

1 GOVERNMENT OF THE DISTRICT OF COLUMBIA
2 Office of Zoning
3 Board of Zoning Adjustment
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9 PUBLIC HEARING
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14 9:35 a.m. to 2:53 p.m.
15 Wednesday, July 6, 2016
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21 441 4th Street, N.W.
22 Jerrily R. Kress Memorial Room
23 Second Floor Hearing Room, Suite 220 South
24 Washington, D.C. 20001
25

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

2 MS. BUTANI-D'SOUZA: Okay. The hearing will
3 please come to order. Good morning, ladies and
4 gentlemen. We are located in the Jerrily R. Kress
5 Memorial Hearing Room at 441 4th Street Northwest.
6 Today's date is July 6th, 2016 and we are here for
7 the public hearing of the Board of Zoning Adjustment
8 of the District of Columbia.

9 My name is Anita Butani-D'Souza, Vice
10 Chairperson.

11 Joining me today is Fred Hill, Board Member,
12 Jeffrey Hinkle, Board Member, and Rob Miller, Member
13 of the Zoning Commission sitting in as a member of
14 the Board today.

15 Please be advised that this proceeding is
16 being recorded by a court reporter and is also
17 webcast live. Accordingly we must ask you to refrain
18 from any disruptive noises or actions in the hearing
19 room.

20 The Board's hearing procedures and how we
21 will process applications can be found on the table
22 by the back door. All individuals wishing to testify
23 today will need to do two things. First, prior to
24 testifying each person who wants to address the Board
25 must complete two witness cards per person, and give

1 those cards, prior to testifying, to the Court
2 reporter who is seated to my right.

3 Number two, I need you to now stand and take
4 the oath which will be administered by Mr. Moy,
5 Secretary of the Board.

6 MR. MOY: Good morning.

7 [Oath administered to the participants.]

8 MR. MOY: Ladies and gentlemen, you may
9 consider yourselves under oath.

10 MS. BUTANI-D'SOUZA: Thank you, Mr. Moy. Do
11 we have any preliminary matters or announcements?

12 MR. MOY: Good morning, Madam Chair, Members
13 of the Board. Yes, I do. Very briefly, and this is
14 for the record, with regards to cases on the docket
15 for today, or in this case not, Madam Chair, there
16 are two cases, applications that have been postponed
17 to July 19th, 2016. Those cases are Application No.
18 19303 of Servant's Office, LLC., and Application No.
19 19316 of Dilan Investment, LLC., Application No.
20 19311 of Manna, Inc., Incorporated, has been
21 postponed, rescheduled to July 12th, 2016. And
22 finally, Application No. 19282 of Teace and John Noel
23 has been rescheduled to September 27th, 2016. And I
24 forgot this last one, Application No. 19280 of Martin
25 Hardy has been rescheduled to September 20th, 2016.

1 That's it, Madam Chair.

2 MS. BUTANI-D'SOUZA: Okay. Thank you. So in
3 terms of our order today we are going to follow the
4 agenda and begin with the appeal of ANC 3D. So, Mr.
5 Moy, can you please call the first case?

6 MR. MOY: Yes, with pleasure, Madam Chair.
7 Parties to the table to Appeal No. 19274 of ANC 3D as
8 captioned and advertised for -- this is an appeal
9 from the March 24th, 2016 zoning determination, but
10 of the Zoning Administrator, Department of Consumer
11 and Regulatory Affairs. This is regarding parking
12 considerations for a proposed addition within the
13 Spring Valley Shopping Center, R-5-B District, 4800
14 block of Massachusetts Avenue Northwest, Square 1500,
15 Lots 1 through 3.

16 And, Madam Chair, just a reminder that there
17 is a request for intervenor status under Exhibit 24.

18 MS. BUTANI-D'SOUZA: Okay. Thank you. Good
19 morning. Let's see. Why don't we start with
20 introductions? We'll start on this side. Can you
21 turn on your mic?

22 MR. MURN: Hi. My name is Ed Murn. I'm with
23 Washington Real Estate Investment Trust.

24 MS. PRINCE: Allison Prince here on behalf of
25 Washington Real Estate Investment Trust, Goulston and

1 Storrs.

2 MS. RODDY: Christine Roddy with Goulston and
3 Storrs.

4 MR. KRASKIN: Dr. Jeffrey Krasking, Spring
5 Valley Wesley Heights Citizen's Association.

6 MR. SMITH: My name is Tom Smith and I'm the
7 Chair of ANC 3D.

8 MS. GATES: Alma Gates, ANC 3D.

9 MR. LEGRANT: Matthew LeGrant, Zoning
10 Administrator, DCRA.

11 MR. TONDRO: Maximilian Tondro, general
12 counsel -- on behalf of the general counsel for DCRA
13 and the Zoning Administrator.

14 MS. BUTANI-D'SOUZA: Okay. Thank you. Okay.
15 So, before we begin we have a request for intervenor
16 status from the Spring Valley Wesley Heights Civic
17 Association. So, it's my understanding that
18 intervenor status typically is only granted -- well,
19 let me just ask. Can you help us understand how the
20 interests of Spring Valley Wesley Heights Civic
21 Association differ from the ANC?

22 MR. KRASKIN: We are the ones who actually
23 raised and brought the historic designation
24 application up originally. And we have been involved
25 fully throughout this process of meetings, arranging

1 with the community dealing with this specific issue
2 regarding parking and this new building.

3 MS. BUTANI-D'SOUZA: Okay. So I believe the
4 question though is, how do your interests differ from
5 those of the ANC? Are they the same?

6 MR. KRASKIN: They would be similar and
7 supportive.

8 MS. BUTANI-D'SOUZA: Okay. So typically
9 intervener status is granted if there is a sort of
10 clearly demonstrated distinction or interest that is
11 distinct from the ANC. Excuse me. So I am -- I --

12 MR. KRASKIN: I think it's the -- I mean, in
13 essence it's the background information that we bring
14 to the ANC.

15 MS. BUTANI-D'SOUZA: Uh-huh.

16 MR. KRASKIN: And to this case today.

17 MS. BUTANI-D'SOUZA: So it seems to me that
18 perhaps it may make sense for you to simply join with
19 the ANC. Is that a --

20 MR. KRASKIN: That's fine. We can do that.

21 MS. BUTANI-D'SOUZA: -- a reasonable thing to
22 do?

23 MR. KRASKIN: We can do that.

24 MS. BUTANI-D'SOUZA: Okay. So any other
25 thoughts from -- okay. So then in that case I would

1 make a motion to deny the request for intervener
2 status.

3 MR. HILL: Second.

4 [Vote taken.]

5 MS. BUTANI-D'SOUZA: Okay. So now that that
6 is taken care of, I think the next step is to get an
7 idea of how much time each of the parties will
8 require to present their case. So, let me start with
9 Ms. Prince. You're the representative of the owner.
10 Is that correct?

11 MS. PRINCE: Correct.

12 MS. BUTANI-D'SOUZA: Okay. About how much
13 time do you think you're going to need to --

14 MS. PRINCE: Fifteen minutes, maximum.

15 MS. BUTANI-D'SOUZA: Okay. And then the --
16 let me see. Mr. Thorn. Tonda.

17 MR. TONDRO: Tondro, is my name.

18 MS. BUTANI-D'SOUZA: Tondro. I'm sorry.

19 MR. TONDRO: That's no -- 10 minutes would be
20 fine for me, thank you.

21 MS. BUTANI-D'SOUZA: Okay. And the ANC?

22 MR. SMITH: We'd estimate about 15 minutes.

23 MS. BUTANI-D'SOUZA: Okay. Okay, great. So,
24 I believe with appeals we begin with the statement of
25 the appellant. So why don't we go ahead and start

1 with -- in this case, the appellant is also the ANC.
2 So we would start there.

3 MR. SMITH: Thank you very much for giving us
4 this opportunity to testify this morning.

5 ANC 3D is here today because we believe a
6 March 24th, 2016 determination letter from the Zoning
7 Administrator concerning parking requirements at the
8 Spring Valley Shopping Center has the effect of
9 granting a variance that only the BZA is empowered to
10 grant under the city's Zoning Regulations. We object
11 to this decision on two grounds. First, that the
12 determination is inconsistent with Section 2100.10A
13 of the Zoning Regulations, because the ZA does not
14 require the property owner to provide parking
15 consistent with the number of spaces when the
16 property was designated in July 1989, as an historic
17 landmark.

18 And two, we question whether the property as
19 it has been proposed and approved by the Historic
20 Preservation Review Board qualifies under Section
21 2120 as an unattached structure and therefore Section
22 2101 parking rules may apply.

23 ANC 3D believes that both issues should be
24 addressed through a variance request. The Spring
25 Valley Shopping Center does not fit the model of a

1 traditional neighborhood shopping center or strip
2 mall. Rather, the shopping center was designed and
3 built as a cluster of separate buildings with parking
4 on the side and in the rear of the buildings. These
5 building clusters were constructed over a 13 year
6 period between 1936 and 1949. In fact, it was this
7 clustered design with the availability of sufficient
8 parking that earned the site its historic
9 designation.

10 The shopping center is immediate adjacent to
11 an R-1-B residential neighborhood, so issues with
12 parking and traffic are important to residents. The
13 center is divided into three lots and the proposed
14 new building, just like the parking lot, crosses all
15 three lots.

16 When the property owner filed an application
17 with the Historic Preservation Office in February
18 2015, the owner certified that they would be seeking
19 a parking variance from the BZA and indicated in
20 their description of the project that's Exhibit 3,
21 that 17 parking spaces would be removed from the lot.
22 In all their written materials and meetings with ANC
23 3D and neighbors during review of this project by the
24 Historic Preservation Review Board, the property
25 owner refused to discuss specific parking issues,

1 saying these would be discussed when the owner filed
2 for a parking variance at the BZA.

3 ANC 3D learned in January 2016 that the
4 property owner would not seek a parking variance,
5 saying they could reduce the parking lot by eight
6 spaces or more, and still comply with the existing
7 Zoning Regulations. Representatives of ANC 3D and
8 neighbors, including the Spring Valley Wesley Heights
9 Citizen's Association, met with the ZA in January to
10 discuss this matter, and he advised us he had not met
11 yet with the property owner.

12 Currently, the lot is configured for 72
13 parking spaces, and the applicant is proposing 65.
14 But Section 2100.10A of the Zoning Rules requires
15 that the applicant provide the number of parking
16 spaces at the time the property was designated
17 historic. Since 1934, this parking lot configuration
18 has varied. But we believe there is sufficient
19 evidence to conclude that in 1989, when the site was
20 declared historic, the parking lot was configured for
21 more spaces than the 72 which exist today.

22 For much of its historic this lot was divided
23 into two sections. Aerial photographs from 1957
24 prior to the D.C. Zoning Regulations, and 1963, show
25 that the lot was configured into two sections. Both

1 photos show parking for about 80 spaces. One section
2 offered access and an exit off 49th Street. The
3 other section offered access off 49th, and an exit to
4 Fordham Road.

5 We know from engineering conceptual designs -
6 - would you mind taking that up there? Will you take
7 this one up too?

8 We know from engineering conceptual designs
9 dated March 1987, from the former property owner,
10 that the lot would be reconfigured by joining the two
11 separate segments and making 49th an entry point to
12 the lot and Fordham Road an exit point from the lot.

13 This 1987 conceptual design indicates the lot
14 would be expanded to 90 spaces. Both DCRA and the
15 property owner argue there is no proof this design
16 was ever put in place. Aerial photographs from 1988,
17 however, demonstrate otherwise. Moreover, April 1989
18 detailed engineering plans, the originals of which
19 we've just asked to be brought to you, which were
20 developed for installing new curbs and gutters, a
21 change in grade to improve drainage, and for sediment
22 control, also show a configuration of 90 spaces.

23 These plans also show that the eight spaces
24 along 49th Street intrude across the lot line into
25 public space. In fact the aerial photography

1 suggests that this is a condition that extends back
2 at least to 1957.

3 A 2002 aerial photograph shows the number of
4 spaces in the lot had been reduced from the 90.
5 Clearly the 90 space configuration is in place
6 immediately prior to the July 1989 designation of the
7 site as a historic landmark. Today's 72 space
8 parking lot is nonconforming. Now that the property
9 owner seeks to construct a new building at the site,
10 the owner is required to provide an additional 18
11 parking spaces or seek a variance. Instead, the
12 owner is reducing the existing number of parking
13 spaces by 17, making the current design 35 spaces
14 short of what is required under Section 2100.10A of
15 the Zoning Regulations.

16 In ANC 3D's view, it is not the purpose of
17 this hearing to determine how many spaces must be
18 added or replaced, but simply to demonstrate that the
19 ZA erred by relying on the existing conditions as the
20 benchmark. The designs shown to you today were
21 shared also with the ZA at our January meeting.
22 Under any applicable rules of evidence we believe
23 this documentation is sufficient for the BZA to rule
24 that a variance hearing is warranted.

25 Although we find this makes irrelevant the

1 issue of what the eight parking spaces along 49th
2 Street should be included in the benchmark, the eight
3 spaces are part of the existing conditions on the
4 site and have been since before 1989. While those
5 conditions would not be allowed today under the
6 city's rules, that does not absolve the property
7 owner from providing the amount of spaces that would
8 be required under Section 2100.10A. That being the
9 number of spaces at the time the property was
10 designated a historic landmark. Whether or not the
11 location or configuration of those spaces would be
12 compliant with today's rules or practices.

13 There is nothing in Section 2100.10A that
14 would suggest the number of parking spaces do not
15 need to be maintained if they are not quote/unquote,
16 "zoning compliant."

17 It is convoluted to suggest that noncompliant
18 conditions absolve the property owner from compliance
19 with Section 2100.10A, especially given that the
20 property has been grandfathered. Whether those
21 spaces would be allowed today is not germane. What
22 is germane is that these parking spaces existed and
23 were used when the property was designated an
24 historic landmark and continue to be used today.

25 In reality the entire parking lot is not in

1 compliance with Section 2116.4, which bars parking
2 between a street and a building façade as the
3 property owner has argued to the ZA, according to the
4 March 2006 determination letter. This alone warrants
5 filing a variance given the plans for new
6 construction.

7 Based on the designs approved by the HPRB in
8 October 2015, ANC 3D also has argued that the
9 building is not attached, and that Section 2101
10 parking rules would apply in this case. This would
11 require even more parking spaces than the 90.

12 In his determination letter the ZA limits his
13 reference to the design plans approved by HPRB in
14 October 2015. The same reference is made in DCRA's
15 prehearing statement. Those design plans show a
16 separate two-story building with no party walls and
17 no adjoining roof line. The building was described
18 by the property owner over three separate hearings
19 before the HPRB as an in-fill building, a building in
20 an open space, not as an addition to another building
21 or part of a contiguous string of buildings. The
22 HPRB agreed that one of the two approved building
23 designs could abut one side of an existing building.
24 But the abutting design as provided to the ANC, HPRB,
25 and residents, had a separate wall that did not

1 attach to the existing building.

2 In its prehearing statement, DCRA relies on a
3 July HPO staff recommendation which references the
4 word, "connection" to suggest the buildings are
5 attached. However, DCRA ignores the fact that this
6 recommendation was rejected by the HPRB in July 2015,
7 necessitating two revised designs that were
8 considered at the October 2015 HPRB hearing, both of
9 which were approved.

10 However, the prehearing statement from the
11 property owner now includes a very different design,
12 a building with a basement when the property owner
13 specifically said there would be no basement. This
14 is important for residents in the Spring Valley
15 neighborhood because the US Army Corps of Engineers
16 is still digging up chemical munitions from World War
17 I that were first discovered 23 years ago in 1993.

18 So we're a little sensitive about building
19 excavations when the property being excavated was not
20 included in the Corps' initial examination for
21 possible World War I munitions precisely because the
22 lot has been covered with blacktop since it was
23 originally created.

24 The property owner's prehearing statement
25 indicates the new building will be fastened to the

1 existing building through shared mortar joints. This
2 design included in the prehearing filing was never
3 shared with HPRB, the ANC, or residents. In fact,
4 the first we were aware of this is when we read the
5 prehearing filing in this case by assessing it on the
6 case record. ANC 3D still has not been served with
7 that filing. The new design submitted in the
8 property owner's prehearing statement is not dated,
9 and based on the record in this case there is no
10 evidence that this plan was provided to the ZA prior
11 to his issuing his determination letter.

12 Nevertheless, the new structure offers no
13 access to the existing abutting building. It shares
14 no systems, heat, air conditioning, et cetera. The
15 entrance to the new building where it abuts is from
16 the rear, not the front, and the inside use where the
17 buildings abut is a corridor that allows access only
18 to the new building from the parking lot. This
19 corridor has no functional connection to the existing
20 building that it abuts.

21 By all means, the design tries to give the
22 impression that the new building will be attached,
23 but it is not. The regulations specify the new
24 construction would have to comply with Section 2101
25 Rules if the buildings are unattached.

1 As the DCRA prehearing statement indicates,
2 the city's Zoning Regulations, unlike those in some
3 other cities, do not currently define the word
4 unattached. Although DCRA suggests we must rely on a
5 Webster's definition of the word attached, we can
6 probably do better than that to assess whether a
7 building is truly unattached.

8 The definition of building separate, found in
9 the new 2016 D.C. Zoning Regulations, provides the
10 following definition.

11 "Structures that are separated from the
12 ground up by common division walls or contain
13 multiple sections separated horizontally, such as
14 wings or additions, are separate buildings.
15 Structures or sections shall be considered parts of a
16 building if they are joined by an enclosed connection
17 that is fully above grade, is heated and artificially
18 lit, and either a common space shared by users of all
19 portions of the building, such as a lobby or
20 recreation, or space that is designed and used to
21 provide free and unrestricted passage between
22 separate portions of the buildings, such as an
23 unrestricted doorway or walkway."

24 Philadelphia's Zoning Regulations say an
25 attached building must be connected on both sides.

1 Alameda County, California defines an attached
2 structure as having a continuous roof with a main
3 building or structure.

4 Going as far back as 1904, there's a local
5 Pennsylvania Court that held in *Morkum v. O'Keefe*,
6 that a structure must afford passage between
7 buildings or between rooms to be considered attached.
8 And that has influenced the zoning regs of many
9 Pennsylvania cities and towns.

10 For purposes of LEED certification these
11 structures would be considered unattached. According
12 to guidance from the U.S. Green Building Council,
13 structures must be connected by programmable space
14 other than parking or circulation. Specifically, any
15 buildings connected by a pedestrian corridor, as is
16 the case in this new proposed building, would be
17 considered two separate buildings.

18 Under any definitions, including the City's
19 2016 regulations, the building as proposed would not
20 be considered an attached structure. But at the end
21 of the day it's the BZA that is the arbiter of the
22 District of Columbia -- in the District of Columbia
23 on whether these buildings are attached.

24 But that is not the decision before you
25 today. There is sufficient question about whether

1 these buildings are truly attached that warrant and
2 should be addressed as part of a variance hearing.

3 The response of the property owner to this
4 case, ranging from redesigning the building to the
5 attempt to persuade the ZA to disqualify as many as
6 26 existing parking spaces, confirms for us that the
7 primary objective of the property owner is simply to
8 avoid a variance hearing, without regard to the
9 letter or the spirit of the city's Zoning
10 Regulations, or for the future wellbeing of the
11 neighborhood.

12 As property owners, our constituents also
13 have a stake in the outcome of this proceeding. ANC
14 3D is here today to give voice to their concerns.
15 Thank you very much for your consideration.

16 MS. BUTANI-D'SOUZA: Okay. Thank you, sir.
17 I believe that you said you needed about 15 minutes.
18 So was that the extent of your presentation?

19 MR. SMITH: Yes.

20 MS. BUTANI-D'SOUZA: Okay. Okay. All right.
21 So the next step in this would be for the Zoning
22 Administrator to present their case.

23 MR. TONDRO: Thank you. Good morning, Madam
24 Vice Chair and Members of the Board. Thank you.
25 I've covered most things in the brief so I don't want

1 to just repeat myself as to what was already stated
2 as well as in the determination letter.

3 However, I do want to make sure that we're
4 clear on one thing, and that is that the issue that's
5 being appealed here, the decision by the Zoning
6 Administrator, is that determination letter which by
7 definition is sort of a more conceptual stage in the
8 process. In other words, it's not a building permit
9 where you have absolute final details. I just want
10 to make sure that we're all clear on that because I
11 think some of what appellant is concerned about are
12 issues that would be more clearly established at the
13 moment of the building permit itself.

14 But they chose to appeal the zoning
15 determination letter, which is their absolute right
16 to do so, but I just want to make sure that we're
17 clear that it is therefore the conceptual aspects of
18 it that we're basically talking about here.

19 Let me deal with basically the three major
20 issues that we see in terms of the appellant's
21 allegations.

22 First of all, does Section 2120 apply or not?
23 And that's the limited applicability of the parking
24 regulations to historic structures.

25 First of all I just want to point out that

1 2120.1 specifically calls out attached. We have a
2 long conversation. We've heard about what attached
3 means. I will note that Section 199.2G of the Zoning
4 Regulations is the one that refers to Webster's if
5 it's not defined in the Zoning Regulations, there is
6 no provision of the Zoning Regulations to look to
7 other jurisdiction zoning regulations. If it's not
8 defined in the actual zoning regulations then we're
9 supposed to look to Webster's, which the reason why
10 in my brief I did refer to Webster's, which defined
11 it as being joined or attached.

12 As I said in that -- in my brief too, you can
13 see by looking at Exhibit 25C of the record, which
14 was submitted by the intervener, the plans, and it's
15 Sheet A3.01. There's a little detail you can see.
16 It's already been with the red outline around it that
17 shows clearly that there is an attachment in terms of
18 the roof that's overlapping the addition to the other
19 building.

20 The Zoning Administrator had to make a call.
21 He was presented with this as an addition, as a
22 building, and make the call as to whether or not it
23 was attached. And from what he could look at and
24 what he could discern, this seemed to be certainly an
25 attached structure. And so therefore, as a result,

1 Section 2120 did apply because it was attached to
2 4860 Massachusetts Avenue, which was part of the
3 historic resource that was listed.

4 Second, the issue in terms of the number of
5 parking spaces are required to be retained. The
6 Zoning Administrator was presented by appellant with
7 these two proposed plans as evidence somehow that
8 there was on site, either that there were 90 spaces
9 or that there were 76 or 77, plus or minus. The
10 problem for the Zoning Administrator was trying to
11 understand what the probative value was of these
12 plans themselves. They're by definition, proposed
13 plans, wasn't clear there was anything that was ever
14 done with it. It could have been -- wasn't sure who
15 it was naturally done for. More importantly, the
16 issue was that while it cited to existing, it said
17 plus or minus indicating that the -- I mean, I don't
18 know how one doesn't know if there's 76 or 77 or 75.
19 It should seem to be that if you know, you know. The
20 parking spaces, they're pretty large.

21 And as a result the fact that the map
22 indicated that it was 76 plus or minus suggested that
23 the engineer who drew that plan was not really
24 focused on what was actually existing at that time.
25 That raised real questions for the Zoning

1 Administrator. Now, had we been dealing with an as-
2 built survey, which indicated this is what the layout
3 was, and you could count them, and you could confirm
4 there were 76, and this is the way they were laid
5 out, that would have been a different story. But
6 that's not what he had.

7 Finally, I just want to call your attention
8 to Section 2100.10A as appellant referred to. And I
9 think if we look carefully at it you'll see that it
10 is very clear that it refers to existing. And let me
11 just read that if I may, to you.

12 "2100.10A indicates they're building our
13 structure, for Zoning Regulations now require more
14 parking space than required when the building or
15 structure is built, the following shall be required."

16 "A., if the existing number of parking spaces
17 now provided."

18 I think it's pretty clear that that is
19 exactly what the Zoning Administrator looked to. It
20 says, "existing number of parking spaces."

21 Had there been, instead an alternative, the
22 map that show that as-built at the time of the
23 historic designation, that might have been another
24 issue. But that's not what the appellant provided
25 the Zoning Administrator.

1 In addition, I will point out that if we look
2 at that section of Chapter 21 that deals with
3 historic -- the limited applicability of parking
4 regulations for historic resources, the only time
5 when it refers to the issue to this trigger point
6 being when the property or when the historic resource
7 was designated, is in 2120.4. And then all that it
8 says is that the number of spaces at the time of
9 designation, those shall be exempted from three
10 different provisions, 2115 and 2117.5 and .6.

11 2115 deals with size of spaces. 2117.5 and
12 .6 deal with aisle widths. It doesn't say that
13 that's the marker and the time for determining what
14 the number of space is. So in that sense, at that
15 point, then the Zoning Administrator defaults back to
16 2100.10A with the fact that it says existing
17 conditions at that particular time.

18 So the ZA therefore looked, considered the
19 totality of the evidence, considered those plans,
20 determined that they weren't sufficiently probative
21 to say that the numbers should be changed from the
22 existing conditions. Instead, therefore, established
23 that the baseline was 72 parking spaces that were
24 existing.

25 MS. BUTANI-D'SOUZA: Mr. Tondro, sorry to

1 interrupt.

2 MR. TONDRO: No.

3 MS. BUTANI-D'SOUZA: I'm just, I'm trying to
4 follow all of the regulations that you're presenting,
5 so can you just --

6 MR. TONDRO: Yes. I'm sorry.

7 MS. BUTANI-D'SOUZA: -- take a little bit
8 more slowly? So 2100.10A says if the existing number
9 of parking spaces provided at the time of
10 designation, or at the time of --

11 MR. TONDRO: No, the only provision in the
12 Zoning Regulations -- thank you for asking. Pardon
13 me if I ran ahead. The only provision in the Zoning
14 Regulations refers to the historic designation as
15 being a time point. That's the time when you have to
16 calculate the number of spaces --

17 MS. BUTANI-D'SOUZA: Uh-huh.

18 MR. TONDRO: -- is in Section 2120.4. That's
19 within this larger chapter that deals solely with
20 this limited applicability of parking regulations to
21 historic resources.

22 MS. BUTANI-D'SOUZA: So 2120.4 says that the
23 number of spaces at the time of historic designation,
24 what?

25 MR. TONDRO: Are exempt from the requirements

1 of 2115, which is about the size of parking spaces,
2 and 2117.5, and 2117.6, which deal with aisle widths.

3 MS. BUTANI-D'SOUZA: Okay. And so what
4 you're saying is basically that the Zoning
5 Administrator read 21.20 -- sorry, 2120.4 and said
6 okay, the number of spaces at the time of designation
7 are exempt from the requirements of size and aisle
8 widths. It doesn't say anything about the quantity
9 that's preserved. Therefore, the Zoning
10 Administrator defaults back to 2100.10A.

11 MR. TONDRO: Yes, which --

12 MS. BUTANI-D'SOUZA: Can you clarify again
13 what is 2100.10A?

14 MR. TONDRO: Yes. That deals with the
15 requirements to retain on site the existing number of
16 spaces.

17 MS. BUTANI-D'SOUZA: Okay. And that --

18 MR. TONDRO: I'm sorry. I should say --

19 MS. BUTANI-D'SOUZA: -- saves the same number
20 of spaces at what time?

21 MR. TONDRO: -- you have to retain the
22 existing number of spaces if the existing number of
23 spaces are less than would be required under the
24 current rules. In other words, you can't -- that's
25 basically what we would deem as grandfathering. If

1 you have a nonconforming because you have fewer
2 spaces than would be required under today's
3 regulations, you have to retain what you already
4 have.

5 MS. BUTANI-D'SOUZA: And that's today, not --

6 MR. TONDRO: It says existing.

7 MS. BUTANI-D'SOUZA: Existing. So not -- has
8 nothing to do with the time of --

9 MR. TONDRO: Right. That is exactly what the
10 Zoning Administrator determined.

11 MS. BUTANI-D'SOUZA: Okay. So that's the
12 response to the argument regarding the aerial photos
13 and the plans that may or may not show additional
14 spaces.

15 MR. TONDRO: Yes.

16 MS. BUTANI-D'SOUZA: Okay.

17 MR. TONDRO: Yes.

18 MS. BUTANI-D'SOUZA: Thank you for clarifying
19 that.

20 MR. TONDRO: Sure. Absolutely. No, thank
21 you for asking.

22 So that was the way that the Zoning
23 Administrator then came to 72 spaces as being what's
24 existing, but that was therefore what had to be
25 retained.

1 But then the question came up, and it's a
2 legitimate question that is not necessarily clear so
3 it's something that's fair for interpretation. The
4 Zoning Administrator had to confront the fact that
5 there were these eight spaces along 49th Street that
6 are literally half, they cut in half across the
7 property line. They're halfway in public space and
8 they're halfway on the property line. Or within the
9 property.

10 And the Zoning Administrator had to make a
11 determination as to how do we treat these eight
12 spaces. Are they in fact legal spaces that therefore
13 should have to be retained? I mean, it might be one
14 thing if they only protruded six inches or slightly
15 as appellants have asserted. But they are halfway in
16 the public space.

17 If you want -- if you're required as a
18 property owner now a days to provide parking, you
19 have to provide it on your lot. You cannot provide
20 it crossing a lot line. And so there's that
21 provision of the Zoning Regulations that presents a
22 problem. But more importantly, the public space,
23 DDOT as you can see in Exhibit 25C, the e-mail from
24 DDOT, they would not allow -- they do not allow
25 parking in public space.

1 And then finally as I pointed out in the
2 brief, Section 2116.4 establishes this principle that
3 there shall be no parking between a building façade
4 and the nearest street.

5 Now as I said in the brief, this is not
6 directly applicable here because in this case the
7 building façade is built to the building line, and
8 the issue here is that the spaces cross over that
9 property line. But it is analogous and informs the
10 intent of the Zoning Regulations.

11 Therefore, for all of those reasons the
12 Zoning Administrator determined that these spaces
13 really should not be counted as part of that overall
14 72 that had to be retained because they are not legal
15 spaces that are allowed now.

16 MS. BUTANI-D'SOUZA: So let's just --

17 MR. TONDRO: Yeah.

18 MS. BUTANI-D'SOUZA: -- tease apart these
19 arguments a little bit because again, I'm trying to
20 follow them.

21 MR. TONDRO: Sure.

22 MS. BUTANI-D'SOUZA: So the first argument is
23 that the spaces are within public space. Are half in
24 public space. And DDOT has said that they're
25 requesting that those spaces be removed from public

1 space --

2 MR. TONDRO: Yes.

3 MS. BUTANI-D'SOUZA: -- because the property
4 is being redeveloped.

5 MR. TONDRO: Yes, and they would not be
6 allowed today, to do that under DDOT regulations. To
7 intrude into public space.

8 MS. BUTANI-D'SOUZA: Okay. So that's point
9 number one. Can you just reexplain this point about
10 the spaces crossing over the lot line because what
11 I'm a little bit confused about is, I believe that
12 there is the owner is attempting to combine all of
13 the spaces into a single lot. So I am not sure that
14 I understand the relevance of this issue on spaces
15 crossing the lot lines.

16 MR. TONDRO: Absolutely. Thank you for
17 asking that. I think the issue of combining lots is
18 really irrelevant. I'm not sure why it was raised.
19 It was not something that the zoning determination
20 letter addressed. The fact is that the owner has
21 taken what is currently three lots and combined them
22 into one single lot. The owner had raised questions
23 as to whether or not the existing -- those existing
24 parking spaces that crossed the lot line, whether or
25 not they should count.

1 Whether the Zoning Administrator determined
2 and I believe that the owner themselves also
3 indicated was that, well, since they're all combined
4 into one lot anyhow, we're going to treat those.
5 We're going to retain all of those parking spaces as
6 ones that have to be retained.

7 The issue here is just simply these eight
8 that are crossing at the public space, for which
9 there is no provision for them to be combined into --

10 MS. BUTANI-D'SOUZA: Okay. The crossing over
11 lot lines doesn't pertain to the eight in public
12 space?

13 MR. TONDRO: It does in the sense that the
14 boundary between public space and the private
15 property is the lot line. So it's crossing over a
16 lot line. The property line between the public space
17 right of way and the property itself.

18 MS. BUTANI-D'SOUZA: Okay. And, sorry, the
19 regulation is that a parking space does not count
20 towards the number retained if it crosses over a lot
21 line or --

22 MR. TONDRO: No, it's rather that -- no, that
23 would be far too clear. We might not be here today
24 if that was the written -- it is rather the fact that
25 you are not -- if you are required to provide parking

1 you cannot provide it across a lot line. It has to
2 be on the lot for which the use for which it is
3 required.

4 Do you want me to indicate where we're
5 looking? Up on the upper right-hand side I believe
6 you can see --

7 MS. BUTANI-D'SOUZA: Where the red --

8 MR. TONDRO: -- there's a little bit, yeah in
9 red right there, and you can see that that --
10 exactly, thank you. That half portion over there is
11 in public space as opposed to -- yeah, I think it's a
12 little clearer. Right.

13 MS. BUTANI-D'SOUZA: Okay.

14 MR. TONDRO: So the Zoning Administrator was
15 faced with this conundrum, how do we deal with these
16 eight spaces? Obviously it's a judgment call.
17 There's not something specifically in the Zoning
18 Regulations. This is precisely the time when the
19 Zoning Administrator is called to interpret and to
20 determine what makes sense. And as a result the
21 Zoning Administrator determined that it wasn't fair
22 to be in a situation where you say that these eight
23 spaces which we're now requiring to not be located in
24 public space, would have to be retained elsewhere on
25 the site. That was what the Zoning Administrator

1 therefore determined, that those eight spaces should
2 not count towards that overall that have to be
3 retained.

4 So the 72 that was the existing were now,
5 because eight of them are -- they're not valid,
6 therefore that takes you down to 64 and the owner had
7 proposed to provide 65, therefore exceeding that by
8 one.

9 MS. BUTANI-D'SOUZA: I want to go back to
10 something that you said earlier. You said that 2115
11 pertains to the size of the spaces. And I believe
12 that in the appellant's briefs they discussed that
13 the reconfiguration of the parking lot has resulted
14 in all of the spaces except for the handicapped
15 spaces being compact. So can you just help me
16 understand, is that an issue that the Zoning
17 Administrator looked at and deemed was acceptable
18 under 2115, or --

19 MR. TONDRO: No, because if you look at
20 provision 2120.5 --

21 MS. BUTANI-D'SOUZA: I'm sorry. Is it
22 2120 --

23 MR. TONDRO: No, you're right.

24 MS. BUTANI-D'SOUZA: Okay.

25 MR. TONDRO: It is 21 -- there are two

1 different provisions. They happen to be right next
2 to each other. So 2120.4 is the only provision that
3 refers to this time designation that it has to be at
4 the time of the designation of the historic resource.

5 The next provision, 2120.5 specifically
6 states that, and I quote, "Parking spaces provided
7 for an historic resource shall be a minimum of eight
8 feet in width and 16 feet in length."

9 MS. BUTANI-D'SOUZA: So the --

10 MR. TONDRO: So in other words, there's an
11 allow -- that for historic resources the parking can
12 be what we call a compact space. It doesn't have to
13 be the nine by 18 that's the standard. It can be
14 instead the eight by 16.

15 MS. BUTANI-D'SOUZA: Okay. So the historic -
16 - the regulations pertaining to historic properties
17 state that the parking space size can be essentially
18 a compact size space. So the reconfiguration of the
19 lot to the compact size spaces is acceptable per the
20 Zoning Regulation. That's the interpretation.

21 MR. TONDRO: Yes, per Section 2120.5. Right.

22 MS. BUTANI-D'SOUZA: Got it. Okay.

23 MR. TONDRO: Okay? Yeah. Sure.

24 MS. BUTANI-D'SOUZA: Sorry, did you want
25 to --

1 MR. TONDRO: No, no, no, you're fine. And
2 then the final issue that was raised by the
3 appellant, I think very briefly, is just this issue
4 of bicycle parking that the appellant felt that the
5 Zoning Administrator erred in not requiring biking
6 parking because supposedly that was an issue that was
7 in contradiction to public policy.

8 The fact of the matter is, it's not. The
9 bike parking requirements are linked to the number of
10 required parking spaces by 2101.1. Since this is an
11 historic resource, under 2120 this is not -- there is
12 no requirement for parking spaces under 2101.1. And
13 therefore there is no requirement for bicycle parking
14 spaces.

15 Having said that, as indicated in my brief,
16 owner has assured the Zoning Administrator that they
17 will provide eight bicycle parking spaces on the
18 site, which would be far in excess of what would
19 possibly be required because the requirement for
20 bicycle parking spaces is five percent of the overall
21 parking total.

22 MS. BUTANI-D'SOUZA: Okay. I've got another
23 question for you. Okay. So, as I understand it
24 basically what's happened here is that DDOT has said
25 that any redevelopment of this property will require

1 that the property be brought into public space
2 conformance. And this process of being brought into
3 public space conformance would result in the
4 elimination of eight parking spaces.

5 So therefore, what that means is that
6 redeveloping this space, anything here, would require
7 the elimination of eight spaces. So help me
8 understand. The elimination of eight spaces would
9 require BZA approval, correct?

10 MR. TONDRO: The Zoning Administrator did not
11 find that there was that requirement.

12 MS. BUTANI-D'SOUZA: So help me understand
13 because I think that's the argument that appellant is
14 making here.

15 MR. TONDRO: Right. Sure.

16 MS. BUTANI-D'SOUZA: That if this equals
17 this, then this equals that.

18 MR. TONDRO: Right. Because 72 was the
19 overall that's provided on the site and associated
20 nearby, you know it was part on public space. But
21 the Zoning Administrator made the determination that
22 these eight spaces were not valid and therefore
23 should not count towards those 72, because they're
24 only half on the property and half off the property,
25 and therefore they're not legally allowed at this

1 moment in time. You can't do them. They're simply
2 not allowed. They're not allowed. They contradict
3 the zoning provisions but they certainly are against
4 DDOT regulations. And therefore as a result they
5 shouldn't be countered toward that overall total of
6 72.

7 MS. BUTANI-D'SOUZA: Okay. So the Zoning
8 Administrator is sort of treating it as if those
9 spaces did never exist.

10 MR. TONDRO: Exactly.

11 MS. BUTANI-D'SOUZA: So they're not treating
12 it as because those were on the property partially
13 and they've been there for quite a while that they
14 are part of the historic designation here.

15 MR. TONDRO: No. Because again, the issue is
16 that they're crossing over on to the public space.
17 The Zoning Administrator perhaps could have been in a
18 situation where he said, well you know, what, we'll
19 split the baby. They're half on, half off. There
20 are eight of them, we'll require four. Could have
21 said they had to be -- there are all sorts of
22 different possibilities. The problem for the Zoning
23 Administrator, he had to make a determination on the
24 basis of what was provided and wanted a clear role.
25 The Zoning Administrator has a follow-up that --

1 MR. LEGRANT: I just want to note that in the
2 course of reviewing this case, and in other cases on
3 occasion people bring to me their site plan or their
4 plat, which maybe they assumed at the parking -- you
5 know, the property they purchased or in a contract to
6 purchase, is on the site. And low and behold, after
7 they do a plat and they figure out where the property
8 lines are, they find that in some instances parking
9 spaces lie either partially or wholly outside their
10 property. That's the point where I say, okay, you
11 can't count those. Those Zoning Regulations are
12 clear, the zoning -- the required spaces have to be
13 provided on the lot. When they're not provided on
14 the lot that I know that in the course of the
15 redevelopment, when they get to public space they're
16 not going to be allowed.

17 So they have to take those off their count
18 and they revise their plans to show that they're
19 eliminated. That's just been my practice. Not only
20 in this case, but in other cases.

21 MR. TONDRO: So in other words, just
22 following up on that, if you can't count them for
23 you, you can't count them against you. They just
24 basically don't exist because they're not compliant
25 with the Zoning Regulations. In other words, if they

1 had to provide 72 on site, these eight wouldn't
2 necessarily be allowed to count towards those 72.
3 Therefore, they shouldn't count as having to be
4 required or retained either.

5 MS. BUTANI-D'SOUZA: So, if I were -- so is
6 it fair then to summarize this argument basically as
7 you can't count them for you or against you, so under
8 the Zoning Regulations essentially these spaces, it's
9 as if they don't exist. Therefore it's not an
10 elimination of parking spaces because they were never
11 part of this?

12 MR. TONDRO: Precisely.

13 MS. BUTANI-D'SOUZA: Okay. I have -- why
14 don't we continue on and then I've got some other
15 questions. But we'll keep going.

16 MR. TONDRO: Thank you. Actually, I think
17 I've come to the end of the presentation. I think
18 we've dealt with all the three issues. I think,
19 first of all, the building is attached. Therefore,
20 it is subject to 2120. That the number of parking
21 spaces I think we've gone through fairly
22 exhaustively. Seventy-two, but that of those 72 the
23 eight effectively don't exist, and therefore it's 64.
24 And then finally the bicycle parking spaces, that
25 there is no requirement but nonetheless that the

1 owner has indicated that they will provide more than
2 would be required anyhow.

3 Therefore, DCRA would rest on the fact that
4 the Zoning Administrator made, correctly made --
5 correctly issued the zoning determination letter,
6 that the project as provided to him for review for
7 the zoning determination letter, was compliant with
8 the Zoning Regulations, and therefore respectfully
9 requests that the Board deny the appeal. Thank you.

10 MS. BUTANI-D'SOUZA: I have one other
11 question. At the start of your presentation you
12 mentioned that the Zoning Administrator was presented
13 with the conceptual plan, and that they provide a
14 determination letter based on the conceptual plan,
15 but that I believe what you were saying is that there
16 would be a greater review, more in depth review when
17 the building permit was actually applied for, which
18 hasn't happened yet. Is that correct?

19 MR. TONDRO: Yeah. The point was, I think I
20 was responding to the appellants raising of issues
21 that I think I can understand why they're important
22 to the appellant. But I don't think they're relevant
23 right now, which is what was said or not said before
24 HPRB and the whole issue of the basement being
25 subject to Army Corps of Engineers. Review that

1 subject to Army Corps, that's not what the Zoning
2 Administrator faced. The Zoning Administrator was
3 faced -- this is a project -- does this comply? Does
4 this aspect of the project comply or not comply.
5 That was what the zoning determination letter
6 responded to. It's very specific in terms of
7 responded to this issue of, what were the number of
8 parking spaces required, and the bicycle parking
9 spaces required? That's all that it dealt with.

10 In terms of the broader project, if there are
11 any other allegations about issues or aspects of
12 compliance with the Zoning Regulations, that was not
13 something that the Zoning Administrator was requested
14 to weigh in on to make a determination on. Those
15 issues will come up, however, when there will be a
16 building permit and then there will be plans and at
17 that point then the Zoning Administrator will have to
18 review that again.

19 MS. BUTANI-D'SOUZA: Okay. Thanks. Okay.
20 Okay. The next step here is the owner.

21 MR. MURN: Good morning, Members of the
22 Board. As I mentioned before, my name is Ed Murn and
23 I am a managing director of Washington Real Estate
24 Investment Trust, or Washington REIT, as we're known,
25 and head of the Development Division and the

1 Residential Division of the company.

2 Washington REIT is the owner of the subject
3 shopping center. It was purchased -- we purchased
4 the property in 2014 with the intention of
5 constructing a modest addition along Massachusetts
6 Avenue. Understanding that the property was a
7 historical landmark, and any work on the site would
8 require historical review, we engaged the community
9 on the project from the very beginning. Reaction to
10 the development was consistently divided within the
11 community.

12 There was a very strong component of the
13 community who welcomed the retail, and there was a
14 component who opposed the change from the beginning.

15 During the historical review process we met
16 with the community on several occasions. We had
17 three public hearings before the HPRB at which the
18 ANC and the Citizen's Association opposed the
19 addition. The HPRB approved the application over the
20 objections of the ANC.

21 Since that time we have been moving forward
22 diligently with the project. We've refined the plans
23 and confirmed that the proposed program did not
24 require any zoning relief. Knowing the objections to
25 the project we decided to confirm this estimate with

1 the Zoning Administrator. My predecessor met with
2 Mr. LeGrant earlier this year to confirm that parking
3 relief was not required to effectuate the approved
4 plan.

5 As a result of those meetings, Mr. LeGrant
6 issued the March letter that is subject of this
7 appeal, and now we find ourselves before you in
8 another attempt by the ANC to stop our project. Put
9 quite simply, there are only two questions the Board
10 must ask to determine if the Zoning Administrator
11 erred in issuing his determination.

12 The first is whether the addition itself
13 triggers the need for additional parking. As Mr.
14 LeGrant states in his March determination the
15 addition does not trigger a parking requirement. The
16 addition is less than 50 percent of the gross floor
17 area of the historical resource. As he states very
18 clearly, the addition consists of just over 20
19 percent of the existing gross floor area, and as such
20 it does not require any additional parking.

21 This is clear under the plain meaning of the
22 regulations. The ANC's argument that the addition
23 isn't attached is a red herring that is absolutely
24 not based in any semblance of fact. The addition is
25 attached to the historical resource under any

1 definition of that word. The second question is
2 whether the amount of parking is being reduced on
3 site. As we just hear, no it is not. In fact, it is
4 being increased. Again, the ANC's argument is
5 misleading. They point to a parking plan created for
6 the property citing 90 spaces, but that plan was
7 never implemented. The ANC points to no evidence
8 that it ever existed. All we have seen is a plan
9 that suggests that the previous owners of the
10 property thought about increasing parking on site.
11 But there is nothing in the record that confirms that
12 the parking plan was actually constructed and that is
13 because it was not ever constructed.

14 Similarly, the ANC relies on a note on the 90
15 space plan that there are 77 existing spaces on site.
16 But again, we have never seen the 77 space plan. We
17 didn't have the opportunity to review the plan to
18 understand if spaces are located in public space, if
19 the spaces met the size requirements or access
20 requirements. We simply have no information or
21 evidence of a 77 space parking plan.

22 Because there is no historical evidence
23 confirming any former parking plans for the property,
24 it was entirely reasonable to rely on the existing
25 parking plan as the baseline for the parking

1 requirement. We used the number of parking spaces
2 located on this property at the time we purchased it
3 to inform the number of parking spaces that must
4 remain on site after the construction of the
5 addition.

6 We are meeting, in fact exceeding that
7 standard. The ANC argues that we are not providing
8 the same level of parking onsite as the existing plan
9 and that is erroneous. The ANC argues that the eight
10 spaces located in the public space should be included
11 in the tally of existing spaces, but that flies in
12 the face of the zoning requirements.

13 The determination confirmed that if the
14 spaces are not located on the lot they are not
15 considered zoning compliant. As such it was entirely
16 reasonable that Mr. LeGrant did not count those
17 spaces in the existing count of spaces. There are 64
18 zoning compliant spaces on site and our proposed
19 parking plan includes 65 zoning compliant spaces.

20 The zoning determination has a sound rational
21 basis. As such, it should be upheld. Thank you for
22 your time.

23 MR. McCLENNAN: I'll just add to that. My
24 name is Rob McClennan. I'm the architect with
25 Bonstra/Haresign Architects. I wanted to quickly run

1 you through some of the site plans.

2 What you have here is the existing
3 conditions. And this is the bank building that's the
4 building in question when we refer to being attached.
5 The proposed plan shows the new building directly
6 abutting the bank building. These were some of the
7 renderings that were presented to the HPRB that
8 clearly again show, this is the two-story portion of
9 the new building. This is the one-story portion
10 using the same type of brick and directly attaching
11 to the bank building party wall.

12 MS. BUTANI-D'SOUZA: Sorry. Can you just
13 back up a second? So, that whole piece is the new
14 portion of the building?

15 MR. McCLENNAN: So that's the existing bank
16 building there. That's the party wall of the bank
17 building, which is a triple wide brick construction.

18 MS. BUTANI-D'SOUZA: Uh-huh.

19 MR. McCLENNAN: We are building two-story
20 addition, and then a one-story portion there that
21 attaches directly to the bank building in a --

22 MS. BUTANI-D'SOUZA: And that's where the
23 attachment is that's shown in detail 5 and 6 where
24 it's the roof --

25 MR. McCLENNAN: Yes, so that's -- and that's

1 the one-story piece right there, running almost the
2 entire length of the existing bank building.

3 MS. BUTANI-D'SOUZA: And were those -- the
4 plans showing the attachment detail, those were
5 presented to the Zoning Administrator as part of the
6 conceptual package?

7 MR. McCLENNAN: That's correct.

8 MS. BUTANI-D'SOUZA: Okay. And those were
9 also the plans that were presented to HPRB?

10 MR. McCLENNAN: The -- we didn't have these
11 details prepared at that time and the HPRB wasn't
12 really looking, necessarily, at the attachment. So,
13 no. These weren't -- we didn't have this level of
14 construction detail. They did see that the building
15 attached to it. We just didn't show them how we were
16 going to do that exactly.

17 MS. BUTANI-D'SOUZA: Okay. So yeah, because
18 there is quite a long discussion in the HPRB letter
19 regarding the connection. So that was presented at
20 the conceptual level without this detail.

21 MR. McCLENNAN: That's correct. But there
22 was the understanding that we were abutting it and
23 attaching to it.

24 MS. BUTANI-D'SOUZA: Okay. And so there is -
25 - help me understand. There is -- it's not a party

1 wall. There is going to be a gap, is that correct?

2 MR. McCLENNAN: No, no gap.

3 MS. BUTANI-D'SOUZA: No gap. It's fully
4 attached.

5 MR. McCLENNAN: We're attaching to it. Our
6 roof structure is attaching to it. We're actually
7 using the existing wall of the bank as the wall of
8 our interior space.

9 MS. BUTANI-D'SOUZA: Got it. Okay. So it
10 is. It's attached?

11 MR. McCLENNAN: Yes, by any definition, it's
12 attached.

13 MS. BUTANI-D'SOUZA: Okay. Sorry, I
14 interrupted you. Did you have other things to --

15 MR. McCLENNAN: No, no worries. The next
16 thing I wanted to discuss was just the parking. This
17 again, you know, this shows the existing site plan
18 with the 72 spaces. The area in red indicates the
19 spaces that are extending over into the public space
20 and therefore are not considered legal spaces.

21 This shows the footprint of our building and
22 how it impacts the existing parking lot. And then
23 our proposed parking plan that we're actually able to
24 -- by using the efficiency we removed this cut
25 through, which is actually going to be important

1 later on. The original parking lot had sort of a
2 circular pattern where there was a cut through. We
3 were able to eliminate that. We kept some grass
4 crete (phonetic) here for service trucks if they
5 needed to, to get across. But we're able to get more
6 efficiency out of the plan and get the 65 spaces with
7 this concurrent configuration.

8 Finally, this shows the four satellite images
9 starting in 1988 up until today. And I think it's
10 hard to see in the 1988 because it is somewhat
11 blurry. But to me it clearly shows that the parking
12 configuration has remained consistent for the last 28
13 years. You know, you can see there is the pass
14 through. You know, there is the pass through.

15 The proposed plans that they put in -- that
16 have been given to you eliminate that pass through.
17 So it's my belief that those plans were never
18 implemented and I think the satellite imagery clearly
19 shows that the parking lot has remained in its
20 current configuration since at least 1988. And that
21 concludes my testimony.

22 MS. RODDY: Thank you. I'll just close this
23 out. You've heard a lot of testimony this afternoon
24 and I think it's clear that the determination that
25 Mr. LeGrant issued was accurate and was not issued in

1 error. The addition did not trigger addition parking
2 and it did not reduce the amount of parking that was
3 provided on site.

4 The ANC arguments are red herrings as there
5 is no evidence of a 76, 77, 90 space parking plan
6 ever having been effectuated. The aerials that they
7 show are completely illegible and certainly are not
8 determinative. If anything, the number of competing
9 parking spaces and the competing number of theories
10 about the level of parking confirms by using the
11 existing site plan as the baseline for the parking
12 requirement make sense. Sixty-four is the only
13 number that anyone has been able to confirm. So it's
14 entirely reasonable for Mr. LeGrant to rely on that
15 number as the required number of parking spaces.

16 And with respect to the spaces in public
17 space, Section 2116.1 specifically requires parking
18 to be placed on the same lot as the service that they
19 serve. Using public space to satisfy a zoning
20 requirement has never been accepted by the Board for
21 obvious reasons. It's not a permanent solution and
22 the District can reclaim its property at any point,
23 which is what's happening here. DDOT has asked us to
24 remove the spaces from public space and they have
25 told us that they will not support a request to

1 include parking in public space. The eight spaces
2 therefore should not be included in the parking
3 supply.

4 Again, there are 64 spaces on site today.
5 The proposal is for 65 spaces, and as such there was
6 a basis for the determination that was issued. It
7 was not in error and we ask that this appeal be
8 denied.

9 MS. BUTANI-D'SOUZA: Thank you. Anything
10 further? Okay. All right. The next step in this is
11 to allow the appellant an opportunity to cross-
12 examine.

13 MR. SMITH: Well, yes. I have one question,
14 actually of Mr. LeGrant or DCRA counsel. And it's
15 just to -- actually, two questions.

16 Can you tell us whether -- you know, can you
17 tell us, has -- I want to phrase this exactly
18 correctly so I'm not misleading anybody; actually,
19 leading anybody. But when you reviewed the materials
20 after meeting with the property owner, what design
21 did you have available to make the determination that
22 the building was not unattached?

23 And is it the same design that was submitted
24 in the prehearing statement --

25 MR. LEGRANT: Okay.

1 MR. SMITH: -- of the property owner.

2 MR. LEGRANT: Okay. So my recollection is
3 that at the time that I met with the property owner
4 and their counsel, we did not have the detailed
5 drawing presented today about the level of
6 attachment. It was presented to me that these would
7 be attached, and my recollection is that we didn't
8 drill down into the extent of the attachment. It was
9 presented to me that it would be qualify under the
10 provision that it would be an attached building.

11 And as my counsel noted, my attitude on such
12 things is, okay, later at the building permit stage
13 this will have to be verified. So, that's my
14 recollection of how that particular aspect was
15 presented to me at the time.

16 MR. SMITH: And --

17 [Discussion off the record.]

18 MR. TONDRO: I just wanted to add that, as a
19 follow-up, that what was presented to the Zoning
20 Administrator was entirely consistent with what is
21 shown here and with what was shown to HPRB.

22 To the extent that it was relevant to the
23 Zoning Administrator's determination, which was this
24 very limited issue of attachment. He doesn't need to
25 see all the specific details of all the roofs on the

1 other portion, just to what extent was it attached to
2 the next building.

3 MR. SMITH: Okay. And then just to follow
4 up, did the property owner show you the two designs
5 that were approved by the Historic Preservation
6 Review Board at its October 2015 hearing? The two
7 designs?

8 MR. LEGRANT: I don't recall if they did or
9 not.

10 MR. SMITH: So how would you know, if you
11 don't recall the two design -- seeing two designs,
12 what would be the basis of your decision? Was it
13 just simply on the basis that the property owner said
14 they were attached? Or on the basis of the actual
15 designs that were approved by the Historic
16 Preservation Review Board, although albeit, limited
17 in terms of detail that those designs might offer.

18 MR. LEGRANT: What I recall is a site plan
19 showing an addition that was presented to me as
20 attached. And I looked at those plans and I said,
21 okay, these -- I don't see any gaps between portions
22 of the structure that was -- did not have a level of
23 detail that of course we see today. But my
24 recollection is it was presented to me as attached
25 and I didn't dwell too much on that point at that

1 point in time.

2 MR. SMITH: Did you see the design that's
3 shown on the screen that was approved by the Historic
4 Preservation Review Board at its October 22nd
5 meeting?

6 MR. LEGRANT: I don't recall that specific
7 drawing, no.

8 MR. SMITH: Okay. All right. Okay. That's
9 all. Thank you.

10 MS. BUTANI-D'SOUZA: Okay. All right. The
11 next step in this would be for the Zoning
12 Administrator to have an opportunity to cross. Do
13 you have any cross-examination?

14 MR. TONDRO: Not at this time. Thank you.

15 CHAIRPERSON HOOD: Okay. The next step would
16 be for the property owner to have an opportunity for
17 cross-examination.

18 MS. RODDY: We have no cross-examination.
19 Thank you.

20 MS. BUTANI-D'SOUZA: Okay. Thank you. Are
21 there any parties wishing to speak -- actually, hold
22 on?

23 Since this is an appeal we don't have parties
24 in support and opposition. The next step would be
25 for the ANC, of course, to speak, but the ANC has

1 already spoken. There are no intervenors in this
2 case, so the last step here would be a closing
3 statement by the appellant.

4 MR. SMITH: Well, there is much to say, from
5 what I've heard. There are some thing I want to
6 correct for the record.

7 First of all, the ANC actually did not oppose
8 this project. What we did do was we questioned the
9 design and initially the citing. And in fact we
10 consistently reached out to the property owner to try
11 to reach a consensus. And in fact we thought we had
12 achieved that in August and October, with that design
13 that was -- that shows up there. That was actually
14 one of two designs that was approved by the HPRB.
15 And in fact at the October meeting of the HPRB we
16 endorsed fully the concept of this building and the
17 idea of this building.

18 So to suggest that we've been this obstinate
19 kind of character trying to you know, prevent this
20 building from going forward, just is inaccurate.

21 Our concern has been to reflect the
22 neighbors, the immediate neighbors' concerns, which
23 have primarily dealt with parking and traffic. And
24 we were consistently told, and the neighbors were
25 consistently told by the property owner that those

1 issues would be discussed as part of a variance
2 hearing, because at the end of the day, no matter how
3 you want to figure it. No matter how you want to
4 count these spaces, right now you go out to that
5 parking lot, there are 72 spaces. They are proposing
6 65 spaces. To suggest that somehow we're increasing
7 those spaces is not -- is somewhat disingenuous.

8 And those eight questionable spaces have been
9 in that lot since the -- at least since 1957. Now,
10 that property was grandfathered. That doesn't mean
11 those spaces just poof, go away. According to the
12 argument advanced by DCRA, no property owner would
13 ever have to bring their property into compliance if
14 it's been grandfathered, and then goes to seek to
15 change the property. That's the rationale that's
16 being advanced about these eight parking spaces. It
17 just doesn't make sense. You know?

18 Now, going back to -- I want to address some
19 of the issues that were raised by DCRA counsel with
20 respect to the zoning code. And you know, it's great
21 to make reference to Sections 2117.5 and 2117.6 from
22 which historic properties are exempted from. But
23 they're not exempted from 2117.1. You don't see in
24 2120.4 for example, any reference to 2117.1 or
25 2117.2.

1 And what did those say? 2117.1 says, "The
2 parking spaces required by this chapter shall be
3 provided and maintained as so long as the structure
4 that the parking spaces are designed to serve exist."

5 And 2117.2 goes on to say that, "Required
6 parking spaces shall not be reduced in total extent
7 after their provision, except upon approval by the
8 Board of Zoning Adjustment." Okay? And then it sets
9 out the standards by which you review those. That is
10 our argument. This is a decision for the Board of
11 Zoning Adjustment in the course of evaluating a
12 variance request filed before you. This is not
13 something that should be the decision solely of the
14 Zoning Administrator.

15 The other thing that I want to mention to you
16 is that you've heard a lot about, oh, there's no
17 evidence of anything existing. Photos don't lie.
18 We're not superhuman people here. We're all
19 volunteers. If we can look at those aerial
20 photographs, enhance them, digitally, count the
21 number of spaces, it's hard for me to believe that
22 Washington Real Estate Investment Trust or DCRA, with
23 all the resources and capabilities that they have to
24 bring to the table, couldn't do the same thing.

25 The building -- the parking plan that we

1 submitted to you, not the conceptual design, the
2 engineer's plan, what is it -- it even references the
3 fact that they will need an inspection by sediment
4 control. That parking plan, that engineering design
5 should have been enough to trigger additional
6 research on the part of the Zoning Administrator to
7 assess what the existing conditions were at the site.

8 Now, what basically the argument that DCRA is
9 advancing to you this morning is that they don't have
10 to provide any parking spaces. They can gradually,
11 over time, continue to propose to build to fill in a
12 parking lot and there would be nothing in the
13 requirements based on what we've heard today in terms
14 of the rationale put forward by DCRA counsel, there
15 would be nothing that would prevent them from
16 eliminating all of the parking there.

17 If you assume, if you make the assumption
18 that they are under no requirement to maintain the
19 number of parking spaces that were identified at the
20 time of historic designation, which is the standard
21 by which the city has operated for many, many years,
22 that's the way the zoning code has been interpreted.
23 And that's why if you look at 2117.1 and 2117.2, you
24 can see why the city has interpreted it that way.

25 Then why do we have -- there will be no

1 requirements for parking spaces at any historic
2 property. None.

3 So this is, you know, the issue here is that
4 I think frankly, just from what we've seen today, the
5 issue is a very complex one, involves a lot of
6 drilling down into the zoning code, and it really
7 requires a variance hearing where a lot more focus
8 can be put on these issues. That is my view and the
9 view of the ANC.

10 And I just want to say one more thing, and
11 that is that this is -- there is -- this variance
12 request was not something that we created. This is
13 not what -- what has triggered this whole process is
14 a decision by the property owner to add a new
15 building at the site. That is what forces the
16 compliance issue. It is the property owner that has
17 consistently said that it warranted a variance
18 hearing.

19 And only after a year, almost a year of HPRB
20 hearings, which I think was probably a lot longer
21 than what they anticipated it would take, from
22 January through October, that they didn't want to go
23 through another proceeding here.

24 And I will conclude with one statement, and
25 that is we didn't force the determination letter.

1 The determination letter was requested by the
2 property owner. When the property owner went to the
3 ZA and asked for the determination letter, we had to
4 decide whether to act. We didn't have the luxury of
5 waiting until a permit was applied for because the
6 determination letter was set. We had 90 days to
7 respond.

8 Now what I'm hearing today from DCRA is, oh
9 well, you just come back when there's a permit
10 application and then we'll look at all these issues
11 in more detail.

12 And the DCRA counsel said one other thing.
13 He said, if the Zoning Administrator had some sense
14 of some other configuration other than what was
15 presented to him by the property owner, he might have
16 felt differently. Well, I think we've shown more
17 than that with the combination of those plans that
18 were shown to you, which were included in our file,
19 or original filing, as well as the aerial photograph.
20 Photographs don't lie. Thank you.

21 MR. TONDRO: Madam Vice Chair, if I might? I
22 think I'd like to have -- be able to at least respond
23 because appellant has raised new issues in this
24 conclusion and is not allowing us to respond to those
25 assertions.

1 MR. SMITH: It should be in the case-in-
2 chief. If it's important enough it should have been
3 in the case-in-chief and allowed us to be in a
4 position to respond. They're introducing new issues
5 after the fact. That is not something that is, under
6 any condition, something that should be allowed.

7 MS. BUTANI-D'SOUZA: Okay. Here's what we're
8 going to do. I think before you respond some members
9 of the Board have some questions that they'd like to
10 ask. So why don't we go there first?

11 MR. MILLER: Thank you, Madam Chair. I just
12 had a question of either the owner or the owner's
13 representative and the DCRA on the issue of
14 attachment. The owner's representative stated by any
15 definition that it would be considered attached and I
16 see the statements and the evidence that talks about
17 joints being -- and shared walls, or shared roofline.
18 But would you -- just to elaborate on that, you said
19 by any definition it would be attached. Would you
20 say that under the new CR-16 regulations that there's
21 any meaningful connection? It includes the
22 meaningful functional connection argument that the
23 appellant alluded to, and I'm just wondering if you
24 could respond to that.

25 And maybe if DCRA could -- I know that DCRA

1 has had a different view of meaningful connection
2 under the existing regulation than others have had,
3 but it does get clarified in the new regulations.
4 But if you could just -- if each of you could just
5 elaborate on that I think I understand the
6 appellant's argument but I want to make sure I
7 understand your response to that question.

8 MS. RODDY: Sure. Let me also just say that
9 I think that there's a distinction here between the
10 use of the word attachment in 2120, it just says that
11 has to be attached to the historic resource, versus
12 the connection that we have used for defining a
13 single building. I think those are two distinct
14 definitions. And here we're just merely proving that
15 there is an attachment as 2120 requires. And I will
16 let the architect speak in more detail to that.

17 MR. McCLENNAN: Yeah. I would say that to
18 me, you know, I think about a detached row home, you
19 know, it's something that physically touches it. We
20 are coming into contact with that wall. We have
21 flashing that attaches to it, our roof attaches to
22 it. You know, and it was meant to be a party wall.
23 That bank building was meant to be an in-line
24 building when you look at the existing drawings. It
25 refers to that wall as a party wall.

1 So, that's my definition of it is, we're
2 coming into contact with it. We're attaching to it.
3 We're going to be sharing, you know, water that comes
4 on to our side will be put on our roof drain. But,
5 you know, we have a flashing piece that comes across.
6 So we, you know, we're going to be taking off the
7 coping of the bank and replacing it with a new
8 coping. To me, that's attached.

9 MR. TONDRO: If I might --

10 MR. McCLENNAN: Yeah. The other thing is,
11 our exterior wall, the front wall of our one-story
12 addition comes across and directly attaches to it,
13 both on the back and on the front.

14 MR. TONDRO: So I guess, yeah, building on
15 that, just looking at the definition of building
16 attached and building detached in the new
17 regulations, and the word that they use for defining
18 it is abuts, or shares walls. That's the key is
19 abut. I think there's no question that that's what's
20 happening right here.

21 So building attached is defined in a quote.
22 A building that abuts or shares wall on both --
23 shares walls on both side lot lines with other
24 buildings and adjoining lots, where as a detached
25 building is defined as a free-standing building that

1 does not about any other building.

2 So I think that here we have that issue of
3 abutting is what's used under the 2016.

4 Going back to what we're under currently for
5 this appeal, 1958, I think the issue is -- I can
6 understand, Commissioner Miller, I had some other
7 question in terms of this issue of connection.
8 Meaningful connection, that's obviously been a
9 subject that's been much discussed. But the Zoning
10 Commission did not, in making the Zoning Regulations
11 for 2120, did not use that word, "connection."

12 I'm not sure why. I'm not privy to when that
13 was introduced. Obviously I would presume some
14 decades ago. But they clearly had the opportunity to
15 use that word "connection" and they instead chose to
16 use the word, "attach," and then not to have it
17 defined. So I would be wary of reading "attached" as
18 an immediate synonym for connection because I don't
19 believe that -- I think within the building industry,
20 and that may be something that the architect -- the
21 owner's architect can speak to more, that there
22 really -- that often times there is an important
23 distinction between something that's attaching or
24 abutting, but where you still have firewall
25 separation, as opposed to something where there's

1 actually a connection, which case raises all sorts of
2 other additional requirements under the building
3 code, whether it's fire, whether it's ADA, all sorts
4 of other issues.

5 So I think there is a distinction, a net
6 distinction between attachment and connection, and
7 that's enough, I believe that -- I am assuming that
8 that's what the Zoning Commission chose not to use
9 the word "connection" in that context in this
10 particular reference.

11 MR. MILLER: Thank you for that response, and
12 since I did ask two of the parties, if the appellant
13 wants to respond briefly on that question, you have
14 an opportunity to do so, just because I gave the
15 other two an opportunity.

16 But I think I understand your position.

17 MS. GATES: My only question to the Zoning
18 Administrator is if they would please read the
19 definition of the word, "abut."

20 MR. SMITH: Actually, Commissioner Miller,
21 I'm looking at this and I guess from a different
22 angle. And I'm probably not going to be completely
23 responsive to your question, but I found it kind of
24 intriguing with the discussion here today, trying to
25 make the distinction between the word "connection"

1 and the word "attached" because when you -- I'm sort
2 of a student of other cities' zoning regs. And when
3 you look at the way municipalities around the country
4 treat this issue, the issues is about attachment,
5 it's not about a connection. You know, the
6 connection doesn't mean anything. The attachment is
7 what defines a building. Even, you know, in any,
8 way, shape, or form.

9 And what the two stiles in 16-DC regs talk
10 about is functionality. That's the essence of what's
11 in those regs is functionality. And there is no
12 function in this area where the buildings intersect
13 that is applicable to both of the buildings. Party
14 wall or no party wall, you know, it just doesn't
15 work.

16 The roof lines, the roof lines don't connect.
17 I mean, you don't have to be a brain surgeon here to
18 see that the roof lines are not consistent.

19 But I think the issue here is the word
20 "attached" is an important word because it deals with
21 -- and actually the zoning rules refer to the word,
22 "unattached." Not to the word "attached," but to the
23 word, "unattached." It's the functionality issue.

24 MR. MILLER: Thank you.

25 MR. TONDRO: If I might, simply just in

1 response to --

2 MS. BUTANI-D'SOUZA: Okay. So --

3 MR. TONDRO: I was just going to offer the
4 definition from Merriam Webster's of abut, which is
5 what --

6 MS. BUTANI-D'SOUZA: Go ahead.

7 MR. TONDRO: -- Mrs. Gates asked. And I'm
8 just reading, "To touch along a boarder or with a
9 projecting part to terminate at a point of contact or
10 lean for support."

11 MS. BUTANI-D'SOUZA: Okay.

12 MS. GATES: But does that exist in the Zoning
13 Regulations?

14 MR. TONDRO: I'm sorry. To be clear, there
15 is -- that's not defined in the Zoning Regulations,
16 neither the current, nor the new one. Therefore, I
17 went to Webster's as I said, under 199.2G.

18 MS. BUTANI-D'SOUZA: Okay. Mr. Tondro, you
19 requested the opportunity to respond to the
20 appellant's closing. In this case I think it's
21 appropriate for you to respond and then we'll give
22 the appellant a chance to rebut his closing.

23 MR. TONDRO: Thank you, Madam Vice Chair, I
24 appreciate that.

25 Yes, I just wanted to point out a couple

1 things. First of all, in terms of HPRB review of
2 that October 29th at its' meeting, it did -- first of
3 all it delegated approval to HPO, to its staff, to
4 determine the final because again, this was a
5 conceptual review at this particular time.

6 It did recognize that there had been two
7 options that were presented to HPRB, and it reviewed
8 -- it approved both of them, but it expressed a
9 preference for the one that was that magic word
10 again, abutting, which is the one that we have been
11 discussing that was provided in Exhibit 25B. And
12 that's one point.

13 And then the other issue is just simply that
14 the Zoning Administrator here is not arguing for a
15 reduction or that historic property is just not
16 allowed to -- that they are not subject at all to any
17 of the parking requirements. They have to retain the
18 parking spaces. The issue is that these eight that
19 are half on public space and half not, can't count
20 for them and it can't count against them. That was
21 it. Thank you.

22 MR. SMITH: I'm not going to address the
23 eight parking issues because I think we've exhausted
24 that issue beyond you know -- I mean, either they
25 count or they don't count. What we know is, they

1 exist and they're used and they're continuing to be
2 used. And under the new parking plan there will be
3 spaces there that won't be able to be used because of
4 the grass crete and no parking will be allowed on
5 those, even though there are lines on your drawings
6 which show that they'll be used because they're going
7 to have to be -- they won't be usable when there are
8 any kind of trucks coming in for deliveries or
9 loading. And that's based on what we've been told by
10 the property owner.

11 The issue here though, with respect to the
12 HPRB, as one who sat through and spent from January
13 through October and November dealing with the HPRB,
14 the HPRB hearings in a very intimate way since the
15 district that abuts the property owner -- the
16 property, is mine. The residential neighborhood is
17 the neighborhood that -- these are my constituents,
18 so I've been very much involved in this, and believe
19 me, you know, the idea was that what the -- while
20 DCRA is correct in saying that the final
21 determination was designated to staff, what was very
22 clear is that HPRB approved two designs.

23 We had no way of knowing which design they
24 were going to choose. We had talked with HPO staff,
25 and in fact until the prehearing statement that was

1 filed by the property owner, which we still haven't
2 been served with, we only have seen this because of
3 the case record, that's when we found out actually
4 what plan was actually going to be used. So, and
5 it's not for want of our efforts to try to get it.

6 But the bottom line is that HPRB reviewed two
7 plans and it would seem to us that the Zoning
8 Administrator should have been given access to both
9 of those plans to make that determination.

10 MS. BUTANI-D'SOUZA: Okay. Thank you. Do
11 any other members of the Board have questions? No?

12 Okay, I feel comfortable moving to decision
13 on this. I'm curious if --

14 MR. HILL: Deliberation?

15 MS. BUTANI-D'SOUZA: Deliberation, yes.

16 MR. HILL: [Speaking off mic.]

17 MS. BUTANI-D'SOUZA: Okay. Okay. So we're
18 going to go ahead and deliberate on this right now.

19 So let me see. I will get this started,
20 unless you'd like to start.

21 MR. HILL: I'll start.

22 MS. BUTANI-D'SOUZA: Okay.

23 MR. HILL: I'll take the bullet first. Thank
24 you, Madam Chair.

25 So, for me it was again what is brought

1 before us again is whether or not the ZA has erred in
2 his decision.

3 And while, you know, I think we've gone quite
4 a bit through the hearing here and had an opportunity
5 to kind of hear from everyone, and the ANC, and I do
6 really appreciate the ANC and what they had wanted to
7 have an opportunity to do, which was that I guess,
8 you know, them coming before us for a parking
9 variance. I mean, I continued to just be focused on
10 and was focused on whether I thought that the ZA had
11 erred, which is what we're supposed to view in terms
12 of, you know, whether or not to grant an appeal.

13 I did appreciate the questions that you asked
14 for the Zoning Administrator. And again, this has
15 gone on longer than some appeals that we've done.
16 And for me it was also very helpful. I would
17 actually agree with the brief and what Mr. Tondro,
18 the DCRA, had to say in terms of the logic, as to how
19 they got to the point that they're at. I think that
20 you know, that the structure is attached. You know,
21 that's what my feeling is from the drawings. I
22 understand how they got through this in terms of, you
23 know, there were 72 spaces existing and then once you
24 take away the eight that again, what we have seen
25 before is that you know, spaces that were cut in half

1 and that are now in public space, you can't count
2 towards the parking. You know, and so that's been
3 things that have been taken away before even though a
4 property owner would have liked to have counted those
5 spaces towards that.

6 So then, once you get away from that, then
7 there was the discussion about, you know, so that got
8 me down to the 64. Was it 64? Sixty-four, plus.
9 Then so the property owner was going to give one more
10 space. And then the -- so the property owner was
11 going to give one more space.

12 And then again, I understood the logic behind
13 how the ZA got to, you know, the size of the spaces
14 and the aisle width. And so, you know, and I'd be
15 interested in hearing from other people as well as
16 yourself, Madam Chair Vice Chair, but you know, I
17 would not be in favor of approving the appeal.

18 MS. BUTANI-D'SOUZA: So initially the piece -
19 - in reading all of the background material the piece
20 that I got hung up on was also this question of you
21 know, if the redevelopment of the property would
22 require it to be brought into public space
23 conformance, and that means eliminating eight spaces,
24 then shouldn't the BZA weigh in on that. But, Mr.
25 Tondro's explanation that from the point of view from

1 the Zoning Regulations, that these eight spaces
2 really didn't exist sort of under the purview of the
3 Zoning Regulations, persuaded me as well. So I
4 concur with Board Member Hill that I don't see this
5 as an issue where the BZA needs to get involved.

6 I also think that the explanation with regard
7 to the compact spaces that the historic -- the
8 regulations governing historic structures allow for a
9 smaller space also sort of addresses a concern that
10 the appellant had raised in their filings regarding
11 the size of the spaces.

12 I do think that there -- it seems like there
13 have been some communication issues here with regard
14 to the redevelopment. I understand what the owner
15 stated, that they did make many attempts to work with
16 the community. I think it's very clear that this
17 community is very concerned about parking. So, you
18 know, I would hope that as the owner moves forward
19 with the building permit process that you would
20 engage more productively with the ANC on these
21 parking questions, particularly the ANC's concern
22 that the conceptual drawings that have been shown so
23 far include five parking spaces that may or may not
24 be usable. And I believe -- I'm sure that the Zoning
25 Administrator will also carefully evaluate the

1 parking presented in the building permit plans.

2 So I would tend to concur with Board Member
3 Hill.

4 MR. HINKLE: Yeah, I tend to agree with all
5 the statements that you just made. I just want to
6 add in terms of the parking on the public space. I
7 mean, we've -- I've been on this Board for quite a
8 while and I have never seen DDOT actually support any
9 sort of parking on public space. And in fact in one
10 case where we did require a space in the public
11 space, it was subsequently removed from the plans by
12 DDOT.

13 So, I don't think we can rely on those spaces
14 to be there and used. And in terms of all the other
15 merits of the appeal I'm not necessarily supportive
16 of the argument that the ZA erred in this case.

17 MR. MILLER: Well, I actually am torn. I
18 think there were sufficient questions about the
19 nature of attachment and the number of existing
20 spaces that, and that colored by a possible
21 representation that we'll get to parking at the
22 zoning hearing that I think that probably the BZA
23 should have been involved in a variance hearing on
24 the parking relief. And I think based on just the
25 evidence in this case there may be a good reason for

1 granting that variance relief down to the 65.

2 But I think all that could have been erred at
3 -- I think there are sufficient questions in my own
4 mind. I think they're reasonable arguments, they're
5 reasonable interpretations that have been made by
6 each of the parties, but I think it probably should
7 have gone to a variance hearing, just in my own --
8 just weighing all the factors involved, so I would
9 not be -- I would be supportive of the appeal but I
10 realize that I am in the minority on that viewpoint
11 and accepting of that position. I'm used to being in
12 that position in some cases.

13 MR. HILL: Are you making a motion?

14 [No audible response.]

15 MR. HILL: Okay. Well, then I'd make a
16 motion to deny the Appeal No. 19274 of ANC 3D.

17 MS. BUTANI-D'SOUZA: Second.

18 [Vote taken.]

19 MS. BUTANI-D'SOUZA: Staff would record the
20 vote as three to one to one. This is on the motion
21 of Mr. Hill to the motion to deny the appeal.
22 Seconded the motion, Vice Chairperson Butani. Also
23 in support, Mr. Hinkle. Mr. Rob Miller is opposed to
24 the motion. We have no other board member present,
25 so the motion carries, Madam Chair.

1 MS. BUTANI-D'SOUZA: Okay. So we missed our
2 10:30 break so we're going to take a brief five-
3 minute break.

4 [Off the record from 11:16 a.m. for a short
5 break.]

6 MR. MOY: Sorry, Madam Chair. I thought that
7 was a Chinese five minutes.

8 MS. BUTANI-D'SOUZA: Okay. The meeting will
9 come back to order.

10 All right. Next up on the agenda, if I can
11 find it, will be -- or I guess, Mr. Moy, you call the
12 next case, right?

13 MR. MOY: Yes. Thank you, Madam Chair.
14 Parties to the table. This is to application No.
15 14096A, A as in Alpha, of Wilson NPB, LLC. as
16 captioned and advertised for a special exception from
17 the unused bonus density requirements under Section
18 768. This would permit the interior renovation of an
19 existing building, DD/C5 District, 529 14th Street
20 Northwest, Square 254, Lot 53.

21 MS. BUTANI-D'SOUZA: Okay. Thank you, Mr.
22 Moy. Good morning. Would you please introduce
23 yourself for the record?

24 MR. HAMMER: My name is Ted Hammer, an
25 architect with Mancini Duffy.

1 MS. BUTANI-D'SOUZA: Okay.

2 MR. KADLECEK: Cary Kadlecek with Goulston
3 and Storrs on behalf of the applicant.

4 MR. KEELEY: Patrick Keeley from Normandy
5 Real Estate Partners, representative of the owner.

6 MS. BUTANI-D'SOUZA: Okay. Thank you. Okay.
7 I don't think we need to go through the full -- a
8 full presentation. So, I think what we should do is
9 first go directly to the Office of Planning and see
10 if they have anything to add.

11 MR. COCHRAN: No, Madam Chair. We're happy
12 to stand on our revised report.

13 MS. BUTANI-D'SOUZA: Okay. I did have a
14 couple questions for the Office of Planning. In your
15 report the Office of Planning indicated that it's
16 support was -- it sounded like it was contingent on
17 the applicant's submission of additional information,
18 and then it went through detailed diagrams of the
19 pedestrian entrances and exits, clear illustration of
20 pedestrian passageway, and demonstrating that the
21 additions would not have a negative impact on the
22 existing three-block pedestrian circulation and
23 pedestrian space bonus features.

24 I saw that the applicant did make an
25 additional submission. Did that meet your

1 requirements or do you require additional
2 information?

3 MR. COCHRAN: No, it met our requirements and
4 I just want to be sure you're working with the
5 revised report because we didn't actually have any
6 conditions in our recommendation. They're both dated
7 the same day, it's just that the applicant updated
8 some of their information a couple minutes after we
9 filed our report.

10 MS. BUTANI-D'SOUZA: I see.

11 MR. COCHRAN: So we updated it.

12 MS. BUTANI-D'SOUZA: Okay. Thank you for
13 clarifying that.

14 MR. COCHRAN: Sure.

15 MS. BUTANI-D'SOUZA: Okay. Are there any
16 questions from any other members of the Board?

17 [No audible response.]

18 MS. BUTANI-D'SOUZA: Okay. Let me see. I
19 see that we have the report from the ANC which
20 recommends approval. Is there anyone here from the
21 ANC who wishes to speak regarding this case?

22 Okay. Seeing none. I also see that we have
23 a report of no objection from DDOT. Is DDOT here?
24 No? Okay.

25 And it looks like Historic Preservation has

1 no comment because the requested square footage would
2 be an interior addition not subject to historic
3 review.

4 Okay. We did not have any letters of support
5 or opposition in the record. Is there anyone here
6 wishing to speak in support of the application?

7 Okay, seeing none. Is there anyone here
8 wishing to speak in opposition? All right.

9 And I believe that there's really no need for
10 rebuttal or a closing from the applicant. Okay.
11 Okay. So any other comments or questions from the
12 Board?

13 MR. HILL: Are you guys pulled up on the
14 system? Are you plugged in? Oh, you're not plugged
15 in. Okay, never mind.

16 MR. KADLECEK: We can if you want.

17 MR. HILL: No, no, that's okay. I live down
18 the road. I had a question about something but I'll
19 just look at it when it's done.

20 MS. BUTANI-D'SOUZA: Okay. So, since there
21 is no further discussion here I would suggest that we
22 move straight to deliberations. Okay. I am assuming
23 that there are no comments from the Board on the
24 deliberation, or are there?

25 MR. HILL: No.

1 MS. BUTANI-D'SOUZA: No? Okay. And so I
2 would make a motion to -- read this and get this
3 correct. I would make a motion to approve the
4 request for a special exception from the unused bonus
5 density requirements under Section 768 to permit the
6 interior renovation of existing building in the C-5
7 District. Is there a second?

8 MR. HILL: Second.

9 [Vote taken.]

10 MS. BUTANI-D'SOUZA: Okay.

11 MR. MOY: Staff would record the vote as four
12 to zero to one. This is on the motion of Chairperson
13 Butani. Seconding the motion, Mr. Hill. Also in
14 support, Mr. Rob Miller, Mr. Hinkle. We have no
15 other member participating today and these are
16 according to revised plans under Exhibit 36A through
17 36B.

18 Does the Board wish to waive the requirements
19 for a --

20 MS. BUTANI-D'SOUZA: Summary order? Yes,
21 summary order.

22 MR. MOY: Thank you.

23 MS. BUTANI-D'SOUZA: Uh-huh.

24 MR. KADLECEK: Thank you.

25 MR. MOY: Okay. I believe the next

1 application is Application No. 19241 of Ira L.
2 Hartwell. If parties can come to the table? As
3 captioned and advertised for special exception relief
4 under Section 223, not meeting the lot occupancy
5 requirements under Section 403.2, rear yard setback,
6 404.1. This would construct a sun room and expand
7 the porch of an existing one-family dwelling, R-2
8 District, 852 50th Place Northeast, Square 5177W, Lot
9 19.

10 MS. BUTANI-D'SOUZA: Good morning.

11 MR. COLICCHIO: Good morning.

12 MS. BUTANI-D'SOUZA: Would you please
13 introduce yourself for the record?

14 MR. COLICCHIO: My name is Anthony Colicchio.
15 I'm the authorization for Ira Hartwell. I'm the
16 engineer, registered engineer in D.C.

17 MS. BUTANI-D'SOUZA: Thank you. Okay. I
18 don't think that we need a full presentation on this
19 unless you -- okay. Do any of the Board members have
20 any questions for the applicant?

21 MR. HILL: I'm just curious, there's no ANC
22 report.

23 MS. BUTANI-D'SOUZA: No, there was no ANC
24 report.

25 MR. HILL: Madam Chair, I've got a quick --

1 did you present before the ANC?

2 MR. COLICCHIO: Mr. Hartwell did talk to, I
3 believe, the Chairman of NAC (sic) of Mr. Holmes and
4 he advised him what was going on, but that's all I
5 heard from that, with regard to the ANC.

6 MR. HILL: Okay. Well, I don't know. Thank
7 you.

8 MS. BUTANI-D'SOUZA: So, sorry. Just to --
9 so you guys attempted to get on the schedule for the
10 June ANC meeting but you weren't able to?

11 MR. COLICCHIO: That's correct.

12 MS. BUTANI-D'SOUZA: Are you on the schedule
13 for the July meeting?

14 MR. COLICCHIO: I'm not sure if we are or
15 not, but we could get on there, I guess.

16 MS. BUTANI-D'SOUZA: Okay. Okay. And then
17 can you just help me understand? So this was -- when
18 did the owner discover that there was no permit
19 pulled for this?

20 MR. COLICCHIO: I believe, beginning of last
21 year, around January of 2015.

22 MS. BUTANI-D'SOUZA: Okay. Okay. All right.
23 Why don't we move next to hear from the Office of
24 Planning?

25 MS. THOMAS: Yes, Madam Chair. Good morning,

1 Karen Thomas for the Office of Planning. With
2 respect to the ANC issue, they did attempt to get in
3 to the ANC. But they didn't get into that meeting.
4 The July -- I don't think the ANC has a July
5 schedule, so I think that was what happened.

6 And the way I understand it is that the
7 applicant took -- was ill for an extended period of
8 time, from when they first filed. So that's why
9 there is this gap in the submission in going to the
10 ANC. But we do recommend approval of the
11 application.

12 MS. BUTANI-D'SOUZA: I had a question. In
13 your report there was a surveyor's plat which was
14 slightly different from the plat that I saw submitted
15 in the record, in that it showed a sort of diagonal
16 cut. Can you just clarify?

17 MS. THOMAS: Yeah, sure. The Public Space
18 Staff at OP recommended that they could go into the
19 building restriction line, but it had to only have
20 five feet within the building restriction line that
21 was -- that's there. As it's the original one, they
22 were way well beyond that five feet, so they pulled
23 it back. So he corrected the application.

24 MS. BUTANI-D'SOUZA: Okay.

25 MR. COLICCHIO: That's correct.

1 MS. BUTANI-D'SOUZA: So the current
2 application is for what's shown in the plat from the
3 OP report?

4 MR. COLICCHIO: Correct.

5 MS. BUTANI-D'SOUZA: Okay. And so I believe
6 that it's already been constructed in accordance with
7 the original design. Is it the intention of the
8 applicant to demolish that small portion and bring
9 it --

10 MR. COLICCHIO: Yes, that would be easily
11 done. Yes, he has agreed to do that.

12 MS. BUTANI-D'SOUZA: Okay. Terrific. The OP
13 report also included a condition, I believe, that was
14 inclusion of shrubbery along the chain link property
15 line in the area of the porch to act as natural
16 screening between the subject and adjoining property
17 to the south, which was --

18 MS. THOMAS: Yeah. I just thought that it
19 would -- if there were any issues of privacy, the
20 concerns that it would be helpful -- it's a
21 neighborhood where you have that whole stretch of
22 chain link fencing and I just thought as an open view
23 with a porch --

24 MS. BUTANI-D'SOUZA: Uh-huh.

25 MS. THOMAS: -- if they wanted they could put

1 in some landscaping.

2 MS. BUTANI-D'SOUZA: Does the applicant have
3 any issues with this condition?

4 MR. COLICCHIO: Well, I talked to Mr. Ira.
5 He would not have any problems with that at all and I
6 would show that in the revised plans when we go for
7 final permit.

8 MS. BUTANI-D'SOUZA: Okay. Terrific. Are
9 there any other questions for OP? No? Okay.

10 Moving right along, I see that we have a
11 letter of no objection from DDOT, and we've discussed
12 that there is no ANC report on file. Are there any
13 parties or persons wishing to speak in support of the
14 application?

15 Okay, seeing none, are there any parties or
16 persons wishing to speak in opposition to the
17 application? All right.

18 Do you feel that you need to -- I don't think
19 you need to do a closing statement, but if you'd like
20 to say anything else?

21 MR. COLICCHIO: No, not at all.

22 MS. BUTANI-D'SOUZA: Have you filled out a
23 witness card?

24 MR. COLICCHIO: Excuse me?

25 MS. BUTANI-D'SOUZA: Have you filled out the

1 witness cards?

2 MR. COLICCHIO: No, I have not.

3 MS. BUTANI-D'SOUZA: Okay. So, were you
4 sworn in?

5 MR. COLICCHIO: Excuse me?

6 MS. BUTANI-D'SOUZA: Were you sworn in?

7 MR. COLICCHIO: Yes, I was.

8 MS. BUTANI-D'SOUZA: Okay. So we will need
9 you to fill out two witness cards.

10 MR. MOY: Yes, please. And then you could
11 submit it to the recorder to your left. Thank you.

12 MS. BUTANI-D'SOUZA: Okay. Yeah, go ahead.

13 MR. HILL: Thank you, Madam Vice Chair.

14 I just have a question for you. So, did you
15 reach out to the next door neighbor there?

16 MR. COLICCHIO: Excuse me?

17 MR. HILL: Have you reached out to your next
18 door neighbor?

19 MR. COLICCHIO: I'm not sure if Mr. Hartwell
20 has not -- has talked to him or not.

21 MR. HILL: Okay.

22 MR. COLICCHIO: As instructed. And we did
23 post a, you know, a zoning --

24 MR. HILL: Right. The posting.

25 MR. COLICCHIO: Yes.

1 MR. HILL: Right? Okay. All right. Thank
2 you.

3 MS. BUTANI-D'SOUZA: Okay. Seeing as we have
4 no further questions on this I think we should move
5 straight to deliberations. So I guess I'll --

6 MR. HILL: Okay. So this is what I'm
7 struggling with. And I know that we're even talking
8 -- I mean, I really can't believe you haven't talked
9 to your neighbors, or again, nothing from the ANC.
10 Mr. Clichinko (sic)?

11 MR. COLICCHIO: Colicchio.

12 MR. HILL: Colicchio. Colicchio. Mr.
13 Colicchio, I mean, I really am struggling with this.
14 I mean, you basically are good to go. I mean, to a
15 certain extent, but there's nothing from the ANC
16 here. You know, I don't have a report, I don't have
17 the -- you know, other than you got on the calendar
18 and now I feel, you know, disappointed for you in
19 that I guess -- do the ANCs meet in August? I don't
20 even know if they're at --

21 MS. THOMAS: No, they don't meet at all.

22 MR. HILL: They're off in August.

23 MS. THOMAS: And --

24 MR. HILL: So now you're in to September.
25 But you didn't even tell me that you spoke to the

1 neighbor next door. And so, Madam Chair, I'm really
2 kind of at a loss. Like I want to put it off and see
3 some kind of community outreach. I mean, the deck is
4 already there. It's not even supposed to be there.
5 You know, and yet you're giving me nothing here other
6 than -- I mean, it's great the Office of Planning is
7 in support, but -- so I want to put it off until I
8 see something from the ANC or something from the
9 neighborhood, or something.

10 MS. BUTANI-D'SOUZA: I would tend to agree
11 because this is something that was built without a
12 permit originally.

13 MR. COLICCHIO: Uh-huh.

14 MS. BUTANI-D'SOUZA: So I think it would be
15 worthwhile to make sure that we check that box. I
16 agree. So --

17 MR. HINKLE: Madam Chair, if I could jump in
18 as well? I think we need a revised plan that shows
19 also the shrubs that the applicant has stated that
20 they would do along the fence line.

21 MS. BUTANI-D'SOUZA: Uh-huh.

22 MR. HINKLE: So I think that would be
23 helpful. So, we, you know, we have some time.

24 MS. BUTANI-D'SOUZA: Yeah, I think that's a
25 good point as well.

1 MR. COLICCHIO: Okay.

2 MS. BUTANI-D'SOUZA: So I think we're going
3 to have to put this off until you can get on the
4 ANC's schedule.

5 MR. COLICCHIO: Uh-huh.

6 MS. BUTANI-D'SOUZA: So it would be helpful
7 if you could one, get on the ANC schedule. Two,
8 submit a letter or some kind of documentation showing
9 that you've had a discussion with the neighbor and
10 that they are amenable to the project. And then
11 three, the revised plans showing the shrubbery and
12 the demolition of the portion of the deck that's
13 being taken off and the construction of the new
14 revised shape to the deck.

15 MR. COLICCHIO: Okay.

16 MR. MILLER: I just wanted to say for the
17 record that I'm supportive of all the comments that
18 my colleagues have made.

19 MS. BUTANI-D'SOUZA: Okay. So, Mr. Moy, are
20 we scheduling --

21 MR. MOY: Yeah, I think we should, Madam
22 Chair. So we have something scheduled, date certain.
23 So my understanding from the Office of Planning is
24 that the ANC is in recess in July and August, so this
25 then would be at a BZA hearing in September. So,

1 Madam Chair, I would suggest then a date in September
2 -- September and not knowing when the ANC meets. Do
3 you know, Karen? Ms. Thomas?

4 MS. THOMAS: No, I can't remember.

5 MR. MOY: First, second, or third week.

6 MS. THOMAS: I can't, but --

7 MS. BUTANI-D'SOUZA: Why don't we do the last
8 week, then?

9 MR. MOY: Let's do the last week September
10 then.

11 MS. THOMAS: Yeah.

12 MR. MOY: To be sure. So that would --

13 MS. BUTANI-D'SOUZA: Or would that give them
14 enough time to --

15 MS. THOMAS: I think we -- I think it's in
16 the second week. It's the second meeting. Yes.
17 It's the second Wednesday.

18 MR. MOY: Okay. Well, then that would be --
19 and plus then it would allow time for the Board to
20 receive a letter from the ANC.

21 MS. BUTANI-D'SOUZA: Uh-huh.

22 MR. MOY: So the last hearing, September, is
23 September 27th, which appears to be a good date.

24 MS. BUTANI-D'SOUZA: Okay. Let's go with
25 September 27th.

1 MR. COLICCHIO: Is that the 14 or the 27th?
2 Okay. So that will be in the month. Hopefully the
3 ANC will be somewhere in the middle of the month, I
4 guess.

5 MS. BUTANI-D'SOUZA: Okay.

6 MR. COLICCHIO: I'm not sure if that would be
7 giving me enough time to get a letter from the ANC to
8 bring it to you when we have the next meeting here or
9 not.

10 MS. BUTANI-D'SOUZA: I think you should be
11 able to.

12 MR. COLICCHIO: You think I should be? Okay.

13 MS. BUTANI-D'SOUZA: But if you can't then
14 what I would encourage you to do is communicate with
15 staff, Office of Zoning staff, so that they know what
16 the status is and can --

17 MR. COLICCHIO: Okay. Will that suffice,
18 other than a letter if the ANC communicates with the
19 Zoning Department?

20 MS. BUTANI-D'SOUZA: We do require a report
21 from the ANC, I believe.

22 MR. MOY: Yeah, typically when you meet with
23 the ANC, sir, they typically would write a letter or
24 letter of resolution.

25 MR. COLICCHIO: Uh-huh.

1 MR. MOY: And they would file that in the
2 case record here at Office of Zoning.

3 MR. COLICCHIO: Oh, okay. I mean, would that
4 be enough time safe? It's in the middle of the month
5 for you guys, when you're meeting at the end of
6 September to --

7 MR. MOY: Well, it should be as the chair
8 said that, I mean, you could connect with me as to
9 the status and if you need more time then you can ask
10 for a postponement and rescheduling of this date.

11 MR. COLICCHIO: Okay.

12 MS. BUTANI-D'SOUZA: Okay. Thank you very
13 much.

14 MR. COLICCHIO: Okay. You're welcome.

15 MS. BUTANI-D'SOUZA: Okay. Mr. Moy, shall we
16 call our next case?

17 MR. MOY: Yes. Thank you. That would be
18 Application No. 19306 of Massage Envy, captioned and
19 advertised for a special exception relief from the
20 massage establishment requirements under Section 731.
21 This would allow -- this would operate -- this would
22 allow for an operation of a massage establishment in
23 the C-2-A District, 4926 Wisconsin Avenue Northwest,
24 Square 1671, Lot 805.

25 MS. BUTANI-D'SOUZA: Thank you. Would you

1 please introduce yourself for the record?

2 MR. BARTON: Sure. Yeah. Hello, my name is
3 Eric Barton. I'm a regional developer for Massage
4 Envy.

5 MS. BUTANI-D'SOUZA: Okay. So normally we
6 would take a statement from you and from any
7 witnesses but I don't -- I think the record was
8 fairly complete. I don't think we really need that
9 unless you wish to make any statements.

10 MR. BARTON: No, everything stands.

11 MS. BUTANI-D'SOUZA: All right. So, why
12 don't we move to the Office of Planning?

13 MS. ELLIOTT: Good morning, Madam Chair.
14 Members of the Board. OP is recommending approval of
15 this, of the special exception that's been requested,
16 so we'll go ahead and stand on the record of our
17 report, but I'm happy to answer any questions you
18 have.

19 MS. BUTANI-D'SOUZA: Thank you. Are there
20 any questions?

21 Okay. I see that we have a DDOT report of no
22 objection here. The ANC has unanimously voted that
23 they do not oppose this request for relief. Are
24 there any persons wishing to -- are there any persons
25 from the ANC wishing to speak today? Okay.

1 Are there any parties or persons wishing to
2 speak in support of the application? Okay, seeing
3 none. Are there any parties or persons wishing to
4 speak in opposition to the application?

5 Okay. I don't think there's much of a need
6 to close, but you're welcome to make a closing if you
7 wish to.

8 MR. BARTON: We're just excited to get open.
9 We were here two years ago and it didn't work out but
10 now this one, it's going to work out.

11 MS. BUTANI-D'SOUZA: Good. Okay. So with
12 that I would say we should move to deliberation
13 unless there's any other comments from the Board.
14 Okay. So, I think that this seems to be an
15 appropriate use. The neighbors are supportive and
16 this does meet the criteria for special exception.
17 So I would be in favor of this. Okay. Any other
18 comments?

19 MR. HINKLE: I'll second it.

20 MS. BUTANI-D'SOUZA: Okay, so --

21 MR. HINKLE: Oh, you made a motion?

22 MS. BUTANI-D'SOUZA: I haven't made the
23 motion yet.

24 MR. HINKLE: Oh, I guess I am jumping the gun
25 here.

1 MS. BUTANI-D'SOUZA: Well, you can make the
2 motion. Would you like to make it? No? Okay. All
3 right. Okay. So I would make a motion to approve
4 the request for special exception as captioned in the
5 notice here. Is that an acceptable motion?

6 MR. MILLER: Second.

7 [Vote taken.]

8 MS. BUTANI-D'SOUZA: Okay. Thank you.

9 MR. BARTON: That's great. Thank you.

10 MS. BUTANI-D'SOUZA: Congratulations.

11 MR. MOY: Staff would record the vote as four
12 to zero to one. This is on the motion of Vice
13 Chairperson Butani approving the application for the
14 relief requested, and this is shown on plans under
15 Exhibit 7. Seconded the motion, Mr. Miller. Also in
16 support, Mr. Hill and Mr. Hinkle. No other board
17 member present today. Motion carries, Madam Chair.

18 MS. BUTANI-D'SOUZA: Yes, summary order.
19 Thank you.

20 MR. MOY: Thank you.

21 MS. BUTANI-D'SOUZA: The next application,
22 parties to the table to Number 19312 of Allegro II,
23 or the Two, LLC., captioned and advertised for
24 variance relief from the FAR requirements under
25 531.1, nonconforming structure provisions under

1 2001.3, special exception from the penthouse setback
2 requirements, 411.18, Sub B, to renovate existing
3 offices in the DC/SPI District, 1714 through 1716 N
4 Street Northwest, Square 159, Lots 829 through 830.
5 And their revised plans were in Exhibit 34A, and I
6 believe, Madam Chair, there is a request with a
7 waiver of time requirements for a party status.

8 MS. BUTANI-D'SOUZA: Okay. Thank you, Mr.
9 Moy. So, let's begin with introductions. Please
10 introduce yourself, state your name for the record.
11 Make sure your mic is on.

12 MS. CUMMINS: Kristin Cummins, 1712 N Street.
13 I'm the adjacent property owner.

14 MS. BUTANI-D'SOUZA: Thank you.

15 MR. GOODRICH: Abraham Goodrich with Gensler.
16 I'm the architect.

17 MS. MAZO: Hi. Samantha Mazo, excuse me,
18 Griffin, Murphy, Moldenhauer, And Wiggins, and we
19 represent the property owner.

20 MR. BLOODWORTH: Brandon Bloodworth. I'm the
21 owner.

22 MS. MINCH: Christie Minch with Cresa,
23 project management.

24 MS. BUTANI-D'SOUZA: Okay. Thank you. So I
25 believe Mr. Moy mentioned that we have a request for

1 party status from Ms. Cummins. So, I think in this
2 case -- I'd just like to understand why the request
3 for party status is so late.

4 MS. CUMMINS: It wasn't on a result of it not
5 being important or being lazy, but I had called in
6 about a week or two after receiving the notice and it
7 was a miscommunication talking to, it was an Allison
8 Myers. She had kind of directed me more to be
9 involved after the BZA level when it went to building
10 permits. And so there was some confusion and then I
11 called in yesterday to kind of find out exactly how
12 the timing would go today and I spoke with Cliff. I
13 guess maybe this person here. And realized that like
14 adjacent property owners, you know, having party
15 status is something that is typical, and that you
16 know, I just -- there's also some structural concerns
17 I have based on something that happened. A roof that
18 was put on that particular property three years ago
19 that caused debris to come down through multiple
20 fireplaces in my building.

21 So, I feel like it's important and it was
22 just a mistake. It's the first time I've ever been
23 to the BZA and so I just didn't know.

24 MS. BUTANI-D'SOUZA: Can you help us
25 understand? Are your concerns more pertaining to

1 construction, or are they more pertaining to zoning?

2 MS. CUMMINS: Well, they're related.

3 MS. BUTANI-D'SOUZA: Are they related to
4 construction?

5 MS. CUMMINS: I mean, it's more the
6 construction but it's the whole project, yes.

7 MS. BUTANI-D'SOUZA: Okay. So, the reason
8 I'm asking is because concerns related to
9 construction are outside the purview of this Board.
10 So, if the reason for -- I did read the submission
11 that you made, and it appeared that most of your
12 concerns were pertaining to construction, and this
13 Board typically advises neighbors who are concerned
14 about construction practices to work with the
15 applicant to develop a construction management
16 agreement to address those concerns.

17 MS. CUMMINS: Yeah, that attempt has been
18 made but I have not received a response from their
19 agents. Cresa did not respond to that, so.

20 MS. BUTANI-D'SOUZA: Did the applicant or the
21 project manager receive a request for a construction
22 management? Is there any reason why --

23 MS. MINCH: I missed that last piece.
24 Request for what?

25 MS. BUTANI-D'SOUZA: Sounds like you have a

1 neighbor --

2 MS. CUMMINS: I have evidence here. I have
3 spoke with, let's see, Aaron Berkley. They were kind
4 enough to reach out to me because they wanted me to
5 sign their petition in favor, and when I had
6 mentioned a lot of my concerns and they you know,
7 expressed concern about getting a construction plan
8 in place they did not reach out. And when I emailed
9 him yesterday they said my project management team
10 has taken the lead on this. I believe everything is
11 under control and I asked for more details, and none
12 were given.

13 MS. MINCH: So that's our broker. I was not
14 made aware of these requests. But ultimately we're
15 in design so we don't have construction drawings that
16 have been applied for permit in which we can put
17 together a full construction plan to relay to you.
18 But I'm happy to --

19 MS. CUMMINS: Well, it's also the design that
20 plans that were sent were just, like you had
21 mentioned, they were just floorplans. And so what
22 the structure looks like from the outside.

23 MS. BUTANI-D'SOUZA: Okay. Okay. Hold on.
24 I'm going to let you finish first.

25 So, you are intending on striking a

1 construction management plan with the neighbor to
2 address some of the concerns that have been raised
3 about construction?

4 MS. MINCH: Yeah, absolutely. We'd be happy
5 to. We're just, we're not that far along yet.

6 MS. BUTANI-D'SOUZA: Okay.

7 MR. MILLER: Madam Chair, I would just offer
8 -- agree with you that based on the filing all of the
9 issues relate to the construction management and I
10 would encourage the parties, as good neighbors, to
11 follow through as you get closer to the building
12 permit stage.

13 MS. MINCH: I've got a question.

14 MR. MILLER: Although, I would note that one
15 of the conditions seems incredibly unreasonable. No
16 construction during working hours. That's usually
17 when construction occurs. I realize that you are
18 there during working hours, probably, that's why you
19 don't necessarily want that. But construction has to
20 happen during the normal business hours of
21 construction. I've been living with construction,
22 renovation of houses in my square for three
23 continuous years. It's all during the day when that
24 happens mostly, Monday through Saturday.

25 But anyway, I would encourage you all to work

1 together as you get closer, and so I would be in
2 favor of denying the party status request at this
3 time.

4 MS. MINCH: Could I ask one more question,
5 please?

6 MS. BUTANI-D'SOUZA: Sure.

7 MS. MINCH: When you said, does it relate to
8 the zoning, does economic loss relate to adjacent
9 economic loss relate to zoning?

10 MS. BUTANI-D'SOUZA: So based on the
11 submission that was put into the record the economic
12 loss argument pertaining to construction related
13 noise, which is outside the purview of this Board.
14 So for that reason I would tend to agree with Board
15 Member miller that this is -- that it would be
16 sensible to reject the request for party status.

17 MS. MAZO: Okay. Sorry. And just on behalf
18 of the applicant, I mean, we object to the
19 untimeliness of this filing and the fact that the
20 issues do believe -- from what I understand, having
21 not seen any of the filings, it appears to us that
22 these issues are outside the scope of the Board.

23 MS. BUTANI-D'SOUZA: Thank you, Ms. Mazo.

24 Okay. So are we all in agreement then that
25 we will -- so we are going to deny the request for

1 party status, but we are going to encourage the
2 applicant to work with their neighbor, and to be good
3 neighbors when they are performing construction.
4 Obviously to have debris falling into a chimney of an
5 adjoining property is completely inappropriate. It
6 is a health risk, all of these things. So we would
7 encourage you to use safe construction practices and
8 work with your neighbor.

9 Okay. And you will have the opportunity to
10 testify later in this hearing. So, okay. So we are
11 going to continue on with the hearing. So, we start
12 with a statement of the applicant. And I think it
13 would be sensible to focus your statement on some of
14 the issues raised in the OP report, specifically. I
15 don't think we need the full statement.

16 MS. MAZO: Sure. And we will go ahead and be
17 happy to upload our presentation. But just simply in
18 sum, the applicant certainly has no problems with
19 stepping back the rear -- sorry, the rear of the
20 penthouse, the three feet as requested by HPO. That
21 is not a concern of ours. And then that was really
22 the only issue that was raised by OP.

23 Similarly we note that DDOT has published --
24 or, sorry. Has filed a letter of no objection and
25 they do indicate that the exterior staircase will

1 need public space permitting, and we agreed to go
2 through that process. So, if there are other
3 questions the Board has, be happy to address them,
4 but those are the two issues that were raised by OP.
5 Sorry, the one issue that was raised by OP, and then
6 the separate issue that was raised by DDOT.

7 MS. BUTANI-D'SOUZA: Okay. Let's see. Why
8 don't we move to OP and hear from them.

9 MR. JESICK: Thank you, Madam Vice Chair and
10 Members of the Board. My name is Matt Jesick. The
11 Office of Planning supports the requested relief. In
12 terms of the penthouse setback we do support some
13 degree of relief. But after speaking with the
14 Historic Preservation Office, the structure should be
15 set back no less than three feet from the rear wall
16 of the building. Thank you.

17 MS. BUTANI-D'SOUZA: Can you help us
18 understand how you came up with the three feet
19 recommendation?

20 MR. JESICK: That, I understand, is a
21 standard minimum distance that HP typically looks for
22 on these types of additions, vertical additions where
23 you're building new construction on top of a historic
24 building, a contributing building in a historic
25 district. They want to see a visual separation

1 between the historic building below and the new
2 construction above. And over the course of time
3 they've developed that as at least a minimum standard
4 for a setback.

5 MS. BUTANI-D'SOUZA: Okay. I have a
6 question, actually, for the applicant. So the
7 argument that's being made is that there are
8 operational difficulties that are resulting in this
9 request. And I guess the part where I didn't really
10 see a clear explanation of the operational
11 difficulties were on this issue of accommodating the
12 conference room within the building. So there was a
13 statement in the application that the number of
14 offices that were needed exceeded the capacity of the
15 building such that a conference room could not be
16 accommodated within the building and needed to be
17 placed on the roof. I'd like you to kind of walk
18 through that a little bit more clearly with perhaps
19 some evidence showing why you would need this.

20 MS. MAZO: Sure. And I'm just trying to open
21 the PowerPoint for a second.

22 MR. HILL: Thank you, Madam Chair. And then
23 I was just -- so I'm a little confused. I thought
24 now you guys were both in agreement in terms of the
25 three feet. You are agreeing to pull back the three

1 feet.

2 MS. MAZO: Yes, we are.

3 MR. HILL: So there's nothing -- there's no
4 issue anymore.

5 MS. MAZO: No, there's no issue anymore.

6 MR. HILL: Okay. All right. Thanks.

7 MS. MAZO: Yeah, there's no concern.

8 MS. BUTANI-D'SOUZA: Have you submitted the
9 revised plans?

10 MS. MAZO: We have not revised the plans to
11 show the three feet. We have just agreed to it. And
12 so if the Board has that as a condition then any
13 plans that are approved as one of -- as the building
14 permit, will show the at least three-foot setback as
15 required by OP and HPO.

16 MS. BUTANI-D'SOUZA: Okay. I would like you
17 to just run through the argument on why this relief
18 is required, because I really didn't see anything in
19 the record that demonstrated that issue.

20 MS. MAZO: Sure. With us today is Abraham
21 Goodrich from Gensler, and he's going to talk through
22 with you, the open floorplan that is proposed here
23 and essentially where the offices will be. And, you
24 know, the argument really is, is that in the property
25 once -- due to the existing configuration and once it

1 is renovated for the open office concept, there
2 really will be very little room for a conference or
3 break room within the existing building due to the
4 small size. But Abraham can talk through it, so --

5 MR. GOODRICH: Sure. So from the point of
6 view of the occupant of the building, one of the
7 motivators for coming to this new location is to
8 attempt to consolidate their people. So today
9 they're in two separate sites. The purchase of this
10 property, or the two properties provides the
11 opportunity to really try to get everyone together in
12 one location. And kind of moving beyond that it
13 would be nice to be able to get everyone together in
14 the same physical space. You know, think of an all-
15 hands meeting for example. The opportunity to get
16 everybody together.

17 And the nature of these buildings, we have a
18 party wall and we have proposed, you know, combining
19 these properties so that we have the possibility of
20 taking some -- making some larger openings between
21 the party walls that will hopefully connect the two
22 structures spatially better together than they are
23 today. However, if you can imagine this filled with
24 offices and desks, there really is not a great
25 opportunity to provide a single space where people

1 could get together. And you can think of it as kind
2 of a more -- the priority from the client point of
3 view is to have essentially a social space where they
4 can bring those folks together. Think of it as like
5 a lunchroom more than, say, a conference room.
6 That's a function that they have today in their
7 current space and they're looking to try to replicate
8 that to some degree with this new location.

9 MS. MAZO: And so, I'm sorry. Abraham, can
10 you just, you know, in order to address the Vice
11 Chair's question, can you indicate where in the
12 existing floors of the office there really would be
13 another space for a break room or a place for people
14 to kind of meet more jointly?

15 MR. GOODRICH: Is there a pointer? No. All
16 right.

17 So the question is, where might they be able
18 to do this within the floor --

19 MS. BUTANI-D'SOUZA: I think there is a
20 pointer.

21 MR. GOODRICH: -- plate that we have here.
22 Thank you. All right.

23 MS. MAZO: Well, actually, I'm going to step
24 back. Can you just more explicitly walk through the
25 proposed areas where the offices uses would be and

1 where you anticipate desks being located within the
2 existing footprint?

3 MR. GOODRICH: Sure. So, what you're seeing
4 here on the screen, that is an existing elevator that
5 will remain. This is a proposed new stair. And you
6 can sort of see that this corner of the building
7 doesn't really provide significant space for
8 planning. So, we will naturally tend to put
9 functions like restrooms and mechanical spaces in
10 this corner of the building. Probably a little
11 easier to understand on the upper floors where we
12 don't have this, which is a kind of historic addition
13 to the building. But if we imagine here.

14 So the areas that we have available to us to
15 plan effectively for the interior. It's the 1716
16 side, and sort of the front portion of 1714. The
17 space kind of between party walls is approximately 18
18 and a half feet wide. So, you know, I'm looking for
19 a reference in the room but that's basically the
20 width of a, say a standard meeting room.

21 But you know, if we tried to get everyone
22 together in one space here, I think you can probably
23 visualize that it might take a significant area here
24 to get all of the occupants of the building together.
25 And effectively during the day --

1 MS. BUTANI-D'SOUZA: How many floors --

2 MR. GOODRICH: I'm sorry?

3 MS. BUTANI-D'SOUZA: How many floor -- there
4 are four floors here, right?

5 MR. GOODRICH: There are four levels, yes.

6 MS. BUTANI-D'SOUZA: So, presumably you could
7 put people together on one of the other floors,
8 correct?

9 MR. GOODRICH: Well, I guess, you know, the
10 question is do you set aside space within those four
11 levels that's dedicated to kind of, A, an occurrence
12 that is more casual and not that frequent. It's not
13 perhaps the most efficient use of that space when you
14 could be planning it for desks and offices.

15 So the opportunity of the penthouse space is
16 to have an informal gathering area that would not be
17 used with heavy regularity that would have -- provide
18 enough floor space to get those folks together, while
19 not kind of permanently setting aside that space
20 within the first four levels of the building so that
21 that space inside of the building can be used on a
22 day to day basis for a regular work space.

23 MS. BUTANI-D'SOUZA: And can you help me
24 understand? There's a back portion of the building
25 that's sort of separate from the main square there.

1 MR. GOODRICH: This here?

2 MS. BUTANI-D'SOUZA: Why would that not be
3 used as a conference space on one of the four floors.
4 Or I suppose, one of the three floors, two floors
5 that it exists.

6 MR. GOODRICH: Well, it may in fact be used
7 that way. It's really a question of the floor area
8 that you have there. So, this is not a big building
9 and that extension out there, I think it's probably
10 about 15 feet that direction and maybe 18 feet the
11 other direction. So we're not talking about a very
12 big room. And probably not adequate to assemble all
13 hands.

14 MS. BUTANI-D'SOUZA: And how big is a
15 proposed penthouse space?

16 MS. MAZO: And also, to be clear, Abraham,
17 isn't it correct that that exterior portion is only
18 on the ground and the first level of the buildings,
19 correct?

20 MR. GOODRICH: Yes.

21 MS. MAZO: So, accordingly the third and
22 fourth levels do not have that same square footage.

23 MS. BUTANI-D'SOUZA: I see. So is the
24 argument that you're making that a conference cannot
25 go on the ground or the second floor?

1 MS. MAZO: No, no, no, that's not my
2 argument. My argument is just to be clear that that
3 rear area is only on two of the levels as opposed to
4 being all four of the levels. I wanted the Board to
5 be clear on that.

6 MS. BUTANI-D'SOUZA: Okay. So, I'm still not
7 really hearing something that is compelling to me for
8 the special exception to the penthouse regulations.
9 It seems to me that you have a four-level building.
10 You have an -- you know, that is two row houses.
11 There is several areas where you could fit it,
12 including this back area on two of the floors. I'm
13 just not really understand, I suppose, the argument
14 here. The evidence that you're presenting on why
15 your break room needs to go in the penthouse.

16 You know, specifically on the one hand you
17 said that this would be a lunch room that I presume
18 people have lunch every day, so that would be an
19 everyday usage. And then on the other hand you say
20 that it's an occasional usage. So, I'm just a little
21 bit confused there.

22 And, sorry. Can you just help me understand,
23 what is the usable area for the, what you're showing
24 with the conference room and the row of chairs.
25 Conference table and row of chairs there. Is it --

1 how big is that?

2 MR. GOODRICH: I believe that's approximately
3 580 square feet the way it's shown.

4 MS. BUTANI-D'SOUZA: Okay. And --

5 MR. GOODRICH: And that's gross. So, you
6 know, it begins to erode as you factor on the skin of
7 the building and some of the other realities of
8 occupying that, that area.

9 MS. BUTANI-D'SOUZA: Okay. Does anyone else
10 have questions about this issue?

11 No? Okay. Do you have anything else that
12 you would want to present on this question?

13 MS. MAZO: I mean, I think the only issue
14 that I would like Abraham to expound upon is in the
15 internal configuration of the floors, is the
16 expectation as I understand it, is that there is
17 going to be offices of desks throughout the entire
18 portions of the ground through the fourth floors. Is
19 that correct?

20 MR. GOODRICH: That's right.

21 MS. MAZO: So if there are desks in those
22 areas it would be very difficult to have a meeting
23 room space to reconfigure those desks in such a way
24 that if people are eating lunch, whether it be every
25 day or if they have a long conference it would be

1 difficult to reconfigure those areas such that you
2 could have a meeting as proposed in the ground
3 through fourth floors of the building.

4 MR. GOODRICH: That's right. You know, if we
5 look what we have on the screen here and the plan
6 that's off to the left-hand side, that size of table
7 and that quantity of people in a single space is not
8 something that we're really able to accomplish in the
9 floorplates below. Simply a function of the
10 limitation of the width of those row homes as defined
11 by their party walls.

12 So, the opportunity of the roof is to make a
13 space that's larger than what we could otherwise
14 accommodate within the typical floor. And I think
15 the essence of, you know, our argument for relief is
16 that in order to respect the historic character of N
17 Street it makes sense, which we acknowledged, to move
18 that penthouse structure back from the street an
19 additional distance. And we plan to respect the
20 setbacks on the side.

21 Once we do that what you see is -- and we
22 respect the rear setback -- we're left with something
23 which is effectively not very usable and that's
24 what's represented in the slide that's off to the
25 right. Once you include the area for a stair

1 connector to the level below and the required space
2 just to be able to maneuver from the top of that
3 stair and into the accessory area, what you're left
4 with is a sliver of space that's, you know, much
5 worse than what you would be able to do ordinarily in
6 any corner of the building below.

7 MS. MAZO: And to be clear, the central core
8 area of -- that would be required in order to bring
9 the staircase up, and the landing, is about 315
10 square feet. And that would be the same whether you
11 had the full rear setback or you have what is
12 proposed or what we have agreed to through HP0. Is
13 that correct?

14 MR. GOODRICH: That's right.

15 MS. MAZO: So if you are required to provide
16 that central core area which is operational and which
17 is a requirement of the building, that if the full
18 rear setback was provided then it would really leave
19 very little usable space. Correct?

20 MR. GOODRICH: Correct.

21 MS. BUTANI-D'SOUZA: Okay. Thank you. Do
22 you have anything further? No?

23 MS. MAZO: No. Well, we'll save -- I mean, I
24 anticipate that there will be some need for rebuttal,
25 so we'll save that.

1 MS. BUTANI-D'SOUZA: Okay. Is there anyone
2 here from the ANC who wishes to speak on this
3 application?

4 Okay. Are there any parties or persons in
5 support who wish to speak now?

6 Okay. Are there any parties or persons in
7 opposition to the application who wish to speak?

8 MS. CUMMINS: [Speaking off mic.]

9 MS. BUTANI-D'SOUZA: Okay. Mr. Moy, can
10 you --

11 MR. MOY: No, you can stand where you were.
12 [Oath administered to the participant.]

13 MR. MOY: Thank you.

14 MS. BUTANI-D'SOUZA: And just after you speak
15 you need to fill out the witness cards if you haven't
16 already done that.

17 So, I think it's -- Mr. Moy, is it three
18 minutes?

19 MR. MOY: Yes.

20 MS. BUTANI-D'SOUZA: Thank you.

21 MS. CUMMINS: I'm a little confused about
22 what I can and can't say because I guess it's related
23 to the construction issues, but just as a matter of
24 public record can I just read what I was going to
25 read anyways?

1 MS. BUTANI-D'SOUZA: Absolutely.

2 MS. CUMMINS: Okay. 1712 N Street is --

3 MR. HILL: You can speak on anything you want
4 to speak on. You have three minutes.

5 MS. CUMMINS: Okay. I'll speak quickly. Is
6 distinctly affected because it's the adjacent
7 property to the east. 1712 N Street provides direct
8 lease commercial office space to companies,
9 individuals, organizations of five or fewer,
10 typically, who require quiet and separate office
11 space. 1712 N Street fills a gap in the existing
12 commercial inventory between executive office suites
13 with less permanency and privacy, and traditional
14 larger office space which requires longer leases and
15 larger, more costly spaces, and they get to work in a
16 historic D.C. environment.

17 Construction on the subject property at 1714,
18 1716, has had prior adverse and proven damage to 1712
19 N Street. In the last two weeks of May, 2012 they
20 put on a new roof and tenants were disgruntled.
21 Expenses increased due to debris clean-up and it's
22 still unclear if there is potential structural damage
23 if something more significant like a penthouse were
24 put on.

25 Currently there are six tenants at this

1 building, some of which are certified business
2 enterprises in D.C. There's two law firms. The
3 former ambassador, an interior designer developer, a
4 consulting company and in international technology
5 company. Each tenant requires normal working
6 conditions and they all value privacy in a quiet work
7 environment. As evidenced by the short construction
8 project in May 2012, that caused considerable tenant
9 dissatisfaction. So it increased property management
10 burden, rent abatement issues, and ultimately loss of
11 tenant renewals which are key for the shorter term
12 leasing model.

13 So 1712 N Street, LLC. is concerned they'll
14 not be able to manage the off-site impacts, one, due
15 to the increased property management burdens,
16 potential structural damage, interior debris/dust
17 control, inability of tenants to conduct business
18 during working hours, and ultimately the huge
19 economic loss of rent abatement, tenants leaving
20 their leases early, or threatening to sue and break
21 their lease. So that's it. Thank you.

22 MS. BUTANI-D'SOUZA: Thank you. Are there
23 any questions from the Board?

24 MR. HILL: I have a question. So I'm just
25 trying to be clear. So you own the building next

1 door?

2 MS. CUMMINS: Yes.

3 MR. HILL: Okay. And so it's a you know,
4 kind of a small tenant building next door office
5 space.

6 MS. CUMMINS: Yeah, it's 4,600 square feet
7 and there is currently six tenants that can have up
8 to seven suites.

9 MR. HILL: Okay. Are you the one right to
10 the right or the left? Where are you?

11 MS. CUMMINS: To the east, to the left.

12 MR. HILL: To the left, as you're facing,
13 you're to the left?

14 MS. CUMMINS: That's -- that's mine, yes.

15 MR. HILL: Oh, I see. Okay. Okay. And so I
16 mean, I would -- I mean, I know that we've spoken
17 about this already in terms of doing like kind of a
18 construction agreement and working with the
19 neighbors. And I guess, you know, I'm also to
20 comment upon what Commissioner Miller mentioned, I
21 mean, you know, some of the things that you already
22 mentioned in there makes it kind of difficult to
23 agree to, meaning that they have to be able to do the
24 construction during the day. So I'm trying to figure
25 out what you would think is an equitable arrangement

1 in terms of you would think that -- and I am curious
2 of this -- so that you would want them to do the
3 construction after hours?

4 MS. CUMMINS: I just was going on the
5 assumption for residential. They try not to do
6 construction on the weekends and in the evenings when
7 people are home, and this is a commercial so --

8 MR. HILL: Oh, yeah.

9 MS. CUMMINS: -- I thought they could work
10 early in the morning or later in the evening and on
11 the weekends. The two-week issue, or the trial
12 construction period we had in May of 2012, they did
13 do demolition in the evening, but we still had debris
14 coming down and lots of noise during the day, and
15 that was not even -- that was just the regular
16 construction.

17 So, I'm pretty convinced this is kind of
18 devastating news to my tenants, and ultimately, you
19 know, my business model, so.

20 MR. HILL: Right. But then once the
21 structure is finished it could potentially help the -
22 - your environment in terms of like, you know, you
23 have an office space, converted office space next
24 door. I guess I'm just trying to set your --

25 MS. CUMMINS: Philosophically I'm pro

1 development. I'm not opposed to the concept. But
2 it's still unclear. I don't know the wall that we
3 share, if there's two walls that abut, or if we
4 actually have the same wall and the load on that
5 wall. And in hindsight, of course, I probably should
6 have done more research about what had happened when
7 they put on the new roof three years ago, because to
8 have every single tenant have debris and lots of it
9 come through the fireplace shaft and dust everywhere,
10 you know, I didn't even ask the neighbor to pay for
11 the cleanup. You know, it just kind of happened
12 quickly and --

13 MR. HILL: Sure.

14 MS. CUMMINS: -- they were, you know -- I get
15 the brunt of it. They're all -- I property manage it
16 as well, and so you know, everyone feels like it's
17 their right to work without a hammer going. So, if
18 it were my own business and I were operating there I
19 agree with your point. Like, I'd look more on the
20 positive and kind of grin and bear it. But I'm
21 responsible for a lot of tenants that are, you know,
22 paying good money for a nice quiet office space.

23 MR. HILL: No, and I understand. And I mean,
24 as also a business owner and property owner here in
25 the city I just am just trying to get your

1 expectations in synch with, you know, the applicant
2 an also to be clear to the applicant, I mean, you
3 also have a business owner then next door and try to
4 not just say we're going to work together after you
5 leave here, but actually try to work together.

6 I mean, I'm also saying that I think your
7 expectation was a little unreasonable in terms of
8 nine to six. I mean, I don't know how you're going
9 to kind of work that out. But you know, just trying
10 to -- I'm just being clear in that I'd like to see
11 some true communication between the two because
12 knowing that there's a, you know, a property owner
13 next door that's renting out the space to, you know,
14 short-term tenants and things such as that, you know,
15 wanting to -- and even if you have something to say
16 now, like wanting to hear something that you actually
17 will make an attempt to work with the -- because they
18 do share a party wall. You know, work with the
19 people right next door.

20 MS. MAZO: Yeah. First of all, just two
21 points, first of all. The current applicant did not
22 own the property in 2012 and we were unaware until
23 this minute that there was any sort of concerns about
24 when the roof was put on. Second of all, I would
25 like both Christine Minch and -- to speak on behalf

1 of Cresa and to indicate the work that they often do
2 with construction on properties all over the city
3 where there are abutting neighbors. And then Brandon
4 Bloodworth of Barbare can speak as well to Board
5 Member Hill's comments.

6 MR. BLOODWORTH: I'm a business owner as
7 well. This is going to be an owner occupied space.
8 This isn't an investment company that's coming in to
9 bang stuff up and then sell it and flip it and turn
10 on. We have to live with your tenants as well as
11 neighbors and such. We understand this is going to
12 be problematic to some extent. We're sorry for that
13 but we know that, you know, some of that has to
14 happen. We're going to go through that again when
15 they tear down the YMCA building behind us, which is
16 going to be significant and dramatically more
17 disruptive. So I sympathize for a lot of those
18 things you have to go through.

19 But, you know, as a business owner too, you
20 know, we're trying to provide great space with, you
21 know, the things that you know, we can make to grow.
22 We've been in two different offices for the last year
23 or so and now we need to consolidate down.

24 So, but with that being said and knowing
25 we're going to have to work and live together, you

1 know, we're committed to being as best we can in
2 order to get the project done, and we certainly don't
3 want to be any more disruptive than we possibly have
4 to.

5 MR. HILL: Madam Chair. No, I'm sorry. So,
6 have you guys met before?

7 MR. BLOODWORTH: No, we did not know the --
8 we didn't own the property in '12. We just purchased
9 it a few months ago. No, we did do some outreach
10 through Cresa, which is I think how you found Aaron.
11 And --

12 MR. HILL: Okay. So you're the property
13 owner.

14 MR. BLOODWORTH: Yes.

15 MR. HILL: Okay. And you're going to be
16 owner occupied?

17 MR. BLOODWORTH: Yes.

18 MR. HILL: Okay. So, I would really -- I
19 mean, again, this is an opportunity. You've come in
20 here, you've taken your time to come out. You didn't
21 get party status. You know, we have the chance to
22 speak. Some of your expectations might be a little
23 bit skewed. However, I also want to say that, again,
24 please work with your neighbor, okay? And if you are
25 owner occupied we're both -- we're all, I should say,

1 but some of us are small businesses here in the city.
2 And so, you know, do your best to work together is
3 all I'd like to say.

4 MS. BUTANI-D'SOUZA: And if I could add to
5 that, I think typically in construction the
6 contractors and owners are required to hold
7 insurance, and it may be a good idea for you to
8 request or negotiate in your construction management
9 agreement, that the owner and contractor provide you
10 with a certificate of insurance so that if there is
11 damage to your property you do have recourse through
12 the insurance company to handle that. And I would
13 imagine that that is something that the owner would
14 be amenable to. Pretty standard.

15 MR. BLOODWORTH: Yeah, absolutely.

16 MS. BUTANI-D'SOUZA: Okay. So construction
17 management agreements are often negotiated. They are
18 enforceable. There are different means of
19 enforcements that are included in them and I think --
20 it sounds like your neighbor is amenable to working
21 with you to have a more positive experience on this
22 development. Noise is what it is when it comes to
23 construction. But hopefully the outcome is a more
24 beautiful building.

25 So, are there any other questions for this

1 witness? No. Okay. So let me see, where are we on
2 this?

3 I believe that we do need to see a revised
4 plan showing the setback, the three-foot setback. So
5 I think it would also be helpful to see a little bit
6 of evidence showing why it is that you cannot
7 actually fit a conference room within the building.
8 So I would suggest that we put this on for decision
9 at a later date so that they can provide those two
10 pieces of information.

11 And I would suggest that we close the record
12 other than those two pieces of information, unless
13 there is additional information needed. No? Okay.
14 So --

15 MR. MOY: We would -- would you, as a
16 suggestion, whether or not you would want OP to opine
17 on the revised roof plan. It's not -- he's shaking
18 his head, so.

19 MS. BUTANI-D'SOUZA: I think they've already
20 opined.

21 Okay. So, how long would you need to prepare
22 that?

23 MS. MAZO: We would like to get back in and
24 have the decision in July. So we can, you know, I
25 guess by the July 26th meeting, if that works. And

1 so we can certainly do whatever we need to do in
2 order to be able to make that date.

3 MS. BUTANI-D'SOUZA: I believe the 26th is
4 not available. But the week before that might be a
5 good option.

6 MS. MAZO: Yeah, that's fine for us.

7 MR. MOY: We'll do the 19th.

8 MS. BUTANI-D'SOUZA: The 19th.

9 MR. MOY: July 19th. For a decision meeting.

10 MS. BUTANI-D'SOUZA: Okay. So July 19th for
11 decision.

12 MS. MAZO: No problem and we will hopefully
13 aim to get these plans in, back in to the Board by
14 the end of this week.

15 MS. BUTANI-D'SOUZA: Terrific. Okay. Thank
16 you.

17 I think we're ready for our next case.

18 MR. MOY: All right. The next case, next
19 application, parties to the table to Application No.
20 19315. This is of Associated Catholic Charities as
21 captioned and advertised for variance relief from the
22 lot dimension requirements 401, lot occupancy
23 requirements under 403.2, rear yard requirements,
24 404.1, the flats on alley lot requirements, 2507.1,
25 and the alley access requirements under 2507.2. This

1 would construct three flats in a R-4 District at the
2 premises which is the rear of 611 through 617 Rhode
3 Island Avenue Northwest, Square 442, Lots 4, 49, and
4 50.

5 MS. BUTANI-D'SOUZA: Thank you, Mr. Moy. Can
6 we start with introductions? Can you please
7 introduce yourself for the record and state your
8 name?

9 MR. DEWEY: Hello. I'm Matt Dewey with Urban
10 Pace. Yeah, I'm Matt Dewey with Urban Pace.

11 MS. BUTANI-D'SOUZA: Thank you.

12 MS. MOLDENHAUER: Good afternoon, Meredith
13 Moldenhauer, law firm of Griffin, Murphy, and
14 Moldenhauer on behalf of the Associated Catholic
15 Charities.

16 MR. SCHNECK: Good afternoon, Ron Schneck,
17 Square 134 Architects.

18 MS. BUTANI-D'SOUZA: Okay. Thank you. So --

19 MR. HILL: I've got a quick question.

20 MS. BUTANI-D'SOUZA: Yeah, go ahead.

21 MR. HILL: Excuse me. I'm sorry. Mr. Dewey,
22 how are you with?

23 MR. DEWEY: Urban Pace.

24 MR. HILL: Urban Pace? I'm sorry, who is
25 that?

1 MR. DEWEY: It's a residential new
2 construction brokerage firm.

3 MR. HILL: You're the developer?

4 MR. DEWEY: No the developer, no.

5 MR. HILL: Oh, got you. Okay.

6 MS. MOLDENHAUER: Mr. Dewey, we had a letter
7 in the record from Urban Pace, a professional broker
8 company, and so Mr. Dewey is with that company and
9 will be presenting testimony in regards to the
10 brokerage and challenges of alley properties.

11 MR. HILL: Okay. Thank you.

12 MS. BUTANI-D'SOUZA: Okay. So, we want to
13 give you the opportunity to make a statement but I
14 would request, I think, the big question here. I
15 would request that you focus on this question of why
16 you are proposing to subdivide this into three lots
17 that are nonconforming, rather than two conforming
18 lots.

19 And I believe there's also a question about
20 the relief that's been requested here, the lot
21 dimension versus lot area relief. Is that correct?

22 Okay. So if you could focus the presentation
23 on why you're -- as a starting point. And I'm sure
24 the board members have questions. But why you're
25 choosing to recommend that this be subdivided into

1 three lots rather than two.

2 MS. MOLDENHAUER: Sorry. Just having
3 technology errors for some reason.

4 MS. BUTANI-D'SOUZA: I think we have it on
5 our -- it's in the record and I believe it's on our
6 screens as well.

7 MS. MOLDENHAUER: Sorry. Good afternoon.
8 I'll just provide a brief introduction and then we
9 can get into the specific question that you posed, if
10 that's acceptable.

11 I'm here on behalf of -- I'm here on behalf
12 of the Associated Catholic Charities. The Associated
13 has a mission to strengthen the lives of all in need.
14 As the Board is aware, for the last couple of weeks
15 they've had other cases in regards to the fact that
16 one of the highest priorities in this city and for
17 this applicant, is making homelessness rare, brief,
18 and nonrecurring.

19 Obviously homelessness has been increasing
20 throughout the District and has been continuing to
21 rise. More than 7,000 men, women, and children
22 experience homelessness on any given night. One of
23 the challenges with homelessness is not just short-
24 term emergency care, but also for cities to provide
25 permanent supportive housing.

1 The applicant runs the Mulumba House, which
2 is the adjacent property to this site, and that site
3 actually provides for permanent supportive housing
4 programs for men. This land that is in question in
5 regards to whether or not it can be subdivided into
6 three lots has been sitting idle for a substantial
7 period of time. And without this relief you know,
8 would continue to remain idle and would not be able
9 to be sold and thus the funds would not be able to be
10 utilized for the mission that I've just identified.

11 That being said, I'll just quickly, before we
12 jump into the actual presentation -- well, it looks
13 like we've got the PowerPoint up and running -- just
14 identify that this site does have challenges in
15 regards to ability to expand and provide larger lots
16 that would be able to comply. There's no ability for
17 it to expand into the public alley. And the Board
18 and Office of Planning has recognized the inability
19 for a project to acquire more land as a practical
20 difficulty. See Application No. 17737 of the
21 DistrictProperties.com, LLC. in 2008 when the Board
22 approved a variance to allow new residential use on a
23 vacant lot, similar to this, which was surrounded by
24 both sides by improved lots and continued that the
25 inability to expand the subject property in that case

1 created a practical difficulty for the owner.

2 So some of the challenges here, as we'll
3 continue to identify, are that the Mulumba House,
4 which is adjacent to this site, you can see that here
5 in this. I don't know if my pointer is working. The
6 Mulumba House is this long site here. So there's no
7 ability for it to expand and obviously that has a
8 substantial city necessity, which I was indicated
9 that houses a permanent supportive housing, which
10 means that it provides reduced rates for a permanent
11 housing for individuals who had previously had either
12 homelessness or had had drug rehabilitation
13 challenges. So it's part of the whole network of
14 services to help reduce homelessness throughout the
15 city.

16 And so this property cannot be expanded due
17 to that site and then due to the fact that there is
18 obviously the public alley located here. That being
19 said --

20 MS. BUTANI-D'SOUZA: Sorry. You're saying
21 that the Mulumba House can't be expanded to where
22 the --

23 MS. MOLDENHAUER: No, the lots cannot be
24 expanded because the Mulumba House is there and is
25 providing a missionary use. And so --

1 MS. BUTANI-D'SOUZA: Okay. I understand.
2 Thanks.

3 MS. MOLDENHAUER: Just then also just
4 indicating that the Board, pursuant to the Monaco
5 case, may provide more flexibility. One, it assesses
6 a nonprofit organization, which is well established
7 elements of our government systems, and at public
8 needs for the uses important factor in either
9 granting or denying a variance. And we find that,
10 you know, we submit that to the Board.

11 I will just continue down. As you can see
12 here, again, this is a long -- this is the Mulumba
13 House here. The inability for the site to be
14 expanded. This lot 3 is owned by a separate property
15 and cannot be expanded there, and then you have the
16 public alley, so the lot cannot be expanded on that
17 side either.

18 Just to kind of provide some information on,
19 you know, why three lots would be appropriate, this
20 is an image of a 1903 base map and our firm has
21 access too, but these are actually Historic
22 Preservation Office submitted an old assessment of
23 when properties were built and who built them. And
24 so this is a copy of those records indicating that
25 these lots were originally developed as dwellings in

1 the -- in 1821.

2 So this alley actually had, you know, as a
3 unique condition in which it actually was originally
4 constructed for dwelling units, along this alley and
5 we are trying to bring back that, you know, prior use
6 to the site.

7 The site is also located in regards to, you
8 know, kind of why three units, there is always a need
9 in the city for additional housing and this has a
10 very, you know, unique location which is literally
11 about maybe a block, a block and a half depending
12 upon how you want to measure it, from the Shaw Metro
13 Station. So this is obviously a very transit rich
14 location with a lot of you know, opportunities for
15 providing, you know, three lots and, you know, six
16 residential units for the city in this location.

17 In regards to kind of what's surrounding the
18 area, you know, there is obviously a -- sure.

19 MS. BUTANI-D'SOUZA: I don't mean to cut you
20 short, but I think it would be helpful, since we've
21 all read all of this information and it's all
22 available in the record, to really focus on the
23 question that we asked about why are you proposing to
24 subdivide into three lots, I believe it's some, or
25 all of which are nonconforming, rather than two

1 conforming lots.

2 MS. MOLDENHAUER: So we are proposing to
3 subdivide into three lots and I'll turn it over to --
4 this is just obviously going through the Catholic
5 charity's missions. And then the Mulumba house's
6 needs in regards to the reduced standard for a
7 nonprofit organization. That focuses on the
8 substantial needs of the public. And then I can turn
9 it over to Ron to kind of walk through the
10 challenges. Then obviously we also have Matt Dewey
11 here from Urban Pace, who I think will address your
12 question specifically.

13 But let me just indicate that we are
14 proposing that three of the two lots would meet the
15 1,500 square foot requirement if you were to provide
16 the IZ bonus density mentality. I know it's kind of
17 a hypothetical application but we were proposing to
18 opt in to the inclusionary zoning providing a
19 covenant for one IZ unit. Thus, in that theoretical
20 analysis, two of the three lots would actually be
21 compliant in regards to 1,500 square feet.

22 MS. BUTANI-D'SOUZA: So, hang on a second.
23 So, can you just describe the density bonus that
24 you're looking at? So you're saying that if you opt
25 in, I believe it's 10 units that are required to

1 achieve the density bonus. And when you do 10 units
2 you're required to do how many Inclusionary Zoning
3 units?

4 MS. MOLDENHAUER: So, when you -- in order
5 to --

6 MS. BUTANI-D'SOUZA: It's more than one,
7 correct?

8 MS. MOLDENHAUER: It would -- no. It's not
9 absolutely more than one. It's a question of, it's a
10 question of square footage.

11 So right now obviously there is no
12 opportunity to opt in. So as I said, it's more of a
13 theoretical mentality of opting in, indicating that
14 if we were able to provide an IZ unit through a
15 covenant, right now the R-4 allows for 1,800 square
16 feet per lot, but under the IZ program it actually
17 goes down to 1,500 square feet. And lots C and B are
18 compliant as to 1,500 square feet.

19 And so I'm going to turn it over to Ron to
20 kind of look -- walk through the unit subdivision,
21 and you know, how that breaks down and then turn it
22 over to Matt.

23 MR. SCHNECK: Hi. I'll quickly walk through
24 sort of, as brief as I can, the architectural design
25 and I'll try to address sort of your specific

1 questions.

2 First, this plan shows basically the site
3 plan. And we find that alley dwellings can be very
4 successful projects. However, you know, there needs
5 to be -- usually there needs to be sort of some
6 amount of, you know, numerous units to create sort of
7 its own little community and its own environment. So
8 architecturally speaking this sort of three makes a
9 lot more sense than say, two.

10 And then in addition to that, you know, based
11 on sort of what the residential needs are right now
12 within that neighborhood, you know, these are much
13 more sort of representative units. They're not large
14 townhouses. There's really not a need for that right
15 there. So, anyway, just addressing that.

16 In the floorplan you can see we have
17 compliant parking on Lot A. It's on the exterior and
18 on Lots B and C we have it on the inside. Just sort
19 of architecturally, again, what's important for us,
20 you know, why we're so close to the setback in the
21 back, is we feel it's important to have sort of a
22 buffer space between the residences and the alley
23 itself so we have that sort of front yard, as well as
24 some potential public space modifications, just to
25 sort of create that nice buffer zone.

1 MS. BUTANI-D'SOUZA: You mentioned that an
2 alley dwelling requires -- or rather, successful
3 alley dwellings require a cluster. Do you have any
4 evidence showing that, like by terms of data? Do you
5 have any case studies? Do you have any examples?
6 Because I appreciate -- while I certainly appreciate
7 that Urban Pace does work in this space, you know, as
8 a reasonable person, in order to hang my hat on a
9 decision to provide a tremendous amount of relief for
10 this property --

11 MR. SCHNECK: Okay.

12 MS. BUTANI-D'SOUZA: -- I think we need to
13 have something a little bit more substantial than a
14 letter from somebody saying it's because I said so.

15 MR. SCHNECK: That's fine. I mean, we can --
16 I mean, I'm thinking of Naylor Court. I've done one
17 in the Capitol Hill neighborhood. But I mean, that's
18 definitely something we could provide a much thorough
19 sort of analysis and sort of submit that for
20 additional information.

21 MS. BUTANI-D'SOUZA: Yes, I think data --

22 MR. SCHNECK: If that would be helpful.

23 MS. BUTANI-D'SOUZA: -- would be very
24 helpful.

25 MR. SCHNECK: Okay. That's fine.

1 MS. BUTANI-D'SOUZA: Data, facts,
2 something --

3 MR. SCHNECK: Okay.

4 MS. BUTANI-D'SOUZA: -- a fact-based
5 analysis.

6 MR. SCHNECK: Okay. Absolutely.

7 MS. BUTANI-D'SOUZA: Is really what I'm
8 looking for here --

9 MR. SCHNECK: Okay. That's fine.

10 MS. BUTANI-D'SOUZA: -- on that particular
11 point.

12 MR. SCHNECK: Okay. I'll just sort of
13 continue on the slides just to sort of go over the
14 project real quickly.

15 You know, one of the concerns obviously is
16 when you're, you know, asking for relief is sort of
17 what the impact on the neighborhood is. You know,
18 and we've gone through a lot of efforts to make sure
19 that we're minimally impacting, you know, adjacent
20 properties, and this just shows that you know, we
21 think we're a considerable distance from the
22 properties that face Rhode Island.

23 This just shows sort of a flat on elevation
24 of the front. This is a very interesting
25 neighborhood in terms of sort of aesthetics and so

1 we're sort of taking advantage of a lot of the
2 contemporary architecture there, which is why we're
3 proposing something a little bit more contemporary on
4 the alley side.

5 And then if you flip to the next one. On the
6 back which is sort of just, you know, facing the
7 residence along Rhode Island, we're you know, trying
8 to you know, maintain some of the same aesthetic but
9 make it a little bit more traditional. Just a
10 perspective of those views.

11 Floor plans real quickly. What we're -- for
12 Lot A, which is a top lot, we're basically providing
13 a one-bedroom unit in the lower level, and then a
14 two-bedroom unit above that; two-bedroom and a den,
15 which you can see. And then the two, Lots B and Lot
16 C, again we're providing two-bedroom units which we
17 think are sort of -- you know, work well for the site
18 and for that area.

19 MS. MOLDENHAUER: Mr. Schneck, how large if
20 this were two lots as, you know, the Vice Chair kind
21 of asked? How large would these be?

22 MR. SCHNECK: Off the top of my -- it would
23 be, you know, 3,000 square foot home, which is not
24 something that we don't think would be sort of
25 supported here, which is why we're doing the

1 smaller --

2 MS. BUTANI-D'SOUZA: That's if it's a single-
3 family home?

4 MR. SCHNECK: Yeah.

5 MS. BUTANI-D'SOUZA: Okay. So you're
6 proposing to do flats, correct?

7 MR. SCHNECK: Correct, flats.

8 MS. BUTANI-D'SOUZA: So I guess the relevant
9 comparison then would be flats on two lots rather
10 than flats on three lots, correct?

11 MR. SCHNECK: Correct. And we think the
12 flats on three lots gives us the better size type of
13 unit as opposed to flats on two lots, which the units
14 would be larger.

15 MS. MOLDENHAUER: And we can supplement the
16 record with actual comparable numbers for what those
17 would be. That might be helpful.

18 MR. SCHNECK: Yeah.

19 MS. BUTANI-D'SOUZA: Okay.

20 MS. MOLDENHAUER: I think we can jump past
21 the sun studies --

22 MR. SCHNECK: Yeah.

23 MS. MOLDENHAUER: -- unless board members
24 have any questions on that.

25 MR. SCHNECK: We're to the north, no impact

1 to the neighbors in terms of casting shadows or
2 anything like that.

3 MS. MOLDENHAUER: And then at this point I
4 think what we'll do is we'll turn over to Mr. Dewey
5 to kind of identify his research that he's provided,
6 and then also trying to direct an answer, Vice Chair
7 D'Souza's questions. Thank you.

8 MR. DEWEY: So I've been doing market
9 research and working on market studies. I don't have
10 those for you now but I'm happy to provide those at
11 another time. When looking into this specific
12 project, size was a big factor. The larger the units
13 get the more difficult it is to market and then sell
14 them due to price points.

15 So we really -- we want to keep these in a
16 accessible, first time, to move up homebuyer price
17 point in order to achieve the largest market share
18 because there are just inherent issues when you're
19 marketing and trying to sell alley homes. That comes
20 down to the issues about security, which we believe
21 can be created in a community. We'll overcome --
22 there's views, there's light. And then just
23 challenges with actual visibility of the project.

24 Our largest marketing refer is signs. When
25 you're working with alley properties, you're cutting

1 that off inherently. So, being able to commute, to
2 promote a better sense of community will allow for a
3 more successful project.

4 MS. MOLDENHAUER: In your research what was
5 the average change or delta between a street property
6 and an alley property?

7 MR. DEWEY: So I saw it between 20 to 30
8 percent. You could sell the street-facing property
9 for between 20 to 30 percent more than a similar
10 alley community.

11 MS. MOLDENHAUER: And in your experience,
12 kind of I see on the PowerPoint, there's examples of
13 multiple different alley communities. Out of those
14 six alley communities are those groupings of multiple
15 homes, or are some of those instances where they are
16 smaller groupings?

17 MR. DEWEY: All of those are multiple homes.
18 The smallest one that I can think of is -- well, Beal
19 Square is the smallest one. That's five. But it's
20 part of a community that has a 39-unit condo building
21 as well as a 16-unit condo building. And then the
22 Snows Court is the other smallest, which is 13.

23 MS. MOLDENHAUER: So in your opinion, based
24 on those specific facts of, you know larger Beals,
25 and Snow, would it be practically difficult to have

1 only two lots and four units, or would it be you
2 know, less practically difficult to have the proposed
3 three lots and six units?

4 MR. DEWEY: The -- so the six units would be
5 beneficial from -- I mean, it's creating the
6 community from a marketability standpoint. And then
7 just an overall sales and accessibility to a wider
8 market place.

9 MS. MOLDENHAUER: And would you be able to
10 provide maybe a more specific supplement as
11 Commissioner D'Souza asked in regards to kind of
12 providing more data on this and more examples, rather
13 than the summaries and the executive summaries that
14 you've just provided?

15 MR. DEWEY: Yes, absolutely.

16 MS. BUTANI-D'SOUZA: Are there any other
17 arguments that you're making to justify the three
18 lots versus the two?

19 MS. MOLDENHAUER: Well, so one obviously is
20 the reduced standard then the fact that in regards to
21 the three lots, so if we go back -- let me just go
22 back up here to the -- so, Lot C is 1,500 square
23 feet, which would be compliant in regards to the you
24 know, IZ square footage for 1,500 square feet. It's
25 complaint as to lot occupancy and it's compliant as

1 to rear yard. Lot B is compliant as to 1,500 square
2 foot requirements, compliant as to lot occupancy, and
3 it's compliant as to rear yard. The only --

4 MS. BUTANI-D'SOUZA: Sorry, when you say
5 compliant you mean if you were to build 10 units and
6 get the density bonus, correct?

7 MS. MOLDENHAUER: If the Board were to accept
8 the --

9 MS. BUTANI-D'SOUZA: Sorry. If you were to
10 build 10 units with a certain level of affordability
11 I think we'd have to look at the regulation to
12 understand exactly how many units affordable you need
13 to have to receive the density bonus, which would
14 allow you to build to 1,500 feet.

15 MS. MOLDENHAUER: And as we're saying, we're
16 not able, obviously, physically, to be able to build
17 10 units here. So we were indicating that
18 hypothetically on a -- if you were to look at these,
19 since we would be providing one IZ unit out of the
20 six, so that's one out of six, that would then be
21 able to review and provide a reduced review or
22 reduced standard for the Board to be able to identify
23 the 1,500 as being in line with that public benefit
24 or the goal of the Zoning Regulations and the system.
25 So obviously yes, 1,800 is the requirement since we

1 are only three units.

2 But I'm just kind of walking through the
3 delta. And then Lot A, so the other argument is
4 obviously that the rhombus shape of this Lot A, if
5 not for the angular location of this alley, this lot
6 A would be obviously able to -- and the fact that
7 this is the shortest portion of the lot here, would
8 be able to meet that same requirement, but given the
9 unique lot shape that obviously creates the inability
10 for, as each lot gets smaller, due to the rhombus
11 shape of the property. So that is also another one
12 of our factors in regards to the relief that we are
13 requesting.

14 And then as I said, you know, based on the
15 National Black Children's Development Institute,
16 versus the District of Columbia, there is a reduced
17 standard. There is also, in regards to in Monaco,
18 which was a case where the National Republican
19 Committee had a building on Capitol Hill and that was
20 a situation where based on its proximity to the
21 Capitol, that situation the Board applied a reduced
22 standard as a nonprofit and applied the flexibility
23 for the relief. And we would ask the Board to apply
24 that same standard here.

25 That being said, we also want to point out

1 that we have -- there was points made by Office of
2 Planning in regards to the -- in regards to the
3 challenge of EMS to access the property. And we've
4 actually obtained a letter and we can provide this to
5 the Board from the District of Columbia Fire and EMS
6 Department. And we can provide this.

7 It indicates that they have reviewed these
8 alley lots and that they believe that given the fact
9 that the property would be proposed to be
10 sprinklered, that there would then have an ability to
11 have a greater distance and would comply with their
12 requirements that they would not see an issue with
13 developing a site on this location.

14 We also have an e-mail from the D.C. Water
15 indicating that -- and as we showed in the beginning
16 that the property was obviously originally developed
17 as a dwelling, that this alley actually does have
18 water lines. And so they have also analyzed this,
19 obviously on a preliminary basis, but that they
20 believe that there would be no issue in obtaining a
21 water hookup for this site as well.

22 MR. HILL: Just a question. So the proposed
23 use of this again, I'm a little confused. They're
24 going to be -- the archdiocese is going to be using
25 these for housing? Is that what you were saying? Or

1 these are going to be sold?

2 MS. MOLDENHAUER: The archdiocese is trying
3 to utilize this vacant and idle property in order to
4 improve the Mulumba House and to use the sales
5 profits of this for their mission. And so it would
6 be sold, but that there would be practical difficulty
7 in selling this property to any possible developer
8 without the relief.

9 And so we can actually, I can have Mr. Dewey
10 speak to, you know, whether or not other type of uses
11 that would be allowed as a matter of right would be
12 practical, practically difficult or would be
13 reasonable.

14 MR. HILL: So the archdiocese is selling the
15 lot for development, and then part of the development
16 is the IZ that you're offering?

17 MS. MOLDENHAUER: Yes.

18 MR. HILL: Okay. Thanks.

19 MS. MOLDENHAUER: So, Mr. Dewey, if you can
20 just walk through the practical difficulty of
21 developing this property as any matter of right
22 option?

23 MR. DEWEY: Yeah, so any developer that we
24 work with would look at it from a matter of right
25 perspective and the options available to them is

1 storage for wares, art studios, or a private garage.
2 And those would just not be feasible from a cost
3 perspective to develop with those uses.

4 MS. BUTANI-D'SOUZA: Do you have the e-mail
5 from D.C. Water?

6 MS. MOLDENHAUER: I can supplement the
7 record. It sounds like we're probably going to have
8 to come back maybe for a continued hearing, so I can
9 bring that back and I can supplement that between now
10 and then if that's possible.

11 MS. BUTANI-D'SOUZA: That would be great.

12 MS. MOLDENHAUER: Okay. Mr. Schneck, can you
13 just identify generally some of the challenges for
14 providing any --

15 MS. BUTANI-D'SOUZA: Just one second. I have
16 another question about --

17 MS. MOLDENHAUER: Sure, go ahead.

18 MS. BUTANI-D'SOUZA: -- what you said a
19 moment ago, Ms. Moldenhauer. So, the Catholic
20 Charities owns the property. And they are associated
21 with the Mulumba House or --

22 MS. MOLDENHAUER: They own and run and
23 operate the Mulumba House. It's one of their
24 multiple missions.

25 MS. BUTANI-D'SOUZA: And have they committed

1 to reinvesting the proceeds, the full proceeds of
2 this sale into the Mulumba House?

3 MS. MOLDENHAUER: They have, as indicated in
4 the letter that we have attached at Exhibit -- bear
5 with me. Attached as Exhibit 26C in the filing. We
6 have a letter from Catholic Charities outlining the
7 needs at the Mulumba House and the capital
8 improvements that would be required and maintenance,
9 a deferred maintenance.

10 [Pause.]

11 MS. BUTANI-D'SOUZA: Okay. Sorry. We're
12 having some technology difficulties up here as well.

13 Okay. And there is -- sorry to jump around a
14 little bit, but there is no ANC report currently, is
15 there?

16 MS. MOLDENHAUER: So we went to the ANC
17 subcommittee, got full support from the ANC
18 subcommittee. Went to the ANC and got full support
19 from the ANC. I e-mailed at 8:39 a.m. this morning,
20 both the Chair and the SMD, indicating that we were
21 going to be coming before the Board this morning. I
22 got an e-mail back from Alex Padro indicating that
23 Marge, the Chair of the ANC was out of town still,
24 but that they were going to be trying to file it
25 today. So I am assuming that it will be filed, but

1 we do have full unanimous support from the ANC. And
2 we will be, obviously, I think that's one of the
3 reasons why we are under the impression we'll
4 probably be coming back for a supplemental hearing in
5 addition to the comments that Vice Chair D'Souza, you
6 indicated in regards to wanting some additional
7 information.

8 MS. BUTANI-D'SOUZA: Okay. Are there any
9 questions from the Board?

10 MR. MILLER: Well, I was interested in
11 hearing the answer to the -- you want to go into the
12 practical difficulty of doing a matter of right
13 option, or did you already do that?

14 MS. MOLDENHAUER: Mr. Dewey did talk about --

15 MR. MILLER: Okay.

16 MS. MOLDENHAUER: -- the different matter of
17 right options, but we can --

18 MR. MILLER: No, that's okay.

19 MS. MOLDENHAUER: -- restate that.

20 MR. MILLER: That's okay. I thought you --
21 yes, I did have one question. So, the resources --
22 this project, this is the sale of these flats will
23 contribute to resources of Catholic Charities and the
24 mission of the Mulumba House. What are the -- what
25 do you expect the range of price, sales price for

1 each of the -- well, each of the five market rate
2 units versus the sales price of the 80 percent opt-in
3 IZ unit? Do you have any --

4 MS. MOLDENHAUER: I don't know. I can tell
5 you what the IZ opt-in 80 percent unit would be, but
6 otherwise I --

7 MR. MILLER: That would be helpful, because I
8 was just wondering, given the mission of Mulumba
9 House and Catholic Charities, as long as you're
10 opting in to IZ, if you'd be willing to opt in at a
11 lower, the lower income opt-in range at 50 percent
12 AMI. Or enter into a covenant that's not part of IZ
13 with the City at 60 percent AMI. The 80 percent, as
14 you know, the Zoning Commission has a case pending on
15 IZ, which is looking at deeper affordability levels
16 among many other options, including the opt-in option
17 that you're trying to take advantage of before it
18 happens, but -- which is fine.

19 But I'm just wondering if there is any
20 willingness given the mission of Catholic Charities
21 and the Mulumba House. Obviously you'd get less
22 resources if you did a lower income, but would you be
23 willing to consider a 60 percent covenant with the
24 city or opt in at the 50 percent IZ level?

25 MS. MOLDENHAUER: I will definitely follow up

1 on that and see if that's something that between now
2 and maybe a continued hearing date we can walk
3 through and analyze and then get back with you on.
4 Obviously not having my client present I can't really
5 speak to that at the moment, but I would definitely
6 follow up on that conversation and be able to get
7 back with you on that.

8 MR. MILLER: Yeah, and I'm not just asking
9 this question, because of the mission of Catholic
10 Charities and for permanent supportive housing. We
11 actually, at the Zoning Commission, have asked that
12 question in every case where IZ applies or doesn't
13 apply, whether they'd be willing to do more
14 affordable housing than what is required. So I'd be
15 appreciative if you could get back to us on that
16 point.

17 MS. MOLDENHAUER: Absolutely. And right now
18 a 80 percent AMI two-bedroom would be 298,500.

19 MS. BUTANI-D'SOUZA: And I think since a
20 central point to your argument is related to the
21 price point that you achieve for alley dwellings, it
22 would be helpful to understand in your analysis what
23 that price point is.

24 I'm also, since so much of your argument
25 hangs on this question of using a reduced standard as

1 it pertains to a nonprofit organization, and you're
2 requesting changes to -- or you're requesting relief
3 from local zoning laws, I'm curious as to whether
4 your client would be willing to -- and unfortunately
5 I can't pull up the letter right now to read it
6 again, but it would be helpful to know or to have
7 some kind of certainty that the money would actually
8 be reinvested in the Mulumba House as of course
9 Catholic Charities is a much larger organization, I
10 think it would be helpful to know that this would be
11 reinvested in this community. And that's part of the
12 reason why I'm curious to see the ANC resolution and
13 understand whether they also are under the impression
14 that it would certainly be reinvested into this
15 community.

16 MS. BUTANI-D'SOUZA: The ANC did not -- I
17 mean, again, I have not seen the resolution myself
18 either because it has not been filed. But in the
19 discussion at the ANC that I was present at, they did
20 not ask about the reinvestment of the funds. They
21 did ask, they wanted to make sure that this did not
22 mean that the Mulumba House is moving. And we
23 confirmed that this is not the Mulumba House moving;
24 that they are going to be staying a part of the
25 community. Associated Catholic Charities has

1 confirmed that you know, Mulumba House is going to be
2 there for, you know, the course of you know, as long
3 as, you know, they are continuing to do their
4 mission.

5 So that was a question and they were very
6 happy to hear that the Mulumba House, and that
7 overall this was going to assist that. But we can --
8 I can, again, speak with my client and follow up.

9 MS. BUTANI-D'SOUZA: Yes, it would be helpful
10 to know how -- it would be helpful to see some level
11 of commitment; some level of certainty that it's
12 going to go -- the funding is going to go toward the
13 Mulumba House. That's what I'm asking for.

14 Okay. So is there anything further from the
15 applicant, or can we turn to the Office of Planning?
16 I think now would be a good time to turn to the
17 Office of Planning.

18 MS. BROWN-ROBERTS: Good afternoon, Madam
19 Chairman and Members of the Board. Maxine Brown-
20 Roberts, here from the Office of Planning. And you
21 have seen our report. I haven't heard anything here
22 today that changes our recommendation. We still have
23 a concern about the lot size and making that
24 comparison to the IZ, because the project obviously
25 isn't an IZ project, and as the applicant said, it's

1 really a hypothetical which, you know -- so I'm not
2 sure why that comparison is being made.

3 And then my second thing to add is regarding
4 the projects that the applicant has outlined here
5 today, we'd like to know if those projects are all on
6 alleys that are less than the 30-foot -- less than
7 the 30-foot width, which is the requirement.

8 Otherwise from that, we still have a problem
9 with the subdivision. They're creating lots and then
10 making the argument that it is -- that there is some
11 -- they have to make the lot substandard. And I
12 think if they were -- if they were at least keeping
13 one lot, one of the lots that meets the requirement,
14 and then asking for the relief from the others, I
15 think that it something that we would take into
16 consideration. But they're creating all new
17 nonconforming lots which does cause us a concern.

18 So, I think those were the major things that
19 were our concern from our report, and I'm available
20 for questions.

21 MS. BUTANI-D'SOUZA: Thank you. So I'm
22 wondering if you could talk a little bit -- I believe
23 in your report you mentioned that the concern with
24 the width of the alley was pertaining to EMS, D.C.
25 Water, and other city services.

1 MS. BROWN-ROBERTS: Uh-huh. Uh-huh.

2 MS. BUTANI-D'SOUZA: So having seen the
3 letter that they've presented from EMS, and
4 presumably the e-mail from D.C. Water, can you
5 clarify whether OP would still have concerns about
6 the width of the lot and if so what the basis of the
7 concerns would be?

8 MS. BROWN-ROBERTS: I think the concerning
9 the width of that, we always want to make sure that
10 the units will be able, you know, to be accessed and
11 especially concerning from the file.

12 So that is -- so the letter sort of puts to
13 rest that concern. But we have also outlined a
14 number of other concerns that we have and so I think
15 some of those things haven't changed. This has taken
16 off one of the things that we were concerned about
17 from off the table, but there are still the other
18 things that we have concerns about.

19 MS. BUTANI-D'SOUZA: Okay. Thank you. And
20 then, I'm just curious, so I'm going to be honest,
21 I'm not as familiar with all of the detailed nuances
22 pertaining to the IZ regulations. Are you able to
23 give us a little bit of insight on how a, you know,
24 commitment to set aside one unit as affordable at 80
25 percent AMI, how that would be different or parallel

1 to what the IZ requirement would be to achieve the
2 density bonus?

3 MS. BROWN-ROBERTS: I am not very much up on
4 that. But my basic understanding of it is that there
5 is a process that the Housing Department goes through
6 when they have these units set aside for them, that
7 they have to go through. And usually, you know,
8 getting one unit and that sort of thing is not
9 something within which -- because, when they have a
10 unit -- when they have these units in a development
11 it takes a number of things that they have to put in
12 place to monitor that unit. And right now that isn't
13 in place.

14 MS. BUTANI-D'SOUZA: Uh-huh.

15 MS. BROWN-ROBERTS: So if the case that is
16 currently under review, then they would have that
17 system set up in place. Right now, it's not.

18 MS. BUTANI-D'SOUZA: So there's an
19 enforceability question?

20 MS. BROWN-ROBERTS: Right. That's exactly
21 it. Let's say that the Board doesn't approve the
22 current regulations that they have in front of them,
23 then there would be that problem.

24 MS. BUTANI-D'SOUZA: Okay. And so if they
25 were to put say, like a covenant on the property

1 requiring that it be 80 percent AMI in perpetuity
2 when it is sold, I suppose that would perhaps speak
3 to the enforceability issue?

4 MS. BROWN-ROBERTS: Yes, but I don't know who
5 would be the enforcing agent.

6 MS. BUTANI-D'SOUZA: Okay.

7 MS. BROWN-ROBERTS: On that. Because if the
8 Housing Department doesn't take it into their
9 inventory, I don't know. Maybe, you know -- I just
10 don't know.

11 MS. BUTANI-D'SOUZA: Okay. Thank you.

12 Are there other --

13 MR. MILLER: Yeah. I just want to -- thank
14 you, Madam Chair. I just wanted to note that, yeah
15 obvious, yeah, the new IZ regs aren't -- they haven't
16 even been -- well, they're not in effect yet and
17 won't be for some time, even if the Zoning Commission
18 takes preliminary action at the end of this month.
19 But I just wanted to offer my opinion, my own
20 personal opinion that I think a covenant that was
21 recorded with the land that was a main part of this
22 order, would be an enforceable -- it would have had
23 all -- that had conditions that were drafted by, you
24 know, the OAG could be made an enforceable
25 requirement.

1 I also just wanted to note another thing
2 that's not in effect yet, which is ZR-16. But it did
3 let -- well, the fire EMS letter is much appreciated
4 and I think that does kind of put to rest that
5 concern. But I would add that ZR-16 also did reduce
6 the width with a lot of back and forth with fire.

7 I think it's 24 feet generally. But it's 15
8 feet, which is what's here, if there's a 300 -- if
9 it's within 300 feet of the street, because that's
10 the hose that come from the street down the -- so I
11 think we look forward to seeing the D.C. Water e-mail
12 that would show that there's not a concern from that
13 agency as well.

14 That's all I wanted to say at this point, Ms.
15 Madam Chair.

16 MS. BUTANI-D'SOUZA: That's very helpful.
17 So, I think just to kind of wrap up on this IZ point,
18 when you come back I think it would be helpful to
19 make clear the parallel that you're arguing for here.
20 So essentially if there is -- what I'm looking for
21 would be helpful to me is a table of some sort that
22 shows, you know, under IZ regulations if you build 10
23 units at -- or rather, if you agree to build this
24 number of units, whatever it may be, as affordable
25 units, you receive a density bonus equal to X, Y, Z.

1 So whether it be reduced lot area or whatever, and
2 you're required to build a certain number of units,
3 it would be helpful to kind of see that element that
4 you are arguing as parallel, compared against what it
5 is that you are proposing to provide. Just so that
6 we can be clear on exactly what parallel we're sort
7 of going with if this does -- if this relief is
8 approved.

9 MS. MOLDENHAUER: I just, of the math, we
10 will supplement it in a chart as well. But so, it's
11 typically eight -- if you build with wood and you
12 don't build with steel and concrete, which a flat
13 project like this would be built with wood, it's
14 eight percent.

15 So eight percent of 10 units, now obviously
16 it's not a unit-based calculation, so that's where
17 this is a gross generalization because it's a gross
18 square footage calculation, is .8. So that's, .8
19 would pretty much make u one unit. It's a little
20 less than one unit, but it could be a little smaller,
21 but it could be one unit.

22 We are proposing one out of six units, which
23 would be 16 percent. So we are actually providing
24 more you know, and we are obviously asking to take
25 advantage of that. But we are asking -- we are

1 providing more than what would be provided if it was
2 a typical 10-unit project and you would provide one
3 because you're providing one for six.

4 So we will supplement the record on that
5 issue.

6 MS. BUTANI-D'SOUZA: That's very helpful.

7 MS. MOLDENHAUER: And then I would just maybe
8 like to end with two points, and then we can
9 supplement the -- we can conclude.

10 MR. HILL: I'm sorry. I just have a question
11 for Office of Planning.

12 MS. MOLDENHAUER: Sorry.

13 MR. HILL: That's all right. I don't know,
14 Ms. Brown-Roberts, whether you'd have an opinion on
15 this or whether you could comment, but the applicant
16 made a -- I think they made a statement that without
17 the relief, the lot couldn't be sold. Do you have an
18 opinion on that statement?

19 MS. BROWN-ROBERTS: No.

20 MR. HILL: No. Yeah, I didn't think so.

21 MS. BROWN-ROBERTS: No.

22 MR. HILL: Okay. So, when we come back or
23 now I'm just -- Madam Chair, if I might just address
24 the applicant here. And I guess you were getting
25 close to closing. For me again, when you come back

1 again, the issue that I'm having is the by-right to
2 the by-right one lot and then splitting the remainder
3 into two nonconforming. Office of Planning was
4 saying something like that. And I know that the
5 Board in recent cases has not been as interested in
6 financials. I mean, that's the part that I'm having
7 a little bit of difficulty, like why can't you do the
8 two lots? And the argument with the two lots.

9 And I actually like the project. You know, I
10 think the project looks good. I think that the --
11 you know, the argument that you're making for the
12 helping the Mulumba House and that, you know, this is
13 something that would -- I mean, I understand that
14 argument and I understand that there would be an
15 increased flexibility to meeting the standard based
16 upon that argument. However, I'm still not there.

17 And you know, since I guess we're going to
18 come back, again, really the by-right or the Office
19 of Planning is saying in terms of the one conforming
20 lot, and then I guess Office of Planning, you're
21 suggesting splitting up the remainder into two
22 nonconforming lots?

23 MS. BROWN-ROBERTS: No. I'm just -- no.

24 MR. HILL: Sorry. All right. So, you know,
25 working with Office of Planning. I mean, obviously

1 Office of Planning is in denial -- in denial. Is
2 denying this application. And so, you know, I mean,
3 and for the developer and the architect here and the
4 property owner isn't here, so I would assume they're
5 watching or will be watching, that you know, I'm not
6 there yet.

7 And again it's the, you know, you can have
8 two by-right lots and you did make a statement that
9 you couldn't sell the lots, you know, the way they
10 are, by-right. And so if that's something you want
11 to try to hang your hat on, that's also fine but
12 that's a pretty bold statement. You know, I mean
13 like, you know, somebody might buy it. It's just a
14 matter of the price and whether or not you can make
15 it work.

16 But again, I like the project. I think this
17 project is great. I'm just not there.

18 MS. BUTANI-D'SOUZA: Especially since this is
19 adjacent to an arts district and I believe art
20 studios are one of the by-right use options, right?
21 So, the argument that you can't sell artist studios,
22 for example, or even a set of lots with flats on them
23 where the lots are conforming to the minimum lot
24 area, would be helpful to understand. And I think I
25 totally agree with Mr. Hill that understanding the

1 financial argument that you are implicitly making
2 here would be helpful because this essentially is a
3 financial argument that you're not making enough
4 money for the improvements to the Mulumba House if
5 you have only two lots with four units or two lots
6 with single-family, or two lots with artist studios
7 on them.

8 So that is essentially the argument that
9 you're making implicitly, so I would just ask that
10 you make that explicit. And I believe there are
11 other questions.

12 MR. MILLER: No, thank you, Madam Chair. No,
13 I was going to ask as a follow-up to Office of
14 Planning's comment, that if the applicant as part of
15 that information that you're providing, if you can
16 address, if you divided the three lots into one,
17 being the 1,800 lot -- square foot lot area, and then
18 the other two being nonconforming, although the
19 Office of Planning seemed to -- I think I heard the
20 same thing that Board Member Hill heard, that you
21 might be -- have less concern if there were only two
22 nonsubstandard lot area lots, rather than three.
23 So --

24 MS. BROWN-ROBERTS: Yeah, I think --

25 MR. MILLER: -- they did maybe -- but because

1 you're only working with a certain number of square
2 feet they'd be even less -- those two would be even
3 less conforming in terms of lot area. They'd be down
4 to 1,250 square feet or something by my quick math,
5 if you had the 1,800 square feet for the third one.

6 MS. MOLDENHAUER: I think we can definitely
7 walk through those different challenges and then
8 looking at, you know, well, what does that create in
9 regards to design and in regards to building code for
10 stairs. I mean, a lot of -- we will supplement
11 information on a lot of alley dwellings were
12 actually, you know, were originally designed that way
13 and as we provided information, this property was
14 originally designed as an alley dwelling, you know,
15 back in the 1820s, I believe it was, when obvious
16 stair building code requirements were different, when
17 you had different -- you know, your refrigerator
18 doors were smaller. You didn't have the same you
19 know basic design elements that we have in today's
20 day and age. But we can supplement and provide
21 information on that as well.

22 I just want to point out to the Board that
23 current the lot is nonconforming. There's two, only
24 14-foot wide lots. And then there is a 28-foot wide
25 lot. So we're actually -- even though we are

1 resubdividing we're actually making all three lots
2 come into more compliance in regards to creating
3 three more evenly designed lots than having two 14-
4 foot wide lots and one 28-foot wide lot. And then we
5 can provide a little more information on the fact
6 that, you know, self-located hardship doesn't come
7 into play. In other words, the area variances for
8 the lot widths and the lot area requirements.

9 But we -- I guess the question is, when would
10 the Board like to see us back and we can, instead of
11 providing a closing now I'll defer to providing a
12 closing at the continued hearing after the Board has
13 time to review our supplemented information.

14 MS. BUTANI-D'SOUZA: I think we may have some
15 more questions for the Office of Planning before --
16 no? I have a question for the Office of Planning.

17 I think in your report you mentioned that
18 creating greater density on this property than is
19 allowable per the zoning code, would have an impact
20 on the public good. I'm not sure if that's your
21 phrasing or not. But I believe that was one of the
22 points that you made. Now that we've set aside the
23 issue of D.C. Water and EMS, are there any other
24 relevant impacts to the public good that we need to
25 consider as we evaluate the increase to density here?

1 MS. BROWN-ROBERTS: No, I think the only one
2 thing, and again going back to the size of the lots,
3 you know, in that the regulation talks about, you
4 know, having single-family dwellings along the alley.
5 This is introducing six units which is, you know,
6 which is completely different from what the
7 regulations envisioned. So.

8 MS. BUTANI-D'SOUZA: Uh-huh. Okay.

9 MR. HILL: Ms. Brown-Roberts, I'm sorry. I'm
10 just trying to clear to what Commissioner Miller
11 asked again because what I thought I heard you say,
12 and I know I'm not asking you to give an opinion on
13 this, but what I thought I heard you say was that,
14 you know, keeping one conforming and then making the
15 other two even less conforming was something that
16 maybe the Office of Planning would consider talking
17 about.

18 MS. BROWN-ROBERTS: I was trying to say I
19 think that, you know, if we had one lot that was
20 conforming, then we would take a look at it.

21 MR. HILL: Okay.

22 MS. BROWN-ROBERTS: That was --

23 MR. HILL: You'd take a look at it.

24 MS. BROWN-ROBERTS: Yes. Yes.

25 MR. HILL: Okay.

1 MS. BROWN-ROBERTS: Not that --

2 MR. HILL: They'd take a look at it.

3 MS. BROWN-ROBERTS: Yes.

4 MR. HILL: Okay. Okay. Thank you.

5 MS. BUTANI-D'SOUZA: I think in general it
6 would be helpful if you carefully reviewed Office of
7 Planning's report because there are other issues that
8 they've raised there that I think are relevant here.
9 One of which is, the point that they're making about
10 the specific uniqueness or exceptional situation of
11 the property that results in the need for the one-
12 family dwelling on alley lots to be replaced by
13 flats. So, really teasing out that argument I think
14 would also be quite helpful.

15 And you know, I think I live very close to
16 this proposed development. And you know I, like
17 Board Member Hill, I tend to be very supportive of
18 the concept of increasing density in this
19 neighborhood, and certainly I don't see a problem
20 with putting more eyes on the street and an alley.
21 But I do think that this Board needs to do its job
22 and carefully vet the cases. And in order to do that
23 I think the applicant needs to provide a more solid
24 case for what they're trying to do.

25 So, do we have any other questions for the

1 Office of Planning or for the applicant?

2 Okay. So then let's run through this really
3 quickly. I see that we have a report of no objection
4 from the Department of Transportation. We do not
5 have the ANC report, but we expect that we will have
6 that by the time this comes up again for decision.

7 Are there any parties or persons wishing to
8 speak in support of this application? No.

9 Anyone wishing to speak in opposition? Okay.
10 I see we do not have any letters of support or
11 opposition in the record. I think we've had a very
12 robust discussion here with some additional requests
13 for information. The applicant wishes to hold on
14 providing a closing statement. I think that's fine.

15 So, I think what we've discussed needing, and
16 please let me know if I'm missing anything here is
17 the e-mail from D.C. Water, some information about
18 the proposed price point and the financial analysis.
19 I would recommend that if the intention of the
20 applicant is to sell this as land rather than selling
21 it -- developing the property and selling them as
22 units, I would recommend that the financial analysis
23 be done from that point of view rather than, you
24 know, from the point of view of selling the units.
25 It's just, I think that would be a cleaner argument

1 to make.

2 We, let me see, also requested commitment
3 from Catholic Charities regarding the use of the
4 funding for the improvements to the Mulumba House,
5 the ANC report. I think I said clarity on the IZ
6 argument, and a careful analysis of the issues raised
7 in the OP report and a response to them. And am I
8 missing anything else? Did we request anything else?
9 No? Okay.

10 So, Mr. Moy, when -- or I guess I should ask,
11 how long will it take you to prepare that additional
12 information?

13 MS. MOLDENHAUER: I think that we could
14 probably work on this to try to get it in before the
15 end of July since we've obviously now vested under a
16 hearing for the ZR-58. We'll just assume that the
17 Board might want to try to address all of their ZR-58
18 cases before the end of July.

19 MS. BUTANI-D'SOUZA: And let me ask, why not
20 file this under ZR-16 where you have a better
21 alleyway, treatment of alleyways, a more favorable
22 treatment?

23 MS. MOLDENHAUER: There are both favorable
24 elements and disfavorable elements to the ZR-16 new
25 regulations. So there are changes so we believe that

1 it is more, you know, beneficial to move forward
2 under this current regulation.

3 MS. BUTANI-D'SOUZA: Okay.

4 MR. MOY: Madam Chair, after hearing all this
5 the -- just to let you know, the July 19th date, we
6 have -- or rather the Board is going to be reviewing
7 16 cases, and I haven't even mentioned the cases for
8 decision. Of course, you know, you know me,
9 sometimes I'll say what's one more.

10 Beyond that one, of course, there's some
11 other options. Otherwise, depending on what the
12 applicant is going to be submitting, then we're
13 looking into September, and of course if we go into
14 September then we have latitude in selection of
15 hearing dates in September. So any of those would be
16 open for the Board to schedule, beginning with
17 September 13th.

18 It would be either the 19th or the 12th of
19 July.

20 MS. BUTANI-D'SOUZA: And I'm assuming you
21 need more time than the 12th? Well, actually, we
22 would need to get the information into the record.

23 MS. MOLDENHAUER: Yeah, and we would need to
24 file that by tomorrow at 3:00, which I just don't
25 think I could -- you know. Is there, is the 26th not

1 available, Mr. Moy? Is that not open? Of July?

2 MR. MOY: The Board is holding that in
3 reserve.

4 MS. BUTANI-D'SOUZA: The 26th is not
5 available.

6 MR. MOY: But it's up to the -- okay. Well,
7 there you go. Can we push for the 19th? We could
8 try it and then if that doesn't work then we're into
9 September.

10 MS. BUTANI-D'SOUZA: Or you can take the
11 additional time and really craft these arguments so
12 that this is a --

13 MS. MOLDENHAUER: I mean, at this point,
14 unless OAG disagrees with me, we've already now
15 vested, since we've had a hearing. So I don't see a
16 need to push the Board into another case on the 19th,
17 and we would just continue to September. But vesting
18 still under the 58 rules based on the vesting
19 language that once a hearing has occurred we are then
20 now under the 58 rules and this would be a continued
21 hearing.

22 MS. BUTANI-D'SOUZA: I'm certainly
23 comfortable with that. I don't know what OAG --

24 MS. GLAZER: I don't know, is the short
25 answer. It's the applicant's choice.

1 MR. MOY: It's applicant's choice and I
2 remind the Board we already have about two other
3 cases that would be the under the ZR-58 rules.

4 MS. BUTANI-D'SOUZA: Okay. So I think it
5 would be acceptable to do this for September 13th.
6 Unless that date is already full, Mr. Moy.

7 MR. MOY: No.

8 MS. MOLDENHAUER: Okay. Thank you. So --

9 MR. HILL: Not to beat a dead horse, I'm just
10 so curious about this.

11 So for the applicant, like I really am
12 curious also to see what the one conforming lot and
13 the two nonconforming lots are.

14 MS. MOLDENHAUER: No, that that --

15 MR. HILL: Yeah, I'm just --

16 MS. MOLDENHAUER: I really appreciate it. I
17 really appreciate those questions.

18 MR. HILL: I'm very curious. Right. Thank
19 you.

20 MS. MOLDENHAUER: I really appreciate those
21 questions and we will definitely explore that and --

22 MR. HILL: I mean, I'm not putting OP on the
23 spot at all. I'm just letting you know, I'm just
24 curious in general what it looks like.

25 MS. BUTANI-D'SOUZA: We put OP on the spot

1 quite a lot today.

2 MS. MOLDENHAUER: So, would that mean that --
3 would the Board want the filings before the 8th? Or
4 would they want them on the 8th, which would be the
5 Thursday before? Or would the Board like them
6 earlier than that?

7 MS. BUTANI-D'SOUZA: I think it would be
8 great since you have two months, to give us the
9 filings, everything on time. And I believe the new
10 regulations require -- the filing deadlines are a
11 little bit earlier.

12 MS. MOLDENHAUER: All right. But this would
13 still be under the old regs. But we can conform with
14 -- we can, at your request, we can file them early,
15 but we're still under 58.

16 MS. BUTANI-D'SOUZA: Yes. We understand that
17 this would be evaluated under the 58 rules but the
18 rules of practices and procedure that we're going to
19 start with in September would conform with the ZR-16
20 Rules of Practice and Procedure which require earlier
21 submission.

22 MR. MOY: that's correct. So, again
23 continued hearing on September 13th and can the
24 applicant make their filing by August the 30th?
25 That's two weeks. That's exactly two weeks.

1 MS. BUTANI-D'SOUZA: Is that the new ZR-16
2 Rules of Practice and Procedure?

3 MS. MOLDENHAUER: Isn't it 21 days under the
4 new ZR, or is that --

5 MS. BUTANI-D'SOUZA: I think it would be
6 helpful to have it be --

7 MR. MOY: Yeah, I can --

8 MS. MOLDENHAUER: We can file it by --

9 MR. MOY: How about a week before that?
10 Let's say August 22nd?

11 MS. MOLDENHAUER: That's a Monday? That
12 might be fine. August 22nd.

13 MS. BUTANI-D'SOUZA: Let's do this. Maybe if
14 you can confer with the Office of Zoning and get what
15 the exact date is under the new rules of practice and
16 procedure, that would be helpful so that we can keep
17 some efficiency there in terms of board operations.

18 MS. MOLDENHAUER: And so I'm sorry, practice
19 and -- this is not the ZR-16, this is a new Board
20 procedures.

21 MS. BUTANI-D'SOUZA: ZR-16 includes new
22 deadlines --

23 MS. MOLDENHAUER: Okay. Okay.

24 MS. BUTANI-D'SOUZA: -- for the Board, so
25 that's what I'm asking that you --

1 MS. MOLDENHAUER: We will do that and we'll
2 make sure we have it filed on time.

3 MS. BUTANI-D'SOUZA: Thank you. Okay. So, I
4 think now that that's settled, thank you very much.
5 Enjoy your summer.

6 MS. MOLDENHAUER: Thank you very much. I'll
7 be back. Thank you very much. I appreciate the
8 Board's time and all of their questions. Thank you.

9 MS. BUTANI-D'SOUZA: Okay. We're going to
10 take a brief break. Five or ten minutes.

11 [Off the record from 1:29 p.m. to 1:40 p.m.]

12 MS. BUTANI-D'SOUZA: Come back to order and
13 call our next case.

14 MR. MOY: Absolutely. Thank you, Madam
15 Chair. That would be parties to the table for
16 Application No. 19317. This is of Travis Gordon as
17 advertised and captioned for special exception relief
18 under Section 223, not meeting the lot occupancy
19 requirements under 403.2, open court requirements
20 under 406.1, and the nonconforming structure
21 requirements under 2001.3. And a special exception
22 from the penthouse requirements under 411.5 to
23 construct a new stairway penthouse to an existing
24 one-family dwelling R-4 District, 1320 10th Street
25 Northwest, Square 339, Lot 28.

1 MS. BUTANI-D'SOUZA: Okay. Good morning.
2 Good afternoon, rather. Can you introduce yourself
3 for the record?

4 MR. JONES: Patrick Jones, the architect.

5 MS. BUTANI-D'SOUZA: Terrific. Okay, Mr.
6 Jones. I'm not sure that we need a full presentation
7 on this, unless you would like to get into some more
8 detail, but I think we pretty much understand the
9 case. I think the biggest question here is it looks
10 like OP is recommending denial of the special
11 exception for the one to one setback of the roof
12 terrace guardrails. And so if you would like to
13 comment on that point specifically, I think that
14 would be most helpful.

15 And then we'll discuss the ANC issue.

16 MR. JONES: Yes. I talked to the client this
17 morning and they're fine with setting the railing
18 back from the face of the building.

19 MS. BUTANI-D'SOUZA: Okay. Terrific. Did
20 the applicant, or did you meet with the ANC?

21 MR. JONES: We met with -- sorry. We met
22 with part of the ANC last week, but the full ANC was
23 meeting today.

24 MS. BUTANI-D'SOUZA: Okay. Are you on the
25 agenda for today?

1 MR. JONES: I'm not sure. But the full --
2 the other ANC gave us -- sorry.

3 [Pause.]

4 MR. JONES: Yeah. So, we met with the
5 Community Development Committee for ANC 2F and they
6 voted unanimously to approve the project, and I
7 wasn't -- they weren't sure if we would have to
8 actually present to the full ANC.

9 MS. BUTANI-D'SOUZA: I believe that you would
10 have to present to the full ANC or the ANC would have
11 to issue a report in order for it to be considered by
12 the Board, and I think we would like to have some
13 record of the ANC's opinion on this.

14 So, if we could get that, that would be
15 helpful. Sir, would you like to introduce yourself
16 for the record?

17 MR. BELLO: Yes. Sorry about that. Toye
18 Bello for the applicant.

19 MS. BUTANI-D'SOUZA: Are you the owner?

20 MR. BELLO: I'm representing the applicant.

21 MS. BUTANI-D'SOUZA: You're representing the
22 applicant. I see. Okay. So, two things. First is,
23 we would like to receive a report from the ANC. The
24 second thing is, it sounds like the applicant has
25 agreed to set back the guardrails in compliance with

1 the request from the Office of Planning. So we would
2 need a revised set of plans showing that and let me
3 see, is there any -- I think we also need a revised
4 self-certification is that correct? Yes, we do need
5 a revised self-certification as well.

6 So I think it would be a good idea to run
7 through the hearing procedures very quickly and then
8 we can circle back and confirm all of the items that
9 are needed, and then we can put this on for decision.

10 So why don't we go, unless you have anything
11 you'd like to add on that. On these issues?

12 MR. BELLO: Well --

13 MS. BUTANI-D'SOUZA: You don't have to if you
14 don't have anything.

15 MR. BELLO: Okay. And I hear you on the
16 submission of the ANC report. But we did meet with
17 the Community Development Committee of the ANC on
18 June 27th. We had a unanimous vote to recommend
19 approval to the ANC. I believe that ANC hearing is
20 today, later.

21 MS. BUTANI-D'SOUZA: Terrific.

22 MR. BELLO: Yeah.

23 MS. BUTANI-D'SOUZA: Okay. Okay. Why don't
24 we go to the Office of Planning?

25 MS. BROWN-ROBERTS: Again, good afternoon,

1 Madam Chair. And as outlined in our report we will
2 stand on the record. We recommend approval of the
3 various special exceptions, and we're glad to hear
4 that the applicant will set back the guardrails on
5 the roof terrace. So with that we recommend
6 approval.

7 There is also one other section of the code.
8 Under 400.24, and this was brought to my attention
9 from someone from DCRA regarding in a section that it
10 talks about any additions that are going to be -- any
11 addition that may hamper the chimneys or solar panels
12 and that sort of thing.

13 And apparently what has happened in some
14 cases is that people have gotten approvals for their
15 solar panels while a project is being processed. And
16 if the applicant hasn't asked for that relief then
17 when it goes to DCRA they may have a hold on their
18 application because someone has come in and has an --
19 submitted an applicant for the solar panels.

20 So since the applicant is going to submit
21 additional information, I would just ask if they
22 could just put a statement in there to say that they
23 meet the requirements of 400.24.

24 MS. BUTANI-D'SOUZA: Okay. Thank you. So
25 let's add that to the list of items that the

1 applicant will bring back. Are there any questions
2 for the Office of Planning or for the applicant? No?
3 Okay.

4 Let's see. I see that we have a report of no
5 objection from the Department of Transportation. We
6 are missing a report from the ANC? Is there anyone
7 here from the ANC who wishes to testify with regard
8 to this project? Seeing none.

9 Are there any parties or persons who wish to
10 testify in support of this application? Okay, seeing
11 none.

12 Are there any parties or persons in
13 opposition to the applicant who wish to speak today?
14 Okay.

15 So, does the applicant wish to say anything
16 else?

17 MR. BELLO: We'll just rest on the record.

18 MS. BUTANI-D'SOUZA: Okay. Wonderful. So
19 what I would like to do is, if it's possible, Mr.
20 Moy, to schedule this next week for decision, would
21 it be possible for you to -- let's see. That doesn't
22 give them very much time to get everything in.

23 MR. MOY: What, Friday? That would be --

24 MS. BUTANI-D'SOUZA: Do you think you can get
25 this information in by Friday?

1 MR. BELLO: We should be able to do that.

2 MS. BUTANI-D'SOUZA: Okay. Wonderful. And I
3 would be amenable to accepting, if the ANC can't
4 produce a report by Friday, I would be amenable to
5 accepting something like an e-mail from the
6 chairperson of the ANC indicating that the
7 application was voted on and what the vote was.

8 Okay. So we'll be on for this for decision
9 for Tuesday the 12th?

10 MR. MOY: Tuesday, July the 12th, and your
11 filings by this Friday, the 8th.

12 MS. BUTANI-D'SOUZA: By 3:00. Okay,
13 terrific. Thank you.

14 MR. BELLO: Thank you.

15 MS. BUTANI-D'SOUZA: Okay. Mr. Moy, shall we
16 call the next case?

17 MR. MOY: Yes. Thank you, Madam Chair. That
18 would be Application No. 19266 of Elonda Edwards,
19 captioned and advertised for special exception relief
20 on the home occupation requirements under Section
21 203.10 to enlarge or operate a child development home
22 with 12 children and three adults in a R-4 District,
23 816 6th Street Northeast, Square 832, Lot 45.

24 MS. BUTANI-D'SOUZA: Thank you, Mr. Moy. Can
25 you state your name for the record? Or sorry, yeah,

1 sate your name for the record.

2 MS. EDWARDS: Hi. I'm Elonda Edwards. I
3 live on 816. I'm the owner of Elonda's Daycare.

4 MS. BUTANI-D'SOUZA: Thank you. I don't
5 think we have a lot of questions. We've all read the
6 record and are familiar with the case. So if it's
7 okay with you I'd rather just turn it over to
8 questions from the Board, unless you feel like you'd
9 like to give a more formal presentation.

10 MS. EDWARDS: Oh, that's fine.

11 MS. BUTANI-D'SOUZA: Great. Thanks. Does
12 anyone have any questions?

13 [Discussion off the record.]

14 MS. BUTANI-D'SOUZA: Okay. So, I actually
15 have some questions. So, currently you care for six
16 kids. Is that correct?

17 MS. EDWARDS: Yes.

18 MS. BUTANI-D'SOUZA: And how old are they?

19 MS. EDWARDS: I have, right now it's just two
20 years old and up.

21 MS. BUTANI-D'SOUZA: Two years old and up.
22 Okay. And how many employees do you currently have?

23 MS. BUTANI-D'SOUZA: It's just --

24 MS. BUTANI-D'SOUZA: Just yourself right now.
25 Okay. So, have you already applied to Office of

1 State Superintendent of Education, OSSE, with this
2 plan?

3 MS. EDWARDS: They have the OP -- the
4 approval.

5 MS. BUTANI-D'SOUZA: The BZA approval first?

6 MS. EDWARDS: Yeah, the -- yeah.

7 MS. BUTANI-D'SOUZA: Okay. So, my concern in
8 reading -- I went through and I looked at the
9 regulations for OSSE on the size and the ages of the
10 children. My concern is that based on my reading of
11 the regulation you would need to have a ratio of one
12 adult to three children and a maximum group size of
13 eight, or one adult to four children for a maximum
14 group size of nine, and that's because the
15 regulations specifically states that when children of
16 different ages are combined in one group the adult
17 child ratio for the youngest child shall apply. So
18 in this case that would be infant.

19 And I will go to OP in a moment, but I wanted
20 to flag this issue because I think it would be
21 confusing if the BZA were to approve you to have a
22 business size, particularly with the cap on the
23 number of employees that the ANC has requested, and
24 have that be not in line with what is permitted from
25 OSSE's regulations.

1 MS. EDWARDS: Yes. They did say something
2 about the only two employees, because I did three
3 because I was including myself.

4 MS. BUTANI-D'SOUZA: Uh-huh.

5 MS. EDWARDS: So I do correct that for it's
6 just two employees instead.

7 MS. BUTANI-D'SOUZA: So it's two employees
8 including you, but you want to have 12 children,
9 correct?

10 MS. EDWARDS: Yes. It's two employees but
11 they said -- two employees but not including myself.

12 MS. BUTANI-D'SOUZA: That's what the ANC
13 said?

14 MS. EDWARDS: Yes.

15 MS. BUTANI-D'SOUZA: Okay. So I believe the
16 regulation is that -- and you requested four infants
17 and eight toddlers.

18 MS. EDWARDS: Four infants and -- infants and
19 toddlers is four, because with OSSE it's considered
20 up to age two is toddlers and infants.

21 MS. BUTANI-D'SOUZA: Oh, so -- okay. So --

22 MS. EDWARDS: From six weeks to two years old
23 is considered infants and toddlers.

24 MS. BUTANI-D'SOUZA: Is considered infants
25 and toddlers.

1 MS. EDWARDS: Uh-huh.

2 MS. BUTANI-D'SOUZA: Okay. So, and I pulled
3 -- I'm trying to pull this up, but there is OSSE has
4 a zero to 12 months -- for children age zero to 12
5 months, and this is important to me because as a
6 mother --

7 MS. EDWARDS: Oh, yeah, I'm a mom too.

8 MS. BUTANI-D'SOUZA: Okay. All right. So
9 daycare. Zero to 12 months, the ratio is one to
10 three, I believe.

11 MS. EDWARDS: Well, OSSE on my license, they
12 gave me two infants only.

13 MS. BUTANI-D'SOUZA: Two infants on your
14 current license.

15 MS. EDWARDS: Yes.

16 MS. BUTANI-D'SOUZA: But you haven't --

17 MS. EDWARDS: With one person.

18 MS. BUTANI-D'SOUZA: You haven't applied for
19 the revised license for this?

20 MS. EDWARDS: No, they say I can't apply
21 until I get this approved.

22 MS. BUTANI-D'SOUZA: Okay. All right. So
23 let's pause on that point because I want to hear from
24 the Office of Planning and see if they have already
25 looked into this issue and have already evaluated it.

1 MR. MORDFIN: Okay. Good afternoon. I'm
2 Stephen Mordfin with the Office of Planning.

3 And excuse me, we evaluated this against the
4 Zoning Regulations. OSSE evaluates it against there,
5 so if the Board were to approve a number that OSSE
6 couldn't and they wanted to lower it then that would
7 take precedence. So if the Board approved 12 and
8 OSSE said maximum 10, then that would be all she
9 could get. Whatever that number is. So we just
10 review it against the Zoning Regulations, not OSSE's
11 regulations.

12 MS. BUTANI-D'SOUZA: Okay. Mr. Moy, does it
13 create confusion if we approve for something for
14 capacity that's greater than what would be allowed
15 under OSSE? I just feel uncomfortable approving four
16 infants and eight toddlers if the age groups don't
17 line up and restricting the number of employees if
18 the age groups don't really line up.

19 MR. MOY: Yeah. Common sense, I would defer
20 to OAG, but my common sense would tell me that to be
21 more on the conservative side with regards to the
22 standard groups.

23 MS. BUTANI-D'SOUZA: So to clarify the
24 confusion first.

25 MS. GLAZER: No, historically the BZA just

1 applies the Zoning Regulations and all you look at is
2 drop-off and pick-up, traffic implications, parking,
3 that sort of thing. We don't get into the ages of
4 the kids or how many staff per the ages of the kids,
5 because from a zoning point of view the ages of the
6 kids don't really matter except maybe with respect to
7 off-site play or something like that.

8 So, the BZA approval is the zoning approval.
9 And all the licensing that comes separately is
10 separate and it's not the BZA's job to -- somebody
11 has to go first and pick a number.

12 MS. BUTANI-D'SOUZA: Okay.

13 MS. GLAZER: But ultimately OSSE weighs in on
14 their -- they have their own regulations, they make
15 their own decision, so.

16 MS. BUTANI-D'SOUZA: So, okay. So the ANC is
17 saying that they want to restrict the number of
18 employees, excluding the owner, to two. And my
19 concern is that if we include that as a condition
20 then that limits her to less than 12 because if we
21 include it as a condition on the zoning order that
22 she cannot have more than two employees, then what
23 would end up happening, practically speaking, is that
24 she would be restricted depending on the age group of
25 the children to having fewer than 12, which is what

1 we're --

2 MS. GLAZER: That's a possibility but again,
3 the zoning -- any condition adopted by the Board
4 should be the minimum necessary to mitigate adverse
5 impacts as identified in the Zoning Regulations.

6 MS. BUTANI-D'SOUZA: Okay.

7 MS. GLAZER: And, you know, what happens
8 after that is up to the applicant and the rest of the
9 regulatory process.

10 MS. BUTANI-D'SOUZA: Okay. So do you
11 understand the issue here?

12 MS. EDWARDS: Yes, but with the two
13 employees --

14 MS. BUTANI-D'SOUZA: You just have to press
15 it once.

16 MS. EDWARDS: With the two employees I have
17 to be present at all times because I'm the only
18 licensed provider. The employees are just helpers.

19 MS. BUTANI-D'SOUZA: Okay. So the issue is
20 that you've applied for -- to expand your business to
21 cover 12 children. So when you applied for that the
22 ANC that you -- that your business that you live in
23 has said, that's fine, you can have 12 children but
24 we would like for you to only have two employees. So
25 it would be yourself and two employees, which is

1 three total caregivers.

2 Separate from that the OSSE has regulations
3 regarding the age of children and the number of
4 caregivers to children. So the number of caregivers
5 that you need to have per number of children.

6 MS. EDWARDS: Yes.

7 MS. BUTANI-D'SOUZA: So if OSSE says that if
8 you're planning on having infants and the ratio
9 requires that you can only have nine infants if
10 you're having three employees, that's the issue that
11 you would run into.

12 So the reason I want to make you aware of
13 this is that the ANC has put basically a limit on the
14 number of young children that you can have is
15 essentially is what it boils down to. And you're
16 comfortable with that?

17 MS. EDWARDS: Oh, yes, because the bottom
18 level is more for school-age. So I only want a
19 certain amount of infants. It's just four and up.
20 Nothing more than that.

21 MS. BUTANI-D'SOUZA: Okay. So you only want
22 four infants. So you're comfortable if that means
23 that you're not allowed to have as many toddlers?

24 MS. EDWARDS: Yes. Uh-huh.

25 MS. BUTANI-D'SOUZA: Okay. Okay. Great.

1 All right. Then that was my question. Are there any
2 other questions?

3 No? Okay. Let's see. I see that we have a
4 -- we have a letter from the ANC that is in support
5 of this application with conditions. The conditions
6 are no parking in the alley and no more than two
7 employees plus the owner, which it sounds like the
8 applicant is comfortable with those conditions.

9 We have a report -- is there anyone from the
10 ANC who wishes to testify regarding this project?

11 No. We have a report from the Department of
12 Transportation which indicates no adverse impacts and
13 notes that the vehicle trips will not exceed eight
14 and they will be staggered throughout the day so
15 there shouldn't be an impact associated with that.

16 We don't have any other comments from any
17 other agencies. We do have two letters in the record
18 in support of this application. Are there any
19 parties or persons who wish to speak in support of
20 the application?

21 Okay. Are there any parties or persons who
22 wish to speak in opposition to the application?

23 Okay. So do you have anything else that
24 you'd like to say?

25 MS. EDWARDS: Oh, no. That's all. Thank

1 you.

2 MS. BUTANI-D'SOUZA: That's it. Okay. All
3 right. So then I would make a motion to let me see,
4 to approve the request for relief for a special
5 exception from the home occupation requirements to
6 establish a childcare center with 12 children and
7 three adults in the R-4 premises, the R-4 District at
8 816 6th Street Northeast, with the conditions
9 suggested by the Office of Planning and the ANC.

10 MR. HILL: Second.

11 [Vote taken.]

12 MS. BUTANI-D'SOUZA: Okay.

13 MS. EDWARDS: Thank you.

14 MR. MOY: Staff would record the vote as four
15 to zero to one. This is on the motion of Vice Chair
16 Butani. Seconding the motion, Mr. Hill. Also in
17 support Mr. Rob Miller, Mr. Hinkle. No other member
18 present, and of course this approval is per the
19 conditions as cited by the Board.

20 MS. BUTANI-D'SOUZA: Summary order.

21 MR. MOY: Yes. Thank you.

22 MS. EDWARDS: Thank you.

23 MS. BUTANI-D'SOUZA: Thank you.

24 All right. Why don't we go ahead and call
25 the next case?

1 MR. MOY: Yes. Thank you, Madam Chair. That
2 would be Application No. 19219 of 2001 2nd Street
3 Northeast, LLC. as amended, the caption as advertised
4 reads as, request for a special exception from the
5 residential conversion requirements pursuant to
6 336.13 and from the rooftop architectural element
7 requirements under 400.24. This would expand an
8 existing two-story, four-unit apartment house into a
9 three-story five-unit apartment house, R-4 District,
10 2001 2nd Street Northeast, Square 3565, Lot 58.

11 MS. BUTANI-D'SOUZA: Thank you, Mr. Moy. To
12 begin, good afternoon. Could you please introduce
13 yourselves for the record?

14 MR. CARBALLO: Yes. My name is Adam
15 Carballo. I'm the architect on the project.

16 MS. BUTANI-D'SOUZA: Okay.

17 MS. McAD00: I'm Karen Hardy McAdoo.

18 MS. BUTANI-D'SOUZA: Can you turn your mic
19 on?

20 MS. McAD00: Good afternoon. I'm Karen Hardy
21 McAdoo and I am one of the partners of the 2001 2nd
22 Street Northeast, LLC.

23 MS. BUTANI-D'SOUZA: Okay.

24 MR. McAD00: I'm Larry McAdoo. I'm also one
25 of the partners of the LLC.

1 MS. BUTANI-D'SOUZA: Okay. Thank you. So, I
2 believe that this application has gone through some
3 modifications and OP has issued a revised report. I
4 don't know if any of the board members have questions
5 but I think it would possibly be most helpful to
6 focus in on the issues that OP has had and how that's
7 been resolved.

8 MR. CARBALLO: Right. Just to give you a
9 very brief background, we had submitted this special
10 exception some time ago. We've gone through, as the
11 record shows, a number of postponements. We've
12 worked with Ms. Elliott from OP as well as Mr.
13 LeGrant in zoning to actually reduce the scale of the
14 project since our original submission back in March.

15 Originally we had requested relief for lot
16 area coverage as well as number of dwelling units.
17 We've since revised our request. We no longer need
18 relief from lot are coverage. We've reduced the
19 scale of the project and we've also reduced the
20 number of dwelling units from you know, originally
21 requesting six, we now are only requesting five.

22 The lot itself is 53 -- 5,300 and where is
23 it, 26 square feet. In this zoning district we
24 require a 900 square feet per dwelling unit. We're
25 sort of right on the cusp of being able to call it

1 six. But that would sort of exceed the lot area
2 cover. So we've actually reduced our request to only
3 five which is within the right of the lot area of
4 covered ratio.

5 And also, in working with Ms. Brandice, with
6 Ms. Elliott, we've -- we are increasing the building
7 height but we're still underneath the maximum
8 building -- maximum building height of maximum. I
9 think we have a 35-foot height limit. We're actually
10 only at 31 feet, even though we're adding another
11 floor.

12 MS. BUTANI-D'SOUZA: Okay. Terrific. Thank
13 you. Are there any questions for the applicant?

14 Okay. Let's move to the Office of Planning
15 then.

16 MS. ELLIOTT: Thank you, Madam; Madam Chair.
17 For the record, I'm Brandice Elliott with the D.C.
18 Office of Planning and we are now able to recommend
19 approval of the special exception that's been
20 requested for Section 400.24. It relates solely to
21 the embellishments on the roof. In speaking with
22 DCRA they thought that this was the most appropriate
23 relief to seek at this time. So, I guess with that
24 we'll go ahead and stand on the record of our
25 supplemental report and then just note that we

1 appreciate the applicant's work to revise the site
2 plan so that it is more conforming with the current
3 Zoning Regulations.

4 MS. BUTANI-D'SOUZA: Okay. Thank you. So,
5 just so that we understand, so the relief that's
6 being requested -- let's see if I can find my agenda
7 here. The relief that's being requested now, or the
8 relief that's required now, is only the rooftop
9 architectural element. They no longer require relief
10 for the residential conversion requirements?

11 MS. ELLIOTT: So, that relief was never
12 necessary.

13 MS. BUTANI-D'SOUZA: Okay.

14 MS. ELLIOTT: That was part of the original
15 request and we had some exchanges with the Zoning
16 Administrator regarding how that would be applied to
17 this particular project. This is a purpose built
18 apartment house, and so because it's always been an
19 apartment house and has had that function there was
20 never actually any conversion.

21 And so the regulations apply to it a little
22 bit differently. And the Zoning Administrator did
23 issue a letter that I believe is in the record for
24 the first set of plans that were received, where he
25 indicated that that relief would not be necessary.

1 And so, even with the revisions we don't see a need
2 for relief from 336.

3 MS. BUTANI-D'SOUZA: Okay. So if we can note
4 that in the order that gets issued, assuming that
5 this goes through.

6 Okay. So, are there any other questions for
7 the Office of Planning?

8 MR. MILLER: So just to clarify, thank you,
9 Madam Chair. Ms. Elliott, the ZA has made a
10 determination that the rooftop, is it the guardrail
11 doesn't have to be set back under his interpretation
12 and you're no longer -- so that is why you no longer
13 have a concern about that?

14 MS. ELLIOTT: So the Zoning Administrator
15 only weighed in on the first set of drawings. He did
16 not see the revised ones that I'm aware of.

17 We pointed out in our supplemental report
18 that there could potentially be a setback issue with
19 the guardrails because a one to one setback from all
20 sides is required. The applicant did not request
21 that relief so he didn't review that. But we did
22 note that we would unlikely support that relief if it
23 were requested.

24 MR. MILLER: Okay.

25 MR. CARBALLO: Sorry. Just for a

1 clarification. And Ms. Elliott can correct me if I'm
2 incorrect. The purpose for that rooftop
3 embellishment really is the third floor that we're
4 adding on to the building. And the design of that
5 third floor from the exterior has never changed from
6 our original submission. We've just made a larger
7 fifth unit on the top floor, rather than two separate
8 units.

9 MS. BUTANI-D'SOUZA: Okay. So I think there
10 is a little bit of a confusion here then. So this is
11 a self-certified application, correct?

12 MR. CARBALLO: Yes. Yeah.

13 MS. BUTANI-D'SOUZA: So it sounds like what
14 Office of Planning is saying is that you have not
15 applied for the rooftop embellishment.

16 MS. ELLIOTT: So the --

17 MS. BUTANI-D'SOUZA: Sorry, the roof, the
18 setback relief.

19 MS. ELLIOTT: The setback of the guardrail,
20 specifically. So the penthouse regulations do
21 require a setback when guardrails are concerned. And
22 so a one to one, one foot for every height of
23 guardrail, typically four feet, would be required.
24 That specific relief as noted in our supplemental had
25 not been requested so --

1 MS. BUTANI-D'SOUZA: And the Office of
2 Planning would not be in favor of granting that
3 relief, correct?

4 MS. ELLIOTT: That is correct.

5 MS. BUTANI-D'SOUZA: Okay. So --

6 MR. CARBALLO: Just to clarify, we do not
7 have a penthouse, we do not have any guardrails.

8 MS. BUTANI-D'SOUZA: It sounds like there is
9 some confusion about the plans in that case.

10 MS. ELLIOTT: It appeared on the plans that
11 there could potentially be a guardrail. And we just
12 wanted to call that out to make sure that it wasn't
13 something that slipped past us or DCRA.

14 MR. CARBALLO: Our original submission had a
15 roof deck, but we've no -- we no longer have that
16 roof deck.

17 MS. BUTANI-D'SOUZA: And that's in the plans
18 that are uploaded to the record right now?

19 MR. CARBALLO: Yes. The current, the current
20 set of drawings do not have a roof deck. An upper,
21 you know, upper most level roof deck. There's no
22 penthouse.

23 MR. HINKLE: Yeah, I'm looking at Exhibit 37
24 and there's no rooftop deck or additional guardrails.

25 MR. CARBALLO: Yeah, that was removed some

1 time ago.

2 MR. HINKLE: Right. So, it's only up to the
3 third floor and you have, you know, the guardrails at
4 the balconies and not the staircases that --

5 MR. CARBALLO: There's a balcony at --

6 MR. HINKLE: -- are appropriate. Yeah,
7 right.

8 MR. CARBALLO: -- the third level, yes.

9 MR. HINKLE: Right.

10 MR. CARBALLO: But that wouldn't exceed the
11 height.

12 MS. BUTANI-D'SOUZA: Okay. Okay. So the
13 Office of Planning agrees, then, that it's not
14 required?

15 MS. ELLIOTT: Correct.

16 MS. BUTANI-D'SOUZA: Okay. Terrific. Okay.
17 Well, I'm glad that we could resolve that issue. Are
18 there other questions of the Office of Planning or
19 the applicant from the Board?

20 Okay. Let's see.

21 MR. HINKLE: Madam Chair, I do have one.

22 MS. BUTANI-D'SOUZA: Yeah, uh-huh.

23 MR. HINKLE: We have a letter in opposition
24 from Michael or Michelle White, Exhibit 28. But they
25 don't really state what their issue is. Do you have

1 any -- have you had any contact with this person?

2 MS. McAD00: No, we actually -- my husband
3 and I canvased the neighborhood.

4 MR. HINKLE: Michelle White.

5 MS. McAD00: Under the recommendation of the
6 ANC. And we have signed petition enthusiastically in
7 support of the project from like 58 neighbors who
8 live directly within the 200-foot boundary, and we
9 went before the ANC two weeks ago, and the ANC
10 unanimously voted to support it pending us providing
11 the signatures to them so they could verify the
12 addresses and names. We submitted it to the ANC
13 representative.

14 At that time, they said they had no
15 opposition. We submitted it to her by e-mail as she
16 requested, one week before this hearing, and continue
17 to e-mail her and asking her for the letter of
18 support but we never got a response.

19 MR. CARBALLO: Yeah, she requested that we
20 achieve a 51 percent, you know, support within a 200-
21 foot radius. Within 200 feet I think we have --

22 MS. McAD00: There's like 130 some names
23 because there are a lot of apartment buildings around
24 there.

25 MR. CARBALLO: Right. Yeah.

1 MS. McAD00: And we've met with most of the
2 homeowners and quite a few of the apartment buildings
3 that we could get in so.

4 MR. CARBALLO: Yeah, I actually think 51
5 percent was just physically difficult to identify
6 each one of those people, but we have a list of 50
7 some-odd names rather than the 60 or so.

8 MS. McAD00: And of all the people we met
9 with I think maybe one neighbor who didn't want to
10 sigh and didn't really want to talk to us because
11 they, I guess they just had some hearings in their
12 neighborhood about historic designation. So anything
13 that was adding a third floor to her, she was just
14 not going to support. I don't know what her name was
15 though.

16 MR. HINKLE: Well, it sounds positive. I
17 don't see those petitions in the record. You might
18 want to include those if you want.

19 MS. McAD00: We can. We can submit them.

20 MR. McAD00: We have them here. So we can
21 share them with you.

22 MS. McAD00: We can submit them.

23 MR. HINKLE: Great. Thank you.

24 MS. BUTANI-D'SOUZA: I think it would be
25 helpful to get the ANC report in the record. I think

1 we've requested that in the past and I think it would
2 be helpful here. So, I think that would be helpful
3 to receiving this. Unless folks disagree with me.

4 MR. HILL: So what happened to the ANC? So
5 you presented in front of the ANC, they voted and
6 they didn't submit a report yet?

7 MS. McADOO: Yeah, so we were like, they were
8 supposed to end at 9:00 and they didn't even see us
9 until 10 after 9:00, so we presented really quickly
10 and they voted unanimously to support it pending the
11 commissioner for the area getting confirmation that
12 we had 51 percent support from the neighbors.

13 And so she requested that we send her the
14 list of petition names, and which we did send it a
15 week before as she asked us to. But she hasn't
16 responded. So, we sent her an e-mail, I called again
17 yesterday. I didn't get a response.

18 MS. BUTANI-D'SOUZA: I think it -- Mr. Moy,
19 is there an easier way for them to submit this to the
20 record without having to come back again for --

21 MR. MOY: Well, as a matter of practice with
22 our staff, it's appropriate to -- that all the
23 documents are in order before the Board makes a
24 decision. After having said that I have also on
25 occasion have reached out to the ANC myself and

1 gotten some good results. So here I could do that as
2 well to get a letter from the ANC. So I can move on
3 that after this hearing today.

4 MS. BUTANI-D'SOUZA: Would that enable us to
5 take -- to move to decision on this case today? Or
6 no, we would have to wait?

7 MR. MOY: Well, the Board can do whatever you
8 wish, but I would prefer putting off the decision to
9 next Tuesday at the earliest.

10 MS. BUTANI-D'SOUZA: Okay. All right. So,
11 we will close the record then. So the only open --
12 if you wish to submit the letters in support, I think
13 that that would be helpful. And Mr. Moy is going to
14 very generously reach out to the ANC on your behalf
15 to see if they can get themselves moving.

16 Mr. Moy, I think even an e-mail would be
17 sufficient. And we'll put this on for decision for
18 next week.

19 MS. McADOO: Okay.

20 MS. BUTANI-D'SOUZA: Oh, let me ask before we
21 do that. Is there anyone from the ANC here who
22 wishes to testify?

23 Okay. Are there any persons or parties who
24 wish to testify in support of this application?

25 Anyone wishing to testify in opposition to

1 the application?

2 Okay. Any rebuttal or closing statement that
3 you wish to make? You don't have to if you --

4 MR. CARBALLO: I guess just for
5 clarification, do we need to be in attendance next
6 week for --

7 MS. BUTANI-D'SOUZA: No, you don't. So, next
8 week the Board would deliberate and it is webcast
9 live so you can watch from your home or desk, and
10 there would not typically be any interaction with
11 applicants or parties in opposition.

12 MS. McAD00: I just have a question. I know
13 that the request now just is regarding the roof. But
14 we've had multiple conflicting responses to what we
15 needed, what we needed to get a special exception
16 from and this started from why we've postponed over
17 and over, from our first preliminary design review
18 meeting.

19 MS. BUTANI-D'SOUZA: Uh-huh.

20 MS. McAD00: And it just concerns me about
21 not having anything in writing from going from four
22 to five units, because just as recently as a week and
23 a half ago we were still told that's what we needed.

24 MR. CARBALLO: Right.

25 MS. McAD00: And that's why we're here. The

1 roof came up at the very last minute. So my question
2 is, I'm concerned to -- we'll go through the building
3 permit process, there will be nothing in writing that
4 says, that doesn't apply to a special purpose four-
5 unit building, and then we'll get kicked aside from
6 Zoning saying that we need to go for special
7 exception.

8 So I'm just wondering, if it's not required
9 is there any way to have that documentation in
10 writing so that it doesn't cause a problem for us?

11 MS. BUTANI-D'SOUZA: That would be part of
12 the order. Would that be something they could get
13 from the Zoning Administrator?

14 MS. ELLIOTT: Well, typically, prior to
15 actually being here, if that's the kind of certainty
16 you would want you would actually get a determination
17 letter from the Zoning Administrator that, you know,
18 that allows DCRA to review the plans and determine
19 specifically what relief is needed. But this
20 application is self-certified. So, the onus was
21 actually put on, on you as the applicant, to
22 determine what relief was necessary.

23 MS. McAD00: Can I clarify though --

24 MS. ELLIOTT: Now, I can say that we have
25 been in discussions with DCRA, so at least initially

1 I reached out to the Zoning Administrator to confirm
2 the relief that was needed, and then the
3 determination letter was entered into the record.
4 And when the plans changed I followed up again with
5 DCRA to see if the relief needed seemed appropriate,
6 and they agreed that Section 400.24 appeared to be
7 the only relief that you needed.

8 But certainly when you self-certify that's a
9 risk that you take as the applicant.

10 MS. McADOO: Maybe I'm not clear, but we had
11 preliminary design review meeting with the Matt
12 LeGrant where I thought he expressed -- sent us in
13 writing what we needed, which is nothing that we're
14 asking for today. So, I'm still confused because we
15 may --

16 MS. BUTANI-D'SOUZA: Was that for the
17 original plans?

18 MR. CARBALLO: This is for the original plan
19 but he had indicated that any increase above what was
20 currently there would require a special exception.
21 So even going from four to five.

22 MS. BUTANI-D'SOUZA: So he indicated that in
23 his letter from four to five would require a special
24 exception?

25 MS. McADOO: From four to six, originally.

1 MR. CARBALLO: Four to six or --

2 MS. McADOO: But he said any change, period.

3 MR. COLICCHIO: Any change period.

4 MS. BUTANI-D'SOUZA: And the Office of
5 Planning is saying that that's not the case?

6 MS. ELLIOTT: The determination letter
7 specifically required a relief for a variance for the
8 number of units because they were not providing 900
9 square feet of lot area per unit. That was a
10 variance. And then a variance also from lot
11 occupancy for the original drawings.

12 Now, the drawings have changed, and so now
13 the number of units is compliant. There is at least
14 900 square feet of land area per unit, and the lot
15 occupancy is now at 40 percent or less. So that
16 relief would no longer be necessary.

17 MS. BUTANI-D'SOUZA: So when you apply you
18 should update your self-certification to show that
19 you're in conformance with those two issues, and it
20 should be -- it should go through the normal process.

21 MR. CARBALLO: Okay. All right. Fair
22 enough.

23 MS. BUTANI-D'SOUZA: And once this --
24 assuming that this goes through, which I don't
25 anticipate any major opposition here, you would take

1 the summary order from the Board to the -- you would
2 attach that with your permit application.

3 MR. CARBALLO: okay. All right.

4 MS. McAD00: Thank you very much.

5 MR. McAD00: You going to need a copy of all
6 the signatures that we receiving around the
7 neighborhood?

8 MS. McAD00: He's going to submit it.

9 MR. CARBALLO: I'll submit that.

10 MS. McAD00: He'll submit it.

11 MR. McAD00: Oh, okay. Okay.

12 MS. McAD00: Thank you.

13 MS. BUTANI-D'SOUZA: Wonderful. Thank you.

14 So then this will be on for decision next week.

15 MR. CARBALLO: Okay. All right.

16 MS. BUTANI-D'SOUZA: Thank you very much.

17 MR. McAD00: Thank you.

18 MS. BUTANI-D'SOUZA: Oh, and if you -- we
19 were hoping that we can get the ANC report in by
20 Friday so that we can make the decision on Tuesday.

21 MS. McAD00: So we'll call again too.

22 MR. MOY: All right. The next application,
23 Madam Chair, is Application No. 19263 of Michael and
24 Kimberly Baker, captioned and advertised for special
25 exception relief under Section 223, not meeting lot

1 occupancy requirements under 403.2, rear yard
2 requirements, 404, and the minimum open court
3 requirements under 406, to construct a rear deck
4 addition to an existing one-family dwelling, R-4
5 District at 2629 Woodley Place Northwest, Square
6 2205, Lot 40.

7 MS. BUTANI-D'SOUZA: Good afternoon. Can you
8 please introduce yourself for the record?

9 MR. WHITE: I'm Terrel White, authorized
10 agent of the homeowner.

11 MS. BUTANI-D'SOUZA: Thank you, Mr. White.
12 Okay. So --

13 MR. WHITE: One second. I've got to get --
14 [Pause.]

15 MR. WHITE: All right.

16 MS. BUTANI-D'SOUZA: Okay. So, I don't
17 believe that we need a full presentation from you
18 regarding this application. Are there any questions
19 that the Board has for the applicant?

20 [No audible response.]

21 MS. BUTANI-D'SOUZA: Okay. I would just like
22 to say that I understand that this was an existing
23 deck that was constructed by a previous owner without
24 permits that jeopardizes the health of the tree that
25 it surrounded, that a new deck is going to help

1 better preserve the tree, but also it looks like that
2 deck is somewhat unsafe, so.

3 MR. WHITE: Yes, they actually have had to
4 move their railing that they're using as a railing
5 almost five feet back from the edge of the deck
6 because it --

7 MS. BUTANI-D'SOUZA: Yeah.

8 MR. WHITE: -- has been unsafe.

9 MS. BUTANI-D'SOUZA: And I applaud the
10 applicant for taking on the, what I believe to be a
11 daunting task of going in front of Historic
12 Preservation and the BZA to get this approved. So I
13 think we certainly appreciate that the applicant is
14 following the rules, which we hope everyone does.

15 Okay. So why don't we hear from the Office
16 of Planning?

17 MR. MORDFIN: Good afternoon, I'm Stephen
18 Mordfin and the Office of Planning continues to
19 support this application and stands on the record.

20 MS. BUTANI-D'SOUZA: Thank you so much Mr.
21 Mordfin. I see that we have a letter of no objection
22 from the Department of Transportation. I see that
23 the ANC supports the application. Is there anyone
24 here from the ANC who wishes to testify regarding
25 this application? Okay, seeing none.

1 Are there any parties or persons who wish to
2 speak in support of the application? Also seeing
3 none.

4 Any parties or persons who wish to speak in
5 opposition to the application? Okay.

6 Any questions from the board for Office of
7 Planning? No. Okay. I don't think that there's a
8 need for you to rebut but if you feel --

9 MR. WHITE: No, I just submitted that extra
10 information because he had suggested it might be
11 necessary, stating that we were going to reuse the
12 existing pier. Pier footings.

13 MS. BUTANI-D'SOUZA: Wonderful. Okay. I
14 think this is in the plans as well.

15 MR. WHITE: No, actually he had brought it up
16 when he was in the process of doing the review that
17 the -- I think it was DDOT had requested if we were
18 doing new footings versus old and if they were going
19 to affect the tree or not, and I noticed that in the
20 plans the footings looked out of balance of what they
21 should be. They were considerably larger than they
22 actually will be. It was just a representation and
23 so I contacted the architect that had put it
24 together. And he was like, no, I intend to use the
25 existing piers and he put that plan together.

1 And if there is an issue when we go down
2 there, of the piers seem like they're not going to be
3 supportive, you know, we've been building decks for
4 20 years, we would have an idea. We're going to, you
5 know, make the adjustments necessary and we're going
6 to have the tree advisor on site when we go to look
7 at the footings.

8 MS. BUTANI-D'SOUZA: Okay. Right. Certainly
9 it would be nonsensical to reduce the size of your
10 deck for the tree and then --

11 MR. WHITE: Yeah.

12 MS. BUTANI-D'SOUZA: -- cut all the roots of
13 the tree up --

14 MR. WHITE: Exactly.

15 MS. BUTANI-D'SOUZA: -- to build the
16 foundations. Okay. Terrific. Thank you. This is
17 helpful. This is actually very helpful.

18 Okay. So are there any other comments? So
19 then I think we should move to deliberation on this.

20 I would make a motion to approve the
21 captioned relief requested for a special exception --
22 yes, a special exception for not meeting the lot
23 occupancy requirements, rear yard requirements, and
24 minimum required open court requirements to construct
25 the rear deck as proposed in the application. Is

1 there a second?

2 MR. HILL: Second.

3 [Vote taken.]

4 MS. BUTANI-D'SOUZA: Okay. Then,
5 congratulations.

6 MR. WHITE: Quick question. I noticed them
7 say earlier about the summary notice at the end of
8 everything.

9 MS. BUTANI-D'SOUZA: Yes.

10 MR. WHITE: What is that? With that?

11 MS. BUTANI-D'SOUZA: A summary order -- Mr.
12 Moy, would you like to explain?

13 MR. MOY: Yes, yes, absolutely. The staff
14 would write a -- it's actually a report but we call
15 it an order, and this case it's a summary order
16 because it's shorter than a full order.

17 MR. WHITE: Uh-huh.

18 MR. MOY: And so when we complete that then
19 we'll send you a copy.

20 MR. WHITE: And then how long before it turns
21 around to getting to allowing me to continue with the
22 permit?

23 MS. BUTANI-D'SOUZA: The summary order is
24 much faster than a full order.

25 MR. WHITE: Okay.

1 MR. MOY: Yes. Yeah, it's either by the end
2 of this week or next week.

3 MR. WHITE: Okay. Great.

4 MR. MOY: All right?

5 MR. WHITE: Thank you.

6 MS. BUTANI-D'SOUZA: Okay.

7 MR. MOY: Staff would record the vote as four
8 to zero to one. This is on the motion of Chair
9 Butani to grant the relief requested. Seconding the
10 motion, Mr. Hill. Also in support, Mr. Rob Miller,
11 Mr. Hinkle. Board member not present. Motion
12 carries, and I believe you said summary order.

13 MS. BUTANI-D'SOUZA: Summary order, yes.

14 MR. MOY: Thank you.

15 MS. BUTANI-D'SOUZA: Okay. So I am --

16 MR. MOY: Where are we?

17 MS. BUTANI-D'SOUZA: We are, I believe we're
18 in the last case of the day.

19 MR. MOY: Oh, perfect. I just wanted to
20 double-check.

21 MS. BUTANI-D'SOUZA: And I'm going to go
22 ahead and recuse myself from this case, so I turn it
23 over to the former Vice Chair.

24 MR. MOY: Oh, okay. That's right.

25 Application No. 19281. This is of DGS of

1 D.C. captioned and advertised for variance relief
2 from the parking requirements under Section 2100 and
3 special exception from the rooftop mounted mechanical
4 equipment requirements under 411.6, 411.7, and 411.18
5 to permit the installation of new rooftop mounted
6 mechanical equipment to an existing public school in
7 the R-5-B District at 11 55th Street Southeast,
8 Square 85, 853N, Lot 809. And Mr. Hill, I would ask
9 that the applicant clarify the relief that you're
10 seeking today.

11 MR. HILL: Yes. Thank you, Mr. Moy. If you
12 could just first introduce yourself and then if you
13 could clarify the relief again?

14 MR. PICKEN: Kevin Picken, DGS
15 representative.

16 MR. HOGAN: Devon Hogan, with Quinn Evans
17 Architects.

18 MR. LUKER: Jeffrey Luker with Quinn Evans
19 Architects.

20 MR. PICKEN: So we have a plan that pretty
21 much summarizes the five areas of relief, or there's
22 six. One is the continuous structure. There are
23 three separate structures covering each of the
24 mechanical units. On one of the end, we're coming
25 into the structure from a existing roof access from

1 existing stair tower, and one-to-one setback is not
2 met there. That's the second relief.

3 Third is another one-to-one ratio on interior
4 courtyard. It's set back --

5 MR. LUKER: Kevin, can you wait a sec? Can
6 you let Devon get the image up on the screen?

7 MR. PICKEN: Sure.

8 [Discussion off the record.]

9 MR. HILL: Someone is coming to help right
10 now. Thank you.

11 [Pause.]

12 MR. PICKEN: So I was just going through the
13 points that are listed on there.

14 MR. HILL: Yeah, please do.

15 MR. PICKEN: The third is an interior
16 courtyard. Well, it's not really interior court, but
17 it's inside of the site off the main roads. It's a
18 one-to-one setback relief there as well.

19 The fourth one --

20 MR. HOGAN: Right. So we actually do not
21 require relief. This is at the -- sorry, the lower
22 roof here. We had previously, to satisfy our
23 previous comment, we moved the make-up area unit to
24 this location per DCMR Chapter 11-411.23. No screen
25 is required as it's set back about 10 feet or more

1 from each roof edge. And it does not extend above
2 four feet above the parapet wall there.

3 The other areas are for the loading platform
4 here, located on the plan. And we are requesting
5 relief for the 100 square foot loading platform, due
6 in part to the fact that one, it would be infeasible
7 for our condition, and it's in conditions, and the
8 loading area that's provided is at grade.

9 And finally, we are requesting relief for the
10 number of parking spaces that are on site.

11 MR. HILL: Okay.

12 MR. HOGAN: And we sent an outline of each of
13 these points to -- as a companion to this drawing.

14 MR. HILL: Is it in the record?

15 MR. HOGAN: It should be, yes.

16 MR. LUKER: It's in the planning report from
17 Maxine. We shared the narrative description with her
18 and the reliefs that are asked for are consistent
19 with the Office of Planning.

20 MR. HILL: Okay. Great. And when you
21 presented to the ANC did you present all these --
22 these are the same requested reliefs that you
23 presented in front of the ANC?

24 MR. PICKEN: That's right.

25 MR. HILL: Okay. All right. Well, I'm not

1 going to need a full presentation myself. I don't
2 know how the rest of the board -- it seems to me they
3 don't have any other question. So at this point if
4 you guys don't have anything else I'd just, I'd like
5 to hear from the Office of Planning.

6 MS. BROWN-ROBERTS: Good afternoon, Mr.
7 Chairman and the remainder of the Board.

8 As outlined in our report we identified the
9 areas of relief that we sort of surmised that they
10 needed. The only one that I wanted to make note of
11 is the one for the parking because they're not
12 providing any parking on site. The parking is off-
13 site and so they outlined that the new area that they
14 need the relief from was -- is 2108. -- yeah, 2108 is
15 the section that they should apply for the relief on,
16 because they're providing the parking off-site.

17 MR. HILL: Okay. And so does the applicant
18 agree with that?

19 MR. HOGAN: Yes.

20 MR. HILL: So then the Office of Planning
21 would be in agreement with that relief?

22 MS. BROWN-ROBERTS: Yes. Yes.

23 MR. HILL: So 2108?

24 MS. BROWN-ROBERTS: 2108, yes. And then
25 regarding the loading, I had also put in there that

1 because the loading requirement is for the berth, the
2 platform and a service delivery space. And they're
3 only providing the loading bay. So they need relief
4 from -- for not providing the platform and the
5 service space.

6 MR. HILL: Does the applicant agree with
7 that?

8 MR. HOGAN: Yes.

9 MR. HILL: So you'll revise the application
10 for those?

11 MR. HOGAN: Sure.

12 MR. HILL: Okay.

13 MS. BROWN-ROBERTS: And that's it.

14 MR. HILL: All right.

15 MS. BROWN-ROBERTS: Yes.

16 MR. HILL: Does anyone have any questions for
17 Office of Planning?

18 Okay. DDOT wanted a parking occupancy study.
19 Did you guys give that to them, and --

20 MR. HOGAN: So we did speak with the reviewer
21 that provided that comment. There were two
22 challenges that we saw. One is that rather our
23 understanding for the need for the parking occupancy
24 study, what they're looking for, is they wanted to
25 see which spaces can't be accommodated on site, or

1 wouldn't be accommodated, that we're asking for
2 relief for, where that would be accommodated
3 elsewhere.

4 Our understanding is that due to the -- I
5 guess proximity of the Metro rail, Metro bus lines,
6 and the bicycle parking that will be provided on
7 site, that the remaining parking that was based off
8 of staff, that remaining staff would be using the
9 public transportation the bicycle parking on site as
10 opposed to an automobile mode of transportation.

11 And that's something that the school actually
12 encourages as well, is an alternative mode of
13 transportation.

14 We did talk about what we would need to do to
15 provide that parking occupancy study, as also
16 understanding from speaking with the reviewer that
17 the -- to provide effective documentation it would be
18 ideal if we provided this, a study during the months
19 when the school is in session. So around September,
20 about mid-week.

21 We received a comment in June and
22 unfortunately, so we -- if we were to provide the
23 study now we'd have to provide it with the caveat
24 that it is not when school is in session at peak
25 times. So, we were prepared in working with the

1 reviewer to provide something to satisfy that
2 comment. But we're also kind of under the
3 understanding that this comment, if the teachers --
4 if the intent is to study how much of the parking is
5 not being accommodated on site elsewhere, if the mode
6 of transportation isn't via automobile, if it's
7 something that we -- if that would be taken into
8 consideration. If that makes sense.

9 MR. HILL: So you haven't provided a parking
10 occupancy study to DDOT. You're saying that you
11 can't do it because you have to wait until School is
12 in session?

13 MR. HOGAN: Well, we could do it but if we
14 did it, it would be with the understanding that it's
15 not, like I said, in an ultimate time to provide the
16 study because it's, as of right now, the school is
17 not open because it's June, the students are out.
18 And so the data that we gather wouldn't be as -- from
19 speaking with the DDOT reviewer it wouldn't be at the
20 peak times. So it wouldn't be as if school was
21 actually in session. So if we provided it we would
22 have to provide it with that note.

23 However, if we did it during September it
24 would compromise our project schedule.

25 MR. HILL: Okay. So I mean, you know that

1 there still -- they can't approve it right now?

2 MR. HOGAN: Yes, sir.

3 MR. HILL: Okay.

4 MR. HOGAN: But we are willing to provide
5 that, but it would have to be with that, I guess that
6 note. And that's what I had spoken with the reviewer
7 about is that we could provide occupancy study,
8 however please note that this is during -- this is
9 being done during a time when school was not in
10 session and that would be the -- that would kind of
11 be the caveat there.

12 MR. LUKER: Could I ask a question? What is
13 your need for the Department of Transportation ruling
14 relative to this request, the request for these
15 variances?

16 MR. HILL: Well, I mean we -- you know, we
17 base our decision on a variety of factors. One of
18 which is what DDOT has to say and currently they're
19 saying that they can't approve, and they were looking
20 for, you know, parking occupancy study in order to
21 determine whether or not they could approve it, I
22 assume.

23 And I don't think DDOT is here. I don't see
24 DDOT here, so I can't ask them directly. And so
25 that's in answer to that question.

1 Now, I mean, we still might end up
2 deliberating on this but I'm just letting you know
3 that they were looking for a parking occupancy study.
4 You didn't give them one and the reason, and which I
5 think could be a valid one is that what they would be
6 looking for is for school to be in session, and
7 school isn't in session.

8 MR. LUKER: Correct. So that's our
9 challenge. We have been working steadily with the
10 Department of Transportation on a range of issues and
11 we recently changed the design for them and took away
12 an existing curb cut at their request to make this
13 work.

14 The parking on this for us has been confusing
15 because you know, we are showing 21 parking spaces on
16 the adjacent DPR property, which is kind of co-
17 managed by the Department of General Services. So we
18 have a memorandum of understanding. And so the
19 request was for, you know, our analysis indicates
20 that 33 parking spaces would be what would be
21 typically provided if you were building a new school
22 in the District. And we are providing 21 of those
23 spaces, and we are within three blocks of Metro, and
24 across the street from a major bus line.

25 So we think we can work through the whole

1 parking occupancy concern with DDOT without much
2 difficulty. And so that's a process -- well, the
3 reason I asked is if it was dependent whether your
4 rulings needed to come first, or whether theirs
5 needed to come first, or whether we, you know,
6 whether we're kind of stuck in a catch-22 here.

7 MR. HILL: That's okay. So you have been
8 working with DDOT. You took away a curb cut. Is
9 that what you were saying?

10 MR. LUKER: Yes. Yes.

11 MR. HILL: Okay. And you had just mentioned
12 that this is going to push back your schedule?

13 MR. LUKER: Yes. So we are trying to get a
14 full occupancy permit for the school, which is
15 growing as we speak.

16 MR. HILL: Uh-huh.

17 MR. LUKER: For this fall. So all the
18 construction will be done this fall. The challenge
19 we have is that -- so the permit, most of the schools
20 operate in the District without permits and we're
21 trying to get that resolved in this school
22 development program as we go forward here. This one
23 has gotten confusing because it was a school building
24 converted to administrative offices. And then now
25 turned back to a school. And so the whole site

1 development is all built around building playground
2 as opposed to parking in that area. So that's why
3 we're trying to --

4 MR. HILL: Okay. Okay.

5 MR. LUKER: -- work through this complexity
6 here.

7 MR. HILL: Okay. Do you guys have any
8 questions?

9 MR. HINKLE: Yeah, if I could add, I'm just
10 reading the -- excuse me, the ANC report. And they
11 took a look at the parking variance themselves and
12 strongly support the variance based on, you know,
13 what they think could be the needs and impacts in the
14 neighborhood.

15 So even though it's not a technical report
16 that DDOT is asking for, certainly, the ANC knows the
17 vibes of the neighborhood and strongly supports, as I
18 said, this variance.

19 MR. HILL: Okay. Yeah. Commissioner Miller,
20 do you have anything?

21 MR. MILLER: No, thank you --

22 MR. HILL: Whatever it is.

23 MR. MILLER: -- Mr. Former Vice Chairman.
24 Mr. Acting Chairman. I was going to make the same
25 point that Board member Hinkle made.

1 MR. HILL: Okay.

2 MR. MILLER: And say, I know we're not
3 deliberating it, but I don't see the need for a
4 parking occupancy study. It might be helpful to have
5 in the record this MOU that you have with the PR that
6 provides the 21 spaces, but I wouldn't want to hold
7 up the approval over that, but if that could be
8 submitted for the record I think it might be helpful.

9 MR. HILL: Okay. Could you guys do that?

10 MR. HOGAN: Yeah.

11 MR. HILL: Okay. Great. I don't think we
12 have any other questions. Do you have anything to
13 add or ask of OP, or do you have anything you would
14 like to say?

15 MR. PICKEN: Just wanted to thank Maxine for
16 working with us last week to bring is to conclusion.

17 MR. HILL: Okay. Great. Thank you. All
18 right. Is there anyone here from the ANC that would
19 like to speak?

20 Is there anyone here that would like to speak
21 in support of this application? Anyone in support?

22 Would anyone like to speak in opposition to
23 the application? Anyone in opposition?

24 No? Okay. Well, then in that case I'll
25 close the hearing. Or the record, I should say. And

1 we'll go to deliberations.

2 I'm comfortable with the Office of Planning
3 and their analysis and you know, how the standard has
4 been met and I would be in support of this
5 application and so I would make a motion to approve
6 the Application 19281 as amended from the -- as
7 amended with the items, recommendations with the
8 Office of Planning.

9 MR. MILLER: Second.

10 MR. HILL: Motion has been made and seconded.
11 [Vote taken.]

12 MR. HILL: Okay. The motion passes. And,
13 Mr. Moy, if we can do a summary?

14 MR. MOY: Yes, sir. Staff would record the
15 vote as three to zero to two. This is on the motion
16 of Mr. Hill to approve the application with the
17 amended relief. Of course, that also include the two
18 that the applicant agreed to. Seconded the motion,
19 Mr. Miller. Also in support, Mr. Hinkle. We have
20 two board members not participating. Motion carries,
21 and this will be a summary order.

22 MR. HOGAN: Great. Thank you.

23 MR. HILL: Thank you.

24 MR. HOGAN: Thank you.

25 MS. BUTANI-D'SOUZA: Thank you very much.

1 Thank you, Mr. Moy.

2 Is there anything else before the Board
3 today?

4 MR. MOY: Not from the staff.

5 MS. BUTANI-D'SOUZA: So with that we close
6 the hearing. Thank you very much.

7 [Whereupon, at 2:53 p.m., the Board Hearing
8 was adjourned.]

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