

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF ZONING
BOARD OF ZONING ADJUSTMENT

BOARD OF ZONING ADJUSTMENT PUBLIC HEARING

9:30 a.m. to 4:31 p.m.

Tuesday, October 6, 2015

441 4th Street, N.W.

Jerrily R. Kress Memorial Hearing Room

Suite 220 South

Washington, D.C. 20001

OLENDER REPORTING, INC.

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1 BOARD MEMBERS:

2 MARNIQUE Y. HEATH, Chairperson

3 FREDERICK L. HILL, Vice-Chairperson,

4 District Resident Appointee

5 JEFFREY HINKLE,

6 National Capital Planning Commission Designee

7 MARCIE COHEN, Zoning Commission

8 (recused from Application No. 19057)

9 MICHAEL TURNBULL, Zoning Commission

10 (sitting in for Application No. 19057 only)

11

12 OFFICE OF ZONING STAFF:

13 CLIFFORD MOY, Board Secretary

14

15 OFFICE OF PLANNING:

16 STEVE COCHRAN, Zoning and Special Projects Planner

17 MEGAN RAPPOLT, Development Review Specialist

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P R O C E E D I N G S

[9:30 a.m.]

BOARD ELECTIONS

VICE-CHAIRPERSON HEATH: Before we begin with the opening statement, I am going to, as Vice-Chair, open up the floor for Board elections.

Our Board Chairs recently left the Board as of last week, and so we now are at a point where we need to nominate for both the positions of Board Chair and Vice-Chair. We will start with Board Chair. Any nominations?

MR. HILL: I'd like to nominate Marnique Heath for Board Chair, please.

COMMISSIONER COHEN: And I'll second that.

VICE-CHAIRPERSON HEATH: All right. Any discussion?

[No audible response.]

VICE-CHAIRPERSON HEATH: All right. So all those in favor of the motion?

[Chorus of ayes.]

VICE-CHAIRPERSON HEATH: Anyone opposed?

[No audible response.]

COMMISSIONER COHEN: Congratulations.

MR. HILL: Congratulations.

[Laughter.]

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1 CHAIRPERSON HEATH: And so I'd also like to
2 open up the floor for nominations of Vice-Chair.

3 COMMISSIONER COHEN: Ms. Chair, I nominate
4 Fred Hill for the position of Vice-Chair of the Board of
5 Zoning Adjustment.

6 CHAIRPERSON HEATH: And I will second that.
7 Any discussion?

8 [No audible response.]

9 CHAIRPERSON HEATH: All right. So all
10 those information favor of the motion?

11 [Chorus of ayes.]

12 CHAIRPERSON HEATH: And anyone opposed?

13 [No audible response.]

14 CHAIRPERSON HEATH: All right. So --

15 COMMISSIONER COHEN: Congratulations.

16 VICE-CHAIRPERSON HILL: Thank you. Thank
17 you. Thank you.

18 CHAIRPERSON HEATH: Congratulations.

19 So, Mr. Moy, that concludes our Board
20 elections.

21 Oh, we don't have a reporter -- a recorder.

22 MR. MOY: Oh. Yeah, I just realized that
23 the recorder hasn't appeared yet. I need for the
24 transcript, the recorder, so maybe we should recess for a
25 bit and give the Staff time to follow up --

1 CHAIRPERSON HEATH: Okay.

2 MR. MOY: -- on the whereabouts of our
3 recorder.

4 CHAIRPERSON HEATH: Yes.

5 [Recess taken.]

6 CHAIRPERSON HEATH: All right. The hearing
7 will please come to order. Good morning, ladies and
8 gentlemen. We're located in the Jerrily R. Kress
9 Memorial Hearing Room at 441 4th Street, Northwest.
10 Today's date is Tuesday, October 6th, 2015, and we are
11 here for the public meeting and hearings of the Board of
12 Zoning Adjustment of the District of Columbia.

13 My name is Marnie Heath, Chairperson.
14 Joining me today is Fred Hill, Vice Chairperson; and
15 Marcie Cohen, a member of the Zoning Commission sitting
16 in as a member of the Board today. For one case today,
17 we will have Commissioner Michael Turnbull sitting in.

18 Please be advised that this proceeding is
19 being recorded by the court reporting company. Even
20 though the court reporter isn't here, they will record
21 from the video. And it is also being webcast live.

22 Accordingly, we must ask you to refrain
23 from any disruptive noises or actions in the hearing
24 room. The Board's hearing procedures and how we will
25 process applications can be found on the table by the

1 back door in the corner.

2 All individuals wishing to testify today
3 will need to do two things prior to testifying. Even
4 though the court reporter is not here, prior to
5 testifying, each person who needs to address the Board
6 will need to complete two witness cards. Typically, you
7 would give those witness cards to the reporter. Today we
8 are asking that you just leave them on the court
9 reporter's stand.

10 The other thing that you will need to do is
11 now stand to take the oath, which will be administered by
12 Mr. Moy, the Secretary of the Board.

13 MR. MOY: Good morning. Do you solemnly
14 swear or affirm that the testimony you are about to
15 present in this proceeding is the truth, the whole truth,
16 and nothing but the truth?

17 [Witnesses sworn en masse.]

18 MR. MOY: Ladies and gentlemen, you may
19 consider yourselves under oath.

20 CHAIRPERSON HEATH: Thank you.

21 Mr. Moy, are there any issues or
22 preliminary matters that need to be addressed?

23 MR. MOY: Yes. Well, first of all,
24 congratulations, Madam Chairperson, and also
25 congratulations to the new Vice Chair.

1 **APPLICATION NO. 19079**

2 MR. MOY: For the record, three cases,
3 Madam Chair. First is originally on the docket,
4 Application No. 19079 of 2002 11th Street LLC and
5 Industrial Bank. At the request of the Applicant, that
6 application has been postponed and rescheduled to
7 November 10, 2015.

8 **APPEAL NO. 19077**

9 MR. MOY: The Appeal No. 19077 of
10 Massachusetts Avenue Heights Citizens Association, et
11 al., Madam Chair, they're in the record as a preliminary
12 matter, a consent motion to postpone, and should the
13 Board grant that motion, Staff would recommend sending it
14 for rescheduling it for November 24th.

15 **APPLICATION NO. 19042**

16 MR. MOY: And, lastly, Staff is seeking
17 action by the Board on Application No. 19042 of
18 DistrictProperties.com. As the Board will recall, at its
19 September 22nd meeting or hearing, the Board approved the
20 application with a proviso that the Applicant submit
21 revised drawings, and that is in the record. And Staff
22 is seeking a confirmation for that filing.

23 That completes the Staff's briefing, Madam
24 Chair.

25 CHAIRPERSON HEATH: Thank you.

1 So I think, first, we will deal with the
2 appeal of Massachusetts Avenue Height Citizens
3 Association. I will move that we allow for the
4 continuation requested.

5 COMMISSIONER COHEN: I second.

6 CHAIRPERSON HEATH: Any discussion?

7 [No audible reply.]

8 CHAIRPERSON HEATH: All those in favor?

9 [Chorus of ayes.]

10 CHAIRPERSON HEATH: Anyone opposed?

11 [No audible reply.]

12 CHAIRPERSON HEATH: We will allow for the
13 continuation. Thank you.

14 The next issue that I will deal with is the
15 Application 19042. This is the Application of District
16 Properties. As Mr. Moy noted, this was approved on
17 September 22nd. On September 26th, the Applicant
18 resubmitted its previously filed plans, with notes
19 explaining why adding a window was not practical.

20 After a review of the notes and their
21 notation making it clear that they also have included a
22 glass light at the back door, within the kitchen, I am
23 satisfied that the Applicant has met the intent of the
24 request, and so I would move that we allow this
25 application to continue to be approved.

1 VICE-CHAIRPERSON HILL: I second the
2 motion.

3 CHAIRPERSON HEATH: Any discussion?

4 [No audible response.]

5 CHAIRPERSON HEATH: All those in favor?

6 [Chorus of ayes.]

7 CHAIRPERSON HEATH: Anyone opposed?

8 [No audible response.]

9 CHAIRPERSON HEATH: Thank you. The motion
10 carries.

11 MR. MOY: The motion carries, Madam Chair,
12 on your motion and seconded by Vice-Chair Hill; also in
13 support, Ms. Cohen; 3 to zero.

14 CHAIRPERSON HEATH: Do we need a summary
15 order here?

16 MR. MOY: No. We would just include that
17 plan with the summary order.

18 CHAIRPERSON HEATH: Okay.

19 **APPEAL NO. 18114**

20 CHAIRPERSON HEATH: The next thing I'd like
21 to address as a preliminary matter is the remand of
22 Appeal No. 18114 of Ward 5 Improvement Association.

23 This remand concerns an appeal asserting
24 that the establishment known as the Stadium Club was a
25 sexually oriented business establishment, or SOBE. After

1 some reflection, I no longer believe that further hearing
2 is needed and would therefore move that the Board vote to
3 have such a meeting rescinded, and that the Board should
4 resume its deliberations on October 20th in lieu of
5 having another full hearing.

6 Anyone second that motion?

7 VICE-CHAIRPERSON HILL: I second the
8 motion, Madam Chair.

9 CHAIRPERSON HEATH: Any further discussion?

10 [No audible response.]

11 CHAIRPERSON HEATH: All right. All those
12 in favor of the motion, please signify by saying "aye."

13 [Chorus of ayes.]

14 CHAIRPERSON HEATH: All those opposed?

15 [No audible response.]

16 CHAIRPERSON HEATH: So the motion carries.

17 MR. MOY: The motion carries 3 to zero on
18 your motion, seconded by Vice Chair Hill; in support, Ms.
19 Cohen.

20 Thank you.

21 CHAIRPERSON HEATH: Let's call our first
22 meeting case, the minor modification.

23 **APPLICATION NO. 18640-A**

24 MR. MOY: The application for in the public
25 meeting, Madam Chair, is Application No. 18640-A, as in

1 "alpha," of Barry S. Jackson. This is a request for a
2 minor modification under Special Exception 223 relief at
3 property 761 10th Street, Southeast.

4 CHAIRPERSON HEATH: All right. Thank you.

5 So the Board granted the requested relief
6 from this application on December 17th, 2013. Then on
7 July 31st, 2015, the Applicant submitted the request for
8 the minor modification seeking to amend the approved
9 plans. Included in that request, the Applicant noted
10 that they were repositioning the pergola in the back yard
11 and a door, that they were also changing the fence
12 materials from wood to brick, but they were adding a
13 sliding glass door and changing the kitchen window.

14 The issues, as I see them right now, are
15 that there are changes to the drawings that the Applicant
16 submitted along with their request that no other things
17 that have changed in addition to the things that they
18 submitted in their statement.

19 Additionally, the ANC has noted that they
20 are not in support of some of the changes, specifically
21 the change of the pergola and the pergola location and
22 the change of the fence from wood to brick. They are in
23 support of the change of the window.

24 We also haven't heard from the neighbors
25 regarding this modification, and so I still have some

1 issues with moving this forward as s minor modification.

2 Any other thoughts?

3 COMMISSIONER COHEN: Ms. Chair, I concur
4 with your analysis, so I would suggest that we postpone
5 this until the clarifications are submitted on the plans.

6 CHAIRPERSON HEATH: What we would typically
7 do in a case like this -- I understand that one of the
8 neighbors is here, and I appreciate you coming down.
9 Because this was on the docket for a minor modification,
10 we weren't scheduled to have a full hearing, and so we
11 want to make sure that we give proper notice that a full
12 hearing is going to take place, so that all parties
13 interested can be present and properly prepared.

14 So I would move that we do not accept this
15 as a minor modification, but ask that we continue it, and
16 ask that the Applicant resubmit their statement of what's
17 being modified that they clearly represent in their
18 drawings, what relief is being requested, what changes
19 are being made, and that they have conversations with
20 both the neighbors and the ANC in the meantime.

21 COMMISSIONER COHEN: I would second that.

22 CHAIRPERSON HEATH: Any discussion?

23 [No audible response.]

24 CHAIRPERSON HEATH: All right. So all
25 those in favor of the motion, signify by saying "aye."

1 [Chorus of ayes.]

2 CHAIRPERSON HEATH: Anyone opposed?

3 [No audible response.]

4 CHAIRPERSON HEATH: The motion carries.

5 MR. MOY: Madam Chair, would you like to
6 set a date? Because on the docket calendar, Ms. Cohen is
7 scheduled to reappear with the Board on November 24th, if
8 that's --

9 COMMISSIONER COHEN: November 6th.

10 MR. MOY: The 6th?

11 [Pause.]

12 MR. MOY: Is that a "yes"?

13 COMMISSIONER COHEN: This is right before
14 Thanksgiving? Schedule it for then.

15 MR. MOY: Okay.

16 CHAIRPERSON HEATH: Okay. So what is the
17 proposed date?

18 MR. MOY: 24th of November.

19 CHAIRPERSON HEATH: Okay, all right. So
20 we'll continue this on the 24th.

21 So Commissioner Cohen has just left us.
22 Commissioner Turnbull will join us for our first hearing
23 case.

24 While we are waiting, we have an
25 application on the docket today, Application 19056,

1 Margaret Cheney, where we have a number of party status
2 requests, and I would like to call those parties to the
3 table prior to beginning our hearing cases.

4 [Pause.]

5 **APPLICATION NO. 19056**

6 CHAIRPERSON HEATH: This application is for
7 variances from the minimum lot width requirements under
8 401 and off-street parking requirements under 2101.1 to
9 allow the construction of two new family dwellings in the
10 R-4 at 3324 Dent Place.

11 I would like to have each of you just
12 introduce yourselves.

13 MR. CASEY: My name is John Casey. I am
14 the contract purchaser of the property.

15 MS. MOLDENHAUER: Meridith Moldenhauer,
16 representing the Applicant, from Griffin, Murphy,
17 Moldenhauer & Wiggins.

18 MS. MAZO: Samantha Mazo, representing the
19 Application, from Griffin, Murphy, Moldenhauer & Wiggins.

20 MR. PRICE: K.C. Price, Principal at KC/DC
21 Studios, one of the designers.

22 MR. HINDS: Richard Hinds, General Counsel
23 to the Citizens Association of Georgetown.

24 MR. vom EIGEN: Robert vom Eigen,
25 President, Citizens Association of Georgetown.

1 CHAIRPERSON HEATH: Okay.

2 MR. HINDS: We also -- just for the record,
3 we also represent several immediate neighbors of this
4 property, and the names and addresses are in our
5 application.

6 CHAIRPERSON HEATH: Okay, all right.

7 So we had letters from several of the
8 residents of the community who requested party status.
9 Are you representing -- you're the Citizens Association
10 of Georgetown, so you're representing the community --

11 MR. HINDS: Basically, yes.

12 CHAIRPERSON HEATH: -- or their status?

13 Okay. So then what I will encourage you to
14 do, this is something that was established by the
15 previous Board Chair, and it has worked in the past. I
16 know you all have had extensive conversations, and I'd
17 encourage you to continue those conversations while we
18 proceed with the other hearings of the morning in hopes
19 that you can come to some sort of agreement or
20 conclusion. It may not be possible, but we will give you
21 time for that this morning, so I would encourage you to
22 have serious conversations about how you might resolve
23 some of your issues.

24 Are you another party to this case?

25 MR. LEWIS: I'm Ron Lewis, Chair of ANC-2E.

1 CHAIRPERSON HEATH: Okay.

2 MR. LEWIS: And we have not had
3 conversations. While the Applicant requested an
4 extension for the purpose of having conversations with
5 the ANC and the neighbors, those really didn't take
6 place. So I hope we won't be pushed to the end of the
7 agenda in the hopes that something will happen here today
8 because there's no implication whatsoever that it will.

9 CHAIRPERSON HEATH: When was the last ANC
10 meeting? Have they --

11 MR. LEWIS: We have had two ANC meetings
12 since the request for postponement was granted. I
13 invited the Applicant to come talk with us either at the
14 meetings or separately. I understand there's been a
15 change of counsel, and I have talked with counsel once or
16 twice, but there have been no serious efforts to resolve
17 the issues.

18 MS. MOLDENHAUER: We're more than willing
19 to go into the hallway and have a conversation. I have
20 had conversations with Mr. Lewis about whether attending
21 another ANC would be fruitful or if positions were stuck
22 in regards to the community's perspective as well or
23 there was a validity to modify or work with them, but we
24 will be more than happy to go into the hallway and have
25 conversations before this case is called.

1 CHAIRPERSON HEATH: Okay. Thank you. I
2 would encourage that. Thank you. We will call you back
3 up later today.

4 Mr. Moy, can you call our first hearing
5 case.

6 MR. MOY: Okay. According to the listing
7 of cases on the --

8 CHAIRPERSON HEATH: Hollow Creek.

9 MR. MOY: Ah.

10 CHAIRPERSON HEATH: Sorry. I'll be
11 specific.

12 **APPLICATION NO. 19057**

13 MR. MOY: Okay. This would be Application
14 No. 19057 of Hollow Creek Investment Group, LLC. This, I
15 believe, has been amended for variance relief from
16 Section 400, 406, 2001.3; and special exception, 337.
17 And this is a continued hearing from July 28th, I
18 believe.

19 CHAIRPERSON HEATH: Yes, that's correct.
20 It was July 28th,

21 Would the parties please come forward.

22 VICE-CHAIRPERSON HILL: Madam Chair, just
23 for the record, I'd like to say that I have reviewed all
24 the material in this case, and I am prepared to work
25 today.

1 CHAIRPERSON HEATH: Thank you.

2 All right. So this application was
3 originally heard on July 28th and was continued in order
4 for the Applicant and OAG to file briefs regarding
5 whether the application is subject to the amendments to
6 the R-4 regulations adopted in Zoning Case No. 14-11.

7 Since that hearing, the Zoning Commission
8 has further amended the vesting provisions for these
9 amendments to allow an Applicant to choose whether to
10 proceed under either the old or new regulations, and the
11 Applicant has subsequently filed a supplemental statement
12 indicating that they have adopted for the newly adopted
13 regulations.

14 As I understand it, the requested relief
15 has been modified accordingly and now includes special
16 exception relief for conversion of a nonresidential
17 building under 330.7 and 337, a variance for an addition
18 to a nonconforming building under 2001, pursuant to
19 Section 400, to add a fifth story, and a variance from
20 406.1 to create a nonconforming court.

21 The Applicant has removed the request for
22 relief for roof structure under 411.

23 Can you, the parties, introduce yourselves,
24 please.

25 MS. MOLDENHAUER: Good morning. My name is

1 Meridith Moldenhauer on behalf of the Applicant. Here
2 with me today is Jim Foster from Arcadia Designs. My
3 client is on his way. I believe he was stuck in traffic,
4 but we can proceed.

5 CHAIRPERSON HEATH: Okay.

6 MR. NELSON: Good morning. My name is
7 Patrick Nelson, and I chair the 1B Zoning, Preservation &
8 Development Committee.

9 CHAIRPERSON HEATH: Okay. Thank you for
10 coming down.

11 So I think that there are still issues
12 regarding this case, and OP has indicated, as I'm sure
13 you're aware, that they're still not recommending support
14 of the height requirement. And since Mr. Cochran is
15 here, I will let him speak to his issues, but I think I
16 still have some issues with the justification of the
17 fifth story, so --

18 MS. MOLDENHAUER: The Board did, though,
19 get his updated report that then supported the number of
20 units and all the other areas of relief, except for the
21 question for the height relief.

22 CHAIRPERSON HEATH: Correct, correct.

23 So, before we hear from you, I will let Mr.
24 Cochran speak to his issues.

25 And then is there any other discussion from

1 the Board, any other issues prior to going to OP?

2 [No audible response.]

3 CHAIRPERSON HEATH: All right.

4 MR. COCHRAN: Thank you, Madam Chair.

5 As you know from the filing yesterday, we
6 have looked at the additional information that the
7 Applicant supplied at the last hearing, and subsequently,
8 we did change our recommendation on the number of units,
9 which we had formerly said we could not yet support, but
10 the information has come in, and we now support that.

11 But we do continue to recommend that you
12 deny the variance on the fifth story. This is primarily
13 because of the character of the R-4 zone. The Zoning
14 Commission recently went through extensive hearings,
15 deliberation, on what the character of the R-4 zone
16 should be, and it decided that while nonresidential
17 structures did have different qualities that may warrant
18 a somewhat more lenient approach on their conversion to
19 residential units, they focused that somewhat more
20 liberal policy on the numbers of units going from what
21 would have required a variance for a number of units to a
22 special exception, which allowed us to actually recommend
23 for that.

24 But they were very clear in saying that the
25 R-4 zone, it's appropriate to have 35 feet as the

1 maximum, by right, height, and even 40 feet, which was
2 the former height would now be permitted only as a
3 special exception. There was nothing about anything over
4 40 feet being appropriate for a new development in an R-4
5 zone, nor was there anything that would have allowed for
6 an additional story. So we're now looking at three
7 stories and, even with a special exception, 40 feet as
8 being the norm in an R-4 zone. That's why this has to be
9 -- that's why this top story is a variance.

10 Given the recent and extensive record of
11 the Zoning Commission, the Office of Planning believes
12 that to approve the fifth story would pose significant
13 harm to the regulations for the R-4 zone. I can go into
14 that more, but that sort of summarizes where we are.

15 CHAIRPERSON HEATH: Okay. Thank you, Mr.
16 Cochran.

17 Any questions?

18 COMMISSIONER TURNBULL: Thank you for your
19 summary, Mr. Cochran.

20 MR. COCHRAN: Certainly.

21 CHAIRPERSON HEATH: All right.

22 So -- sure, sure. You know how to --

23 MS. MOLDENHAUER: I'm now on the mic.

24 CHAIRPERSON HEATH: Right.

25 MS. MOLDENHAUER: I now have some questions

1 for the Office of Planning.

2 CHAIRPERSON HEATH: Sure.

3 MS. MOLDENHAUER: Thank you very much,
4 Chairman Heath.

5 One of the questions is, while obviously
6 there was a focus on maintaining the height of a new
7 35-foot, this property would never comply with that; is
8 that correct?

9 MR. COCHRAN: That's correct. It's already
10 nonconforming.

11 MS. MOLDENHAUER: And a lot of the other
12 concerns were because projects were adding, let's say, a
13 two-level third floor that was towering over neighboring
14 property owners. Is this property -- is this height
15 requested adding any higher structure than already exists
16 by the roof structures on the property?

17 MR. COCHRAN: It's adding an additional
18 story, and it is adding additional occupiable height of 9
19 feet to a building that's already at roughly 18 feet over
20 what would be permitted by right in the R-4 zone. So
21 it's already nonconforming, and this would make it even
22 more nonconforming.

23 MS. MOLDENHAUER: My question is, is the
24 height requested for this floor shorter or taller than
25 the existing penthouse structures that exist on the

1 property?

2 MR. COCHRAN: I believe that it is
3 approximately the same height as the existing penthouse
4 structures.

5 MS. MOLDENHAUER: We'll clarify that issue:
6 It is lower.

7 And is one of the concerns for the
8 reduction in height a general concern of R-4 -- light,
9 air, and privacy of adjacent property owners -- just
10 shadow studies? Do you know if this additional height
11 will create any additional shadow on adjacent properties?

12 MR. COCHRAN: I'm not answering the first.
13 I'm not agreeing or disagreeing with your first
14 presumption on the record for the R-4 case.

15 With respect to the shadows, I have not
16 seen shadow studies, but I don't believe it would create
17 additional shadows.

18 MS. MOLDENHAUER: The R-4 -- one of the
19 other concerns of the height were issues of chimneys, and
20 with the row home structures allowing on property to
21 possibly tower over another property, which is the main
22 purpose of why the Zoning Commission addressed the
23 height, does this property have any adjacent chimneys
24 that would be affected by the requested fifth floor?

25 MR. COCHRAN: I'm not aware of that.

1 MS. MOLDENHAUER: Another issue was
2 concerns of solar panels that were going to be affected
3 by if a neighboring property owner wanted to improve
4 their property by solar panels and solar powering. Is
5 there any issue here that would address permitting this
6 fifth floor any impact on solar panels of adjacent
7 properties?

8 MR. COCHRAN: I'm not aware of that. Your
9 questions do sort of set a pattern of this being
10 considered as a special exception, however, when it's a
11 variance.

12 MS. MOLDENHAUER: My questions have to do
13 with the specific conditions the Zoning Commission
14 discussed and put into the regulations as to, in my mind,
15 what led them to be concerned about height in the R-4.

16 Are these conditions and points that the
17 Zoning Commission discussed in detail during the 1411
18 Zoning Commission text amendment?

19 MR. COCHRAN: They are among many -- many
20 discussions, yes.

21 MS. MOLDENHAUER: And if -- while this is a
22 request for a fifth floor, is this structure only taking
23 up about a third of the overall roof structure?

24 MR. COCHRAN: I'm not sure.

25 MS. MOLDENHAUER: Would a penthouse be

1 permitted on this project as a matter of right?

2 MR. COCHRAN: There are already two
3 penthouses. I'm not -- I do not believe that additional
4 square footage for a penthouse would be permitted without
5 some sort of zoning relief.

6 MS. MOLDENHAUER: Seeking possibly a 2001
7 addition to an existing nonconforming structure?

8 MR. COCHRAN: Possibly, or penthouses of
9 differing heights, possibly penthouses because these
10 don't set back from the property line, perhaps relief
11 there. It depends upon the configuration of what this
12 additional square footage in the penthouse would be.

13 MS. MOLDENHAUER: Are you aware that these
14 are substantially set back from all property lines, the
15 addition that we're requesting?

16 MR. COCHRAN: No, I am not aware of that.

17 MS. MOLDENHAUER: Are you aware that each
18 --

19 MR. COCHRAN: And I am not -- and I am not
20 sure I'd agree with your implicit statement that they
21 are.

22 MS. MOLDENHAUER: Well, we'll provide that
23 during our testimony in chief.

24 Are you aware that HPRB has reviewed this
25 and reviewed the fifth floor and recommended support for

1 the design of having a fifth floor in the project?

2 COMMISSIONER TURNBULL: Let me interject.

3 HPRB is not a zoning body.

4 MS. MOLDENHAUER: No, it's not, but I'm --
5 just in regards to the impact on the community and their
6 --

7 COMMISSIONER TURNBULL: That's fine.

8 MS. MOLDENHAUER: -- review of --

9 COMMISSIONER TURNBULL: But they're not a
10 zoning body. I just want to clarify that.

11 MS. MOLDENHAUER: The separate agency --

12 MR. COCHRAN: They also review the design,
13 per se. I am not -- I do not know whether they discuss
14 the fifth floor as a fifth floor or whether they discuss
15 the overall design and made a decision based on the
16 overall design as opposed to the fifth floor itself
17 explicitly.

18 MS. MOLDENHAUER: Are you -- is OP -- a
19 position that one of the benefits of the new change in
20 text amendment, Section 1411, which modified the R-4 zone
21 -- is one of the benefits to allow for community input in
22 the R-4 zone, providing for special exception relief when
23 previously conversions were allowed for three units if
24 you comply with the 900-square-foot requirement, but now
25 they would require special exception relief, thus,

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1 increasing the ability for developers to reach out into
2 the community and talk with community members? Is that
3 one of the goals in your opinion or OP's opinion?

4 MR. COCHRAN: I don't have an opinion on
5 that.

6 MS. MOLDENHAUER: I have no further
7 questions.

8 CHAIRPERSON HEATH: Okay. Thank you.

9 COMMISSIONER TURNBULL: I just have --
10 going back to Mr. Cochran, since there's been so much
11 talk about what the Zoning Commission did or didn't do --
12 and I think Mr. Cochran adequately expressed that some of
13 the points that Ms. Moldenhauer brought out, we did talk
14 about, but some of the other items that we talked about
15 was especially we heard after 7 years, a review on the
16 ZRR, a lot of comments about people talking about the
17 character of the R-4 and preserving the character. It's
18 kind of a nebulous phrase at some point to talk about
19 that there is a character in the R-4, and a lot of it has
20 to do with height.

21 And as Mr. Cochran said, 35 feet was done
22 with going to 40 feet by special exception. We did talk
23 about -- and as Ms. Moldenhauer has provided us a copy of
24 the regulation that we did, sort of the clarification
25 issue, which she now is taking advantage of. But we did

1 -- it clarified in that document also the intent of where
2 we were going with trying to preserve the R-4.

3 Height was a big item, and although this
4 allows you a special exception to be able to pursue that,
5 we have to look at the fact that this is four times the
6 density that is normally required, and although OP has
7 come back and said we think we could accept this, this is
8 four times the density that you could normally get by
9 matter of right on this site.

10 And when we go back and look at the height,
11 we have to look at this as a nonconforming structure, and
12 increasing, adding more onto the bulk of this building,
13 is a significant thing, which was not intended by the
14 Zoning Commission, adding more bulk and height to a
15 building such as this.

16 MR. COCHRAN: As I understand it, the point
17 of going to the special exception for a nonresidential
18 conversion was to acknowledge the unusual nature of
19 nonresidential buildings.

20 COMMISSIONER TURNBULL: Correct.

21 MR. COCHRAN: The very words that Ms.
22 Moldenhauer submitted in her most recent filing, the
23 additional thickness of the walls, perhaps differing
24 courts, et cetera, and that was the whole reason that we
25 went to allowing an easier test for getting more units.

1 As it is, if this were simply by right,
2 this building could accommodate seven units.

3 COMMISSIONER TURNBULL: Correct.

4 MR. COCHRAN: But with the special
5 exception, it gets an additional 20 units from which it
6 can generate sales.

7 COMMISSIONER TURNBULL: Four times the
8 amount that would normally be allowed.

9 MR. COCHRAN: Yes.

10 COMMISSIONER TURNBULL: Okay. Thank you.

11 CHAIRPERSON HEATH: All right. So, Ms.
12 Moldenhauer, you know what our issues are. The fifth
13 story is definitely something that we're questioning, the
14 amount of density. As Commissioner Turnbull has pointed
15 out, it exceeds by four times what would typically be
16 allowed, and so if you could speak to this, that's really
17 where our issues are.

18 MS. MOLDENHAUER: Mm-hmm. Absolutely. Let
19 me just dive right in, then, and talk specifically about
20 that.

21 In our submission and our application, this
22 is a unique building that the Zoning Commission and OP,
23 during their discussion, specifically addressed.

24 As you can see -- I will just jump through
25 here -- the building takes up nearly half of the entire

1 block. It is a large site. This is not your typical row
2 home where you're trying to squeeze four or six units
3 into a row home. This is a lot that takes up almost half
4 of -- or rather, half of the entire block right next to
5 -- in regard to density, this is actually abutting. You
6 can see on the top portion of the screen, the property is
7 right near a C-2-A Arts, and the C-2-A is pretty much
8 right in between U Street Metro and Howard Metro.

9 If we go -- the property was built, as OP I
10 think has acknowledged, as we have talked about in the
11 prior hearing -- it was built by a renowned African
12 American architect. It was originally home to the United
13 Order of the Odd Fellows and was built as a lodge. This
14 was not built as a residential building; this was built
15 for the purposes of housing a substantial number of
16 people and a substantial density of individuals.

17 The property is 100 percent lot occupancy.
18 So when we're talking typically, while I understand Mr.
19 Turnbull's -- Commissioner Turnbull's comments about the
20 degree of relief we're asking, when you're typically
21 looking at an R-4 site, you're talking about a property
22 that might be 40 percent lot occupancy, at the maximum 60
23 percent lot occupancy, and you're talking about a site
24 that's typically in the district from all of the Office
25 of Planning analysis. You're talking about sites that

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1 are anywhere from 1,200 square feet, maybe 1,800 square
2 feet, which was the minimum required. Maybe you have a
3 2,700-square-foot unit, but they are talking about a very
4 small site. It's over a 6,461-square-foot site that is
5 100 percent lot occupancy. So the existing structure in
6 and of itself makes up over 21,000 of gross square -- of
7 area.

8 Now, that is how it naturally exists today,
9 and dividing that is where we come to the degree of
10 density that we're requesting under the new special
11 exception requirement.

12 In addition to that, we can walk through
13 and we can kind of show the images of the -- I'm kind of
14 going -- repeating some of this. I know you both have
15 watched the hearings, but --I -- since you both were at
16 the original hearing.

17 The property had an original auditorium,
18 which has a curved ceiling, and Mr. Foster will go
19 through architecturally the challenges that poses, but
20 I'll just kind of walk through the existing conditions.

21 While this was obviously visible at the
22 time of reviewing the property by my client, there are
23 factors when you go through the acquisition process that
24 no matter who buys this property -- I think that that's
25 the issue here. This is a variance standard. We are --

1 obviously, we cannot do this project as a matter of
2 right, which is why we sit here before this Board.

3 This is an area variance, we are
4 requesting. It is a special exception in regards to
5 number of units, but it's an area variance in regards to
6 height.

7 This isn't a question of undue hardship.
8 We don't have to show that there was no other
9 possibility, but we have to show that there is a
10 practical difficulty. And I think that that's very clear
11 here.

12 This auditorium is beautiful and unique,
13 and as I said, Mr. Foster will provide more testimony as
14 to that. It has a sloped ceiling that creates some
15 challenges once you finally get into the site and measure
16 it and address that. There are double-heightened windows
17 here that you can see on the right-hand side of that
18 image, which was used as a basketball facility and kind
19 of cafeteria for the school that was in its place.

20 And at this point, what I'll do, I'll turn
21 this over to Mr. Foster. This is the picture of the
22 existing structure of the rear of it. It kind of shows
23 you the double-heightened windows and the rear portion of
24 the auditorium space that starts walking through the
25 practical difficulty of the site.

1 MR. FOSTER: Okay. Hi.

2 Sorry. Thank you.

3 My name is Jim Foster from Arcadia Design.

4 The picture that's up there right now is
5 the back of the building, and it partly shows that lower
6 corner area where we're removing a small portion to
7 create one of the courts. But what it also shows, those
8 three large windows along the side open into the existing
9 auditorium. As you can see, they are about 8 to 10 feet
10 tall, and I will explain in the next few slides how those
11 particular windows and that particular part of the
12 building creates a practical difficulty in adaptively
13 reusing that space.

14 This slide shows the first floor and, to
15 some degree, shows how we provided a court niche to
16 provide light and air into the lower level on the bottom
17 left and right.

18 We're maintaining the original entrance off
19 9th Street. We're utilizing the original elevator core
20 with its large structural mass that surrounds it. In the
21 rear, upper rear, we added a trash and bike storage room
22 in response to the ANC and neighbors' request, and then,
23 of course, as Meridith was discussing, the large volume
24 space sort of in the bottom there is the original
25 auditorium space.

1 Throughout the floor plan, significantly
2 thick structure walls, as much as 18 to 24 inches, easily
3 four times the standard we would build today. Especially
4 around the elevator where they are as thick as 4 feet and
5 around some of the stair shafts, there is an extremely
6 dense structure.

7 We have almost -- we have well over 2,300
8 square feet per -- lost to the thickness of the walls
9 and, to some degree, due to the circulation required by
10 the odd placement of some of the structure and the
11 location of the stairs.

12 I guess the next one. Yeah. Yeah, I lost
13 my place.

14 So the existing nonresidential space,
15 especially the auditorium, creates a practical difficulty
16 because of the odd shape and the nature of the size of it
17 and the thick walls around it, and there is no way to
18 insert a second floor into that space.

19 I think the next, slide 9 -- this section
20 helps show that a little bit better. This section
21 through the building on the right shows the existing
22 auditorium and how the sloped ceiling goes down lower on
23 the edges, and there's only a small portion of a second
24 floor to the left.

25 The section on the right would show, if we

1 could insert a second floor into that auditorium space,
2 it really wouldn't be possible because on the far
3 right-hand wall where you see on the left section, the
4 tall window, that's the window that you could see in the
5 rear photograph that we looked at initially. We would
6 have to remove that window and remove part of the
7 structure on the side in order to insert new windows that
8 could accommodate adding a second floor into that space,
9 something that Historic Preservation would clearly not
10 support in terms of altering the exterior fabric and
11 altering the character of the existing building.

12 If you -- I hope that -- does that explain
13 it? Yeah.

14 So, if you go to the next slide, our
15 solution was to keep the auditorium and gain some of the
16 square footage back by inserting a small mezzanine into
17 that space, which keeps the curving ceiling, but in order
18 to do that, we have to cut out part of the first floor
19 and lower it so that we can keep part of the first floor
20 under that mezzanine to a significant cost of the client.
21 But it allowed us to add a little bit of square footage
22 and keep the context of the existing auditorium, and then
23 this section, you can see a section through the top
24 floor, the new fifth floor, which is lower than the
25 existing stair structures on the top and set back

1 significantly from the perimeter of the building on all
2 four sides.

3 MS. MOLDENHAUER: Can you just -- so can
4 you explain what the existing condition is on the top of
5 the building right now?

6 MR. FOSTER: Well, on the top of the
7 building per the plan that was showing up earlier is --
8 there's a lot of mechanical equipment in the center, but
9 there are two existing stair towers, one in the southwest
10 corner and one in the northeast corner, that are about 10
11 to 12 feet tall and contain the stairs that go up to the
12 top of the building along with some -- a little bit of
13 mechanical space and storage space. Those are original
14 to the building and are somewhat visible from the street,
15 depending on where you stand.

16 Our new addition on the fifth floor is set
17 down beneath the tops of those and set back, so that it's
18 not visible at all from public space anywhere around the
19 building.

20 This is the third floor, and I guess we're
21 showing this to -- again, it shows some of the thick
22 walls in the structure and how basically we think the
23 shape of the building easily and practically divided
24 easily and nicely into seven units. More or less, the
25 same floor plan is on the fourth floor as well.

1 So this is the fourth and fifth floor. The
2 new fifth floor is on the right, and by adding this
3 partial fifth floor, there are no additional units in our
4 scheme. Basically, the new fifth floor is just an
5 extension of the units that are on the fourth floor, and
6 basically, it was designed technically as a mezzanine
7 when we designed the space. So that each unit has about
8 half -- about a third or so of the space is open volume
9 space that opens between the fourth floor and the new
10 fifth floor. The new fifth floor adds what I think is a
11 modest amount of space. It adds a bedroom and a bath to
12 each unit.

13 So to repeat, there are no additional units
14 because of the fifth floor structure, only an extension
15 of the fourth floor units up to that floor, and as you
16 can see on the right, the heavily thick walls on the
17 upper right-hand corner and the lower left-hand corner
18 are the existing stair towers, but our new fifth floor is
19 in the center only and connects those two structures. It
20 is set back at least 20 feet and sometimes 25 feet from
21 all four sides of the building. There is nowhere where
22 the new structure extends to the existing exterior façade
23 of the building and --

24 MS. MOLDENHAUER: I'm sorry. Can you say
25 that again? What's the setback?

1 MR. FOSTER: I think it's 25 feet at the
2 shallowest and as much as -- 20 feet at the shallowest
3 and as much as 25 feet at the widest point, and as I said
4 before, it's set so far back, the top of the building has
5 about a 4-foot -- existing 4-foot parapet above the
6 existing roofline. So you cannot see this addition from
7 anywhere around the building. Maybe four blocks away, if
8 it was possible to be in a corner somewhere nearby, you
9 might catch a glimpse of a sliver of the top of this.
10 But as Historic Preservation acknowledged and approved on
11 consent calendar, as did the ANC, that the structure is
12 not visible from public space, does not change the
13 character of any of the adjoining properties, and doesn't
14 alter the appearance of the building in any way.

15 This is a section that shows a little bit
16 more. You can see here the original auditorium near the
17 bottom. We took the first floor that's slightly lowered
18 now along with the second floor and made those two-story
19 units in order to keep what was a relatively small space
20 and utilize it more efficiently. You can see, then,
21 above that is the third floor. Above that, then, is the
22 fourth floor, which is the first level of the two-story
23 upper units. Hopefully, this section can show you
24 clearly that the new fifth floor is a relatively small
25 footprint of space, with open space and staircases that

1 go down into the fourth floor.

2 Here again, you can see that the section
3 shows that the fifth floor is set significantly back from
4 the perimeter of the building. The tall exterior parapet
5 wall on the original building helps hide that from public
6 space, and then in that section in the back in white, you
7 can see that's the existing stair tower that projects
8 taller than the top of the roof of our new fifth floor.

9 Is that good? Okay.

10 This is a detail plan. I think at the last
11 presentation, there was some question about had we
12 thought about and had we looked at how these units would
13 actually physically lay out. So I didn't present every
14 single floor plan, but this is the Unit -- I forget --
15 404, I think, which is in the rear back corner. It's a
16 corner unit. It's not the largest unit. It's not -- nor
17 is it the smallest unit.

18 And this shows the first floor with living,
19 dining, kitchen space, two bedrooms, a bathroom,
20 mechanical, a staircase up to a two-volume space that
21 then opens into a master bedroom and bath, and then has a
22 door out to a roof terrace that surrounds part of the
23 unit.

24 And these units -- this unit, for instance,
25 is only a thousand square feet. So, in requesting the

1 additional space, we're not making these gigantic huge
2 apartments. They're still relatively modest because of
3 the thickness of the walls and the limitations of the
4 structure, but it gives us some of the square footage
5 back that we lost on the lower floors because of the
6 auditorium and the thick walls.

7 MS. MOLDENHAUER: The image that you're
8 showing now, what is this portion, if I can get my mouse
9 to work? What is this portion here showing?

10 MR. FOSTER: That shows one of the original
11 stair towers. That's the one that's next to the elevator
12 shaft below. It has a stair that -- existing stair that
13 goes up to the roof and then some additional space
14 enclosed.

15 That drawing, if you look at it on the
16 upper right-hand corner, the unit we were just looking at
17 was the unit in the lower left-hand corner of that plan,
18 and you can see the elevator shaft and stair tower right
19 there.

20 This slide shows -- albeit, it's a little
21 hard to see in the resolution in the light, but it was
22 trying to indicate how much of the footprint of the
23 building is structure with the thick walls and how much
24 of it is circulation because of the locations of the
25 stairs and the sort of circuitous hallways I had to

1 create to access them.

2 Generally, I think a common core element,
3 either structure of hallways, is 5, maybe up to 10
4 percent. This is easily four times what is typical in a
5 modern building or if we were designing from scratch and
6 didn't have to deal with the existing conditions.

7 And this shows that a little bit. What we
8 have calculated in terms of what we believe to be the
9 loss of space is about 20-, almost 2,400 square feet due
10 to the structure mostly, and our new fifth floor is only
11 1,400 square feet. So we are well -- even adding the
12 fifth floor, we're not even anywhere near replacing what
13 we believe to be the lost square footage due to structure
14 and inefficiency.

15 MS. MOLDENHAUER: And that thickness also
16 doesn't account for the challenge in adaptively reusing
17 the auditorium?

18 MR. FOSTER: Correct.

19 MS. MOLDENHAUER: And what percentage -- if
20 you calculate the 2,385 square feet of lost square foot
21 based on the thickness of the wall, what percentage of
22 the building does that take up?

23 MR. FOSTER: I forget. I think it's almost
24 10 percent, 9.6 percent.

25 This slide shows basically what we

1 presented initially to HPRB that shows that from the
2 intersection across the street, you cannot see this
3 addition.

4 Our renovation of this building, including
5 adding the new fifth floor, doesn't alter the appearance
6 in any way from public space. The building looks exactly
7 the same, and there is no change of the character of the
8 building.

9 This next slide shows -- after we met with
10 the ANC and some of the neighbors, they requested that we
11 add some landscaping to the public space around the
12 building. We had a meeting with the neighbors right
13 across 9th Street. This slide shows how we would add new
14 greenspace along the T Street side to soften the concrete
15 expanse along with adding to and maintaining the existing
16 tree boxes and even adding some landscaping to the south
17 edge of the building along the new open courts that we
18 provided.

19 MS. MOLDENHAUER: That concludes Mr.
20 Foster's testimony. We have Mr. Wang present now to
21 testify, unless the Board wishes to question Mr. Foster
22 before we get on to the rest of our presentation.

23 CHAIRPERSON HEATH: Any questions for the
24 Applicant, the Architect?

25 VICE-CHAIRPERSON HILL: I'm curious about

1 something. So the two, the penthouses, the penthouse
2 unit -- I mean the existing penthouse that has the
3 stairwell and the mechanical in there, is there just one?

4 MR. FOSTER: There's two.

5 VICE-CHAIRPERSON HILL: There's two.

6 MR. FOSTER: If you look at -- I'm trying
7 to -- there's a picture looking east there, and that's
8 the one in the back, but where the photograph is being
9 taken, there's one also right behind me in that
10 photograph. And then if you look -- go to any plan --

11 VICE-CHAIRPERSON HILL: That's fine.

12 That's all right. I understand.

13 MR. FOSTER: And there are two. They are
14 rather large. They are 15-by-20-some feet in each case.
15 One is a little bit bigger than the other.

16 VICE-CHAIRPERSON HILL: I understand.

17 MR. FOSTER: But the two staircases you
18 look at in the plan go up into those.

19 VICE-CHAIRPERSON HILL: And just because of
20 the building, you're not allowed to change any of the
21 existing walls or anything at all?

22 MR. FOSTER: Correct. On the exterior.

23 On the interior, we have some leeway.

24 Although HPRB did -- while they didn't require it, they
25 did express a strong interest in maintaining the

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1 auditorium. They couldn't force us to do it, but they
2 strongly encouraged us to maintain the auditorium because
3 of its importance to the community and the fabric of the
4 space and its intact originality. It has a little bit of
5 -- a few of the elements we changed a little bit during
6 some of the renovations, but that original plaster curved
7 ceiling is all completely intact.

8 VICE-CHAIRPERSON HILL: Okay. Thank you.

9 CHAIRPERSON HEATH: Are all of the thick
10 walls that you have maintained structural?

11 MR. FOSTER: Yes.

12 CHAIRPERSON HEATH: Okay.

13 MR. FOSTER: There are some shafts here and
14 there that were added when it was converted to a high
15 school where some of that big ductwork you see goes down
16 through the building, but we actually took a lot of that
17 off.

18 The floor plans that you're looking at
19 don't show a lot of the chunky stuff that existed in the
20 floor plans that was new, modern interventions.

21 The plans you're looking at are almost
22 exclusively existing masonry core walls and a couple of
23 shafts, but not very many. Mostly, it's concrete columns
24 and masonry retaining -- structural walls.

25 CHAIRPERSON HEATH: And I'll ask a

1 question. Due to the original construction and its
2 current use as an institutional school, no matter what
3 you did to this project, would there be a substantial
4 amount of rehab and cost associated with converting this
5 to residential?

6 MR. FOSTER: Yes.

7 CHAIRPERSON HEATH: Mr. Moy, Michael Wang
8 is present now on behalf of Hollow Creek, but he was not
9 sworn in. I don't know if we need to re-administer the
10 oath -- or administer the oath for Mr. Wang.

11 MR. MOY: Thank you. That would be a good
12 idea.

13 Do you solemnly swear or affirm that the
14 testimony you are about to present in this proceeding is
15 the truth, the whole truth, and nothing but the truth?

16 MR. WANG: Yes.

17 [Witness sworn.]

18 MR. WANG: Good morning, Chairperson Heath
19 and the members of the Board. My name is Mike Wang, and
20 I am the contract owner of 1851 9th Street, Northwest.

21 And I have been in the development business
22 for 6 years, and my primary work has been in Virginia on
23 ground-up new construction and the rehab of existing
24 structures or SBO sites. I also worked on a smaller
25 scale, D.C. rehab projects too.

1 So when I made the commitment to purchase
2 this property, I knew this building was special and there
3 would be some challenges working within the footprint of
4 the existing structure to convert this building into
5 residences. However, it was not until I was able to
6 perform a detail structural review of the property that
7 the full scope of the challenges become apparent. To
8 overcome the challenges this institution building
9 presents, the variability of this project requires a
10 fifth floor.

11 So if you took a look at the pro forma, pro
12 forma statement I submitted, which is Exhibit B of the
13 prehearing statement, you will note that each that each
14 fourth floor unit is being sold at a 20 percent increase
15 compared to the units on the third floor. This is
16 because each unit on the fourth floor is -- has a -- is a
17 two-story dwelling unit with private rooftop access.

18 The fifth floor does not add units to the
19 building, yet it provides additional living space, which
20 results in additional sellable square footage. So the
21 extra space on the fifth floor is critical to the success
22 of repurposing this school building. Without the fifth
23 floor, the project would lose over 700,000.

24 So, in total, the fifth floor adds an
25 additional 1,450 square feet for living and sellable

1 space to the project, and each unit on the fourth floor
2 gains between 180 and 340 square feet.

3 As the plan shows, that would allow for an
4 additional bedroom and, in some cases, even a bathroom in
5 each of those units.

6 So this square footage may not sound like
7 much, but it is for this project. My return on
8 investment with the fifth floor for this project is only
9 7.38 percent. Without a fifth floor, the project loses
10 over 700,000, and my return on investment is reduced down
11 to 1.71 percent. And I cannot convert this building into
12 residences if my return on investment is this low, so --

13 CHAIRPERSON HEATH: Question for you.

14 MR. WANG: Yeah.

15 CHAIRPERSON HEATH: So with the 27 units,
16 you're showing a 7.38 percent return?

17 MR. WANG: That's true.

18 CHAIRPERSON HEATH: You've noted that the
19 fifth floor doesn't add to your units, but this is --
20 this is strictly assuming that you have that additional
21 area on the fifth floor?

22 MR. WANG: Yes, that's true.

23 CHAIRPERSON HEATH: And that gains you --
24 that small area gains you 4 percent?

25 MR. WANG: Yeah. Because that 1,400 square

1 feet would help with the proposed sellable square footage
2 and the selling price of the top floor units, so by a
3 lot.

4 VICE-CHAIRPERSON HILL: So, Mr. Wang?

5 MR. WANG: Mm-hmm.

6 VICE-CHAIRPERSON HILL: The \$750,000 that
7 you're coming at, how are you getting at the 750,000?

8 MR. WANG: So it's kind of simple. So if
9 we assume like 1,450 square feet at roughly -- so at
10 roughly 6- to \$700 per square feet, and then so the total
11 value of that addition is about 1.1 million, and the cost
12 to build that addition is between 350- to 400,000. So
13 net would be a \$700,000 value.

14 VICE-CHAIRPERSON HILL: And the square
15 footage you're basing it on, that's the fifth floor?

16 MR. WANG: Yeah, that's the fifth floor.

17 VICE-CHAIRPERSON HILL: And what was that
18 number again, the square -- how you got the multiple?

19 MR. WANG: 1,450 square feet, yeah.

20 VICE-CHAIRPERSON HILL: 1,450 square feet
21 at how much per square feet?

22 MR. WANG: So around -- so 650 to \$750 per
23 square feet. So -- yeah. Basically, the total value is
24 about 1 million to 1.1.

25 MS. MOLDENHAUER: If you look at the new

1 PowerPoint slide that's up on the chart here, we can walk
2 through each of the fourth floor units because they have
3 a fourth and fifth floor connected, and so you can see
4 each of the fourth floor unit numbers. And then you can
5 see the total square footage for those numbers if the
6 project was approved with the fifth floor square footage,
7 a thousand, 900, and then the sales price.

8 Then if you look at the column to your
9 right, that is showing the square footage without that
10 additional fifth floor square footage. You can see they
11 lower the square footages from a thousand to 740, from
12 950 -- so, in regards to price per square foot, which is
13 how units are marketed, you can see the drastic reduction
14 in the sales prices that you're going to be able to get
15 for your most marketable top floor units. And then you
16 can see the total loss in the sales price that you're
17 obtaining, which is then, as Mr. Wang has testified to,
18 1,052,216 minus the 350,000 for the cost of building the
19 fifth floor. And that's still giving the 20 percent bump
20 to all of those sales prices, even though they don't have
21 a top floor rooftop access and still giving the --
22 assuming a 20 percent bump for the top floor units.

23 CHAIRPERSON HEATH: Any other questions,
24 Board?

25 [No audible response.]

1 CHAIRPERSON HEATH: You can proceed.

2 MS. MOLDENHAUER: Mr. Wang, if you can just
3 talk a little bit about the community outreach and --

4 MR. WANG: Yes. So, yeah, we have done
5 significant -- so extensive community outreach, and we
6 were very responsive to their concerns. And after the
7 ANC meeting -- so yeah. So based on neighbor comments,
8 and we added a trash room and trash chutes, adjusted our
9 unit mix, and made more two- and three-bedroom units
10 available.

11 And also, yeah, we added the landscaping,
12 as Jim mentioned before.

13 So we were able to obtain unanimous ANC
14 support, and yeah, so several letters of supports. And
15 we also obtained HPRB approval, so yeah.

16 MS. MOLDENHAUER: Mr. Wang, I just have a
17 couple of questions for you.

18 In doing any project, which units are
19 typically the most desirable and which typically sell for
20 the most money?

21 MR. WANG: That would be the top floor
22 units.

23 MS. MOLDENHAUER: So, in today's market, do
24 you find having penthouse access or outdoor space
25 critical?

1 MR. WANG: Yes.

2 MS. MOLDENHAUER: Since this building was
3 built to 100 percent lot occupancy structurally, what is
4 the only way that you can obtain outdoor or rooftop
5 space?

6 MR. WANG: That would be the -- yeah, so
7 adding the fifth floor and the roof deck.

8 MS. MOLDENHAUER: If this property had --
9 was more conforming and had maybe a 60 percent lot
10 occupancy or 40 percent lot occupancy, would you
11 typically then provide balconies or other type of
12 architectural designs to provide outdoor space for unit
13 owners?

14 MR. WANG: Correct, assuming HPRB allows
15 it.

16 MS. MOLDENHAUER: But that's not possible
17 here because of the 100 percent lot occupancy?

18 MR. WANG: True.

19 MS. MOLDENHAUER: And no matter what you
20 would do to this project, you would obviously need to
21 address the commercial HVAC systems that are on the roof,
22 the student facilities that are currently there? What
23 other factors are you -- no matter what, you would have
24 to do, are base-level costs that would be associated with
25 this project?

1 MR. WANG: So, basically, the interior
2 needs a full overhaul, so that's in general, regardless
3 the number of units situation. So the base cost to
4 repurpose this building is tremendous.

5 MS. MOLDENHAUER: Thank you very much, Mr.
6 Wang.

7 CHAIRPERSON HEATH: Mr. Cochran, do you
8 have a question?

9 MR. COCHRAN: No, Madam Chair. It's not a
10 question. If there is opportunity, a comment?

11 CHAIRPERSON HEATH: Sure, absolutely.

12 MS. MOLDENHAUER: I have a closing
13 statement. I can either provide that now, or I can wait,
14 obviously, to hear Office of Planning's questions and
15 comments and also provide an opportunity for the ANC to
16 present as well.

17 CHAIRPERSON HEATH: Sure. Okay. If you
18 could wait, we'll turn back to Office of Planning.

19 MR. COCHRAN: Thank you.

20 The Applicant just said that the only way
21 to get access to the roof would be through a fifth floor.
22 There are other ways to get access to roof decks. We've
23 seen many examples where they don't have to add something
24 that counts as a floor.

25 The other thing I would want to point out

1 is, with respect to the argument on financial difficulty,
2 the base situation when the Applicant was looking at the
3 property would have allowed, by right, seven units and
4 perhaps a mezzanine. That base situation has changed a
5 little bit. It's now seven units -- excuse me. It's
6 still seven units by right, but you're now allowed to get
7 more since the Applicant did his pro forma, as a special
8 exception.

9 That's all I want to point out.

10 CHAIRPERSON HEATH: Thank you.

11 Any questions for Office of Planning?

12 COMMISSIONER TURNBULL: So you're basically
13 saying that 27 units is --

14 MR. COCHRAN: Well, I'm saying that the
15 applicant knew that seven units were what were permitted
16 as a matter of right when they went into negotiations
17 about the property.

18 COMMISSIONER TURNBULL: Right.

19 MS. MOLDENHAUER: Can I --

20 VICE-CHAIRPERSON HILL: And I just have --
21 so now they could get 27 units?

22 MR. COCHRAN: Not by right. By special
23 exception, which does not require them to prove that
24 there is an exceptional condition that leads to a
25 practical difficulty that wouldn't then have an impact --

1 a negative impact on the character of the zone or the
2 Zoning Regulations. All they now have to demonstrate is
3 that they meet the criteria that had been recently
4 established in the regulations, which essentially go to
5 -- well, you've got the criteria. I could go through the
6 seven, if you want, but I --

7 CHAIRPERSON HEATH: Okay. Applicant
8 questions, questions of Office of Planning?

9 MS. MOLDENHAUER: Questions for OP, yes.

10 Are you changing the standard? Are you now
11 saying that the Board should consider self-created
12 hardship on an area variance since the Applicant knew
13 that he required relief before purchasing the building?

14 MR. COCHRAN: I am not trying to change any
15 standard.

16 MS. MOLDENHAUER: But you know that
17 self-created hardship, whereas someone knows that they
18 are buying a property that may be unique, whether it's a
19 triangular-shaped lot, a very small lot, or a very large
20 lot, does not bar an area variance?

21 MR. COCHRAN: I'm not suggesting that it
22 does. I'm only pointing out the conditions of which the
23 Applicant would have been aware at the time that they
24 negotiated the building.

25 MS. MOLDENHAUER: No other questions.

1 CHAIRPERSON HEATH: Thank you.

2 So we will move to DDOT. We have a letter
3 of no objection with conditions from DDOT, and I just
4 want to be clear that the Applicant is aware of those and
5 is fine with installing --

6 MS. MOLDENHAUER: Yes, we have been working
7 with DDOT, and we would be fine with complying with their
8 conditions.

9 CHAIRPERSON HEATH: Okay.

10 I assume there is no one here from DDOT,
11 but I will call for DDOT, if anyone is here.

12 COMMISSIONER TURNBULL: Madam Chair, I
13 would just want to maybe amend. I mean, I think even the
14 Office of Planning in their report talked about
15 transportation demand management issues and trying, that
16 the building ought to reach out and do more. And one of
17 the things in which -- since this project is supposedly
18 transit-oriented, that is, were near transit stations and
19 that there's really no parking, I believe -- and I think
20 I would ask OP to maybe confer, but I believe what this
21 building ought to provide is what most other projects are
22 providing, is a transit screen in the lobby that DDOT
23 usually requests. I'm surprised they haven't done that.

24 But I would highly suggest that part of
25 this agreement would be that there would be a transit

1 screen that the Department of Transportation recommends
2 and is tied into giving information on buses and
3 whatever, any kind of public transportation. I would
4 recommend that that be part of this project.

5 CHAIRPERSON HEATH: Okay. All right.

6 MR. WANG: That's a great idea.

7 CHAIRPERSON HEATH: Okay. I will turn to
8 the representative from ANC-1B.

9 MR. NELSON: Once again, my name is Patrick
10 Nelson, and I wanted to just talk about some of the
11 issues that have been discussed.

12 First, I wanted to explain to the
13 Commission that you probably have not received an
14 official letter from the ANC, and that's one of the
15 reasons why I showed up this morning, as the chair of the
16 committee, to explain that this project took quite a bit
17 of time, both on my part and ANC commission that this SMD
18 is in and negotiating some of the issues that we're
19 talking about today as far as the height and the density
20 and all of that. And we were able to negotiate quite a
21 number of changes that they had not even considered, one
22 being trash and how they were going to deal with that,
23 one being bicycle transportation issues that you were
24 hitting on.

25 Another issue that we dealt with was

1 parking that they're not required to have because they're
2 exempt, but we stressed that that was an issue that we
3 wanted them to work on because it is a huge concern for
4 us. So we were able to convince them to go out and lease
5 some spaces in a local parking facilities that they're
6 going to offer to their tenants for a certain time frame
7 to start them in mode of trying to find places to park.

8 We also did talk about the issue that you
9 brought up about the screen and bike shares and all of
10 that, and they did commit that they were going to work on
11 doing that.

12 One of the issues that was talked about
13 very strongly was the -- a number of units that they
14 originally came before us and proposed, and we were very
15 strong in telling them that that was not going to work,
16 that they had to really look at that, that in the zone
17 they were in, they were asking for way more than I knew
18 OP would allow. And they did adjust those numbers down
19 to the 27 that is now projected.

20 And they also explained the rationale
21 behind why they wanted to add the floor in to make the
22 units on the top floor more sellable. We did have some
23 concern with that, but during the course of our
24 discussions, it became quite evident to us on the
25 committee that it was a viable option, and we had hoped

1 that there would not be a real issue since they were not
2 going to be showing from the street, all of the things
3 that normally are community-related issues that come up.

4 So the committee, when we met, we had some
5 final resolutions that we needed to work out with the
6 developer before the ANC actually met, so I made a
7 suggestion as the chair that I could not hardly support
8 this project going forward unless certain conditions were
9 met, and I said that I would recommend that the committee
10 not support this project.

11 And if between the time that we met and the
12 time that the Commission met, they came back to us with
13 concrete resolutions to specific issues -- parking and a
14 couple other things that we were dealing with, that the
15 community wanted greenspace and all that stuff -- if they
16 had concrete solutions to that, that were acceptable to
17 me and our committee, and we would go in front of the
18 Commission and recommend that they support it, which is
19 what happened.

20 Due to the fact that the chair was not at
21 that meeting and the vice-chair took over, somehow in the
22 communication, the remittance of the normal forms that we
23 send was negated, so it never came in.

24 So I wanted to make sure that I came to
25 explain to you that the ANC did support this with all of

1 the changes that were agreed to, and that we certainly
2 are willing to send you in the required forms from the
3 ANC, but because of the timing, knowing that you need
4 your 7-day window, by the time we realized that it hadn't
5 been sent, it was past that. So I wanted to comment
6 personally, explain what happened and give you the
7 opportunity, if you want the ANC to send in the official
8 documentation. I will have the chair do that sometime
9 this week. I just didn't want to have it sent in and not
10 get it into the record because of technical issues.

11 CHAIRPERSON HEATH: Sure. Okay.

12 Thank you for coming down. We appreciate
13 you taking the time and for offering your support. If
14 you could submit that formal paperwork this week for the
15 record, that would be great.

16 MR. NELSON: Okay. I will do that.

17 CHAIRPERSON HEATH: Any questions, Board,
18 for ANC?

19 COMMISSIONER TURNBULL: No. Just thank you
20 again for coming down.

21 CHAIRPERSON HEATH: All right.

22 MS. MOLDENHAUER: I have one question.

23 CHAIRPERSON HEATH: Sure.

24 MS. MOLDENHAUER: Were you present at a
25 meeting that we held at a homeowner literally directly

1 across the street from this project?

2 MR. NELSON: Yes, I was.

3 MS. MOLDENHAUER: And at that point, was
4 the fifth floor shown to the community and to the people
5 that literally live across the street, and did they
6 express any concern?

7 MR. NELSON: Yes, I was, and no, there was
8 no concern from them. They had other concerns not
9 relating to the roof part of it.

10 MS. MOLDENHAUER: Thank you.

11 CHAIRPERSON HEATH: Thank you.

12 Is there anyone here wishing to speak in
13 support of this application? Anyone in support?

14 [No audible response.]

15 CHAIRPERSON HEATH: Is there anyone here
16 wishing to speak in opposition to this application?
17 Anyone in opposition?

18 [No audible response.]

19 CHAIRPERSON HEATH: Then I'll turn back to
20 the Applicant for closing.

21 MS. MOLDENHAUER: Yes. I do believe that
22 the single-member district representative, Ellen
23 Sullivan, was on her way to try to make it in time to
24 speak in support of the project and express the degree of
25 communication she's had with the local community. I

1 don't know if she'll be here in time. Doesn't look like
2 it. But I just wanted to let you know that we were
3 trying to -- she was texting with us, trying to come to
4 attend.

5 So, just in summary, obviously we are here
6 for special exception relief based on the new 330.7 for
7 the number of units that do not comply with the
8 900-square-foot requirement and the existing
9 nonconformity as to the four-story structure, four-story
10 structure that's over 35 feet in height.

11 We were also, then, asking for a variance
12 relief, and I want to stress that these are area
13 variances. These require practical difficulty, not undue
14 hardship. These are situations in which the Board and
15 the Court of Appeals has repeatedly confirmed that simply
16 because an Applicant new a property had unique conditions
17 at the time that they acquired it or at the time that
18 they were seeking relief does not bar relief, and that
19 this is not a situation where we are required to show
20 undue hardship, that there is no other possibility for
21 use, but rather that there are unique conditions here
22 that create a practical difficulty for the Applicant.

23 That being said, this property does exude a
24 large number of unique and exceptional conditions. As I
25 said earlier, it's a large lot. This is a

1 6,000-square-foot lot which is about five times larger
2 than a typical R-4 lot. It is 100 percent lot occupancy,
3 when most lots are only permitted to be about 40 to 60
4 percent lot occupancy. It's a nonresidential structure,
5 an institutional structure that has to be adaptively
6 reused, to be returned to the community as a residential
7 use, and it is located in a historic district and was
8 actually built by a historical African American
9 architect, which desires the intention to obviously
10 preserve as much as possible, both on the exterior and on
11 the interior auditorium that currently exists.

12 The historic construction of the building
13 created some unique conditions, such as the thickness of
14 the walls, the wide staircases, the challenging layouts,
15 and also the existing penthouse structures that are
16 taller than the proposed fifth floor.

17 Practical difficulty without the relief,
18 the development constraints due to this historic
19 structure, as I just indicated, we have -- we are only
20 asking for a fifth floor, which would only add 1,451
21 square feet of usable and sellable square footage. The
22 financial value of that fifth floor is 700,000 out of
23 only a \$900,000 profit. For a real estate developer,
24 there are below-grade units here that have about 12-foot
25 ceilings. That is an existing condition. While yes,

1 there are units there, those are challenging units to
2 sell, and those are seller conditions that preexist and
3 that, as you can see, if you look on the financials that
4 we provided in our prehearing statement, those sales
5 prices are obviously accounted for based on the fact that
6 those are below-grade seller units, where we're creating
7 window wells to provide light and air to those units.
8 But that square footage, that is obviously not as
9 desirable for a marketability and create challenges.

10 We then have the first floor units, which
11 have the awkward layout. As Mr. Foster walked through,
12 all of those first floor units have to be two-story
13 structures. Not everybody wants to buy a two-story
14 structure where you have to walk up and down to get from
15 your kitchen to your bedroom if you want to go get a
16 glass of milk or a drink. Those also create practical
17 difficulty.

18 We then have the auditorium, which the only
19 way to adaptively reuse that structure without trying to
20 seek extreme measures of going to HPRB to remove those
21 original two-story windows would be to do some
22 substantial construction. You're talking about
23 substantial base-level construction that has to occur,
24 totally removing half of the portion of the floor,
25 lowering that floor, and then putting a mezzanine.

1 In the prior hearing, we heard testimony
2 regarding the fact that that auditorium, while large,
3 creates its own practical difficulty, it's in the record
4 that because there are no windows associated with that
5 auditorium, mezzanine-level bedroom or loft-style
6 bedroom, that has to be a studio. And just because of
7 the unique size, it's -- be a very large studio that is
8 going to most likely have challenges, with being able to
9 have comps, and with ability to sell that.

10 You then have the challenges, as Mr. Wang
11 testified to, about the inability to have any outdoor
12 space. If we drive around the city in today's day, a
13 majority of projects have amenity space with pools or
14 outdoor facilities or they have balconies, something to
15 allow an individual to connect to their outdoor
16 surroundings while still within their unit. This project
17 does not have any of that, and that is a unique condition
18 that creates practical difficulty.

19 We are asking for a very small, only
20 one-third fifth floor that is shorter than the existing
21 rooftop structures, and is -- if not permitted or not
22 approved, this Board has found in other situations that
23 practical difficulty based on Tyler and based on other
24 Court of Appeals cases are sufficient to support an area
25 variance and are sufficient to support practical

1 difficulty.

2 Here, there is a direct connection between
3 the necessity to adaptively reuse this building and the
4 financial hardship that would encounter not just this
5 Applicant, but any Applicant that were to pursue a
6 redevelopment or a reuse of this site.

7 Another in regard to the question of degree
8 of density, this is just a chart that we have used in
9 other cases. These are all cases that were approved by
10 an area variance. Now based on the change of the Zoning
11 Commission, this is no longer an area variance standard,
12 but as you can see, the number of units, 27 units, is in
13 the middle, directly in the middle in regards to the
14 degrees of deviation that we're requesting based on the
15 size of this lot and the total number of units requested.

16 We believe that what we're submitting -- we
17 have been working with the community. One of the most
18 important things, I think, from the special exception
19 standard is engaging in a dialogue with the community,
20 making sure that to OP's point that this does not create
21 an adverse impact or a negative character, as Mr.
22 Turnbull stated, to the community.

23 Here, I believe we have shown on the record
24 that this does not. We have adjacent property owners
25 that we have spoken with. We have nobody in opposition

1 stating concerns. We have the ANC unanimously supporting
2 the project. We have HPRB approving on consent agenda,
3 the physical condition and the concept of this fifth
4 floor, whether it was a mezzanine at the time, but the
5 physical appearance of this structure.

6 We believe that based on all of those
7 factors that this Board should support the areas of
8 relief requested.

9 That being said, due to the fact that OP
10 has recommended support for a majority of the relief, but
11 not the height, we would ask if the Board has any issues
12 with any of the relief they would possibly bifurcate
13 their decision.

14 But that is the end of my closing remarks.
15 I am available for questions.

16 But we also -- I just want to point out
17 that Ms. Sullivan, who is a single-member district, did
18 arrive, if the Board is so kind to provide her with a few
19 minutes to testify.

20 CHAIRPERSON HEATH: Sure. We will allow
21 you.

22 MS. SULLIVAN: Thank you. I appreciate
23 your accommodation, and I apologize for my tardiness. My
24 name is --

25 CHAIRPERSON HEATH: One second.

1 Mr. Moy, does she need to be sworn in?

2 COMMISSIONER TURNBULL: Yes. You need to
3 be sworn in.

4 MR. MOY: You should stand.

5 MS. SULLIVAN: Yeah.

6 MR. MOY: Do you solemnly swear or affirm
7 that the testimony you're about to present in this
8 proceeding is the truth, the whole truth, and nothing but
9 the truth?

10 MS. SULLIVAN: I do.

11 MR. MOY: Thank you.

12 [Witness sworn.]

13 MS. SULLIVAN: I would like to echo what
14 I'm sure have been the statements of my colleague,
15 Patrick Nelson. This has been a very interesting project
16 for our neighborhood, mostly because of how well we have
17 worked with the developers. This has been a great
18 process. They have come to the community with an open
19 mind as to how we could work on things. They have given
20 us, with their openness, the opportunity to look at doing
21 parking in a different way than any developer has ever
22 been willing to look at in our neighborhood.

23 Where other developers have said, "No, we
24 can't look at off-site parking. What are you talking
25 about? That's silly," these developers said, "Let us

1 look. Let us see what we can find out," and they did it.
2 They have an agreement in place that will allow for
3 parking, more than what the minimum will be, probably, at
4 the time that their building is built, not that they
5 legally even have to meet that minimum, and for 2 years
6 that they will provide for their residents. That's
7 something that was very important to the community.

8 They have also worked with the community on
9 making sure that the units are of a size that will allow
10 for a variety of types of people living in the building.
11 It's not all just small little units. We're going to
12 have some bigger units that will allow for more of a
13 diverse family structure, whether it's people living with
14 their aging parents or people with children.

15 And so we appreciate what the developer has
16 done. We appreciate how they came and worked with the
17 community, and I wanted to make sure, even though I was
18 tardy today. It was incredibly important for me to be
19 here to state how well we have worked with them and how
20 much community support they have.

21 I'll be honest and say when they first came
22 to us, we were a little worried. We weren't really sure
23 what they were planning to do. It sounded, you know --
24 it was right smack in the middle of a very residential
25 part of the neighborhood, but in working with them, we

1 have come to realize that this is going to be a good
2 thing for our neighborhood, and we would like for the
3 construction to be able to proceed.

4 Right now, this is an empty building. It
5 is on a corner where we have had problems previously, and
6 we don't want a vacant building there. We want a
7 building that is busy 24 hours a day. That corner needs
8 eyes on the street at all times, and having a residential
9 building will provide that. Any other use would not, and
10 so the community supports this. And we would like for it
11 to go forward.

12 And I apologize for the ANC's previous
13 mistake. I am getting our letter of support in. As was
14 stated, this was voted with unanimous support by the ANC,
15 and so we would like to see it proceed.

16 CHAIRPERSON HEATH: Thank you, and thanks
17 for coming down.

18 Any questions for the Commissioner?

19 [No audible response.]

20 CHAIRPERSON HEATH: All right. Then we'll
21 close this hearing.

22 Is the Board ready to deliberate?

23 VICE-CHAIRPERSON HILL: Sure.

24 CHAIRPERSON HEATH: Does anybody want to
25 begin?

1 COMMISSIONER TURNBULL: Oh, I'll lead off,
2 if you like.

3 I want to thank the Applicant for coming
4 back and presenting new information -- well, actually,
5 it's kind of old information, redone.

6 I want to thank the ANC and the
7 neighborhood for their input and working on this case.

8 I guess you need thanks on getting
9 landscaping around the building, which it sounds like
10 there wasn't going to be, which we would have probably
11 brought up, anyways, but thank you for your input on
12 that.

13 This is -- it's a troubling -- it's a good
14 project; it's a troubling project in certain aspects.
15 And I struggle with a lot of this.

16 We've talked about the R-4 and the
17 qualities that we're looking for and what we've struggled
18 for the last 7 years on the Zoning Commission listening
19 to all the neighborhoods and all the ANCs and talking
20 about the row houses and the heights and the character of
21 this neighborhood, so we're very in tune to what people
22 are saying about trying to preserve the integral aspects
23 of the R-4 neighborhood.

24 I guess to get back to the -- some of those
25 things are -- I'm not that troubled with anymore. We've

1 already gone through the special exception aspects about
2 the conversion. As we said before, matter of right, as
3 the OP has pointed out, seven units are matter of right
4 on this, on this lot. You have a historic building. You
5 have an old building. And so when you come back, it's
6 the whole point that we did the special exception process
7 for this and had done a rewrite.

8 And so getting at 27 units is what we're
9 looking at, which is four times the matter of right that
10 could normally be built, and apparently, we've heard
11 testimony that it could have been more. Apparently, they
12 had more on the ANC who said, "Wait a minute." So we're
13 down to 27 because the ANC struggled and said, "You've
14 got to get less."

15 It's still a lot, but considering what the
16 structure is, it's workable. There's a variety of units.
17 We've heard that. There's one-bedroom studios,
18 three-bedroom. So it sounds to me that there is a very
19 viable building here from the standpoint of residential
20 units and fitting into the neighborhood, and so I'm not
21 that concerned about going ahead with the special
22 exception for the number of units that they want.

23 What does trouble me is some of the -- and
24 I want to just -- I don't want to belabor this point, but
25 the drawings that we got on this project were terrible.

1 From day one, when we had the mezzanine, we couldn't even
2 tell there was a mezzanine. The drawings didn't show it.
3 There wasn't a section. There was nothing clear that
4 showed what this building really looked like on the
5 inside, so we struggled day one trying to interpret what
6 the heck we were getting.

7 Even now, the drawings that we got are
8 smaller than what we had before. They are tiny, and we
9 didn't see an actual floor plan of a possible unit until
10 tonight -- until today. So you struggle with what are
11 they really doing, what do they really want to do and
12 why.

13 And I guess I'm not totally convinced. I
14 mean, the third floor and the fourth floor are basically
15 the same units. It's basically a mirror image from one
16 to the other.

17 And the amount of floor area that they're
18 taking up because of larger walls, I think -- I'm not
19 convinced that that's much of a hardship. I mean, if you
20 buy an old building and you get loft buildings and loft
21 spaces, people like that. So this building is not -- I
22 don't think this building is going to have a problem
23 having -- selling out that auditorium or anything. There
24 are buyers who want to buy unique spaces, and in a place
25 like this near transportation.

1 So I think it's key to understand that this
2 is a viable building, this is a viable structure, and
3 it's got very key elements that are with it.

4 What I really can't buy is the fifth floor
5 addition, making these luxury units -- and again, a third
6 of that space that's going up on the roof is not going to
7 be usable. It's going to be open space with a stairwell,
8 stair going up, so you have a little play area. You
9 could have a bedroom, maybe. It's going to be tiny -- or
10 a bathroom, which I find difficult to do. That's even
11 more expensive.

12 I guess the pro forma, I guess I am not
13 convinced that the pro forma shows all of the things that
14 really go into this, but I'm not going to debate that.
15 But I am just concerned that by adding this extra unit,
16 these units to me are going to sell, the fourth floor
17 without a penthouse.

18 Better that you could have gone up to the
19 fifth floor as the whole building and used the roof as a
20 roof deck. To me, that would have been more amenable to
21 the whole people in the building, but it doesn't have
22 that. Instead, you're catering to seven units because
23 you're going to bump up the price, and to me, I don't buy
24 that.

25 As far as what we're trying to do with -- I

1 mean, again, this building is over the height limit, and
2 adding the 10 feet, even though it's going to be below
3 the penthouse level now, it's still a floor. It's a
4 usable floor that gets counted, and the bulk that gets
5 added to this building, it's precedent-setting to the R-4
6 district, and what I don't want to do is to start going
7 down that road.

8 I think we went a long way, 7 years going
9 through this trying to determine what was trying to keep
10 -- reign in a lot of this. I mean, by doing this special
11 exception, you are encouraging development of buildings
12 like this, but going an extra -- I mean, the Applicant
13 even submitted the clarification we did, and if you go
14 through that, I mean, I think it's very clear what we
15 wanted to do with the R-4 district.

16 And if the Applicant wants to bifurcate
17 this, that's fine. I can go on with the special
18 exception and grant this building to go ahead with the 27
19 units, but I cannot agree with adding on that fifth
20 floor. I just don't see what that does. I think it does
21 harm the zoning regulations, and it will cause future
22 harm in R-4 areas, R-4 neighborhoods in the future. I
23 just can't go along with it.

24 CHAIRPERSON HEATH: Do you want to go?

25 VICE-CHAIRPERSON HILL: I'm going to agree

1 with my colleague, basically. I mean, I think that if
2 you want to bifurcate and go ahead and do everything, I
3 can agree with everything but the height myself. I mean,
4 it's just -- I think that it's a great project. I think
5 it's a nice building. I think that they can do a roof
6 deck on the top, and then everybody can enjoy that.

7 I think it's too bad that they can't -- I
8 don't know what they have to do with the auditorium in
9 order to -- I was just kind of stuck with the finances.
10 I mean, that was the argument for me. It's like, you
11 know, is it not possible to do the project? I mean, I
12 think it is possible to do the project without the added
13 square footage up there for the additional price that
14 you'll get for those, and so -- I mean, I think it's a
15 good project, and I think it would go forward with the
16 ability that they're getting 27 versus the 7, and that
17 it was nonconforming. And, you know, you kind of knew
18 that going in. To have an -- and I don't know if this or
19 isn't the case, but when you purchase it, you know what
20 you're going to be able to get. And then to bank on
21 everything being for a variance, I don't think that
22 that's -- what I could hang my hat on it, so I could
23 bifurcate.

24 CHAIRPERSON HEATH: All right. So I think
25 it sounds like we're all in agreement that this is a

1 great project.

2 I really appreciate that it seems the
3 Applicant spent a lot of time working with the community.
4 It sounds like the discussions were really fruitful and
5 resulted in a lot of positive outcomes over the course of
6 the development of the project to this point.

7 I do think, as I said, that this is a great
8 project. It's a great building and an asset to the
9 community as a new development and not left vacant. I
10 agree.

11 And I'd like to see this project go
12 forward. I think that the character of the building
13 makes these residential units particularly unique. Even
14 a seller, a seller unit having a 12-foot-high ceiling, I
15 think is unique and makes those -- what would normally
16 seem undesirable as units a lot more appealing, and I
17 agree with my colleagues that you have got a great
18 amenity in the roof.

19 I don't know that the pro forma has
20 convinced me enough that you need the roof, that
21 additional fifth floor as apartment space, but there is a
22 possibility for that roof to be used as an amenity for
23 the entire building, which certainly is something that
24 should be reflected in the prices of the units. It
25 wouldn't be personal space, but it would be shared

1 communal space.

2 And so I have no problem supporting the
3 special exception, but I do have a hard time buying the
4 argument for the fifth story, and so given the comments
5 so far from the Board, I would move that we approve the
6 application for special exception relief and the variance
7 for 406 for the nonconforming court, but that we deny the
8 variance for under 2001 -- 2001 pursuant to 400, to add
9 the fifth story.

10 And I'd also like to add that we should
11 also include the provisions from DDOT for transportation
12 management with the nine long-term bicycle parking spaces
13 and the four short-term spaces, and the transit screen,
14 which is seemed the Applicant was amenable to.

15 So that's my motion.

16 VICE-CHAIRPERSON HILL: I second your
17 motion.

18 CHAIRPERSON HEATH: Any further discussion?
19 [No audible response.]

20 CHAIRPERSON HEATH: So all in favor of the
21 motion, signify by saying "aye"?

22 [Chorus of ayes.]

23 CHAIRPERSON HEATH: All opposed?
24 [No audible response.]

25 CHAIRPERSON HEATH: The motion carries.

1 Mr. Moy, full order?

2 MR. MOY: There were no party status
3 requests --

4 CHAIRPERSON HEATH: Okay. So summary
5 order?

6 MR. MOY: -- and the ANC was in support.
7 Right.

8 CHAIRPERSON HEATH: Okay. All right. So
9 we will stick with the full order.

10 MR. MOY: Very well.

11 MS. MOLDENHAUER: We would request a
12 summary order. Is there no possible way for a summary
13 order to be requested? There's no parties in opposition.
14 The ANC is in support.

15 CHAIRPERSON HEATH: Of part of the
16 application.

17 MS. MOLDENHAUER: The ANC is in support of
18 the full application.

19 CHAIRPERSON HEATH: Oh, I'm sorry. The OP
20 --

21 MS. MOLDENHAUER: So could bifurcate in
22 regards to the support for this application and then have
23 a full order for the denial?

24 [Pause.]

25 CHAIRPERSON HEATH: Okay. So just to

1 clarify for the record, we're not denying the relief for
2 2001.3 based on the existing height, but for the
3 additional height of the fifth story. And we can
4 bifurcate, but I think -- I'm fine to bifurcate and do
5 this as a summary order on that which was approved and a
6 full order on the denial.

7 MR. MOY: Okay. All right.

8 MS. MOLDENHAUER: Thank you very much,
9 Madam Chair.

10 MR. MOY: This is on the motion of Madam
11 Chair Heath; second the motion, Vice-Chairperson Hill;
12 also in support, Mr. Turnbull. Two other members not
13 present. And I think you've already cited the relief.

14 CHAIRPERSON HEATH: We'll take a 50-minute
15 break, and then we'll come back with Application No.
16 19076.

17 [Recess taken from 11:32 to 11:47 a.m.]

18 CHAIRPERSON HEATH: All right. Mr. Moy, we
19 are ready. If we can call our next case?

20 MR. MOY: Yes. Thank you, Madam Chair.

21 Before I call the next one, I want to add
22 in my preliminary at 9:30, I neglected to --

23 CHAIRPERSON HEATH: Can we come to order,
24 please?

25 **APPLICATION NO. 19066**

1 MR. MOY: I neglected to mention that
2 Application No. 19066 of Gabriel and Stephanie Klein,
3 that has also been removed from the docket and postponed,
4 rescheduled to October 20th. I just wanted to mention
5 that for the record.

6 **APPLICATION NO. 19076**

7 MR. MOY: So back to the top of the batting
8 order, then to the table, Applicants to Application No.
9 19076 of Kelly Gorsuch. This is a request for a variance
10 relief at Property 1544 9th Street, Northwest.

11 CHAIRPERSON HEATH: Will the parties for
12 that application please come forward. Please introduce
13 yourselves.

14 MS. MOLDENHAUER: Good morning. Meridith
15 Moldenhauer. I am here on behalf of the Applicant.

16 MR. GORSUCH: Good morning. My name is
17 Kelly Gorsuch. I'm the property owner.

18 CHAIRPERSON HEATH: Okay. I believe that,
19 largely, this file is complete. I do have a couple
20 issues.

21 One, the Affidavit of Posting was dated
22 September 28th. Was that the actual date it was posted?
23 Do you have anything showing when the notice was posted?

24 MS. MOLDENHAUER: I did communicate with
25 someone in my office, and I know that she went out and

1 she posted it on the required date, 15 days prior to the
2 hearing. I am just looking in the record to confirm
3 that, but I can attest to the fact that we posted it on
4 the 21st, November 21st.

5 CHAIRPERSON HEATH: Okay.

6 MS. MOLDENHAUER: September 21st. I'm
7 sorry.

8 CHAIRPERSON HEATH: September, right.

9 MS. MOLDENHAUER: September 21st. We are
10 not yet at October 21st. September 21st.

11 CHAIRPERSON HEATH: Okay. All right.

12 MS. MOLDENHAUER: Monday, September 21st,
13 at 4:38 p.m.

14 CHAIRPERSON HEATH: Okay. All right.
15 Thank you.

16 MS. MOLDENHAUER: We also were informed
17 that the ANC filed a resolution of support, I think, last
18 night or this morning. We have hard copies of those for
19 the Board, if they'd like to see.

20 CHAIRPERSON HEATH: That would be helpful.
21 Does that resolution also include their
22 conditions?

23 MS. MOLDENHAUER: [Nods head up and down.]

24 CHAIRPERSON HEATH: Okay. Thank you. All
25 right.

1 MS. MOLDENHAUER: Just for the record, yes,
2 the resolution does include the conditions that we had
3 previously put into our prehearing statement.

4 CHAIRPERSON HEATH: Okay. All right.
5 Okay.

6 So, with those matters handled, I don't
7 have any other issues with this application. It appears
8 to me to be complete.

9 Does anyone also on the Board have any
10 questions or anything they need to hear from the
11 Applicant?

12 COMMISSIONER COHEN: Yes. I'd like to know
13 for the record, do you agree with the Office of
14 Planning's recommendations about the trash and the
15 outdoor seating and the hours?

16 MS. MOLDENHAUER: Yes. We are fine and
17 agreeable to the OP's conditions.

18 COMMISSIONER COHEN: Thank you.

19 CHAIRPERSON HEATH: All right. So, as is
20 customary with the way we've been proceeding recently,
21 you have the right to a full hearing. We believe we have
22 all the information that we need from you, so you can --

23 MS. MOLDENHAUER: The Applicant is more
24 than happy to rest on the record.

25 CHAIRPERSON HEATH: Thank you.

1 All right. So then we'll turn to Office of
2 Planning. We do have a letter of approval with
3 conditions, but we'll --

4 MS. RAPPOLT: Yes. Megan Rappolt for the
5 record. I'm filling in for Steve Mordfin, who was the
6 case manager on this project, and we continue to support
7 the request with the conditions that were outlined in our
8 report.

9 CHAIRPERSON HEATH: Thank you.

10 Any questions for Office of Planning?

11 [No audible response.]

12 CHAIRPERSON HEATH: Any questions from the
13 Applicant?

14 MS. MOLDENHAUER: No questions for Office
15 of Planning. Thank you.

16 CHAIRPERSON HEATH: Okay. And we have a
17 letter from DDOT recommending no objection. Is there
18 anyone from DDOT here on this case?

19 [No audible response.]

20 CHAIRPERSON HEATH: It appears there's not,
21 so we're fine to proceed based on their recommendation.

22 Is there anyone here from the ANC-6E?

23 [No audible response.]

24 CHAIRPERSON HEATH: Okay. We do now have
25 their letter, and so that will be added to the record.

1 And the Applicant has stated that you're
2 fine to adhere to the conditions that the ANC has put
3 forward.

4 MS. MOLDENHAUER: Yes, we are.

5 CHAIRPERSON HEATH: All right.

6 Is there anyone here wishing to speak in
7 support of this application? Anyone in support?

8 [No audible response.]

9 CHAIRPERSON HEATH: Anyone here wishing to
10 speak in opposition? Anyone in opposition?

11 [No audible response.]

12 CHAIRPERSON HEATH: Great. Then, normally,
13 we would turn to you for closing, but there's nothing to
14 rebut or --

15 MS. MOLDENHAUER: No closing required.
16 Thank you very much for your time.

17 CHAIRPERSON HEATH: Okay. Then I would
18 move that we accept this application for variance to
19 allow the conversion of this one-family dwelling into a
20 restaurant, with the conditions stated by OP, and I'll
21 just read those conditions.

22 First, all trash and recyclables shall be
23 stored within the fenced rear yard with collection from Q
24 Street only. Collection of all refuse shall take place
25 only between the hours of 9 a.m. and 9 p.m. to avoid

1 disturbing adjacent residential neighbors. No
2 recyclables shall be placed within dumpsters between 9
3 p.m. and 9 a.m. to protect adjacent residential neighbors
4 from excessive noise.

5 Number two, no outdoor seating or parking
6 shall be permitted within the rear yard.

7 Number three, only the evening meal shall
8 be served by reservation only, except that one table may
9 be left open each evening for neighborhood residents
10 without a reservation. There shall be no more than two
11 seatings per evening.

12 And would the Board--

13 [Pause.]

14 CHAIRPERSON HEATH: All right. So I'm also
15 going to go through the conditions from the ANC. The
16 first -- some of them are duplicative, and so -- and the
17 first appears to be -- I'll read it -- though trash and
18 recyclables, including waste, oil, will be stored in the
19 fenced area -- fenced-in area at the west of the building
20 with all trash service being accomplished from that rear
21 location. No trash or recyclables will be stored I
22 public space on either 9th or Q Streets, Northwest,
23 regardless of whether said space is considered parking
24 and maintained by the property owner under easement.

25 Recyclables will not be placed in dumpsters

1 after 9 p.m. or before 9 a.m., which was also in the
2 Office of Planning's request, in order to avoid
3 associated noises from disturbing adjacent residential
4 neighbors in the late evening or early morning hours.
5 Likewise, collection of trash and recyclables by licensed
6 haulers will not take place during these hours for the
7 same reason.

8 Number three, no vehicles associated with
9 the property, the business, or other parties, including
10 owners and employees, shall be parked on public space on
11 the 9th or Q Streets, Northwest, sides of the property or
12 in the vacant area on the west side of the building on
13 the property at any time. It is understood and accepted
14 that as part of the use of the property as a restaurant,
15 no residential parking permits can be issued to any
16 vehicles registered at the address 1544 9th Street,
17 Northwest.

18 Number four, the Shaw Bijou will engage a
19 valet parking service to provide parking for the
20 restaurants customers during all hours of operation. The
21 area where 1544 9th Street, Northwest, is located is
22 understood to have a parking deficit, which makes finding
23 parking difficult for neighborhood residents. It's our
24 intention to not cause any further parking burdens on our
25 neighbors as a result of the operation of the Shaw Bijou.

1 Number five, it is understood that any
2 alterations to the exterior of the building at 1544 9th
3 Street, Northwest, and any signage for the restaurant
4 must be approved by the D.C. Office of Planning's
5 Historic Preservation Office, as the property is located
6 within the boundaries of the Shaw Historic District.

7 Number seven, it is the intention of the
8 Shaw Bijou that the greenspace or parking area on the Q
9 Street side of the building at 1544 9th Street,
10 Northwest, will not be used for outdoor seating for the
11 restaurant, but will instead be maintained as a
12 greenspace, including a garden where herbs and vegetables
13 for use in the restaurant's kitchen may be grown. If
14 this green area is to be fenced, it is understood that
15 permits must be applied for and approved by the D.C.
16 Office of Planning's Historic Preservation Office, and
17 that said fencing shall be of a character consistent with
18 historic fencing found in the Shaw Historic District.

19 And number seven, the last small curb cut
20 on the Q Street side of the property will be eliminated
21 and restored to its normal original condition at the
22 property owner's sole expense, including cost of permits
23 and all construction necessary to accomplish this work.

24 So those are all of the conditions, and
25 that is my -- a long motion, but that's my motion.

1 COMMISSIONER COHEN: And I'll second that.

2 Do you want me to read --

3 [Laughter.]

4 CHAIRPERSON HEATH: You don't have to.

5 All those in favor of the motion, signify
6 by saying "aye."

7 [Chorus of ayes.]

8 CHAIRPERSON HEATH: All those opposed?

9 [No audible response.]

10 CHAIRPERSON HEATH: The motion carries.

11 MR. MOY: The Staff would record the vote
12 as 3 to zero to 2. This is on the motion of Madam Chair
13 Heath to approve the application for the relief requested
14 and with that list of conditions; seconded the motion,
15 Ms. Cohen; also support Vice- Chair -- Vice-Chairman
16 Hill; two members not present. The motion carries,
17 ma'am.

18 CHAIRPERSON HEATH: Summary order.

19 MR. MOY: Thank you.

20 MS. MOLDENHAUER: Thank you very much.

21 **APPLICATION NO. 19078**

22 CHAIRPERSON HEATH: We'll call our next
23 case, 19078.

24 MR. MOY: All right. To the table
25 applications -- or rather, Applicants to Application No.

1 19078, Application of Andrew and Hope McCallum.

2 Madam Chair, this is a request, as
3 advertised, for special exception relief under Section
4 223, not meeting side yard requirements, not conforming
5 structure requirements, to construct a rear addition at
6 4108 Garrison Street, Northwest.

7 CHAIRPERSON HEATH: All right. Would you
8 please introduce yourself. Please make sure your
9 microphone is on, the green glowing light.

10 MR. McCALLUM: There we go. Yep. Good
11 morning, everyone. My name is Andrew McCallum. I am the
12 resident at this property, 4108 Garrison Street.

13 CHAIRPERSON HEATH: Okay. One moment.

14 Okay. So I think your file is largely
15 complete. There's one issue that we have, and that is
16 that your self-certification doesn't include your
17 calculations for side yard, and so I believe that you can
18 amend your certification to make sure that you've
19 included that, your calculations for side yard.

20 MR. McCALLUM: Okay.

21 CHAIRPERSON HEATH: All right. Okay. Any
22 other questions? Board?

23 [No audible response.]

24 CHAIRPERSON HEATH: All right. Then you
25 have the right to a full hearing, but we believe that

1 your file is largely complete, and so we can proceed, if
2 you're fine with proceeding on with the rest of the
3 hearing.

4 MR. McCALLUM: Yeah. I'm good to let the
5 Office of Planning support be my record.

6 CHAIRPERSON HEATH: Okay. Then we'll turn
7 to Office of Planning.

8 MS. RAPPOLT: Megan Rappolt again. For the
9 record, I am the case manager on this particular request,
10 and we stand on the record in support of the request.

11 CHAIRPERSON HEATH: Thank you.

12 Any questions of Office of Planning?

13 [No audible response.]

14 CHAIRPERSON HEATH: Applicant, any
15 questions of Office of Planning?

16 MR. McCALLUM: Nope.

17 CHAIRPERSON HEATH: Okay. We -- is there
18 anyone here from DDOT on this application? We do have a
19 letter of no objection from DDOT.

20 [No audible response.]

21 CHAIRPERSON HEATH: Is there anyone here
22 from ANC-3E?

23 [No audible response.]

24 CHAIRPERSON HEATH: We do understand that
25 ANC-3E has heard your request at their meeting on

1 September 10th. They recommend approval, based on their
2 letter.

3 All right. Is there anyone here wishing to
4 speak in support of this application? Anyone in support?

5 [No audible response.]

6 CHAIRPERSON HEATH: Anyone here wishing to
7 speak in opposition? Any opposition?

8 [No audible response.]

9 CHAIRPERSON HEATH: Then we will close this
10 hearing.

11 COMMISSIONER COHEN: Ms. Chair, I move to
12 approve BZA Case 19078, request for special exception
13 relief under 223 for a two-story addition and deck to an
14 existing single-family dwelling at 4108 Garrison Street,
15 Northwest, and ask for a second.

16 VICE-CHAIRPERSON HILL: I second.

17 CHAIRPERSON HEATH: Any further discussion?

18 [No audible response.]

19 CHAIRPERSON HEATH: All right. All those
20 in favor of the motion, signify by "aye."

21 [Chorus of ayes.]

22 CHAIRPERSON HEATH: All those opposed?

23 [No audible response.]

24 CHAIRPERSON HEATH: All right. Then the
25 motion carries.

1 MR. MOY: The Staff would record the vote
2 as 3 to zero to 2. This is on the motion of Ms. Cohen to
3 approve the application for the relief requested;
4 seconded the motion, Vice-Chairman Hill; also in support,
5 Madam Chair Heath; two members not present with us today.
6 The motion carries, ma'am.

7 CHAIRPERSON HEATH: Summary order, please.

8 MR. MOY: Thank you.

9 **APPEAL NO. 19080**

10 CHAIRPERSON HEATH: All right. I think we
11 can go next to 19080, Mr. Moy.

12 MR. MOY: Okay. To the table, parties to
13 Appeal No, 19080. This is of Adams Morgan Neighbors for
14 Action. This is an appeal of the decision by the Zoning
15 Administrator to issue a Building Permit No. B, B as in
16 Bravo, 1410380, at property 1770 Euclid Street,
17 Northwest.

18 [Pause.]

19 CHAIRPERSON HEATH: Is it possible to have
20 somebody help you with opening that, so that you can --

21 MS. JOSEPH: That would be willing to help
22 me, yes.

23 CHAIRPERSON HEATH: Yeah. That way, we can
24 get started with the hearing. Thank you.

25 [Pause.]

1 CHAIRPERSON HEATH: If you could please be
2 seated at the table.

3 MS. JOSEPH: I have copies for all the --

4 CHAIRPERSON HEATH: That's fine. Thank
5 you. If you could hold them for now, and if they're
6 necessary to distribute, you can pass them on to the
7 Board Secretary.

8 If you could each introduce yourselves.
9 Why don't you start.

10 MR. TONDRO: Maximilian Tondro with the
11 DCRA, representing the Zoning Administrator.

12 MR. LeGRANT: Good afternoon. Mathew
13 LeGrant. I'm the Zoning Administrator, DCRA.

14 MR. GLASGOW: Norman M. Glasgow Jr. on
15 behalf of the property owner.

16 MS. JOSEPH: Cassandra Joseph.

17 CHAIRPERSON HEATH: Can you make sure your
18 mic is on?

19 MS. JOSEPH: Yes, it is.

20 Cassandra Joseph.

21 CHAIRPERSON HEATH: It's not. Push the --

22 MS. JOSEPH: All right. Thank you. I'm
23 sorry.

24 CHAIRPERSON HEATH: That's okay.

25 MS. JOSEPH: Cassandra Joseph, facilitator

1 for Adams Morgan Neighbors for action.

2 CHAIRPERSON HEATH: Okay. Thank you.

3 So the Board has reviewed all documents
4 submitted for this case, and we believe we understand the
5 positions of each of the parties here.

6 We do want to allow each of you an
7 opportunity to be heard. As I said, we understand the
8 points that you've made, but we -- because you're here,
9 we want to give you a chance to speak and really amplify
10 any points that you want to stress. And you can
11 reference your exhibits as a part of that.

12 How much time do you think you need as a
13 part of your presentation?

14 MS. JOSEPH: My presentation will probably
15 take about 5 minutes.

16 CHAIRPERSON HEATH: Okay. All right.
17 That's perfect.

18 So we'll give each of you 5 minutes.

19 We'll start with the Appellant, and, Mr.
20 Moy, if you could start the time. Please.

21 MS. JOSEPH: Thank you. Thank you so much
22 for allowing us to be here this morning. My presentation
23 is that Adams Morgan Neighbors for Action brings this
24 timely appeal of Building Permit, B, as in boy, 1410380.
25 The permit was issued by DCRA on June 5th, 2015, to allow

1 the construction of a new 72-foot-tall, 227-room luxury
2 hotel to be located at the corner of Euclid and Champlain
3 Streets, Northwest, and the -- I'm sorry. You don't have
4 your exhibits, but everything is attached there.

5 The hotel project sits across three lots,
6 Nos. 872, 875, and 127. That would be the top two, A and
7 B. Actually, I am speaking about A right now, which was
8 recently consolidated into one lot, No. 135, and that's
9 the one, B, next to it. We will call this the subject
10 site.

11 The hotel lot is a corner lot located at
12 the intersection of Euclid and Champlain Streets,
13 Northwest. The plat put on the record by Respondent,
14 DCRA, depicts that the hotel lot also abuts Columbia
15 Road, Northwest, in a most minute way.

16 The subject is zoned commercially, C-2-B,
17 with the Reed-Cooke zoning overlaid on top, RC/C-2-B.
18 The Reed-Cooke Overlay seeks to protect the Reed-Cooke
19 residential neighborhood from encroaching commercial
20 impact, such as noise, traffic, pollution, et cetera, and
21 you will have an exhibit in your packet.

22 Further, the District of Columbia
23 Generalized Policy Map identifies the Reed-Cooke
24 neighborhood, including the lot surrounding the hotel, a
25 neighborhood conservation area. The Comprehensive Plan

1 says that neighborhood conservation areas are primarily
2 residential in character, and where change occurs, it
3 would be modest in scale.

4 The proposed commercial hotel project is
5 not considered to be modest in scale. At points along
6 Champlain Street, Northwest, the hotel with tower at over
7 85 feet in height, including the rooftop components, and
8 the walls of the hotel will be constructed straight up
9 against most of the lot lines, including the southern lot
10 line.

11 To give this some context, south of the
12 subject site sits a two-story, small-scale apartment
13 building, and south of that is a three-story residential
14 apartment. Just across the street stand two-story
15 apartments as well. That would be Exhibit C.

16 The Reed-Cooke zoning regulations limit the
17 height of the hotel to a maximum of 72 feet and a bulk
18 floor to air -- that is the FAR -- ratio of 3.99. You
19 will find this in Municipal Regulations 11, Section 1403,
20 2.3.

21 The Reed-Cooke Overlay does not expressly
22 provide for other zoning exceptions, besides height and
23 bulk, for hotel project at the subject site. In fact,
24 the Reed-Cooke Overlay expressly states for the purpose
25 of this chapter: No planned unit development shall

1 exceed the matter of right, height, bulk, et cetera, area
2 requirement of the underlying district. The area
3 requirement in this case is, indeed, the area behind the
4 rear of the proposed hotel building, the required rear
5 yard buffer.

6 The rear yard requirement is applicable.
7 The subject site is zoned C-2-B. This means that any
8 projection developed at the site is required to have a
9 rear yard unless otherwise granted relief.

10 It is the fact that the planned unit
11 development approval for the proposed hotel project at
12 the subject site in Zoning Commission Order No. 11-17
13 never granted relief from the aforementioned rear yard
14 area requirement. Therefore, then underlying zoning
15 requirement for a rear yard buffer still stands.

16 The rear lot line is the southern-most lot
17 of the line. As shown earlier, the proposed hotel
18 project sat across three lots, Nos. 872, 875, and 127,
19 all of which were recently consolidated into one lot, No.
20 135. We believe the southern-most lot line on the
21 subject site is indeed the rear yard lot line.

22 That is, the rear lot line is the lot line
23 between the subject site Lot No. 135 and Lot No. 809, to
24 the south. We believe this is a common-sense conclusion,
25 given information in ZC Order No. 11-17. For instance,

1 the order says in part, the approximately 68-foot-tall
2 church building will be preserved in its entirety and
3 restored and modernized. Guests will enter the hotel
4 along Euclid Street through the 20-foot-tall main doors.

5 The project contemplates the renovation of
6 the church building as the main entrance with a
7 seven-story masonry addition behind and to the south of
8 the church building. DDOT indicated support for the
9 Applicant's proposal to locate a taxi queue for hotel
10 guests along the main entrance to the hotel along Euclid
11 Street, Northwest. All of the heights are measured from
12 the level of the curb, opposite the middle of the front
13 of the building on Euclid Street, in accordance with the
14 provisions of the regulations.

15 Zoning Commission Order No. 11-17 makes it
16 clear that the main entrance to the hotel is at the front
17 of the proposed hotel building on Euclid Street,
18 Northwest, the exact location where all the fundamental
19 zoning perimeters for this project hides density,
20 occupancy, et cetera, were measured.

21 The received proposal of the planned unit
22 development, as shown in Zoning Commission Order 11-17,
23 the Intervenor, hotel owner chose the street frontage to
24 the Euclid Street, Northwest. For your review,
25 Commissioners, please see attached Exhibit E, which also

1 makes it obvious where the front of the hotel is located,
2 along Euclid Street. If the main entrance of the hotel
3 is on Euclid Street and that is considered the front of a
4 new hotel, then drawing a line straight back from the
5 front of the hotel most obviously shows that the
6 southern-most lot line is the real lot line.

7 The southern-most lot line of the hotel
8 site is opposite from the front line along Euclid Street
9 when defining "rear," as the Merriam-Webster Dictionary
10 -- "rear," the part of something located opposite its
11 front.

12 An area buffer is required between the rear
13 line of the building and lot line. According to the
14 Zoning Regulations, a rear yard should be provided for
15 each structure located in a commercial district, with a
16 minimum depth of 15 feet for lots zoned commercially as
17 C-2-B, and the regulations are there.

18 Further, according to the zoning
19 definitions, the rear yard is a yard between the rear
20 line of a building or other structure and the rear lot
21 line. The rear yard shall be for the full width of the
22 lot and shall be unoccupied. The rear line of the
23 proposed hotel building is standing face against what we
24 believe to be the southern-most rear lot line. Since
25 Zoning Commission Order No. 11-17 does not grant relief

1 to the Intervenor from providing a rear yard behind the
2 rear of the hotel building, the underlying C-2-B area
3 requirement for a rear yard buffer still stands.

4 In conclusion, Adams Morgan Neighbors for
5 Action participants, especially those living on Euclid
6 and Champlain Streets, are directly affected by the
7 adverse impacts this huge commercial project clearly
8 presents: increased traffic, noise, pollution, and
9 significant increases on public utility use, most of
10 which are aging modalities.

11 These impacts will also mean less
12 pedestrian safety, less healthy air, and less security in
13 our personal and property interests.

14 By ensuring that a rear yard buffer exists
15 according to the law, we can also ensure to bring the
16 hotel and its serious commercial impacts north of
17 Champlain Street and closer to Euclid Street. This would
18 move many of the impacts further away from the
19 residential community we seek to protect. This appeal,
20 if upheld, will concretely benefit participating members
21 of Adams Morgan Neighbors for Action and will ensure that
22 the integrity of the plain language of the Zoning
23 Regulations is protected.

24 Thank you.

25 CHAIRPERSON HEATH: Thank you.

1 Board, any questions of the Appellant?

2 [No audible response.]

3 CHAIRPERSON HEATH: Is your submission, the
4 document that you have, the same as what you submitted
5 previously? Was that previously submitted as an exhibit
6 for the record?

7 MS. JOSEPH: Not that I know of.

8 CHAIRPERSON HEATH: Okay. We have --

9 MS. JOSEPH: There may have been some
10 submissions.

11 CHAIRPERSON HEATH: Okay.

12 MS. JOSEPH: But I'm not exactly sure if
13 this was it.

14 CHAIRPERSON HEATH: Okay. If you could
15 pass that to the Board Secretary, Mr. Moy?

16 MS. JOSEPH: Okay. All of this?

17 CHAIRPERSON HEATH: And make sure that they
18 get a copy as well.

19 MS. JOSEPH: I have about 11 copies.

20 CHAIRPERSON HEATH: Okay.

21 MS. JOSEPH: Okay. So do I need to pass
22 them out, or will someone else do it? Okay.

23 [Pause.]

24 MS. JOSEPH: Thank you.

25 CHAIRPERSON HEATH: Okay. So I'll turn to

1 Mr. Tondro.

2 MR. TONDRO: Good afternoon, Madam Chair,
3 members of the Board.

4 I want to focus on sort of three issues,
5 very clearly, quickly. First of all, the Zoning
6 Commission has reviewed this after extensive review. So
7 I just think that that's something that we have to keep
8 in mind. They have looked at the project.

9 As I showed in my exhibits, the areas of
10 the building, the envelope of the building, was included
11 in the site plan that was approved by the Zoning
12 Commission. This is not something that is different from
13 or a departure from what was approved by the Zoning
14 Commission.

15 Second of all, in terms of the specific
16 issues that were raised by the Appellant, there are
17 basically two that I see underneath or coming under the
18 Zoning Regulations. On the one hand, there's the
19 question, the 15-foot rear yard that's required by
20 Section 774.1, and on the other hand, there is this
21 assertion that there is a required 25-foot buffer from an
22 adjacent residential zone under -- in the Reed-Cooke
23 Overlay under Section 1403.1(d).

24 I'm just going to take those in sort of
25 reverse order. So the first one, as I've already

1 provided my brief, I'm going to try to be as concise and
2 quick as possible, but just in terms of the first one,
3 the Reed-Cooke Overlay requirement of the 25-foot buffer
4 zone, I believe that's erroneous. It's not relevant here
5 because that's a criterion for a special exception in the
6 Reed-Cooke Overlay. In this particular case, however,
7 the Zoning Commission specifically and explicitly
8 approved this particular use with these lot numbers in
9 Section 1404.1(d).

10 Second, and getting back to the rear yard,
11 the issue here is that they required a C-2-B. Property
12 in a C-2-B requires a 15-foot rear yard by Section 774.1.
13 However, in this particular case, the property comes
14 under the provisions of Section 774.11, which governs
15 properties that have -- that front on three different
16 streets.

17 I am going to show a blow-up, if I may.
18 This is an exhibit that's already entered into the record
19 as Owner's Exhibit I, and this is the subdivision that
20 was approved that combined those lots, right here.

21 I just want to just go over briefly. We
22 can see that this property right here does front on three
23 different streets. You have Columbia Road, Northwest.
24 You have Euclid Road, Northwest, and then Champlain
25 Street, Northwest.

1 Under the Zoning Code, under the Zoning
2 Regulation, Section 199.1, the definition of street
3 frontage gives that choice not to the Zoning
4 Administrator, not to the Board, not to anybody else but
5 the owner. The owner gets to choose which frontage,
6 street frontage, counts as the street frontage for
7 determining front of the property, and by the Board's
8 decision in Board Appeal 18152, it laid out very clearly
9 the methodology by which you select the rear yard lot
10 line. And that is, you start with the frontage that was
11 chosen as a street frontage, draw a perpendicular line
12 through that, and where it intersects a property line,
13 that is the rear lot line.

14 So, in this particular case, the Applicant
15 -- the owner has chosen Columbia Road, Northwest, to draw
16 a perpendicular line, and it hits then the rear lot line,
17 is then determined to be the one along Champlain Street.

18 At that point, once you determine that,
19 then the rear lot line, that means the rear yard
20 requirements are related to that rear lot line.

21 In this particular case under Section
22 774.11, there is an ability for a C-2-B property to use
23 their -- to determine the rear yard -- or provide for the
24 rear yard based on the street right-of-way or half of the
25 street right-of-way. You start from the center line of

1 the streets.

2 In this particular case, you start from the
3 center line of Champlain Street. In other words, it
4 doesn't start at the property line going in. It starts,
5 instead, at the center line of the street.

6 Champlain Street is 50-foot -- has a
7 50-foot right-of-way. Therefore, as a result, there is a
8 25-foot -- is half of that street right-of-way. That is
9 -- then counts towards the rear yard. Since requirement
10 for a C-2-B zone is only 15 feet, therefore, this is
11 almost twice as much as required. And I believe that's
12 probably one of the reasons why the Zoning Commission did
13 not see that they needed to provide relief when they
14 considered this application.

15 I'll rest on that. Thank you.

16 CHAIRPERSON HEATH: Thank you.

17 Would anyone else wishing to speak, we're
18 willing to give you the right -- representing the owner
19 --

20 MR. GLASGOW: Yes. I'm representative of
21 the owner.

22 Obviously, we agree with Mr. Tondro's
23 recitation of the law on this. I did try the case before
24 the Zoning Commission. We had many hearings on this
25 case. We had a text amendment in addition to the PUD,

1 and the text amendment specifically addressed a number of
2 the issues that were raised in the assertions made by the
3 Appellants.

4 It is clear from taking the frontage off of
5 Columbia Road and doing the perpendicular lines through
6 the middle of the frontage on Columbia Road that
7 Champlain Street is the rear yard, and these plans are
8 exactly as were approved by the Zoning Commission. We
9 are building entirely consistent with that order. This
10 project is under construction right at this point in
11 time, so it is -- and we have been subject to a series of
12 appeals in between -- with the OAG and others, and we
13 certainly want to keep the construction on the project
14 going.

15 So if the Board does deem fit to uphold the
16 decision of the Zoning Administrator, we would like to
17 have a ruling as expeditiously as possible.

18 Thank you.

19 CHAIRPERSON HEATH: Do you have a question?

20 COMMISSIONER COHEN: Ms. Chair, I want to
21 state for the record that I did sit on the PUD case and
22 the text amendment, and it is my understanding that the
23 Applicant has presented the specifics of Case 11 -- PUD
24 Case 11-17, and I could concur with their summary of what
25 the PUD and text amendment contained.

1 CHAIRPERSON HEATH: Okay. All right.

2 So if there are no other parties wishing to
3 speak, is the Board ready to deliberate on this?

4 MS. JOSEPH: Excuse me. I have some
5 questions for Mr. LeGrant, if I may.

6 CHAIRPERSON HEATH: You can.

7 MS. JOSEPH: And I also would like to ask a
8 very valid question, I believe.

9 CHAIRPERSON HEATH: Sure. You can ask your
10 questions.

11 MS. JOSEPH: Thank you.

12 MR. TONDRO: Excuse me. Madam Chair, Mr.
13 LeGrant was not entered as a witness in this case, so I'm
14 not --

15 CHAIRPERSON HEATH: Are you saying that Mr.
16 LeGrant wants to speak, or not?

17 MR. TONDRO: No. That he was not -- he is
18 not -- he happens to be at the table, but he has not been
19 presented --

20 CHAIRPERSON HEATH: Okay.

21 MR. TONDRO: -- as a witness. Therefore,
22 there's no cross examination, necessarily.

23 CHAIRPERSON HEATH: Okay. Was your
24 question for Mr. Tondro or for --

25 MS. JOSEPH: Specifically for Mr. LeGrant.

1 CHAIRPERSON HEATH: Oh, okay. So you're
2 not able to ask --

3 MS. JOSEPH: I can ask Mr. Tondro.

4 CHAIRPERSON HEATH: Okay. You can ask Mr.
5 Tondro.

6 MS. JOSEPH: Sure.

7 CHAIRPERSON HEATH: Okay.

8 MS. JOSEPH: Thank you.

9 Mr. Tondro, our main question is, how are
10 you going to have two fronts on a building? I understand
11 what you say the Zoning Commission has said, that the
12 developer or the Applicant or the owner can choose the
13 front. However, according to all of the building
14 permits, all of your other project documents and so
15 forth, even your drawings, you state that 1770 Euclid
16 Street, Northwest, is the front of the building.

17 If I may.

18 [Stands up and approaches her display.]

19 MS. JOSEPH: This is the entrance. The
20 main question that we have is, how is it that all of your
21 permits and all of your project papers state that Euclid
22 Street is the front of the building for building
23 purposes, which would mean the rear yard would be back
24 here? Okay.

25 There has been no relief granted. I

1 understand that it is the decision of the owner, but how
2 are you going to have two fronts? Now you say for
3 building purposes and to get the heights that you want
4 and everything that you need to build this tower in back
5 of the church building, that you're using Euclid Street
6 to do all of those measurements and to do all of that
7 building.

8 So here is the south lot here. I may be a
9 grandma and a great-grandma, but this is the front. This
10 is the back.

11 Now you're saying that you're going to use
12 this little 13-some, little feet here that barely abuts
13 Columbia Road and an alley for your front. Where are the
14 guests going to come in? They are going to come in up
15 the steps of that church building, right there on Euclid
16 Street.

17 CHAIRPERSON HEATH: Excuse me. We're not
18 -- this isn't a formal hearing.

19 MS. JOSEPH: I'm sorry. Okay.

20 CHAIRPERSON HEATH: But I want to allow you
21 the opportunity to ask your question.

22 MS. JOSEPH: Thank you.

23 CHAIRPERSON HEATH: So if you could make it
24 a question?

25 MS. JOSEPH: My main question is -- yes.

1 How are you going to have two fronts? All
2 of your paperwork states that your front is on Euclid
3 Street, and now you're saying that your front is on
4 Columbia Road. I understand you have the choice, but we
5 don't understand that.

6 CHAIRPERSON HEATH: Mr. Tondro, for the
7 record, I just want to acknowledge that this isn't a
8 hearing. We just ask for presentations, but if you are
9 okay with answering her question for clarity, we would
10 appreciate it.

11 MR. TONDRO: I would be glad to. In fact,
12 I've talked to my client, and the Zoning Administrator
13 does choose to respond, so I will turn it over to him.

14 CHAIRPERSON HEATH: Okay.

15 MR. LeGRANT: Good afternoon.

16 So the specific question, as I understand
17 it, was how can there be two fronts? Well, there's not
18 two fronts. From the Zoning Code perspective, as Mr.
19 Tondro laid out, the Applicant, for purposes of
20 determining street frontage was -- as set forth in the
21 definitions of Zoning Regulations -- allows the owner --
22 I think it's all agreement here -- to choose the front.
23 This is regardless of where the building entrance may be
24 or the address may be.

25 A couple other points I'll point out is,

1 for maybe Building Code purposes, there may be another
2 criteria for what is a front that is separate and
3 distinct from what the Zoning Regulations speak to.

4 And finally, as the Board may know,
5 measuring the building height can occur on another street
6 frontage besides the choice of the frontage for the
7 frontage of the lot. You can make that distinction from
8 where the building height measuring point may be located
9 on another street.

10 CHAIRPERSON HEATH: Thank you.

11 MS. JOSEPH: Yes, sir. I understand.

12 But when we look at this exhibit, isn't
13 there a lower elevation here?

14 CHAIRPERSON HEATH: What is --

15 MS. JOSEPH: I believe I am seeing a lower
16 elevation here. So if you're saying this is your front,
17 but you have the option to build from another front, if
18 that is the case, then if you're using Columbia Road as
19 your front and you want to use Champlain Street as your
20 rear yard, sir, wouldn't there have to be some
21 modifications to your plans?

22 MR. TONDRO: I think Mr. LeGrant has
23 already responded to this question. Thank you.

24 CHAIRPERSON HEATH: Thank you.

25 I think we're -- one second.

1 [Pause.]

2 CHAIRPERSON HEATH: Do any Board members
3 have any questions of any of the parties?

4 COMMISSIONER COHEN: I do not.

5 CHAIRPERSON HEATH: All right. Then I
6 think we -- I have a full understanding of the issues as
7 they have been presented from all parties.

8 AUDIENCE MEMBER: We are here to speak in
9 support. I don't know if that's allowed.

10 CHAIRPERSON HEATH: Okay. We didn't hear
11 from the Appellant at the beginning. That you had
12 witnesses who wanted to speak?

13 MS. JOSEPH: Oh, I'm sorry. I wasn't aware
14 that I needed to say I had witnesses.

15 CHAIRPERSON HEATH: That's --

16 MS. JOSEPH: I'm sorry.

17 CHAIRPERSON HEATH: We understand.

18 MS. JOSEPH: Would you allow?

19 CHAIRPERSON HEATH: We will. We don't want
20 to continue to hear duplicative information, so if we
21 could consolidate the support, we certainly can hear from
22 of a few of your representatives who want to speak in
23 support.

24 MS. JOSEPH: Thank you.

25 CHAIRPERSON HEATH: We'll give 2 minutes.

1 COMMISSIONER COHEN: Normally, it's 3
2 minutes for persons and applications, but --

3 CHAIRPERSON HEATH: Okay.

4 COMMISSIONER COHEN: The Board has some
5 discretion here.

6 CHAIRPERSON HEATH: Okay.

7 COMMISSIONER COHEN: Madam Chair, I think
8 from the people wearing the same shirts, I think that one
9 person could speak on their behalf.

10 MS. JOSEPH: Yes. There will be one
11 person.

12 AUDIENCE MEMBER: That is our plan.

13 CHAIRPERSON HEATH: Okay, that's great.
14 Thank you.

15 And that's what I was getting at by
16 consolidated support. So if you're willing to come
17 forward now?

18 Were you here at the beginning of the
19 morning when we --

20 MR. ELDER: I didn't --

21 CHAIRPERSON HEATH: You weren't sworn in?
22 Okay.

23 So, Mr. Moy, if you could administer the
24 oath.

25 MR. MOY: Do you solemnly swear or affirm

1 that the testimony you are about to present in this
2 proceeding is the truth, the whole truth, and nothing but
3 the truth?

4 MR. ELDER: I do.

5 [Witness sworn.]

6 CHAIRPERSON HEATH: Please state your name
7 for the record.

8 MR. ELDER: All right. My name is Ian
9 Elder. I'm here with a statement from John Boardman of
10 UNITE HERE Local 25.

11 And our case is mostly we agree with what
12 has already been said, but there is one legal point that
13 I think is a serious legal point that needs to be
14 considered here, but I'll read the statement: [reading]

15 "My name is John Boardman, Executive
16 Secretary Treasurer of UNITE HERE Local 25. We are an
17 organization of over 6,500 hotel workers in the D.C.
18 Metro Area working to create middle-class jobs within the
19 hotel industry in the District of Columbia. I am writing
20 to express our support for the Appeal of Adams Morgan
21 Neighbors for Action.

22 "In this case, the Permit Applicant's case
23 rests on the claim that the hotel fronts on Columbia Road
24 rather than Euclid Street, and that, therefore, the rear
25 of the project could equally be considered to abut either

1 Champlain Street or the lot line behind the hotel.

2 "DCRA has argued that based on the
3 definition of street frontage from the Zoning
4 Regulations, the developer has the option to select which
5 abutting street he uses the street frontage, and that the
6 developer chose Columbia Road as the front of this
7 project.

8 "We agree that the developer has the option
9 to select one street as the front, although Columbia Road
10 is the dubious choice. However, we do not believe that
11 the developer has the option to select Columbia Road as
12 the front of the project for the purposes of choosing a
13 lot line abutting Champlain Street as the rear lot line,
14 because the developer has already chosen Euclid Street as
15 the front of the project for the purposes of measuring
16 the height."

17 I'll skip some of this. I'm citing Zoning
18 Case 11-17, but it says Fact 84 as all of the heights are
19 measured from the level of the curb opposite the middle
20 of the front of the building on Euclid Street in
21 accordance with the provisions of the regulations.

22 The Board has previously argued that the
23 prior designation of the front of a building should not
24 bind the property owner as to future additions, so long
25 as the existing building will remain conforming. DCRA

1 already mentioned that case.

2 This case is different. That
3 interpretation seems reasonable to us when there's an
4 addition because it seems fair that a prior designation
5 shouldn't indefinitely bind a property owner for years or
6 decades. However, in this case, the developer is
7 attempting to claim two different streets as the front at
8 the exact same time.

9 I would add that the definition of "street
10 frontage" does only allow for one front.

11 Furthermore, even though the regulations
12 allow an owner to select which street a corner lot fronts
13 on, it seems clearly out of line with the intent of the
14 regulation to allow Columbia Road to be selected as the
15 front. Columbia Road barely abuts the property,
16 intersecting only along 13.57 feet on the corner. The
17 developer's plans do not provide for any entrance to the
18 building along Columbia Road.

19 Euclid Street, on the other hand, abuts the
20 property for 131.8 feet. Moreover, the historic church's
21 steps lead up to the entrance of the building from the
22 middle of Euclid Street. Euclid Street is where the
23 guests will enter and exit the building. For all intents
24 and purposes, Euclid Street is the front, and if there
25 ever was any doubt, the developer eliminated that doubt

1 by previously selecting Euclid Street as the front for
2 the purposes of this project.

3 Therefore, we do not find a reason to
4 designate Columbia Road as the front of this building for
5 the purposes of this permit.

6 We, therefore, urge you to grant the appeal
7 of Adams Morgan Neighbors for Action.

8 Thank you very much.

9 CHAIRPERSON HEATH: Thank you.

10 Board, any questions of the witness?

11 COMMISSIONER COHEN: No.

12 CHAIRPERSON HEATH: Go ahead, Fred.

13 VICE-CHAIRPERSON HILL: Mr. Boardman, so
14 I'm just curious. So you're --

15 MR. ELDER: I am Ian Elder. I have just
16 read the testimony from Mr. Boardman.

17 VICE-CHAIRPERSON HILL: Oh, okay. I'm
18 sorry. What was your name?

19 MR. ELDER: Ian Elder.

20 VICE-CHAIRPERSON HILL: Mr. Elder.

21 So you guys are in opposition to the
22 project; is that right?

23 MR. ELDER: Well, we're in support of this
24 appeal, and --

25 VICE-CHAIRPERSON HILL: But you represent

1 hotel workers and --

2 MR. ELDER: That's correct.

3 VICE-CHAIRPERSON HILL: -- and, like, jobs,
4 and so I'm a little confused as to why you wouldn't want
5 the jobs there.

6 MR. ELDER: I'm not authorized to speak
7 about that. I'm just a -- I'm a staff member reading the
8 letter from Mr. Boardman.

9 VICE-CHAIRPERSON HILL: Okay. Thank you.

10 CHAIRPERSON HEATH: Any other questions,
11 Board?

12 [No audible response.]

13 CHAIRPERSON HEATH: No? Okay. All right.
14 Then --

15 MS. JOSEPH: I have a conclusion. If I
16 may?

17 CHAIRPERSON HEATH: Okay. Can it be brief?

18 MS. JOSEPH: It is.

19 CHAIRPERSON HEATH: Okay, perfect. You can
20 conclude.

21 MS. JOSEPH: In conclusion, Commission and
22 respective -- and respective -- Adams Morgan Neighbors
23 for Action has presented evidence to the BZA
24 Commissioners that shows bipolar decision-making by DCRA
25 in this case. The D.C. Zoning Administrator has

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1 mistakenly allowed the Intervenor, hotel owner, to use
2 both the Euclid Street frontage and Columbia Road
3 frontage for their zoning convenience, to detriment of
4 Adams Morgan neighbors, seriously challenging the
5 integrity of the plain language of the Zoning Code.

6 It is clear the Zoning Commission in their
7 Order No. 11-17 allowed the Intervenor, hotel owner, to
8 choose Euclid Street as the front of the hotel building
9 to set the measuring point for all critical zoning
10 perimeters like height, bulk, lot occupancy, et cetera.

11 Now 2 years on at the DCRA permitting
12 stage, the D.C. Zoning Administrator has allowed the
13 Intervenor, hotel owner, to designate Columbia Road as
14 the hotel street frontage for the purposes of granting
15 rear yard relief.

16 The zoning world doesn't allow it both
17 ways. You can't in one sense say Euclid Street is the
18 front of the building in terms of measuring zoning
19 perimeters and then simultaneously say that Columbia Road
20 is the front to make the determination that Champlain
21 Street is the rear yard. This is affirmed clearly in the
22 Zoning Regulations under the definition of "building
23 height," under municipal regulations, Chapter 11, Section
24 199.1.

25 In this case, the height of the hotel

1 building was chosen to be based upon the hotel building
2 fronting on Euclid Street, Northwest. This location
3 choice and measurement point is affirmed several times in
4 Zoning Commission Order No. 11-17.

5 Then and for obvious reasons, joint a line
6 straight back from Euclid Street, shows the rear lot line
7 to be the southern-most lot line where the rear yard is
8 supposed to be located. The Zoning Administrator wants
9 us to believe that Champlain Street is the rear yard, a
10 yard that is at a 90-degree angle from the front of the
11 building on Euclid Street.

12 Mr. LeGrant's decision regarding the rear
13 yard, which is never put into a letter of determination,
14 not only mocks the plain definitions of "front" and
15 "rear," it seriously challenges the basic principle of
16 D.C. Zoning Code, yet it underlies the issuance of DCRA's
17 building permit.

18 If the Intervenor, hotel owner, wants to
19 now say Columbia is -- Columbia Road is the frontage of
20 the hotel, then all of the critical zoning measurements
21 must be recalculated from the elevation point at Columbia
22 Road, not from Euclid Street. As of right now, any
23 interpretation that says Columbia Road is the front of
24 the hotel building is inconsistent with Zoning Commission
25 Order No. 11-17.

1 And as we have shown in Exhibit E and the
2 zoning measurement point at Columbia Road elevation would
3 be different and lower than the measurement point on
4 Euclid Street, for all of the above reasons, evidence,
5 and plain language of the Zoning Code, we ask the Board
6 of Zoning Commission to uphold our appeal in this case
7 and revoke Building Permit B, as in boy, 1410380, even if
8 temporarily.

9 In the meanwhile, we would ask that the BZA
10 requests the Zoning Commission to hold a public hearing
11 in order to clarify Zoning Commission Order No. 11-17 so
12 that they can grant relief for the rear yard, as
13 required, and in granting this relief, the Zoning
14 Commission can then examine ways to mitigate impacts to
15 neighbors and to put it in writing in return for this
16 required relief.

17 In the alternative, the Zoning Commission
18 can be asked by the BZA to hold a public hearing to
19 discuss the heights, densities, and other zoning
20 perimeters as recalculated from Columbia Road, Northwest,
21 and reissue a new order reflecting these zoning
22 calculations.

23 Additionally, we would ask for some time to
24 submit a post-hearing submission based on the new
25 information we have received today by cross-examination,

1 so as to list any final facts and conclusions of law.

2 And finally, I would like to submit all of
3 the evidence and filings we brought today into the
4 record, including the letter of determination penned by
5 Mr. LeGrant and 2013 regarding increasing the height over
6 the hotel, over the maximum allowed 72 feet.

7 We look forward to a fair and impartial
8 ruling on this matter. Thank you so very much.

9 COMMISSIONER COHEN: Ms. Chair, I'd like to
10 again say for the record that this project did go through
11 a number of hearings in front of the Zoning Commission.

12 I understand that you're concerned about
13 some interpretations, but the interpretations are written
14 in this Zoning Code. They're not interpretations. This
15 is available to every owner, whether it's a hotel or a
16 multi-family building or an office building. These are
17 standard.

18 It gives some flexibility, and mostly
19 zoning is not usually considered a flexible document, but
20 it allows certain things to happen based on a site.

21 So I just want to state to you that we have
22 been through this quite a bit. The ANC supported it.
23 The Reed-Cooke Overlay Citizens Association supported it.
24 So I just want to reassure you that it has been vetted
25 quite a few times, and my understanding is that there

1 were a number of, also, court cases that this went
2 through, and they were not held up by the judge.

3 So I feel that the Zoning Administrator
4 made the correct decision, and that's the way I will
5 vote. Thank you.

6 MS. JOSEPH: Thank you.

7 Is it true that the Zoning Administrator,
8 the Administrator and not the Commission, has the right
9 to do that change?

10 COMMISSIONER COHEN: It went in front of --
11 it did go in front of the Zoning Commission, and the vote
12 was 5 to zero, after holding a number of public hearings,
13 after requesting a number of changes as well. I mean,
14 this has been vetted by the neighborhood, and the Zoning
15 Administrator, however, is interpreting the Zoning Code
16 properly.

17 CHAIRPERSON HEATH: Okay. So I agree with
18 my colleague, that I feel that the Zoning Administrator
19 is interpreting the Zoning Regulations correctly. Zoning
20 is complicated, and there are a number of provisions
21 here, as Mr. Tondro has outlined, that allow them to
22 designate where their street frontage is.

23 They have accurately -- based on his
24 presentation, they have accurately determined their rear
25 yard based on the location that they have designated as

1 their street frontage.

2 I will ask one question, just for clarity,
3 of the witness. In your testimony, you mentioned a prior
4 designation of street frontage. Can you clarify what you
5 were referencing there when you talked about some other
6 street frontage or where measurements were taken for --

7 MR. ELDER: Yeah, definitely. It's -- it
8 was for the purpose of measuring the height of the
9 building and determining what the height of the building
10 was, and that was in the Zoning Commission Order, Fact
11 84. It states a number of times, but one of the relevant
12 quotes from that fact is all of the heights are measured
13 from the level of the curb, opposite the middle of the
14 front of the building on Euclid Street, in accordance
15 with the provisions of the regulations, which reading
16 into it, I think probably refers to the fact that the
17 developer is able to select one front.

18 And our point was simply that they selected
19 a front, and it seems to us that the definition of
20 "street frontage" doesn't allow for several fronts at the
21 same time for the same project.

22 And our argument also talked about the fact
23 that the Board has previously ruled that if there's an
24 addition, you know, several years later, you can change
25 it, but this is not a situation of an addition. This is

1 a situation where you have the same project, two
2 different things that are trying to be gotten by the
3 developer by choosing different fronts.

4 So we think it's a different situation, and
5 we think it's a seriously legal consideration in this
6 case, if it's okay to have multiple streets at the same
7 time. I think that's a serious precedent, I think.

8 MR. GLASGOW: Madam Chair, I would like to
9 respond to that very quickly.

10 CHAIRPERSON HEATH: Sure. If you would,
11 please.

12 MR. GLASGOW: Sure.

13 You can have -- when you have a corner lot
14 or a through lot, you can pick whatever street you want
15 for a point of measurement of the building, and you can
16 pick another street as your front and use the rear yard
17 off of that. That has been done many, many, many times
18 in this city. This is not unique. This is not
19 precedent-setting. And the regulations specifically and
20 clearly provide for it.

21 CHAIRPERSON HEATH: Mr. Tondro?

22 MR. TONDRO: If I may, just to follow up on
23 that issue. The definition of building height talks
24 specifically about measuring opposite the middle of the
25 front of the building. Instead, if you look at the

1 definition of street frontage, it refers specifically to
2 lot, and so I quote from my brief: Where a lot abuts
3 more than one streets -- where a lot abuts more than one
4 street, the owner is able to choose. So I think there is
5 a distinction built into the Zoning Regulations between
6 street frontage for determination of rear lot line and
7 then rear yard and separate from that from determining
8 the front of the building itself for building height.

9 Thank you.

10 CHAIRPERSON HEATH: Thank you to both of
11 you.

12 So, Board, are we ready to deliberate on
13 this?

14 [No audible response.]

15 CHAIRPERSON HEATH: All right. So, based
16 on the information presented today, I have a hard time
17 finding where the ZA and DCRA erred in their
18 determination of this building permit being granted.

19 As I said previously, it's been made very
20 clear how the frontage of the building was determined
21 and, as a result, how the rear yard was determined and
22 where the Zoning Regulations allow for that.

23 I understand your concerns as an
24 association and as a neighborhood about this project, and
25 your concerns obviously are valid, but this Board's hands

1 are tied with respect to the conditions of this appeal.
2 And we have to rule on whether or not the Zoning
3 Administrator erred in his determination.

4 Regardless of how you might feel about this
5 project, we have to decide whether or not he was
6 incorrect, and I don't have any grounds to determine that
7 his designation was incorrect.

8 VICE-CHAIRPERSON HILL: Madam Chair, I am
9 just going to echo what you guys said in terms of this
10 case.

11 I mean, it's, as I understand it, a very
12 high standard to reverse or that the ZA has erred. I
13 don't think the Applicant met that standard.

14 I also think that it went through -- you
15 know, there was a text amendment. There was a PUD. The
16 community has gone through a lot of this already, so my
17 vote would be not to uphold the appeal.

18 CHAIRPERSON HEATH: Anything? Are you
19 sure?

20 COMMISSIONER COHEN: Madam Chairman, I move
21 to deny Appeal No. 19080 of Adams Morgan Neighbors for
22 Action and ask for a second.

23 VICE-CHAIRPERSON HILL: I second.

24 CHAIRPERSON HEATH: All right. The motion
25 has been made. All those in favor?

1 [Chorus of ayes.]

2 CHAIRPERSON HEATH: Anyone opposed?

3 [No audible response.]

4 CHAIRPERSON HEATH: The motion carries.

5 MR. MOY: Yes. Staff would record the vote
6 as 3 to zero. This is on the motion of Ms. Cohen to deny
7 the appeal or affirm the decision of the Zoning
8 Administrator's determination; seconded the motion,
9 Vice-Chairperson Hill; also in support, Madam Chair
10 Heath; no other members present. Motion carries 3 to
11 zero, ma'am.

12 CHAIRPERSON HEATH: Thank you. Thank you.

13 MS. JOSEPH: Thank you.

14 I would like to submit my conclusion. May
15 I?

16 CHAIRPERSON HEATH: Submit that to Mr. Moy.

17 MS. JOSEPH: Thank you.

18 CHAIRPERSON HEATH: Thank you.

19 **APPLICATION NO. 19068**

20 CHAIRPERSON HEATH: All right. Mr. Moy
21 will call our next case, 19068.

22 MR. MOY: Yes. The parties to Application
23 No. 19068 -- this is the application of The Old Pentecost
24 Church Temple of Truth.

25 Madam Chair, this is a request, as

1 advertised, for a variance relief on the lot area
2 requirements under Section 401.3 and off-street parking
3 requirements under Section 2101.1 at premises 727 Hobart
4 Place, Northwest.

5 CHAIRPERSON HEATH: Would you all please
6 introduce yourselves.

7 MR. BERMAN: Meade Berman with Boundary
8 Street Development.

9 MR. SULLIVAN: Good afternoon, Board
10 Members. My name is Marty Sullivan with the law firm of
11 Sullivan & Barros, on behalf of the Applicant.

12 MS. GARCIA: Good afternoon. My name is
13 Alex Garcia, and I am also with Sullivan & Barros, on
14 behalf of the Applicant.

15 CHAIRPERSON HEATH: Okay. So we have
16 reviewed the record and all the documents submitted.

17 There are some issues here, and one I'm
18 sure you're aware of is the Office of Planning's
19 recommendation to deny this application on the basis of
20 not having satisfied the variance test. And I think I'm
21 there as well.

22 So if you could talk specifically about how
23 you feel you've satisfied the test, and I'll turn to
24 Office of Planning before you begin your presentation,
25 just to make sure that we're addressing their concern, so

1 that you can speak to those relating to the subdivision
2 of the lots.

3 MS. RAPPOLT: Good afternoon. Megan
4 Rappolt, and I'm filling in for Steve Mordfin. He's the
5 case manager on this particular project.

6 The main issue we have for this project is
7 just that the land area only supports three flats, and
8 we'd say that in sort of looking at the character of the
9 square, this eastern half of the square has lots of
10 different building types, different heights. There's a
11 multifamily building at the corner of Georgia and Hobart
12 that's, I think, almost six stories.

13 The row homes there are about 40 feet in
14 height. There are some detached row homes. There's the
15 church property, and then, as you moved west towards
16 Sherman Avenue, Columbia Road, there are very small lots
17 with two-story structures along there.

18 And so I think one of the Applicant's
19 points is that there's a character established, and I
20 think OP would say, yes, there's a character established
21 on the western side of the square. But the eastern side
22 of the square where this property is, there's sort of
23 lots of different building types, and therefore, we think
24 that three units meeting the zoning ordinance,
25 regulations makes sense here.

1 And that's it.

2 CHAIRPERSON HEATH: Does the Applicant have
3 any questions of Office of Planning? Do you understand
4 their request?

5 MR. SULLIVAN: We do, and we do have a
6 presentation that we'd like to go through to give it some
7 context. So if you want us to do that first, or would it
8 be appropriate to --

9 CHAIRPERSON HEATH: Why don't you go
10 through --

11 MR. SULLIVAN: I'd be effectively wanting
12 to do my cross-examination --

13 CHAIRPERSON HEATH: Sure.

14 MR. SULLIVAN: -- but it's a little out of
15 order.

16 CHAIRPERSON HEATH: Why don't you go
17 through your presentation.

18 MR. SULLIVAN: Okay. Thank you.

19 CHAIRPERSON HEATH: Oh. Can you --
20 somebody move the easel that's blocking the screen now?
21 Thank you.

22 MR. SULLIVAN: Thank you, Madam Chair and
23 members of the Board.

24 Again, the property at 727 Hobart Place,
25 Northwest, it's a lot which is -- has a land area of

1 6,161 square feet. It's in the R-4 zone. It's a through
2 lot that has frontage both on Hobart Place and on
3 Columbia Road. Where it is -- where the boundary with
4 Hobart Place, there's an elevation that's about -- I'd
5 say about 12 or 15 feet. The topography is higher at the
6 -- where it meets the church front door.

7 So there's an existing church there now,
8 and the church is proposing to -- they're going to sell
9 the lot to the contract purchaser, the Applicant.

10 The proposal was to divide into four -- you
11 could see here -- if you could go back to that picture,
12 the street frontages.

13 So the picture on the left is the street
14 frontage on Hobart Place. The picture on the right is
15 Columbia.

16 COMMISSIONER COHEN: Excuse me. Do you
17 have copies of that, that you can give?

18 MR. SULLIVAN: I do.

19 COMMISSIONER COHEN: Because --

20 MR. SULLIVAN: Yeah.

21 COMMISSIONER COHEN: -- my eyes are --
22 Thank you.

23 MR. SULLIVAN: So you can see the pictures.
24 Here is where the frontage is.

25 Now, Columbia Road, of course, is a

1 commuter road. There's no parking on the street during
2 the -- during rush hours, and Hobart Place is a
3 relatively narrow street to the south of Columbia Road.

4 So the church is existing. It was built
5 after 1958. It's not historic also.

6 We've included some proposed concept plans,
7 although it's not really part of the application because
8 we're just asking for the lot relief. The buildings that
9 will be built here eventually will be completely matter
10 of right, other than for the lot area relief that we're
11 requesting.

12 So the relief requested is under Section
13 401.3, relief for minimum lot area, which is 1,800 square
14 feet, and we're proposing 1,540 square feet of land area
15 for each lot. The lot as it exists now, it's about six
16 times the standard or typical lot area for this block and
17 this square. Office of Planning did mention that this
18 end of the property of the street or square has some
19 diversity in that respect, and I would point out if the
20 argument is about consistency and character, the property
21 immediately to the east is subdivided in almost this
22 exact same way, in the four lots, approximately the same
23 size as these four lots. In those lots -- and these lots
24 would be the largest still.

25 Following the proposed subdivision, the lot

1 area will be 1,540 square feet, which will be still 50
2 percent larger than most of the lots on this square.

3 We're also asking for relief for parking
4 because we have no alley access to this, either from the
5 side or from either street frontage, and we believe --
6 there is a bit of a history with a curb cut request in
7 that the ANC and the community is adamantly opposed to
8 having a curb cut here. It is obviously on Hobart Place
9 that you can't put a curb cut just because of the
10 topography, but on Columbia, it's also -- it's a commuter
11 road. We don't think it's safe to have a curb cut there,
12 and it would also take up a large portion of the
13 property.

14 It would also lead to a driveway and a car
15 sitting exposed on Columbia Road in an area where there
16 aren't any. It's mostly row houses, and there's no
17 driveways and garages there.

18 Regarding the burden of proof, so the
19 property is obviously quite unique. It's 6,161 square
20 feet. It's six times larger than most, almost every
21 other lot on the square. It's a through lot with
22 frontage on both Columbia and on Hobart.

23 After subdivision, as stated, it will still
24 be 50 percent larger. It has differing topography with
25 the high grade on Hobart, and it goes down to about

1 street level on Columbia. And also, it contains a
2 church building, which needs to be removed and razed, and
3 there's some other accessory structures the church over
4 the years has tried and largely failed to build accessory
5 structures and retaining walls.

6 If you would recall from the earlier
7 picture, there's a retaining wall that's falling down in
8 the rear of the property on Columbia Road. So we think
9 the property is obviously unique.

10 Regarding practical difficulty, for the lot
11 area, first of all, a matter-of-right subdivision. If we
12 subdivided into three lots, would result in large and/or
13 odd-shaped lots that would still be twice the size of
14 most of the lots in the square.

15 Here's one option we could do. We could
16 have 15-foot frontage on Hobart Place for these three
17 lots, and we may be able to engineer this so that the
18 average lot width would actually equal 18 feet if we did
19 L-shaped lots, as shown in this diagram.

20 Obviously, that would also lead to rear
21 yards on Columbia Road, which is something that Mr.
22 Mordfin from the Office of Planning had told me he
23 definitely didn't want to see. So we think there's some
24 difficulty involved in that configuration.

25 The only other possible configuration for

1 the three lots that we could come up with is to have two
2 standard lots on Hobart Place with frontage, and then
3 you'd have a very narrow lot on Columbia Road. And
4 there's some problems related to that, including, first
5 of all, the architecture, design, and construction
6 becomes much more difficult if you're doing different
7 designs for these three. And you're going to have homes
8 and units that are a lot larger than the rest of the
9 neighborhood.

10 And I'd like to have Mr. Berman speak a
11 little bit about that, about marketability of the units
12 for the larger lots.

13 MR. BERMAN: The issue we're finding with
14 larger lots is customer demands and desires are -- our
15 understanding of the market is two-bedroom, three-bedroom
16 units. Anything larger than 1,100, 1,200 square feet,
17 you are not warranting that size with rent, rent income
18 or sale price.

19 So what we found is that if we ended up
20 doing the three lots, you're building units that could be
21 upwards of 1,600 square feet each, 2,000 square foot
22 each, and you would then have to charge rents that you
23 would not be able to kind of quantify or qualify the --
24 your construction costs.

25 Over the last 10 years, we found that our

1 most successful and desired units are between 900, 700,
2 1,100 square feet, two to three bedrooms, and more
3 efficient size, less wasted space.

4 So what we're coming across here is that
5 these larger -- this last resort, these bigger units, we
6 just can't -- we just can't find a market for units of
7 this size.

8 MR. SULLIVAN: Thank you.

9 Regarding the third prong of the variance
10 test, we think it's clear that there's no substantial
11 detriment to the public good in granting relief. This
12 project is unanimously supported by the ANC. We're not
13 aware of any opposition other than the letters in the
14 file that talked about a project that was previously
15 proposed, is what we think it was.

16 Those people that wrote those letters did
17 not come to either of the ANC meetings, and so we
18 understood their concerns to be mostly about the curb
19 cut.

20 We also think there's no substantial
21 detriment to the integrity of the Zone Plan for this
22 reason, that it's a highly unique situation.

23 And also, especially regarding the parking,
24 although we are still under the current regs, the new
25 proposed regs would lead to matter of right, not having

1 to provide parking here. So we think it's unusual for
2 the Office of Planning to take the position that granting
3 relief here would be a substantial detriment to the Zone
4 Plan while also supporting the position that parking
5 won't be required here following a potential vote later
6 this month.

7 Finally, we did do a parking study that
8 showed that there is available parking spaces. So, in
9 the end, what we're talking about is one additional
10 dwelling here, and the purpose of it is to make the
11 development make sense with the neighborhood.

12 What OP is proposing would leave either a
13 large portion of the property idle, or it would leave one
14 of the properties with a rear yard on Columbia.

15 Regarding the parking, there's just -- it's
16 not really feasible to do a curb cut, and that would make
17 sense.

18 So we believe we meet the variance test for
19 that reason, and we can answer any questions.

20 CHAIRPERSON HEATH: One question that I
21 have regarding your alternative lots, configurations, can
22 you explain the Option No. 1 again, which results in the
23 L-shaped lots?

24 MR. SULLIVAN: Lot width measurement is
25 taken as an average lot width for the length of the lot.

1 So if you have irregular-shaped lots, the way you measure
2 that is at 10-foot intervals, you measure the width, and
3 then you take the total of each of those widths and
4 divide them by the number of intervals, and that gives
5 you your average lot width.

6 So if your lot is long enough, you can do
7 this configuration. So the first lot on the left is 15
8 feet wide -- you need 14 minimum for subdivision purposes
9 as well -- 15 feet wide and as long as it needs to be to
10 reach the 1,800 square feet, so that's 1,800 square feet.

11

12 The other two lots are also about 15 feet,
13 15-1/2 feet wide. So your 10-foot intervals are 15, 15,
14 15, and then when you get to where you L over, your width
15 increases, and at that point, it's 30. And if you had
16 two intervals at 30, your average would get over 18, and
17 the same with the other lot. So that's one way to rig
18 three lots in there, and the other way is to do the short
19 squat lot on Columbia, both of which don't make sense
20 from a development standpoint and don't fit in with the
21 character of the neighborhood and particularly the -- not
22 the lots next door or any of the row houses on the west
23 side of the block.

24 CHAIRPERSON HEATH: Marcie.

25 COMMISSIONER COHEN: Thank you, Madam

1 Chair.

2 I have a question with regard to -- could
3 you make the fourth unit an affordable unit under the
4 definition of inclusionary zoning?

5 MR. SULLIVAN: I don't know that we've
6 looked -- we haven't looked at that, and I guess we could
7 look at that. But I think part of the issue here is
8 economically whether or not it works to do the project at
9 all because there's a church that needs to be removed.
10 There's some significant grading that needs done, and I
11 could have the Applicant speak to that, but the economic
12 feasibility of the project isn't there at three units.
13 And so I'm not sure that having one of the units be an IZ
14 unit if that negates the economic feasibility of the
15 four-dwelling scenario or not.

16 COMMISSIONER COHEN: But you're at least
17 getting some additional use out of that land if it was an
18 affordable versus keeping it empty. You're not going to
19 realize that additional increment.

20 MR. SULLIVAN: We haven't done the
21 calculation, so I don't -- I mean, I could ask the
22 Applicant to speak to that, but not knowing offhand what
23 the -- what the numbers are, I don't know that we'd have
24 a good answer for you. We could submit something if --

25 COMMISSIONER COHEN: I think that would be

1 very helpful because, you know, I understand that the ANC
2 is supporting this. I know that OP has a problem with
3 it. But I think that some of, maybe, OP's issues, we
4 could overrule if there is some additional benefit to the
5 community and the city, at least that's my -- would be my
6 comfort.

7 MR. SULLIVAN: Okay. We will look into
8 that.

9 I would point out that we are providing
10 eight units, so that does help overall in housing
11 affordability, where there's nothing now.

12 CHAIRPERSON HEATH: I am going to turn back
13 to Office of Planning for a question.

14 You have the packet that he was presenting.
15 Is Alternative No. 2 most similar to what OP is
16 recommending with the three lots?

17 MS. RAPPOLT: I would say that it sort of
18 looks like it makes more sense than Option 1. However,
19 there's just missing information on this plan. I don't
20 know what the lot depths are. We just need more
21 information to analyze it, to be honest with you.

22 CHAIRPERSON HEATH: Okay. All right.

23 COMMISSIONER COHEN: This is a question for
24 OP as well.

25 I'm not sure I understand your rationale

1 because it appears that the conformity to the
2 neighborhood issue, the four lots would conform because
3 of the diversity, and so maybe I just didn't really find
4 the argument, although the third lot would be wider than
5 required, it could also be developed as a row house or
6 semi-detached structure. Isn't that what they are
7 proposing, anyway?

8 MS. RAPPOLT: I think they are, but we
9 haven't seen very definitive plans into what the building
10 type is that they are submitting, actually.

11 And I would say, yes, that there is the
12 character sort of established on the west side, and my
13 point was to sort of get to the Applicant's point that we
14 need the four lots solely because of a character issue.

15 And like I said, we would just point out on
16 the western side of this square, there's different
17 building types, different building forms. They're a lot
18 taller than all the row houses along Columbia Road on the
19 western part of the square.

20 But to get back to the main sort of
21 rationale for OP's position is that when you start to
22 modify the lot width and lot areas of the Zoning
23 Regulations, you're in effect densifying what the intent
24 of the regulations were.

25 Zoning here allows for three units, and

1 when we add the fourth unit, we're sort of up-zoning the
2 property to some degree. So we now would be dealing with
3 eight units as opposed to six units.

4 So when you start sort of fiddling with the
5 lot and the width, sort of lose the intent of the density
6 that's supposed to be there in the R-4.

7 COMMISSIONER COHEN: All right. But how
8 far is this from public transit?

9 Mr. Sullivan, maybe you can answer that.

10 What I'm getting at is the density issue is
11 of concern in certain neighborhoods more than, I think,
12 in this neighborhood that I'm aware of, and that the
13 density is needed in our city, because we're a growing
14 city, and we should be trying to, if appropriate -- and
15 I'm not sure this is the right case yet. But if
16 appropriate, we need units in our city, period, and I
17 would think that we would look to see where, again, if
18 there is diversity, it would accommodate that kind of
19 growth or diversity.

20 So that's why I asked about the -- maybe we
21 need more information on this project to move forward.

22 Do you know how far it is?

23 MR. SULLIVAN: We're looking through the
24 parking study right now, and we'll give you that
25 information.

1 COMMISSIONER COHEN: Thank you.

2 CHAIRPERSON HEATH: All right. It does
3 sound like we're going to need additional information,
4 both on the transit, how close it is to transit, and I
5 think it would be beneficial to get a little more detail
6 on your alternatives.

7 COMMISSIONER COHEN: Including the
8 affordability --

9 CHAIRPERSON HEATH: Right.

10 COMMISSIONER COHEN: -- issue because that
11 would give greater comfort, I think, all around if we are
12 to make this exception and override the Office of
13 Planning's proposed -- report.

14 MR. SULLIVAN: Okay. We'll look into those
15 issues. I'd still like to ask some questions of the
16 Office of Planning.

17 CHAIRPERSON HEATH: Sure. Sure.
18 Board, any other questions of Office of
19 Planning?

20 [No audible response.]

21 CHAIRPERSON HEATH: All right. So,
22 Applicant, you can proceed with your questions to Office
23 of Planning.

24 MR. SULLIVAN: Thank you.

25 Regarding prong one, Ms. Rappolt, would you

1 say that the property is unique?

2 MS. RAPPOLT: In the context of your
3 request, I don't -- we have not found a uniqueness in
4 this particular property.

5 MR. SULLIVAN: Okay. So are there other
6 properties similarly situated or sized in this general
7 area? Are there other 6,000-square-foot lots with a
8 church on them and street footage on both streets?

9 MS. RAPPOLT: I would say no. There aren't
10 those types of properties there, but in the context of
11 pursuing row dwellings here, we wouldn't find that there
12 is a uniqueness here.

13 MR. SULLIVAN: Are row dwellings unique on
14 this block, then?

15 MS. RAPPOLT: No.

16 MR. SULLIVAN: Okay. So, if I could
17 understand the proposal, the alternative proposal --
18 first of all, is the standard that it -- that compliance
19 with the matter-of-right regulations be unnecessarily
20 burdensome to an Applicant to grant relief, or does it
21 have to be impossible? And did OP use that standard?
22 What standard did OP use in finding that there's no
23 practical difficulty?

24 MS. RAPPOLT: I think from OP's
25 perspective, it's difficult for us to support new

1 development that doesn't meet the standards that include
2 lot width and lot area due to the fact that it can then
3 cause a development that's out of character with the
4 intent of the R-4 regulations.

5 MR. SULLIVAN: So is that a policy decision
6 across the board, or does that just relate to this
7 project? Are you saying Office of Planning is making
8 this decision based on a policy, not necessarily on the
9 facts of this particular case?

10 MS. RAPPOLT: I would say that we are
11 looking at this case very specifically on its facts, but
12 in general, that has been a policy that OP has sort of
13 stood behind.

14 MR. SULLIVAN: So is it a -- could it be
15 unnecessarily burdensome to an Applicant under your
16 proposal to leave a sizeable portion of the property
17 idle, which would happen under your scenario, or to
18 create odd-shaped lots, a shallow, stubby lot on
19 Columbia, and then to have to provide a curb cut and a
20 parking space, further limiting the usable area and the
21 pervious surface on a lot that already needs to be
22 cleared of existing improvements? There's no -- you
23 don't think that's any burden to the Applicant
24 whatsoever?

25 MS. RAPPOLT: I think it could be

1 burdensome, but again, we haven't seen a proper layout,
2 as far as I know, of different options that could be here
3 to sort of evaluate, you know, in your scenario to what
4 would a building look like there, what other sorts of
5 relief would you need. I think this just needs to go a
6 little bit further to show that, in fact, the three lots
7 are very difficult to deal with.

8 And on the flip side, the fourth -- the
9 fourth row dwelling of two units makes a lot more sense
10 than the three.

11 MR. SULLIVAN: I agree. I'm not sure I
12 understand that comment on the fourth row dwelling.
13 That's what we're proposing is four row dwellings.

14 MS. RAPPOLT: I think we need to see it,
15 just to compare the layouts, to sort of see what is the
16 burden of just providing the three units a lot more
17 clearly than what's shown here. This drawing doesn't
18 have dimensions on it, doesn't have a building footprint.
19 It's hard for us to evaluate that sort of in a vacuum.

20 MR. SULLIVAN: Okay. My impression was
21 that you had evaluated that and said that three works,
22 and that that was the OP's position that three works just
23 fine with absolutely no burden whatsoever to the
24 Applicant.

25 MS. RAPPOLT: That's what we -- that's what

1 we assumed because it meets the regulations, but you're
2 saying that it doesn't meet those? So that's what I'm
3 saying. We'd like to see if it doesn't, if it is very
4 burdensome, a layout of a building here on the third lot.

5 MR. SULLIVAN: So regarding the reports,
6 comments on prong three, regarding substantial detriment
7 to the public good, the Office of Planning's position is
8 that granting relief could result in a detriment to the
9 public good. Could you explain what the detriment would
10 be in providing one additional dwelling on this block?

11 MS. RAPPOLT: It's two units, and we would
12 just say that it's increasing the density beyond what was
13 sort of envisioned for this district.

14 MR. SULLIVAN: Right. And doesn't every
15 variance request include some aspect of an increase or a
16 relief from zoning like this one? So you're saying that
17 it will have a detrimental effect on the public good
18 because we're asking for relief?

19 MS. RAPPOLT: I think I'm just saying that
20 because you're asking for relief, it would cause you then
21 to increase the density on the property, then that was
22 not envisioned.

23 MR. SULLIVAN: And how would that
24 substantially be detrimental to the public good exactly?
25 Because there's no detail in the report of why it would

1 be a detriment to the public good to have one more unit
2 on this crowded block -- two more units, one more flat.

3 MS. RAPPOLT: I think it just gets to the
4 public's anticipation of where they live and what's
5 possible in their neighborhood, and if everyone came
6 forward and started asking for additional height and
7 destiny or any other sort of zoning thing, I think you
8 sort of then move away from the intent of the district.

9 MR. SULLIVAN: Wouldn't their case have to
10 be unique? Wouldn't it have to be a unique lot, much
11 like this?

12 MS. RAPPOLT: Perhaps.

13 MR. SULLIVAN: Isn't that why we have --

14 MS. RAPPOLT: But again, we're kind of
15 talking in hypotheticals here, so --

16 MR. SULLIVAN: But isn't that why we have
17 the uniqueness factor in fact?

18 MS. RAPPOLT: Yes. That's why there's a
19 uniqueness and people's request for variance.

20 MR. SULLIVAN: I'm sorry. I don't mean to
21 badger. I don't see any reason why or explanation why
22 there will be a detriment to the public good, other than
23 it doesn't meet the regs; therefore, it's a detriment to
24 the public good. And that's why we're here, to ask for
25 relief from the public good.

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1 So on the same -- by the same token, no
2 substantial harm to the Zoning Regulations, the
3 explanation seems to be the same. Both sentences there
4 really say the same thing. We're asking for an increase
5 in density; therefore, there is substantial harm to the
6 Zoning Regulations, period.

7 CHAIRPERSON HEATH: We're going to ask for
8 additional information --

9 MR. SULLIVAN: Okay.

10 CHAIRPERSON HEATH: -- on this case. So
11 we're not going to decide today, which is going to give
12 you extra time to have further conversations with Office
13 of Planning to get clarity on their position and your
14 position. So, if that will suffice --

15 MR. SULLIVAN: Yes.

16 CHAIRPERSON HEATH: -- we'd like to keep
17 moving.

18 MR. SULLIVAN: Thank you.

19 CHAIRPERSON HEATH: Thank you. All right.

20 MR. SULLIVAN: Okay. No further questions.

21 CHAIRPERSON HEATH: Thank you.

22 Sure, go ahead.

23 VICE-CHAIRPERSON HILL: Well, I just wanted
24 to say a little bit where I am with this, so if we're
25 coming back.

1 I mean, I appreciate the slide that has the
2 three lots, and this is what I had thought that you would
3 be able to do with it. And so why this doesn't work is
4 kind of where I'm stuck with, like, you know -- if
5 Columbia Road -- the lot, the square lot that you have,
6 at least based upon this diagram, if you make the back
7 yard just as big as you have proposed on the other units,
8 then you will have a bigger lot there, and so why this
9 doesn't work is where I'm kind of, you know, struggling
10 with.

11 MR. SULLIVAN: I'm sorry. Which?

12 VICE-CHAIRPERSON HILL: Your slide,
13 Alternative No. 2.

14 COMMISSIONER COHEN: Alternative No. 2.

15 MR. SULLIVAN: Okay.

16 VICE-CHAIRPERSON HILL: As I read through
17 the record -- and that's where I thought was the only way
18 that you do it. I mean, the L lot thing or whatever it
19 is that you had shown before, that obviously isn't going
20 to work.

21 And so this -- and then to my colleague's
22 point about the affordable housing, I mean, that might be
23 something that is of a discussion, I guess, but why this
24 doesn't work is where I'm kind of sitting.

25 MR. SULLIVAN: Sure. And we can provide

1 more information on that, and I can have Mr. Berman speak
2 to that.

3 And I would like to point out that if we
4 can -- I know it's not often talked about or it's
5 reviewed in a different standard, but it's unnecessarily
6 burdensome is the standard for area variance relief and
7 not whether or not something is possible, so we would
8 like -- while we are submitting more additional
9 information, we can submit some information on why it is
10 burdensome to do a three flat --

11 CHAIRPERSON HEATH: You can include that.

12 MR. SULLIVAN: Yeah. Three lot
13 configuration.

14 Thank you.

15 CHAIRPERSON HEATH: All right. So we'll
16 proceed with the hearing, and then we'll conclude with
17 just a follow-up on the additional information that we
18 need.

19 Is anybody from Department of
20 Transportation here on this case?

21 [No audible response.]

22 CHAIRPERSON HEATH: We do have a
23 recommendation of no objection from Department of
24 Transportation with conditions if changes are made to the
25 TDM plan, and they've also asked that the Applicant agree

1 to work further with DDOT.

2 Is anyone here from ANC-1B?

3 MR. NELSON: I'm here to represent as a
4 resident to support this project.

5 CHAIRPERSON HEATH: Can you come forward?

6 MR. NELSON: Once again, my name is Patrick
7 Nelson, and I chair the Zoning Preservation and
8 Development Group for 1B.

9 Just to give you a couple of answers to
10 questions you ask in retrospect to the transportation,
11 this property is located on -- right off of Georgia
12 Avenue, which has two bus lines, the 52 and the 54 that
13 run directly down, highly used. It's somewhat centrally
14 located between the Columbia Heights Metro Station, the
15 Petworth Station, and Shaw Metro Station, so it's kind of
16 in the middle.

17 I live about two blocks -- two or three
18 blocks from this residence, and I can walk from either --
19 to either one of those stations from my house in about 10
20 minutes. It's not that far.

21 The other thing I wanted to point out was
22 the point that OP made about different styles of
23 buildings that are on this plot. This is one of those
24 unique plots that does not have an alley, so there are
25 some houses that were built originally, and then this

1 plot was changed probably in the early '50s when they
2 built the building that's there.

3 The buildings that are on Georgia Avenue
4 are in a totally different zone, so their density is
5 completely different than this.

6 And the other point I want to make is that
7 there is only one plot on this square that goes from
8 Georgia to the alley and between the two streets, and
9 that was built as a row house that goes from front to
10 back.

11 And the reason why the ANC is really
12 supporting this, aside from the fact that it needs to
13 relieve, is the fact that that one plot, the house has
14 kind of moved into the middle of the lot, so it doesn't
15 match the houses on the other side.

16 It also leaves an empty lot in the back
17 that they used as their back yard, but it makes the
18 street on the Hobart side less traffic where people are
19 moving in and out of. So the logic that we used when we
20 decided to support this project was that it would be
21 putting houses on both sides.

22 There is no parking on any of the spaces,
23 so it's concurrent with the lot that's there.

24 We also have had the church come before us
25 and ask for a variance to put in a curb cut, so that they

1 could use the spot on Columbia Road as a parking lot,
2 which the community adamantly opposed, and also DDOT said
3 they wouldn't do it. So there is background to not
4 having curb cuts put. So no matter what they do on this,
5 whether they do three sites or two sites or one site,
6 they are not going to get a curb cut, so they won't be
7 able to have any parking, no matter what we end up doing.

8 And what's important to me as a resident
9 that's dealt with this property for a long time, it's
10 been a real nuisance property. The church has tried to
11 start multiple construction parcels on the Columbia Road
12 side and has failed. It has done damage to the house
13 that is abutting to it. They have had to go to court and
14 sue them to get the things fixed. It's been a huge
15 problem, and to have a developer that wants to come in
16 and do something that's going to be positive we wholly
17 support.

18 And my concern is that the uniformity,
19 which I think she mentioned, of the houses, if you look
20 at the houses that are on Columbia Road now, they are all
21 row houses, the older houses that front the street, and
22 they have a very small back yard with no parking. And
23 there's only one building on the Hobart side at the end
24 of the alley. That's a multi-unit building that also
25 doesn't have any parking and has absolutely on rear yard.

1 And then the two houses that abut that are
2 row houses that do have some space in the back, but none
3 of those houses have parking.

4 So to put a house that is only on one side,
5 it kind of takes away from the symmetry of the other side
6 of the street having the row houses on both sides. So
7 that's the logic that we used at the committee level when
8 we were analyzing this issue.

9 And I also want to say in final comment
10 that when Ms. Cohen made the comment about affordability,
11 that was something that was brought up to the developer
12 at the committee level, and we said that if that is
13 something that he is willing to work with, he would get
14 greater support at your level and at the community level.
15 But that was not something that we pushed because we felt
16 that the whole plan was congruent with what we wanted to
17 see.

18 COMMISSIONER COHEN: Thank you very much
19 for your testimony.

20 CHAIRPERSON HEATH: Thank you. You have
21 had a busy day today.

22 All right. Is there anyone else here
23 wishing to speak in support of this application? Anyone
24 in support?

25 [No audible response.]

1 CHAIRPERSON HEATH: Anyone here wishing to
2 speak in opposition to this application? Anyone in
3 opposition?

4 [No audible response.]

5 CHAIRPERSON HEATH: Okay. Well, then we
6 will conclude the hearing and request that the Applicant
7 submit additional information conveying why the three
8 lots don't work, so additional information beyond just
9 the single-line drawings showing the alternatives, but
10 specifically include dimensions and other applicable
11 detail that will help us understand will make it clear.

12 I would also ask that you submit
13 information on whether or not you can include affordable
14 housing as a part of this development, whether that is
15 feasible or not.

16 And I would also encourage you to continue
17 your conversations with Office of Planning and DDOT until
18 this comes back.

19 Anything else, Board?

20 COMMISSIONER COHEN: That's it.

21 CHAIRPERSON HEATH: Okay. All right.

22 So Mr. Moy will put this on the docket for
23 a future meeting.

24 MR. MOY: Yes. If I can propose two dates,
25 Madam Chair. Looking at the schedule, Ms. Cohen is --

1 well, you're already scheduled for November the 24th, but
2 there's -- we could do November 17th if Ms. Cohen wants
3 to come in just for that one case. The docket up until
4 that date is very, very full for the Board.

5 CHAIRPERSON HEATH: Okay. Are you fine
6 with the 17th?

7 COMMISSIONER COHEN: Yes.

8 CHAIRPERSON HEATH: Okay.

9 COMMISSIONER COHEN: Wait. I think so.

10 CHAIRPERSON HEATH: Okay.

11 [Pause.]

12 COMMISSIONER COHEN: Oh, it looks good.

13 Fine.

14 CHAIRPERSON HEATH: Okay.

15 MR. MOY: I'm sorry. For my clarification,
16 is this for a continued hearing or for a decision?

17 CHAIRPERSON HEATH: Let's make it a
18 decision.

19 MR. MOY: Okay.

20 CHAIRPERSON HEATH: Yeah, we'll make it a
21 decision.

22 MR. MOY: Okay. A decision. Then if the
23 Applicant can submit filings by the week prior, if we can
24 make it Monday, November the 9th, is that doable?

25 MR. SULLIVAN: [Nods head up and down.]

1 CHAIRPERSON HEATH: All right. Thank you.

2 [Pause.]

3 **APPLICATION NO. 19056 (further)**

4 CHAIRPERSON HEATH: So we'll call back as
5 our next case, Application 19056. I know the parties
6 have left the room several times for conversation, and it
7 would be great to hear if anything has come out of that
8 before we proceed.

9 MS. MAZO: Thank you. Again, Samantha Mazo
10 for the Applicant.

11 As part of those conversations, our
12 Applicant has looked into the possibility of alternative
13 plans that could very well obviate the need for this
14 variance relief. Therefore, we have requested and
15 suggested to Mr. Moy that we go ahead and postpone this
16 hearing today because we believe that would be the best
17 interest of the Board and for the Board's efficiency.

18 That said, we understand that the neighbors
19 may have a different opinion, and if it's the Board's
20 pleasure, we are more than happy to go forward with our
21 request and our full presentation here and now.

22 Thank you.

23 CHAIRPERSON HEATH: Okay.

24 Yes.

25 MR. LEWIS: Ron Lewis for ANC-2E. Thank

1 you very much.

2 Sometimes it's music to the ears to hear
3 let's put this off and let people talk about it some
4 more. We feel it's different here.

5 We had no discussions whatsoever for
6 months, including a time that was postponed at the
7 Applicant's request in order to have discussions. They
8 just didn't happen, and so it's only after we show up
9 here today with four community members and three
10 community representatives willing to give up the day
11 because this is important that suddenly there's some
12 vague talk about, well, I think we may be able to come up
13 with something different where we wouldn't -- you know,
14 the one-house plan, a one-house plan.

15 Well, we're happy to have those
16 conversations, but not with another postponement looming
17 over our heads. So we feel the Applicant should either
18 withdraw the application if they're serious about this
19 based on this past history of indications we're going to
20 talk with no follow-through. Withdraw the application,
21 and then we'll talk. It can always be filed again, I
22 suppose, if things break down, or to go forward today
23 because we're here.

24 MR. HINDS: Speaking for the Citizens
25 Association of Georgetown, this is a very important site

1 in Georgetown. It's important to the history of
2 Georgetown, and the Applicant's first proposal for
3 building two houses on the substandard lots,
4 substandard-width lots on this site was, you know,
5 roundly opposed by the neighborhood. There was an ANC
6 resolution, which was available, obviously, to the
7 Applicant explaining why this was a nonstarter.

8 And I think that from the point of view of
9 those who have been -- you know, were presented with this
10 hearing and a revised plan also showing smaller but
11 substandard lots that completely obliterated this site,
12 you know, feel that it's time for the Applicant to
13 realize that this is just a non-starter. And I think the
14 Applicant is coming around to that view, but that doesn't
15 jibe with postponing this hearing for another hearing on
16 the same plans.

17 MS. MAZO: To be clear, the Applicant
18 strongly stands behind its variance request, and that
19 indeed is not the reason why we are asking for this
20 postponement.

21 We are asking for this postponement because
22 we realize that any residents who are going to reside on
23 this property, be it one house or two, will become a part
24 of this neighborhood. And accordingly, we would like to
25 design a property that is in fitting with the

1 neighborhood and is something that can be welcomed by the
2 neighbors.

3 To that end, I understand that just in
4 terms of outreach to the neighbors, there has been a
5 counsel shift, and so there's a new counsel that has been
6 brought on. I was not party to any of the prior
7 discussions.

8 We are happy to continue our discussions,
9 and also, as the Board is aware, that any development on
10 this property due to the fact that it is located in the
11 Georgetown Historic District would be subject to review
12 and approval by HPRB and OGB.

13 Accordingly, the neighbors, the ANC,
14 anybody who is interested will have more than an
15 opportunity at that point should an alternate -- should
16 an alternate design go forward.

17 So, therefore, we're merely asking for a
18 decision by the Board at this time to give us a little
19 bit more time to flesh out this idea. That, honestly,
20 our architect was working in AutoCAD in the other room to
21 try to come up with something that would be a little bit
22 different just now. So it hasn't been fully fleshed out.
23 We would like to go forward, hopefully, with that plan,
24 but we just cannot commit today to what the opposition is
25 requesting -- and that would be a full deletion or

1 pulling back of this application -- because it is
2 certainly not warranted in this case.

3 CHAIRPERSON HEATH: Are you looking at any
4 solutions that would negate the need for the variance
5 relief?

6 MS. MAZO: Yeah, indeed. The particular
7 solution that we are looking at and we are most
8 interested would indeed negate the need for any sort of
9 zoning relief and would keep the lot as one larger lot,
10 which to the best of my understanding is the ANC's and
11 the CAG's opposition to this case, is that they have --
12 in their position, that having two lots on this
13 particularly quite large and unique and exceptionally --
14 a lot that has exceptional conditions on the block and in
15 the square, but it is their position that improving this
16 or subdividing this lot into two separate lots is
17 questionable and not to their liking.

18 Accordingly -- and I also understand that
19 they are interested in trying to preserve some open
20 space.

21 We are looking at an option for development
22 of this project that would preserve certain open space
23 and would be more similar to what was previously on the
24 property as an old razed home -- home that was razed in
25 2013. We certainly cannot go back to that footprint

1 because that footprint was very, very small by historic
2 Georgetown standards and is not something that would work
3 today, but we are looking at an option that could be
4 processed as a matter of right, would go before OGB and
5 HPRB.

6 But, unfortunately, as I said, this option
7 is really just coming to us now, and we cannot share it,
8 obviously, at this time. And we are also -- it has not
9 been fully vetted.

10 COMMISSIONER COHEN: How long have
11 discussions been going on about this parcel?

12 MR. HINDS: Yeah, that's part of the
13 problem is that there have not been any discussions with
14 the neighbors.

15 I think that one neighbor was consulted
16 briefly by a representative of the Applicant, and that
17 was just simply to tell the neighbor what was being
18 proposed, which was to build two townhouses on
19 substandard lots.

20 It is the proposal to build two townhouses
21 on substandard lots that we're opposed, and that's the
22 particular proposal that they want to have postponed.

23 I think that it would be helpful to the
24 Applicant to know that the opposition of the ANC, the
25 Citizens Association at Georgetown, and the Office of

1 Planning say that that's a bad idea here is sufficient to
2 go back to the drawing board and present us with another
3 proposal.

4 That just doesn't square with postponing
5 this hearing. We are here to tell you that this is not a
6 good idea. I think the Applicant is hearing us, but it
7 doesn't make sense to postpone a hearing to hear this
8 again.

9 COMMISSIONER COHEN: But I thought they
10 made some changes in their discussion right now. If you
11 were listening to them, it seems like they may make steps
12 to address your concerns. It appears that way, what I
13 just heard.

14 MR. HINES: Yes, I think it does. And our
15 only problem is that they are proposing to take this
16 existing plans that are before you and have a hearing on
17 those plans at some postponed date. That's what they're
18 proposing.

19 CHAIRPERSON HEATH: What they've indicated,
20 what I heard, is that they are now going back to the
21 literal drawing board and looking at alternative
22 solutions that would address your concerns about
23 potentially having just a single residence, potentially
24 having more greenspace, and reducing the size of the
25 development project that's a part of the application

1 today.

2 And what I would also say is that the
3 reason that I had you all spend time talking today was
4 because I assume you had had conversations before, but I
5 understand that hasn't happened. But the reason that I
6 didn't that was so that there could potentially be some
7 movement coming together on a decision.

8 If we make the decision, somebody is going
9 to be unhappy. It's likely that -- and I don't know this
10 for a fact, but in a lot of cases where there is a lot of
11 opposition, it's difficult for us as a Board to decide on
12 a case the day that it's presented. We could need
13 additional information. We could have additional
14 requests of the parties that would require you to come
15 back to us.

16 So just because we hold the hearing today
17 doesn't mean that a decision will be made today whether
18 we grant or deny this application.

19 So, for me, the request to postpone is an
20 opportunity for the Applicant. They understand there's
21 lots of opposition from other parties involved and from
22 the Office of Planning, but the postponement would allow
23 the Applicant to make a revision in order to get closer
24 to what the community is requesting. That's what it
25 sounds to me.

1 MR. LEWIS: We hear what they are saying,
2 yes, and we do appreciate the chance to get together.

3 And as I think you know, our community and
4 our ANC likes to work collegially on matters that come to
5 the BZA and that come to the Zoning Commission, and we
6 often succeed.

7 Here, the conversation has been going on,
8 the community conversation, for quite a long time because
9 it started with the demolition by neglect and then by a
10 tree of the property and then the tough decision to
11 support demolition because there was no other
12 opportunity.

13 But at the time we did that at the ANC, we
14 included in our resolution of support for demolition the
15 conditions that we would expect a house of modest size, a
16 single house of modest size, reminiscent of what had been
17 there to follow up.

18 So that has been on the public record for
19 quite some time, and while we appreciate the current
20 situation and would look forward to talking further and
21 possibly reaching agreement or sending it to the Old
22 Georgetown Board or doing something that does not require
23 zoning relief and letting the OGB wrestle with the size
24 and precise location of a single-family house.

25 We're fine with all that. It's just that

1 we have no assurance that that's where this is really
2 going, and based on past history, we don't have any
3 reason to feel that comfortable about it.

4 COMMISSIONER COHEN: Well, two things.
5 One, it seems to me that what's there now is
6 unacceptable, and the second thing is, is that at least
7 what I -- again, what I heard is that there have been
8 some discussions with people who are no longer engaged in
9 this. And I believe that, again, what I heard is that
10 they're willing to try to do the only single home,
11 redesign it.

12 I would just suggest that we postpone this
13 and see what comes up and hope for the best. I mean,
14 they actually stated that they were willing to
15 compromise. At least, again, that's what I believe I
16 heard, and if I heard differently from my other
17 colleagues --

18 MS. MOLDENHAUER: Let me just put on the
19 record here -- because I think that we -- we are
20 obviously willing to postpone the case. We are also
21 willing to move forward with this case, if that's what
22 the ANC and the parties want. I don't believe that's in
23 the best interest of the Board.

24 The ANC has vehemently -- and the
25 neighborhood, as you can even heard today -- only wanted

1 a single-family home, and we did not believe that would
2 be possible. We believe we had a strong case for the
3 relief to revert this property back to its original two
4 lots, but based on a conversation today and possible new
5 suggestions that were not previously discussed, we have
6 an opportunity to maybe meet that compromise, which is
7 exactly what they want, which we did not think was
8 possible.

9 We are possibly going to be working with
10 the ANC and the neighborhood and CAG to give them kind of
11 their only option kind of strategy if we ask -- if we
12 obtain this postponement.

13 VICE-CHAIRPERSON HILL: Madam Chair, I just
14 want to say I can go either way on this, like, either
15 postpone or not. I mean, if it's because everyone is
16 here and they want to go through it, because if -- you
17 know, we're not going to make a decision probably today
18 anyway, and so it's going to get pushed off, anyway.

19 And then if after this, it turns out that
20 they can do something that is of by right, then they're
21 going to pull the application, anyway.

22 So it basically, to me, sounds like we're
23 either going to save our time by not doing it and hoping
24 that they pull the application, or we just go ahead and
25 go through and do it and then see what happens.

1 CHAIRPERSON HEATH: Yeah.

2 COMMISSIONER COHEN: Well, the way I look
3 at it is there's so much opposition and denial from OP
4 and the ANC and no objection from DDOT. I think we
5 should just move on and see what comes of the revised
6 design.

7 CHAIRPERSON HEATH: Yeah. I don't think
8 that moving forward with a hearing on this case does
9 anybody any good, the Board included, and so --

10 MR. HINDS: We would be very comfortable
11 with the Board providing a postponement to the Applicant
12 to produce a revised design after consulting with the ANC
13 --

14 CHAIRPERSON HEATH: Sure.

15 MR. HINDS: -- the neighbors, and CAG.

16 What we don't want is a postponement just
17 to look at the same plan that is before us today.

18 CHAIRPERSON HEATH: Sure. That would be a
19 waste of all of our time.

20 MR. HINDS: That was our point.

21 CHAIRPERSON HEATH: Agree.

22 So what we'll do is we will grant the
23 postponement, and we'll reschedule this hearing. But we
24 expect serious consideration of alternatives and serious
25 consideration of the community's input.

1 We also expect that there will be
2 conversations and meetings with the ANC and the community
3 and with the civic association. It's really important
4 that those conversations happen, and we can't -- you
5 can't come back to the Board without having had those.

6 So we'll postpone under those conditions,
7 and --

8 MS. MOLDENHAUER: Can I just make sure that
9 the record is very clear because of what was just said?
10 We will postpone with the hopes that, obviously, we're
11 working with DDOT, which is a party that we cannot
12 control, which is a fundamental part of our alternative
13 design concept.

14 CHAIRPERSON HEATH: Sure.

15 MS. MOLDENHAUER: If we cannot obtain that,
16 we will be back to this Board with a similar concept as
17 what we have currently in the record. And I don't want
18 the Board to be under any misassumptions that we are
19 going to obviously -- under my record, we are going to be
20 working with the community. We have every intention of
21 hopefully getting that approved and working with them,
22 but if there's issues that are beyond our control, then
23 obviously we will have to be back here. But that's not
24 our desire at the moment.

25 CHAIRPERSON HEATH: We understand that, and

1 that's why I specifically said serious considerations,
2 but also seriously working with the community, the ANC,
3 and Office of Planning, because there's significant
4 opposition to this project as it stands now, so it would
5 do us no good for you to come back with the exact same
6 solution with all of the opposition that's currently
7 facing us.

8 So I will grant the postponement.

9 COMMISSIONER COHEN: Madam Chair, does the
10 Board wish to rule on the party status request or defer
11 those rulings until the continued date?

12 CHAIRPERSON HEATH: I would elect to defer.
13 Let's see what the Applicant is able to provide and then
14 determine if the party status request is necessary, and
15 then we can elect to grant party status at that time.

16 COMMISSIONER COHEN: May I just add one
17 thing? The party status, a lot of people seem to have
18 similar concerns. So to lighten the load, it's often
19 appropriate to agree for one person to represent all the
20 people.

21 I mean, you could come in with as many
22 letters as you want, but as far as testimony, it's not to
23 anybody's benefit to be repetitive and duplicate what's
24 already been said.

25 CHAIRPERSON HEATH: All right. Thank you.

1 So a new date. How much time do you all
2 need as -- okay.

3 MS. MOLDENHAUER: We were just discussing
4 that. I think we would -- if we were to revise the
5 plans, we would then be filing that with OGB next week
6 and then going to OGB next month, so now we're into
7 November. So maybe if we could get an end-of-November
8 date, that would be preferable.

9 CHAIRPERSON HEATH: How does the 24th look?

10 MR. MOY: That looks like it's the 24th,
11 Ms. Cohen.

12 CHAIRPERSON HEATH: Okay.

13 MR. LEWIS: Excuse me. If they are going
14 to file plans next week with OGB, that hardly leaves any
15 time at all for consulting with the community about
16 what's going to be in those plans.

17 MS. MOLDENHAUER: Then we can push it off
18 to January, a January date for the BZA.

19 CHAIRPERSON HEATH: When is the next ANC
20 meeting?

21 MR. LEWIS: We meet monthly, usually the
22 first Monday of the month, so that would be November 2nd,
23 I think.

24 MS. MOLDENHAUER: Okay.

25 MR LEWIS: But it's the OGB time table that

1 drives this. They require plans to be submitted well in
2 advance of that, and the OGB deadline wouldn't really
3 leave us much time to have serious discussions about
4 this.

5 MS. MOLDENHAUER: And I think the issue
6 would be really more talking with the neighbor regarding
7 a DDOT issue and then moving forward with the plans. And
8 obviously, if the concept physically -- if the building
9 size had evolved, that's not a zoning issue, so I don't
10 see how that would then affect the time frame for this
11 date.

12 CHAIRPERSON HEATH: Okay. So are we -- do
13 you have a question?

14 VICE-CHAIRPERSON HILL: I don't know if
15 this is helping or not, but I'm just curious. Is the
16 DDOT issue a curb cut?

17 MS. MOLDENHAUER: Yes. It's a curb cut.

18 So one of the issues here has always been
19 the fact that if you're doing one home, there was no
20 permitted curb cut on the site, and so it was a question
21 of working with the neighbors on that issue.

22 MR. LEWIS: But it's also a question of
23 working with the neighbors on the size of the house, I
24 would think.

25 MS. MOLDENHAUER: That's not a zoning issue

1 if we're talking about a single-family home.

2 MR. LEWIS: I understand that, but unless
3 you are comfortable with what you have going forward, you
4 want to come back here, and so we want to help you get
5 comfortable by agreeing on the aspects of your alternate
6 plan, and that takes some time.

7 CHAIRPERSON HEATH: Agree. And it's all
8 going to be contingent upon what they are able to come
9 back with. So if we -- what would be -- if we didn't do
10 the 24th, what would be the next date for --

11 MR. MOY: In December, then we're looking
12 at December 1st, December 8th, or December 15th.

13 COMMISSIONER COHEN: Am I sitting on any of
14 those?

15 MR. MOY: No. That's what you wanted,
16 right?

17 CHAIRPERSON HEATH: We probably should go
18 earlier in December.

19 MR. MOY: Of course, you want this.

20 CHAIRPERSON HEATH: Yeah. Would early
21 December be sufficient?

22 MR. MAZO: Would Commissioner Cohen be able
23 to attend that?

24 COMMISSIONER COHEN: We haven't had the
25 hearing, so -- I mean, even though I'm probably your

1 favorite commissioner, it's the luck of the draw.

2 [Laughter.]

3 CHAIRPERSON HEATH: Right, right. Since we
4 haven't moved forward with a hearing, it's not really --

5 MR. MAZO: Okay. Okay.

6 MS. MOLDENHAUER: So December 1st would be
7 fine.

8 CHAIRPERSON HEATH: Okay.

9 MR. MOY: The 1st, it is.

10 [Pause.]

11 MR. LEWIS: If they're ready, they can be
12 on the November second ANC meeting. The next one after
13 that, our schedule is a little complex because we gear it
14 to when the OGB meeting is.

15 CHAIRPERSON HEATH: Okay.

16 MR. MOY: Your first Monday in December,
17 sir, would be December the 7th, if it's the first Monday.

18 MR. LEWIS: No. It's --

19 MR. MOY: Oh.

20 MR. LEWIS: This is like the "i" before "e"
21 except after "c" rule.

22 MR. MOY: Gotcha. I gotcha.

23 MR. LEWIS: It's the first Monday in a
24 month unless the OGB is meeting in the first week of the
25 month, and then it's the last Monday. We're probably

1 meeting November 30th.

2 CHAIRPERSON HEATH: Okay. So this would
3 put us just after.

4 MR. LEWIS: Okay.

5 CHAIRPERSON HEATH: So let's stick with
6 December 1st.

7 All right. Thank you.

8 **APPLICATION NO. 19029**

9 CHAIRPERSON HEATH: So our last case,
10 Application No. 19029.

11 MR. MOY: Yes. The next application in
12 public hearing is No. 19029 of Eric Piersma, and this is
13 a case, Madam Chair, that was continued from September
14 15th.

15 CHAIRPERSON HEATH: If you all could
16 introduce yourselves?

17 MR. PIERSMA: Eric Piersma, homeowner.

18 MR. McDONALD: Matthew McDonald, architect,
19 on behalf of Mr. Piersma.

20 MR. SULLIVAN: Marty Sullivan with Sullivan
21 & Barros, on behalf of the Applicant, Mr. Piersma.

22 MS. GARCIA: Alex Garcia, also from
23 Sullivan & Barros.

24 VICE-CHAIRPERSON HILL: Just for the
25 record, Madam Chair, I have reviewed everything and seen

1 everything and watched everything, and so I'm able to
2 participate. Thank you.

3 CHAIRPERSON HEATH: All right, great.
4 Thank you.

5 So this case was originally heard on July
6 7th of this year, and at that time, the Board heard
7 testimony from the Applicant, Office of Planning, the ANC
8 Commissioner, who spoke in support, and we didn't have
9 anyone speak in support or opposition at that time. But
10 the hearing was continued to allow the Applicant to
11 provide financial information to support their practical
12 difficulty argument.

13 The Board also requested that the Office of
14 Planning take a closer look at the adjacent C-2-B zone
15 and provide additional analysis about the character of
16 the neighborhood.

17 Since the hearing, we have received your
18 preliminary pricing information, which relates to your
19 financial analysis and practical difficulty argument, and
20 we've also received a letter in support from Edward
21 Burske. I think that's how you pronounce his last name.

22 MR. McDONALD: "Burs-kee."

23 CHAIRPERSON HEATH: "Burs-kee." Okay.
24 Thank you.

25 Prior to this additional information,

1 Office of Planning was not in support of this
2 application, and because of the practical difficulty that
3 they felt you weren't meeting.

4 So I'd like to turn back to Office of
5 Planning, unless the Board has any other comments?

6 [No audible response.]

7 CHAIRPERSON HEATH: We'll turn back to
8 Office of Planning to see if you have any updates or new
9 information or thoughts.

10 MS. RAPPOLT: Megan Rappolt for the record.
11 Again, Anne Fothergill was the case manager for this case
12 back in July, and so I am covering for her today.

13 To answer some of the questions I think
14 that were brought up at the first hearing, we looked at
15 the C-2-B zone that's adjacent, the R-5-B zone, and I
16 think the question was, could this site potentially be
17 rezoned -- I think that's what the question was -- to
18 allow for a greater density. And even though the
19 Comprehensive Plan does -- would suggest that it could,
20 it's my understanding that that's probably infeasible
21 from the Applicant's point of view.

22 And I would also say that this particular
23 area in terms of character, it includes a lot of larger
24 row homes and apartment buildings that exist in legally
25 nonconforming buildings that have more units in them that

1 would be allowable under today's standards of the 900
2 square feet of lot area per unit.

3 And a lot of those buildings have had the
4 same number of units for quite some time, and so I think
5 some of the Applicant's information submitted was that
6 there is a lot of buildings here that are probably more
7 -- have more units than what would be required under the
8 900 square feet, which is true in our research.

9 However, most of those buildings are not
10 permitted to add an additional unit, and we wouldn't
11 support an additional unit being added in those existing
12 nonconforming apartment buildings or those row homes.

13 And we will acknowledge the Applicant's
14 request to bifurcate the application, and we would not
15 oppose the approval of the third unit becoming conforming
16 as part of their request. However, we would still
17 continue to oppose the fourth unit.

18 And I think that's sort of our summary from
19 last time.

20 CHAIRPERSON HEATH: Okay. So you have seen
21 the financial information. Did that impact -- did that
22 have any impact?

23 MS. RAPPOLT: We had a lot of questions
24 about it. It's kind of hard to look at that information
25 when it's submitted pretty late in the time period.

1 One thing that struck me was that the point
2 of the financial information was to sort of support the
3 fact that the third unit needs to be brought up to code,
4 but it just looked like from looking at the information,
5 there's a lot more happening in this project than just
6 bringing the third unit up to code. I think there's
7 probably an entire building renovation. There's 50,000
8 square -- or \$50,000 worth of site work happening.

9 So I think we asked for information that
10 was specific to bringing it up to code in terms of the
11 finances, and I think we just had a lot of questions
12 about what all the additional work was for, so --

13 CHAIRPERSON HEATH: Okay. Board, any
14 questions for Office of Planning?

15 COMMISSIONER COHEN: Again, you are looking
16 at this as not the pre but the post R-4 requirements, is
17 that correct, the ones that are more current that were
18 just recently approved?

19 MS. RAPPOLT: No. Our application is
20 looking at the old regulations, and that's how we
21 analyzed this request.

22 COMMISSIONER COHEN: And remind me what the
23 height of this building is, if it was to add that story.
24 It's 40 feet now, and it's going to remain 40 feet?

25 MS. RAPPOLT: Yes.

1 COMMISSIONER COHEN: And there are other
2 surrounding 40-foot buildings; is that correct?

3 MS. RAPPOLT: I believe so.

4 COMMISSIONER COHEN: So this is not what
5 one would consider a pop-up; is that correct?

6 MS. RAPPOLT: Correct.

7 CHAIRPERSON HEATH: All right. Mr.
8 Sullivan, does the Applicant have any questions of Office
9 of Planning at this point?

10 We have additional questions for you if we
11 can proceed to those. That will give you an opportunity.

12 MR. SULLIVAN: No, no questions. Thank
13 you.

14 CHAIRPERSON HEATH: All right.

15 Do you want to ask your questions?

16 COMMISSIONER COHEN: Again, I looked at the
17 pro forma, and I had some questions on some of the
18 assumptions, but I don't want to go into that kind of
19 depth.

20 What I want to do is ask you about the
21 affordability of some of these units. I didn't see that
22 the pro forma took into account rent that would be
23 considered accessible to somebody making less than market
24 rate. I mean, I didn't see the rents reflecting anything
25 less than market rate. Is that correct? I mean, you did

1 not add an affordable unit?

2 MR. McDONALD: Not at this time, no.

3 COMMISSIONER COHEN: Okay. My question is,
4 again, to overcome some of the obstacles when the Board
5 of Zoning Adjustment -- I mean, obviously, it has and it
6 will continue to overrule some of the Office of
7 Planning's recommendations, and in this case, I believe
8 you do have support of the ANC.

9 So I'm just asking, though, would your pro
10 forma be able to absorb the cost to make one of the units
11 below market rate?

12 MR. McDONALD: I can't really answer that
13 because I don't know what those rates would be.

14 COMMISSIONER COHEN: Eighty percent --
15 okay. Eighty percent of median income is -- I mean,
16 median income is 109,000. So 80 percent of that is in
17 the upper 80,000s. Do any of your rents -- let's see.
18 I'm sorry. I should have done this at home.

19 In other words, I would like you to do a
20 look at this project to see if you can support an
21 affordable unit. That makes it easier for us, I believe,
22 to override any of OP's -- by saying, "We had an
23 affordable unit. The ANC supported it." That's what I'm
24 looking for.

25 MR. SULLIVAN: How would -- we're not sure

1 how that would work. I guess that's part of the issue.

2 But, first of all, for the record, he says
3 yes. We definitely would like to do something like that.

4 COMMISSIONER COHEN: Okay. Let me just
5 walk you through the calculation, but I haven't done it
6 myself.

7 Median income is 109,000, roughly.

8 MR. SULLIVAN: Sure.

9 COMMISSIONER COHEN: Eighty percent of that
10 would be something like 80,000-something. Thirty-eight
11 --

12 MR. SULLIVAN: But I guess the question is,
13 not to cut you off, but would it -- as long as one of
14 these units rents for that number --

15 COMMISSIONER COHEN: Or less. Yeah, or
16 less.

17 MR. SULLIVAN: Or less. Right.

18 COMMISSIONER COHEN: I mean, I would love
19 to see some household who makes 50 percent of median
20 income.

21 MR. SULLIVAN: I'm worried about some of
22 the other rules for IZ as far as same finishes and same
23 --

24 COMMISSIONER COHEN: Yes.

25 MR. SULLIVAN: -- square footages and all

1 that stuff might be --

2 COMMISSIONER COHEN: Yeah. Just like an
3 IZ, exactly. Just like an -- that's what I'm asking for,
4 an IZ-eligible unit.

5 Therefore, it would also be the life of the
6 project.

7 MR. SULLIVAN: Could it be specifically
8 engineered in a BZA order with conditions?

9 So that, for instances, the units right
10 now, the way the house is configured, they may be
11 different sizes already, so it may not comply with
12 everything that you would do if you did 10 new units
13 because you could create that compliance right off the
14 bat.

15 COMMISSIONER COHEN: So you'd be willing to
16 maybe make the smallest one an IZ unit? Is that what
17 you're suggesting?

18 MR. SULLIVAN: I think so.

19 COMMISSIONER COHEN: That's sort of the way
20 people's behavior -- I mean, it's predictable.

21 MR. McDONALD: Would the rent be set at 80
22 percent of the -- what I would normally ask for rent, or
23 do they need to make 80 percent of the median income to
24 --

25 COMMISSIONER COHEN: Qualify, yes.

1 MR. McDONALD: I have no problem with that.
2 That's fine.

3 COMMISSIONER COHEN: For the life of the
4 project?

5 MR. McDONALD: Yes.

6 COMMISSIONER COHEN: I know that there are
7 different size units. I did see that. I would be very
8 comfortable, though, in arguing for any kind -- and it's
9 just me. I haven't yet looked at my -- or heard from my
10 colleagues. They may not be willing to do that, but it
11 would make it more comfortable for me to get a unit in
12 there that is more affordable to, you know, a working
13 class person.

14 MR. McDONALD: I understand.

15 I didn't research it because we filed this
16 before the zoning changes, so that wasn't part of our
17 research. That's why I'm not familiar.

18 COMMISSIONER COHEN: No, I understand.

19 I'm just -- a lot of it had to do more with
20 the pop-up situation and going higher than what was
21 considered, you know, comparable to other properties, and
22 I'm just pushing you a little bit more because I really
23 want to see greater affordability in this city. But
24 that's me as one commissioner on a --

25 MR. McDONALD: And just to clarify, I am

1 not adding any height to the building at all.

2 COMMISSIONER COHEN: No. Right. I
3 understand that.

4 MR. McDONALD: That's what the Office of
5 Planning said, but I'm not -- the existing --

6 COMMISSIONER COHEN: No, they agreed. They
7 said it remains 40 feet, and it's not considered a
8 pop-up.

9 So I'm just pushing you because the
10 pushback we sometimes get about not agreeing with the
11 Office of Planning, so I'm giving the Board of Zoning
12 Adjustment an opportunity to say -- the ANC didn't
13 disagree with this. I don't believe DDOT has a problem.
14 Am I correct? And so I'm trying to sort of just give
15 myself greater -- I could sleep better at night if I
16 fight for affordable housing.

17 MR. SULLIVAN: I appreciate that.

18 COMMISSIONER COHEN: But that's me.

19 MR. SULLIVAN: And if I might add, making
20 it as four units already helps the affordability because
21 they're more affordable units as individually, anyway.
22 So it's easier to get all the way to the IZ price coming
23 from four.

24 COMMISSIONER COHEN: Yes. Again, this is
25 me. My colleagues haven't really opined on that, nor has

1 OGC.

2 CHAIRPERSON HEATH: Right.

3 COMMISSIONER COHEN: And I don't want to be
4 perceived as a bully even though people have called me
5 that from time to time.

6 CHAIRPERSON HEATH: Okay. So we appreciate
7 the inclusionary zoning and affordable units, but it's
8 not a condition of the variance test. So I can't make it
9 a requirement, but if it's something that you're willing
10 to consider, that's certainly up to the Applicant.

11 MR. SULLIVAN: As the Applicant has stated,
12 we are willing to consider, and I would posit that it is
13 part of prong three, possibly, of the variance test.

14 CHAIRPERSON HEATH: Not --

15 MR. SULLIVAN: No substantial detriment to
16 then public good if you consider affordable housing a
17 public policy, desired public policy.

18 CHAIRPERSON HEATH: Could be. It depends
19 on how we -- yeah, it depends on how we interpret this.

20 MR. SULLIVAN: Right.

21 CHAIRPERSON HEATH: Yeah. That's okay.
22 That's okay.

23 So, Board, we could proceed with letting
24 the Applicant try to make justification for this fourth
25 unit. It sounds like that's where we're all --

1 VICE-CHAIRPERSON HILL: Justification for a
2 fourth unit?

3 CHAIRPERSON HEATH: Right. Unless you all
4 feel that you're ready to move forward on this one.

5 COMMISSIONER COHEN: Are you ready to --

6 CHAIRPERSON HEATH: Are you reading to move
7 forward on deciding this?

8 VICE-CHAIRPERSON HILL: I'm ready to move
9 forward.

10 MS. GLAZER: I'm sorry. Madam Chair, I
11 hate to interrupt, but I was engaged in a discussion with
12 Commissioner Cohen and didn't hear if you had a
13 discussion regarding what appears to be a threshold
14 issue, a procedural one on bifurcation that was raised by
15 the Applicant's counsel's letter.

16 CHAIRPERSON HEATH: We weren't talking
17 about -- we were talking about the affordable housing.

18 MS. GLAZER: Well, I believe there is an
19 outstanding request, then, from the Applicant. I'm not
20 sure if he wishes to withdraw that or not, but there is a
21 request to bifurcate the proceeding to consider, A -- or
22 I don't know if "bifurcate" is the proper word here, but
23 to consider, A, the project with the fourth unit or, B,
24 approval with a third unit only. I believe I am
25 interpreting it, but Mr. Sullivan may want to add to

1 that.

2 CHAIRPERSON HEATH: Can you elaborate on
3 that from your --

4 MR. SULLIVAN: Yes. I think "bifurcation"
5 is the correct term.

6 What we were requesting is, before the
7 Board, request to approve the third unit that has
8 existed, and the alternative to give the fourth unit now
9 offered as an IZ unit under Alternative B. So we would
10 -- we believe we meet the test for four units, but to not
11 get a third unit would be somewhat financially
12 catastrophic. So we do want to make the separate request
13 in case the Board was not inclined to grant four.

14 VICE-CHAIRPERSON HILL: Madam Chair, I can
15 just tell you where I am right now insofar as -- so what
16 I understand from OP, okay, so they -- by right, you are
17 allowed two, and this one has been here since 1989. And
18 so OP is agreeing to a third unit, but you'd only really
19 be able to do by right. And I'm laughing. Like, '89 is
20 supposed to be a long time ago.

21 So I would be sitting more in the terms of,
22 like, as far as meeting the standard -- like, I am having
23 a difficult time with the fourth unit because I don't
24 necessarily think it's different than the other ones that
25 are on the block and just kind of going through that

1 standard.

2 So I would be in support of the bifurcation
3 and the third unit.

4 CHAIRPERSON HEATH: But not the fourth?

5 VICE-CHAIRPERSON HILL: But not the fourth.

6 COMMISSIONER COHEN: And again, I am
7 supportive of the fourth if it's --

8 CHAIRPERSON HEATH: But only under the
9 condition that it is --

10 COMMISSIONER COHEN: Yes.

11 CHAIRPERSON HEATH: -- affordable.

12 And where does the Applicant -- I just want
13 to ask this one last time. Where does the Applicant
14 stand on the fourth unit if it's a contingent -- if it's
15 contingent upon being an affordable unit?

16 I am imagining that you need some time to
17 look into whether or not that's feasible.

18 MR. McDONALD: No. I would be open to it.

19 COMMISSIONER COHEN: And you would proffer
20 it so that it --

21 MR. McDONALD: Sorry?

22 COMMISSIONER COHEN: It's called
23 "proffering."

24 I mean, I am so deep into PUDs that I am
25 bullying you a little bit on having that.

1 I can go for the fourth only if --

2 MR. SULLIVAN: Maybe we could have one
3 minute to discuss?

4 COMMISSIONER COHEN: Sure.

5 [Pause.]

6 MR. SULLIVAN: We do believe it would be a
7 cleaner request to stick with the three --

8 CHAIRPERSON HEATH: Okay.

9 MR. SULLIVAN: -- and essentially withdraw
10 the request for four --

11 CHAIRPERSON HEATH: Okay.

12 MR. SULLIVAN: -- and approve it based on
13 the practical difficulty of it being there for 26 years.

14 CHAIRPERSON HEATH: Okay. Well, I believe
15 -- I know I am ready to move forward on this with the
16 change in your application, now moving forward with the
17 three units, and would the Board be willing to move
18 forward?

19 COMMISSIONER COHEN: Mm-hmm.

20 VICE-CHAIRPERSON HILL: Yes.

21 CHAIRPERSON HEATH: Okay. So then I'll
22 make a motion that we approve the application for the
23 variance for the three units and ask that you submit your
24 revision to the application, so it's not a bifurcated
25 request any longer. It's just a request for the three

1 units.

2 Anyone want to --

3 VICE-CHAIRPERSON HILL: I second the
4 motion.

5 CHAIRPERSON HEATH: All right. So the
6 motion was made and seconded. All in favor?

7 [Chorus of ayes.]

8 CHAIRPERSON HEATH: Anyone opposed?

9 [No audible response.]

10 CHAIRPERSON HEATH: All right. Then the
11 motion carries.

12 MR. MOY: The Staff would record the vote
13 at 3 to zero to 2 on the motion of Chairperson Heath to
14 approve the application for the relief requested for
15 three units, and I'm assuming also a filing of revised
16 plans as well for only three units into the record;
17 second the motion, Vice-Chairperson Hill; also in
18 support, Ms. Cohen; two members not present. Motion
19 carries.

20 CHAIRPERSON HEATH: Thank you.

21 Is there any further business?

22 MR. MOY: Is that for a summary order or
23 full order?

24 CHAIRPERSON HEATH: Summary. Can we do a
25 summary order with the revised application?

1 COMMISSIONER COHEN: I believe it would be
2 appropriate since the relief to the fourth unit was
3 withdrawn.

4 CHAIRPERSON HEATH: Sure. Okay, all right.

5 MR. SULLIVAN: Sorry. I didn't catch that.

6 CHAIRPERSON HEATH: We'll do a summary
7 order since the relief for the fourth unit was withdrawn.

8 MR. SULLIVAN: Okay. Thank you.

9 CHAIRPERSON HEATH: Are there any other
10 matters coming before the Board today, Mr. Moy?

11 MR. MOY: Not from the Staff, Madam Chair.

12 CHAIRPERSON HEATH: Thank you.

13 Then we'll adjourn.

14 [Whereupon, at 2:33 p.m., the public
15 hearing was adjourned.]

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