. So that's the second relief that we're
8 asking for in addition to the lot occupancy is for C
9 1501.1(c) to go from the 35 feet to 43.5 feet for a
10 proposed penthouse. The building addition, the third
11 floor, is -- meets the matter of right height criteria.
12 So we're just asking for the penthouse addition.

13 When we originally filed the application, we had
14 requested a taller penthouse, so we did revise the plans.

15 I worked closely with Mr. Jesick, who was extremely
16 helpful on this case, to work through all the relief. And
17 we actually slimmed it down a lot, which is why we had
18 kind of a late filing. But we eliminated a need for
19 additional penthouse relief by dropping the height from, I
20 think we had it at 45 feet and now it's 43.5 feet. It
21 also meets the setback requirements on the roof.

22 We also dropped the request for the three units,
23 given that we did not have the land area to support that
24 relief and we would've needed to get a variance. And I
25 understand that's a very difficult request. So we have

1 kind of opted to stay with a two unit, two family flat for
2 this proposal. So that's why you see some revised filings
3 in the -- in the file.

4 We did submit a sun study and it does show that
5 there's very minimal impact to neighboring properties,
6 especially with the -- when you're looking at the
7 difference between matter of right and proposed. We have
8 support from Office of Planning. And again, we worked
9 very closely with them to make sure they were comfortable
10 with the proposal. And the ANC is also in support of the
11 project. They voted unanimously to support. I know that
12 Capitol Hill Restoration Society submitted a letter in
13 opposition. I think my understanding is I know they were
14 not pleased with the three-unit request. So that was one
15 of the main things that they mentioned in their letter,
16 which we have addressed.

17 They also had concerns about the height of the
18 penthouse being over 9 feet high. We also addressed that.

19 So that's changed since they reviewed the plans. And
20 then they also mentioned that the building height was
21 38'8", but I think that's actually to the parapet. So the
22 building, the roof itself is at 35 feet and then there are
23 parapet walls at the roof deck.

24 So I think we pretty well kind of addressed any
25 concerns from both the ANC and the Capitol Hill

1 Restoration Society with the current proposal. And would
2 hope to get your support. And with that, I'll rest on the
3 record.

4 CHAIRPERSON POURCIAU: Thank you so much, Ms.
5 Fowler.

6 MS. FOWLER: Thank you.

7 CHAIRPERSON POURCIAU: And thank you for being so
8 responsive to the Capitol Hill Restoration Society. We
9 haven't heard back from them, but for sure, you heard them
10 and made some changes. So that is --

11 MS. FOWLER: Thank you.

12 CHAIRPERSON POURCIAU: -- appreciated.

13 I would like to see if there are questions from
14 the board. I'll start with Vice Chair -- I'll start with
15 Vice Chair Goldstein. And I see you, Ms. Wright.

16 VICE CHAIRPERSON GOLDSTEIN: Well, thank you very
17 much for the presentation, Ms. Fowler. Just a couple
18 questions. Well, first, I do want to state on the record
19 that I don't see any issues with accepting the late
20 filings. I don't know if any of my fellow board members
21 do. I don't think it's -- they're prejudicial in any way.
22 So I just want to get that on the record.

23 The Office of Planning Report mentioned they
24 weren't sure whether you met the 30 square foot
25 requirement of the ancillary space for the penthouse. I

1 -- I'm assuming you've reviewed their report. just to
2 note, do you think you meet that standard? I just want to
3 make sure that you're aware of that condition. So just to
4 back it up, that's in C 1501.1(b)(3) which says that your
5 penthouse contains only stair or elevator access to the
6 roof, plus a maximum 30 square feet of space ancillary to
7 a roof deck or terrace.

8 And I think the Office of Planning wrote that
9 that'll be evaluated at the time of building permit. I
10 just want to make sure you're aware that they were not
11 able to obviously determine it, and I wasn't either in my
12 review. But you're aware of that condition and will meet
13 it; is that right?

14 MS. FOWLER: Yes. Thank you so much for bringing
15 that up. And yes, we will make sure that the 30 square
16 feet is complied -- maintained. And that's the intention.
17 It's really just the -- to create the stairway to the
18 roof deck.

19 VICE CHAIRPERSON GOLDSTEIN: Okay. Well, thank
20 -- great. Okay. Well, thank you very much. I really
21 don't have too much else. I think the case, from my
22 perspective, once you slimmed it down with the relief, and
23 made the changes, made it far easier for me at least, to
24 review it and see how you satisfy the burden. So thank
25 you for the changes that you made.

1 CHAIRPERSON POURCIAU: Thank you.
2 Commissioner Wright?

3 MEMBER WRIGHT: So my question is about the
4 penthouse. I find it to be a bit big, that it definitely
5 adds dramatically to the massing of what you're adding to
6 this existing, relatively modest house. And I guess my
7 question is basically, why do you need that penthouse?
8 Why aren't you able to, you know, just put a much smaller
9 entrance to the roof deck or have the entrance to the roof
10 deck be, you know, a stairway off the back facade? You
11 know, there are a number of different ways you could
12 approach it without having to have the relatively large
13 penthouse that you're showing.

14 MS. FOWLER: We have reduced the penthouse. We
15 modified the setbacks. We reduced the height. It is
16 something that the homeowner strongly desires as part of
17 kind of making that -- the roof deck very functional for
18 their use. So we wanted to kind of try to see how it
19 would go over with -- and obviously, the ANC was fine with
20 it. We haven't had any neighbor opposition to the
21 project. So you know, really it's just a -- kind of a
22 strong desire by the homeowner to have that ease of
23 access.

24 You know, there's other solutions that -- like,
25 skylight hatches and the other things that are very costly

1 and difficult. You know, you have to get them in and
2 bring a crane. And so this is kind of like the simplest
3 solution from a construction standpoint and for ease of
4 use. So that was the intention there.

5 MEMBER WRIGHT: Thank you for that response.

6 CHAIRPERSON POURCIAU: Thank you.

7 Board Member Lindsjo, would you please add any
8 questions that you might have or comments?

9 MEMBER LINDSJO: I don't have any questions at
10 this time. Thank you.

11 CHAIRPERSON POURCIAU: Thank you.

12 We'll move on to our next presenter, which will
13 be Mr. Jesick, Office of Planning. Would you please join
14 us? Thank you so much. Good seeing you.

15 MR. JESICK: Thank you, Madam Chair, members of
16 the board. Good seeing you as well. And the Office of
17 Planning can rest on the record in support of this
18 application. We found that the application met the
19 criteria for special exception approval for both areas of
20 relief, which were sought. The special exceptions would
21 not impair the intent of the regulations nor cause undue
22 impacts to adjacent properties. So again, Office of
23 Planning recommends approval and I'm happy to take any
24 questions. Thank you.

25 CHAIRPERSON POURCIAU: Thank you. Any questions

1 for OP from the board? No, not seeing any questions.

2 Thank you, Mr. -- I was just talking --

3 MS. ROSE: Madam Chair.

4 CHAIRPERSON POURCIAU: Yeah, I was talking away
5 --

6 MS. ROSE: Yeah --

7 CHAIRPERSON POURCIAU: -- and I was muted. Thank
8 you.

9 Thank you, Mr. Jesick. I just want to see if
10 there's anyone else here to present on the record. I see
11 no other government agencies and the ANC is not present.
12 I want to thank them for submitting something for the
13 record, though. And there are no parties or individuals
14 that are here to speak.

15 So I'd like to ask the applicant if -- Ms.
16 Fowler, do you have any closing remarks you'd like to
17 give?

18 MS. FOWLER: I don't have anything else to add.
19 I just really appreciate everybody's time. Thank you.

20 CHAIRPERSON POURCIAU: Thank you so much. Any
21 closing remarks from the board? No? Okay. Not seeing
22 any, I'd like to close the hearing so we can deliberate.
23 I'd like to thank all those who were present on behalf of
24 the application. The board will deliberate at this time.
25 And if after deliberation -- oh, we'll deliberate and

1 hopefully we'll we have a consensus.

2 All right. The application looked pretty well-
3 developed. The applicant didn't show us any pictures, but
4 the pictures looked pretty good. I know Historic
5 Preservation was concerned about the view of the top of
6 the unit from the alleyway. And the applicant said that
7 they had addressed that by making that somewhat smaller.
8 And their other concern was the amount of lot occupancy
9 and the setback, but they addressed that as well. So
10 other than that, there didn't seem to be many concerns.

11 Is there anything else anyone on the board would
12 like to talk about at this point?

13 MEMBER WRIGHT: I mean, I'll just say that I'm
14 going to be voting against this application because I feel
15 strongly that the penthouse is too much. Adding the third
16 story, I can certainly understand and see, but I think the
17 penthouse is too much. It is a choice by the owner, the
18 way they would like to access the roof deck. There are
19 other options. But I -- you know, I'm not comfortable
20 with the penthouse. I'll just put it out there.

21 CHAIRPERSON POURCIAU: Thank you for sharing
22 that.

23 Vice Chair Goldstein, would you like to add
24 anything and respond as well? Thank you.

25 VICE CHAIRPERSON GOLDSTEIN: Sure. And I -- just

1 to clarify, I think when you were saying the concerns that
2 were expressed, were -- those were concerns of the Capitol
3 Hill Restoration Society, not the Historic Preservation
4 Office. I don't believe that this --

5 CHAIRPERSON POURCIAU: Thank you for that
6 clarification.

7 VICE CHAIRPERSON GOLDSTEIN: Oh, yeah. No, I
8 think it may have been assumed. I just want to make sure
9 for the record. And I don't believe this is in a historic
10 district, which is kind of another data point.

11 I want to say -- acknowledge Commissioner
12 Wright's comments. You know, I don't know -- I don't know
13 how I feel about penthouses generally, but I don't
14 necessarily view this as creating some adverse impact on
15 light or air or the like; the addition of the penthouse.

16 So I think, in my view, the applicant has met the
17 burden of the lot occupancy relief as well as the
18 penthouse -- I'm sorry, let me pull back up. It was the
19 lot occupancy requirements of E 210.1 as well, and the
20 relief associated with it, as well as the penthouse height
21 requirement. So I would be supportive of the application.

22 CHAIRPERSON POURCIAU: Thank you so much, Vice
23 Chair.

24 Board Member Lindsjo, would you please add any
25 remarks you might have and your preferences, please?

1 MEMBER LINDSJ0: Uh-huh. Yep. Thank you. I
2 would also like to align myself with Vice Chair's
3 comments, and I do appreciate Commissioner Wright's
4 concerns as well. Thank you.

5 CHAIRPERSON POURCIAU: Thank you for that. I
6 just wanted to -- I'm going to take a minute. I just want
7 to go back in and look at some of the -- I want to look at
8 the images since I didn't get to refresh myself on that
9 with the presentation. That's 21. Yeah.

10 Yeah. I too agree with Vice Chair Goldstein. I
11 appreciate -- I wanted to look back at the roof lines
12 there, and there isn't a lot that -- in the images
13 provided, there hasn't been a lot of additions in that
14 neighborhood yet, but I know we see that lots of growth in
15 the footprint of row house development that I believe is
16 positive. We're seeing updating and upgrading. So I am
17 not concerned with that additional area on the top.

18 And so with that, is there -- I'd like to ask
19 Vice Chair Goldstein if he would offer a motion, please.

20 VICE CHAIRPERSON GOLDSTEIN: Sure. I would like
21 to make a motion to approve Application number 21478 by
22 Andrew -- from Andrew Cooper for the relief as read and
23 captioned by the secretary. I think that does it.

24 CHAIRPERSON POURCIAU: Thank you. I'll second.

25 And, Secretary Rose, would you please --

1 Is there any further discussion before we call
2 the vote? No? Okay. Thank you.

3 Secretary Rose, would you please call the vote?

4 MS. ROSE: Yes. Please respond to the motion by
5 Vice Chair Goldstein.

6 Chair Pourciau?

7 CHAIRPERSON POURCIAU: Yes.

8 MS. ROSE: Vice Chair Goldstein?

9 VICE CHAIRPERSON GOLDSTEIN: Yes.

10 MS. ROSE: Board Member Lindsjo?

11 MEMBER LINDSJO: Yes.

12 MS. ROSE: Commissioner Wright?

13 MEMBER WRIGHT: No.

14 MS. ROSE: Staff will record the vote as three to
15 one to one, to approve the application on a motion by Vice
16 Chair Goldstein, seconded by Chair Pourciau, with
17 Commissioner Wright opposed to the motion.

18 CHAIRPERSON POURCIAU: Thank you so much. And
19 that ends our hearing for today. I want to thank all of
20 the board members for being here. I do want to give a
21 special shout out today to our Office of Zoning legal
22 representatives, Ms. DeMare and Mr. Wong. We had a couple
23 cases that kind of tried us a little bit, and so your
24 support and additional staff work is really appreciated,
25 and really helps us move through these hearings quickly.

1 And want to thank Ms. Rose for joining us today.

2 It's nice to see --

3 MS. ROSE: You're welcome.

4 CHAIRPERSON POURCIAU: -- a new face.

5 MS. ROSE: Thank you.

6 CHAIRPERSON POURCIAU: Have a good one. I'll see
7 you all next week or soon. Bye-bye.

8 VICE CHAIRPERSON GOLDSTEIN: Thank you.

9 (Whereupon, the above-entitled matter went off
10 the record at 12:45 p.m.)

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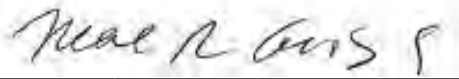
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C E R T I F I C A T E

This is to certify that the foregoing transcript was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings; and that I am neither counsel for, related to, nor employed by any of the parties to this action in which this matter was taken; and further that I am not a relative nor an employee of any of the parties nor counsel employed by the parties, and I am not financially or otherwise interested in the outcome of the action.

A handwritten signature in dark ink, appearing to read "Neal R. Gross", is written over a horizontal line.

Court Reporter