GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

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WEDNESDAY

OCTOBER 21, 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 10:16 a.m. EDT, Michelle Pourciau, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

MICHELLE POURCIAU, Chairperson
PAUL GOLDSTEIN, Vice-Chairperson
MELISSA LINDSJO, NCPC Designee
ROBYN JACKSON WELLS, District Resident Appointee

ZONING COMMISSION MEMBERS PRESENT:

CHRISTINE BRUINS, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

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

OFFICE OF PLANNING DEVELOPMENT REVIEW STAFF PRESENT:

MATTHEW JESICK
PHILIP ISAIAH

OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
CARISSA DEMARE, ESQ.

The transcript constitutes the minutes from the Regular Public Hearing held on October 21, 2026.

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

(10:16 a.m.)

CHAIRPERSON POURCIAU: We are ready to enter into our virtual public hearing session. The first case of our public hearing is case number 21483. And Madam Secretary, would you please read the case into the record?

MS. MEHLERT: Next is application number 21483 of Three Three One One, LLC and Maria C. Van Den Bussche. This is a self-certified application pursuant to Subtitle X, Section 901.2, for a special exception under Subtitle D, Section 207.5, to allow the rear wall of a row building to extend farther than 10 feet beyond the furthest rear wall of any adjoining principal residential building on any adjacent property. Proposals for a new two-story rear addition to an existing three-story attached principal dwelling located in the R-3/GT zone at 3311 P Street Northwest, Square 1254, Lot 836. I'll note, on July 15th request for party status and opposition to Grace Bateman, Gregory Doolan (phonetic), Matt Tyler, and Elizabeth Evans. The public hearing was also postponed from September 16th at the request of the parties in opposition. And lastly, the applicant yesterday submitted an updated letter of authorization.

CHAIRPERSON POURCIAU: Very good. Thank you very much. We do have a party in opposition. I'm trying to

see -- and I see their agent is on, and I do see the applicant's agent is on.

And so with that, I believe we're ready to begin. I do want to state that we would like to hear the application within a 15-minute time frame. I know there are significant items to discuss here, and so we will be monitoring the time, but hope that you can make it as succinct as possible. And then we'd like to ask the same of the party in opposition, that they stay within a similar time frame as the applicant. And we know these matters are critical and we would like to hear all parts of your presentation, but hope that they won't be duplicative.

So having said that, I see that Mr. Teass is here for -- is the applicant for the agent. Would you please introduce anyone who is -- will be speaking on behalf of the application? And I'd like to remind you, if at all possible, please try to stay within 15 minutes. Thank you.

MR. TEASS: Certainly. Good morning, Chairperson Pourciau. My name is Will Teass. I'm the managing principal of Teass Warren Architects. I'm here to speak on behalf of the application. I believe also one of the property owners, Graham Kent, is -- had signed up to testify and would like to say a few words as well. But I

think between the two of us, we can keep it to 15 minutes. Thank you.

CHAIRPERSON POURCIAU: Are you waiting for Mr. Young to move the slides?

MR. TEASS: Yes. We have submitted them.

CHAIRPERSON POURCIAU: Yeah. Mr. Young?

MR. YOUNG: Yes. We --

CHAIRPERSON POURCIAU: Thank you.

MR. TEASS: Again, good morning. I'm here on behalf of the property owners at 3311 P Street Northwest, which is BZA case 21483.

Next slide.

We have about 20 slides to go through today, but I think what we want to do is provide a brief overview. So we'll go through the proposal. I don't think -- I think it's relatively straightforward. I think we'll talk about the zoning record pretty briefly. The key issue here is light, air, and privacy, so we'll spend a little bit more time on that because that is the standard to which we're held. We've also incorporated a number of design mitigations already in conversations that we've had with ANC with the neighbors. We'd like to talk about that, talk a little bit about the Office of Planning report, and then, ultimately, conclude with what our ask or the findings are.

Next slide.

So the project is an existing row house in Georgetown. It is on the north side of P Street. It is in a neighborhood of similar size row homes. As I stated, it's in the R-3/GT zone, and it's also in the Georgetown Historic District. This project has been reviewed preliminarily by the Old Georgetown Board, and their preliminary finding was that an -- a two-story rear addition would generally be acceptable, but the case is still under review pending the outcome of today's hearing.

Next slide.

So I want to provide some context, particularly from the rear, which is where the project that we're showing today is happening. The immediate surroundings are all generally two-story row homes. We have a home to the east, which is number one on the right-hand picture, that is shallower. It's on a shallower lot, and it also sits at a lower elevation, and it's also a shallower building. There are homes to the left, which you see in the left photo and the middle photo that are at a lower elevation as well, but I think it's important to point out that there is extensive vegetative screening between the subject property and adjacent properties to the east.

The other piece that I think is very significant here are, on the right-hand photo, number 3, number 4, and

number 5, there's pattern of development of rear additions. And it's our understanding that each of those is built as a matter of right, but it's important to understand that this is one of several buildings. And so what we're proposing is very much in line with what's happening to the west.

Next slide.

So the lot, it's an existing non-conforming lot. It's 16 1/2 feet wide. It's 125 feet deep. There are two stories plus a basement. What you're seeing here is an existing condition looking due south. There's a trellis that'll be relocated to the rear of the property. And in place of the trellis, we're proposing a two-story addition. As I mentioned, the building to the left at 3309, which is one of the parties in opposition, is already set back 12.9 feet from the rear wall -- existing rear wall of the subject property. But it's also important to point out that the property to the west is about 16 feet beyond. So you're seeing a gable shed or a slope roof on the existing rear one-story addition that is also one of the parties in opposition.

Next slide.

So just to summarize, we're -- what we're proposing to do, and really the key part of the project is we're relocating the primary bedroom from the front of the

house to the rear. In doing that, we're proposing to build a two-story addition. At the ground floor, we're extending 14 feet beyond, which would contain a family room. On the second floor, we're expanding that bedroom to accommodate the primary suite by 10 feet. So the result is that we are technically 26.9 feet beyond the house to the east, but we're 14 feet at the lower level and 10 feet at the second floor from the existing condition.

As I mentioned, the trellis will be relocated. We are in the setback area proposing a vegetated roof. We -- I would also like to point out that we're voluntarily setting back from the property to the west to allow passageway. And then I think it's important to note that the use of the property does not change.

Next slide.

So to take a look at the zoning issues at a glance here, the lot is already non-conforming, but it's a preexisting condition, and that requirement doesn't apply to new record lots. We are conforming with all other aspects of the zoning regulations with the exception of the rear depth and the rear addition depth. And that's really the key issue today that we want to focus on. And so this is a special exception request for the rear yard relief.

Next slide.

So again, that single point of relief right now, the existing structure is 12.9 feet beyond the existing neighbor, which is obviously beyond the 10-foot special exception threshold, and that we're proposing to go to 26.9 at the lower level. And I think it's important to point out that the 10-foot is not a -- it's not the maximum. It's not a ceiling. It's the trigger for board review, and regulations direct the board to grant relief whenever it finds that the light, air, and privacy are satisfied.

Next slide, please.

As I mentioned, there is precedent for rear additions, particularly those to the west of the property. So at 33 -- 3313 P Street next door, there's a one-story addition. There's also a two-story addition at 3315 and 3317. Again, those are all built as a matter of right. The addition at 3315 was built so recently as to not even show up in the aerial photo, which is a year or two old.

Next slide.

So again, the request is for a special exception. This is not a variance. There are no practical difficulty or hardship tests to meet. We're specifically looking at whether light and air, privacy, and visual character are unduly affected. We're not saying -- the opposition,

you'll hear from them later, is claiming that we're affecting this. We don't deny that there will be some affect, but the standard is unduly affect. And so in our opinion, and the Office of Planning is -- has concurred with our findings that we are not unduly affecting the adjacent properties with regard to light, air, and privacy.

Next slide.

So in order to address the issue of light and air, we are -- we've prepared a solar or sun study that shows the condition of the property before and the condition of the property after. We have a more detailed analysis, but the high level is that during the winter conditions, there's really no increased effect of shading just because of the virtue of what -- how the existing building is. When you get into the equinox conditions, there is some slight additional shading in the rear yard. It's highlighted in the yellow and we'll see it in the next slide. But then also in the summer solstice, there is some additional shading that occurs in the rear yards of the adjacent properties. This only happens towards the end of the afternoon and in certain times of the year. We're not -- the opposition would characterize this as, sort of, putting these houses into darkness, and that's simply not the case.

The Office of Planning did note there was a -- some shadow being cast in particular in the mornings on the property to the west that could impact the skylight that's there. But again, it's a condition that only happens at sometimes the year, sometimes a day.

So I just wanted to get a little bit more into the weeds, so if we can go to the next slide, please.

So the way these are set up is the row across the top is the existing shadow pattern. The row across the bottom is the proposed, and this takes into account the green area, which is the addition. And then we've highlighted orange areas where we have impacts on adjacent structures. So again, in the winter months, because the sun angle is such that it's so low in the sky that really there's shadow being cast, and we're all familiar with that idea that the sun is at a lower level. We also just wanted to point out one of the requests that was made by the neighbors was to provide that additional run of the model at 6:00 p.m. And so we've provided that here, again, showing no impact in the winter.

Next slide.

So this is at the spring and fall equinox, so March and September 21st. We've just highlighted with the red circle, the minor degree to which some shadow is being cast on the walls to the left at 9:00 a.m. -- or the roof

of the adjacent structure at 9:00 a.m. And then on the rear yard of the structure at 3:00 p.m. And then again, by 6:00 p.m., the existing -- the entirety of all of the yards are already in shade and that we're not contributing any additional shadowing.

Next slide.

And then at the summer solstice where the sun is at its highest angle, this is when you see a little bit of shadowing that happens on the roof of the property to the west, which is 3313. And then you're also seeing the shadow that's being cast -- or the minor degree of shadow that's being cast when -- towards the end of the late afternoon into the evening.

Next slide.

So in summary, looking at the light and air and specifically with regard to the shadow studies, at the winter solstice condition, we're not providing any -- or the addition is not casting any additional shadow on the neighboring property. At the equinoxes, we're providing small, new shadow pockets at mornings to the west and afternoons to the east. And then at summer solstice, we also have some additional shadow that's being cast on the roof of the property at the west, and then some additional shadowing to the rear yards at the east. So the Office of Planning in reviewing these shadow studies has determined

that it is not enough to result in an undue impact on the light and air available to adjacent properties.

Next slide.

So another aspect that we need to look at is the airflow and massing. And so what you're seeing here is a two-dimensional projected elevation that shows the res, the existing brick and landscape brick wall. You can see the portion of the proposed addition that extends 10 feet out. There is, as I mentioned, the properties to the east are at a lower elevation. So there's a dimension -- there's an existing condition dimension of about 10 1/2 feet from the top of that wall down to the garden next door. And so a portion of this, particularly the ground floor, almost half of it'll be obscured by that existing wall, and then a portion of it would extend above the wall at the ground floor. And then you're seeing the setback and then you see that extend up to the second floor.

And again, also planning in their report, which they'll present, that they felt that the proposed addition should not substantially change the flow of air to nearby properties. The configuration of the properties is such that the prevailing wind from the west still has a pathway to exit through the rear yard and in a public alleyway so that there's no change to the airflow.

Next slide.

Privacy is the other issue that we wanted to talk about. And so this is a view that we prepared on -- at the request of the neighbors from one of the rear yards. One, I think it shows just the degree to which we have vegetative cover, but also you're seeing, you know, a very common condition where you have windows that look into the backyard. Everybody in the square has windows that look into the backyard. And so by adding windows here or a glass -- sliding glass door here, it doesn't really change that characteristic.

We are not proposing any windows on the east wall. We do have some west-facing windows. There was a concern, I think, in Exhibit 40 about the privacy of that. Again, we're sitting back from the property line. It's common for windows to appear in the side walls of row homes where they're set back from the property line, but we set those windows high. So unless you're on a stepladder, you're not looking into the adjacent property.

Again, the Office of Planning felt that this -- the views to and from the addition should be substantially similar to views from the existing building. There's been some concern about the setback and what happens on that. We're proposing a vegetated roof, a small garden, and then it's being accessed for maintenance by a sliding glass door. But that sliding glass door, 99 percent of the

time, functions as a large window that looks into the backyard.

Next slide.

Another aspect of consideration is the streetscape and the visual character. And so we wanted to reiterate that the addition itself is not visible from any public street. So the site plan on the right-hand side shows a 3-foot wide public alleyway that extends north from P Street to the backs of three yards. That actually extends further than that in the form of an easement that is not reported public space. And so we've shown a smaller red arrow is the view from the alleyway back to the structure, so you will not see it. The other way is there's a gap between the buildings along 33rd Street. And again, by virtue of the geometry of the existing buildings and where one can see it from the street, the -- no portion of the addition will be visual -- will be visible from the street.

I'd also like to point out that Georgetown has a history and legacy of having very traditional fronts, but in the back, and this is a project not by our office, but by another architect of a particularly well done rear addition that is much more contemporary in character. And so that's part of the effect that we're trying to achieve. But again, from a visual impact, streetscape character, we

are not impacting because the addition itself is not visible from a public right of way.

Next slide.

As I mentioned, we've already had discussions with the neighbors. We've had discussions with the ANC. We've had discussions with Old Georgetown Board. Part of what you're seeing today is a result of those discussions. We've reduced the 10 foot from an original 14. We stepped it back to 10 feet. We've eliminated the windows on the east wall. We're providing clerestory glazing only on the west wall. Instead, we -- originally, we had a balcony. We've removed that balcony and we've -- showing a vegetated roof only. It's not occupiable.

The Office of Planning did have a couple of suggestions. One, they had questioned the choice of material and specifically the color of the material, and they asked that we look at it in further study. The report was recently generated, so we only got that feedback and did not have a chance to look at that. We will be going back to the Old Georgetown Board, and I'm sure they're going to have some thoughts about color and material as well. They also wanted to ask us to take a look at the glazing, and this is something that we've agreed to look at as well. And again, because we have to go back through the design review at Old Georgetown Board,

I think that there's an opportunity to address the Office of Planning's concerns with those two areas.

Next slide.

So again, the Office of Planning's independent recommendation, the board's technical expert says -- suggests that -- or recommends approval of the relief as a special exception. I think this is -- you know, we feel that we've met the criteria. The Office of Planning has concurred.

Next slide.

DDOT has issued a letter of no objection. We do have a party in opposition. It's several of the adjacent neighbors, but not all of them. And the ANC, ultimately, voted in September to file a letter of opposition. I think it's important to note that they did acknowledge that we have met with neighbors and we've tried to address their concerns to the maximum extent possible.

Next slide.

So just in summary as to conclude, from a light and air perspective, we're not providing any new winter shadows. We're providing minor, non-undue pockets at equinox in summer sun conditions. We're not providing any east-facing windows. We're only providing clerestories, so we address the privacy concerns. The proposed addition is not visible from a public street or alleyway, so we're

meeting the visual intrusion standards. We have provided plans, elevation sections, numerous visualizations, sun studies, since we've -- we feel like we've demonstrated the graphics that are required for the board to come to their conclusion. We and the board -- and the Office of Planning agrees, we are preserving the intended light, air and open space of the zone. And that, again, the Office of Planning concurs with our finding that there's no adverse effect on the neighboring uses. So there is an effect, but it is not an undue effect. And I think that's the important piece that I'd like to leave with the board as well.

Next slide.

And so we are requesting that you grant the special exception relief to permit the proposed rear addition at 3311 P Street. So with that, I believe our -- my client, Graham Kent, is on and would like to say a few words. So hopefully, we can keep that within the 15 minutes. Thank you.

MR. KENT: Good morning, Board of Zoning. Good morning. I do have a few comments to make, reiterating what Will has been through with you there, but a lot of my comments are based on the presentation being given by the opposition. So if I may, I would just like to bring up a few points after you've sent that so you can understand

the points I'm raising. So if I may, I'll let them go on and carry on with their presentation first.

CHAIRPERSON POURCIAU: Thank you all for your presentation. There will be time for comments and rebuttals throughout this process. What we will do next is take questions from board members as well as from parties established. So that will include the opposition party as well as the ANC. So I'll begin with questions from the board.

Vice Chair Goldstein, do you have questions for the applicant at this time?

VICE CHAIRPERSON GOLDSTEIN: Yes, I do have a few questions. Thank you very much. And terrific presentation. I'm trying to think of where to start. One is a little bit of an in the weeds interpretive question. I'm just curious if this has been raised with the zoning administrator in the past. I don't think I've seen a circumstance where you're measuring your proposed rear wall against an adjacent property that is shallower than where your rear wall ends up. Have you -- did you have any discussions with OZA about that or the Office of Planning of -- it's not that the relief wouldn't be required. It's more about the degree of relief being requested. Curious for your thoughts on that question.

MR. KENT: If I may, I'll step in there. Yeah.

The extension that we're proposing is actually only 14 feet from ground from the original back wall of our property, which is the same back wall as 13 -- 3313, 3315, 3317. They all have the original back wall. So we're only proposing from the original. The back set of 33 -- 3309 is an original build from the time that it was built. So it's basically the side wall of our house. So we've not extended the property at all. It's just the original wall.

VICE CHAIRPERSON GOLDSTEIN: I don't think that was quite what I was asking. I appreciate the response, but your 26 feet measured against your adjacent neighbor to the east is actually beyond your neighbor to the east rear property line. So you continued to measure the full rear yard extension even beyond your neighbor's property. And I don't think I've seen that circumstance where you have a shallower lot relative to the rear wall extension.

Mr. Teass, is that something you've seen before? I'm going to ask the Office of Planning about that as well.

MR. TEASS: Yeah. No, I appreciate the question. And I think I was still struggling to figure out what the question was. But, yeah, I mean, as you pointed out, the lot to the east of 3309 is significantly shallower. And when we're providing that 26-foot-9 dimension, that's the

overall length in the rear wall, which does extend past their property line. I don't have the dimension off -- but I'll look at it here in a second.

So we -- we've had, kind of, a curious history with the zoning administrator in that we met with them and did a preliminary zoning determination meeting at the onset of this project. And their original conclusion was with -- that we did not need relief. The -- and it was unclear as to the rationale. They later said, no, we erred and you do need to have relief. And so I think, you know, there's some -- in my mind, some discrepancy when you have this -- certainly when you have lots on either side that are the same depth or within -- you know, relatively close to the same depth, it seems very straightforward. But in this case, we have a very odd condition where the lot to the east is significantly shallower. Does that help provide some insight?

VICE CHAIRPERSON GOLDSTEIN: It does. Yeah. No, I hadn't seen -- because we're -- it's really your rear wall relative to your neighbor, and their property ends a lot shallower. And it's a bit of an unusual condition. I think I'm going to just flag that for the Office of Planning when they go to testify a little later.

MR. KENT: I may have --

VICE CHAIRPERSON GOLDSTEIN: Could you talk Mr.

Teass -- yeah.

MR. KENT: Sorry. I may have another answer to that, although we don't know. If you take the properties on 33rd Street, they, obviously, all abut our rear wall. The property 3309 was built some years after 3311, 15, 17, and 19. And the properties to the east of them have a lot shallower gardens than all the others on 33rd Street. There is some rationale that they may have purchased -- the original person may have purchased some of the land on 33rd Street, hence why you haven't just got all abutted properties. And that property was built later.

VICE CHAIRPERSON GOLDSTEIN: So you --

MR. KENT: Yeah.

VICE CHAIRPERSON GOLDSTEIN: Okay. No. Thank you for that information. Could you describe a little bit about the evolution of the project and how where you've landed is meeting your client's expectations for what they want in this development? It sounds like you proposed, what, 14 feet on the -- both floors. You've pulled it back to 10 feet. I'm just curious why 10 feet in particular? Is there a reason of the layout that's driving the need for even that 10 feet of depth?

MR. TEASS: Yeah. Thank you for allowing me to expand on that. So right now, the house is a two-bedroom house. There are three bedrooms upstairs. The primary

bedroom faces P Street, which is a little bit more activity. It's a little bit noisier. And our client came to us and said, we would like to, as a part of several other improvements, relocate the primary bedroom suite to the back of the house. And so our original plan expanded the rear bedroom backward by 14 feet, which we then reviewed with the zoning administrator's office and got that preliminary reading that turned out to be incorrect.

We then went back and said, you know, we've got some pushback from the neighbors. We got some pushback from ANC as part of the OGP process. And so we said, well, what is really the minimum amount of space that we need on the second floor? And based on the layout and the reconfiguration of that bedroom, it's that 10-foot extension is what's needed on the second floor to accommodate the program. Does that answer your question, Mr. Goldstein?

VICE CHAIRPERSON GOLDSTEIN: It does. It does. So just to recap, you said it's the minimum amount needed to meet your program on that second floor; is that correct?

MR. TEASS: Yes.

VICE CHAIRPERSON GOLDSTEIN: Could you talk a little bit about you -- the 3-foot setback to the west that I think you've mentioned a couple of times? What --

what's the purpose of that?

MR. TEASS: So there is -- and it's on the site plan. I don't know if we can put that back up on the screen or not, but there is a -- between the house at our -- the subject property at 3311 and the adjacent property at 3313, there's a staircase that leads down to the lower level to provide access to the basements. And so the project already maintains a 3-foot separation from the property line to provide access to that stairs. The property next door built an addition at some point and they filled -- they went all the way to the property line and then they added a door that allows them to also access the stairs down to the basement. Does that help clarify what's going on there? Why we --

VICE CHAIRPERSON GOLDSTEIN: Yeah.

MR. TEASS: Why that looks --

VICE CHAIRPERSON GOLDSTEIN: Okay.

MR. KENT: We didn't take --

VICE CHAIRPERSON GOLDSTEIN: It does.

MR. KENT: We didn't take the whole -- full width of the land. We just wanted to use the existing building element. So we're only using the --

VICE CHAIRPERSON GOLDSTEIN: Okay.

MR. KENT: -- existing building.

VICE CHAIRPERSON GOLDSTEIN: Okay. And just to

confirm my understanding, the neighbor to the west actually has their ground floor addition would extend further than your ground floor and second floor addition; is that right?

MR. TEASS: That's correct. They're -- they extend past the -- our rear wall by about 16 feet. So we're -- at the ground floor, we're 2 feet shorter. And that 14-foot dimension was arrived at originally because of the second floor, but it also corresponds roughly to the -- or fairly precisely, I should say, to the trellis that's there. So you know, from a change, we're simply replacing the trellis element with a ground floor addition and then putting a second floor addition above that, if that visual comparison makes sense to the board.

VICE CHAIRPERSON GOLDSTEIN: Yeah. Sorry. Just a couple more questions, Madam Chair, if you don't mind indulging me a little bit longer.

I saw something in the record about solar on neighboring properties, and I'm hoping that you can address how you've approached any solar issues.

MR. TEASS: Yeah. Thank you for reminding me. We neglected to include that in the presentation. But the property to the east at 3309 does have a solar array over the main bulk of the house. And because of the north-south configuration of the properties, the addition that

we're proposing has no impact on their existing solar array. So that building is set down some dimension a couple of feet. So there's already, kind of, a shadow being cast by the existing building, but we're not going on top of that building. And so therefore, we're not casting any additional shadow on that array. Does that help clarify the solar question?

VICE CHAIRPERSON GOLDSTEIN: It does. And, you know, I may not know all the details, but do -- you may know this better than I do. Is it typical to put in some kind of affidavit that you are having no impact on someone's solar as part of a BZA case?

MR. TEASS: I believe that was part of the application. We had to go -- we amended the application to include that.

VICE CHAIRPERSON GOLDSTEIN: Okay.

MR. TEASS: So I'd have to go back and take a look at the revised application. I don't know what the exhibit is offhand, but just with that affidavit.

VICE CHAIRPERSON GOLDSTEIN: Okay.

MR. TEASS: And so if we needed to file an additional document to that effect, we would certainly be willing to do that as a condition.

VICE CHAIRPERSON GOLDSTEIN: Okay. Yeah. It may be there and I -- I've overlooked it. So to the extent

that, you know, at some point you can just let me know, that would be terrific.

And I think my only other question at the moment is: I actually do kind of agree with the Office of Planning about materials. I would love -- I think it would be helpful to take another look at the palette that's being used. I think there could be potentially ways to soften the look a little bit. So I would encourage you. I'm glad to hear that you're open to that idea.

Oh, I -- one more question I wanted to ask you. I apologize. Can you talk a little bit more about the grade difference to the east? I -- I've seen that referenced a few times. What is the -- what is the grade difference and what is the impact of that grade difference from your perspective?

MR. TEASS: Sure. And I don't know if it's possible to put back up this -- or the -- one of the slides, but as it stands today, the adjacent property at 3309 sits about 5 feet below.

If we can go to slide before, slide before, slide before, slide before. Oh. Sorry. One more. One more. Sorry.

So this is a -- an elevation drawing that shows the east-facing elevation. And so right now, there's

approximately 10-foot-4 from -- there's an existing landscape wall, which is the red that you're seeing below the black that extends about 10-foot-6 above the grade of the adjacent property. And then the grade at 1510 and 1512 is also below. We were unable to make those -- that measurement, but it's where -- it slopes up very slightly, but it's still, you know, between 8 1/2 and 10 feet from the top of the wall down. So the grade change is below.

And so you know, what we're proposing extends up about 16 feet at the two-story portion above that. And then obviously, at the ground floor, it only goes up about 6 1/2 feet or so. Does that help clarify, Mr. Goldstein?

VICE CHAIRPERSON GOLDSTEIN: Yeah, it does. And I -- I'm sorry, you had covered that some of your presentation and appreciate you mentioning it again. Okay.

Thank you very much, Madam Chair. I've -- those are all my questions for now.

CHAIRPERSON POURCIAU: Thank you, Vice Chair Goldstein.

Board Member Lindsjo, do you have questions for the applicant?

MEMBER LINDSJO: Not at this time. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells, do you have questions for the

applicant?

MEMBER WELLS: My questions actually were related to the solar panel affidavit. I do see the updated application that looks as if you're waiving that consideration for that. Unclear whether or not that was the affidavit that you were referring to.

MR. TEASS: I believe so. I mean, the solar panels are south of the proposed -- sorry. Can you hear me?

MEMBER WELLS: I can hear you.

MR. TEASS: Okay.

MEMBER WELLS: Yeah. Go ahead.

MR. TEASS: The solar panels are south of it, so there's no impact. So I think we were under the impression that perhaps when we filed it that we didn't -- that we could check the box and didn't need to file an affidavit. But again, if you need to file an affidavit and perform additional documentation that shows that there's no impact, we can certainly do so.

MEMBER WELLS: Yes. So I believe the requirement is to -- an affidavit saying that -- stating no solar energy system is being impacted. Yeah. I think there's a percentage to call out there.

MR. TEASS: Got it. So in addition to checking the box on the application, if there's no impact, we need

to file an additional affidavit?

MEMBER WELLS: I believe so. I believe so. And I wonder if they --

MR. TEASS: Okay.

MEMBER WELLS: -- have the board's interpretation as well. It was not something I was looking for specifically, was an affidavit.

VICE CHAIRPERSON GOLDSTEIN: I think you'll just need to review 204.3, and we may not be able to give you precise guidance in the moment, but that would be -- and that's Subtitle E, of course, to go back and take a look at.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells, do you have anything else at this time?

MEMBER WELLS: Not at this time. I -- well, I -- there was a response from the applicant from the letters in opposition, and I'm assuming that as we get to the opposition, then the applicant will respond. It's more in line with those oppositions. We can discuss it at that time.

CHAIRPERSON POURCIAU: Yes. Very good. Just hold on to it though, just in case if it doesn't come up. Thank you.

Commissioner Bruins, do you have questions for

the applicant?

COMMISSIONER BRUINS: I have just one additional question, and that is, with the access to the roof of the first floor addition, can you describe -- so in your presentation, you noted having the sliding doors to maintain access for a rooftop garden, so if you could please describe what access is needed.

There is a concern in some of the opposition letters and from the ANC that it has a potential to become an informal deck. So if you can talk to why that area needs to be accessed via a door versus a fixed window or if it can be accessed via a ladder or other means for maintenance of what you're proposing.

MR. TEASS: Certainly. So we have a, as you mentioned, a 4-foot setback, and so if you're standing in the bedroom -- the new primary bedroom looking into the rear yard, instead of looking at a piece of white roof, there's an opportunity to introduce a little bit of a vegetated roof, and so it's a really common -- you see them around the district all the time now, but then the convenient safe way to access that so you're not having to get on the ladder is to simply have a two-panel door. One panel would be fixed, the other panel would be operable, and you could open that up if you wanted to go out there and weed or replace plants if they died or whatever the

case may be.

That was the thinking there, and so you're really using the large glass opening as the window into the back -- into that bedroom, but then it doubles as service access in the -- you know, once or twice a year when something might need to be maintained out there, but we're not providing a guardrail. We're -- you know, it's not intended to be occupiable. It's not intended to be a walkable surface. It's intended to be a rooftop garden.

MR. KENT: I mean, yeah, whether it was sliding or whether it was French doors, it's just really access to that area. You know, it could be tilt doors. It doesn't need to be visually like a balcony at all, because it's going to be grass right across it with vegetation and growth. So it's just something new and modern that is being built into many designs around the world on properties.

COMMISSIONER BRUINS: Okay. Thank you.

CHAIRPERSON POURCIAU: Thank you. At this time, we'll take cross-examination from the parties. I'd like to start with the ANC.

Commissioner Maysak, good to see you today. Do you have questions for the applicant at this time?

MR. MAYSAK: Thank you. Good to be here. Do I have a specific question? I have certainly a lot of

involvement in, you know, meetings and different things. I guess, specific questions. Well, I don't know if I'd say questions. I mean, the statement, and I think, you know, Commissioner Goldstein touched upon it, which, you know, we're looking at a 10 or a 14-foot addition, right, and calling it a special exception.

I mean, as a neighborhood and as a commission and as a commissioner, I think we're really kind of seeing it as a 26 feet past the current house. So that was a -- the genesis of concern, and then also, you know, you've mentioned the sloping of the hill, or we put it in our resolution, that 33rd Street is much lower. I don't know, about six feet. So that this is a sort of a towering wall.

Those are concerns as to why we led to opposition, and then also, you know, specifically light, air, and privacy, that second floor -- we were just talking about garden space. Anyone can say it's not intended to be accessed or -- you know, but I think that would certainly have an effect on privacy because ultimately, whether it's this owner or the next owner, whether they go out there, that would tower down and have a deck, and those would be things that we would not like. So I think those are my comments, not really specific questions at this time.

MR. KENT: Can I answer that, Paul? Could I answer that question?

CHAIRPERSON POURCIAU: Yes. Yes.

MR. KENT: First of all, does that 5-foot ground level and height of wall already exist today with the original building?

MR. MAYSAK: Is that a question of me?

MR. KENT: Well, you're stating that the extension being, but is it already there today?

MR. MAYSAK: Sure.

CHAIRPERSON POURCIAU: So you know -- excuse me one second. What I would like to do is have us go through this process, right? So there are going to be a number of iterations of the applicant speaking and the opposition speaking. So why don't we -- if there's no direct response, why don't we table that for your rebuttal or the question-and-answer period going forward? Is that okay, Mr. Kent?

MR. KENT: Perfect. Thank you.

CHAIRPERSON POURCIAU: Okay.

You okay with that, Mr. Maysak?

MR. MAYSAK: Of course. Yeah.

CHAIRPERSON POURCIAU: Okay, great. Thank you.

All right. I would then like to go to the party in opposition, and I have a question. I see Agent --

where is the agent? Yeah. Agent Ferster is here.

Agent Ferster, will you be speaking primarily on behalf of the party? I saw your presentation agenda, but in this case, in terms of questions for the applicant, will you be the person speaking, or do I need to call on each member of the party?

MS. FERSTER: Good morning. Andrea Ferster, attorney for the opposition party. I will be handling any cross-examination for my clients, but I have no questions for the applicant's witnesses.

CHAIRPERSON POURCIAU: Excellent. Thank you so much.

All right. So we have completed the presentation, and we're ready to go to the Office of Planning to hear their presentation on this application. I see we have Mr. Jesick.

Thank you so much for being here.

MR. JESICK: Thank you, Madam Chair, and members of the board. Again, for the record, my name is Matt Jesick, and I'll be presenting OP's testimony in this case, and the Office of Planning reviewed this application against the relevant criteria of Subtitle D, section 5201, and after a review of the information contained in the record, we concluded that there would be no undue impacts to light and air available to neighboring properties.

There would be some small change in the amount of shadow, as the applicant noted in their presentation, but we concluded that that impact would not be undue given the existing -- the change from existing conditions.

We also concluded that there would not be an undue impact to the privacy of adjacent properties, especially given that the existing building has rear windows which already look out onto the nearby properties, and the new condition would be -- provide very similar views into the surrounding area.

The third criteria of 5201 speaks to character, although specifically character as viewed from a public way, and the proposed addition would not be visible from any public way, although as noted, we did suggest that the applicant perhaps study the color choice for the addition to find maybe something that might be more compatible with the existing building. So again, we found that the application met the criteria of 5201, and therefore we recommend approval of the application. Thank you.

CHAIRPERSON POURCIAU: Thank you, Mr. Jesick. I'd like to see if there's questions from the board.

Vice Chair Goldstein, do you have questions for OP?

VICE CHAIRPERSON GOLDSTEIN: Thank you, Mr. Jesick. Just a couple questions, and this is one I

previewed a little earlier, and I don't know if you heard it or not. I just hadn't seen a circumstance where you've extended 26 feet beyond a neighbor but it's beyond their rear property line that you're still counting the rear extension.

Is that -- do you have any feelings about -- is that -- has that come up before? It's not a question of whether relief is needed. It's really a question of the extent of the relief needed, and I'm curious if that's been discussed.

MR. JESICK: We did not discuss it previously. However, after you asked that question, I went back and looked at the exact language of D 207.4 and 207.5, and the language only references, you know, construction beyond the farthest rear wall of an adjacent building. It makes no mention of lot lines or rear property lines or anything along that line.

So you know, I think the 10-foot rule probably still does apply as it would normally, and I don't think the regulations anticipated a scenario such as this, but I think it does apply.

VICE CHAIRPERSON GOLDSTEIN: Yeah. No, I agree with you. I think it does apply. It's a bit of an edge case scenario. I don't think I -- I've seen it quite like this before. I think -- you heard a little bit of our

discussion about the solar issue, and I'm just wondering if you had any feedback or response to how that needs to be addressed?

MR. JESICK: I would have to go back and look at the regulations on what is required for the submission of an application regarding the solar. I don't have an answer for you off the top of my head.

VICE CHAIRPERSON GOLDSTEIN: Sure. We've heard a little bit about air flow, and I'm just kind of curious, is that -- you know, the regulations don't talk about flow in particular, and I -- I'm just curious if -- what -- how do you -- how do you view the idea of, you know, obstructing airflow?

MR. JESICK: Yes, you're correct that 5201 does not talk about air flow, just that light and air available to neighboring property should not be unduly affected, and there's no metric or, you know, specified quantity of, you know, airflow that, you know, might, you know, result in an undue impact.

So I think we, you know, base our analysis on what we typically see around the city and especially in, you know, dense row house neighborhoods. The addition, you know, in our view is of a scale that would not significantly impact air available to adjacent properties. The height is within the matter of right height.

The property meets, greatly exceeds, I believe, the rear yard requirement and is well below the lot occupancy maximum. So there's still a great deal of open space on the lot. So we concluded that the air available to adjacent properties would not be unduly impacted by the proposed addition.

VICE CHAIRPERSON GOLDSTEIN: Okay. Thank you very much. Really appreciate your testimony today.

CHAIRPERSON POURCIAU: Thank you, Vice Chair.

Next, we'll take questions from Board Member Lindsjo.

MEMBER LINDSJO: I have no questions at this time. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells, do you have questions?

MEMBER WELLS: No, I don't. Thank you.

CHAIRPERSON POURCIAU: Commissioner Bruins, do you have any questions for Mr. Jesick?

COMMISSIONER BRUINS: No, I do not.

CHAIRPERSON POURCIAU: Thank you.

We will now go to cross-examination, and both the applicant and the parties are -- can cross-examine the Office of Planning. I'd like to start with the applicant.

Mr. Teass or Kent, do you have any questions of Mr. Jesick?

MR. TEASS: I've got just one question as it pertains to air and airflow, Mr. Jesick, and we -- to your knowledge, have there been any other objective analyses provided for other cases that measure air or airflow?

Certainly the solar study, I think, is an accepted practice for determining light, but in terms of air, is there anything -- any studies or any other information that could be provided, or is it a completely subjective point?

MR. JESICK: I don't believe in my experience I've ever come across any sort of airflow study for any BZA case.

MR. TEASS: Thank you.

CHAIRPERSON POURCIAU: Thank you.

I'd like to now go to ANC Commissioner Maysak.

Do you have any questions for Office of Planning?

MR. MAYSAK: I do not.

CHAIRPERSON POURCIAU: Thank you.

And then I'd like to ask Ms. Ferster.

On behalf of the party, do you have any questions for Office of Planning?

MS. FERSTER: No, we don't have any questions. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Thank you so much, Mr. Jesick. We appreciate

your presentation.

At this point, we have no other district government agencies that are signed up to present. We do have the ANC commissioner.

Mr. Maysak, did you want to make a presentation today?

MR. MAYSAK: I do not. I think that a lot of our comments are in the resolution, and I've made some comments, so I'm good.

CHAIRPERSON POURCIAU: Very good. Thank you very much.

And so we will now go to the parties. There are no parties in support. There is a party in opposition. Ms. Ferster represents that party, and I see we have at least two -- Ms. Bateman, Ms. Evans, are also on.

I believe the applicant took about 20 minutes to present their case. Ms. Ferster, I'm hoping you'll be able to -- oh, I see a Mr. Tyler as well now, too.

Thank you for joining us, Mr. Tyler.

Ms. Ferster, I hope you'll be able to stay within a similar time frame. Please note to please give your name and address for the record before you present, and with that, I'd like to turn it over to you. Thank you.

MS. FERSTER: Yes. Thank you. We will have a PowerPoint presentation that has been submitted, so I

would ask that Mr. Young cue that up. Mr. Tyler will be presenting first, followed by Ms. Bateman, and third, Ms. Evans.

Mr. Doolan, the other 3311 200-footer neighbor, is out of town, but he has submitted a written statement for the record, and with that, I would turn it over to Mr. Tyler.

MR. TYLER: All right. Good morning. My name is Matthew Tyler, and I own and live at the house at 3309 P Street Northwest, adjacent to the applicant property in this case, and I'll be presenting our presentation on behalf of our party in opposition.

The other members of our group are Elizabeth Evans, Grace Bateman, and Gregory Doolan, and I believe Grace and Liz are also here today to give some additional testimony. All other members of our group either -- live in either adjacent or abutting properties, and we do appreciate being here today and having the opportunity to testify in opposition to this project.

Next slide, please.

So just starting off with some context on the setting for this case, the applicant property is in Georgetown, of course. It's very close to the corner of P Street and 33rd Street Northwest. The applicant property is the cream-colored house in the center of the first

picture, and my house is the blue one to -- on the right of it next to it with the red door, and then on the far right of the first image, you can see the back of one of the houses along 33rd Street, and in the second image, you can see the front of some of those houses. So you can see how you move up 33rd Street, that the backs of all those houses, you get to a situation where there are numerous backyards all backing up to each other in the same spot.

Next slide, please.

So what makes this case unique? So first, as I mentioned before, the applicant's side is located near the end of the block on P Street, just beyond the intersection with 33rd Street Northwest, and this creates a situation where a total 27-foot, two-story rear extension is going to have a major impact on not only the two adjacent neighboring properties, but also at least four abutting properties on 33rd Street.

Second, there's the grade change that's been mentioned before, meaning that the houses and yards to the east of the applicant property are between 5 and 10 feet lower than the applicant's backyard, and as a result, the proposed addition would tower up to 33 feet above neighboring yards and floor grades.

Third, as the applicant property already exceeds the 10-foot rule, if zoning relief is granted in this

case, the applicant property would extend a total of 26.9 feet beyond my rear wall, which is nearly 270 percent of what the 10-foot rule allows, and we feel that when you consider the effect of what's in essence a sheer vertical cliff, 27 feet long and up to 33 feet high above neighbors, you can begin to see how this project would impose a truly severe level of negative impact on multiple neighboring properties, and taken together, these three factors result in what we -- we're calling the walling-in of four neighboring properties to the east, effectively turning a shared backyard space into a canyon.

Next slide, please.

So this map is taken from the applicant's architectural file showing the applicant property at the center with the red -- sort of the red border, with the proposed addition in green extending north. My house is immediately on the right, and the red or orange shaded area includes the rear yards of my house as well as three additional properties on 33rd Street.

The proposed addition would have the effect of essentially walling off that entire red shaded area and drastically reducing access to light and air for all of those properties, and I'd like to note that although, as has been mentioned, the property to the west has an existing addition of similar depth to the applicant's

proposal, it is a one-story addition instead of the two-story addition being proposed here, and so the present configuration, you get this tapering effect starting from the center of the block, where the rear extensions become shallower and also shorter as you move towards the edge of the block.

Next slide, please.

So here we have highlighted the homes of the four opposition party members, and the intent here is just to show that opposition to this project is really significant and broad-based. You -- you're not talking about just one or two people here, and, you know, we've been fighting this project for eight or nine months now, at the ANC several times, at the Old Georgetown Board, and we certainly intend to continue doing so.

Next slide, please.

So here's a photo, again taken from the applicant's files, which shows the view from what would be basically the new rear wall of the applicant property. At the center, in the center right, you have the houses along 33rd Street, and on the right side, labeled number five, is the back of my house on P Street.

So to sort of start to, you know, perceive or to visualize the impact on this space of what's being proposed, you can imagine a sheer wall extending from the

right side of the photo all the way back to my house there in the right background, and for most of this length, the wall would exceed the heights of all of the -- all the structures in this photo and be about the height of that attic window in the top left of the photo.

Here, you can also effectively see the impact of the grade change, where all of the rear yards in the picture are substantially below the observer when you're standing at the applicant property's grade level.

I want to note that the lower windows visible of the four sort of similar houses on 33rd Street are actually the middle floors of those houses. Those are not the lower floors. So the actual rear gardens and lower floors of those houses are an entire story below that, and I want to make note also of the house on the left, that the balcony or deck labeled number one leads into a bedroom, which would be directly overlooked by the full length glass doors on the second floor of the proposed addition.

The lower level of the house on the left is the kitchen and dining room, and you can imagine that the experience of living and dining in that house is going to be transformed in a negative way by having essentially a massive wall built outside your windows.

Next slide, please.

So we have a few before-and-after photos attempting to show visually the impact on neighboring properties of the proposed addition. This photo shows the view from my back garden, and you can see that the addition would wipe out a large portion of the visible sky, ambient light, and airflows coming from the west. I want to point out, it's not really clear from this perspective, but more than half of the addition would actually lie completely beyond the brick wall at the rear of my property.

One other point I'd like to make here is that it's extremely difficult to really capture the full impact of this addition in photos, but it's something that if you stand at the site, you can really appreciate how the -- this additional wall extension would serve to enclose the space, and it's been mentioned that this is sort of an edge case and an unusual situation, and one thing we'd certainly like to do is to invite the board to perform a site visit to sort of examine the potential impacts and appreciate the potential impacts firsthand.

Next slide, please.

This is the view out the rear windows of 1508 33rd Street looking west. The applicant's property is that brick wall and trellis at the center, and my house -- the rear wall of my house is visible on the left side.

You can see very clearly here how the addition would obliterate access to light and air reaching the shared backyard space, walling it in and effectively turning it into a canyon, and I'll point out here also that if you look to the bottom of the photo, you can see some items of furniture at ground level in the rear yard of this house. There's sort of a bench there in the center and a small table on the right, and I think you can certainly appreciate the impacts on light and air if you imagine standing in that yard and looking up at this sort of towering edifice, which on top of everything else is currently planned to be painted a dark gray or a black color on the sides.

Next slide, please.

These photos show the view outside the dining room at 1510 33rd Street. I think these do a really good job of highlighting the privacy impacts of this project, because you can imagine being outside, maybe sitting on that couch at the back corner of the yard when those full length glass doors on the top floor of the addition open up and all of a someone -- all of a sudden someone's perched like 8 -- 6 or 8 feet directly above you on that green roof.

As has been raised by others here, we also feel that in the fullness of time, it's possible or even likely

that the green roof -- the green roof will become a sort of makeshift guard-free roof deck or balcony, making the privacy impact even worse, and I should also note that this yard currently receives some afternoon direct sun in spring and fall, but if the project moves forward, that afternoon direct sun would be totally eliminated. That's characterized as a slight increase in shading, but it's actually a total increase in shading, at least for that time of the year.

Next slide, please.

So to address the impacts in order, starting with light, the shadow study shows what the applicant calls slight increases in shading, and the fact is that much of the backyard area is already placed in shadow by the existing structure at 3311 P Street for large parts of the day and large parts of the year.

What that means is that much of the light the area does receive is ambient or indirect light, and the reduction of this light will be extremely significant due to the massive size and scale of the proposed addition, the addition's dark gray or black color, and the unusual layout and geography of the neighboring shared backyard space.

The reduction in light would affect at least four adjacent and abutting properties, and there will also be

notable elimination of direct sunlight reaching the skylights at 3313 P Street, as well as elimination of direct sun to 1510 33rd Street, as I mentioned on the previous slide.

Next slide, please.

Impact on air. We -- in the previous slides, we've presented a number of maps and photos that we feel demonstrate as almost a matter of common sense that the proposed addition, and especially its second floor, would substantially impede airflow from the west to neighboring and abutting homes.

The applicant has not presented any real evidence to support its claim that the addition will not impact airflow, and here again, it's the overall effect of the enormous height and scale of this 27 -- 27-foot rear extension beyond the rear of the neighboring property. It really hasn't been adequately considered in the application and does not appear to have been a factor in the project's design.

Next slide, please.

The fact is that the glass doors on the second floor of the addition will have a substantial negative impact on the privacy of at least three surrounding homes. We've presented some photos which illustrate the prospect of neighbors relaxing in their homes, bedrooms, dining

rooms, and backyards only to look up and see those full length second floor glass doors open up and see someone perched on what amounts to a makeshift guard-free balcony 6 or 8 feet above their heads, and I think, you know, we're all a little mystified that the Office of Planning just, like, didn't really address that issue, and the fact is also that any sort of muted potential changes to glazing, window size, and so forth would mean at best only slight mitigation to the privacy impact.

The impact, once again, stems from the oversized scale of the addition interacting with the unique configuration of the site and its orientation with respect to the neighboring properties.

Next slide, please.

So in summary, we believe the applicant has not met its burden under the rules to receive a special exception. The two-story height of the proposed addition, the elevated grade over neighboring properties, and the total 27-foot projection beyond the adjacent home would together substantially impact access to light and air for at least four neighboring properties.

Neighbors would also face substantial negative impacts on their privacy from the proposed second floor of the addition, with its full length glass doors opening to what the plans describe as a green roof but which, as time

passes, could easily become a makeshift unguarded roof deck.

The glass doors and rooftop are entirely perched above existing privacy walls and allow anyone standing on the roof to look directly down into neighbors' gardens, bedrooms, dining rooms, and other spaces, which for the last 100, 125 years have been entirely private. For these reasons, we believe the applicant is not entitled to receive a special exception under the zoning rules.

Next slide, please. Next -- yeah.

So finally -- so what are we asking for as the party in opposition? You know, first off, we'd like the board to simply deny the application, recognizing that the unique site conditions, and in particular this proposed second floor of the addition, would have substantial negative impacts on the light, air, and privacy of numerous neighboring properties. If the board is determined to grant a special exception, we'd ask that permission be given for only a one-story addition.

The fact is that almost all of the negative impacts that we've covered here result directly from the project being two stories. Allowing a one-story addition would enable the applicant to expand their home while drastically reducing the adverse effect on neighboring properties, and finally, I would once again like to extend

an invitation, in consideration of the unique -- of the unique site conditions, we would like to invite the board to perform a site visit to more fully appreciate the impact of this proposed project. Thank you, and that concludes my presentation, and I'm happy to take any questions.

CHAIRPERSON POURCIAU: Are you turning it over to another presenter, or is that the end of the product presentation?

MR. TYLER: I believe we have a couple of other individuals here. Yeah.

MS. FERSTER: Ms. Bateman will be presenting next.

CHAIRPERSON POURCIAU: Please proceed.

MS. BATEMAN: Good morning. It's a --

CHAIRPERSON POURCIAU: Good morning.

MS. BATEMAN: It's a pleasure to be here. My name is Grace Bateman. I live at 1508 33rd Street Northwest. I've lived there for more than 20 years. As the previous slides have shown, my property is perpendicular to 3311 P, and it's uniquely 10 feet below.

So the slide that Matt showed a bit earlier of the bench and the table, that's the rear of my garden in the winter, and as he indicated, it's substantially below the grade of 3311 P. So this addition will tower

essentially four stories over my house, filling, as one of the slides indicated, a slot that currently gives me a little sky and a little sun during part of the year. When this addition is built, I will be looking at the back of a four-story-tall structure.

I believe one of the comments that Mr. Teass made was that there's vegetation that will frame these properties. In fact, I believe the applicant's been somewhat dismissive of the impact of this project on the 33rd Street houses because he claims there are plenty of trees that'll shield the view.

In fact, the trees are deciduous. They're bare for at least half the year. As we all know, trees are impermanent. They may not be there forever, and so the addition will stand, but the trees may long be gone. So I think that's kind of a specious argument.

As Board Member Goldstein pointed out, he's kind of aware, and I think we all should be aware, that this is a very unusual site. I know the board has a very long record of approving special exception requests, and if this was an ordinary site, it's quite likely the board would approve it, but this is a very unusual site.

It's very unique. It's very close to the corner, so other properties are affected. Our properties on 33rd Street have very narrow gardens. I think my garden is

more than -- no more than 15 feet deep, and we're 10 foot below this -- what will be a towering addition.

So this - in addition to the fact that the addition will extend beyond the property line of the Tyler property, totally sealing off that property from light and air to the west, so it will have a significant impact on us, on -- particularly on the properties to the west, that this size addition, which taken in the abstract does not look so large, it looks more or less like a standard sort of addition that would be put on the back of a townhouse, in this particular setting has very substantial impacts that would not occur were it lower grade and not quite so near the corner and not quite so near houses that have very narrow gardens.

So I would request that the board deny this application. As Mr. Tyler said, we would not be averse to a one-story addition because although it would have some impacts, they would be not nearly as severe that a two-story addition would have. And I would request that the board proceed in that direction. Thank you very much.

CHAIRPERSON POURCIAU: Thank you, Ms. Bateman.

Ms. Ferster, are there any other presenters?

MS. FERSTER: Yes. Ms. Evans will make a brief statement, and then perhaps Mr. Tyler will make one additional point.

MS. EVANS: Yes. Good morning. My name is Ms. Evans. My home address is 3313 P Street and is adjacent to 3311 P Street, where the applicant wishes to build a two-story addition. My late husband and I bought our house 30 years ago. Excuse me. There are four impacts the second floor addition will have on my property.

First, each pair of these otherwise attached townhouses on P Street shares a back stairwell that lets light and air into one side of our houses. The one window that I have in my kitchen and the one window that I have in my dining room both open onto this stairwell. A second-story addition next door will greatly reduce the light to these windows. Second, it will wall in my second floor rear windows impacting my light and air. Third, it will cast shade on my first floor skylight. My other skylight, the west-facing one, has already been blocked by the second-story addition put on by my neighbors on my west side. And lastly, the applicant's second floor glass doors or windows that may replace them will look down on my garden, greatly affecting my privacy. That's my statement. Thank you.

CHAIRPERSON POURCIAU: Thank you so much.

Mr. Tyler, are you going to summarize?

MR. TYLER: Yeah. I just had one additional point, which is that the applicant -- I mean, the stated

purpose of -- or the rationale for having that second floor or that second floor on the addition in the rear is to be able to expand the primary bedroom as a result of, you know, the -- having the primary bedroom in the front against P Street being too noisy. I mean, the fact of the matter is that our primary bedroom is on P Street, and we really don't have any problems with noise. You know, the disruption from, you know, massive construction in the rear of the house is going to be far worse than any kind of street noise we currently receive. And that's my point. And as I said before, we're happy to take any questions.

MS. FERSTER: Madam Chair, just one brief closing point to answer a question that was posed by several of the board members relating to the requirement of an affidavit -- solar affidavit in the application. And I did go back and look at the zoning regulations, so I wanted to just clarify that question, which is that E204.1D. Yeah. Yeah. Specifically says that "All applications for proposed construction, whether for a building permit or for zoning relief, must include one of the following: an affidavit by the applicant stating that there is no solar energy system on the abutting property or a comparative solar shading study, which meets the minimum standard established by the zoning administrator

for the purpose of determining the increased annual incident solar shading by percentage or a written agreement executed by the owner of the impacted solar energy system accepting the interference with the solar energy system."

So there -- the -- this application requirement has not been met yet. Thank you. And that includes our -- concludes our presentation. Happy to answer any questions.

CHAIRPERSON POURCIAU: Thank you so much. Thank you for being succinct and having a well-crafted presentation by our members.

I'd like to take questions from the board at this time for the party and opposition, not for the ANC since nothing in addition was presented. But if you have questions for the ANC, I guess now would be the right time because that file is on the record.

Board Vice Chair Goldstein, we'll start with you, please.

VICE CHAIRPERSON GOLDSTEIN: Apologies for the delay.

Mr. Tyler, first of all, just thank you very much for your presentation. That was helpful to understand your perspective and introducing also perspectives of your neighbors. And I may ask them some questions as well. I

do want to ask you -- start with the solar energy system question. Do you have an operable solar energy system on your house?

MR. TYLER: Yes. Our house has a -- it's like a 5 kilowatt solar system.

VICE CHAIRPERSON GOLDSTEIN: Do -- is it your contention that this addition will have any impact on your solar system?

MR. TYLER: I -- you know, I -- I'm not really -- I'm not really supposed to say that. I -- that's -- you know, that's up to people who are more knowledgeable about shading and sun studies than I am.

VICE CHAIRPERSON GOLDSTEIN: Okay. I want to talk for a moment about the deck issue. This -- I hear the concern. It's been expressed now by a few neighbors that the green roof could be a de facto deck. You know, thinking about this, you know, the applicant could build a deck as a matter of right, you know, that's two stories. So I -- I'm just trying to think of -- you know, this -- from my perspective, it looks like a minor concern. If the applicant really was intent on creating decks, they could just build decks. So just curious for your reaction to that.

MR. TYLER: Well, I think -- I mean, I think, you know, in terms of the rearward extension, I think the

issue is that, you know, the wall currently is -- at least from the perspective of the houses on 33rd Street, the wall -- there's some distance right now as it is between the applicant's rear wall and the beginning of the property line for 1510 33rd Street. And if you push that rear wall backwards, you're getting to a point where whether it's a deck or whether it's a window in the back, you're essentially overlooking directly that backyard, and also for 1512. And I think that is the substance of the privacy issue.

And the fact that there's a -- the potential for there to be a deck is just, well, if there's going to be people out there often and just this notion of you're in your backyard, which for the last 125 years has been a private space, and then there's this potential that you can be there and someone can all of a sudden open up those doors and be perched on this deck directly above your rear garden. I think that is really the substance of the concerns that we have.

VICE CHAIRPERSON GOLDSTEIN: Okay. I guess I get -- I hear that and just kind of think the opposite position. That they could just build a deck and not get permission. So that -- that's just a little bit in my mind. I'm curious -- so the applicant made some concessions along the way here, and I understand your

position, you still don't want the second floor, but I'm kind of curious about your reaction to the fact that they pulled back that second floor by 4 feet. And some might view that as an -- you know, listening to concerns, maybe not fully addressing concerns. I should say not fully addressing concerns, but taking your concerns into account. How do you view their revision of the project?

MR. TYLER: It was something that was -- I mean, it wasn't discussed with us. It wasn't -- you know, it wasn't the result of any process where they, you know, said, okay. We understand you have concerns. You know, what can we do to make this better? They just sort of came up with it. I think we actually had to delay the hearing. Like, this hearing had to be pushed back because of those changes. And, you know, I think it was out of a -- it was done out of recognition of the sheer breadth and weight of the opposition against this project.

You know, we had -- way back in February, we had an Old Georgetown Board presentation. The Old Georgetown Board had a number of concerns about the project at that time. And since then, they've been kind of slowly, like, you know, tearing it back in small ways as time goes on. And I think that, yeah. I mean, that was, again, not done out of -- it wasn't a product of a consultative process. It was done as a means of saying, okay. Well, you know,

we're going to -- we're going to -- we're going to -- we're going to lop off a few inches from the end of this second floor in order to hopefully, you know, be able to push it through the zoning process and show that we've done something. But --

VICE CHAIRPERSON GOLDSTEIN: I would suggest that -- that's more than a few inches, but I hear you that it wasn't a consultative. It was just strategic. Is that what you're suggesting?

MR. TYLER: Right. And I think that it also doesn't -- I mean, the -- you know, the fact is it really doesn't -- I mean, while although it makes the top floor smaller, it really doesn't eliminate the problem. It doesn't address the issue. I mean, it's -- you're still going to have a sheer wall. Instead of 27 feet, it's going to be 23 feet beyond my rear wall. And that's still quite a substantial edifice, so yeah.

VICE CHAIRPERSON GOLDSTEIN: Is there any tweaking of that second floor that would make you feel better about it, or is it just that it's too substantial? There is no tweaking at this point?

MR. TYLER: I think every -- you know, any reduction in size, any reduction in depth would obviously -- you know, would reduce the impacts in kind of a -- in kind of a scaled way, the smaller it gets. As we

mentioned in the presentation, just eliminating the second floor entirely, which at the end of the day is essentially going to be used as a primary bedroom closet, eliminating that entirely would still allow them to have a rear addition, which is almost the same size as Ms. Evans' addition on the west side. It would allow them to expand their home, but it would allow them to do so without creating all these negative impacts on all of their neighbors, basically.

VICE CHAIRPERSON GOLDSTEIN: Okay. And I -- just one last question, Mr. Tyler. Thank you. This has been a helpful dialogue for me. They presented a shadow study, which in their minds, in their view, shows little additional shadow imposed on the neighbors. I'm just trying to understand, do you contest the accuracy of that shadow study? What is your view of it?

MR. TYLER: So I think, you know, the rules -- I mean, again, it's sort of an edge case. The rules say, you know, "impact on light." And I think "impact on light" is being taken very literally in this case to mean, you know, according to a shadow study, a certain percentage increase in shading over certain -- you know, certain times of the year, certain times of day. I think what we're contending is that although there is significant localized increase in shading when you're

going from the point of view of 1510 33rd Street, you're going from having some afternoon sun in March and September to not having any.

I think what we're saying is that the impact on light goes beyond that in the sense that you have this -- the shared backyard space with all of these walls around it. You're building an additional wall. It's currently planned to be painted dark gray or black. They've said that they may consider changing that, but it -- it's not clear if that's going to be part of the actual relief is if it's going to say you must change it. And what we're saying is that the impact on light is going to be substantial, notwithstanding the sort of very strict, you know, percentage increase basis that is shown by a shadow study.

And I think that's why, you know -- I mean, you know, in terms -- certainly in terms of the ANC statement, when we -- you know, when we raised this project and we brought commissioners to the site, they stood there and they were able to look up at the wall and say, wow. You know, this is really going to be a -- this is really going to be a massive project. This is going to be a big change. And I think that's why we've extended an invitation to perform a site visit, because I think if you're at the site, you'll be able to appreciate that

reduction of indirect or ambient lighting much better than with photos or through a shadow study.

VICE CHAIRPERSON GOLDSTEIN: Okay. Well, thank you. We don't take site visits, but I do appreciate the offer. I mean, Georgetown is always a lovely neighborhood to visit, so I -- it -- it's almost tempting unto itself.

I'm hoping to just ask Ms. Bateman a quick question. Madam Chair, I don't know if you'd rather board members ask Mr. Tyler any additional questions or I can just run through some questions.

CHAIRPERSON POURCIAU: Mr. Goldstein, please proceed. I think it'll be good if we ask all of our questions. Thank you.

VICE CHAIRPERSON GOLDSTEIN: Thank you.

Ms. Bateman, thank you also for your testimony. I -- I'm just trying to understand your neighbor -- because of the configuration of lots, you know, the impacts are a little bit different from home to home. Your rear yard is separated, right? From the applicant's property by 3309 P Street; is that correct?

MS. BATEMAN: That's correct, yes. Which is a narrow lot. I believe it's -- I don't know. I can't recall the footage, but it's a narrow lot. But the --

VICE CHAIRPERSON GOLDSTEIN: Okay.

MS. BATEMAN: So I'm looking squarely at the

existing brick wall, which is right beyond the -- I have a very narrow garden, so it's right beyond the garden of the east -- the west wall of 3309. But the major -- as was indicated, the major configuration issue is that I'm 10 feet lower. So that, as Matt pointed out on the slides, even the -- my garden floor and the main floor of my house are substantially lower. So anything that 3311 P does is going to be 10 -- they're going to start 10 foot above where my living space is. So it has -- the combination of Matt having a very narrow lot, my garden being very short, and the existence already of a very large brick wall makes the actual impact on my property much more significant than it appears on paper, again, because of the grade change.

Architectural drawings don't show grade change very effectively, and I have to say that the -- Mr. Teass's drawings, which are lovely, cast the addition from an angle that's -- that minimizes the visual effect of the grade change. He never came into my garden and took any photographs or did any elevations from the perspective of my house because it's the most unattractive perspective because it's a -- you know, a 38-foot-high wall from the perspective 10 feet below. I mean, the effective height of it is 38 feet tall, so. Again, it's a very unique configuration. I can't emphasize that enough.

You were onto this from the very beginning. The combination of Matt's property line being completely blocked in by this addition and the visual impact of -- at my house and of those of my neighbors and also of Ms. Evans' house because of the shading of her skylight and the walling in of her second-story windows makes this a -- I think, a unique case for the BZA. I really do. It's not a garden variety addition. It just isn't because the site is so unusual.

And while I realize the board doesn't make site visits, I'm wondering whether and if the Office of Planning ever made a site visit because, you know, they're your technical experts. And if they based their report solely on Mr. Teass's filings and didn't make a site visit, I think they would be very remiss. And I would -- one of the things I would ask would be for the board to ask OP to go back, make a site visit. I'd be happy to invite them into my garden and into my house. And I think the rest of the parties in opposition would agree and perhaps amend their report to reflect actual conditions on the ground because this is such a unique site.

VICE CHAIRPERSON GOLDSTEIN: Okay. Well, thank you very much. I don't know the answer to that question, but I appreciate your response to that.

MS. BATEMAN: Can we ask the Office of Planning

whether they ever visited the site?

CHAIRPERSON POURCIAU: We can take that up as we move through the process, so I'll make a note of it. Thank you.

MS. BATEMAN: Thank you.

VICE CHAIRPERSON GOLDSTEIN: Thank you, Madam Chair.

CHAIRPERSON POURCIAU: You're welcome.

VICE CHAIRPERSON GOLDSTEIN: Ms. Evans, can I just ask you a quick question, if you don't mind?

MS. EVANS: Yeah, sure.

VICE CHAIRPERSON GOLDSTEIN: Thank -- and thank you so much for your testimony as well. You know, I've heard from the applicant about this 3-foot setback they're providing, which in some ways one could interpret as being a bit sensitive to your property, but I'm not hearing any credit for that. So I just want to make sure that -- I want to really understand what it is that you're -- what it -- what is the key issue that you have, and I also want to frame it in the context that they're here for relief really based on their property to the east, not really with your property to the west, which already extends further. So that may have been a compound question, but I'm hoping you can shed a little bit more light for me.

MS. EVANS: Yeah. Well, since my neighbors on my

west side put their two-story addition on, my view from my second story is completely -- is cut off on my -- on the left side. And this two-story addition on the east side will put me basically on -- at the bottom of a canyon on my second floor. Most importantly, I would say, you know, the original builders of this home -- these homes, this row of townhouses back in 1900 were ingenious in figuring out ways to give us light and air. And the stairwell in the back here is probably my bigger issue, which is that any addition that goes out makes it -- makes the two little windows I have down there -- casts shade on them. I don't get the light that I currently have in my kitchen and in my dining room. I appreciate that they reduced it a little bit. I certainly do.

VICE CHAIRPERSON GOLDSTEIN: Okay. Now, thank you very much for your testimony.

Madam Chair, I'm all done. Thank you.

CHAIRPERSON POURCIAU: Thank you, Vice Chair Goldstein.

I'd now like to ask Board Member Lindsjo if she has questions for the presenting party or the ANC.

MEMBER LINDSJO: Not at this time. Thank you for all the presentations. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells, do you have questions for the

party or the ANC?

MEMBER WELLS: I have questions for Mr. Tyler. Yeah, I do have questions. So a couple of things. I think you've already sort of addressed this through your testimony and Vice Chair Goldstein's questions as well. So one thing from the Office of Planning's report, you had sort of stated that it's their rear -- extension that's being requested. Do you have any thoughts on that or, you know, comment on that statement?

MR. TYLER: Sorry. Sorry. I -- your audio feed cut out there. I didn't hear the full question. Could you ask it again, please?

MEMBER WELLS: Yes. So the Office of Planning's report and through their testimony stated that the existing condition for the applicant's, I guess, view from the rear will be similar to the extension. What are your -- do you have any thoughts on that, on that statement in particular?

MR. TYLER: So you said "the existing condition for the applicant," like, from the perspective of my property, or what do you --

MEMBER WELLS: Yeah. So --

MR. TYLER: From what perspective would it be similar?

MEMBER WELLS: Well, that's what -- that's the --

my -- I guess my question. Because part of the reason the Office of Planning, why they -- there is no undue hardship is because the existing conditions are already similar to what's being proposed by the applicant. So the views on the backside of the applicant's home on the second level will be sort of similar to what they see now. And it's mostly because -- and I guess I'm asking you in particular because your property is the one that's, I guess, you know, being impacted the most or they're looking to receive relief from. Yeah.

MR. TYLER: Well, in terms of -- I mean, in terms of being -- I mean, you know, the fact of the matter is that right now, I mean, my property line, my rear garden does extend, it's like 3 or 4 feet beyond the applicant's rear wall. So I -- you know, if I stand at the -- in my backyard, I can look up and I can -- and there's sky there and there's light and air coming in. But this project would completely wall me off. My property would be completely enclosed on the west side. So certainly from the --

MEMBER WELLS: As --

MR. TYLER: Sorry. Go ahead.

MEMBER WELLS: As it relates to privacy.

MR. TYLER: Oh, well, for me -- I mean, for my property in particular, you know, for 3309 P, I don't --

you know, there's not going to be any real privacy impact because it's just going to be a -- it's going to be a sheer wall. The privacy impact is really for the houses that are further up on 33rd Street.

MEMBER WELLS: Okay. And you also stated that, you know, the concern on the second level could, you know, be turned into a patio of sorts. And from the applicant, we heard that there's no intention right now to do that. Is there sort of any design consideration or is -- that you would consider in order to kind of feel more comfortable about that statement, like if it wasn't a sliding door and it was just, you know, a large window, or is it just that -- you know, the fact that it's a -- you know, a glass curtain wall that makes you hesitant about this?

MR. TYLER: Well, I think -- I mean, the owner of the property at 1512 33rd is not here today, and he's the one who would be most impacted by that. But I think -- you know, his feeling, you know, I believe is that, you know, even if there's a window there, like, they're still going to be able to stand at the window and be looking into his rooms and his home, which that's not currently possible.

And having the sliding glass door and the potential -- you know, in Georgetown -- you know, I

remember I looked at an apartment in Georgetown, like, 15 years ago, and they had a situation where there was a small rooftop outside of a back window, and it was being used as a makeshift roof deck. So it happens -- you know, over time, it happens in places. And I think his concern is that that would be a particularly egregious invasion of privacy from his perspective. But even having a window there or a smaller window or, you know, changes in glazing, whatever, would not eliminate the privacy issue.

MEMBER WELLS: Something else you stated was that there will be a total increase in shading on your property with this addition. Can you explain that a little further because it -- yeah, can you explain a little further? Because your property is already shaded by the existing structure. And are you saying it's a total increase and now it's -- it'll be completely shaded?

MR. TYLER: So on the sun study, there's -- I can actually pull it up here. There -- there's a -- there are a number of different sort of cells which indicate the increase in shading at different times of day and different times of the year. And there's one where it shows that the property at 1510 33rd Street currently receives afternoon shading in the March and September, and in sort of a -- it's a portion of the yard, about a quarter of the yard.

And that shading -- and I'm sorry. Currently receives direct sun during those -- during that time of day, during those times of year, and that direct sun would be totally eliminated by the project -- by the proposed project. And that sort of is written off as a slight increase in shading. And I think, you know, what we're saying is that, well, in fact, that's a significant increase in shading. You're going from having some sun to having none at all.

My property, of course, because of the existing configuration, I'm already shaded by the applicant's structure for most of the day during most parts of the year. For me, the light impact is more an issue of ambient light, which is to say that, you know, if I stand in my backyard, there -- there's sky there right now. There's not direct sun, but having sky there certainly allows a lot more lighting than if a black wall is going to be constructed there.

MEMBER WELLS: Okay. So I misunderstood that statement. So I thought you were saying that you are having a total increase issue with this -- the property at 15 --

MR. TYLER: 1510.

MEMBER WELLS: 1510. Okay. And then let's see. Yeah. And I guess I -- what I'm kind of wondering, I

guess, continuing within my mind is that, you know, the existing structure already extends about 10 feet beyond your property. And thank you for, you know, these renderings showing the blacked-out portions to give as a perspective of your view of things. One of these, though, was a perspective from Ms. Bateman's property as well from her garden; is that correct?

MR. TYLER: Yes. That -- that's slide number 8 in the presentation. It says "Figure 5." That is a view --

MEMBER WELLS: Okay.

MR. TYLER: That is a view from her rear windows on her middle floor of her house looking backwards.

MEMBER WELLS: Okay. And so Ms. Bateman, your primary concerns were for privacy in this regard?

MS. BATEMAN: No. My primary concerns -- privacy doesn't affect me at all because I'm just looking at blank walls. My primary --

MEMBER WELLS: Yeah.

MS. BATEMAN: -- concern is air, light, and the sort of visual impact of having this four-story windowless structure 30 feet away from the back wall of my house --

MEMBER WELLS: Okay.

MS. BATEMAN: -- because I'm so much lower -- I am so much lower than the grade of 3311. That's the --

and that's something that unfortunately we can't mitigate. I mean, we can't change the grade. The grade is what it is. And the proximity to the corner, I mean, much has been said about the fact that, you know, this is a row of houses. Many of them have additions. But as you approach the corner, you impact all of the perpendicular properties. So it's a really different site condition from a house that's even next door to the current property. So again, I think we -- I think the key for the board here is it's a unique site. It's an unusual site.

MEMBER WELLS: This picture that's taken from figure 5, is this from your -- I guess your second level is not from the garden area here?

MS. BATEMAN: No, no. It's -- yeah. It's from the main floor of my house, which is above the garden area, so.

MEMBER WELLS: Above your garden. Okay.

MS. BATEMAN: Yeah. My yard -- my garden is so short, it was difficult for me to take a photograph standing in the garden and looking kind of straight up, because that's essentially what the existing wall is for me today.

MEMBER WELLS: Okay. That might have been a good perspective to look straight up to see the --

MS. BATEMAN: Yeah. Well, I can do that.

MEMBER WELLS: It's fine. It's -- I'm glad -- I'm appreciative of these photos.

MS. BATEMAN: Yeah.

MEMBER WELLS: Okay. Yeah. I -- I'm sensitive to the fact that it is unique. You know, that most of our requests here, the grade changes. So I do understand that as well. So I do hear you, and this is just, you know, a different circumstance that we usually see.

No further questions. Thank you.

CHAIRPERSON POURCIAU: Thank you, Ms. Wells.

Commissioner Bruins, do you have questions for the party in opposition or the ANC commissioner?

COMMISSIONER BRUINS: My questions have already been answered through the questions of fellow board members. I do want to thank the opposition party for providing all these photos and the maps showing your individual properties and how they relate to the exemption request. It's very helpful to see and very organized, and I appreciate your time today.

CHAIRPERSON POURCIAU: I'd like to take a quick break before we proceed to the next step, which will be cross-exam from the applicant to the parties in opposition. Could we return in, like, three minutes at noon? Very good. Thank you. See you in a couple minutes.

(Whereupon, the above-entitled matter went off the record at 11:57 a.m. and resumed at 12:04 p.m.)

CHAIRPERSON POURCIAU: Okay. Very good. All right. We will reconvene. And at this point, I'd like to ask the applicant if they would like to cross-examine the parties. The way we proceeded previously, we asked each member a question -- we asked the opposition party questions, and then we asked the ANC questions separately. At this point, I think it would be good if we started with the ANC and then went to the parties.

Mr. Teass, will you lead the questions or will they be jointly asked by you and Mr. Kent?

MR. TEASS: They'll be jointly asked by myself and Mr. Kent.

CHAIRPERSON POURCIAU: Okay. Who would like to go first?

MR. TEASS: I've got one question for the ANC commissioner before we move on to the parties in opposition, which Mr. Kent will take the lead on.

CHAIRPERSON POURCIAU: Thank you.

MR. TEASS: Mr. Maysak, I just wanted to -- if you could recall some of the discussion about the design revisions that we looked at in the August and early September time frame and the meeting that we had with the neighbors in mid-September, and that the intent there was

to diminish the addition so that it minimized impacts on neighbors; is that correct?

CHAIRPERSON POURCIAU: You know, Mr. Maysak isn't here, so we will --

Is he -- Mr. Young, did Mr. Maysak drop off or has he not returned?

MR. YOUNG: It looks like he's now calling in by his phone, so I just brought him in.

CHAIRPERSON POURCIAU: Okay. Thank you so much.

Mr. Maysak, are you here? You're on mute if you are.

Mr. Young, can you assist?

MR. YOUNG: I believe he has to push start --

MR. MAYSAK: Wait, I'm here. Are you there?

MR. YOUNG: Okay.

MR. MAYSAK: Sorry about that. I had to switch to my cell phone.

CHAIRPERSON POURCIAU: That's fine.

MR. MAYSAK: I apologize. The question was, yes, we had a meeting. And I think the question right, Will, was, did you decrease the size as a result of the -- tell me the question again. So I can --

MR. TEASS: Sure. I'll rephrase. So I just wanted you to verify that we did meet in -- with neighbors in mid-September in advance of the ANC meeting. And part

of that, the discussion was the voluntary redesign that we took on to reduce the second floor.

MR. MAYSAK: I'd agree to that.

MR. TEASS: Thank you.

MR. MAYSAK: Yeah.

CHAIRPERSON POURCIAU: Thank you.

And Mr. Kent, did you have any questions for the ANC?

MR. KENT: I have no questions. Thank you, Madam Chairman.

CHAIRPERSON POURCIAU: Okay. Thank you so much.

We'll then proceed to questions for the party and opposition or -- I'm sorry, Mr. Maysak, did you want to say something else?

MR. MAYSAK: I'm not sure. I guess, you know, the question is, did they reduce to make the -- whatever we want to call that area or the porch area so it was 4 feet shorter at the top? Yes, that was true. I mean, it was also discussed at that time. You know, I heard Mr. Goldstein. I mean, we don't really allow roof decks in Georgetown, so I expressed concerns then as to how that would be used, whether a railing would go up. Typically, if you're going to put doors on a second floor, you need to have a railing for security. I don't think that building without a railing. So there was discussion also

about how that door, whether it was going to become a window or how that space would be used. So I mean, those were discussed. I think it leads to the privacy question.

CHAIRPERSON POURCIAU: Thank you for that clarification.

MR. MAYSAK: Yeah.

CHAIRPERSON POURCIAU: Thank you for the clarification.

I think we're ready to go to the cross-examine for the party in opposition. Mr. Kent, did you want to go first?

MR. KENT: Please, if I may, Madam Chairman. Yes.

My questions are for Mr. Tyler, first of all, if I may.

MR. TYLER: Yes.

MR. KENT: You're there? Great. Okay. Thank you. I just want to get some clarity and to make sure that there's no deception. Is there an existing wall that is in situation that is 33 feet high and 16 foot long?

MR. TYLER: In existing wall, you mean the wall of your property?

MR. KENT: Correct.

MR. TYLER: There's an existing wall. I -- I'm not sure of the exact height. It's probably indicated on

the architectural plans. And my marks --

MR. KENT: Yeah. 33 feet high, 16 foot long. Yeah.

MR. TYLER: I believe it's -- I believe it's 12 -- it's 12.9 feet beyond --

MR. KENT: Well, the wall of the house, Mr. Tyler. You quote it on your page. You say that I've got 33 feet above the neighboring yards. So therefore, my existing wall is 33 feet high.

MR. TYLER: Yeah. When -- if -- I believe if you take the current height of the house, it's 33 feet above --

MR. KENT: And it's 16 --

MR. TYLER: -- above the -- right. Above -- it's 33 feet above the rear yards and floor grades of the lowest neighbors, which includes --

MR. KENT: My extension is actually --

MEMBER WELLS: Mr. Kent, just -- I'm sorry. Can you just let him answer the question first?

VICE CHAIRPERSON GOLDSTEIN: He just works a little better --

MR. KENT: Yeah, but he's not answering the question. I'm just saying, is there a wall?

MEMBER WELLS: Just let him answer it, finish, and then ask your next.

MR. KENT: Okay.

MEMBER WELLS: Okay. Thank you.

MR. KENT: So is there a wall 33 feet high, 16 foot long from your backyard, from your view of your house?

MR. TYLER: Again, I -- so the -- I mean, on the architectural plans, it shows the height above my garden. I believe it's 23 feet, if I'm not incorrect. The 33-foot figure, again, is based on the fact that the houses on 33rd Street have a lower grade. Ms. Bateman's house is, I believe, we identified it as being 10 feet below.

MR. KENT: Okay. So is her ground level 5 feet below yours?

MR. TYLER: That is our understanding, yes.

MR. KENT: Okay. Well, I correct you on that because your ground level and her ground level is the same. So it's 5 feet below my ground level?

MR. TYLER: No, her ground level is not the same.

MR. KENT: Okay. All right, if you say so.

MR. TYLER: The ground level of her rear yard is not the same as my rear yard.

MR. KENT: Okay. So my extension that I'm applying for is actually only 15 foot above the existing wall and 10 foot out from my existing rear boundary, correct?

MR. TYLER: You know, I don't know. So sorry, I'm -- like, I don't know why you're asking me these questions. I mean, this information is in the architectural plan.

MR. KENT: Because in what you've written here, you're putting that I'm putting the extension 33 feet high, 26 foot .9 projection. I am not putting the extension 26 foot nine. I'm putting the extension that is 15 foot higher than the current situation today and 10 foot out.

MR. TYLER: Well, it's 4 -- it's 14 feet -- I mean, it's 14 feet long, right? The addition?

MR. KENT: But you can't see that above the existing wall that's there today.

MR. TYLER: So -- okay. Yeah. So yeah, if you -- if you're narrowing it down to the second floor, I mean, yeah, on your plans, it's 10 feet -- 10 feet deep.

MR. KENT: Okay. Okay.

MR. TYLER: In terms of the --

MR. KENT: For that question and answer, thank you very much. I appreciate it. Can you --

MR. TYLER: But I --

MR. KENT: Well, sorry.

MR. TYLER: Well, I just want to clarify. The rear yard's -- I mean, in particular, Ms. Bateman's rear

yard is absolutely not at the same level as mine. If you walk back through the public alley indicated on -- in the applicant's architectural plans, as well as in Slide 4 of my presentation, you walk back through that alley, which continues as an easement beyond the property at 1506. And then at that that grade level of that alley, you walk directly into Ms. Bateman's backyard through a gate. To access my property, you have to open the gate and then walk up a flight of steps to get to my rear garden.

MR. KENT: 5 feet?

MR. TYLER: I believe it's 5 feet, yes.

MR. KENT: Okay. Okay. That clarifies the difference that you've put in there. Thank you. I appreciate that. A question: In your rear back window, can you look in Ms. Bateman's garden?

MR. TYLER: I would -- I mean, I can see -- I -- I'd have to identify exactly how much, but yeah, we can see in her garden to some degree. I'm not sure that we can see the entire garden based on the wall that's there.

MR. KENT: Okay. In your slide of Slide 6, when was that picture taken?

MR. TYLER: So Slide number 6, that'd be our figure 3.

MR. KENT: Figure 6, sorry. Figure 6.

MR. TYLER: Figure 6. The -- this -- the -- this

picture is from a real estate listing for 1510 33rd Street.

MR. KENT: Is 1510 33rd Street a complainant?

MR. TYLER: No, it is not.

MR. KENT: Okay. And is that slide from some time ago? I'm talking years ago.

MR. TYLER: It could be. I think it's probably from at least three or four years ago, yes.

MR. KENT: Okay. So it doesn't show any of the foliage or the trees that's been planted in that garden?

MR. TYLER: No. Yeah. The current -- there are currently additional trees or new trees that have been planted since that photo was taken, yes.

MR. KENT: Okay. Finally, of 200 footers of approximately 12 persons, is there four complainants?

MR. TYLER: That's correct.

MR. KENT: Okay. Thank you, Mr. Tyler, for your questions. Thank you.

Ms. Bateman, can I ask you a question, please?

MS. BATEMAN: Yes.

MR. KENT: When you purchased the property, and you said you've been there for some years, was the wall that's existing there today there?

MS. BATEMAN: Yes, it was.

MR. KENT: So you purchased the property knowing

that wall was there?

MS. BATEMAN: Yeah, I did, but a feature of the wall is that it does not extend the full length of -- the full width of my garden. So although it substantially blocks light and air coming from the west, there's essentially a slot through which of -- you know, a reasonably sized slot through which I can see sky, I can get air, and I get light. So the conditions are -- were -- did exist when I purchased the property 20-odd years ago, but they would be significantly different if my slot is filled with the second story of your addition.

MR. KENT: Okay. In the rear garden of Mr. Tyler's house, does he have a tree that extends to about 33 foot high and about 16, 18 foot wide?

MS. BATEMAN: Yes, he does. But as I pointed out, it's a deciduous tree and trees are not permanent. Trees are -- you know, trees have lives, and there's no guarantee that tree will be there next week or tomorrow or a year from now. So we cannot rely on screening from deciduous trees when, in fact, I'll be looking -- I do look at your brick wall six months of the year because the tree is bare.

MR. KENT: I wouldn't say it's six months, but I do understand.

MS. BATEMAN: Well, some number of months.

MR. KENT: For a number of months, correct. Okay. So -- and from the view of your upstairs window, can you look into Mr. Tyler's garden?

MS. BATEMAN: I see the top of it. I don't -- because the angle, again, we're different heights. I don't see the entire garden. I see a portion of it, a very small segment at the rear end of it.

MR. KENT: Finally, if somebody asked you to stand on a 4-foot window ledge or put a chair on a 4-foot window ledge with no balcony, would you do it?

MS. BATEMAN: No. And I have to say what I find extremely, and maybe Mr. Teass can answer this question, puzzling. Is it D.C. code to have a second story balcony with sliding glass doors and no security?

MR. KENT: Not a balcony.

MS. BATEMAN: I mean, with about two -- well, if sliding glass doors open, can't a child just walk out onto and then fall off a second story building? Is that permissible?

MR. KENT: There will be an internal railing to stop anybody going out, internal.

MS. BATEMAN: Okay. I mean, it looks very odd to me, just eyeballing it. I'm not an architect.

MR. KENT: I'm just going to assure you that it's only there for access to get to that area two or three

times a year. Apart from that, just to have the door open. Simple as that.

MS. BATEMAN: Well, again, things change.

MR. KENT: Okay. Lastly, thank you very much for your questions you've answered there for me.

Can I then go to Ms. Evans, please?

MS. EVANS: Yes. Hello.

MR. KENT: Okay. Thanks, Liz. Thanks for coming on. The question: You talk about your kitchen and dining lounge area window, did you not block the light from that from building your full width extension? Did you not block your views into your garden when, in fact, the only view you've got is into my garden?

MS. EVANS: The -- my -- are you talking about my first story addition?

MR. KENT: No. Your windows you speak about, your kitchen window and your dining lounge window, you say that you are going to be blocked further by the extension that I'm having. Do you --

MS. EVANS: A light -- the light I currently -- the light I currently enjoy coming through the dining window.

MR. KENT: My extension is not going full width, so it doesn't stop the light going.

MS. EVANS: Well, but I can see -- I can see

the -- if it's going to be the width of the trellis.

MR. KENT: Yeah. Right.

MS. EVANS: That's going to be a solid structure blocking that light.

MR. KENT: But you have to look through my garden to look at that light. You don't look through your garden because you took that away by putting your full width extension; is that correct?

MS. EVANS: Well, the -- when we bought the house 30 years ago, there already was a room there. It just wasn't winterized, and we had two children under the age of two, and we winterized it.

MR. KENT: Okay. But today, you can't look out your window into your rear garden?

MS. EVANS: I -- from --

MR. KENT: From your dining room kitchen window?

MS. EVANS: No. No. No.

MR. KENT: Okay. Thanks. Thank you. That's all I have. Thank you very much. I very much appreciate it.

MS. EVANS: Thank you.

MR. KENT: Thank you.

CHAIRPERSON POURCIAU: Okay. Thank you. At this time, we will proceed. There are no individuals that have signed up either in opposition or support.

Mr. Young, let me know if I've missed anyone, but

as of this morning, I didn't see anyone else. And so I did want to ask the Office of Planning the question about a site visit.

Mr. Jesick, did OP make a site visit to this site?

MR. JESICK: Thank you, Madam Chair. No, the Office of Planning did not make a site visit to this site as part of our review of this application.

CHAIRPERSON POURCIAU: Thank you very much. And so with that, I'd like to ask the applicant two things. Number one, if you would like to make a rebuttal, and then are you ready to enter your closing statement? And if you'd like to do those as two separate items or consolidate?

Mr. Teass, how would you like to proceed or Mr. Kent?

MR. KENT: I'm concluded, Madam Chairman. I'll pass it over, Mr. Teass.

CHAIRPERSON POURCIAU: Thank you so much.

Mr. Teass?

MR. TEASS: Thank you so much. I would like to combine both the rebuttal and a closing statement into one, just in the interest of brevity. You heard a lot of testimony today about light and air and privacy. We have parties in opposition that don't actually abut the

property. We have suppositions that are made without any evidence. And I just wanted to return us to what the criteria were for granting the special exception. Again, the 10 foot is not a maximum. It is simply a guidepost so that the board is involved in cases beyond that. I would agree that we have a unique site in that we have an adjacent property that's only -- a lot that's 80 feet deep next to a lot that's 125 feet deep. So inherently, there's an asymmetry there. The criteria that we're -- the board is to be looking at includes light and air. And so as we've shown through the shadow studies, there is some slight increase in the afternoons, but by and large for the morning and noon times of the day, light is not affected to properties to the east. And then in the noontime and in the afternoon, light is not affected to properties to the west.

We've demonstrated that we're meeting the privacy. As it stands today, everyone in the neighborhood can look into everyone's backyards from their second floor windows. We're proposing something that's no different from that. In fact, I would argue we're actually improving the privacy concern for the immediate adjacent neighborhood because there's no longer a way for anyone to look into his backyard. We have shown through graphic example that the addition itself is not visible from the

public realm, so we meet the standard for visual intrusion there. We've provided a number of drawings and graphic depictions to illustrate all of our points. There have been some, I think, exaggerated visualizations that have been presented by the opposition. I would also like to note that they've not retained any architectural or expert counsel to address the matters at hand.

And again, we feel that we are preserving the intended light, air, and open space, and that the Office of Planning has concurred with our findings and that we're not having any adverse impacts on the neighboring uses. So with that, I will conclude.

CHAIRPERSON POURCIAU: Thank you for that. I think we have one outstanding item, which is the solar impact, and if that needs to be -- or how that is properly addressed on the record. Mr. Teass, could you offer any suggestions to how we should deal with that matter?

MR. TEASS: Certainly. I would propose that we file an affidavit where -- if we can get the record open in order for us to file that affidavit. And then we've included the solar panels on the shadow studies already, but we'll just highlight where those solar panels are as a part of that affidavit to demonstrate that there's no impact, if that makes sense, Madam Chair.

CHAIRPERSON POURCIAU: Are there other questions

from board members regarding the -- any additional information that may be needed in the file or on the record? Are there any other items? I see everybody thinking.

MEMBER WELLS: I would just comment that that requirement for 204.1D-204.1 is very specific about what is required for that affidavit. So just review that and make sure that that is complete. And that way, you know, we have a complete file.

VICE CHAIRPERSON GOLDSTEIN: I -- I'd like to just -- I -- I'm just out of curiosity, I'd like to ask Mr. Teass this question about the -- it's really not a zoning issue, but I'm just curious. The door leading to the roof, the green roof, will you in fact need a rail around that roof?

MR. TEASS: I think there is an interpretation through the building code and then there's the practical nature of the situation that was addressed. So by code, it's not occupiable space. We're not required to provide a railing. I think operational, we would either have a door limiter or some kind of other guardrail that's internal that would prevent someone, except in the case of maintenance, to go out there. But I think, you know, we -- we've talked about and we do -- you know, as I mentioned, we still have to go before the Old Georgetown

board, who is very focused on design issues. So I think two of the considerations that were raised in terms of the appearance -- the interior appearance and material choices as well as that fenestration or the window, that configuration, are going to be reviewed by that body as well. So does that answer your question?

VICE CHAIRPERSON GOLDSTEIN: And yeah, it does. And just to be clear, at the time of building permitting, you'll need to address any building code or life safety issues that are raised, correct?

MR. TEASS: That's correct.

VICE CHAIRPERSON GOLDSTEIN: I don't know, Madam Chair, if I have any other questions at the moment.

CHAIRPERSON POURCIAU: Thank you. Are board members comfortable with proceeding at this time and voting subject to -- you know, subject to the inclusion of the solar panel on the record, or do we want to defer our decision pending that item? I feel comfortable with proceeding with deliberation and voting, but I -- you in particular, Vice Chair Goldstein, having so much knowledge about the kind of regulations, do you feel comfortable with proceeding in that way?

VICE CHAIRPERSON GOLDSTEIN: Well, I think --

CHAIRPERSON POURCIAU: I guess Board Member Wells too is -- has a lot of experience.

VICE CHAIRPERSON GOLDSTEIN: I -- I'll give my two cents and then let Board Member Wells say. I think if we are going to ask the applicant to submit to the record, I would prefer not to deliberate today. I want that into the record and give the party opponent a chance to respond to it. I -- I'm still not 100 percent sure about how to handle the solar. You know, there's also a possibility of just addressing it at the time of permitting. I don't really know, but if the applicant is -- expressed willingness to submit, I think we'll give -- I think it would make sense to give the party opponent a chance to respond to it, and then we can set the case for, I'm guessing, a decision meeting at that point.

COMMISSIONER BRUINS: I had one other item I would like clarified, and that is the elevation between the applicant's property and the 33rd Street properties. There was one slide in the applicant's presentation, but there were statements made from the parties in opposition as to the grade change between 33rd Street and the property. And I would like to see that on a section drawing and validated what those differences in height are.

MR. KENT: Will, you've got the answer to that?

MR. TEASS: Sorry, I just wanted to make sure I understood the question, Commissioner. So you're looking

for a site section through our property and the properties to the east all the way to 33rd Street to show both the adjacent property and the property one over, which I think is the Bateman property; is that correct?

COMMISSIONER BRUINS: You show on your -- it's your current slide 17 height, but there was -- of the addition and showing the existing privacy wall, but there was some mention or question as to the fact of that elevation, and then also the drawing that you show with the heights sort of from the backyards of the 33rd Street neighbors ends kind of short of one of the contested properties. So I think if you can show a section drawing from the backyards of the 33rd Street neighbors showing the height as it curves down the -- you know, the ANC brought this up as a concern that as you go towards P Street, it's lower. And I'd just like to see on a section drawing that the height of the proposed addition from --

MR. KENT: So relatively background level to ground level, correct?

COMMISSIONER BRUINS: Yes.

MR. KENT: Okay.

MR. TEASS: Got it. I understand. We can provide.

CHAIRPERSON POURCIAU: Okay. Any other questions, concerns, requests? So based on what I've

heard, we will leave the record open. We will move decision on this case to a decision meeting subject to provision of two additional documents, which are the solar requirements and the height different -- differentials from the rear of the property.

Ms. Mehlert, could you let us know when we would expect this to be scheduled?

MS. MEHLERT: I would ask the applicant if a week is sufficient time to provide that information or if you would need longer, less time?

MR. TEASS: Given that we'll need to perform some additional site measurements with regard to the topography, it's going to take us a couple weeks to mobilize the surveyor to get that information for us.

MS. MEHLERT: Okay. So perhaps by November 4th, is that suitable for the applicant to submit that information?

MR. TEASS: We can certainly submit by the 4th, but I'm actually going to be out of town that day for a conference. So maybe the -- I guess it's a decision hearing though, so I'm not testifying, right?

MS. MEHLERT: Well, so I was just going to suggest the applicant could submit the materials by November 4th, and then the parties could have another week to respond by the 12th, because the 11th is a holiday and

then the board can return for a decision on November 18th.

MR. TEASS: Yeah, that works for us. Thank you.

MR. KENT: Thank you.

CHAIRPERSON POURCIAU: Thank you. We will -- thank you all for being here and for all your comments, and we look forward to getting the additional information and making a decision at that next meeting.

Next, we'll go to our next case on the agenda. Unless anybody wants to take a break, a lunch break, or you want to keep charging through? Everybody's smiling. That means they want to charge.

VICE CHAIRPERSON GOLDSTEIN: My preference is to push through, but I am open to lunch break if anybody feels it's needed.

CHAIRPERSON POURCIAU: I think we want to push through. Okay. So next is case number 21456 of Cox Development.

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

MS. MEHLERT: Yes. This is application number 21456 of Cox Development Group, LLC. This is a self-certified application pursuant to Subtitle X, Section 901.2 for a special exception under Subtitle U, Section 421, to allow a new residential development. This proposal is for an 18-unit apartment house and a new

three-story detached building cellar on an unimproved lot. Currently configured as two record lots, Lots 53 and 54, and one tax lot, Lot 815. It's located in the RA-1 zone at 1444, 1452, and 1454 Alabama Avenue Southeast, Square 5889, Lots 53, 54, and 815.

CHAIRPERSON POURCIAU: Thank you.

Let's see. We have Ms. Wilson with us today. Thank you for being here. And will you be joined by others --

MS. WILSON: Yes.

CHAIRPERSON POURCIAU: -- for your presentation?

MS. WILSON: Yes. I'll be primarily presenting with Mr. Rob McClennan from McClennan Architects, reviewing some of the plan pages after I give the main presentation. And then we're also joined by Mr. Winston Cox, who is the owner of Cox Development Group, and he is the owner of the project.

CHAIRPERSON POURCIAU: Very good. If you're ready, would you please proceed? I would like to say that we would like to allow 15 minutes if you're willing to stay within that time and we appreciate it.

MS. WILSON: Absolutely. Absolutely.

CHAIRPERSON POURCIAU: Thank you so much.

MS. WILSON: We -- we're trying to definitely do that, too.

Could you please pull up the presentation when you have a chance? Thank you so much.

This is the property at 1444 and 1454 Alabama Avenue. It's currently made up of three lots, which we're proposing to combine.

Next slide, please. Thank you.

So we are proposing a new three-story and cellar apartment building with 18 units, and half of the units are affordable units, including some deeply affordable units pursuant to a covenant with DHCD. The property is relatively large, nearly 13,000 square feet, and it's in the RA-1 zone, which is a residential apartment zone. The proposed building envelope meets the applicable development standards as a matter of right. We are seeking special exception review under U-421 for multiple dwelling units, as any new building over six units in this zone requires review. The criteria for approval of this type of application is effectively a list of materials required to be submitted so that the board, Office of Planning, and any other respective agencies can adequately review the application to make sure the infrastructure surrounding the proposal is adequate to support such a proposal, and that the proposal itself is of a high quality to enhance the neighborhood. And through these slides, I will show you how we meet that requirement.

Next slide, please.

The property is near Congress Heights Metro Station. It's approximately three-tenths of a mile away. The site is zoned RA-1, but it is near other commercial zones, and MU-5 zoning to the east, and MU-8 to the west.

Next slide, please.

There is also a large shopping center across the street.

Next slide, please.

The site is currently vacant with some semi-detached pairs of homes on either side.

Next slide, please.

Across the street are The Shops at Park Village.

Next slide, please.

The large shopping center offering grocery, restaurants, banking, and other retail uses, and a Capital Bikeshare station is also across the street.

Next slide, please.

This shows the proximity to a nearby school, which is across from the Metro station, showing the proximity to the Metro.

Next slide, please.

The building meets the RA-1 development standards. Its rear and side yards are more than double the required dimensions. The proposal includes 10 parking

spaces compared to the two required by zoning. And we are also proposing bicycle parking, including eight long-term spaces in an enclosed bike room and four short-term spaces.

Next slide, please.

Half of the building or nine of the 18 units will be affordable under a DHC covenant.

Next slide, please.

The building is designed with families and accessibility in mind. 16 of the 18 units have two or three bedrooms. Three homes will be fully accessible Type A units. An elevator will serve every floor. And two homes are designed for residents with hearing or vision impairments if needed.

Next slide, please.

Residents will also have an onsite fenced playground, and play area, a great amenity for families. In terms of parking and transit, the Metro, of course, is located nearby with that Capital Bikeshare station across the street and the onsite parking.

Next slide, please.

The DHCD covenant also includes a First Source commitment for jobs for D.C. residents. While that is not directly part of the special exception review, it is an additional community benefit worth highlighting.

Next slide, please.

There will be no new curb cut on Alabama Avenue, so the project will not introduce a new conflict point on that sidewalk. Existing street parking will remain in front of the building. The parking will be accessed from the rear alley, and the site plan also provides screening, landscaping, EV chargers, and a handicap accessible space.

Next slide, please.

The building is designed to enterprise green community standards and proposed features include rooftop solar panels, green roof, bioretention for stormwater management, high performance windows, and insulated building envelope, and efficient systems.

Next slide, please.

Mr. McClennan will go over the site plan in more detail, but this demonstrates all the features I've discussed.

Next slide, please.

In terms of special exception criteria, the RA zone, R1 zone is an apartment zone. Again, the proposed building meets the RA-1 development standards for height, lot occupancy, and yards. The rear and side yards exceed the required setbacks, while parking, trash, and deliveries are located off the alley and screened from neighbors. Therefore, we do not expect the proposal to

adversely affect the use of neighboring properties, and the proposal is in harmony with the zone.

Next slide, please.

As I mentioned in the beginning of the presentation, the purpose of the special exception review is to confirm the infrastructure surrounding proposal is adequate to support the additional density beyond the six units by right, and that the proposal itself is of a high quality. And those requirements are clearly met here with high quality building near the Metro, near a large commercial center. Half of the units are designated as affordable and additional amenities include an onsite playground and onsite parking spaces and green features.

Next slide, please.

The Office of Planning recommends approval of special exception.

Next slide, please.

DDOT has no objection and DHCD, of course, supports the proposal. The ANC voted to support the application twice, once in 2024, and again at its recent October 2026 meeting. And that letter of support is in Exhibit 33. And I'd like to thank the ANC on the record for such a thorough report and all of the thought that they put into the questions they sent us initially as well.

In terms of additional community outreach, the Office of Zoning mails notices, but we also send our own notices to those within 200 feet, and those notices included Mr. Cox's direct information and our office's information that we could be contacted directly. We sent those out, but we have not heard from anybody directly.

Next slide, please.

And with that, I'll hand it over to Mr. McClennan to walk through the selected pages and provide more detail, and then we're happy to answer any of the board's questions.

MR. MCCLENNAN: Great. Thanks, Alexandria.

Good afternoon. My name is Rob McClennan with McClennan Architects. And I'll just take a few minutes to quickly run through the plans. I think Alexandria covered all the pertinent points for this project. What you see here is the site plan. The building is a building in the round. We do have, as Alexandria said, ten parking spaces in the rear. We are proposing a playground in the northeast corner of the site. And then we have an accessible ramp, which takes you from the accessible parking space into the building on a fully accessible route.

Next slide, please.

This is the cellar level of the building. We

have four units in the cellar. We also have a full -- an electric room down here, a water room, and our bike storage is located in this area. I do want to point out that this building is designed for families. We do have five three-bedroom units, 11 two-bedroom units, and two one-bedroom units.

Next slide.

Entry level, four units, two three-bedrooms fronting toward the front of the property and two bedrooms toward the rear. The lobby is a generous lobby where the mail room is located here as well.

Next slide.

The typical floor, and this is the second and third floor here, you can see there is a one-bedroom sandwiched in the front of the building between the two-bedroom and three-bedroom fronting toward the front, and then two two-bedroom units at the rear.

Next slide.

Same again on the third floor.

And next slide. This is just some aerial views showing the general layout of the building. The front of the building is generally comprised of brick with metal panel bays with also metal panels surrounds to kind of create a sort of welcoming front entry piece.

At the rear of the building, we switched the

materiality to exterior insulation and finish system. You can see that there's lots of light and windows with operable windows. All the units will have operable windows both in the bedrooms and in the living rooms. You can also see we are proposing that the air conditioning mechanical units be located on the roof and access to the roof ladder, and then the project is also solar ready.

Next slide.

And I think that might be the end of our presentation. So unless there's any questions, I'll hand it back over to Alexandria.

MS. WILSON: Thank you so much, Rob.

I don't have anything else to add, but we're happy to take any questions.

CHAIRPERSON POURCIAU: Thank you so much. I too enjoyed the report from the ANC. It was very thorough, so thank you for recognizing them on the record for that. This application looks very positive. There's not -- there's no one else here to speak other than the Office of Planning, so let's hear from board members and see if they have any questions for the applicant at this time.

And we'll start with Vice Chair Goldstein, please.

VICE CHAIRPERSON GOLDSTEIN: Thank you. And I echo it's -- looks like a very nice project. It's very

straightforward. I think you all put together a really good application package. I'm just curious, you had mentioned, you know, reaching -- trying to reach neighbors and, you know, the one striking thing that you see is just this development with sort of the smaller, you know, semi-detached homes on either side. I -- I'm just curious if you've been able -- I -- it sounds like you've tried to contact neighbors, but has there been any communication with the most immediate neighbors?

MS. WILSON: So our office hasn't been contacted, and I'll defer to Winston to see if he's had any luck recently talking to the neighbors or if they showed up at the ANC meeting. But we've tried and just haven't heard, at least from the letters.

VICE CHAIRPERSON GOLDSTEIN: I don't really have any other questions at this point. Thank you.

CHAIRPERSON POURCIAU: Board Member Lindsjo, do you have any questions for the applicant?

MEMBER LINDSJO: Not at this time. Thank you for your presentation.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells, do you have any questions?

MEMBER WELLS: I do have a couple of questions. One for exterior lighting, I just want to clarify, you guys are not proposing any exterior lighting for your

project?

MR. MCCLENNAN: We absolutely are. We will have bollards along the front and exterior lights at the -- no, we're -- we are -- we're about to submit -- we're working on this permit drawings now and the lighting package. We're working with a consultant that we use to make sure that the light levels be appropriate throughout the property, including at the playground.

MEMBER WELLS: Okay. Did you provide --

MR. MCCLENNAN: And I don't have a lighting -- a photometric study to share today, but we do -- lighting has been a big part of our design process.

MEMBER WELLS: Okay. And maybe I missed it. One of the requirements was for exterior lighting as well. Are those in -- is that in a drawing at all?

MR. MCCLENNAN: Do you mean a photometric study or --

MEMBER WELLS: No. I think it's just -- well, I guess it's shown on some of your elevations where your exterior light --

MR. MCCLENNAN: Yeah. We have external lighting packs that are attached to the building. We also are planning bollards. I don't know if they're shown in these plans, but we do have bollard plans for the -- plan for the walkway, and I believe there's some lighting at the

rear parking as well.

MEMBER WELLS: Okay. And you said you're still working on your photometric package to show --

MR. MCCLENNAN: Yeah. Not just -- my project architect just messaged me. We have three pole-mounted fixtures in the rear of the parking and then more at the back of the building.

MEMBER WELLS: I see. Okay. And so I'm also -- I -- I'm wondering what means did you use to contact some of the neighbors. I guess this is in two part. I just want to clarify because one, the shadow study, it does sound like the shadow studies are really impacting any of the neighboring buildings next to that; is that correct? So first one is a shadow study. And was that A -- on A120, it looks like?

MS. WILSON: I can speak to that a little, too.

MEMBER WELLS: Yeah.

MS. WILSON: Just the shadow study is part of the new -- newer U-421 requirements. Typically, I think of shadow studies as comparing what can be done as a matter of right versus what we're asking for. This is a little bit different because we -- the building envelope itself is permitted by right. So we put six units in there. It would be the same as the 18 units in there, I guess. So the shade is what the shade is, whether we are here or

we're doing the project by right. But since it was a requirement, we submitted it. And I think you are correct. There's no, you know, major impacts, there's no undue impact to the neighbors.

MEMBER WELLS: So just to clarify, what I'm seeing here on A120 is by right?

MS. WILSON: Correct. The building envelope itself. And we're actually providing more than double the side yard and rear yard, too.

MEMBER WELLS: Okay. And then with that, going back to Vice Chair Goldstein's question, I just want to know, I guess, what methods did you use to reach out to neighbors for comment? So I would think by right would be the -- so the building envelope you're saying is by right, which is a number of units is what you're seeking relief from --

MS. WILSON: Yes, exactly. Yep. And it's --

MEMBER WELLS: Okay.

MS. WILSON: I think it's kind of unique. This U-421 relief is unique in that. And yes, that's why we were -- we talked to OP. We were like, is this -- do we need a shadow study for it by right?

MEMBER WELLS: Yeah.

MS. WILSON: It's part of the package, though. Let's submit it. And in terms of neighbor outreach, our

office, I'd say on every case, we'll send additional notice to everyone within 200 feet with our contact information and the developer's contact information, just in addition to the OZ notices. And then we reach out to the SMD and, you know, the single member district commissioner, and normally they collect questions from the constituents. Some of them will go knock on doors. So we got a list of questions from the SMD that we answered and then presented at the ANC meeting.

MEMBER WELLS: Okay. All right. And I just asked that question because some neighborhoods are -- you know, don't give as much feedback as other neighborhoods, so sometimes different methods, you know. But it sounds like you all did your due diligence to contact the neighbors, the neighboring properties surrounding. Okay. And that's the end of my questions. Thank you.

MS. WILSON: Thank you.

CHAIRPERSON POURCIAU: Thank you.

Commissioner Bruins, do you have questions for the applicant?

COMMISSIONER BRUINS: No. Thank you for the very thorough presentation. I felt the record supports your request and I have no additional questions.

CHAIRPERSON POURCIAU: Thank you.

I think now we'll hear from the Office of

Planning.

Mr. Isaiah, are you ready to give your report?

MR. ISAIAH: Yes, Madam Chair. Thank you. For the record, this is Philip Isaiah on behalf of the Office of Planning. The Office of Planning is recommending approval of the subject application. One matter that has been brought up previous in the conversation in terms of exterior lighting. Ms. Wells is correct that under the new standards for RA-1 applications, I'm not sure if this is the first time the board has seen one since the zoning commission passed its reforms to Subtitle U, Subsection 421. However, in Subtitle -- in U-421.2A8, it is required that exterior lighting be shown on the site plan.

If Office of Planning did in its report state that it did not appear as though any exterior lighting was proposed, if it is seen on the plans, that is in fact the case, it was -- that's a good faith error on the Office of Planning. However, of course, subject to that, the OP is willing to trust that the -- based off of the testimony that's been provided by the applicant so far, as well as DOB permitting that would be required later should the application be approved, would be sufficient in keeping the -- in keeping the standard of nine -- of Subtitle X, Subsection 901.2, that no adverse impacts would be affected to neighboring properties. Otherwise, OP rests

on the record the report contained as Exhibit 29, dated October 9, 2026. Thank you.

CHAIRPERSON POURCIAU: Thank you for that clarification. That's appreciated.

Any questions for OP?

MEMBER WELLS: Just one on the exterior lighting. Would -- I guess, would you look for a photometrics analysis to ensure that there are no impacts on neighbor properties or what would you be looking for for exterior lighting?

MR. ISAIAH: Well, my interpretation of the scrutiny in these standards is not as strict as to require a photometric plan. It's just more -- my interpretation is more of the locations so that in -- so that nothing appears egregious.

MEMBER WELLS: Okay. And I guess I -- next question I'd be like, well, what would appear egregious? I guess if you're looking at a light showing, like, too close to a property or shining directly or oriented towards a property, I guess -- yeah.

MS. WILSON: Yeah.

MEMBER WELLS: I guess I'd be looking for a metric. I think that's what I'm trying to get at. If I'm looking for something that would be egregious is -- you know, how would that be determined?

MR. ISAIAH: I mean, that -- I sympathize with that. I will note that this is, you know, a new standard that has been brought forward in the zoning regulations. So as we see more and more RA-1 zones and more and more precedent is created, I think there might be -- I might be able to give more of a concrete answer in the future.

MEMBER WELLS: Okay. Thank you.

MR. ISAIAH: Thank you.

CHAIRPERSON POURCIAU: Thank you.

Any other questions for OP? No?

Thank you so much, Mr. Isaiah.

We do not have any other district government agencies present. The ANC I do not believe is present, but they presented a very full report. There were no parties established for this application, and there are no individuals either in opposition or support that have signed up.

Would the applicant like to provide any closing remarks at this time?

MS. WILSON: We will rest on the record, and I thank you all so much for your time today.

CHAIRPERSON POURCIAU: Thank you so much.

I -- are there any other items anyone would like to discuss before we deliberate on this case? No? Seeing none, I want to thank the applicant again. I -- it looks

like a great project. No one used the words transit-oriented development, but it feels like a great transit-oriented development project to me, which I love to see access to Metro maximized in development envelopes.

And so with that, we will close the record and we will deliberate on this case. Thank you again. Hey. Okay. So this case to construct the building here, Alabama Avenue, as I just mentioned, looks like a way to really maximize access to transit as well as commercial development and provide for more density, which is allowed with our approval in this area. I thought the applicant has done a great job also of responding not only to the need for more housing in D.C., but for affordable housing at all levels, as well as family-size housing. And so it really responds to many of the items we've been looking at and the city is concerned about. With all that, I am ready to vote for approval on this application, but I'd like to hear from others at this time.

Vice Chair Goldstein.

VICE CHAIRPERSON GOLDSTEIN: Thank you. I think you really captured it. DDOT has no objection. OP supported. DHCD supported. There's a letter in support from ANC 8C. I think the project has tremendous positives to it, playground, affordability. But aside from that, I think they -- the record's quite full about how they meet

the standards of U-421 as well as the general special acceptance standards. So I -- I'd be willing to vote in support of the project.

CHAIRPERSON POURCIAU: Thank you.

Board Member Lindsjo?

MEMBER LINDSJO: Thank you. I would also align my comments with both yours and Vice Chair Goldstein's. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells?

MEMBER WELLS: Generally, I feel it is a good project, and just going through requirements of what we're supposed to evaluate, you know, that's one of the ones that -- one of the reasons why I brought up the exterior lighting that was missing from that. Again, OP's testimony today and, you know, I'm feeling confident that this won't be an egregious situation in the lighting. I'm prepared to move forward on this case.

CHAIRPERSON POURCIAU: Thank you for that, Ms. Wells, and thank you for your diligence in ensuring that we are doing our job and responding to all of the potential concerns. Thank you for that.

Ms. Bruins?

COMMISSIONER BRUINS: I have nothing further to add and align myself with the comments of the rest of you

all.

CHAIRPERSON POURCIAU: Thank you.

So I'd like to offer a motion to approve application 21456 of Cox Development Group as presented into the record by the secretary. Is there a second?

VICE CHAIRPERSON GOLDSTEIN: A second.

CHAIRPERSON POURCIAU: Thank you.

Is there any further discussion? Hearing none, I'll ask the secretary if she would call the vote, please.

MS. MEHLERT: Please respond to the chair's motion to approve the application.

Chair Pourciau?

CHAIRPERSON POURCIAU: Yes.

MS. MEHLERT: Vice Chair Goldstein?

VICE CHAIRPERSON GOLDSTEIN: Yes.

MS. MEHLERT: Board Member Wells?

MEMBER WELLS: Yes.

MS. MEHLERT: Board Member Lindsjo?

MEMBER LINDSJO: Yes.

MS. MEHLERT: Commissioner Bruins?

COMMISSIONER BRUINS: Yes.

MS. MEHLERT: Staff will record the vote as five to zero to zero to approve application number 21456 on the motion made by Chair Pourciau and seconded by Vice Chair Goldstein.

CHAIRPERSON POURCIAU: Thank you.

I would like to charge through, but I think our next two cases are going to take a little time. I don't think they're going to be so quick. And I'm a little hungry, so I was thinking maybe we take a half an hour break, reconvene at 1:30. Is that okay with everyone? All right. Thank you. See you shortly.

(Whereupon, the above-entitled matter went off the record at 1:03 p.m. and resumed at 1:30 p.m.)

CHAIRPERSON POURCIAU: Welcome back, everyone. We will proceed with our virtual public hearing with case number 21491.

Ms. Mehlert, would you please read it into the record?

MS. MEHLERT: Yes. The board is back from its lunch break and returning to the hearing session. Next is application number 21491 of 400 Seward Square, LLC, a self-certified application pursuant to Subtitle X, Section 1002, for an area variance from the 900 square foot minimum lot area for unit requirement of Subtitle U, Section 301.5B to allow three additional dwelling units in an existing 14-unit apartment house for a total of 17 units in an existing four-story building. It's located in the RF-1/CAP zone at 400 Seward Square Southeast, Square 819, Lot 28.

CHAIRPERSON POURCIAU: Thank you.

I see we have the applicant with us, Mr. Sullivan, and -- the agent, Mr. Sullivan, and the applicant, Mr. Barley. I believe we are ready.

Are you ready to present your case?

MR. SULLIVAN: Yes, we are, Madam Chair.

CHAIRPERSON POURCIAU: All right. Thank you very much. Please proceed.

MR. SULLIVAN: Thank you very much. My name is Marty Sullivan. I'm zoning counsel for the applicant in this case. If we could have the PowerPoint loaded, please. The address is 400 Seward Square Southeast, effectively on Pennsylvania Avenue.

Next slide, please.

This is a purpose-built apartment house constructed in 1905. It's four stories plus a cellar. The lot area is 3,445 square feet. This is in the RF-1 zone. There's currently 15 existing units, but we have a C of O for 14 units. And so the request is for relief from the 900-foot rule to get approval for that 15th unit and to add two units in the basement.

Next slide, please.

There's no change to the building, to its height, or to its footprint. The two new units are located entirely within existing cellar space and require no

additional excavation.

Next slide, please.

The relief requested is an area variance from U301.5B, the 900-foot rule pursuant to Subtitle X-102 to legalize the 5th unit and add two more units. This is the footprint or the floor plan for the existing basement level and proposed basement level. It was -- the purpose-built apartment was built prior to 1958, and a building built prior to 1958 can renovate or expand, provided there's 900 square feet of lot area for each dwelling unit, and the property has only 3, 4 -- 4, 5 square feet of lot area. Therefore, the applicant is requesting the area variance relief from that rule.

Next slide, please.

Case history. So in 2020, BZA case number 20289 was filed with this exact same proposal. It was approved, it was supported by the ANC, supported by the Office of Planning, and approved by the board. And then the applicant did obtain building permits within the two-year window, but then those permits expired due to the project being put on hold, first of all, because of COVID and economic conditions, and then the architect failing to extend the permits.

And so order 20289 -- excuse me. Order 20289 then expired when the underlying permits expired. So in

order to do what was approved in 2020, this application has to come forward. And this application was then refiled May 15th for the same relief, exact same proposal. We do have a support letter from a neighbor, we have unanimous support from the ANC 6B, both from the zoning committee and from the full ANC, and Office of Planning report and support as well, and also a support letter from the Architect of the Capitol.

Next slide, please.

So the exceptional condition. This is a pre-1958 purpose-built apartment house. It was built in 1905, so the building predates the zoning regulations lot area per unit standard and cannot conform without substantial alteration. The 15th unit appears to have existed since at least the 1970s, despite the C of O reflecting only the 14 units. And the cellar contains substantially underutilized space that cannot practically be incorporated into existing units due to the structural and layout constraints, which would make renovations costly and disruptive. And the vacant space has already -- has also presented security concerns, including an unauthorized individual staying there overnight.

Next slide, please.

Practical difficulty. Incorporating the cellar into existing units would require moving load-bearing

walls and the stairwell, costly, inefficient, and disruptive to tenants and occupied units. And the resulting units would not work because the combined units would be inconsistent in size and layout with the rest of the building, so folding the space into first floor units would add circulation and reduce functionality as well. And strict compliance with the regulation would also force the removal of one of the long existing units.

Next slide, please.

No substantial detriment to the public good or impairment of zoning regulations. All work is interior. There's no change to the building itself, no additional excavation. Again, the board previously approved the same relief. It's been supported by the ANC and no objections from the community in either case. And the apartment use is contemplated in RF-1, and the requested relief is limited in scope and tailored to the unique conditions of this historic apartment building. And the proposal is consistent with the existing multifamily character of the surrounding neighborhood and represents an appropriate adaptive reuse of the existing open space in the building area below.

Next slide, please.

Here is the exhibits and the support from the record that was mentioned. In addition to the prior case,

there have been at least four or five cases in the past 10 years similar to this where the board has looked at an empty basement and an existing non-conforming apartment building in the RF zone and granted 900-foot rule relief in all those cases based on similar conditions here, security concerns, idle space not being used, and the difficulty in incorporating that empty space into the existing units above.

Next slide, please. Next slide, please.

That's just a plat showing the existing footprint. There's a photo of the building. This is Seward Square, but the main street you see there on the right is Pennsylvania Avenue.

Next slide, please. Next slide, please.

So here is the floor plan showing the proposed renovation.

Next slide, please. Next slide, please.

The last slide was existing, and this is proposed.

Next slide, please.

And I believe that's it. Thank you. And Mr. Barley is here to answer any questions as well.

CHAIRPERSON POURCIAU: Thank you so much.

I'd like to see if there are any questions from the board.

Let's start with Vice Chair Goldstein, please.

VICE CHAIRPERSON GOLDSTEIN: Thank you very much, Mr. Sullivan. A couple questions. For the cellar, I don't think I've heard you mention why it couldn't be used as a conforming use, such as an amenity space for the building. I understand laundry is not in the cards, but what else would -- did you look at as a possibility for the space, and why was that discarded as a path? I think you may be on mute, Mr. Sullivan, if you're talking.

MR. SULLIVAN: Sorry. Sorry. Yeah. I think it's mainly about there's no need for this -- for that use as storage from above. And Mr. Barley may be able to expand on that as well.

MR. BARLEY: Yeah. I'll just kind of share for context. The building is unique in that the unit sizes are quite large with large entertaining areas. The -- I want to say the average square foot size for the units above grade are over 1,000. And, you know, for comparison, you know, a typical kind of row house on Capitol Hill would be between six and 800 square feet per floor with the bedrooms being on the top level. And so these tenants or these units are kind of uniquely situated in that way. It's not as though there are -- these are kind of small studio and one-bedroom apartments.

VICE CHAIRPERSON GOLDSTEIN: Okay. Saying that

then, I just want to take it a step further. Are you suggesting there's no need for any other alternative use in the cellar because those types of needs are addressed or accommodated in the unit sizes that you're mentioning? Is that what you're headed toward?

MR. SULLIVAN: Yes.

MR. BARLEY: Yeah. Correct.

VICE CHAIRPERSON GOLDSTEIN: Okay. Mr. Sullivan, could you -- there -- I understand that incorporating them in other units is impractical. Is there -- can you just bring up the floor plan and just kind of show me what -- what's impractical about it? If you could just -- you or your team could just describe what -- for the record, what is impractical?

MR. SULLIVAN: Well, if you want, you can load the PowerPoint again and I'll have Mr. Barley explain that. It's the same stuff that was evident and shown in the approval from five years ago, though, too.

VICE CHAIRPERSON GOLDSTEIN: No, I hear that. I wasn't here five years ago, so it's -- I need to hear it now.

MR. SULLIVAN: Yeah, I understand. It would -- I would just want to point out that this was approved by the BZA in the exact same form, by the same BZA, not the same board members.

So Tim, if you can --

MR. BARLEY: Yeah, yeah.

MR. SULLIVAN: -- explain. I'm not sure if you can tell from the floor plan or not, but Tim --

MR. BARLEY: Yeah. I have -- I can see the floor plan on the screen here. So there's two conditions that make this really challenging. Number one is right through the middle of the building running north and south is a massive -- and it's not really shown well on this, but there's a massive masonry brick wall. There's a structural support, and because of the age of the building and the structural integrity that that wall provides, it was advised that we not move, but from the architect's team, that we not remove that wall at all.

In addition, and I don't know if you can see the -- there's the word corridor there right in the middle of the floor plan, and then to the north there above that electrical room, that whole wall is a masonry wall. And then -- and historically, this building was heated with a very inefficient oil burner, and provided radiant heat to the units.

And that oil burner is in a room right where the -- I got to zoom in here a little bit. I think that's unit B5, right where that bathroom is. And there's an additional, kind of, structural brick wall around where

that boiler used to exist, and just below that turret that was also recommended that we not remove.

VICE CHAIRPERSON GOLDSTEIN: Okay. And just to take that one step further, you were recommended not to remove that, which means that there -- that there's some impracticability of joining them to other units to be more compliant? Something about the layout of the floor above?

MR. BARLEY: Well, I don't know if it's layout so much as just the structural integrity of the building.

VICE CHAIRPERSON GOLDSTEIN: Okay.

Mr. Sullivan, I was hoping to ask about this 15th unit. I didn't see -- I don't -- didn't see in the record any identification of which unit it is. I don't think there was a floor plan --

MR. SULLIVAN: I'm looking through the --

VICE CHAIRPERSON GOLDSTEIN: -- showing it.

MR. SULLIVAN: Tim, what -- do you know, Tim, where the -- well, I don't -- I'm not sure if it's --

MR. BARLEY: I actually -- I don't --

MR. SULLIVAN: -- if we know because it's just the other unit.

MR. BARLEY: Yeah. I don't know that we have ever known which is the non-conforming unit. The C of O is for 14 units, but when we bought the building, there was always 15 units in there. And that 15 unit, we

believe, predated the Pagonis (phonetic) family, which is the family that we purchased the building from.

MR. SULLIVAN: Yeah. And the C of O doesn't typically identify individual units on a C of O, and so, typically, it would just be a number.

VICE CHAIRPERSON GOLDSTEIN: Okay. I'm a little confused. No. I hear you. So I think there's a belief that it existed from the 1970s? I saw that in some submission.

MR. SULLIVAN: Yeah. Meaning that there were 15 units.

VICE CHAIRPERSON GOLDSTEIN: Now, how is that -- how is that understood if you don't know which unit it is?

MR. SULLIVAN: Because there were 15 units. So one more unit than the C of O existed since the '70s.

VICE CHAIRPERSON GOLDSTEIN: Okay. And you know that because -- how did you trace it back?

MR. SULLIVAN: That's Mr. Barley's -- well, I -- I'll have Tim -- Mr. Barley talk about that.

MR. BARLEY: Yeah. I can speak to that. What we were told, when we did our due diligence on the building, was that that unit existed prior to the seller's ownership, and they never applied for the additional certificate of occupancy. Obviously, after we bought the building, we, in relatively short order, tried to remedy

that.

VICE CHAIRPERSON GOLDSTEIN: When did you buy the property?

MR. BARLEY: 2018, I think. I'd have to get back to you on that.

VICE CHAIRPERSON GOLDSTEIN: Okay. Is -- just out of curiosity, is there a unit that looks like a different layout than the other units on the different floors? I'm just curious.

MR. BARLEY: Yeah. They're all pretty much the same per floor. There -- there's some harmony between all of them, but all of them are unique in certain ways.

VICE CHAIRPERSON GOLDSTEIN: Okay. I think that's all the questions I have for now, Madam Chair.

CHAIRPERSON POURCIAU: Thank you.

Board Member Lindsjo, do you have questions for the applicant?

MEMBER LINDSJO: Not at this time. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells, do you have questions?

MEMBER WELLS: I think I do, yeah.

I'm a little confused, maybe, as it relates to the additional unit. So you had -- is it -- I guess, when did you discover that you needed to seek relief for this additional unit?

MR. BARLEY: We discovered that during our due diligence.

MEMBER WELLS: Okay. And so -- yeah. I --

Well, I guess I don't have any more questions. I'll let the wait let -- maybe after OP's report.

CHAIRPERSON POURCIAU: Thank you.

Commissioner Bruins?

COMMISSIONER BRUINS: Thank you for your presentation. I have no additional questions.

CHAIRPERSON POURCIAU: I have one question on the slide.

Mr. Young, could you bring back up that slide with the floor plan, please?

The -- that unit 1, I don't see where it has a bathroom. Am I not looking at something correctly?

MR. BARLEY: Yeah. So upper right-hand corner of the slide, B1. That's an existing unit.

CHAIRPERSON POURCIAU: Yes.

MR. BARLEY: Yeah. That's an existing unit. So the architectural drawings don't include any detail on that unit, but that does have a bathroom.

CHAIRPERSON POURCIAU: Okay.

MR. BARLEY: So real quick, the --

CHAIRPERSON POURCIAU: So B1, B2, and B3 are existing, so they're not fully described, and then the B4

and B5 are the two new units?

MR. BARLEY: Correct. B5 and B4 are the new units.

CHAIRPERSON POURCIAU: Or is it -- or is it 3? Yeah.

MR. BARLEY: No. B5 and B4.

CHAIRPERSON POURCIAU: Yeah. Okay. Thank you.

I think at this point we'll move on to the Office of Planning for your report.

We have Mr. Isaiah again. Thank you for being here today.

MR. ISAIAH: Thank you, Madam Chair.

For the record, this is Philip Isaiah on behalf of the Office of Planning and on behalf of Crystal Myers, who was the planner for this case and was the author of the report.

The Office of Planning recommends approval of the subject area variance. OP's understanding is that the project was previously approved by this board in case number 20289, in which the board granted the exact same variance relief. However, the order and the building permits were expired as the applicant and the architect were unaware that they needed to extend the building permits in order to begin construction.

The subject building was built in 1905,

containing 15 units, however, the certificate of occupancy was found to reflect as 14 units. With in-unit laundry that was added to each existing unit, there is now -- there was excess cellar space to accommodate the two existing units. Now, given the structure of the building with excess cellar -- with excess cellar space cannot be incorporated into the other existing units, and not granting the relief would result in a large underutilized cellar space, which would cause the -- an existing dwelling unit to be vacant.

OP finds that the project would not be a detriment to the public good or to the purpose or intent of the zoning regulations, and as such, OP otherwise rests on the record of the report contained as Exhibit 23 of the record dated October 9th, 2026. Thank you.

CHAIRPERSON POURCIAU: Thank you, Mr. Isaiah. Are there questions for the Office of Planning?

Vice Chair Goldstein, do you have questions for OP?

VICE CHAIRPERSON GOLDSTEIN: Thank you so much. And I appreciate you pinch-hitting today for -- on Crystal Myers' behalf. I just want to ask you, the applicant has asserted that there have been a number of other cases where, in the RF, of units being added to the cellars, I assume through an area variance, do you just have any

familiarity with past cases that that's come up?

MR. ISAIAH: Well, I'm afraid only my personal availability was that which would occur -- was occurring in zones that are less dense than this. You may recall that I did a case in Southeast that was in the R2 zone on Hillcrest Road Southeast, which also was a basement-type application, which a similar argument was put forward that it was difficult to incorporate such a basement unit in coordinate -- with the other units existing. And having security issues as well and practical difficulty in terms of the structural integrity of the building in deferred -- at least not -- in that case, it was deferred maintenance. I don't think that's the applicant's argument here.

But it appears that there exists precedent, from my understanding, but that's only beyond my personal understanding.

VICE CHAIRPERSON GOLDSTEIN: Okay.

MR. ISAIAH: The OP may have more precedent that I'm not aware of.

VICE CHAIRPERSON GOLDSTEIN: Sure. And I appreciate you off the cuff, I mean, just jumping into that question. I think where it was leading a little bit was, this is now taking it down to 202 square feet per unit, which is a little low, but it's not a huge drop from where it currently is, which is 246 square feet.

So just -- I was just curious of that, you know, shifting down to low 200 square foot -- feet in compliance with the 900-square-foot rule. And I don't know if you have any thoughts on that?

MR. ISAIAH: Well, I would note that the subject building was built in 1905, before the Zoning Act of 1920, and the subject property now is zoned RF-1 Cap, which has a height limitation of 35 feet and three stories, of which the subject property is much more than that. So I assume that the 900-square-foot rule assumes a generally more in line with the bulk of the RF-1 zone, whereas this subject property does not conform.

VICE CHAIRPERSON GOLDSTEIN: Okay. Thank you very much.

MR. ISAIAH: Sure. You're welcome.

CHAIRPERSON POURCIAU: Board Member Lindsjo, do you have questions for Office of Planning?

MEMBER LINDSJO: Not at this time.

Thank you for answering those questions.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells, do you have questions for OP?

MEMBER WELLS: No. Thank you.

CHAIRPERSON POURCIAU: Thank you.

And Commissioner Bruins, would you like to ask Mr. Isaiah anything?

COMMISSIONER BRUINS: No. I have no questions. Thank you.

CHAIRPERSON POURCIAU: Okay. Thank you.

Okay. We will proceed on our agenda.

Thank you, Mr. Isaiah. As also -- always, you -- your comments are appreciated, and thank you for stepping in for your colleague.

There are no other district government agencies present to present. DDOT had no objection to this case. The ANC is not present, but they approved the application. There are no parties and there are no individuals to present.

And so I'd like to ask the applicant if they'd like to make any closing remarks at this time?

MR. SULLIVAN: Thank you, Madam Chair. I would just like to provide some more information to the board in response to Mr. -- to Board Member Goldstein's inquiry about the other cases like this.

Case 19625 for 61 Rhode Island added two units in the basement to a 21-unit building on a lot that was about -- that was 6,174 square feet; case 19570 at 220 2nd Street Southeast, one unit added to 12 existing units on a lot that was 6,657 square feet; 1247 E Street, case 19196, one unit was added to four on a lot that was 3514; and then 19436 case, at 930 to 960 Randolph Street added 13

units in the basement to a -- to an existing 75-unit building on a lot that was 24,000 square feet.

I know every case is decided on its own merits, but the board has looked at similar situations and seen that as an exceptional practical difficulty in these cases very similar to this, in addition to the previous one. And so I -- I'm not suggesting that that means an automatic approval or that the previous approval six years ago means an automatic approval, but nothing has changed since then. And I think it would be extraordinary for the board to, without some sort of change, overrule a previous board's decision on that when that case itself was also in line with all these other situations where that type of relief was asked for.

So when you add that together with the fact that we have unanimous support from the ANC, twice, on this, and when they have provided the great weight they have, I would hope that that would remove any doubt for an approval. In addition to support from the Office of Planning and no opposition, again, through two of these cases.

So that's all I have to add. I believe the application, for those reasons, safely meets the area variance requirements for relief from the 900-foot rule, and I thank the board for its time. Thank you.

CHAIRPERSON POURCIAU: Thank you. Any closing questions we might have or concerns before we move to deliberation? No?

MEMBER WELLS: I do have an additional question.

So the previously approved case, you said was six years ago. That was a different owner at the time? The same?

MR. SULLIVAN: Same owner.

MEMBER WELLS: Same owner. Okay.

MR. SULLIVAN: He purchased it shortly before that. So in response to your first question, it was his due diligence in that first case, where he discovered the need.

MEMBER WELLS: In that first case? Okay.

MR. SULLIVAN: Right. Right. Right. Yeah.

MEMBER WELLS: Because it did change -- right now, we're also approving an additional unit from that first case.

MR. SULLIVAN: No. That -- so in the first case, we were asking for unit 15 plus two.

MEMBER WELLS: Yes.

MR. SULLIVAN: And in this case, we're asking for unit 15 plus two.

MEMBER WELLS: Okay. Okay.

MR. SULLIVAN: So they -- actually, the floor

plans are exact same ones that were submitted in the last case.

MEMBER WELLS: Okay. All right. I think that's it. Thank you. Just -- well, sorry. One more question. I think Goldstein addressed this and I was probably doing a lot of thinking at that time, but other alternatives that you explored to incorporate the cellar unit? I know you talked about that. You talked about storage space wasn't a good use and neither was laundry, but any other uses that would be permittable? Is that --

MR. SULLIVAN: The only thing --

MR. BARLEY: Well --

MR. SULLIVAN: -- that would --

I'm sorry. Go ahead, Tim.

MR. BARLEY: Well, I can speak to that just briefly, and that is, one of the reasons that this space became available was because we, kind of, polled the tenants at the time, asking them about -- we were planning some modernizations of the building, and we polled the tenants to try to understand what their desire was.

And we -- I can't remember exactly, but I think we had, like, five different options that we presented to them. One of them was in-unit laundries. They all wanted in-unit laundries, and so we made the decision, kind of, consulting with them, we're going to do in-unit laundries.

The other thing that they wanted was central air. The building didn't have central air, and it had this old, really wild oil burner in the basement, and so we decommissioned that. They put in-unit HVAC systems, modern HVAC systems, and then also the in-unit laundry.

And so they -- that was, kind of, a decision that was made in, kind of, collaboration with them after, kind of, polling and hearing what they wanted most for the building. I don't know if that speaks to your question at all, but --

MEMBER WELLS: It does speak to the question. Okay. And so the space is unused now? It's not used for anything?

MR. BARLEY: Correct.

MEMBER WELLS: Currently.

MR. BARLEY: Correct.

MEMBER WELLS: Okay. Great.

MR. SULLIVAN: I would also add, just generally, it's -- and to follow up on what Mr. Isaiah said, the building is exceptionally large for RF zone. It's 100 percent lot occupancy and four stories. And so that's resulted in significantly sized units, even -- despite the 900-foot rule impacting that, as Mr. Barley testified to earlier.

MEMBER WELLS: Okay. Great. Thank you.

CHAIRPERSON POURCIAU: Thank you. I appreciate the presentation and the detail. And I'm prepared to vote positively on this application. I think it provides for more housing. The new units are somewhat small, but they are nice new units and a building that sounds like it's been updated recently.

And I believe the record reflects all of the conditions and concerns that have been voiced by the board and the support from the Architect of the Capitol and others is good as well. I don't see any reason not to proceed to deliberation and vote, and I don't see anyone saying, just a minute.

So with that, I'd like to thank Mr. Sullivan and Mr. Barley for coming in today with the application.

We will now close the record and the board will deliberate and vote on this application.

All right. Thank you. I've, kind of, summarized my thoughts on this application. Are there others who would like to share your thoughts or please share your thoughts?

I'll start with Vice Chair Goldstein.

VICE CHAIRPERSON GOLDSTEIN: Sure. I think that the applicant's submission, along with the Office of Planning's report, and some of the oral testimony we heard today helped to establish the uniqueness of this building,

the practical difficulty, as well, related to that unused cellar space, and why it can't be used for a conforming use or to add it to an additional unit.

Additionally, I think it was helpful to hear more about that 15th unit. And it still seems a little strangely mysterious to me, but I think I am over the hump in being supportive of legitimizing what sounds like has been a longstanding condition of the building. I think I would be supportive of the application. I think they've met their burden.

CHAIRPERSON POURCIAU: Thank you.

Board Member Lindsjo, what are your thoughts on this application?

MEMBER LINDSJO: Thank you. I believe they have, as well, met their burden and I have -- I'm willing to support it as is. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells?

MEMBER WELLS: Yeah. I -- I'm a bit on the fence of -- on this one. Variances are usually established at a pretty high bar. Given, you know, testimony from OP and additional information by the applicants, I can get there, I guess, on the -- you know, a favorable approval of this request.

It's not the way it's -- I, you know, if all

options were explored to reasonably use that space. But understanding, like, you know -- and then also giving credit that there was a previous approval for the same thing and pretty much the lapse in time is why we're seeing it again. But with, you know, the new board and new -- and evaluating it with the different eyes, which is my hesitation with approval over this, but the additional information from the applicant during the questioning was at least helpful to get there on this one.

CHAIRPERSON POURCIAU: Thank you.

Commissioner Bruins, what are your thoughts?

COMMISSIONER BRUINS: I agree that the additional testimony on what's going on in the basement, structurally, and what they are allowed to do, or what they're able to do down there, was helpful to provide evidence on the exceptional practical difficulties of their proposal. I agree that there's enough in the record that the proposal has no substantial detriment to the public good and no substantial impairment to the intent, purpose, or integrity of the zone in which it is in.

I think that the prior variance approval establishes an exceptional condition for supporting this same relief request, and I think there is enough on the record for me to support this request at this time.

CHAIRPERSON POURCIAU: Excellent.

Would someone like to make a motion, please?

VICE CHAIRPERSON GOLDSTEIN: I'll make a motion to approve case number 21491, 400 Seward Square, LLC, for the relief as captioned and read by the secretary.

MEMBER LINDSJO: I second that.

CHAIRPERSON POURCIAU: The motion has been passed and seconded.

Madam Secretary, would you please call the vote?

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

Chair Pourciau?

CHAIRPERSON POURCIAU: Yes.

MS. MEHLERT: Vice Chair Goldstein?

VICE CHAIRPERSON GOLDSTEIN: Yes.

MS. MEHLERT: Board Member Wells?

MEMBER WELLS: Yes.

MS. MEHLERT: Ms. Lindsjo?

MEMBER LINDSJO: Yes.

MS. MEHLERT: Commissioner Bruins?

COMMISSIONER BRUINS: Yes.

MS. MEHLERT: Staff will record the vote as 5 to 0 to 0 to approve application number 21491 on the motion made by Vice Chair Goldstein and seconded by Board Member Bruins -- or I don't know. I think it's both. I'll just -- let's say Board Member Lindsjo.

CHAIRPERSON POURCIAU: Thank you.

And we'll proceed to our last case, 21503, of Jemal's Gateway DC, LLC, and Emerald Wings, LLC.

Ms. Mehlert, would you please read it into the record?

MS. MEHLERT: The last case is application number 21503 of Jemal's Gateway DC, LLC, and Emerald Wings, LLC. This is a self-certified application pursuant to Subtitle X, Section 901.2 for a special exception under Subtitle U, Section 513.1(e) to allow a new fast-food establishment with 34 indoor seats, carryout, and delivery in an existing one-story commercial building as part of a shopping center on a split zone site. Located in an MU-4 and R1-B zones at 7800 Alaska Avenue Northwest, Square 2960, Lot 818.

As a preliminary matter, the applicant has submitted a motion to waive the filing deadline for an internal trash plan. It's in Exhibit 27A.

CHAIRPERSON POURCIAU: Thank you.

I see we have Mr. Sullivan again. Good seeing you again, Mr. Sullivan.

MR. SULLIVAN: Thank you, Madam Chair. You as well.

CHAIRPERSON POURCIAU: Are there others who will be presenting or just you today?

MR. SULLIVAN: The representative from the franchisee from -- should be on, Saad Usman. He was actually -- he's at a conference. Wingstop is having their annual meeting, and so he's been in and out of meetings, but he's been paying attention. He should be on. If not, we'll get him on there as soon as we can. But I was going to lead the presentation and have him available to answer questions.

CHAIRPERSON POURCIAU: Makes sense. All right. So --

MR. SULLIVAN: I can --

CHAIRPERSON POURCIAU: Please proceed.

MR. SULLIVAN: -- move forward.

CHAIRPERSON POURCIAU: Thank you.

MR. SULLIVAN: Thank you.

CHAIRPERSON POURCIAU: And I didn't say this previously, but I would like to say, we would like it if you could stay within 15 minutes with your presentation. Thank you.

MR. SULLIVAN: Thank you. Will do. I'm just going to make sure I get somebody to check on Mr. Usman. So the request is a special exception for a fast-food establishment at 7800 Alaska Avenue Northwest.

Next slide, please.

Here you see a photo of the existing building.

The building has been vacant for many years. I believe about nine or ten years, the space has been vacant. It's a one-story commercial building within a larger shopping center. A 1,873 square feet corner tenant space at Alaska Avenue and Kalmia Road.

The proposed use is a Wingstop with 34 dine-in seats plus carry out and delivery, no alcohol, and no drive through. And hours that we are proposing, after working with the ANC and the community on these hours, are to operate from 10:00 a.m. to 1:00 a.m. on Sunday through Thursday and 10:00 a.m. to 2:00 a.m. on Friday and Saturday. We expect about four to eight employees per shift. The location, this is a Georgia Avenue commercial corridor at the D.C.-Maryland line. It has surface parking in the back.

And next slide, please.

So here's the site. The subject premises is on this corner where it says, "Subject property," and pointing to the arrow, and you see it from the front. Now, this actually doesn't go all the way back to the parking lot.

Next slide, please.

We may have this shown in one of the plans. Well, I'll talk about that in a minute. This is the interior of the space. This is the seating here. We have

interior trash. And the reason why we didn't have the exact location of the trash shown on the floor plan until Monday is, the applicant's been working with DOB and the health department on the interior trash collection. And that's been okayed, and this is the space where it's identified for.

There's no exit out of the back of the building, so trash will be collected through the only door, just through the front. So when it's collected, they'll come in, and they'll take the trash out and take it out.

Next slide, please.

Here's where you see the premises from a different angle. So this is what -- the floor plan you just saw. This is a different premises, the space behind that, and the parking lot is behind that. So that's why there's only one entrance out the front and there's no rear egress or side egress.

Next slide, please.

These are representative photos of a Wingstop location. This is generally how it will look on the inside.

Next slide, please.

And I'm going to check and see if Mr. Usman has joined yet. I see he has, so he's available if you have any questions for him. Mr. Usman is with the franchisee

organization, and he is the owner of this franchise and several others as well.

Next slide, please.

Regarding the general special exception review standards, the application will be in harmony with the general purpose and intent of the zoning regulations and maps. This is the MU-4 zone. It's designed to accommodate low to moderate-density commercial uses serving surrounding neighborhoods, particularly along major roadways and commercial corridors outside the district's central core.

The property is located along Georgia Avenue, a priority commercial corridor near other businesses and residences with Eastern Avenue serving as a significant commercial artery along the D.C.-Maryland boundary. And the existing one-story commercial building has an established commercial character, having most recently been occupied by H&R Block quite a few years ago.

The proposed fast-food restaurant will replace a prior retail tenant with a use that's well-suited to the corridor, activates the space, and provides employment opportunities, and serves the surrounding pedestrian, transit-accessible, and vehicular customer base. And the high foot traffic along Georgia Avenue and the property's Walk Score of 94 further support the suitability of the

proposed use at this location.

It will not tend to affect adversely the use of neighboring property. The applicant has met with the ANC multiple times and worked collaboratively with them and nearby neighbors to develop conditions that address neighborhood concerns and ensure the proposed use is compatible with the surrounding community.

Next slide, please.

Specific conditions for the special exception. The first one is not applicable as it's not a detached building. Condition number 2, "Any refuse dumpster used by the establishment shall be housed." We're not going to have a dumpster exterior, so all the trash is inside. So that condition is met. Doesn't include a drive through and "the use," number 4, "shall be designed and operated so as not to become objectionable to neighboring properties because of noise, sounds, odors, lights, hours of operation, or other conditions." And this has been addressed, we believe, by the conditions which we've developed with ANC 4A regarding hours, noise, trash, pests, grease, and security issues.

And number 5, "The use shall provide sufficient off-street parking, but not less than that required." So there's no minimum requirement for a space like this for a parking requirement for the use itself, but the tenant has

access and availability of some of the parking spaces in the back -- or the parking spaces that they need, both for their employees and for customers.

Number 6, there's no dangerous or otherwise objectionable traffic conditions. Wingstop, which operates nationally, of course, estimates about 75 percent are digital orders. And regarding supply deliveries, those are expected to be overnight, about two times a week and don't take a lot of time. And trash collection will be a minimum of three times a week. And as stated, it'll be taken from the interior and kept internally until it's taken out.

And next slide, please.

We do enjoy the support of the Office of Planning. And from their report, there's some highlights. And also, from DDOT, which found that the use may lead to a minor increase in trips and pickup drop for -- drop off activity, and expects this to be mitigated by patron and employee access to the parking lot directly behind the property.

Next slide, please.

This is a chart showing some of the back and forth with ANC 4A. We do enjoy their support for this. And perhaps, Commissioner Edwards is here, too. So I'll let her speak for the ANC, but we think it's been a really

productive engagement with the ANC, and hopefully, will continue to be so if the use were approved.

Next slide, please.

Some of the proposed conditions, hours of operation, as mentioned before, 10:00 to 1:00 on Sunday to Thursday and 10:00 to 2:00 on Friday and Saturday. Deliveries expected two to three times per week in the overnight hours. And pick up instructions, direct third-party drivers to follow traffic and parking lots and not block lanes, sidewalks, driveways, or parking areas.

Employees park at the rear of the lot, not on neighborhood streets. And there's a space for the employees to park on the far part of the parking lot away from the store, actually. Noise, the applicant will discourage noise from employees, delivery drivers, and others, especially late at night.

They will have exterior security cameras, and the applicant, in response to suggestion from the ANC, will endeavor to connect to MPD's DC Connect program. And they also will be providing anti-loitering signs, if needed.

Next slide, please.

Pest control. They'll have monthly licensed extermination, prompt action on any pest issue attributable to the restaurant, rat-proof patron trash receptacles in the lot emptied in coordination with the

landlord.

Wingstop, because of their brand, has more incentive to avoid pest control issues than anybody else, probably. So -- and they're also required to take care of that under their lease, and the landlord has their own program as well, in addition.

Regarding grease and odor, they'll have code compliant grease interceptor serviced at least quarterly, its sensor triggered used oil pickup by a licensed recycler and the hoods and exhausts serviced at least quarterly.

Trash and litter, all trash is kept inside in rat-proof containers until collection, which will happen at least three times per week. And there'll be daily litter pickup around the premises and anti-littering signs and a customer trash receptacle. And then we will have a community point of contact, a designated liaison for ANC 4A and neighbors with timely responses and informal meetings as needed.

Next slide, please.

So we believe this application meets every applicable standard for the special exception. We believe the use fills an existing commercial space and an established shopping center. There's no new building area, no drive through, and no parking requirement. And

the applicant has worked through each ANC 4A concern and agreed to conditions on hours, deliveries, parking, trash, pest, security, and noise such that we now enjoy the support of ANC 4A. And the applicant respectfully -- requests approval of this application.

Thank you. If you have any questions for myself or Mr. Usman, happy to answer those. Thank you.

CHAIRPERSON POURCIAU: Thank you.

I would like to start by asking Vice Chair Goldstein if he has any questions for Mr. Sullivan or Mr. Usman.

VICE CHAIRPERSON GOLDSTEIN: Thank you.

And welcome back again, Mr. Sullivan. Thank you for the presentation. I really appreciate how the applicant has continued working with the neighbors and ANC to try to come to a -- an agreement on operations that leaves everyone feeling positive about the outcome.

I do want to ask you some more specific questions, and there's also some letters in the record from the neighbors that I'm sure you're aware of that I would like you to address.

But first I just want to ask, so no dumpster. So just help me understand when the trash trucks come each week, someone runs it out from the store directly to the truck.

Is that the proposal?

MR. SULLIVAN: Yes, that is.

And Saad, if -- feel free if you want to add in to anything I say.

Yeah. It'll -- it won't be outside at all until the truck shows up. And they'll come inside, get it, and take it out and dispose of it then. And I think we expect -- I don't know.

How much time do you think that will take, Mr. Usman? We -- you're muted, I think.

I think we wrote somewhere at ten to 15 minutes.

MR. USMAN: Can you hear me now?

MR. SULLIVAN: Yes.

VICE CHAIRPERSON GOLDSTEIN: Yes.

MR. USMAN: Perfect.

Actually, it was less than that, Marty.

So the Waste Management, which is a large scale provider of -- that you guys may be familiar with, we reached out to them to confirm service levels and hours and operation standards. They said it would be a typical trash vehicle used elsewhere in parts of D.C., and they do this inside pickup very often.

Bin service takes no more than five to seven minutes. It's two guys on a truck that will come. They have their designated, kind of, standby areas where they

will stage the truck, run inside, get the trash, and be on their way.

CHAIRPERSON POURCIAU: Excuse me for one second. I'm sorry. It's been brought to my attention that Mr. Usman has not been registered or sworn in to testify.

Could we get that corrected before we proceed? Does he have to come offline, or we'll do it right now, Ms. Miller?

COMMISSIONER MILLER: We can do it right now.

Mr. Usman, if you can raise your right hand. And do you swear or affirm that the testimony that you will give today is the truth?

MR. USMAN: Yes.

COMMISSIONER MILLER: You may consider yourself under oath. Thank you.

CHAIRPERSON POURCIAU: Thank you.

We won't make you repeat the answer you just gave.

Sorry about that, Mr. Goldstein. Please proceed.

VICE CHAIRPERSON GOLDSTEIN: I feel like the answer felt legitimate, so I'm going to tease you on. I -- well, thank you, Mr. Usman. I appreciate the explanation. This is for you or for Mr. Sullivan.

Could you explain to me a little bit more about parking? I understand it sounds like your business will

have access to the lot. It wasn't really clear to me how many spots you have access to. You're not the only tenant, I'm guessing, using this parking lot.

I -- I'm not sure, and you can tell me, does the Target also rely on it or not, or whatever tenants do. I'm just trying to get a better understanding of how the parking will be satisfactory for your needs.

MR. USMAN: Yes. So as part of the lease, we do have full access to the parking lot. In order to get the lease executed, we had to work with Target, which is the main anchor in this building, to get a waiver to use that parking lot.

They allowed our customers and delivery drivers to use the general parking lot, and our employees are to park only in the rear of the parking behind the dumpster area, which again, we're not using the dumpster area, but that's just where our parking will be.

VICE CHAIRPERSON GOLDSTEIN: I'm sorry. There is -- I understand you're not using -- there is a dumpster area, but you're -- currently; is that right?

MR. USMAN: Maybe, Marty, if you can chime in more here, we would not be able to -- yeah.

MR. SULLIVAN: Yeah. It's -- yes. Yeah. It's not for Wingstop. It's dedicated only to the Target.

MR. USMAN: Correct.

VICE CHAIRPERSON GOLDSTEIN: Okay.

MR. SULLIVAN: Or other tenants, but it's not -- Wingstop is not entitled to use it, and it's not part of their operation.

VICE CHAIRPERSON GOLDSTEIN: How many spaces have you reserved for your needs?

MR. USMAN: We have no reserved spaces.

VICE CHAIRPERSON GOLDSTEIN: Okay. Oh, okay. So it's just that if there are open spaces, y'all can use them; is that --

MR. USMAN: That is correct. And having been to the site myself personally many times, I don't foresee parking being an issue. Most of our business is digital/delivery. With the amount of onsite dining we will have -- we have about 32 seats. I don't foresee parking being an issue. In addition, we also expect our business to, around lunch and dinner hours, not conflict with the Target traffic either, so.

VICE CHAIRPERSON GOLDSTEIN: And just to -- could you explain why? I'm just curious. Why wouldn't it conflict?

MR. USMAN: So typically, our dinner rush begins around 6:00 to 7:00 p.m. And from, again, my initial observations -- I don't have any data. I -- when I was there, the traffic for the Target is typically midday.

Right after work, folks want to go grocery shopping, and our dinner traffic goes all the way into late night and well past Target's closing as well. So I just personally don't foresee any parking issues, which is why we did not request any reserve parking here.

VICE CHAIRPERSON GOLDSTEIN: Okay. For the pickup delivery, just could you explain how that's intended to work for the business?

MR. USMAN: So we have two primarily -- primary methods of delivery. One is first party, which is Wingstop labeled service, but it is not our drivers. It is DoorDash fulfilled. It's just labeled -- a white labeled as Wingstop Delivery. The second avenue is your traditional third party delivery, which is DoorDash and Uber Eats and Grubhub.

And amongst all of these channels, again, we don't foresee any operational challenges or parking challenges. We're actually incentivized to have the drivers arrive closest to the order ready time and give them the food.

And based on the -- how quick we are in handing that food over to the driver and how quickly they depart, we get certain rebates back. So we are not expecting any sort of lingering drivers or anything of that nature.

VICE CHAIRPERSON GOLDSTEIN: That -- that's

helpful. And I'm just trying to think. So the entryway is facing Georgia; is that right? Or is it more on an angle?

MR. USMAN: The entry to the premises or to the parking lot?

VICE CHAIRPERSON GOLDSTEIN: I'm sorry. To the -- to your premises -- to your business.

MR. USMAN: It is -- let me just confirm. It is off of an angle off of Georgia Avenue. I'm trying to see if I have the exact street name. It might -- it -- I guess Alaska Avenue, it seems to be running parallel, if not just a little offset to that, between Alaska and Kalmia Road.

VICE CHAIRPERSON GOLDSTEIN: Yeah. Okay. And I -- I'm just trying to understand. Do you think the drivers are going to stop on Kalmia and run in, or do you think they're going to go to the parking lot?

MR. USMAN: Two things I would answer to that. One is on Kalmia seems to be a no parking sign that I can see, so I don't foresee them. I do see a couple of parking -- metered parking spots a few feet away.

But the second thing I would say is, we are able to, in some of the delivery channels, provide instructions to the drivers, which, Marty, correct me if I'm wrong, but that is a condition that we are happy to agree to in terms

of directing them where to park and obviously not violating any traffic laws, et cetera.

MR. SULLIVAN: Correct. All right. Yeah.

VICE CHAIRPERSON GOLDSTEIN: So where -- what is the condition? Mr. Sullivan, maybe you have a --

MR. SULLIVAN: Well, the conditions --

VICE CHAIRPERSON GOLDSTEIN: -- sense of --

MR. SULLIVAN: -- of things is admittedly a little bit flexible in that the applicant's going to work with their delivery services to make sure that they respond to issues or concerns and comply with all laws. And, you know, there's some -- there was concern and questions from the community about parking in front, but there's also concerns about using the parking lot.

So I think part of that may yet play out with the support -- with the input of the ANC on what's going to work best there. But if there's -- I think the understanding is, if there's parking available and it's only five to seven minutes, then it would be closer to the front of the premises and not heading into the residential area, for sure.

VICE CHAIRPERSON GOLDSTEIN: That would be my sense, is that people will stop at the most direct path to get to the front door. I think just hearing -- you know, want to make sure, of course, that it doesn't create any

traffic conditions with the pickup and delivery.

And you're telling us that you don't foresee there being any conditions, any issues because you would continue to work out good solutions, or is there something else?

MR. SULLIVAN: Well, one, there's limited pickups. I mean, a minimum of three a week. They're quick. And of course, you know, trash collection is a part of everyday life in the district. And --

VICE CHAIRPERSON GOLDSTEIN: Oh, I'm sorry. I'm talking about delivery orders.

MR. SULLIVAN: Oh, delivery orders? Well, those --

VICE CHAIRPERSON GOLDSTEIN: I apologize, if I made --

MR. SULLIVAN: -- those --

VICE CHAIRPERSON GOLDSTEIN: -- that unclear.

MR. SULLIVAN: Yeah. I'm sorry.

VICE CHAIRPERSON GOLDSTEIN: Yeah.

MR. SULLIVAN: -- those will be coming -- we expect those to be overnight. Now, Mr. Usman can talk about that because that's --

VICE CHAIRPERSON GOLDSTEIN: No, no.

MR. SULLIVAN: And if I --

VICE CHAIRPERSON GOLDSTEIN: I am --

MR. USMAN: I'm sorry.
VICE CHAIRPERSON GOLDSTEIN: I think --
MR. USMAN: Mr. Goldstein is talking about not the food ingredient delivery rather than --
MR. SULLIVAN: I got you.
MR. USMAN: -- delivery of --
MR. SULLIVAN: The drivers?
MR. USMAN: Yes. DoorDash.
MR. SULLIVAN: So I mean, the understanding was --
VICE CHAIRPERSON GOLDSTEIN: My apologies.
MR. SULLIVAN: -- that they would park because it's just cars. I think the understanding is that they would use the parking lot because those are -- unless there's a legal space available. And Mr. Usman may have something to add about --
MR. USMAN: If --
MR. SULLIVAN: -- requirements for delivery drivers.
MR. USMAN: -- if the concern is DoorDash delivery drivers illegally parking or blocking traffic, we are happy to -- again, we're able, and I have to -- we have to double check whether it's DoorDash or Uber Eats, but I believe one, if not both, platforms do allow us to give written directions to the drivers on where to park

and to not impede traffic or violate traffic law.

So we are happy to work with the exact language that the group would like us to include, and wherever we can, we want to comply with that.

VICE CHAIRPERSON GOLDSTEIN: Okay. I do have a question. Have you had any communications with the most immediate neighbors on Kalmia in particular?

MR. SULLIVAN: We have, yes, indeed. Ms. Jefferson, who has lived there for a long time. She's the -- in the very first house closest to this on Kalmia. And she was actually very involved. There was a PUD for this property ten years ago that ended up getting withdrawn. She was very involved in that.

She's been great, been very helpful. She was at the ANC meetings. We actually had another Zoom meeting with her yesterday, and she's been super helpful in expressing her concerns, some of which we've managed to help out with.

The -- one of her concerns with there's a recording that goes off in the parking lot in the middle of the night when somebody comes in after hours. And we talked to the landlord about that, and that has stopped. So -- but she's -- yes, she's been great to work with, and we will continue to work with her. And Mr. Usman will continue to work with her and the ANC.

VICE CHAIRPERSON GOLDSTEIN: Okay. And were there any other neighbors? That -- that's terrific. I'm really glad to hear that you've talked to probably one of the most potentially affected neighbors. And you've tried to, kind of, work more generally with nearby neighbors as well?

MR. SULLIVAN: Yeah. I think there's been good participation at the ANC meetings. And so there's concerns for sure. There's concerns about parking and traffic and hours and it -- oh, through two ANC meetings. And I'm sure Commissioner Edwards would have something to add on this as well. I feel like there was a lot of participation from the community on this.

VICE CHAIRPERSON GOLDSTEIN: Okay. Well, that -- that's terrific to know, and I look forward to hearing from Commissioner Edwards about that.

I think those are all the questions I have for now. Thank you very much.

CHAIRPERSON POURCIAU: Thank you, Mr. Goldstein.

Ms. Lindsjo, do you have questions for the applicant?

MEMBER LINDSJO: Not at this time. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Ms. Wells, do you have questions for the applicant?

MEMBER WELLS: I do. We'll have a question going back to parking.

And Mr. Usman, I heard you say that this is mostly a food delivery service. I think you also saw up to 70 percent of it. So the parking requirements, although based on the size of the property, that'll be required, but if it's mostly a food delivery service, there's one parking spot required, or if it -- if you're calling it a food delivery service.

MR. USMAN: So we are primarily a restaurant with, you know, regular sit-down operations. It just so happens that the Wingstop brand nationally happens to be 70 percent digital orders. Now, those digital orders also include -- that figure that's put out there by the company nationally also includes mobile orders where customers or patrons will pick -- place an order for pickup.

So I don't know the exact delivery mix. The point I was just trying to make is that it is a very heavy pickup and/or DoorDash, Uber Eats delivery business model. That being said, we are a traditional restaurant with dine-in seating.

MEMBER WELLS: Okay. So with that, the other thing in relationship parking, you said you don't anticipate any conflicts based on the operation -- the hours of operation for Target.

Are there any other late night establishments also sharing that parking lot?

MR. USMAN: Not that I am aware of in that parking lot, no.

MEMBER WELLS: Okay. And then when you were talking about the trash storage area could be used for parking, is that what you said? The Targets area could be used for parking for staff and patrons?

MR. USMAN: No. Sorry about --

MEMBER WELLS: I mean, in that area?

MR. USMAN: Yeah. The landlord just -- that's the directional guidance they gave us, is that there is a certain part of the parking lot where dumpsters are located. It is a -- sort of, an angled section of the parking lot. They just want our employees to park behind that area, was the guidance we were given, not to use that dumpster area, no.

MEMBER WELLS: Okay. Sometimes in these shared parking lots, I've seen spaces that say, you know, throwing stuff only, like, one or two spots or whatever. Was that discussion ever had with the Target there?

MR. USMAN: It was had with the landlord, not the -- not Target directly.

MEMBER WELLS: The landlord? Yeah.

MR. USMAN: Yes. And the landlord did not allow

us to have those reserved. They felt that the better approach to allow flexible parking for all tenants was to not reserve any spots for us.

MEMBER WELLS: Okay. And are you aware if there is legal parking today on -- legal on street parking adjacent to your property?

MR. USMAN: I do see per Google Street View that there are a couple of spots on Kalmia Road, right adjacent to the parking lot entrance.

MEMBER WELLS: Okay.

MR. USMAN: But again, if that is any sort of concern and the group here does not want our drivers to use that, happy to direct delivery drivers accordingly.

MEMBER WELLS: And have you had success with directing Uber drivers or -- you know, to stay within -- you know, directing them where to park? Have you done that before, and has it been successful?

MR. USMAN: You know, I cannot say for certain. Ultimately, they're not our drivers. They're our third party. What I can say as the owner of this business is that we will try to work with them as much as possible and direct them to the extent that we can.

MEMBER WELLS: Okay. I believe that -- I think I had questions about the trash routes, that was resolved in the latest drawings.

I think that's it for my questions. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Ms. Bruins, do you have questions for the applicant?

COMMISSIONER BRUINS: I just have a couple.

So most of my questions are or were related to the late night activity and your hours of operation and your delivery and loading and, sort of, the specifics of your parking situation. I think you've covered parking.

The only question for parking I wanted clarified is with your landlord, did you get a number of spots for your employees? If you're expecting four to eight for a shift, do you have permission from them for those number of spaces for your employees in that dumpster area, or is it informal, first come, first serve?

MR. USMAN: It's informal at the moment. I will say based on, again, personal experience in parts of Baltimore where we operate and I foresee the same in D.C. A lot of employees don't have cars, and so they'll take public transportation.

And so again, we felt that it was not worth blocking off certain number of spaces in the parking lot, keep it open for everyone's use, rather than trying to estimate that.

COMMISSIONER BRUINS: Okay. And then my other

two operational questions are, if you are closing at 1:00 and 2:00 a.m. But you are having overnight deliveries, what is that operation like for your supplies that you're receiving weekly or a couple times a week?

MR. USMAN: Yeah. So that is very much established practice across thousands of Wingstops and, I guess, other restaurants across the country. Performance Food Group is our main food supplier. They come two to maybe three times a week. They will come overnight.

And we typically only order inventory for the next few days. So it's typically a small quick delivery. It's done via lockbox. So the delivery drivers are given the access codes to the premises. They will unload a few dollies of product overnight and be on their way.

COMMISSIONER BRUINS: Okay. And what is the noise impact of those deliveries?

MR. USMAN: I would say minimal. I know the neighbors had the same question, and we did reach out to PFG in terms of trying to accommodate perhaps different delivery hours, such as, you know, after 7:00 a.m., et cetera. They said that they will do our -- their best, excuse me, to comply with our requests. But again, they work on a routing software.

Speaking from personal experience, again, no objective data, but I don't see a huge noise impact. It's

typically one or two drivers. They'll unload a few boxes of protein and vegetables, et cetera, be in the premises, come back out. And I don't see much noise concern, but happy to work with the neighbors in any way we can.

COMMISSIONER BRUINS: Okay. And then lastly, during your peak, I guess -- your daily peak ordering, how many -- I mean, if you're -- nationwide, 70 percent of your deliveries are Uber Eats, DoorDash, at your peak during a day, how many drivers are coming at a time? And this is related to the parking and transportation issues.

MR. USMAN: It's a good question. I don't have the data offhand, unfortunately. What I can say is two things. Number one is that DoorDash and I believe Uber Eats drivers are able to pick up multiple orders at a time. They often have multiple stops.

So we often see drivers getting two or three orders at one time. In addition, these drivers, because of this opening of this business, should not be that much incremental, sort of, drivers added to the system of DoorDash or Uber Eats.

Typically, it is the -- are the existing drivers that are driving around restaurants across the street, or I'm sure Target has delivery that they do via DoorDash, et cetera. So it's typically the same drivers in the area that will also stop at Wingstop, pick up one or more

orders, and go deliver them.

COMMISSIONER BRUINS: I guess my question is, if there's one or two legal spots on Kalmia, but you typically, during your surge, have 20 drivers coming, you know, is it enough? And also, with the DoorDash -- and all other parties of Equivalent, in your conversations with the ANC and with the neighbors, did they have a preference for the legal street parking in close proximity to the front door versus the parking lot, and what was the conversation with that?

MR. USMAN: For the first part of your question, in terms of, do we think the parking is sufficient? Again, I don't want to make any claims under oath. I don't have any data to back it up. I don't foresee 20 drivers at one time coming. It's typically just a couple or a handful.

We're also building other sites and other parts of D.C. With way less limited -- way less parking that's much more limited. Having the surface parking lot here is actually a huge comfort and relief. So I don't foresee that being an operational issue at all.

As far as the neighbor's preference, Marty, maybe you can keep me honest here, but I don't recall that coming up.

I just recall that, again, we want to integrate

with the community and work with them. So if they prefer us to do one or the other, we're happy to work. But I don't remember that coming up as far as one or the other.

MR. SULLIVAN: Yeah. I think I would defer to Commissioner Edwards on that question for the drivers.

COMMISSIONER BRUINS: Okay.

Those were my only questions, so thank y'all for your time.

CHAIRPERSON POURCIAU: Thank you, board members.

Mr. Sullivan or Mr. Usman, in your discussions with the owner/operator of the parking lot, did anything ever come up regarding the legality of the use of that lot?

MR. SULLIVAN: So no. Not until the Office of Planning informed us about the situation on Monday. So the lot was approved by special exception because it's in a residential zone. So special exception relief is required to have a accessory parking lot or a parking lot -- separate parking lot, in the residential zone.

So they received special exception approval for that in 2001, and -- which was one in a series of approvals since I'm -- I think about approximately 1950. And then they proceeded to let that order expire. It had a five limit time -- five-year time limit on it, the 2001 order. And so that's expired.

So when I found that out, I reached out to Commissioner Edwards and Ms. Jefferson, the neighbor, told them about it. And then I reached out to Douglas Development, the landlord, and let them know about it. And so I assume an application will be forthcoming.

Nobody wants to see the lot shut down, but I'm sure the zoning administrator will be notifying the landlord or should be notifying the landlord that they need to file an application promptly.

I think the good thing about that is that neighbors had other concerns about the overall operation of the parking lot that they were hoping Wingstop could help them with, and now they can work directly with the landlord on that in a special exception application.

As it regards this case, I don't think it affects this case or the board's decision, because I think anything the board decides would be subject to whatever enforcement the zoning administrator would undertake or whatever conditions this board would levy on any renewal approval of the parking lot in the future.

So for instance, and nobody wants this and it -- I don't expect it would happen, but if the zoning administrator came out and said, you don't have a valid BZA order, I'm shutting you down, well, then Wingstop wouldn't meet its conditions either and would be subject

to that enforcement action as well.

So -- but we expect that the -- based on -- because it's not -- unfortunately, it's not uncommon for these special exception approvals to lapse and then the applicant lose track of it. They change personnel for whatever reason.

And the custom in that from the zoning administrator is to allow the operation of the parking lot to continue pending the new BZA application. And in discussions with Commissioner Edwards about that, she agreed that nobody would want this lot shut down because that would be bad for the surrounding community.

CHAIRPERSON POURCIAU: Thank you.

MR. SULLIVAN: Does that answer your question? But yeah, it's -- that's it. The legality of it is an issue. And I assume that will be addressed in the coming months.

CHAIRPERSON POURCIAU: Okay. Something we'll have to deliberate on. Thank you for that. I think that's all the questions we have.

Ms. Edwards is a party to this case.

Thank you for joining us, Commissioner. Do you have any questions for the applicant at this time?

COMMISSIONER EDWARDS: The only question I have is that at the time we had our discussions, the trash

pickup was not determined. So I assume that's still kind of a work in progress. We had assumed there would be a dumpster, but it seems as though there's not going to be a dumpster anymore. So that's something that we'll have to work on for our MOU; is that correct?

MR. SULLIVAN: Oh, okay. I'm sorry. Yeah. I thought in our discussions it was mentioned that we were going internal.

COMMISSIONER EDWARDS: You said you were going to try to --

MR. SULLIVAN: So I'm sorry if that was --

COMMISSIONER EDWARDS: -- but it wasn't determined that it was a fait accompli, so.

MR. SULLIVAN: Yeah. Yeah. Yeah. So our submission Monday was intended. I intended that to be confirmation that it was coming inside.

COMMISSIONER EDWARDS: Okay.

MR. SULLIVAN: I'm sorry it wasn't clear on that.

COMMISSIONER EDWARDS: No, no, no. That's fine. It's just that when we did the -- when we had the October 1 meeting, it wasn't determined. So we'll just change the wording of our document. Thank you.

MR. SULLIVAN: Thank you.

CHAIRPERSON POURCIAU: Thank you, Ms. Edwards and Mr. Sullivan.

I think we'll go on to hear from Office of Planning now. We have Mr. Isaiah with us again.

Are you ready to give your report, please?

MR. ISAIAH: Yes, Madam Chair. For the record, this is Philip Isaiah on behalf of the Office of Planning. The Office of Planning recommends approval of the subject application and otherwise rests on the record the report contains Exhibit 22 of the record dated October 9, 2026. And I offer two points of clarification for the board that came up during the deliberations that I think that the Office of Planning can give some clarity on.

The first of which is the concept of food delivery service. The zoning regulations in the District of Columbia categorize the use-group "eating and drinking establishments" in many ways. All of the terms have specific definitions. As such, the -- a food delivery service, in order to be deemed as one, requires 75 percent of offsite delivery and -- for consumption to be considered as such the parking requirement for a food delivery service would not be applicable in this scenario. This subject application is deemed to be a fast food establishment, which is why it's here. A fast food establishment must obtain a BZA permission to operate in the MU-4 zone.

The second matter is that of the dumpster. It is

true that there exists a dumpster in the surface parking lot. And OP, when conducting a site visit, did observe it and the applicant did originally suggest throwing -- using the refuse from the business in said dumpster. However, the board will be reminded that the subject property is split-zoned between the MU-4 zone and the R1-B zone. And the dumpster is located in the R1-B zone, meaning that if any refuse from the food -- fast food establishment were used in that dumpster, it would violate standard -- it would violate subtitle use of Section 513.1(e)(5) saying -- oh, not 5, 2. Standard 2, I mean, which states that the entrance of the gate of a dumpster cannot be located within 10 feet of an R, RF, or RA zone, which OP interprets as in the zone, meaning within -- it is within 10 feet.

And so the applicant would not be -- would be -- is forbidden from using the dumpster in the R1-B zone. Otherwise, OPs rest on the record of the report. This concludes OP testimony. Thank you.

CHAIRPERSON POURCIAU: Thank you for that clarification and additional information. Did you have anything you wanted to add regarding the status of the parking lot itself?

MR. ISAIAH: OP is aware that the subject parking lot is subject to BZA application, I think it's 16656

from -- dated January of -- yes, it is. It's dated January of 2001 to permit a "parking lot," as defined in the 58 regs, in the R1-B zone. OP is aware that the conditions located in there did only have a -- the validity of this order was only for five years from the date of effect. OP has not found any subsequent order or renewal. While there exists, from a pragmatic perspective, the parking -- the surface parking lot is still there.

OP is also in coordination with Standard 5, willing to say on the record that while, you know, zero parking is required for this fast food use, that sufficient off-street parking in accordance with that standard, OP could find that still is -- would be zero. While there would be a brief pickup and drop-off located in the vicinity of the fast food establishment, OP finds that there is legal on-street parking located on Kalmia Road directly adjacent to the business.

Also in the -- while east of the property is on Kalmia Road is subject to permit parking for residences, and so that would not be legal parking for pickup and drop-off. There is also much on-street, legal, free parking available directly across Georgia Avenue on Kalmia Road as well if it came to pass that the parking lot could not be used for whatever reason, either by staff or by

delivery drivers, and that the subsequent businesses adjacent to there also have their own surface parking lots. And so if it can -- you know, whether the legal establishment of the parking lot in the rear of the shopping center notwithstanding, OP is willing to find that the -- that Standard 5 is still met.

CHAIRPERSON POURCIAU: Thank you for that.

Are there questions from the board?

Vice Chair Goldstein?

VICE CHAIRPERSON GOLDSTEIN: Thank you for walking us through that. I'm just trying to think. DDOT's report seemed to rely on the use of the parking lot for the business. So I just want to make sure that I'm clear that are -- your view is that even if the parking lot was not usable, that nonetheless, it's still -- that the amount of public accessible parking would still be sufficient; is that right?

MR. ISAIAH: Well, I can't speak for DDOT, and I -- I'm pretty sure that DDOT was not aware of the -- of this matter, in terms of the legal establishment of the parking lot. It's -- it is my understanding that the amount of legal, on-street parking in close vicinity could be accommodated such that the -- you know, whether there's an issue with the parking lot today or not, it could still be -- the amount of parking would still be sufficient

based off of the legal, on-street parking that is available within a reasonable walking distance of the front entrance of the establishment.

I will also note that the subject property is also located on both a high-frequency bus corridor as defined in the zoning regulations and is served by high-frequency bus services defined by WMATA.

In addition, the wide sidewalk adjacent to Georgia Avenue includes bike racks. There has been an assumption that the pickup and drop-off from delivery drivers would be solely the vehicle traffic. The subject property is very close to downtown Silver Spring. I imagine that many of these drivers would be also on bikes or e-bikes as well, and that the continued mix of modes by which traversement would be taking -- would occur from this establishment could still be accommodated without undue adverse impact on neighboring property.

VICE CHAIRPERSON GOLDSTEIN: Okay. Thank you. Just want to ask: The applicant has put forward, I think, a number of proposed conditions. I saw that your report didn't condition your approval at all. Are any of those conditions things that you think would be helpful for the board to adopt? Or that's just up for us to determine at this point; you think they've made their case regardless?

MR. ISAIAH: OP's -- OP did not recommend any

conditions. OP assumed that if there were any neighborhood concerns, that those would be brought forward via the ANC. And that the applicant and the ANC would coordinate and work in good faith to propose conditions to the board. And so OP has no dog in this fight.

VICE CHAIRPERSON GOLDSTEIN: Okay. Thank you very much.

CHAIRPERSON POURCIAU: Thank you.

Board Member Lindsjo, do you have questions for the Office of Planning?

MEMBER LINDSJO: Not at this time.

Thank you for your report.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells, any questions for OP?

MEMBER WELLS: I have a couple questions. And also, thank you for clarifying fast food establishment and then delivering -- food delivery. It sounds like you're delivering food, so food delivery. But I do -- I missed -- okay. So we talked about Kalmia and parking. And you said there was also, I guess, unmetered parking on adjacent streets?

MR. ISAIAH: On -- in the eastern side --

MEMBER WELLS: I missed the name.

MR. ISAIAH: -- of Kalmia -- on the eastern side of Georgia Avenue.

MEMBER WELLS: On the eastern side. Okay. That's not permit-restricted or zone-restricted parking or residential permit parking or anything like that?

MR. ISAIAH: To my understanding from going to the site is that it is not -- it is not restricted in any way and also does not cost you money.

MEMBER WELLS: Okay. Okay. Would you -- okay. Well, that's helpful to know. Would you know if, like -- if either -- I guess the closest street would be Alaska Avenue, whether or not -- does that have parking on it or is it restricted for that time of day or anything?

MR. ISAIAH: Adjacent to the property, it's a slip road, Alaska Avenue --

MEMBER WELLS: Okay.

MR. ISAIAH: -- which was only car -- one car length wide. And so a vehicle would not be able to physically park there without directly blocking traffic. I'm not -- there is parking down Alaska Avenue after the religious institution that's located across the street from -- across Kalmia from the fast food establishment. It appears there is parking that -- I can't -- I'm not sure if it's restricted or not. It does not -- it is -- looking very quickly on Google Street View, it appears that it is not restrict -- it is restricted. It is not restricted.

MEMBER WELLS: Okay.

MR. ISAIAH: It is partially restricted. It appears partially restricted.

MEMBER WELLS: Okay. Partially restricted?

MR. ISAIAH: Two-hour parking for non-residences.

MEMBER WELLS: Okay. Okay. So then -- okay. I think that's all my questions for OP. Thank you.

CHAIRPERSON POURCIAU: Thank you.

Ms. Bruins, do you have any questions for Mr. Isaiah?

COMMISSIONER BRUINS: I do not.

But I appreciate some of the clarifications you've provided. So thank you.

CHAIRPERSON POURCIAU: Thank you.

Ms. Edwards, does the ANC have any follow-up questions for have any rebuttal for the Office of Planning?

COMMISSIONER EDWARDS: Oh, yes. Oh, yes. Losing that parking lot would be a total disaster for the neighborhood. There are three metered space -- well, really, two metered spaces on Kalmia alongside where the entrance is going in. And those are supposed to go away with a DDOT change to the configuration of Georgia Avenue; there's going to be a left turn. Is it a -- yeah. It's a left turn option put in there and they say that they're

going to take away those two metered spaces. The parking is restricted in front of the homes of the nearest neighbors. Kalmia is a fairly narrow road. And parking at some times is all right, but at other times, at busy times, non-residents come in and take up all the spaces and it's difficult for residents to get through. So I don't want to delay this in any way and I really hope that this parking lot will be made legal again, but there is not really sufficient parking.

Now, for the workers, if the workers need to park, there is garage parking down Eastern Avenue on the Maryland side, and there is some street parking on Eastern Avenue. There's some parking on Alaska Avenue, but residents use up a lot of that. There's some parking on 12th Street, but again, resident use up most of that. So that parking lot really is essential, I think. And I live near there, so -- and Mrs. Jefferson, who is the nearest neighbor, should be on and she can attest to the parking issues that she experiences daily, because I keep trying to get the parking enforcement people over there to enforce illegal parking outside of the two-hour zone in front of her home and in front of other homes on Kalmia. Thank you.

CHAIRPERSON POURCIAU: Thank you, Ms. Edwards.

Mr. Isaiah, did you want to respond?

MR. ISAIAH: Oh, I thought that was a question for the Office of Planning.

I -- the -- thank you, Commissioner. My -- you know, the -- from a pragmatic perspective, the surface parking lot is pretty -- you know, is pretty essential to the other businesses, in my opinion, that are using the shopping center. Of course, the -- so the matter of this hearing is just for the fast food establishment. And of course, you know, this was a -- an unfortunate discovery and also a -- we're also a -- in a bit of a hypothetical. The zoning administrator has not actually opined, to my knowledge, on whether the surface parking lot is legally established or not, but it is -- it -- there is -- exists -- it appears there exists that possibility and she may have to opine, later on, on -- you know, on those matters. And there may be enforcement action taken if she is of one opinion.

I will note that it appears that -- you know, that the applicant would use, you know, from a pragmatic perspective, the parking lot because it's there, regardless of the legal arguments at the moment. I also don't know if it is found to be legally non-established, whether the enforcement would be stayed or not while the applicant -- while the owner, rather, of the property chooses to make it right. I -- there are many

hypotheticals of which I don't know.

And, quite frankly, for the sake of the fast food establishment, I think that those could be crossed when they come to it. I hope that that hopes to resolve your issues. I do -- I don't want to -- the -- I don't want to negate, necessarily, the importance of that parking lot for the shopping center as a whole. At the same time I do argue that, at least from Standard 5 for establish -- for a fast food establishment, that it could still be -- it could still be met, that the -- that it could still be open, that the fast food establishment were not able to use the parking lot in that hypothetical. However, it sounds like that would be the case, practically, that they would.

COMMISSIONER EDWARDS: If I just may pause it. That fast food establishment does not exist in a vacuum, so.

MR. ISAIAH: That is correct.

CHAIRPERSON POURCIAU: Commissioner Edwards, we will be hearing from you in just a minute with your report, so it'll be great to hear everything at that time.

Thank you so much, Mr. Isaiah. You've been very helpful in this, kind of, gray area we're in on this.

So at this point, we don't have any other district government agencies that are here to report, but

we do have Commissioner Edwards from the ANC.

And, Commissioner Edwards, would you like to give a report or more thoughts on this application at this time?

COMMISSIONER EDWARDS: Yes. We found out about this, I think, in July, and I started publishing notices to the community to ask them how they felt about it. Unfortunately, most people didn't respond until right before our last meeting. We had three meetings on this, one in September. We had a hyper local community meeting with the -- emphasizing the nearby neighbors on October 1. And then we had a final meeting on October 6th where we voted on the BZA application. And towards the end of this, people began coming out and saying they were opposed to a fast food restaurant and other things like that. But we had worked more with the nearby neighbors. The two nearest neighbors, Mrs. Jefferson, I believe, is on the call, and another neighbor who lives one door away from her were on the October 1 call along with 13 other neighbors.

And we worked out kind of a preliminary MOU of delivery times, how things would be delivered, where people would be encouraged to park, safety and security as Mr. Sullivan observed. We encouraged them to join the DC CameraConnect program.

We worked on rat abatement, on trash, on noise, and other things. And this is going to be a work in progress, obviously; we don't know how everything is going to work. Neighbors began raising issues about proliferation of fast food establishments. They were concerned about traffic of delivery drivers through the neighborhood. They also were concerned about trash and I think we've addressed a lot of those. Staging is going to be an issue and we're still working on how that's going to proceed, the staging of the deliveries, because we worked on that with Wonder. I don't know if you remember the BZA that we had for Wonder. We were concerned about the staging of delivery drivers. So we are somewhat concerned about that here.

But by and large, we think this will be a good addition to the community. The franchisee seems to be very responsible. I spoke to the franchisor and he was enthusiastic about the franchisee's ability to operate in compliance in this area. The nearby neighbors seem willing to work with the applicant to get this through. And I think it'll work as long as, you know, everybody's cooperative and keeps talking.

CHAIRPERSON POURCIAU: Thank you so much for that thorough presentation and your hard work on this. It's quite impressive.

Do board members have questions for Commissioner Edwards?

I'll first ask Board Member Goldstein.

VICE CHAIRPERSON GOLDSTEIN: Thank you. And I really want to echo, appreciate your participation today and your engagement in this issue. It -- you really are representing your ANC well. So appreciate that. I do have a few questions for you and I think you may have touched on it. The neighbors on Kalmia have been engaged in this discussion. And is there anything you'd like to express for their views of this project?

COMMISSIONER EDWARDS: One of them, I believe, is on the call. Mrs. Jefferson. I don't know if she can unmute, because she could speak to her concerns. She is much more effective than anyone. She is the closest neighbor. And --

CHAIRPERSON POURCIAU: I see Mrs. Jefferson --

COMMISSIONER EDWARDS: Okay.

CHAIRPERSON POURCIAU: -- in the attendee list. Maybe what we can do is if she would like to speak, we'll call her up when we take individuals who might want to present. So we'll see if she wants to do that, okay?

COMMISSIONER EDWARDS: Okay. Fine. Well, I can speak to what she's told me and what we've discussed. She's willing -- the late night hours were an issue, going

until 3:00. The applicant did make a concession to close at 1:00 during the week and at 2:00 on the weekend, so that helped. He also -- the concession was also designed to close before the two clubs that close at 2:00 and 3:00 let out. So that was helpful in that we won't get people coming in from the clubs coming to this establishment. We'll see how that works. Again, if the noise stays down, if there's not a lot of traffic at that time of the morning, I think the neighbors will be fine. If it comes to be a problem, then we'll have to discuss it again.

VICE CHAIRPERSON GOLDSTEIN: Okay. I think you mentioned an MOU and I just want to make sure I, kind of, know what you're referencing. I -- I'm aware of the report that you put --

COMMISSIONER EDWARDS: Yes.

VICE CHAIRPERSON GOLDSTEIN: -- into the record. Is that what your -- when you say MOU, is this, kind of, your understanding of what's been agreed to? Or is there something else that you're continuing to work on in -- with the applicant?

COMMISSIONER EDWARDS: Yes. No, I'm sorry. We don't have a formal MOU, but that is the nascent MOU. So we're hoping, once we get all the details in, that we'll have a formal MOU, yes.

VICE CHAIRPERSON GOLDSTEIN: Okay.

COMMISSIONER EDWARDS: Uh-huh.

VICE CHAIRPERSON GOLDSTEIN: So is that still a work in -- you're saying it's still a work in process, these conditions? You anticipate -- I'm trying to think of, sort of, your path and our path.

COMMISSIONER EDWARDS: Uh-huh. Of course.

VICE CHAIRPERSON GOLDSTEIN: So we are being asked within a certain timeline to decide the case. And you're sort of involved, but also separately talking with the applicant about conditions?

COMMISSIONER EDWARDS: Yes. I -- the applicant has very -- been very cooperative thus far. I don't think we need to hold this over him. I have the -- I have the understanding that -- I believe he would enter into an understanding with us absent this process. But I don't know about the formal -- the formality of it, if it needs to be formalized before you vote.

VICE CHAIRPERSON GOLDSTEIN: Okay. And I think one of the last things I want to ask you about is: We've heard a little bit about, sort of, the food delivery aspect and just general concerns about how businesses operate, and particularly this one, and making sure that it doesn't create an objectionable traffic condition. I didn't know if you had an understanding or preference for where you're hoping to see pickups and deliveries

occurring with those vehicles.

COMMISSIONER EDWARDS: It's going to be really tough. We went through this with Wonder and we had a problem with staging. Delivery drivers were -- now, this wasn't -- this was before Wonder opened; Wonder hasn't opened yet. But delivery drivers who were going to the Whole Foods at Walter Reed were actually parking on 12th Street. And they were sitting there waiting for hours sometimes to go in and then pick up and deliver. So the staging is really an issue.

What we have spoken to this applicant about is that drivers will arrive, pick up, and leave quickly and quietly, hopefully. So again, that's something that we're trying to work out. The good thing about Wonder is that they own Grubhub, so they assured us that they could direct their drivers and tell their drivers what to do. This applicant does not have that same kind of control, so we're going to have to work with Uber Eats and everybody else to do that, but we're willing to work with Grubhub and Uber Eats or whoever to control that.

VICE CHAIRPERSON GOLDSTEIN: Okay. Well, and it sounds like you have very good communication with the applicant. I really applaud the applicant for this, that you feel like these issues can be worked on and addressed as it proceeds. Is that a fair statement?

COMMISSIONER EDWARDS: I have that confidence. After talking to the franchisor and doing some research on the applicant, I think the applicant will be responsive to our requests.

VICE CHAIRPERSON GOLDSTEIN: Okay. Thank you very much. I don't have any -- excuse me. I don't have any other additional questions. Appreciate your testimony.

COMMISSIONER EDWARDS: Thank you.

CHAIRPERSON POURCIAU: Thank you, Vice Chair.

Board Member Lindsjo, do you have any questions for Ms. Edwards?

MEMBER LINDSJO: Not at this time.

Thank you for your testimony.

CHAIRPERSON POURCIAU: Thank you.

Board Member Wells, do you have any questions for Ms. Edwards?

MEMBER WELLS: I do not. Thank you.

CHAIRPERSON POURCIAU: Thank you.

And, Commissioner Bruins, do you have any questions for ANC Commissioner Edwards?

COMMISSIONER BRUINS: My only question was asked by Vice Chair Goldstein, so I am all set. And I thank the commissioner for her thorough work on this and with the neighbors. So thank you.

CHAIRPERSON POURCIAU: Thank you.

We'll now go to -- we don't have any parties registered to testify. I do believe we have one individual that has signed up to testify.

Ms. Regal (phonetic), I believe is the name.

MR. YOUNG: So she has a meeting, I think, she's in and can attend, but we did have an additional person sign up.

CHAIRPERSON POURCIAU: Okay.

MR. YOUNG: And that is Ms. Jefferson.

CHAIRPERSON POURCIAU: Very good. Did Ms. -- I think Ms. Regal did submit something in the record. I remember that. I can't --

COMMISSIONER EDWARDS: If I may --

CHAIRPERSON POURCIAU: Let's go to -- let's go to Ms. Jefferson.

Ms. Jefferson, thank you for joining us. We -- we'd like to hear any thoughts you might have on the application if you have something you'd like to present to the board. And if you can give your name and address for the record, please. We'd like to keep your comments under three minutes, if possible. Ms. Jefferson, we're ready.

MS. JEFFERSON: Hi. Can you hear me now?

CHAIRPERSON POURCIAU: Yes. Is that Ms. Jefferson?

MS. JEFFERSON: Yes. Hi. My name is Annelise Jefferson and I live at 1121 Kalmia Road Northwest. And I am directly adjacent to the surface parking lot and the closest residential neighbor to the proposed establishment.

I, first and foremost, want to thank Chair Edwards for her hard work, as well as Mr. Sullivan and Mr. Usman for their cooperation in having meetings to discuss many of the issues. I have been, as Chair Edwards explained, extremely involved when there was a PUD at the property, as well as did a lot of work as it related to the last comprehensive plan modification.

In terms of this establishment, I think, you know, if we were to agree and have something more formalized, that would be preferable. But Commissioner Edwards did present on the record, kind of, the gist of what our dialogue with the establishment or the applicant consisted of. We did express our concerns about the late-night hours. We have had -- because we are a border community, we've had issues as it relates to establishments who call themselves restaurants but also serve alcohol, but really are clubs. And we have worked hard to, kind of, keep those types of entities outside of our community, just because we have not had good experience with them in our community.

So the closing of the hours -- sorry. The shorter hours was something that we though would work well. It would discourage those from leaving those late night establishments to going to hang out and loiter. The other thing is -- which I greatly appreciate, is they did address the speaker that would go off in the middle of the night and wake up people in my household about people in the parking lot.

We also -- you all mentioned, I don't recall which commissioner mentioned, about the trash dumpster being placed in the residential area. The trash dumpster was placed in that area when Target moved in, because, initially, it was placed somewhere else and we could hear them every time they dumped trash or the trash collection company came to pick up the refuse, we would hear it, like, slam down on the concrete. So they moved it away, which was helpful. And we also have dealt with the property owner, as well as Target and Morris Miller, who were right there near where the proposed establishment will be, to address rodent issues.

So we feel very comfortable that -- as it relates to rodent issues, that this is something that is in all of our interest, just because the rodents were out of control and, kind of, there was an infestation that built up. I think it was last year or the year before last. And we

worked with D.C. Health and DPW to get those issues addressed. So if you could please not have them move the trash cans closer to the homes, we really would appreciate it. And it would be great if that could be included in whatever type of BZA order that you have as it relates to the surface parking lot.

I did want to reiterate, also, the parking. I believe it was the commissioner or either Office of Planning that talked about the restricted residential parking. And we actually did get a very high restriction for the on-street parking that is right at the wall, kind of, or right, I guess, to the east of the entrance of the lot, all the way down to the corner. The homes on the north side of Kalmia have no off-street parking. There's no alley. There's no, you know, driveways. It's simply homes with small backyards, and so there were issues as it related to parking, and we worked with the ANC several years ago to get a verified restricted parking. So that space -- those spaces are not available to the general public, but they are available to other Ward 4 stickers only.

We would definitely appreciate if parking was more enforced in that area, and as Ms. -- sorry, as Commissioner Edwards said as well, those metered spaces were scheduled to be removed when DDOT plans to

reconfigure the intersection of Georgia, Alaska, and Kalmia.

Being in that home, on the first one, I obviously hear a lot, see a lot. I would just encourage the applicant, if possible, to use deliver -- delivery drivers who are on scooters, which is what a lot of the downtown Silver Springs establishments use. I only know that because we've done lots of Grubhub and Uber Eats, and they always show up -- almost always, if we've ordered from somewhere in downtown Silver Springs, they're showing up on the scooter. That doesn't take up as much space, and --

CHAIRPERSON POURCIAU: Ms. Jefferson?

MS. JEFFERSON: Yes, ma'am.

CHAIRPERSON POURCIAU: I'm sorry to interrupt. Just wanted to let you know that the three minutes are up. Do you --

MS. JEFFERSON: Oh. Okay. I'll stop.

CHAIRPERSON POURCIAU: Do you have much more to add? Well, can you wrap up --

MS. JEFFERSON: No, it's really -- you know, it's really just making sure that the hours are addressed and that the -- sorry. The commission kind of consider how all these other entities interact, just to make sure that to the best of their ability, we can have some type of

coexistence, to say the least. So I -- I'm sorry. I'll stop, and if there's any questions, you know, feel free to ask.

CHAIRPERSON POURCIAU: Okay. Thank you. We really appreciate you taking the time on this and working with the applicant and the city to work through the issues that you've described. I don't have any questions.

Vice Chair Goldstein, do you have questions for Ms. Jefferson?

VICE CHAIRPERSON GOLDSTEIN: Thank you so much.

First, I just want to begin by saying you sound like an amazing advocate and really appreciate the work you've been doing and your testimony today. Hearing your thoughts about hours, and I just want to make sure, are the hours that are reflected in the ANC's, I think, report, and maybe -- I don't know if you were listening as part of the applicant's presentation, is that consistent with what your understanding is of some revision of the original hours? I think it's --

MS. JEFFERSON: I don't --

VICE CHAIRPERSON GOLDSTEIN: -- one on weekdays and two on the weekend, I believe, but someone can correct me.

MS. JEFFERSON: I think when -- what Commissioner Edwards provided was kind of more in line with what we had

agreed upon in the community. Special occasions would be something like it's Super Bowl Sunday, right? Everybody wants wings. That's a great time for them to have additional business, but yes, to answer your question, that is more of what we discussed. I'm not sure, to be honest, what the applicant said in terms of hours as I was multitasking at the moment.

VICE CHAIRPERSON GOLDSTEIN: Sure.

And Mr. Sullivan, would you mind just saying what the hours were in your proposed condition? I know I'm going a little out of order. I just want to make sure that there's an -- a common understanding of what's being proposed.

MR. SULLIVAN: Sure. We were aligned with the ANC's letter on that. So it was 10:00 a.m. to 1:00 on weekdays and until 2:00 a.m. on Friday and Saturday.

VICE CHAIRPERSON GOLDSTEIN: Thank you.

And I hope that does sound consistent with what your thinking is. It sounds like it is. I don't have any additional questions. Thank you very much for your testimony.

MS. JEFFERSON: Thank you.

CHAIRPERSON POURCIAU: Thank you, Vice Chair.

Board Member Lindsjo, do you have questions for Ms. Jefferson?

MEMBER LINDSJO: I have no questions.

Thank you for your testimony.

CHAIRPERSON POURCIAU: Thank you.

MS. JEFFERSON: Thank you.

CHAIRPERSON POURCIAU: Board Member Wells, any questions?

MEMBER WELLS: No questions at this time. Thank you.

CHAIRPERSON POURCIAU: Thank you.

And Commissioner Bruins, do you have any questions for Ms. Jefferson?

COMMISSIONER BRUINS: No.

Thank you for your testimony.

CHAIRPERSON POURCIAU: Thank you.

Thank you again, Ms. Jefferson.

I would like to say --

MS. JEFFERSON: Thank you all.

CHAIRPERSON POURCIAU: Have a great evening.

I would like to say I just reviewed briefly the letter of opposition that was submitted by Ms. Regal, who was not able to stay on, and the highlights I see were concerns about hours of operation, issues with late at night operations, loitering, double parking, and litter, and also concerns about third party deliveries and additional concerns that the relationships for third party

deliveries are not directly in control of the applicant like the other case they have worked on in the neighborhood where it's worked well. Okay. That takes care of the presentations.

I think at this point -- I think at this point, Mr. Sullivan, we are ready for your closing remarks. Would you like to proceed now, please?

MR. SULLIVAN: Thank you, Madam Chair.

We thank the board for their time today, and we would ask -- respectfully ask that the board consider the conditions being approved and approve the application. We're thankful for the cooperation with the ANC and Ms. Jefferson.

I'll just note on the opposition -- there were four letters -- opposition letters that came in. Commissioner Edwards mentioned that we had worked really closely with the close-in neighbors. Two of the letters are residents about half a mile away, and the other two letters are a couple blocks away.

Not that their concerns are less because of that, but I think the concerns that they did bring -- raise in those letters can be sufficiently mitigated through the conditions that were negotiated with the ANC and the -- and their closer neighbors. So I don't know -- unless Mr. Usman has anything to close with, that would be it. Thank

you very much.

CHAIRPERSON POURCIAU: Thank you.

I feel that the conditions roughly outlined in the ANC report look like they address what we've heard. Some of what's in there, I'm reluctant to, you know, adopt and put in the record the -- you know, the piece about sporting events and -- you know, some things that indicate an ongoing negotiation, I think are not in keeping with the way we condition our applications, and I don't know if --

Did you submit anything, Mr. Sullivan, that lists conditions out? Mr. Sullivan?

MR. SULLIVAN: I'm checking. I'm not sure if we did or if we just put it in the PowerPoint, because we were responding to -- I think we -- our comment was, we're okay with everything submitted in the ANC letter --

CHAIRPERSON POURCIAU: Uh-huh. Uh-huh.

MR. SULLIVAN: -- exactly. So we're aligned with that, and because those were being developed at the last minute --

CHAIRPERSON POURCIAU: Uh-huh.

MR. SULLIVAN: -- I'm just giving oral testimony through the PowerPoint presentation in here that we're okay with all of those conditions --

CHAIRPERSON POURCIAU: Yeah.

MR. SULLIVAN: -- and we didn't submit anything else separate.

CHAIRPERSON POURCIAU: No. And then the trash condition, I think, is a little wonky based on what has actually happened.

Let me ask the board if they -- what their thoughts are on conditioning the application to the conditions that the ANC has put in their report. Are you comfortable with that? Nothing in there is out of line per se. Any --

COMMISSIONER BRUINS: I think there are a couple that I would be reluctant to include, including the discounts for MPD and DCFD commitments to the camera rebate program that is sort of unrelated to the relief being requested here. The requirements that the applicant continue to negotiate with the ANC. It doesn't have a definitive timeline for an order.

And then just general promises to work on undesirable behavior. I don't think we can enforce that, so I don't know that we should include it. I think the conditions that are appropriate for the relief sought are related to the operating hours and late night impacts, specific delivery or loading restrictions as discussed today, and the parking arrangement, I'm not sure what to do with that. I'll lean on others for your thoughts on

the specifics of a condition for parking arrangements, but those are my thoughts, is that not all conditions proposed in that ANC are appropriate for the relief sought here today.

CHAIRPERSON POURCIAU: Thank you for that.

Do others have any suggestions or comments on that, that -- or anything we need to discuss with the applicant on that?

VICE CHAIRPERSON GOLDSTEIN: You know, I think the -- I agree with the comment on -- I think a number of the ANC conditions, while really I understand it in concept, it just becomes a little bit challenging to adopt them from a zoning authority perspective and something that becomes enforceable.

I think Mr. Sullivan has sort of the outline of conditions in the presentation that are probably closer to the type of zoning conditions we tend to adopt. I think one thing, as we're discussing, that we can ask maybe of the applicant is just to submit it as a post-hearing submission, sort of the full list of conditions in a sort of zoning-worded way. We can take a look at it and discuss them with our counsel as well to make sure that they are sort of legally zoning compliant as one possibility.

I do want to ask the applicant a couple more

questions, if that's okay, Madam Chair. I don't mean to divert us here too much but would love to ask a couple items.

CHAIRPERSON POURCIAU: Please proceed.

VICE CHAIRPERSON GOLDSTEIN: Thank you.

CHAIRPERSON POURCIAU: I'm hearing -- okay. Oh, great. I was going to take your silence as no objection.

Mr. Sullivan, I heard the neighbor who testified. I'm sorry, the name, I think it's been a long day and her name has just escaped my mind. She asked for a condition in the BZA order not to move any dumpsters closer to her property, which I can certainly understand the concern. I haven't heard any proposal to move -- or to use any of the dumpsters or to move any dumpsters closer to her property, but I'm just hoping you can respond to her request.

MR. SULLIVAN: Sure. I haven't heard anything, and I think Mr. Usman would say, nothing from the landlord that they -- there was any intention to do that, but also, I think it'll be -- she'll be able to directly address that in the BZA application coming for the lot that we expect.

So -- because that'll be more up to the landlord, but I haven't heard anything throughout this that there was any indication that would happen, and there's certainly nothing that we're proposing that would require

that.

VICE CHAIRPERSON GOLDSTEIN: Okay.

And Mr. Usman, you have nothing to add beyond that, I -- I'm gathering? Okay.

Mr. Sullivan, what else -- the two outstanding issues in my mind are just --

Oh. I'm sorry? Mr. Usman, did -- were you adding something there?

MR. USMAN: I was just saying correct, to nothing to add to that.

VICE CHAIRPERSON GOLDSTEIN: Okay. Thank you very much.

The two outstanding issues in my mind are, you know, is there -- what could happen if you lose access to that parking lot? And I just want to hear, you know, is there something that -- I'm just trying to think of how to manage that issue, and I -- now that you've been able to think about it a little bit more, we've had some discussion about it, but I'm hoping you can address that again, and then the second is, I think I hear just a lot of goodwill about how to manage staging. There's a little bit of anxiety about it, and I'm just hoping that you can kind of help address that issue, too.

MR. SULLIVAN: Sure. On the first issue, I don't think it's even remotely possible that the parking lot

would be shut down, and I don't think anybody wants that to happen. So I think it's -- that would be an academic discussion.

I think since one of our conditions is that we're using that parking lot, it would affect our approval and potentially affect -- in such a way that we would have to come back for a modification if the parking lot was shut down, but again, I'm not -- I don't have any concern in saying that because I don't have any concern that the parking lot would be shut down. The second question, refresh my recollection, please, on that one.

VICE CHAIRPERSON GOLDSTEIN: Sure. It's some of the anxiety about how the staging will happen.

MR. SULLIVAN: Right.

VICE CHAIRPERSON GOLDSTEIN: And I'm just --

MR. SULLIVAN: Yeah. So I think --

VICE CHAIRPERSON GOLDSTEIN: And I think this -- and very specifically, this is food pickup to deliver to customers. At least that -- that's how I interpret it.

MR. SULLIVAN: Yeah. And I think -- I mean, part of it's hard to define, because you're not going to -- like, we can't put everything in a particular box. I think the important thing is that there's a -- been a great relationship with Ms. Jefferson and the ANC with Mr. Usman, and in the other sites that he's -- has gotten

approved in the district, there's, as he mentioned, no situation where there's parking to this level, and so -- and that was one of the reasons that he was attracted to the site, and with some conditions, I understand, where you can't always nail the condition down, and you don't necessarily want to because it requires some flexibility.

For instance, on trash collection, it's not in this case, but when you have a dumpster, you want dumpster never to overflow, but you also don't want trucks there every day if they don't have to be. So there's always a sort of a level of flexibility required for that kind of operation. So we try to nail it down as much as possible on how that'll work.

Regarding drivers, I don't know what kind of condition you could put on it. I think to suggest that there would be 20 at one time, that -- I don't know. I go to Wingstops occasionally, and I've never seen -- or anywhere I go, I've never seen more than one or two Uber drivers show up at the same time. So I don't suspect that that would be an issue.

CHAIRPERSON POURCIAU: Thank you.

MR. SULLIVAN: I don't know if that's responsive or not, but Mr. Usman can weigh in too if you want. I -- maybe --

MR. USMAN: Can you hear me?

CHAIRPERSON POURCIAU: I think I have a suggestion. I have a suggestion. Let's see how this goes.

MR. USMAN: Yes, go ahead, ma'am.

CHAIRPERSON POURCIAU: So I'm thinking -- I looked over the conditions that are on Page 10 of the applicant's presentation and they look pretty good. There are, I believe, eight conditions. Seven of those are in keeping with what the ANC has provided, and the one that is in keeping with the ANC that, you know, probably is not something we want to include, would be the one condition about first responders.

So we might -- you know, I'm leaning for -- toward approval. I believe the board is feeling like this is an approvable application, but there are these items that we need to make sure we address.

So we could move to approve it with conditions stated on Page 10 of the presentation minus the first responders condition, and then I would want to add a condition that says that the applicant will work with the owner and the D.C. Government to ensure that the parking lot that they have access to continues in operation, and I don't know where I would go beyond that. What does the board think about that? What does the applicant think about that?

MEMBER WELLS: I -- I'm not so sure about including a condition based on that parking lot, since it's not a legal parking lot at this time, and -- although, you know, DDOT did base their report of that parking lot being in use, then also the applicant -- you know, part of the record shows that parking lot being in use is a way to offer some relief to parking concerns, and then hearing Office of Planning's testimony seemed fairly confident that even if that parking lot was not in use, it's still not -- would impact, I guess, you know, concerns or, like, you know -- and reasonable concerns for the neighborhood in terms of parking impacts, but I think practically speaking, you know, if it's Super Bowl Sunday, you might have 20 cars show up at Wingstop as opposed to any other day.

So I'm not so sure about a condition relating to parking and use of that parking lot. I do have other concerns regarding parking, in that, you know, one side, on Kalmia, is residential restricted parking, which sounds very restrictive, and then DDOT has a project moving forward, it sounds like, that will remove the metered parking that was there.

So you know, certain times of day, there is no available parking adjacent to that establishment for use. So -- yeah, I'm -- I -- if there are conditions, I'm not

so sure about putting in that -- putting in one way to that parking lot being available if, you know, it's not -- just because it's not legally available now --

CHAIRPERSON POURCIAU: So --

MEMBER WELLS: -- condition to, like, that it's approved later or subject to the approval of that parking lot being, you know, approved later.

CHAIRPERSON POURCIAU: So we could -- you know, we could go forward without that condition. I -- so without that condition, are board members ready to proceed to close the record and to proceed to the vote, or do we want to -- do we want to continue this application, or --

MEMBER WELLS: If I can add?

CHAIRPERSON POURCIAU: Yeah.

MEMBER WELLS: Without that condition, or without that parking, I think there's trouble meeting the "and," like, the "and sufficient off-street parking to accommodate the needs of patrons and employees."

I think it's, you know -- yes, zero spaces are not required, but then you have the "and" portion of that that I think that is difficult to establish unless the applicant has something else to offer.

MR. SULLIVAN: I'm certainly fine -- we as the applicant are certainly fine with any condition making it subject to the approval of the parking lot, but not --

but -- or, I'd rather say, subject to enforcement on the parking lot. Like, the parking lot exists now, it operates, and in my opinion, it's definitely going to continue operating, and -- while the landlord then files an application and goes through that.

Now, we know that the ANC and the neighbors want as much parking in there as possible. Their concerns are about how it operates, and they can address all that. I don't think any of that's going to affect the fact that Wingstop will get to use it. I don't think parking spaces will go away.

So could the condition be written as, it's approved and they're using -- we're using the parking lot, obviously subject to enforcement, ending the use of the parking lot, and then -- in which case, then we would come back for a modification and say, okay, now we want to change the special exception approval because we don't have parking that we thought we had that was -- just because I'm not concerned about that happening, but I -- but if it did, that would be the safety valve there.

VICE CHAIRPERSON GOLDSTEIN: I think that's --

CHAIRPERSON POURCIAU: So would they --

VICE CHAIRPERSON GOLDSTEIN: Oh, I'm sorry.

CHAIRPERSON POURCIAU: No, go ahead, Mr. Goldstein.

VICE CHAIRPERSON GOLDSTEIN: No, I think that would be helpful, and I think this is -- I want to go back to my earlier suggestion. Maybe the applicant can submit the full list of conditions, and I understand they're sort of in the presentation, but maybe those even need to be worked on a little bit more, maybe not, but to include a condition that's -- makes the use -- you know, is reliant on the use of the parking lot, and if the parking lot ceased to be accessible, makes it clear that they have to come back to the board to modify, and I'd leave it to Mr. Sullivan to propose language that he can live with.

MR. SULLIVAN: Sure. We can do that --

VICE CHAIRPERSON GOLDSTEIN: I'm sorry, Madam Chair, was that where you were headed?

CHAIRPERSON POURCIAU: Yeah. Yeah. I was headed to -- that we just defer decision subject to the applicant submitting information as you just described. You know, coordinate that with the ANC commissioner for sure, and others, and that way we can kind of get a legal sufficiency reading on that language as well in terms of -- I like the way you put it, Vice Chair Goldstein, that they would utilize it until such time if they couldn't, and then they would have to come back if that occurred. Something along those lines.

Is -- does that seem reasonable, Mr. Sullivan and

Mr. Usman?

MR. SULLIVAN: Yes, it does. Yes. I mean, we -- obviously, we would like as quick a decision as possible and we could turn it around as quick as possible, but -- so whatever the board decides on that.

CHAIRPERSON POURCIAU: Yes. We --

MR. USMAN: I would --

CHAIRPERSON POURCIAU: -- like to make decisions quickly, too.

MR. USMAN: Yeah. I just wanted to add that I concur with that. You know, this is a parking lot that is -- while it is beneficial, as others on the call, perhaps Mr. Goldstein, as you know, with our other sites, parking has not been a concern, and those sites have much fewer parking. None at all, in fact.

So I would hate for this parking lot to become a reason for much delay of this application. I think if the parking lot in the future does shut down for whatever reason, I think the neighborhood will have much greater concerns than the presence of a Wingstop, right? With all the Target patrons, where will they park? So yes, we are willing to work and do as you suggested.

CHAIRPERSON POURCIAU: Excellent.

MR. SULLIVAN: And just generally, we would love -- it's in our interest to nail down the conditions

with exact language for both sides.

CHAIRPERSON POURCIAU: Right.

Ms. Mehlert, could you help us with scheduling this for a decision meeting, please?

MS. MEHLERT: Sure. I -- you could put this on the November 4th meeting for decision if the applicant is able to submit a list of conditions. I don't know how long it might take me to do that. Maybe by --

MR. SULLIVAN: Friday.

MS. MEHLERT: Friday, and then the ANC could have until next Friday to respond, and then come -- return on November 4th.

COMMISSIONER EDWARDS: That's fine.

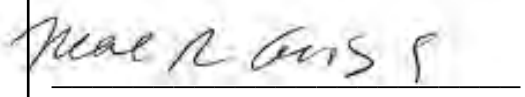
CHAIRPERSON POURCIAU: Thank you, Ms. Edwards.

Thank you. The board's good with that? All right. Well, this is our last case for the day. I want to thank the applicant and the -- Commissioner Edwards and those from the community for participating on this case, and I want to thank board members and staff as always for all the hard work and participation. Wishing you a good evening. That ends our meeting. Good night.

(Whereupon, the above-entitled matter went off the record at 3:59 p.m.)

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.



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