

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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13 10:00 a.m. to 3:06 a.m.

14

Tuesday, July 12, 2016

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18 441 4th Street, N.W.

19

Jerrily R. Kress Memorial Room

20

Second Floor Hearing Room, Suite 220 South

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Washington, D.C. 20001

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

2 CHAIRPERSON HEATH: This hearing will please
3 come to order. Good morning, ladies and gentlemen.
4 We're located in the Jerrily R. Kress Memorial
5 Hearing Room at 441 4th Street Northwest. This is
6 the July 12th, 2016 public hearing of the Board of
7 Zoning Adjustment of the District of Columbia
8 convening to act on a chancery applicant pursuant to
9 the Foreign Missions Act and Chapter 10 of the Zoning
10 Regulations.

11 My name is Marnique Heath, chairperson.
12 Joining me today is Vice Chairperson, Anita D'Souza.
13 The Federal representatives are Marcel Acosta,
14 representing the National Capitol Planning
15 Commission, and Peter May representing the U.S.
16 National Park Service.

17 Copies of today's hearing agenda are
18 available to you and are located to my left in the
19 wall bin near the entrance door.

20 Please be advised that this proceeding is
21 being recorded by a court reporter and is also being
22 webcast live. Accordingly we must ask you to refrain
23 from any disruptive noises or actions while in the
24 hearing room.

25 When presenting information to the Board

1 please turn on and speak into the microphone, first
2 stating your name and home address. When you're
3 finished speaking turn off your microphone so that no
4 -- so that your microphone is no longer picking up
5 sound or background noise. All persons wishing to
6 testify either in support or opposition are to fill
7 out two witness cards. These cards are located to my
8 left on the table near the entrance door and on the
9 witness tables.

10 Upon coming forward to speak to the Board
11 please give both cards to the court reporter seated
12 to my right. The order of procedure for a Foreign
13 Mission case is as follows. First we'll hear
14 statement and witnesses from the applicant. We'll
15 then hear government reports including the United
16 States Secretary of State and the District of
17 Columbia Office of Planning on behalf of the mayor.
18 We'll then hear reports or recommendations by other
19 public agencies, followed by a report of the Advisory
20 Neighborhood Commission, or ANC, and then we'll hear
21 from persons in support or opposition.

22 Please note that requests for party status
23 and a chancery application are not applicable because
24 this is a rulemaking proceeding. Because this is a
25 rulemaking proceeding there are no parties and

1 therefore there is no cross-examination.

2 With that, Mr. Moy, do you have any
3 preliminary matters coming before the Board today
4 before we get into our Foreign Mission case?

5 MR. MOY: I can withhold that until after the
6 Foreign Missions case has been deliberated on, Madam
7 Chair.

8 CHAIRPERSON HEATH: Okay. And so then at
9 this point we can administer the oath. So any
10 persons wishing to testify, whether in a Foreign
11 Missions case or any other hearing cases today,
12 please stand at this time and Mr. Moy will administer
13 the oath.

14 MR. MOY: Good morning.

15 [Oath administered to the participants.]

16 CHAIRPERSON HEATH: All right. Thank you.
17 Mr. Moy, if you'll call our Foreign Mission case?

18 MR. MOY: Yes. Thank you, Madam Chair. Good
19 morning, Members of the Board, Foreign Missions.

20 Application No. 19301 of the Republic of the
21 Gambia. This is pursuant to -- this is citing relief
22 from Section 2006 of the Foreign Missions Act to
23 allow the location of a chancery in the SSH-1/R-1-B
24 District, 5630 16th Street Northwest, Square 2721W,
25 Lot 27.

1 With that Madam Chair, the only other thing I
2 have is that there is a preliminary matter regarding
3 an e-mail that was filed into the record late last
4 night regarding a resident on Madison Street, I
5 believe, who is asking for a postponement of the case
6 to a future date. But I believe you already have
7 that in your case folder.

8 CHAIRPERSON HEATH: All right. Okay. Would
9 the applicant and those who are participating in this
10 hearing please come forward? And I'll have you each
11 introduce yourselves.

12 MS. GIORDANO: I'll start. My name is
13 Cynthia Giordano with Saul Ewing Law Firm
14 representing the applicant.

15 MR. FAYE: My name is Sheikh Omar Faye, I am
16 Ambassador of the Republic of the Gambia to the
17 United States of America.

18 MR. WILSON: I'm David --

19 CHAIRPERSON HEATH: Your mic is not on. Make
20 sure you have a glowing green light.

21 MR. WILSON: Is it on?

22 CHAIRPERSON HEATH: It says, "push."

23 MR. WILSON: I think so. Oh, yeah.

24 CHAIRPERSON HEATH: Sounds like it's on.
25 Okay.

1 MR. WILSON: Thank you very much. David
2 Wilson, ANC 4A-07.

3 CHAIRPERSON HEATH: Okay.

4 MR. TOBE: Gerome Tobe, 1434 Madison Street,
5 Board Member for the 16th Street Heights Civic
6 Association.

7 MR. SEAGROVES: Cliff Seagroves, U.S.
8 Department of State's Office of Foreign Missions.

9 CHAIRPERSON HEATH: Okay. So, as I read in
10 the prehearing statement, the -- we'll start with the
11 applicant with your testimony and any witnesses you
12 might want to call.

13 MS. GIORDANO: Did you want to address the
14 preliminary matter first or --

15 CHAIRPERSON HEATH: So, have you seen this
16 issue?

17 MS. GIORDANO: I heard about it. The
18 Ambassador is here. We've submitted pictures of the
19 signs that were posted and the Ambassador was at the
20 property as late as last night, and clearly they say
21 July 12th, so I'm not --

22 CHAIRPERSON HEATH: How many signs are
23 posted?

24 MS. GIORDANO: Four?

25 MR. FAYE: Four.

1 CHAIRPERSON HEATH: And you confirmed that
2 all four say July 12th?

3 MR. FAYE: Yes, ma'am.

4 CHAIRPERSON HEATH: Okay. I'm not sure where
5 the person who submitted this request to postpone
6 included a photograph that showed July 16th as the
7 date, at least on one sign. However, we do see other
8 signs clearly noted as July 12th, and this person was
9 also within the 200-foot radius and would have
10 received a notice about this hearing, and that notice
11 clearly says July 12th. That notice was mailed on
12 May 20th. So they had plenty of time to be able to
13 either provide a statement or to be here.

14 So, I don't think that there's -- I don't
15 feel that there's good reason to postpone this
16 hearing. They also didn't include any reason that
17 they'd want to postpone, if there's something that
18 they are not in support of regarding this application
19 or some issue that they have. There was no mention
20 of that in their e-mail, just that they thought that
21 this was going to be on the 16th and they weren't
22 able to make it today. So I see no reason not to go
23 forward with this hearing.

24 MS. GIORDANO: Thank you very much.

25 Okay. If I can begin, I think this case is

1 very straight forward. I don't know how much you
2 want me to elaborate, but it's an existing building.
3 There's no addition being proposed, a fence is being
4 installed. That's the only exterior alteration to
5 the property. This is a very small Foreign Mission.
6 There will be no more than six people on site at one
7 time. The Embassy owns four automobiles which can be
8 parked easily on the site, and there will be no more
9 cars on site than that at any one time. There's two
10 that can go in the garage, two behind, and I think
11 that also addresses DDOT's concern about the
12 possibility of some cars hanging out into the
13 building restriction line.

14 The Ambassador anticipates no more than three
15 visitors to the site a week, maximum. Consular
16 activities as is the case with most chanceries are
17 primarily by mail, so there's no reason for any more
18 visits, really, to the chancery than that. And the
19 Ambassador anticipates no more than two larger
20 receptions, potentially, a year. This is a very
21 important step for the Gambia. Right now they're in
22 leased space in Glover Park and it's been, you know,
23 an objective for some time to have a signature
24 property of their own.

25 So with that, Mr. Ambassador, do you want to

1 just follow up on that and just --

2 MR. FAYE: No, Madam Chair. Thank you for
3 having me. We will appreciate it if we have that
4 property. It will be history to be represented in
5 this great country and in Washington, D.C. We've
6 never owned a property and we promise to be a good
7 neighbor. I've already making lots of friends in the
8 neighborhood while I was there watering the plants
9 and doing stuff. So we will appreciate. The Gambia
10 will indeed very, very appreciative. Thank you.

11 CHAIRPERSON HEATH: Thank you.

12 MS. GIORDANO: With that, we've agreed to the
13 conditions that the ANC has put forth, including a
14 letter recently from the Ambassador to the Civic
15 Association agreeing to arbitrate over any problems
16 with respect to the property condition. And this
17 arises more just out of concern for some other
18 properties in the area that weren't maintained, I
19 guess, after some casualty events.

20 CHAIRPERSON HEATH: Okay.

21 MS. GIORDANO: So that concludes our remarks
22 unless the Board has any questions for me or the
23 Ambassador.

24 CHAIRPERSON HEATH: Do you have a question?

25 MR. MAY: Yeah. You addressed two of the

1 areas where I saw discrepancies in the record, at
2 least in what I had read and recalled. One was the
3 number of employees. You say six, now. That was the
4 ANC condition. But the statement that you had
5 submitted had said seven. But it is six.

6 And then that's confirmed, right? And then
7 the other was the no more than two large events per
8 year, right?

9 The third one was -- hold on a second. Oh,
10 the operating hours.

11 MS. GIORDANO: Yes. Initially I had said, I
12 think, 6:30. The community basically asked that we
13 pull that back to 4:30, and the Ambassador was
14 agreeable to that.

15 MR. MAY: Okay. I think that they requested
16 4:00.

17 MS. GIORDANO: Four? Sorry. Okay.

18 MR. MAY: And that's agreeable?

19 MR. FAYE: That's agreeable, sir. No
20 problems.

21 MR. MAY: Okay. Okay.

22 MS. GIORDANO: Just to clarify, the community
23 basically indicated that that is applicable to, you
24 know, public operating hours. But if the Ambassador
25 is working late in his office, that's not a concern.

1 MR. MAY: Okay. That's fine. I saw it two
2 different ways in the record and I wanted to make
3 sure that we're clear on the conditions.

4 CHAIRPERSON HEATH: Okay. I'm going to come
5 back to a few other points in the conditions when we
6 hear from the ANC, just to get some clarity on some
7 of the issues that we see related to enforceability.
8 And so we can -- we'll circle back on a few other
9 points there.

10 So at this time we'd like to hear from the
11 Department of State, and then we'll turn to Office of
12 Planning.

13 MR. SEAGROVES: Thank you. Again, Cliff
14 Seagroves, Department of State, Office of Foreign
15 Missions.

16 Before I give our report I do want to ask one
17 question or make a comment about the issue about the
18 operating hours. I've never heard that come up in a
19 hearing like this before and I just want to put a
20 marker down that, you know, I'm not sure if that
21 meant operating hours to the public, say Visa
22 applicants, or is that what was being referred to
23 there?

24 MS. GIORDANO: That is what our understanding
25 was. I think some members of the community looked at

1 the websites of other chanceries and saw 4:00 or 4:30
2 as being operating hours, and so they questioned why,
3 you know, we had said something later. And they said
4 that they were concerned about, really just posting
5 it as notice to the public so there wasn't sort of an
6 invitation for people to come later. But again if,
7 you know, the Ambassador is working late, it's not
8 that they have to vacate the property, except for the
9 resident that's going to be there.

10 MR. SEAGROVES: Okay. I think that's an
11 important clarification, at least for the State
12 Department because we would say, you know, diplomacy
13 would be a 24-hour business. But being open to the
14 public for visa applicants or citizen services, I
15 think that that's something more in line with what
16 operating hours would mean. But you know, we
17 wouldn't want there to be an issue down the line
18 where you're still there working at 7:00 because
19 issues require that and someone says, well, your
20 zoning order says you would close at 4:00. So, as
21 long as that's clear, that would be important for us
22 to know as well.

23 Okay. Sorry for that, but I'll move on to my
24 report.

25 CHAIRPERSON HEATH: Sure.

1 MR. SEAGROVES: The Department of State
2 hereby provides its comments concerning the --

3 MR. WILSON: Just thought it might be
4 helpful, speaking for the neighborhood that that was
5 our intent that the 4:00 hour had to do with
6 essentially counselor affairs, not doing business on
7 the vast array of things that Embassies deal with.

8 CHAIRPERSON HEATH: Okay. So you're fine
9 with adding language that it's just the public hours?

10 MR. WILSON: Yes.

11 CHAIRPERSON HEATH: Okay.

12 MR. SEAGROVES: Thank you. Okay. The
13 Department of State hereby provides its comments
14 concerning the application submitted to the Board of
15 Zoning Adjustment by the Embassy of the Republic of
16 the Gambia regarding its desire to use the property
17 located at 5630 16th Street Northwest as its
18 chancery.

19 On behalf of the Secretary of State and
20 pursuant to the Foreign Missions Act, particularly
21 Sections 4303 and 4306, I hereby convey to the BZA
22 the following comments and determinations concerning
23 the subject application.

24 First, with respect to the criterion set
25 forth in 4306D-1, we have determined that favorable

1 BZA action on the present application will fulfill
2 the international obligations of the United States to
3 facilitate the revision of adequate and secure
4 premises for the government of the Republic of the
5 Gambia in the District of Columbia.

6 Second, pursuant to 46D-3, after consultation
7 with federal agencies authorized to perform
8 protective services, we have determined that there
9 exist no special security requirements related to
10 parking in this case. I have also determined after
11 similar consultation and pursuant to 4306D-4, that
12 the subject site and area are capable of being
13 adequately protected.

14 And finally, pursuant to 4306D-6 there is a
15 federal interest in this project. The government of
16 the Republic of the Gambia has been helpful in
17 addressing the United States land use needs in
18 Banjul, the Gambia. Such cooperation was essential
19 for the successful -- for successfully achieving the
20 federal government's mission of providing safe,
21 secure, and functional facilities for the conduct of
22 U.S. diplomacy and promotion of U.S. interests
23 worldwide. Thank you.

24 CHAIRPERSON HEATH: All right. Thank you.
25 Any questions from the Board? All right. Then now

1 we'll hear from Office of Planning.

2 MS. THOMAS: Good morning, Madam Chair,
3 Members of the Board. The Office of Planning is
4 recommending that the Board not disapprove this
5 application. We believe it satisfies the municipal
6 interests, particularly with respect to parking and
7 noise and any light issues that may arise, and we
8 will stand on the record and support the conditions
9 provided by the ANC. Thank you.

10 CHAIRPERSON HEATH: Thank you. I also just
11 want to make one point for Office of Planning that
12 you did a really great job of explaining why this
13 location was appropriate for the chancery, so --

14 MS. THOMAS: Thank you.

15 CHAIRPERSON HEATH: -- we appreciate that.
16 Okay.

17 So now we'll hear from the ANC. If you want
18 to make a statement you can start there and then
19 we'll ask any questions we have.

20 MR. WILSON: Thank you very much. To start
21 with, I'm accompanied by a colleague at the Civic
22 Association, Gerome Tobe, T-O-B-E. And I think he
23 has a few things he wants to say.

24 MR. TOBE: Well, ladies and gentlemen, first
25 let me thank you for allowing us this opportunity to

1 come before you and just share our thoughts. We look
2 -- the members of the 16th Street Heights Civic
3 Association where, you know, I'm a former president
4 and I'm currently a board member, and we have had
5 several discussions, several meetings with the staff,
6 the Gambian Staff, and we've come to, you know,
7 appreciate their mission.

8 They understand what we're looking for in the
9 way of neighborhoods, and we feel pretty confident
10 that they intend to be good neighbors in our
11 neighborhood. So we welcome them. And we are
12 looking forward to a long, mutually beneficial
13 relationship. And I think that pretty much sums it
14 up.

15 CHAIRPERSON HEATH: Okay. Thank you.

16 MR. WILSON: Just wanted to make a few
17 remarks. The overlay, whose regulations govern
18 property usage in the neighborhood, it emphasizes
19 that nonresidential uses will be favored over
20 nonresidential ones. Frankly, too many
21 nonresidential uses could cause a neighborhood to
22 lose its residential character.

23 At one time the neighborhood had more
24 nonresidential uses than any other neighborhood in
25 D.C. And that was what led to the regulations as

1 reflected in the overlay. So that's our concern. We
2 have no doubt at all that the Gambians will be good
3 neighbors. We've met many times with the Ambassador,
4 with members of his staff, and we're sure that
5 they're the right kind of folks to handle themselves
6 well in the neighborhood.

7 So, in sum, we welcome the chancery to the
8 neighborhood and we're confident that the
9 neighborhood and the Ambassador will be able,
10 together, to preserve the residential character of
11 the neighborhood.

12 CHAIRPERSON HEATH: Okay.

13 MR. WILSON: Thank you very much.

14 CHAIRPERSON HEATH: All right. Thank you.
15 So, I'd like to talk about a few of the conditions,
16 starting with number 6, where that conditions states
17 that the chancery shall retain and maintain the
18 residential nature of the premises with minor
19 interior alterations. This is something that isn't
20 enforceable as a condition to a BZA order.

21 So I wanted to just understand from you what
22 the intent is here, and see if the applicant is
23 agreeing to that; that intent.

24 MR. WILSON: Specifically we just -- it
25 was -- we just were looking for a statement that this

1 very nice house wasn't going to be greatly changed,
2 and the Ambassador, through his counsel, made it
3 clear that they had no intent to make any great
4 changes in the character of the property, any changes
5 that they proposed would be minor ones. Is that a
6 fair statement?

7 MS. GIORDANO: Yes. If I might? I think
8 part of the intent was that if this property no
9 longer was of use to the Gambia that it could
10 potentially revert back to residential. I think
11 that's really what the community was looking for
12 and --

13 CHAIRPERSON HEATH: Okay.

14 MS. GIORDANO: -- the property has grand, you
15 know, open, large rooms. So there really is no need
16 for the Gambians to make any serious changes inside.
17 They're not going to go gut the property in other
18 words.

19 CHAIRPERSON HEATH: Okay. All right.

20 MR. SEAGROVES: Can I add one --

21 CHAIRPERSON HEATH: Sure.

22 MR. SEAGROVES: -- point from the Department
23 of State? It may help to know that the Foreign
24 Missions Act would require that if they undertake a
25 significant change or renovation or new construction

1 to the building that that action would have to come
2 back to this Board for review and approval. So, you
3 know, that is built into the process already.

4 CHAIRPERSON HEATH: Okay.

5 MR. WILSON: Good.

6 CHAIRPERSON HEATH: All right. If you could
7 also address condition number 7 regarding the
8 exterior of the building and what your intent is
9 there. It says that you -- they want to restrict you
10 from making any addition to the exterior, altering it
11 in any way, such as an antenna. That's very
12 specific. But it also says that you may have a small
13 plaque or a flag on a flagpole. What's your intent
14 with the exterior?

15 MS. GIORDANO: I think that's the intent,
16 then, you know, as is typical of most chanceries
17 there will be a plaque indicating that it is a
18 chancery for the Gambia. They'll want to fly their
19 flag in front of the building and they are installing
20 a security fence. And that's the extent of the
21 exterior renovations. And anything more than that,
22 as the State Department indicated, any substantial
23 changes to the exterior would have to come through
24 this Board in any event.

25 MR. SEAGROVES: Can I make one comment about

1 the antenna request? We do have a -- United States
2 has a treaty obligation to allow for communications
3 between here and a country's capital. And in some
4 cases that requires an antenna. Not all cases,
5 particularly as technology has evolved. So I would
6 say that this would be one that I would be concerned
7 that we -- if it ended up in the zoning order that
8 they were -- even if they agreed today that they
9 would not install an antenna, situations could evolve
10 where we have a different legal obligation to allow
11 that.

12 And when that happens there is the permitting
13 process. They have to follow normal D.C.
14 requirements and code for that, but I do want to flag
15 that there may be -- could potentially be an issue in
16 the future that would obligate us to, I guess ignore
17 is the right word, but move beyond a restriction on
18 this.

19 CHAIRPERSON HEATH: Okay. So then, Mr.
20 Wilson, would you be amenable to modifying that
21 language to say something like unless deemed
22 necessary by the Department of State, because we
23 don't want to impact the ability to secure the
24 Embassy. At this time it doesn't seem that any
25 exterior modifications are necessary, no antennas,

1 but are you amenable to leaving that open in the
2 future should that need arise?

3 MR. WILSON: We certainly don't want to get
4 involved in or impair the ability of the Ambassador
5 to talk to the president, for example, of -- so I
6 think we can live with that.

7 CHAIRPERSON HEATH: Okay. So we can modify
8 that condition.

9 MR. SEAGROVES: I would just clarify. I mean
10 you can look around town. There are not many
11 chanceries left that have antennas. Many of them are
12 from a different time. But you know, if you wanted
13 to have something that was along the lines of what
14 you said, the State Department would have no
15 objection to what you mentioned. It's just that we
16 want there to be a clear understanding that if we did
17 reach that point, that they would have to move
18 forward.

19 MR. WILSON: Okay.

20 CHAIRPERSON HEATH: Okay. All right. So
21 condition number 7 we'll modify to add on to the
22 first sentence, such as an antenna unless deemed
23 necessary by the State Department.

24 And then the last condition is about 16th
25 Street Heights Civic Association and the Ambassador

1 of the Republic of Gambia holding quarterly meetings
2 to discuss neighborhood issues. Can you just clarify
3 who these meetings are intended, who the other
4 participants are meant to be for these meetings and
5 how this will be noticed?

6 MR. WILSON: Really, it's no more than the
7 Civic Association.

8 CHAIRPERSON HEATH: Okay.

9 MR. WILSON: It may or may not be the entire
10 civic association. The Ambassador suggested they
11 might want to come to a meeting of the Association.
12 So it could be either something like that or maybe
13 just members of the board.

14 CHAIRPERSON HEATH: Okay. So it could be
15 that he just comes to the regularly scheduled Civic
16 Association meetings. Okay. All right.

17 Does the Board have any other questions?

18 MR. SEAGROVES: Can I raise one comment about
19 the last point?

20 CHAIRPERSON HEATH: Sure.

21 MR. SEAGROVES: You know, just thinking into
22 the future, would it be -- would you be open to
23 saying the Ambassador or his designee, because you
24 know, I think that we can't -- that would most likely
25 enhance participation and perpetuity.

1 MR. WILSON: Well, the way it's drafted is it
2 talks about chancery officials and employees
3 including the Ambassador.

4 MR. SEAGROVES: Okay. That works. Yes.

5 MR. WILSON: So it's okay.

6 MR. SEAGROVES: Thank you.

7 MS. BUTANI-D'SOUZA: Okay. So there are two
8 other conditions that appear to be perhaps
9 unenforceable by the Zoning Administrator. They're
10 conditions 10 and 11, that the chancery will receive
11 Secret Service protection and that the 16th Street
12 Heights Civic Association and the Republic of the
13 Gambia have agreed to negotiate a procedure for
14 resolving disputes.

15 Since these are outside the purview of the
16 Zoning Administrator to enforce, and since conditions
17 are typically crafted in such a way that they are
18 enforceable by the Zoning Administrator, we would
19 just recommend that those two points that were part
20 of your negotiation be referenced in the body of the
21 order but not be a condition. Hopefully that would
22 not cause any major concerns for the 16th Street
23 Heights Civic Association or the ANC.

24 MS. GIORDANO: Right. We did discuss that,
25 Mr. Wilson and I, and with regard to the arbitration

1 issue, and we have drafted a letter from the
2 Ambassador to the Civic Association to cover that
3 point, so --

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

5 MS. GIORDANO: -- I had indicated that it
6 wasn't really a police power kind of enforcement
7 issue. So I think he's okay with that.

8 MS. BUTANI-D'SOUZA: And this doesn't impact
9 your ability to have those agreements in place. It's
10 just that it's outside the purview of this Board.

11 MR. WILSON: Right. I understand.

12 CHAIRPERSON HEATH: Okay.

13 MR. SEAGROVES: With respect to Condition 10,
14 concerning the protection of the Secret Service,
15 that's not really something that the Embassy has any
16 control over. That is -- the Secret Service has
17 jurisdiction to provide protection or frontline
18 protection for any chancery property in the District.
19 It could, in the future, evolve that a different
20 agency has that responsibility, but that is directed
21 by federal regulations and I guess even statute at
22 some point. So just as a point of reference on that.

23 MR. WILSON: Thank you.

24 MS. BUTANI-D'SOUZA: So, it sounds like based
25 on this discussion we would be modifying condition 7

1 as discussed and we would be removing condition 6,
2 since the residential nature of the premises is
3 already covered by the federal regulations and the
4 process for modifying that as covered by the federal
5 regulations.

6 And it sounds like based on the comments from
7 the representative of the State Department that it
8 would make sense to also remove condition 10, even,
9 from reference in the order since this is again
10 something that's governed by federal regulations. So
11 outside the purview of the Board.

12 And then the negotiated agreement, I think it
13 would be acceptable to reference that in the order
14 but not include it as a condition.

15 CHAIRPERSON HEATH: Okay. All right. Any
16 other questions from the Board? All right.

17 Is there anyone here wishing to speak in
18 support of this application? Anyone in support?

19 Anyone wishing to speak in opposition? No
20 opposition? All right.

21 Then we'll turn back to you for any closing
22 you'd like to make.

23 MS. GIORDANO: Well, that concludes our case.
24 I would ask, if appropriate, that the Board
25 deliberate on this today if possible. The Gambia has

1 already purchased the property and they're very
2 anxious to be able to operate as soon as possible.

3 CHAIRPERSON HEATH: Okay. Thank you. So
4 that concludes the hearing. Is the Board ready to
5 deliberate now?

6 MS. BUTANI-D'SOUZA: Yes.

7 CHAIRPERSON HEATH: All right. Based on the
8 information in the record and the testimony heard
9 today, I think that the applicant has met the two
10 major areas of criteria for approval of this
11 application, first being that the chancery use is
12 appropriate for this location. And as I stated
13 earlier, Office of Planning in their report, gave
14 significant justification for this location for the
15 chancery.

16 We've also heard testimony and seen evidence
17 in the record as to this application meeting the six
18 factors for the Foreign Missions Act, which all fall
19 within 1001.2 to 1001.8 within the regulations. And
20 so with that I think we've also stated for the record
21 the modifications to the conditions, and clarified
22 that Condition No. 6 will no longer be a condition.
23 That's been removed. Number 7 has been modified as
24 previously stated. Ten has been removed and number
25 11 will be referenced in the order, but not a

1 condition.

2 And so with that I would move that we not
3 disapprove this application.

4 MR. WILSON: I just want to make sure I
5 understand one thing. The letter from the Ambassador
6 to the Civic Association, that is part of the record.

7 MS. GIORDANO: I can submit it. This is
8 regarding the arbitration clause.

9 CHAIRPERSON HEATH: Okay. All right.

10 MR. WILSON: Thank you.

11 CHAIRPERSON HEATH: So you're going to submit
12 that today. Okay. Thank you.

13 MS. BUTANI-D'SOUZA: Second.

14 CHAIRPERSON HEATH: So the motion has been
15 made and seconded. Any further discussion?

16 [Vote taken.]

17 MS. BUTANI-D'SOUZA: The motion carries.
18 Thank you.

19 MS. GIORDANO: Thank you.

20 MR. FAYE: Thank you.

21 MR. MOY: Staff would record the vote as four
22 to zero to one. This is on the motion of Chairperson
23 Heath to not disapprove the application with amended
24 conditions as cited by the Chair. Seconding the
25 motion, Vice Chairperson Butani. Also in support,

1 Mr. Peter May and Mr. Marcel Acosta. We have no
2 other board member participating with the Board.
3 Motion carries, Madam Chair.

4 CHAIRPERSON HEATH: All right. Summary for
5 this. Do a full order.

6 MR. MOY: We have a full order, Madam Chair.

7 CHAIRPERSON HEATH: Okay. All right.

8 All right. So we're going to proceed to our
9 decision cases and change zoning commissioners
10 briefly.

11 [Pause.]

12 CHAIRPERSON HEATH: Okay, Mr. Moy, can we
13 call our next case, please? I believe we're skipping
14 over the expedited review for the moment and going
15 into the decision cases. Right? And because I
16 didn't participate on those two decisions last week,
17 I'm not a part of those decisions.

18 MR. MOY: Okay. So we would be at -- okay.
19 First of the two, this is Application No. 19317 of
20 Travis Gordon and this is before the Board before its
21 decision. This was last heard by the Board on July
22 6th, 2016. The record was closed. Apart from
23 supplemental information that the Board requested,
24 that is filed in your -- well, let me end with that.

25 But anyways, as I understand it, the

1 requested relief is for a special exception under
2 223, not meeting the lot occupancy requirements under
3 403.2, open court requirements, 406.1, nonconforming
4 structure provisions under 2001.3, and a special
5 exception from the penthouse requirements under
6 411.5, and 411.9, I believe, to construct a new
7 stairway penthouse to an existing one-family
8 dwelling, R-4 District, 1320 10th Street Northwest,
9 Square 339, Lot 28.

10 And participating is Vice Chair Butani, Mr.
11 Hinkle, and Mr. Miller.

12 MS. BUTANI-D'SOUZA: Thank you, Mr. Moy.
13 Okay. So we're going to be deliberating on this
14 case. We had requested that the applicant submit
15 additional information, specifically we had requested
16 that we receive information from the ANC confirming
17 their support, that we receive revised plans showing
18 the setback that was requested by the Office of
19 Planning, and that we receive a self-certification
20 form.

21 I did see that there were the additional
22 submissions made into the record. Do any of the
23 Board Members have any comments on those submissions
24 or any question or anything to discuss. No? Okay.

25 So, I, in reviewing them I thought we did

1 receive support from the ANC, the plans were
2 sufficiently revised, and the statement regarding
3 compliance with 400.24 was included there, and then
4 the self-certification. So given that we've received
5 everything that we've requested I would make a motion
6 to approve the request for special exception.

7 MR. MILLER: Second.

8 MS. BUTANI-D'SOUZA: The motion has been made
9 and seconded.

10 [Vote taken.]

11 MR. MOY: Staff would --

12 MS. BUTANI-D'SOUZA: The motion carries.

13 MR. MOY: Staff would record the vote as
14 three to zero to two. This is on the motion of Vice
15 Chairperson Butani for the relief requested.
16 Seconding the motion is Mr. Robert Miller, and also
17 in support, Mr. Hinkle. Two members not
18 participating. Motion carries.

19 MS. BUTANI-D'SOUZA: Thank you, Mr. Moy.
20 Shall we call our next case, which would be the next
21 decision case?

22 MR. MOY: Did you say summary order or --

23 MS. BUTANI-D'SOUZA: Oh, summary order. Yes.

24 MR. MOY: Okay. Good. All right. The next
25 case for decision making is Application No. 19219 of

1 2001 2nd Street Northeast, LLC. This application was
2 amended for special exception relief from the
3 residential conversion requirements under 336.13 and
4 from the rooftop architectural element requirements
5 under 400.24. This would expand an existing two-
6 story, four-unit apartment house into a three-story
7 five-unit apartment house, R-4 District, 2001 2nd
8 Street Northeast, Square 3565, Lot 58.

9 MS. BUTANI-D'SOUZA: Mr. Moy, I was under the
10 impression that the residential conversion relief was
11 no longer required because they reduced the number of
12 units from six to five.

13 MR. MOY: That's correct. It's been amended.

14 MS. BUTANI-D'SOUZA: Okay. I see so --

15 MR. MOY: To remove that.

16 MS. BUTANI-D'SOUZA: So the relief requested,
17 or the relief that we're considering is purely for
18 the rooftop architectural elements.

19 MR. MOY: That's correct. Thank you, Madam
20 Chair.

21 MS. BUTANI-D'SOUZA: Okay. I understand that
22 we have a representative from the ANC here today.
23 Why don't you come forward, ma'am and --

24 MS. LEWIS: Hello.

25 MS. BUTANI-D'SOUZA: Good morning. Can you

1 turn your mic on and state your name for the record?

2 MS. LEWIS: Hello. My name is Commissioner
3 Rene T. Lewis for 5E-03.

4 MS. BUTANI-D'SOUZA: Okay. Thank you. So we
5 did receive the e-mail that you sent regarding the
6 ANC hearings. And I just wanted to understand
7 whether the ANC has an issue with the relief that's
8 been requested for relief from the rooftop
9 architectural elements, because as you know, the
10 conversion to apartment house relief does not apply
11 in this case since the applicant has reduced the
12 number of units that they are putting into the
13 property.

14 So just basically what we're looking for is,
15 you know, we understand that the ANC has received a
16 partial presentation on this. Is that a fair way to
17 describe --

18 MS. LEWIS: No, they did a presentation in
19 June.

20 MS. BUTANI-D'SOUZA: Okay. So they did a
21 presentation in June and the ANC voted to postpone a
22 decision?

23 MS. LEWIS: We asked them to ask for an
24 extension because they were supposed to present at
25 the civic association, and based off of the timeframe

1 they contacted me on the Thursday. The civic
2 association meeting is on the Monday, and it was a
3 jammed packed meeting so they were not able to
4 present at that meeting, which was the last meeting
5 before coming to the zoning office.

6 MS. BUTANI-D'SOUZA: Okay. And did the ANC
7 have any issues with the rooftop architectural
8 elements relief that was requested?

9 MS. LEWIS: No, the ANC did not. However, we
10 wanted them to reach out to the community to see how
11 the community felt about it.

12 MS. BUTANI-D'SOUZA: Okay.

13 MS. LEWIS: So that was what the major issue
14 was.

15 MS. BUTANI-D'SOUZA: Okay. And the ANC
16 requested that they either meet with the Eckington
17 Civic Association or get a petition?

18 MS. LEWIS: Yes, start a petition asking for
19 residents within the 200 feet of the project, and
20 seeking -- trying to get 51 percent approval from the
21 community.

22 MS. BUTANI-D'SOUZA: Okay. So I see that
23 they did submit a petition with quite a few
24 signatures on it in support of the project. Normally
25 the Board of Zoning Adjustment is required to give

1 great weight to a written report of the ANC. In this
2 case we did not receive a written report from the
3 ANC. We did receive the petitions in support, and we
4 understand that the ANC voted to postpone, but it
5 sounds like there were no specific issues regarding
6 the relief.

7 MS. LEWIS: We were voting to -- we wanted
8 them to ask for a postponement if they could. And if
9 they couldn't they were given two options to seek
10 community support to pretty much gauge how the
11 community actually feels about the development. And
12 there were two options. Present at the civic
13 association because it's a random sampling of the
14 community. And if they supported it then we would be
15 inclined to support the project. Or collect 51
16 percent support from signatures.

17 They collected, I believe, 42 percent of the
18 -- within the 200 feet of the project. So that's
19 where the discrepancy is.

20 MS. BUTANI-D'SOUZA: Uh-huh. Okay. Do other
21 members of the Board have any questions? No? Okay.

22 MS. LEWIS: And because of that, based off of
23 the contingency that we had with the vote, it would
24 be that we would be in opposition of the project.

25 MS. BUTANI-D'SOUZA: Okay.

1 MS. LEWIS: Based off of the community not
2 completely backing the project. And then also them
3 not reaching out to the community because we've been
4 in -- I've been speaking to this developer since
5 March, and they've been made aware of reaching out to
6 the community, going to the civic association, and
7 they have completely disregarded going to the civic
8 association.

9 MS. BUTANI-D'SOUZA: Okay. Are there any
10 other questions?

11 Okay. Thank you, very much.

12 MS. LEWIS: Okay. Do you know where I put
13 these? Okay.

14 MS. BUTANI-D'SOUZA: Okay. So if the Board
15 has no issue, I would like to move to decision on
16 this case today. So, we did hear from the
17 representative from the ANC who indicated that they
18 had some timing and calendar issues pertaining to the
19 meeting with the Eckington Civic Association. It's
20 my understanding from the information that was
21 submitted into the record that the Eckington Civic
22 Association meets on the third Tuesday of the month,
23 which would be July 19th, which would be the -- would
24 be meeting after the Board of Zoning Adjustment's
25 meeting.

1 I did see that the applicant had submitted
2 into the record quite a lot of signatures for in
3 support of this project. And I also saw that the ANC
4 did not file a written report, which is what we are
5 required to give great weight to, even though they
6 did vote on this project, you know, we require the
7 ANC to file a written report in order to give that
8 great weight.

9 So given all this, and given that the nature
10 of relief of that's been requested has been modified
11 down to simple relief from rooftop architectural
12 elements, I would be inclined to support this
13 application and I'm curious to hear what the other
14 board members feel about it.

15 MR. HINKLE: Yeah, Madam Vice Chair, I tend
16 to agree. There was a request, a significant
17 application in terms of the request that was there,
18 but now it's a simple request and a special exception
19 and I think we could move forward with this.

20 MR. MILLER: Thank you, Madam Vice Chair. I
21 concur with my colleagues and I think the petitions
22 that we received in support are also meaningful.

23 MS. BUTANI-D'SOUZA: Yeah, so I would like to
24 also call out the point that my colleague has made
25 here that this does meet the criteria for the special

1 exception and I would also like to note that the
2 applicant did make significant modifications to the
3 plans in response to information and comments from
4 the Office of Planning and from the community.

5 So with that I would make a motion to approve
6 the request for special exception from the rooftop
7 architectural elements requirement under Section
8 400.24.

9 MR. MILLER: Second.

10 MS. BUTANI-D'SOUZA: Okay. The motion has
11 been made and seconded.

12 [Vote taken.]

13 MS. BUTANI-D'SOUZA: The motion carries.

14 MR. MOY: Staff would record the vote as
15 three to zero to two. This is on the motion of Vice
16 Chairperson Butani to approve the request for the
17 amended application for relief from 400.24.

18 Seconding the motion, Mr. Miller. Also in support,
19 Mr. Hinkle. Two members not present. Motion
20 carries, Madam Chair.

21 MS. BUTANI-D'SOUZA: Thank you. Summary
22 order.

23 MR. MOY: Yes. Thank you.

24 CHAIRPERSON HEATH: All right. So, Mr. Moy,
25 we have one other matter that we need to deal with

1 this morning.

2 MR. MOY: Yes, we do.

3 CHAIRPERSON HEATH: Regarding Application No.
4 18114-B.

5 MR. MOY: Yes, this is 18114-B of the Ward 5
6 Improvement Association. It's a preliminary matter
7 for the Board to act on the motion to buy the leasee
8 for a two-week time extension to file written
9 exceptions. Subsequent to the filing of that motion
10 is a filing from the appellant opposed to that
11 request. And we have a third filing where the leasee
12 replied to that opposition.

13 CHAIRPERSON HEATH: Okay. So, just for the
14 record, the parties to this application or to this
15 case were issued the order based on the Board's
16 action back in October. And the parties were
17 requested to send their comments or exceptions within
18 10 days, that deadline being July 15th. The leasee
19 has requested a two-week extension based on the
20 grounds that they've just brought on counsel and
21 counsel was not retained until July 5th. So they've
22 noted that they need additional time to be able to
23 appropriately respond to the order.

24 We've reviewed the opposition to this
25 extension request from the appellant. I didn't find

1 it particularly compelling or any reasons stated in
2 that opposition that would -- that this extension
3 would prejudice any parties in any way. I think the
4 two weeks is justified and so I see no problem with
5 going forward with a two-week extension which would
6 then mean that comments or exceptions to the order
7 would now be due on July 29th.

8 This is, again, these are just exceptions to
9 the order. There are no replies to filings that will
10 be accepted as a part of this, the submission
11 request. The only thing to be submitted are
12 exceptions. So, does the Board, any other board
13 members have any comments on this extension request,
14 any issues with it?

15 MR. MILLER: Madam Vice Chair, thank you. I
16 concur with your comments. This -- we made the
17 decision back in October of last year with the
18 proposed order only came out at the end of June.
19 This case has been around for a very long time.
20 Another two weeks for the leasee to file the
21 exceptions if they have any, to the proposed order I
22 think is warranted. And I mean, if OAG -- there's a
23 reference in the appellant's argument against the
24 extension that the D.C. Court of Appeals had an
25 expectation that this order would be finalized by

1 July 18th, it's my understanding that OAG, the Office
2 of Attorney General, could do a filing to apprise the
3 Court of the status of the case and how it is moving
4 -- how it has been moving forward, slowly but --

5 CHAIRPERSON HEATH: Right.

6 MR. MILLER: -- forward. So, I support -- I
7 would support the request for extension as you did.

8 CHAIRPERSON HEATH: Okay. All right. Then
9 unless there are other comments I will make a motion
10 that --

11 MR. MOY: Madam Chair, I'm sorry to
12 interrupt. For my staff procedures would the Board -
13 - can I assume then the staff is waiving the time
14 requirement, the seven day for --

15 CHAIRPERSON HEATH: Yes.

16 MR. MOY: -- setting this matter before the
17 Board today?

18 CHAIRPERSON HEATH: Yes, I see no reason to
19 not waive that time requirement. So, unless other
20 members of the Board see otherwise, we will waive
21 that time requirement.

22 And then with that I'll make a motion that we
23 approve the request for time extension and allow
24 parties to submit their exceptions now by July 29th.

25 MR. MILLER: I would second that.

1 CHAIRPERSON HEATH: The motion has been made
2 and seconded. Any further discussion?

3 [Vote taken.]

4 CHAIRPERSON HEATH: The motion carries.

5 MR. MOY: Staff would record the vote as
6 three to zero to two. This is on the motion of
7 Chairperson Heath to grant the requested two-week
8 time extension. Seconded the motion, Mr. Miller.
9 Also in support, Mr. Hinkle. No other board members
10 participating.

11 CHAIRPERSON HEATH: Thank you. All right.
12 And thank you, Mr. Miller. We'll have Mr. May come
13 back. Why don't we take five minutes and then we'll
14 come back with our last two decision cases on the
15 expedited review calendar?

16 [Off the record from 11:02 a.m. to 11:11
17 a.m.]

18 CHAIRPERSON HEATH: We're going to come back
19 to order.

20 MR. MOY: Madam Chair, if I may? I'd like to
21 set the record straight for the docket for today, for
22 the transcript. Number one, a decision on case 19297
23 of Thor 3000 M Street, LLC., the applicant requested
24 additional time to make his filing so it's been set
25 for next week which would be July the 19th. But of

1 course the Board will address that time frame once we
2 have a chance to review the filing and proceed with
3 that.

4 Second, Application No. 19168 of Afework has
5 been withdrawn by the applicant.

6 Number three, Application No. 19153 of
7 Independence Avenue Investments, that has been
8 rescheduled to September 20th, 2016. This is at the
9 request of the applicant yesterday, I believe.

10 And finally, Application Nos. 19289 of
11 Evergreen properties, and Application No. 19302 of
12 Johann Lee has been rescheduled to September 20th,
13 2016. And finally, Application No. 19308 of 1111 H
14 Street, LLC. has been postponed, rescheduled to July
15 19th, 2016, which is next week. And that completes
16 what I have for cases for today's docket, Madam
17 Chair.

18 CHAIRPERSON HEATH: Okay. Thank you, Mr.
19 Moy. Can you call our next decision case, the first
20 on our expedited review calendar?

21 MR. MOY: That would be 19284 of John Furlow
22 and Nancy Taggart.

23 CHAIRPERSON HEATH: Okay.

24 MR. MOY: On the expedited review calendar
25 this is for a special exception relief under 223, not

1 meeting court width requirements, 406, to construct
2 an addition to a one-family dwelling in a R-1-B
3 District, 5318 Reno Road Northwest, Square 1752, Lot
4 23. And as the Board is aware, case is requesting to
5 be on the calendar. The applicant has waived their
6 right to a public hearing.

7 CHAIRPERSON HEATH: Okay. Thank you, Mr.
8 Moy. Typically cases that are on our expedited
9 review calendar, since the applicant has waived their
10 right to a hearing tend to be pretty straight
11 forward. This one has a lot of confusion around it
12 and inconsistencies within the application, and so as
13 is atypical with our practices I'd like to see if
14 the applicant is actually here. Can you come
15 forward, please?

16 Thank you for being here. Can you state your
17 name for the record?

18 MR. MCCOY: My name is Joseph McCoy, and my
19 address as well?

20 CHAIRPERSON HEATH: That's really just for
21 Foreign Mission cases, but so thank you, Mr. McCoy
22 for being here.

23 Are you -- you're not the applicant. Are
24 you --

25 MR. MCCOY: I am [Speaking off mic.]

1 CHAIRPERSON HEATH: Okay. All right. So,
2 typically for an expedited review case we either
3 approve it or disapprove it. There's the potential
4 for us to remove it from the expedited review
5 calendar to our regular hearing calendar so that we
6 can drill down into more issues if we see them with
7 an expedited review case.

8 In this case we weren't clear as to why this
9 application was even submitted. For one, there still
10 seems to be some question within the Office of
11 Planning's report as to whether or not there is a
12 court, a true court here. But if there is, the
13 minimum width of a court is six feet and your
14 drawings indicate that you have six foot, six
15 proposed. So you're meeting the requirement. So,
16 can you just clarify why you've submitted this
17 application?

18 MR. McCOY: Sure. I'll try to summarize it
19 quickly. I'm not the original initiator of the
20 building permit. It was done by another member of my
21 firm no longer there and so I've come in later and
22 now I'm trying to clean up some old permit and zoning
23 issues. There was an original building permit,
24 zoning permit issued. In the course of the
25 construction the owner applicant asked to make a

1 change to the building design which, according to the
2 zoning technician at the time the reviewer created a
3 court situation. The building permit was allowed to
4 continue with the understanding that we would
5 eventually apply for this variance.

6 The Zoning Administrator at the time, or the
7 reviewer indicated that this was a common practice
8 and didn't feel like it was a big issue. But
9 administratively he wanted it cleaned up with this
10 variance or --

11 CHAIRPERSON HEATH: It's a special exception,
12 right.

13 MR. McCOY: Excuse me. I guess the
14 application says variance, but it's a special
15 exception. Recently in the course of submitting this
16 and having it being reviewed by your office, I
17 understood what you just said, that it may not even
18 be needed. But the technician who was reviewing it
19 at the time said, you started the process, we're
20 going to go ahead and complete it because there was
21 this outstanding zoning review comment. So that's
22 what our intent is, is just finish it out, address
23 the zoning review comment that was hanging out,
24 and --

25 CHAIRPERSON HEATH: So this is a just-in

1 case, it seems?

2 MR. McCOY: Yes.

3 CHAIRPERSON HEATH: Okay. And there is
4 inconsistency in the language. As you noted the
5 application and self-cert request notes that this is
6 a variance. Those need to be corrected so that they
7 reflect that this is a special exception. Variances
8 also aren't allowed on the expedited review calendar,
9 only special exceptions. So we do need that
10 corrected in the record.

11 MR. McCOY: Yeah, sure.

12 CHAIRPERSON HEATH: So that it's clear that
13 this is a special exception.

14 MR. McCOY: Yeah, we'd be happy to do that. I
15 think the variance came from the initial comment from
16 the reviewer and may just have been a mistype.

17 CHAIRPERSON HEATH: Okay. All right. The
18 Board have any other questions while we have him
19 here? Okay.

20 MS. GLAZER: Madam Chair.

21 CHAIRPERSON HEATH: Uh-huh.

22 MS. GLAZER: Madam Chair, I just wanted to
23 interject.

24 CHAIRPERSON HEATH: Sure.

25 MS. GLAZER: Could the applicant, while he's

1 here at least, clarify what the calculations and
2 measurements are so that the Board has that on the
3 record?

4 CHAIRPERSON HEATH: Sure.

5 MR. McCOY: Unfortunately I was not intending
6 or planning on being here this morning so I don't
7 have that paperwork with me. I mean, it should be in
8 the packet that you had for your review. The court
9 condition is created by a building addition to a
10 free-standing house, and a free-standing garage that
11 was already existing. So that is the definition as
12 we understood it from the zoning reviewer where a
13 court was created. So this is completely within a
14 residential property between two existing buildings.
15 And to the --

16 CHAIRPERSON HEATH: And the dimension between
17 those two buildings remains six foot, six?

18 MR. McCOY: Exactly, yes.

19 CHAIRPERSON HEATH: Okay. All right.

20 MS. GLAZER: Madam Chair, is the applicant
21 aware of what the requirement is, the minimum court
22 requirement?

23 MR. McCOY: Yes, ma'am, I am. And at the
24 time when we found out that a variance was -- excuse
25 me, a special exception would be required, we

1 questioned the validity of that as well. It doesn't
2 seem like that portion of the zoning code really
3 applies to our situation, but again we were following
4 up from a zoning reviewer comment left over from a
5 building permit, since I wasn't the original
6 applicant there, I really just decided to follow it
7 out and get it completed.

8 CHAIRPERSON HEATH: All right. I mean, we
9 could do two things. We could either approve this,
10 even though it doesn't seem that you need the relief,
11 or we could take this off of the expedited review
12 calendar and put it on for a later date and allow
13 you, during that time, to have another meeting with
14 the Zoning Administrator to just reconfirm, and
15 Office of Planning to just reconfirm what's necessary
16 here.

17 Mr. May, were you going to say something?

18 MR. MAY: No, just going to ask. I mean, did
19 you get any kind of referral letter from the Zoning
20 Administrator's office saying that there was --

21 MR. McCOY: We did. It was part of the
22 building permit review comments. Again, there was an
23 initial building permit, and then a request by the
24 owner in the middle of construction to modify
25 property.

1 MR. MAY: Right. And you know, you said all
2 that before. I'm just -- there's a specific letter
3 that they will issue if you file for a permit and
4 they think you need relief.

5 MR. McCOY: It was a comment only on the --

6 MR. MAY: On the review form.

7 MR. McCOY: -- permit -- exact.

8 MR. MAY: Right. Okay. So I think that
9 there might be another way to resolve this. If you
10 could request from the Zoning Administrator or the
11 Permit Review Office, that referral letter and it may
12 be that on second review they determine that the
13 relief is not necessary, in which case you can simply
14 withdraw the case.

15 And I think, you know, that's easier. If
16 they send the referral to us confirming for some
17 reason that the relief is necessary then we can take
18 up again under consent. And then I think that's
19 probably the, maybe the easiest way to resolve it.

20 CHAIRPERSON HEATH: Okay. Any other
21 questions or comments from the Board? I would concur
22 that that seems to be the easiest way to resolve
23 this.

24 So we can -- what we're doing to do is put
25 this off. We're going to move it off of our

1 expedited review calendar for today and put this on
2 for a hearing on a later date. If you can meet with
3 the Zoning Administrator in the next five days we
4 could put this on for, on to our calendar next week.
5 After that the Board is on recess for the summer
6 until September. So we could either put it on, if
7 you think you can get a meeting with the Zoning
8 Administrator this week, actually less than five days
9 at this point, but this week, then we can put you on
10 for the 19th.

11 MS. BUTANI-D'SOUZA: If needed.

12 CHAIRPERSON HEATH: If needed, right.
13 There's still a possibility you might find that you
14 can withdraw this.

15 MR. MCCOY: Okay, yeah. I wanted to clarify
16 that. If I understand or get comment from the Zoning
17 Administrator that this is indeed not required and
18 the previous comment from the zoning reviewer is not
19 valid, then we can simply withdraw.

20 CHAIRPERSON HEATH: Correct. You can notify
21 the office that your application is withdrawn. All
22 right. So we'll put you on for the 19th. If you
23 find by Thursday that it looks unlikely that you're
24 going to be able to get a meeting or any other
25 clarification from the Zoning Administrator, if you

1 could let the zoning office know, at that point
2 they'll move your application to sometime in
3 September in order to be reheard. But that will give
4 you extra time for your meeting with the Zoning
5 Administrator.

6 Also, if you find -- obviously if you find
7 that this can be withdrawn, there will be no need to
8 put you on the calendar. All right?

9 MS. BUTANI-D'SOUZA: And it's likely that if
10 OZ does not hear from you and there is nothing
11 uploaded to the record, they may administratively
12 postpone you. So, just so that you're aware that
13 that's what the process would be.

14 CHAIRPERSON HEATH: All right. Thank you.
15 So, you've noted that, Mr. Moy?

16 MR. MOY: Indeed.

17 CHAIRPERSON HEATH: For the dates?

18 MR. MOY: Yes.

19 CHAIRPERSON HEATH: So the 19th for now,
20 until we hear further from the applicant.

21 All right. You can call our next expedited
22 review case.

23 MR. MOY: Yes. Parties to the table to
24 Application No. --

25 CHAIRPERSON HEATH: Expedited review.

1 MR. MOY: Oh, actually, we're not there yet.

2 CHAIRPERSON HEATH: Yeah.

3 MR. MOY: So 19294 of Andrew Devine as
4 amended. This is for a special exception under 223,
5 not meeting lot occupancy requirements 403.2, side
6 yard requirements 405.9, court requirements 406.1,
7 nonconforming structure provisions 2001.3, to
8 construct a rear addition to an existing semi-
9 detached dwelling in the CAP, C-A-P/R-4 District, 238
10 D Street Southeast, Square 792, Lot 801.

11 CHAIRPERSON HEATH: Okay. Thanks, Mr. Moy.
12 This application meets the requirements for expedited
13 review. I don't have any issues with it. Does the
14 Board have any issues or -- all right.

15 So then I will make a motion that we approve
16 the request for special exception to construct a rear
17 addition to an existing one-family dwelling in the
18 CAP/R-4 at 328 D Street Southeast for Application No.
19 19294.

20 MS. BUTANI-D'SOUZA: Seconded.

21 CHAIRPERSON HEATH: The motion has been made
22 and seconded. Any further discussion?

23 [Vote taken.]

24 CHAIRPERSON HEATH: The motion carries.

25 MR. MOY: Staff would record the vote as four

1 zero to one on the motion of Chairperson Heath to
2 approve the application for the relief requested.
3 Seconding the motion, Vice Chairperson Butani. Also
4 in support, Mr. May, Mr. Hinkle, no other board
5 member present. Motion carries, Madam Chair.

6 CHAIRPERSON HEATH: All right. Thank you.
7 Summary.

8 MR. MOY: Thank you.

9 CHAIRPERSON HEATH: So now we'll start our
10 hearing docket and we can proceed in the order noted
11 in the agenda.

12 MR. MOY: Okay. Okay, now we're here.

13 CHAIRPERSON HEATH: Yes.

14 MR. MOY: Parties to the table. This is to
15 Application No. 19270 of 3636 Woodner, LL -- or
16 rather, LP, Et cetera, as captioned and advertised
17 for variance relief from the commercial adjunct
18 requirements under 3054.5, special exception from the
19 commercial adjunct requirements 354 permitting a new
20 gym/fitness center in an existing apartment house, R-
21 5-D District, 3636 16th Street Northwest, Square
22 2624, Lots 831 through 833.

23 CHAIRPERSON HEATH: Good morning. Would you
24 please introduce yourselves?

25 MS. BLOOMFIELD: Good morning. My name is

1 Jessica Bloomfield from the law firm of Holland and
2 Knight.

3 MR. MILBY: Good morning. My name is Joe
4 Milby from the Woodner Apartments.

5 MR. UHL: Good morning. My name is Josh Uhl.
6 I'm with Toshiko Mori Architect.

7 MR. SHER: Good morning. For the record my
8 name is Steven E. Sher, the Director of Zoning and
9 Land Use Services with the law firm of Holland and
10 Knight.

11 CHAIRPERSON HEATH: Thank you. All right.
12 Okay. So, I think this application is fairly
13 straight forward. I think, you know, Office of
14 Planning made a stronger argument for when the sign
15 outside of the property than I found in the
16 applicant's statement. But I understand why it's
17 necessary and, you know, certainly the retail
18 benefits of the commercial adjunct does represent a
19 practical difficulty here.

20 So one question that I have for you as the
21 applicant is, DDOT has one condition, and that's with
22 respect to five short-term bicycle parking spaces.
23 Have you located those? Are they in public space, or
24 are they on the property?

25 MS. BLOOMFIELD: Yeah. So we would agree to

1 that condition from DDOT. We're happy to provide
2 five bicycle parking spaces. We actually have space
3 on private property and in public space right next to
4 that side entrance, and we're going to -- we need to
5 still look at it, but if we need to put it in public
6 space we'll work with DDOT to do that, or we'll put
7 it in private property.

8 CHAIRPERSON HEATH: Okay. All right. Does
9 the Board have any other questions on this
10 application? Go ahead, Mr. May.

11 MR. MAY: So the -- it seems that from the
12 Office of Planning's report, I think the concluded
13 that you were not actually including any exterior
14 entrance there. And the latest version of the plans
15 very clearly show that there is an exterior entrance.

16 MS. BLOOMFIELD: Do you want to pull up the
17 site plan?

18 So the exterior entrance from outside into
19 the building goes into a corridor, right there. And
20 then from the corridor you go into the fitness
21 facility.

22 MR. MAY: Oh, I see. Okay.

23 MS. BLOOMFIELD: Do you want to point out the
24 door?

25 MR. MAY: That's all right.

1 MS. BLOOMFIELD: Yeah.

2 MR. MAY: I know what it is. I'm trying to
3 understand how that fits with the regulations. Okay.
4 All right. Thank you.

5 CHAIRPERSON HEATH: Any other questions from
6 the Board? Okay. All right.

7 Then, it doesn't appear we're going to need a
8 full presentation. You've answered the Board's
9 questions. And so if you're okay with us proceeding
10 on?

11 MS. BLOOMFIELD: We're happy to rest on the
12 record, thank you.

13 CHAIRPERSON HEATH: Thanks. All right. So
14 with that we'll hear from Office of Planning.

15 MR. JESICK: Thank you, Madam Chair, Members
16 of the Board. My name is Matt Jesick. The Office of
17 Planning can rest on the record in support of the
18 application but I'd be happy to take any questions.
19 Thank you.

20 CHAIRPERSON HEATH: Okay. Thank you. Any
21 questions, Board, of Office of Planning? Applicant,
22 any questions of Office of Planning?

23 MS. BLOOMFIELD: No.

24 CHAIRPERSON HEATH: Okay. Then we also have
25 a letter from ANC 1D recommending approval. Is there

1 anyone here from ANC 1D on this application? Appears
2 they're not here. And as I've noted we have a letter
3 of no objection from DDOT with that one condition and
4 we've discussed that. So, is there anyone here
5 wishing to speak in support of this application?
6 Anyone in support?

7 Anyone wishing to speak in opposition? No
8 opposition? All right. Then unless the Board has
9 any other questions or comments we'll turn back to
10 the applicant for any closing you'd like to make.

11 MS. BLOOMFIELD: No, we have nothing else.
12 Thank you so much.

13 CHAIRPERSON HEATH: Great. Thank you. Then
14 that concludes the hearing and I will make a motion
15 that we approve the request for variance and special
16 exception to permit a new gym or fitness center in an
17 existing apartment house at 3636 16th Street.

18 MS. BLOOMFIELD: Second.

19 CHAIRPERSON HEATH: The motion has been made
20 and seconded. Any further discussion?

21 [Vote taken.]

22 CHAIRPERSON HEATH: So the motion carries.
23 Thank you.

24 MR. MILBY: Thank you.

25 MR. MOY: Staff would record the vote as four

1 to zero to one. This is on the motion of Chairperson
2 Heath to approve the application for the relief
3 requested. And seconding the motion would be Vice
4 Chairperson Butani. Also in support, Mr. May and Mr.
5 Hinkle, no other board member present. Motion
6 carries, Madam Chair.

7 Did you say summary?

8 CHAIRPERSON HEATH: I was about to.

9 MR. MOY: Oh, okay.

10 CHAIRPERSON HEATH: You beat me to it. I
11 didn't have my mic on.

12 MR. MOY: I'm not really clairvoyant.

13 CHAIRPERSON HEATH: You are. All right.
14 Okay. So you can call our next application.

15 MR. MOY: All right, that would be 19299 of
16 Pete's Coffee and Tea, advertised and captioned for
17 special exception relief from the prepared food shop
18 requirements, Sections 712 and 721.3, Sub T, to
19 operate a prepared food/coffee shop with greater than
20 18 seats in the C-2-A District, 3299 M Street
21 Northwest, Square 1206, Lot 34.

22 CHAIRPERSON HEATH: All right. Good morning.
23 If you could please introduce yourself?

24 MS. BROWN: Sure. Good morning, Madam Chair,
25 Members of the Board. Carolyn Brown with the law

1 firm of Castro Haaset & Brown on behalf of the
2 applicant.

3 CHAIRPERSON HEATH: Okay. I have a couple
4 questions for you. The first is, it appears that
5 you've met with the ANC. They've submitted
6 conditions. I don't think we have a report from the
7 ANC so --

8 MS. BROWN: They actually just uploaded it
9 last evening, so there is one in the record. I have
10 extra copies that I printed out if I can -- if you'd
11 like me to bring them up to the dais?

12 CHAIRPERSON HEATH: Actually, it's here.

13 MS. BROWN: Okay.

14 CHAIRPERSON HEATH: It just wasn't numbered
15 so it --

16 MS. BROWN: Okay.

17 CHAIRPERSON HEATH: -- went to the top of our
18 list. So their resolution says that they do not
19 object to the request, and it was a unanimous vote
20 six to zero.

21 And they voted to adopt your loading
22 management plan as acceptable to DDOT. Okay. All
23 right. Great. Thank you for making sure they got
24 that in.

25 With regard to their conditions, can you

1 confirm that the exhaust system for the grill does in
2 fact exhaust through the roof?

3 MS. BROWN: Yes.

4 CHAIRPERSON HEATH: Okay. And how is trash
5 being stored on the site?

6 MS. BROWN: There is a closed off corridor at
7 the back of the restaurant and it's the north end of
8 the building along 33 Street, and there's a closed
9 door and it will be stored in that area. When trash
10 day comes along they just wheel them out to the curb.

11 CHAIRPERSON HEATH: Okay. How often is trash
12 pickup, just out of --

13 MS. BROWN: They have not arranged that
14 frequency yet, but it's as often as needed but --

15 CHAIRPERSON HEATH: Okay.

16 MS. BROWN: -- probably two to three times a
17 week.

18 CHAIRPERSON HEATH: Okay.

19 MS. BROWN: At least.

20 CHAIRPERSON HEATH: All right. And then DDOT
21 also had one condition. One short-term bicycle rack.
22 Have you -- has the applicant met this request and is
23 it on the property or in public space?

24 MS. BROWN: Yeah, I have two comments about
25 the proposed conditions. First, I don't think

1 they're a difficult thing to address, or to
2 accommodate. But since we're not asking for any
3 loading relief, we're not asking for any parking
4 relief, I'm just not sure what the nexus would be for
5 this application to request, you know, the loading
6 management plan and the bike rack.

7 Having said that, the request from DDOT is to
8 put a new bike rack in the public space. There
9 obviously is no room for it on the private property.
10 So we agreed to look into it.

11 CHAIRPERSON HEATH: Okay. All right. Okay.

12 MS. BUTANI-D'SOUZA: Sorry, could you
13 clarify? Why is it that you're not simply agreeing
14 to accommodate their request? Can you just state
15 that again?

16 MS. BROWN: Normally when the DDOT requests
17 parking or bike -- traffic mitigation measures it's
18 because you're requesting parking or loading relief.
19 This application does not have that extra relief
20 requested.

21 MS. BUTANI-D'SOUZA: So, it just seems to me
22 that DDOT evaluates the increase in traffic and trips
23 to the site. And since the applicant is requesting a
24 very significant increase in the number of seats
25 allowed, I believe the regulation permits 18 seats

1 for this type of use in this district, and I believe
2 the applicant is requesting, is it 55 seats?

3 MS. BROWN: Right. And if you'll note in the
4 record too, that there is a certificate of occupancy
5 for a restaurant with over 100 seats, that was the
6 previous use. So now the actual seating capacity has
7 been reduced to 55, so that's another consideration.

8 And speaking with DDOT what they said was
9 that they wanted us to comply with the new
10 regulations, notwithstanding the fact that we're
11 coming under the existing regulations.

12 MS. BUTANI-D'SOUZA: I see. So the applicant
13 does not want to --

14 MS. BROWN: We would prefer it not to be a
15 requirement or a condition of the approval, but we
16 agree to look in to it because it's going to require
17 us to go get a public space permit. We have to, you
18 know, find the -- I don't think it costs a lot of
19 money, it's just the mechanics of doing it and if we
20 want to get the coffee shop up and operational.

21 CHAIRPERSON HEATH: Okay. So you're agreeing
22 to work with DDOT to try to --

23 MS. BROWN: Yes. Yeah, to follow through on
24 that. Absolutely.

25 CHAIRPERSON HEATH: They're willing to work

1 through it to see if they can. In public space.

2 MS. BUTANI-D'SOUZA: So under what conditions
3 would you agree to pursue the public space permit for
4 the bicycle rack?

5 CHAIRPERSON HEATH: Public space is --

6 MS. BROWN: Well, there's no -- I guess I
7 would turn that around and ask what's the nexus to
8 the BZA request?

9 CHAIRPERSON HEATH: In this case it's not
10 because we're talking about public space. If you
11 were able to meet it on your property then we would
12 want to note that. And I think in that case I would
13 imagine you would have no problems with accepting this
14 as a condition because you'd know where you could
15 locate it and you wouldn't have to go through any
16 additional reviews or approval processes --

17 MS. BROWN: Correct.

18 CHAIRPERSON HEATH: -- to do so. So, we
19 can't make it a condition of this order if the only
20 location for it is in public space, because that's
21 not under our purview.

22 MS. BUTANI-D'SOUZA: I see. Okay.

23 CHAIRPERSON HEATH: So, but we can accept the
24 conditions that you've put forward in your order,
25 which the ANC has also agreed with.

1 MS. BROWN: Correct. We fully support those
2 conditions.

3 CHAIRPERSON HEATH: Okay. All right. Does
4 the Board have any other questions? Okay. All
5 right. Then if you're okay with us proceeding on.

6 MS. BROWN: Yes.

7 CHAIRPERSON HEATH: We'll do so and we'll
8 hear from Office of Planning at this time.

9 MS. THOMAS: Good morning, Madam Chair,
10 again. The Office of Planning will stand on the
11 record of its report of recommending approval. I'd
12 just like to correct one thing in the community
13 comments that I have. I stated that the ANC voted
14 unanimous to support and it should be voted
15 unanimously to not object.

16 CHAIRPERSON HEATH: Right.

17 MS. THOMAS: Just correct that.

18 CHAIRPERSON HEATH: Sure.

19 MS. THOMAS: Thank you.

20 CHAIRPERSON HEATH: Okay. Thank you. All
21 right. And now we have that letter in the record so
22 that's certainly helpful.

23 Is there anyone here from ANC 2E? No one
24 here from ANC 2E. So as I noted we --

25 PARTICIPANT: I'm the executive director.

1 CHAIRPERSON HEATH: Were you wishing to speak
2 on behalf of this application?

3 PARTICIPANT: Do you have the resolution in
4 front of you?

5 CHAIRPERSON HEATH: We do.

6 PARTICIPANT: Okay. Great.

7 CHAIRPERSON HEATH: Thank you.

8 PARTICIPANT: Thank you.

9 CHAIRPERSON HEATH: Thank you for getting the
10 resolution into the record. All right.

11 Okay, and we've noted the conditions.
12 They've also been noted in the applicant's prehearing
13 statement so the applicant has agreed to them.

14 Is there anyone here from DDOT on this
15 application? We do have a letter recommending no
16 objection from DDOT with the one condition. We've
17 discussed the fact that this would have to be in
18 public space. And so the applicant has agreed to
19 work with DDOT to try to find a location where this
20 can be located in public space.

21 Is there anyone here wishing to speak in
22 support of this application? Anyone in support?
23 Anyone wishing to speak in opposition? No
24 opposition? All right.

25 Then we'll turn back to the applicant for any

1 rebuttal.

2 MS. BROWN: No closing statement. We'd
3 appreciate a vote today. Thank you.

4 CHAIRPERSON HEATH: Okay. Thank you. Is the
5 Board ready to deliberate on this? All right. I
6 will make a motion that we approve the request for
7 special exception from the prepared food shop
8 requirements to operate a prepared food or coffee
9 shop with greater than 18 seats in the C-2-A at 3299
10 M Street Northwest. With the conditions proposed by
11 the applicant and agreed to by the ANC.

12 Anybody want to second?

13 MR. MAY: Second.

14 CHAIRPERSON HEATH: The motion has been made
15 and seconded. Any further discussion?

16 [Vote taken.]

17 CHAIRPERSON HEATH: Thank you.

18 MR. MOY: Staff would record the vote as four
19 to zero to one. This is on the motion of Chairperson
20 Heath to approve the application for the relief
21 requested with conditions as cited. Seconding the
22 motion is Mr. Peter May. Also in support, Vice Chair
23 Butani and Mr. Hinkle. Board member not present
24 today. Motion carries, Madam Chair.

25 CHAIRPERSON HEATH: All right. Thank you.

1 Summary order.

2 MR. MOY: Thank you.

3 CHAIRPERSON HEATH: And you can call our next
4 case.

5 MR. MOY: All right. That would be parties
6 to the table to Application No. 19300 of Capitol
7 Holdings II, Roman Numeral 2, LLC., as amended for
8 variance from the lot occupancy requirements under
9 403.2, and special exception from the use
10 requirements under 336 to convert a two-story one-
11 family dwelling into a three-unit apartment house, R-
12 4 District, 1121 G Street Northeast, Square 983, Lot
13 850.

14 CHAIRPERSON HEATH: Okay. All right. If you
15 could introduce yourselves, please?

16 MR. SPRINZEN: Justin Sprinzen, owner of the
17 property.

18 MR. SULLIVAN: Martin Sullivan with the law
19 firm of Sullivan and Barros.

20 CHAIRPERSON HEATH: Okay. Can you confirm
21 the relief that you're requesting? I'm sure you've
22 seen that Office of Planning notes that you may need
23 a special exception from 400.24. Has this been added
24 to the requested relief?

25 MR. SULLIVAN: We haven't added that. If I

1 could have a minute to look at that, please?

2 CHAIRPERSON HEATH: Sure.

3 MR. SULLIVAN: Thank you.

4 [Pause.]

5 MR. SULLIVAN: Perhaps we could have some
6 discussion with Office of Planning, either as part of
7 the hearing --

8 CHAIRPERSON HEATH: Sure.

9 MR. SULLIVAN: -- because we're not clear on
10 what the rooftop architectural element is.

11 CHAIRPERSON HEATH: Okay. All right. Well,
12 we'll get to that in just a moment. You're also
13 aware that Office of Planning is recommending denial
14 of lot occupancy and so --

15 MR. SULLIVAN: Yes.

16 CHAIRPERSON HEATH: And I want to understand
17 how the design has evolved. You know, I understand
18 that in conversations with the community you've added
19 the porch, and that has triggered the need for the
20 lot occupancy relief. But it looks like all you did
21 was add the porch to the existing layout of the
22 apartment units rather than reexamining how the units
23 might be configured and how large the addition needs
24 to be in order to avoid lot occupancy. So it seems
25 sort of a lazy attempt at making this modification

1 and then just saying that you need lot occupancy
2 relief without looking at the design of the units.

3 MR. SULLIVAN: Okay. I do have -- I have a
4 little handout that sort of summarizes the variance
5 argument. And we have had further discussions with
6 Maxine, or with -- about the issue. And I'll pass
7 these out and then I'll speak further.

8 CHAIRPERSON HEATH: Okay.

9 MR. SULLIVAN: So, thank you. I think when
10 it comes to the variance argument the way we look at
11 it is, there was a design requirement from the Zoning
12 Regulations that requires us to keep the porch. And
13 that was requested by the -- it was requested by the
14 Office of Planning or required by the office of
15 planning and requested by the community as well.

16 And the impact of doing that, because this
17 porch, unlike many other properties, the porch is not
18 in public space. It's all on our property. And what
19 that required was that in order to have the porch in
20 the front we essentially lose three floors of
21 interior space of the same size at the rear of the
22 property over the permitted lot occupancy.

23 And I think that design requirement impacted
24 the space that would have otherwise been permitted if
25 this porch was on public space, like many other

1 porches are. Or if we didn't have to retain the
2 porch. To the impact, the flat impact was a
3 significant reduction in three floors of interior
4 space.

5 CHAIRPERSON HEATH: What's the depth of that
6 porch? Is it five feet? Six feet?

7 MR. SPRINZEN: It is five feet.

8 CHAIRPERSON HEATH: Okay.

9 MR. SULLIVAN: Yes, so there was a
10 corresponding reduction of five feet in the back
11 required which on three floors, that's 160 square
12 feet each floor, leads to a significant amount and
13 there's a spreadsheet in the second page of that
14 handout estimating conservatively the loss in value.

15 And I think that loss in value is a practical
16 difficulty in and of itself. I'm not sure where --

17 MR. MAY: I'm sorry, I need to stop you
18 there. So the ability of the property owner to make
19 the max amount of money, it creates a practical
20 difficulty. I wouldn't think so. I mean, if you
21 want to make an economic argument you need to step up
22 and explain why the project becomes unviable -- or
23 not viable. Unviable, is that a word? No longer
24 viable because you lose that amount of space.

25 And if you look at the plans and you chop off

1 a, you know, a few feet off the back, I'm not sure
2 that those plans are no longer viable. So, I mean,
3 you can make it one way or the other. You can say
4 that the units are no longer usable, or you can say
5 that the project doesn't make economic sense, but you
6 can't simply say, we're going to lose \$215,000.
7 That's not an argument.

8 MR. SULLIVAN: Well, I think the question is,
9 because of this requirement for this unique condition
10 with the porch, is it unnecessarily burdensome? And
11 the question is, it's not -- does it make the project
12 not viable? This is the variance test. So is it
13 unnecessarily burdensome to have to strictly comply
14 with the regulations because of the unique condition
15 in the front with the porch?

16 MR. MAY: Yeah, but you could make that
17 argument and say that you're entitled to another five
18 feet off the back, and make the units that much
19 bigger, because if you could you could sell them for
20 another \$400 a square foot, and so therefore you're
21 losing \$500,000.

22 MR. SULLIVAN: Yeah, but we're only losing
23 five feet. It corresponds to the amount of the porch
24 in the front. And if the porch was in public space,
25 that's the unique part of this condition. If the

1 porch was in public space we would have 60 percent
2 lot occupancy.

3 MR. MAY: No, you need to show us plans about
4 what that -- show how the actual impact to the unit
5 would be. I mean, I don't think that the --

6 MR. SULLIVAN: I have plans --

7 MR. MAY: -- value per square foot is
8 meaningful at all.

9 MR. SULLIVAN: Okay. I have plans and I
10 would like to say, we'd be -- we're happy to
11 bifurcate the request. We would like the special
12 exception approval, and what I can hand out now is a
13 plan that shows the area of the reduction, and what
14 we'll be left with under an amended plan, which we'd
15 be happy to do.

16 But we think that the practical difficulty
17 exists because of the flat loss of space, directly
18 due to the porch. I don't think that it's required
19 to show that we're going to lose money, or that -- I
20 mean, that would be true for a use variance. Or it
21 would be true if we're saying we need some extra room
22 because of the economic difficulty of retaining the
23 porch. That's not the argument.

24 It's the fact that the porch is on our
25 property, and because we have to retain it then we

1 have difficulty complying with 60 percent. We don't
2 get 60 percent because of the porch. And it's an
3 uneven balance. It's just a porch roof, but because
4 of that porch roof we lose three floors of interior
5 space in the same -- with the same area.

6 And this was among the discussions that we've
7 had with the Office of Planning, and I think that
8 they were more receptive to the argument,
9 particularly the argument about porches typically
10 being in public space. And somebody not --

11 CHAIRPERSON HEATH: They're still in denial.

12 MR. SULLIVAN: -- situated in this situation
13 would be able to get the 60 percent and we can't.

14 MR. MAY: Give us the plans. You're just
15 repeating yourself.

16 MR. SULLIVAN: Okay.

17 MR. MAY: So, we want to get on --

18 MS. BUTANI-D'SOUZA: Are these plans
19 different from what was included in the record?

20 MR. SULLIVAN: This is a plan that we would
21 be submitting to bifurcate the request should the --

22 MS. BUTANI-D'SOUZA: Oh, I see.

23 MR. SULLIVAN: -- Board not want to approve
24 the variance relief, because again, our objective is
25 to get approved.

1 MS. BUTANI-D'SOUZA: I understand.

2 MR. SULLIVAN: And to get approved in a
3 timely manner. And that's why we wanted to bring the
4 Office of Planning on board as well, too and we --

5 MS. BUTANI-D'SOUZA: Thank you, Mr. Sullivan.
6 I understand.

7 MR. SULLIVAN: Okay.

8 MR. MAY: So the depth of the current porch
9 is five feet, and that's what you're planning to
10 replicate?

11 MR. SPRINZEN: That's correct.

12 CHAIRPERSON HEATH: Right. So the hatched
13 area is what you're losing as you shift the stair and
14 the back wall. And so it results in a bedroom that
15 is 14 feet rather than 19 feet deep?

16 MR. SPRINZEN: That's correct.

17 CHAIRPERSON HEATH: Still seems viable. So,
18 I don't see how this strengthens your argument.

19 MR. SULLIVAN: It is viable. I mean, that's
20 what I'm saying, the variance argument is correctly
21 stated as, is it unnecessarily burdensome. Not does
22 it make your project impossible.

23 CHAIRPERSON HEATH: Uh-huh.

24 MS. BUTANI-D'SOUZA: Do you have --

25 MR. SULLIVAN: And we're not -- oh, I'm

1 sorry.

2 MS. BUTANI-D'SOUZA: -- any more information
3 regarding the statement that it's standard for
4 porches in the District of Columbia to extend into
5 the public space, because it's my understanding that
6 when you are constructing a new property in the
7 District of Columbia to actually have a porch
8 overhang into the public space requires some form of
9 special approval.

10 MR. MAY: It requires a public space permit.
11 And typically you can build a porch out, I think five
12 feet into the public space.

13 MS. BUTANI-D'SOUZA: Okay.

14 MR. MAY: And you can build a bay in, I think
15 more like four feet, a projecting bay. I don't know
16 what the exact number is. And that is fairly
17 typical. I mean, I have a porch in front of my house
18 that's in public space. I had one in my last house.
19 It was in public space.

20 MS. BUTANI-D'SOUZA: Uh-huh. Right. I guess
21 what I'm wondering is, I know DDOT often does not
22 approve of things like curb cuts and modifications to
23 the -- I'll just say things like curb cuts. Is it
24 very difficult to get a public space permit for
25 porches? Is that more complicated? Do we have any

1 idea whether that's --

2 MR. MAY: I don't know how difficult it is.
3 I mean, it's certainly not the first time we've seen
4 something like that. I mean, we've seen other
5 projects where they plan to do porches in the public
6 space.

7 MS. BUTANI-D'SOUZA: I'm just trying to
8 evaluate, Mr. Sullivan, your argument about whether
9 this is actually -- whether this actually meets the
10 standard of an undue hardship, because -- and I'm
11 also trying to understand whether this is actually a
12 peculiar or exceptional situation. Or rather, I
13 suppose the regulation actually states exceptional
14 situation. The peculiar is in reference to the
15 hardship.

16 So I'm just trying to understand how unusual
17 this actually is and how difficult it actually -- it
18 actually is.

19 MR. SULLIVAN: Okay. Thank you. The lot
20 itself is nearly twice as large as almost every other
21 residential property on this block. And that leads
22 to the additional loss of the space in the back
23 because the porch is being extended. It's also
24 unique because it's the only open area on the block.
25 It's rows. The entire block is rows. And this is an

1 existing row house with a side yard essentially the
2 size of another lot. And so that impacts the amount
3 of space being lost because of extending that porch.

4 Also, I would point out that undue hardship
5 is the standard for use variance and we're asking for
6 area variance relief. So the standard for practical
7 difficulty is that it's unnecessarily burdensome.

8 Under undue hardship we would have to prove
9 that it's not reasonably possible to do this. And
10 under that scenario we would be submitting economic
11 analysis and I think we would have to submit
12 something showing that it completely disrupts the
13 configuration interior of the building.

14 But this is not a use variance, it's an area
15 variance, which the standard for which is
16 unnecessarily burdensome. And so I think it's just a
17 direct look at, is it burdensome to the applicant to
18 have to keep this porch. And I think the answer to
19 that question is, it obviously is. And the back, is
20 it unnecessarily burdensome? I think it is
21 unnecessarily burdensome because of the fact that the
22 actual request was -- is supported, and in fact
23 requested by the community, and supported. And the
24 project overall was supported by the community as
25 well. So it doesn't impact anybody to have that

1 additional five feet in the back as well.

2 MS. BUTANI-D'SOUZA: So, okay. So let me see
3 if I'm just -- I just want to make sure I'm wrapping
4 my head around the argument. So you're arguing that
5 the ANC is conditioning its approval upon the
6 retention of the porch in line with the existing
7 neighbor's porch and this is what creates the undue
8 burden. Is that it, because the Board is required to
9 give great weight to the ANC's opinion?

10 MR. SULLIVAN: Well, I think as we
11 subsequently found, the Office of Planning would
12 require it as well. The 336 relief, it wasn't clear
13 to me initially what is an architectural element or
14 not because it describes architectural elements as
15 turrets, towers, and dormers, but it's been, I think,
16 interpreted more generally than that to include
17 porches and other architectural features. And so the
18 Office of Planning has required that we retain the
19 feature as well. So I think it's a requirement.

20 We're not doing this just because the ANC
21 asked us to do it and gave us their support. We're
22 doing it for that reason, of course, but we're also
23 required to do it as we subsequently found according
24 to the OP report. And I think as the Board would
25 find on that as well.

1 CHAIRPERSON HEATH: Are there questions from
2 the Board?

3 All right. Then if there are no other
4 questions I'd like to hear from Office of Planning on
5 this.

6 MS. BROWN-ROBERTS: Good morning, Madam
7 Chairman and Members of the Board. Maxine Brown-
8 Roberts from the Office of Planning.

9 As stated in our report, we had a concern
10 about the applicant not demonstrating that the lot
11 occupancy that -- meeting the lot occupancy
12 requirement was an exceptional situation that was
13 presenting a -- that was not enough for them to go
14 ahead.

15 Subsequent to that, the applicant provided us
16 this morning with some additional factors that they
17 considered to be unique conditions, and we still had
18 some doubts about that. And then they presented the
19 case that in this case the entire porch is within the
20 lot and so that was what was presenting the unique
21 condition.

22 We have looked at it and I told them, you
23 know, we hadn't seen a full discussion of it, but the
24 comparison to other construction where they have
25 placed the porch within the private -- within the

1 public space has been taken into consideration
2 before. And so that would be something that maybe we
3 would look at as being that is something that is
4 causing their practical difficulty.

5 And so as you have asked, I think that we
6 would also like to see a better demonstration of how
7 this would really be affecting the lot occupancy
8 because we didn't look at how, you know, that it was
9 five feet and that sort of thing. But the concept
10 was interesting.

11 Regarding the 336 Section, on that analysis
12 we are in support and regarding the section on
13 400.25, under 336.8 where it says rooftop
14 architectural elements original to the house, and
15 then it goes on to say such as. So we agree that the
16 porch is an element that they needed to address under
17 400.35 because they were taking off the cornice line
18 that is right there, and basically shifting it to the
19 top of the building. So that's why.

20 And we also spoke to DCRA and they agreed
21 that this was something that they think the
22 application should apply for.

23 CHAIRPERSON HEATH: Okay.

24 MS. BROWN-ROBERTS: And we would support that
25 special exception also. Thank you, Madam Chairman.

1 CHAIRPERSON HEATH: Sure. One question for
2 you Ms. Brown-Roberts. The condition of this porch
3 being located within the applicant's property is not
4 unique on this block, is it?

5 MS. BROWN-ROBERTS: No, it is not.

6 CHAIRPERSON HEATH: Okay.

7 MS. BROWN-ROBERTS: It is not.

8 CHAIRPERSON HEATH: But would you agree that
9 it's unique in the District? I mean, I can see the
10 adjacent property has a porch in line with this one,
11 but I'm just trying to understand if --

12 MS. BROWN-ROBERTS: No, I wouldn't say it's -
13 - I certainly wouldn't say it's unique in the
14 District. It's something that, you know, has
15 happened both ways. You know, there are properties
16 that have the porch within the property, and there
17 are some that do, in original construction that have
18 come in and have placed the porch within the public
19 space and have gotten a permit for it.

20 CHAIRPERSON HEATH: Okay. Other questions
21 from the Board.

22 MR. MAY: So I'm not clear. I mean, does
23 this mean that you now support the relief needed to
24 go past the 60 percent lot occupancy, or that you're
25 a bit more sympathetic and you still need more

1 information?

2 MS. BROWN-ROBERTS: Yes, I think we're a bit
3 more sympathetic to it and would need more
4 information.

5 MR. MAY: Okay. Thank you.

6 CHAIRPERSON HEATH: All right. Other
7 questions from the Board?

8 MS. BUTANI-D'SOUZA: So, I'm just trying to
9 understand. So if we do divide this application and
10 let's say we approve the special exception but we do
11 not approve the variance, I'm just curious, are you
12 planning on -- you're not planning on attempting to
13 reconfigure the interior of this. You're just
14 planning on going forward with what you've included
15 in this handout? Because, I mean, I would imagine
16 that there are some other ways to reconfigure this
17 space, such that you don't have the small master
18 bedroom that you're saying is going to cost you
19 \$215,000.

20 It just seems to me that, you know, you could
21 have gone through the --

22 MR. SULLIVAN: Yeah. Well, just to be clear
23 the estimation of lost value is just based on the
24 square footage lost, because they'll be smaller
25 units.

1 MS. BUTANI-D'SOUZA: Okay.

2 MR. SULLIVAN: And not the configuration
3 inside.

4 MS. BUTANI-D'SOUZA: So you [simultaneous
5 speech].

6 MR. SULLIVAN: And the floor plans are
7 presented to be --

8 MS. BUTANI-D'SOUZA: Illustrative.

9 MR. SULLIVAN: -- illustrative, yes.

10 MS. BUTANI-D'SOUZA: Okay. Got it. All
11 right. Thank you.

12 CHAIRPERSON HEATH: Okay. All right.

13 MR. MAY: Yeah, so I know we've gotten some
14 input from neighbors, but do you have letters of
15 support from the abutting neighbors?

16 MR. SULLIVAN: The applicant actually -- we
17 did have a letter of support from one of the
18 neighboring properties and the applicant actually
19 subsequently purchased that property. And doing a
20 matter of right revision on that.

21 And on the other side we do have a letter of
22 support, although the letter was written to the
23 applicant themselves, and --

24 MR. MAY: So is it in the record or --

25 MR. SULLIVAN: I don't believe it is in the

1 record. I have a copy of it here. I've got copies.

2 [Pause.]

3 MR. MAY: So which neighbors are these?

4 Which side?

5 MR. SPRINZEN: So the letter you just
6 received are the neighbors to the east, 1125, it's a
7 two-unit condo. And both neighbors support -- both
8 occupants supported the application.

9 MR. MAY: Yeah, I can see that, I just, I was
10 trying to figure out which one it was.

11 Oh, so that's the brick building.

12 MR. SPRINZEN: Correct.

13 MR. MAY: As opposed to the small wood frame.
14 Just to be clear, I mean, are you planning on
15 demolishing the existing building entirely and
16 building a new complete building?

17 MR. SULLIVAN: No, it needs to be an addition
18 and we've gotten preliminary approval from the Zoning
19 Administrator based on our current proposed
20 demolition plans that that will comply.

21 MR. MAY: Okay. So how much is being
22 demolished?

23 MR. SULLIVAN: It's about half. Percentage
24 wise of the --

25 MR. MAY: Of the current house. Yeah.

1 MR. SULLIVAN: -- actual surface of the
2 walls. Yeah.

3 MR. MAY: Okay. And in terms of the cornice,
4 are you going to reproduce exactly what the cornice
5 is now at the top of the building? Are you going to
6 salvage this and relocate it or --

7 MR. SPRINZEN: If we can attempt to salvage
8 it all, we will. But that's a hard promise to make,
9 but we do intend to replicate as best as we can. And
10 that was a conversation with the ANC and community as
11 well.

12 MR. MAY: Uh-huh. And in terms of the
13 detailing of the new porch, are you trying to
14 replicate the existing brackets and, I can't tell if
15 -- it doesn't look those posts are turned posts, but
16 the brackets and the rail and all that? Or it's not
17 a rail, it's just a skirt. Yeah, just a skirt we're
18 seeing.

19 MR. SPRINZEN: Yes, that's correct. Again,
20 with the conversations with the community and ANC we
21 had agreed to replicate, the best we can, exactly
22 what's there. Obviously there's some existing and
23 then there's going to be some new so we have to be
24 careful that they match appropriately.

25 MR. MAY: When you say the best you can, I

1 mean, you know, that's a very soft term. Do you have
2 experience in doing preservation work or restoration
3 work of this sort, doing salvage work of this kind of
4 wood detail?

5 MR. SPRINZEN: If I could have one moment,
6 please?

7 [Pause.]

8 MR. CHAMBERS: Hi. I'm Bob Chambers. I've
9 been a builder in the District for over 40 years.
10 What we're going to be doing, we have drawings
11 showing the corbels that we'll be using to rebuild
12 the cornice work on the top. Our plans are to
13 replicate as much of the building as we can. The
14 issue we do have are some new -- you're going to have
15 building codes that we're going to have to require to
16 meet. We can't keep the existing rail at 28 inches.
17 It won't pass code.

18 So how we're going to actually design the
19 rail to meet code and look at have the same drawing,
20 or have the same effect, is still on the drawing
21 board, because sometimes I think if you can
22 understand in stretching things or changing their
23 dimensions it takes away proportion --

24 MR. MAY: Absolutely. Yes.

25 MR. CHAMBERS: -- of how it should be. And

1 so the issue being is, is that has to be figured out
2 how we're going to do that.

3 MR. MAY: Okay. I'm less concerned about the
4 rail. I mean, the rail can be a relatively straight
5 forward rail.

6 MR. CHAMBERS: Right.

7 MR. MAY: I mean, you know, you've got a
8 little bit of sort of the gingerbread look to the
9 brackets.

10 MR. CHAMBERS: On the brackets on the porch
11 themselves.

12 MR. MAY: And, yeah.

13 MR. CHAMBERS: Yeah, we can duplicate that.

14 MR. MAY: I mean I've just, I've seen a
15 number of jobs done by, you know, very competent
16 carpenters that completely erase the detail.

17 MR. CHAMBERS: Yeah.

18 MR. MAY: And, you know, you lose dentals and
19 you lose other details and things. I mean, you don't
20 have dentals here, but you've got detail that is
21 important to that look. Simply having a porch is
22 probably not enough.

23 MR. CHAMBERS: No, we will maintain the
24 brackets --

25 MR. MAY: You've got dentals at the top.

1 MR. CHAMBERS: -- on the porch.

2 MR. MAY: What?

3 MR. CHAMBERS: We'll be maintaining the
4 brackets on the porch.

5 MR. MAY: Yeah. Okay. So then the other
6 question I have about this is on the design of the
7 porch façade. I'm looking at the, I guess we have a
8 -- you submitted a version that had the -- oh, here
9 we go. Updated plans. So, and it shows the porch
10 drawn in and we see that in the elevations. And the
11 porches are supported by six columns spaced equally
12 across the face of the building. And I'm wondering
13 if you can do with five because if you can do with
14 five then you can place the columns where they're
15 supposed to be, which is between the windows and not
16 in front of them.

17 MR. CHAMBERS: I wouldn't see a problem with
18 doing it with five posts. I mean, it's not like
19 we're spanning any great distance or carrying any
20 load.

21 MR. MAY: Exactly. It's just, I mean, it's
22 just -- I mean, this is one of the reasons why I
23 question how careful you're going to be in the
24 construction because somebody drew this just randomly
25 placed the columns. It's clearly not structurally

1 necessary that there be that many. It's just
2 somebody said oh yeah, it looks like it, you know,
3 we'll put four across the middle, and you only need
4 three and that way you can line it up with the spaces
5 between the windows.

6 So, that was my one design issue on this
7 because I think that needs to be fixed.

8 CHAIRPERSON HEATH: Any other questions from
9 the Board? All right. So, let's see where we are.
10 All right. So we'll continue on, then.

11 We do have the letter recommending approval
12 from ANC 6A. They've also requested language in the
13 condo bylaws about trash management. Are you in
14 support of this? Have you -- I know that there
15 obviously aren't any bylaws at this point, but how
16 are you prepared to handle this?

17 MR. SPRINZEN: Yes, we actually heard those
18 concerns from the ANC members when we met with them
19 prior and actually brought that to their attention
20 when they discussed trash being an issue. So we
21 actually were the ones to volunteer that.

22 CHAIRPERSON HEATH: Okay.

23 MR. SPRINZEN: And we're amenable to that and
24 we have no problems at all.

25 CHAIRPERSON HEATH: Okay. That's good. Is

1 there anybody here from ANC 6A on this application?
2 Okay. We have a letter of no objection from
3 Department of Transportation on this, and as has been
4 previously noted we do have several letters in
5 support and just received the additional letter of
6 support from the adjacent neighbors.

7 Is there anyone here wishing to speak in
8 support to this application?

9 MR. B. SULLIVAN: Yes. Hi. My name is Brian
10 Sullivan, unrelated to counselor Sullivan here. I've
11 been a neighbor on the 1100 block of G Street, along
12 with my wife, for the past 33 years.

13 I want to reinforce what has been said
14 throughout that this discussion of a porch to the
15 front of this proposed development really comes at
16 the behest of the neighbor. Initial designs did not
17 include a porch. We felt that those initial designs
18 did not speak to the look and the feel of the
19 aesthetic of the neighborhood. This property that is
20 being proposed to be demolished, and the one nearby
21 next door that is going to be added on to, along with
22 our house, are original to the neighborhood built
23 just in the days following the civil war.

24 Mr. May, I totally appreciate your design
25 contributions to this discussion. It synchs exactly

1 with what the neighborhood has been saying. I'm a
2 little fearful that by bifurcating this request might
3 possibly result in no porch at all, which would not
4 be in keeping with what the neighborhood has asked
5 for. And I have to say that Justin has been very
6 open to what the neighborhood has brought before him,
7 with all of the aesthetic contributions to this
8 conversation. If those take place I think the
9 community would be very much in support of that front
10 porch and your acceptance of the applicant before
11 you.

12 CHAIRPERSON HEATH: Did you have a question?
13 Okay. Okay.

14 MS. BUTANI-D'SOUZA: I guess I have a
15 question but this is more of an Office of Zoning
16 procedural question.

17 So I think Mr. Sullivan has raised a very
18 good point that the applicant has testified that the
19 plans that they have handed out to us are conceptual
20 in terms -- they, I think believe that is in terms of
21 the interior layout. But I'm wondering whether the
22 Office of Zoning would require a final set of plans
23 to be submitted into the record if the request were
24 to be bifurcated.

25 CHAIRPERSON HEATH: We would need that.

1 MS. BUTANI-D'SOUZA: So that we address the
2 concern that Mr. Sullivan has raised about the
3 potential for the loss of the porch.

4 CHAIRPERSON HEATH: Right.

5 MR. SULLIVAN: Yeah, we would intend to
6 submit a full size set of plans, conceptual -- more
7 developed. Conceptual to the level that BZA is
8 accustomed to. And any bifurcated request is, to be
9 clear, does not -- includes the porch, either way.
10 So.

11 CHAIRPERSON HEATH: All right.

12 [Discussion off the record.]

13 CHAIRPERSON HEATH: So, all right. Thank
14 you, Mr. Sullivan, for your statement.

15 Is there anyone else here wishing to speak in
16 support?

17 Anyone here wishing to speak in opposition on
18 this application? No opposition?

19 All right. Then we'll turn back to you, Mr.
20 Sullivan for any closing. I know that Office of
21 Planning has said that they'd like to see additional
22 information regarding the lot occupancy issue. But
23 if you're okay with moving to closing I think we can
24 then allow the Board to deliberate and see where we
25 are.

1 MR. SULLIVAN: Thank you, Madam Chair and
2 Members of the Board. And again, to be clear, we
3 would like to bifurcate the request. We're
4 requesting special exception approval under 336, and
5 we're also requesting the variance relief discussed
6 here today for the lot occupancy. And if the Board
7 was so inclined to not grant that we'd want to make
8 sure that we get the 336 relief.

9 And the plans, the exterior plans don't
10 change other than the footprint would be reduced,
11 according to the plans that we handed out.

12 Regarding the comment from the Office of
13 Planning on the rooftop design requirements, I guess
14 I still wasn't entirely clear whether or not we now
15 satisfied them on that. But to the extent we don't,
16 336.12 allows the Board to waive or modify that
17 requirement. And so if the Board was approving of
18 the design in general I think that's what we would
19 include that under. I don't think it's a special
20 section of relief, but it's something the Board is
21 permitted to do in their 336 consideration.

22 And so I would just, I would reiterate the
23 variance argument that the condition of the porch --
24 and one other thing that maybe that wasn't mentioned,
25 there's very few covered porches on the block.

1 There's only four houses, including this one, that
2 have the covered porch. So that makes it further
3 unique. And I think as the Office of Planning said,
4 it's an exceptional condition that the porch is all
5 the way within our property and it's that specific
6 situation that leads to the five-foot loss of space
7 in the back on three stories.

8 And so with that we would like a decision
9 today if possible, and that impacts how we feel about
10 requesting the variance relief as well. And we're
11 happy to provide any other information that the Board
12 or the Office of Planning needs. Thank you.

13 CHAIRPERSON HEATH: Okay. Thank you. Is the
14 Board ready to deliberate on this?

15 MR. MAY: Whether we can complete
16 deliberations I think is --

17 CHAIRPERSON HEATH: Sure.

18 MR. MAY: -- an open question.

19 CHAIRPERSON HEATH: Sure.

20 MR. MAY: But I think we'd want to start
21 talking about it.

22 So as you might have guessed, initially I was
23 not particular persuaded by the loss of income as a
24 persuasive argument. And I think actually what I'm
25 most concerned about, and this is where this sort of

1 case boils down to primarily to special exceptions
2 when you're going from what you're allowed by matter
3 of right in R-4 neighborhood to going into more
4 units, it really has to do with the potential for
5 impact on the neighborhood. And I think that the
6 applicant has actually done a pretty good job of
7 addressing that. And I think that what they've
8 presented in terms of the design, how it faces on the
9 street, and the inclusion of the porch is pretty
10 positive. It's responsive to the neighbors. It has
11 the support of the Restoration Society and the ANC
12 all that.

13 And I think that, so then the question
14 becomes whether the variance relief for lot occupancy
15 is appropriate. I mean, it's certainly not necessary
16 to make the units viable, and but -- although, you
17 know, and I will admit that there is an exceptional
18 condition involving the porch being on the property
19 at the front. Usually houses are not set back. The
20 front wall of the house is right on the property
21 line.

22 And if this were a case where that were true,
23 they could build out exactly as deep as they are
24 proposing. Then the question becomes, does the
25 extension of this property that much further back,

1 have an impact on the nearby properties. And one
2 nearby property is owned by the applicant. The other
3 one they have support from the people who live there.
4 So, you know, it's a little bit longer than I would
5 have liked. I think that in the Zoning Commission
6 we've talked about limiting projecting further back
7 in circumstances like that to 10 feet and I think
8 that may be something that we're going to add to the
9 regulations. But at 12 feet it's not completely
10 outrageous. So, I think given the fact that the
11 abutting neighbors are not objecting, the neighbors
12 who perceive this property from the front on a
13 regular basis are much more concerned about what it
14 looks like and that it be consistent with the porches
15 and the fact that they're going to be required to
16 maintain the detail of the original property.

17 I mean, I think when you add it all up, I
18 think I can get there on all of the relief that's
19 requested. So.

20 MS. BUTANI-D'SOUZA: I tend to agree. I'm
21 reading the record. I guess, I don't know if I
22 missed it in there or if it just wasn't stated in
23 there that the unique condition here is that the
24 porch is located entirely on -- within the property
25 as opposed to within the public space, which is the

1 more typical condition in the District. So where as
2 I would normally not be -- and I wouldn't have been
3 inclined to support that based on what was in the
4 record. Based on what we've heard today from Mr.
5 Sullivan and from the applicant, I do tend to agree
6 that this is a unique situation where you have the
7 ANC and the community very strongly requesting that
8 the porch be preserved, and that creates a situation
9 where the owner loses three stories of space on the
10 house, occupiable space on the house.

11 I think under normal circumstances I would
12 have suggested that the applicant reconfigure the
13 interior and find the five percent, but I do think
14 that that argument is compelling. And that that is a
15 unique situation. So I'm also inclined to support
16 all of the requested relief.

17 CHAIRPERSON HEATH: All right. So, with that
18 then I think you've both made compelling arguments.
19 I wasn't in favor of this in the beginning, and was
20 more inclined to have the applicant present further
21 proof that this variance was justified and you know,
22 because I see no issue with the units without the
23 five feet, but I do think that it has been stated by
24 the Board and I agree that the porch being within the
25 property, and not within public space, is a unique

1 condition here. And the relief being asked is not
2 particularly that great.

3 So I would make a motion that we approve the
4 request for a variance and special exception to
5 convert a two-story one-family dwelling into three --
6 a three-unit apartment house in the R-4 at 1121 G
7 Street Northeast. And this is including special
8 exception relief for 336, variance relief under
9 403.2, and a special exception under 400.25.

10 MS. BUTANI-D'SOUZA: Second.

11 MR. MAY: Could I just add --

12 CHAIRPERSON HEATH: Sure.

13 MR. MAY: -- on the condition that the front
14 façade is modified so that they have the right number
15 of columns?

16 CHAIRPERSON HEATH: Yes. Yes, so the
17 architectural change as noted by Mr. May, to the
18 columns on the porch, is also a condition of this.

19 MS. BUTANI-D'SOUZA: And I would also note
20 that the exceptional situation from my view is both
21 that this is within the private property and that
22 this is a requirement of the ANC for their support.
23 So if this were solely a question of the porch being
24 required. Or sorry, being within the private
25 property, I would not find it as compelling.

1 CHAIRPERSON HEATH: All right. Yeah. A
2 condition of OP and the ANC. So, all right. So, the
3 motion has been made. Did you second?

4 Okay. So the motion has been and seconded.
5 Any further discussion?

6 [Vote taken.]

7 CHAIRPERSON HEATH: The motion carries.
8 Thank you.

9 MR. MOY: Staff would record the vote as four
10 to zero to one. This is on the motion of Chairperson
11 Heath to approve the application for both the
12 variance relief and the special exception relief.
13 And the conditions as to the design of the front
14 porch, all right, the columns. And these are
15 reflected on the updated plans under Exhibit 25, and
16 I believe the plans that -- site plans that were
17 submitted today. Yes?

18 Seconded the motion, Vice Chairperson Butani.
19 Also in support, Mr. Peter May, Mr. Jeffrey Hinkle,
20 no other board member present today. Motion carries,
21 Madam Chair.

22 CHAIRPERSON HEATH: Thank you. Summary
23 order. One other thing to note is that typically we
24 do require that applicants present final drawings.
25 And since we've requested a modification to the

1 porch, the columns, if we could just request that the
2 applicant get that revised elevation in as soon as
3 possible, but certainly before the order is issued.
4 We'll hold the order until that revised drawing is
5 in. Thank you.

6 All right. So, Mr. Moy, you can call our
7 next application.

8 MR. MOY: All right. That would be
9 Application No. 19307. This is of Lock 7
10 Development, LLC., advertised and captioned for
11 variance relief from the off-street parking
12 requirements under 2101.1 to renovate and expand an
13 existing apartment house, C-2-A District, 11 -- at
14 premises 11 15th Street Northeast, Square 1070, Lot
15 93.

16 CHAIRPERSON HEATH: All right. Good
17 afternoon. If you could introduce yourselves?

18 MS. MAZO: Good afternoon, for the applicant
19 Samantha Mazo with the law firm of Griffin, Murphy,
20 Moldenhauer, and Wiggins.

21 MR. GORMAN: Good afternoon. My name is
22 David Gorman and I'm a principal at Lock 7
23 Development and we're the owner.

24 MS. SNEARY: Good afternoon. I'm Stephanie
25 Sneary and I'm with Square 134 Architects.

1 CHAIRPERSON HEATH: All right. So, I think
2 the only real issue here is about whether or not
3 we're going to move forward with the RPP requirement
4 or with the owner's offer to provide two rental
5 parking spaces. I think this Board has heard quite a
6 lot of arguments as to why RPP doesn't work, and I
7 don't like to get involved with RPP at all because
8 there's just absolutely no way to enforce it, as
9 we've heard from DDOT and other city officials. And
10 so it's just, it's a really messy issue.

11 And so given that, I think if you could just
12 speak to what the owner is offering, where these
13 spaces are, if this is in perpetuity, you know, what
14 really is the offer for the two rental spaces.

15 MS. MAZO: Sure. Thank you for that
16 opportunity. So, Dave Gorman is here and he can
17 speak specifically to the options, but we are going
18 to be providing the Board with a map. It's actually
19 not in our PowerPoint, but it's a map that we'll be
20 providing right now to the Board to demonstrate the
21 areas where Mr. Gorman has located and has leased,
22 actually already leased parking spaces. And then
23 similarly we also have signed memorandum of MOUs for
24 two separate parking space locations.

25 And, you know, we would like to say to the

1 Board that Mr. Gorman has already agreed to lease
2 these spaces and so they will be part of the project
3 irrespective of whether the Board decides to, you
4 know, adopt the RPP restrictions or to allow Mr.
5 Gorman to go forward with these spaces that he's
6 already leased. So, Ajaque (phonetic) from my firm
7 will be passing out the leases. And Mr. Gorman can
8 speak to the terms of the leases that we have so far.
9 Certainly the expectation is that there will be spots
10 that will be leased for a certain period of time.
11 And he will speak to the terms of the leases that
12 we've already entered into. But, I don't think we
13 can say on the record that we have leases for an
14 indeterminate amount of time for two parking spaces.

15 But the Board could condition their approval
16 on leases of parking spaces within a certain location
17 for you know, a period of time of their choosing, say
18 five or 10 years that would be part of the BZA order.

19 MS. BUTANI-D'SOUZA: So, you know, my concern
20 here is that -- and I certainly appreciate the offer
21 to go through the terms of the leases for the parking
22 spaces, but I really don't think that's necessary,
23 except at a high level here.

24 So, you know, the neighborhood has expressed
25 considerable concern regarding parking to support the

1 additional density that you're requesting here. And
2 you know, the issue is that if you have a five-year
3 lease for parking, well, that's great for five years
4 but after that you revert back to the condition that
5 the neighborhood is very concerned about.

6 So, given that you guys have presented a very
7 robust enforcement mechanism for the RPP, in
8 reviewing the information on the file I thought to
9 myself, well, perhaps there's an opportunity for you
10 to have a robust enforcement mechanism to maintain
11 these parking spaces over time.

12 So, what I'm wondering is whether the
13 applicant would essentially agree that the condo
14 building would rent spaces in perpetuity and provide
15 copies of the contracts annually to the ANC showing
16 that the spaces remain rented, and whether the
17 applicant would agree to mandate this as a covenant
18 on the deed and in the condo docs as they have
19 proposed to do with the RPP restriction, because to
20 me I think that would be a robust enforcement
21 mechanism that would give the community assurance
22 that the density increase would not be felt on their
23 existing parking situation.

24 MR. GORMAN: Thank you. It's an interesting
25 concept. I think we could definitely address that.

1 One question would be if in the future at some point,
2 for some reason, there's parking spaces that are not
3 available, how would that be treated?

4 MS. BUTANI-D'SOUZA: I can't -- I am not
5 envisioning that the BZA would provide a restriction
6 on the geography of the parking spaces. Certainly if
7 your residents have cars it would be up to them how
8 far they're willing to walk after they've parked
9 their car. So I wouldn't see a need to restrict that
10 and I'm sure that in the District of Columbia there
11 will always be parking spaces available to rent
12 somewhere.

13 MR. GORMAN: I think those conditions would
14 be agreeable.

15 MS. BUTANI-D'SOUZA: Terrific. So that's --

16 MS. MAZO: And, sorry, I just want to clarify
17 that that's in lieu of the RPP restriction, correct?

18 MS. BUTANI-D'SOUZA: Yes, correct. So, for
19 staff purposes what I am suggesting is that the
20 conditions state that the condo association would
21 rent spaces in perpetuity, provide copies of the
22 contracts for the rental spaces on an annual basis to
23 the ANC for verification, and that this rental in
24 perpetuity be mandated as a covenant on the deed and
25 in the condo docs. And that would be the --

1 CHAIRPERSON HEATH: That would replace the
2 ANC's Condition No. 1.

3 MS. MAZO: We are agreeable to that; to those
4 conditions.

5 CHAIRPERSON HEATH: Okay.

6 MS. BUTANI-D'SOUZA: Terrific.

7 CHAIRPERSON HEATH: While we're talking about
8 the conditions, Condition No. 2, about traffic
9 mitigation efforts being installed within the
10 building is pretty vague. What are you proposing to
11 do?

12 MS. MAZO: So the applicant has proposed to
13 install a transit screen, and then we're also
14 providing nine secure bike locations within the rear
15 of the property.

16 CHAIRPERSON HEATH: Okay. So if we can make
17 this condition more specific to say that the
18 applicant shall install a transit screen and provide
19 bicycle parking on the property, I think that would
20 make this condition more enforceable.

21 MS. MAZO: We are amenable to that.

22 CHAIRPERSON HEATH: Okay. Condition No. 3
23 and 4 are really things that need to be approved
24 prior to -- or at least submitted prior to the
25 Board's approval of this application. So, the shadow

1 study.

2 MS. MAZO: To be clear, the shadow study was
3 filed as part of the prehearing statement, and also
4 we are very pleased to say that we have letters in
5 support from both adjacent neighbors.

6 CHAIRPERSON HEATH: Okay. That's great.

7 MS. BUTANI-D'SOUZA: For future reference, I
8 believe the -- and I'm having a hard time opening it
9 right now, but I believe that the shadow study that
10 was included didn't actually show the existing
11 condition as it compared to the proposed condition,
12 which to me is not really a shadow study because
13 honestly that just doesn't really show us what's
14 changing.

15 So since you have letters of support from the
16 adjacent neighborhoods who are most affected, I don't
17 think that's something that needs to be modified.
18 But Ms. Mazo, for you to note for future cases that
19 this is not -- and for anyone who is watching who has
20 a case that involves a shadow study we would request
21 that they show the existing condition and the
22 proposed condition so that the Board can evaluate the
23 impact. Thanks.

24 MS. MAZO: Duly noted. And then also, often
25 those shadow studies also show a matter of right

1 project. So sometimes you'll have shadow studies
2 that shows existing, matter of right, and proposed.

3 CHAIRPERSON HEATH: Sure. All right. And
4 then the last condition proposed by the ANC again is
5 one that we wouldn't include as a condition to this
6 order. But it just states that best attempts should
7 be made to get letters of support from neighbors. I
8 assume you've done that already.

9 MS. MAZO: Yeah, we had the letters in
10 support from the two adjacent neighbors, the letter
11 in support from the adjacent neighbor to the east is
12 at Exhibit 35, and letter in support from the
13 adjacent neighbor to the west is at Exhibit 45.

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

16 MS. MAZO: And also to clarify on the
17 condition, on the rental spaces that would apply to
18 the life of the building.

19 CHAIRPERSON HEATH: Correct. Any other
20 questions from the Board?

21 MS. BUTANI-D'SOUZA: I would just -- I'm just
22 going back to the applicant's prehearing statement
23 because I note that the RPP -- proposed condition
24 related to RPP referenced that the condition would be
25 subject to the conditions enumerated on page 5 of the

1 applicant's prehearing statement which pertains to
2 how this would be memorialized in the condo
3 documents. So, I would suggest that these five
4 conditions that are -- and I guess, I don't know if
5 Office of Zoning can do this in their -- I would
6 image that they would be able to do this in their
7 order, but that the five conditions laid out on page
8 5 of the applicant's prehearing statement be modified
9 so that rather than referring to the RPP restricted
10 units it instead referred to the rental parking
11 spaces as the enforcement mechanism.

12 MS. MAZO: I think that's fine. My only
13 question is, Condition No. 3, because that relates to
14 the ability to obtain RPP information from the DMV.
15 That seems --

16 MS. BUTANI-D'SOUZA: You're right. That's
17 not applicable.

18 MS. MAZO: -- unrelated to the proposed
19 leasing conditions.

20 MS. BUTANI-D'SOUZA: Right. So the other
21 ones are applicable, though, correct? One, two,
22 four, and five are -- I think --

23 MS. MAZO: Yeah, I guess for your idea, and
24 which we have agreed to is that we would report the
25 leasing information annually to the ANC.

1 MS. BUTANI-D'SOUZA: To the ANC.

2 MS. MAZO: Is that how that would be amended?

3 MS. BUTANI-D'SOUZA: Yes. Uh-huh.

4 MS. MAZO: And then five.

5 MS. BUTANI-D'SOUZA: And then I suppose the
6 marketing component of it actually doesn't apply.

7 CHAIRPERSON HEATH: Right.

8 MS. BUTANI-D'SOUZA: So it would really be
9 one, two, and a modification to four. So one and two
10 apply. Condominium documents. Yes, needs to be in
11 the condominium documents. Uh-huh. And -- yes. So
12 it would be one, two, and then the modification to
13 four that we discussed.

14 MS. MAZO: Sure. Would it be helpful to the
15 Board if we redrafted those for you, or what's the
16 best process?

17 CHAIRPERSON HEATH: Yes.

18 MS. BUTANI-D'SOUZA: Yes.

19 CHAIRPERSON HEATH: It would be helpful.

20 MS. BUTANI-D'SOUZA: Do we need to delay
21 decision if they --

22 CHAIRPERSON HEATH: I don't know. Would we
23 need to delay for that language?

24 MR. MOY: Well, that's one option and that
25 gives the Board a chance to confirm the language

1 that's being provided from the applicant. And maybe
2 the Board can decide it next Tuesday.

3 CHAIRPERSON HEATH: Okay. All right. That's
4 fine.

5 MR. MOY: In decision.

6 CHAIRPERSON HEATH: Sure. Sure. That sounds
7 good.

8 MS. MAZO: All right. So we can get that
9 language back to you by this Thursday and so we can
10 get on for decision on the 19th.

11 CHAIRPERSON HEATH: That works.

12 MS. MAZO: Thank you.

13 CHAIRPERSON HEATH: Okay. All right. Okay.
14 So, we haven't heard from Office of Planning yet. So
15 I think that concludes the Board's questions for the
16 applicant and we'll hear from Office of Planning at
17 this time.

18 MR. MORDFIN: Good afternoon, I'm Stephen
19 Mordfin and the Office of Planning continues to
20 support this application and is available for any
21 questions. Thank you.

22 CHAIRPERSON HEATH: Okay. And you've heard
23 the conditions that the Board has recommended. You
24 have no issues with those?

25 MR. MORDFIN: I have no issues with those,

1 right.

2 CHAIRPERSON HEATH: Perfect. All right. Any
3 other questions of Office of Planning? All right.
4 We've noted that we do have approval from ANC 6A and
5 that they have put forward conditions. We've talked
6 about those at length and made modifications to those
7 as well. We also have a letter recommending no
8 objection from Department of Transportation and
9 letters in support from neighbors and the Capitol
10 Hill Restoration Society.

11 We have one letter in opposition from a
12 resident at 1449 A Street Northeast. Is there anyone
13 here wishing to speak in support of this application?
14 Anyone in support? Anyone here wishing to speak in
15 opposition? No opposition? All right.

16 Then we'll turn back to the applicant for any
17 closing you want to make.

18 MS. MAZO: No closing, we would just ask for
19 a bench decision on the 19th.

20 CHAIRPERSON HEATH: Okay. All right. Go
21 ahead.

22 MR. MAY: So, since I won't be able to be
23 here on the 19th and would have to consider this as a
24 -- with an absentee ballot, there are just a couple
25 things that I would want to say in anticipation of

1 whatever deliberations might occur. Which is that
2 first of all that the -- as a matter of principle I
3 actually am a support of RPP restrictions in certain
4 cases and I do think that they are more enforceable
5 and more workable than some people have claimed to
6 us. I realize I may not be in the majority on that,
7 but that's my feeling on this. And I also think that
8 we need to keep pushing this issue because I think
9 that DDOT and DMV and DPW does parking enforcement,
10 all of them would have to get -- you know, mover
11 forward with this because this is the wave of the
12 future. There are requirements under the new zoning
13 regulations that rely on this as a mechanism, and
14 they need to get with the program and develop the
15 right kinds of enforcement tools.

16 That being said, I think it's very weird to
17 do RPP restrictions on two units out of many in a
18 building. I think it's either the whole building or
19 none at all, generally speaking. And so in this case
20 I was not supportive of using RPP restrictions unless
21 it was being proffered for the -- or being offered
22 for the entire building.

23 So therefore, you know, I think that what has
24 been suggested here in terms of the conditions I
25 think I can be supportive of. But I'll wait to see

1 the final version of it. So, thank you.

2 CHAIRPERSON HEATH: Okay. Thank you. So we
3 will put this on for decision next Tuesday. And if
4 you can get your revised statement or your -- yeah,
5 you're revised statement with the revised conditions.

6 MS. MAZO: Sure. We'll submit a, just a post
7 hearing submission just with the revised conditions.

8 CHAIRPERSON HEATH: That works. That's
9 perfect.

10 All right. So, Mr. Moy, decision next week.

11 MR. MOY: Yes, and the filing by the
12 applicant by this Thursday.

13 MS. MAZO: Happily. Sure.

14 CHAIRPERSON HEATH: Okay. Great. Thank you.

15 [Pause.]

16 CHAIRPERSON HEATH: All right. We're going
17 to take five minutes and then come back with our next
18 application, which is 19309.

19 [Off the record at 12:50 p.m. for a short
20 recess.]

21 CHAIRPERSON HEATH: All right. The hearing
22 will come back to order, please.

23 MR. MOY: Yeah, I believe the next
24 application, Madam Chair, is Application No. 19309 of
25 Valor P Street, LLC. Is that right? Yes.

1 CHAIRPERSON HEATH: That is.

2 MR. MOY: Okay. Advertised and captioned for
3 relief for variances from the lot occupancy
4 requirements under 772.1 and the rear yard
5 requirements under 774.1. This would renovate an
6 existing structure to create a mixed use building
7 containing eight dwelling units with a ground floor
8 restaurant in the DC/C-2-C District, 2147 through
9 2149 P Street Northwest, Square 67, Lot 835.

10 CHAIRPERSON HEATH: All right. If you --

11 MR. MOY: And there is a party status
12 request, I believe, Madam Chair.

13 CHAIRPERSON HEATH: Correct. If you call
14 could please introduce yourselves?

15 MS. MAZO: Sure. Samantha Mazo on behalf of
16 the applicant of the law firm of Griffin, Murphy,
17 Moldenhauer, and Wiggins.

18 MR. STEVISON: Matt Sevison, PGN Architects.

19 MR. SERPA: Felipe Serpa. I'm with Valor
20 Development, the owners.

21 MR. WARWICK: Daniel Warwick, ANC 2B.

22 MR. HITCHCOCK: Con Hitchcock, counsel for
23 DuPont West Condominium, the applicant for party
24 status.

25 MR. OATES: And Bob Oates, President of the

1 DuPont West Condominium Owner's Association.

2 CHAIRPERSON HEATH: Okay. Thank you. So
3 we've reviewed the information that's in the record
4 and just received a letter from the ANC, I think it
5 was last night, stating that you voted to deny this
6 application, but you also requested more time. We
7 also saw the PowerPoint from the applicant requesting
8 that we get the hearing started, but then give you
9 more time. It certainly sounds like there -- I mean,
10 given the significant opposition to this, including
11 Office of Planning's opposition, it sounds like there
12 needs to be significant work on this. I don't see
13 any reason for us to go forward without you all
14 getting the time that you've requested. So, is there
15 -- was there some other reason why you wanted to all
16 come here today?

17 MS. MAZO: Well, we had two purposes with
18 coming here today. The first is that the DuPont West
19 does have a party status request and we believe that
20 that request is valid and that the Board should take
21 action on that. And the second is to formally open
22 the hearing so that this application vests under ZR-
23 58 so that when we do come back, which we will come
24 back in September at whatever date Mr. Moy chooses,
25 that we will be able to carry forward under the

1 current zoning regulations.

2 The applicant is working closely with the
3 ANC. We had a very productive meeting with them on
4 the 6th of July. We're also working with the Office
5 of Planning. We have been in touch with the Office
6 of Planning. In addition, we are going to HPRB at
7 the end of the month or the beginning of August,
8 whichever date we get, and Mr. Stevison from PGN can
9 discuss very briefly, but that that HPRB submission
10 has additional detail that's required for the HPRB,
11 and also following HPRB there may be some other
12 direction from HPO that needs to be included within
13 this application.

14 So, we believe that the applicant is right
15 but it has been noticed to start today. We filed a -
16 - the notices have gone out, the property has been
17 posted. Everybody at this table, I believe, is in
18 agreement that we can officially open the hearing and
19 then agree to continue, but they can speak for
20 themselves.

21 CHAIRPERSON HEATH: Okay. Typically in a
22 situation like this I'm more inclined to wait on the
23 party status request until you have more time to see
24 where you stand at that point, and if you still want
25 to request party status, either in support or

1 opposition, you can do that. But you know, since
2 you're here I'm willing to hear from you today.

3 MR. HITCHCOCK: [Speaking off mic.]

4 CHAIRPERSON HEATH: Your mic is not on,
5 still.

6 MR. HITCHCOCK: Thank you. We appreciate
7 that. We have had discussions with the applicant and
8 their representatives. We've had discussions with
9 the ANC and with the Office of Planning. We are here
10 as, you know, given with the way the case came
11 forward, the idea of a compromise was floated at the
12 ANC meeting Tuesday. You know, we're certainly
13 willing to discuss that.

14 As I said, we've had meetings where actually
15 having a meeting of the -- the owners and tenants of
16 the DuPont West this evening to talk further. I
17 think it might be easier to facilitate when we come
18 back in September time, if the party status is
19 granted now and just, I mean, if we are in agreement
20 later on we can certainly report to the Board at that
21 time.

22 CHAIRPERSON HEATH: Okay. All right.

23 MS. MAZO: And for the record, the applicant
24 has no concerns about going forward with party status
25 now. And as, I'm sorry, Mr. Hitchcock mentioned, and

1 as Mr. Oakes would mention, there have been long,
2 ongoing discussions with the DuPont West and really
3 with the help of the ANC and Commissioner Warwick, we
4 are optimistic that we can get there, but it's going
5 to take a little time.

6 CHAIRPERSON HEATH: Okay. All right. So,
7 does the Board have any issues with granting party
8 status?

9 [No audible response.]

10 CHAIRPERSON HEATH: So then we will, we'll
11 formally grant party status to the DuPont West
12 Condominium Association on this application and with
13 that I think I would suggest that we conclude for
14 today.

15 I believe you would have been still vested
16 under the 1958 regulations because of when you
17 applied. When you submitted your application.

18 MS. MAZO: There is some distinction within
19 the language of the ZR-16 that talks about an
20 application going forward for which a public hearing
21 had prior been held, prior to the date, the September
22 6th date. And so really, out of an abundance of
23 caution is why we all got together today.

24 But we really do hope that we're going to be
25 able to come to the Board next time with, you know,

1 much more consensus on where these plans are.

2 CHAIRPERSON HEATH: Okay. All right. Did
3 you want to say something?

4 MR. MAY: Yeah, before we conclude, if I
5 could.

6 CHAIRPERSON HEATH: Uh-huh. Sure. Go ahead.

7 MR. MAY: So the -- I think at this moment I
8 would just want to let you know what my concerns are
9 about this case as you work toward getting to some
10 agreement.

11 And essentially that's that the you know, by
12 requesting this particular relief you're essentially
13 creating a land-locked building that relies on your
14 neighbor's properties to provide light and air to the
15 units, to the windows. I mean, every -- except for
16 the front, on P Street, every other side is looking
17 out on to somebody else's property. And I just don't
18 see how that can work.

19 So I think that there has to be some sort of
20 yard, side yard, rear yard, something that gives you
21 the opportunity to make sure that your units have
22 light and air into the future. Another way to do
23 that would be to acquire an easement from the DuPont
24 West Condo or something like that. But you got to
25 have light and air.

1 And, you know, even though it's unlikely that
2 all of that you know, everything along that property
3 line would be developed, you can't guarantee it. Who
4 knows what the Zoning Commission might do in the next
5 rewrite, you know, hopefully not 50 years from now,
6 but you never know.

7 So I just think it's completely unworkable
8 the way it's planned and there has to be some sort of
9 allowance where you are absolutely guaranteed to have
10 light and air to those units in the back.

11 I mean, if you want to have some units that
12 might have a window at risk here and there, that's
13 one thing. But I've never seen anything like this
14 where every single one on three walls would be at
15 risk. So I think that's the thing you have to fix.

16 MS. MAZO: Okay. Absolutely, duly noted.
17 Thank you, Commissioner May.

18 CHAIRPERSON HEATH: All right. So, Mr. Moy,
19 have you found a new date for this hearing?

20 MR. MOY: I have two possible dates and I
21 would like to hear from Mr. May as to his
22 availability. So the two dates would be either
23 September 20th or September 27th.

24 [Discussion off the record.]

25 MS. MAZO: Mr. Moy, my only concern about the

1 13th is whether that will give us enough time to get
2 back to the ANC. I know they meet in August, but --
3 which is fantastic. Not many meet in August. But if
4 we have to go back again I am a little concerned
5 about the 13th.

6 CHAIRPERSON HEATH: Do you think that the
7 20th or 27th --

8 MS. MAZO: 20th or 27th should be fine.
9 And --

10 MR. WARWICK: As the Commissioner, the ANC 2B
11 meets the second Wednesday of the month, that is in
12 September, September 14th. We actually held a
13 special meeting last week for this application
14 because our meeting for July is tomorrow and we
15 wanted to get the most amount of time before. So we
16 would appreciate September 20th or September 27th, or
17 a date in October if that is possible.

18 CHAIRPERSON HEATH: Okay. It doesn't matter
19 to me.

20 MR. MOY: October is open, Madam Chair.

21 CHAIRPERSON HEATH: Okay.

22 MS. MAZO: And the applicant is amenable to
23 October as well.

24 MR. MOY: Okay. For October, Madam Chair,
25 I'm looking at the first hearing in October would be

1 the 18th of October. And of course any other
2 subsequent Tuesdays were open as well.

3 MS. BUTANI-D'SOUZA: That sounds like that
4 would give the ANC time to meet a second time as
5 well, which I think is great. So, let's go with
6 that.

7 MR. MOY: Mr. May, is 18th of October good,
8 or the 25th of October?

9 MR. MAY: [Speaking off mic.]

10 MR. MOY: Okay.

11 CHAIRPERSON HEATH: 18th. Okay. So October
12 18th.

13 MS. MAZO: All right. Thank you very much.
14 Appreciated. Thanks.

15 MR. MOY: October 18th.

16 MS. MAZO: Thank you. Bye, bye.

17 MR. HITCHCOCK: The 18th at 9:30, then.

18 MR. MOY: Yes.

19 MS. BUTANI-D'SOUZA: Yes.

20 MR. HITCHCOCK: Thank you.

21 CHAIRPERSON HEATH: Thank you. All right,
22 Mr. Moy, you can call our next application.

23 MR. MOY: Yes, thank you. That would be
24 parties to the table to Application No. 19313 of
25 Emmanuel Baptist Church, captioned and advertised for

1 variance relief on the off-street parking
2 requirements under 2101.1, special --

3 CHAIRPERSON HEATH: If you could continue
4 your conversation outside, please, we're continuing
5 on. We're not finished.

6 MR. MOY: Special exception from the
7 residential development requirements under 353. This
8 would construct a new 74-unit apartment building, R-
9 5-A District at 2409 through 2412. I believe it's
10 pronounced Ainger, A-I-N-G-E-R, Place Southeast,
11 Square 5740, Lots 8190 and 851.

12 And, Madam Chair, on the record, the
13 applicant made a supplemental filing under Exhibit
14 39, which was filed rather, July 7th, 2016. A little
15 late.

16 CHAIRPERSON HEATH: Okay. All right. And if
17 you could introduce yourselves, please.

18 MS. GIORDANO: Yes. Cynthia Giordano with
19 Saul Ewing Law Firm. Do you want to introduce
20 everybody now or --

21 CHAIRPERSON HEATH: Sure.

22 MS. GIORDANO: Okay.

23 CHAIRPERSON HEATH: Just make sure your mic
24 is on.

25 MS. SAREEN: Vandana Sereen with Michaels

1 Development Company, development manager.

2 MR. NICHOLS: Christopher Nichols, interim
3 pastor at Emmanuel Baptist Church.

4 MS. WARE: My name is Linda Ware and I'm the
5 tenant of 2412 Ainger, B Building.

6 MR. GOULD: Yes, and my name is Terry Gould
7 and I'm the Executive Director for the Emmanuel
8 Baptist Church nonprofit.

9 CHAIRPERSON HEATH: Okay.

10 MR. WRIGHT: Craig Wright with McKissack and
11 McKissack Architects.

12 CHAIRPERSON HEATH: Okay. All right. So, I
13 don't have any questions on this.

14 MS. GIORDANO: If I can interrupt?

15 CHAIRPERSON HEATH: Sure.

16 MS. GIORDANO: I have 11 by 17 copies of the
17 plans if it would be useful to distribute those.

18 CHAIRPERSON HEATH: Hold that for now.

19 MS. GIORDANO: Okay.

20 CHAIRPERSON HEATH: We'll see if questions
21 come up that pertain to the plans, we'll ask you to
22 distribute.

23 OP recommended two conditions and I assume
24 you are in agreement with both of those.

25 MS. GIORDANO: Yes, that was the reason for

1 the late filing.

2 CHAIRPERSON HEATH: Okay.

3 MS. GIORDANO: We wanted to respond to those
4 and there was still one that was a little ambiguous
5 in my response that we've now clarified with regard
6 to the masonry wall that OP was requesting. We are
7 in agreement that we would provide a perforated wall
8 up to four feet high, or four feet high.

9 CHAIRPERSON HEATH: Okay. All right.

10 MS. BUTANI-D'SOUZA: Is that pertaining to
11 the fireproofing?

12 MS. GIORDANO: No.

13 MS. BUTANI-D'SOUZA: That's a different
14 issue?

15 MS. GIORDANO: Yes. This was to provide
16 screening from the surface parking lot.

17 MS. BUTANI-D'SOUZA: Okay. Uh-huh. So, I
18 did have a couple quick questions. I believe that OP
19 had requested fireproofing for the area adjacent to,
20 I believe it was the trash room, or perhaps it was
21 the laundry facility, and some changes to the
22 landscaping. I don't think those were addressed in
23 the supplemental filing, the letter. So I just
24 wanted to make sure that those were addressed.

25 MS. SAREEN: Yeah. We've actually, we've

1 completed 50 percent due on DD sets, and we've
2 already moved that away in our new submission and Mr.
3 Cochran is aware of that.

4 MS. BUTANI-D'SOUZA: Wonderful. And then I
5 also just wanted to say that I thought this was a
6 really thoughtfully designed project. I appreciated
7 the rapid response to OP's comments, even though it
8 was after the filing deadline. But that's okay in
9 this case.

10 And I also thought I was wonderful that the
11 development will provide ADA accessible units and
12 units that are specifically available to women who
13 face homelessness. I also thought that the provision
14 of family sized units was a great thing, so I applaud
15 the applicant on such a thoughtfully designed
16 project.

17 MS. SAREEN: Thank you.

18 CHAIRPERSON HEATH: All right. All right.
19 So if no other questions from the Board then it
20 doesn't look like we're going to need a full
21 presentation. So if you're okay with us proceeding
22 on - -

23 MS. GIORDANO: Absolutely.

24 CHAIRPERSON HEATH: Okay. So we'll hear from
25 Office of Planning.

1 MR. COCHRAN: Thanks, Madam Chair. As of
2 this morning the applicant has satisfied all of the
3 concerns that we had.

4 CHAIRPERSON HEATH: Okay.

5 MR. COCHRAN: But just for the sake of -- so
6 we recommend approval of the project.

7 Just for the sake of DCRA, though you might
8 want to put in a condition about the screening wall
9 that was agreed to just this morning. And that would
10 be that it would be a perforated masonry wall, four
11 feet high. And that's just because that's not in the
12 plans that were submitted on July 7.

13 CHAIRPERSON HEATH: Are they in the plans
14 that you have with you today?

15 MS. SAREEN: A screening wall?

16 CHAIRPERSON HEATH: Right.

17 MS. SAREEN: No.

18 CHAIRPERSON HEATH: Okay. Because if we make
19 that a condition we're going to need to show that in
20 the plans. The plans will need to reflect what has
21 been made a condition.

22 MS. BUTANI-D'SOUZA: Which would probably
23 mean that we'd have to postpone the decision, which
24 I'm sure you would prefer that we --

25 MS. GIORDANO: It couldn't be a text.

1 They're just on such a time crunch.

2 CHAIRPERSON HEATH: Sure. Sure. Could we
3 have them just submit the revision to add that wall?

4 MR. MAY: I mean, can they take a page out of
5 it and mark it --

6 CHAIRPERSON HEATH: Right.

7 MR. MAY: -- that their wall is going to be
8 there?

9 CHAIRPERSON HEATH: Yes. Yeah.

10 MR. MAY: And submit it to the record.

11 MS. GIORDANO: I don't have a problem with
12 that.

13 MR. MOY: I like that idea.

14 CHAIRPERSON HEATH: Yeah. That's perfect.

15 MS. SAREEN: Okay. We have the landscape
16 architect and our civil --

17 MR. MAY: Yeah.

18 MS. SAREEN: And the architect.

19 MR. MAY: Plenty of people who can draw a
20 straight line.

21 CHAIRPERSON HEATH: Yeah. Sketch away.

22 MR. MAY: Draw a note and bubble it, you
23 know.

24 CHAIRPERSON HEATH: While you do that I'm
25 going to keep going just so we can get through the

1 rest of the hearing.

2 MR. MAY: Can I ask?

3 CHAIRPERSON HEATH: Sure.

4 MR. MAY: What about the planting concern?
5 Did that get addressed?

6 MR. COCHRAN: Somewhat. They -- because of
7 where the loading area is, and then the narrowness of
8 that side of the property, they're not able to put in
9 screening from -- so that you wouldn't see the trucks
10 from the units inside. But there is planting at
11 least, in there.

12 MR. MAY: So it was that side? I thought it
13 was the back side. It's the --

14 MR. COCHRAN: No, it was the --

15 MR. MAY: It was the other abutting property.

16 MR. COCHRAN: If you're looking from the
17 front of the building it would be the right side.

18 MR. MAY: Yeah. Okay.

19 MR. COCHRAN: And it's not like trucks are
20 going to be there all that often.

21 MR. MAY: No. I just, it struck me that the
22 drive aisles are exceptionally wide. I didn't see
23 dimensions on them but it seems like there's an awful
24 lot of room for the cars that are navigating around
25 the building. I don't know how wide they were, but

1 it looked like it was 20 feet wide and it was one way
2 going around the back of the building.

3 MR. COCHRAN: That's something better
4 addressed by the applicant.

5 MR. MAY: Yeah. Okay.

6 MS. SAREEN: I'll let our civil engineer
7 address that.

8 MR. MAY: Okay.

9 MR. GRAZIANO: Mike Graziano, Wiles Mitch
10 Civil Engineer.

11 When we have parking on both side of the
12 drive aisle it's 22 feet drive aisle.

13 MR. MAY: Okay. But that only occurs on the
14 -- if I'm looking at the building, the parking lot on
15 the left where you first pull into, that has two-way
16 traffic.

17 MR. GRAZIANO: Uh-huh.

18 MR. MAY: But then the drive aisle that goes
19 around the building is what?

20 MR. GRAZIANO: It's 22 as it ropes around the
21 back, and then beside the loading dock it narrows to,
22 I think it's 17 feet. And then as you approach the
23 entrance to Ainger, it narrows down to 12 feet.

24 MR. MAY: Right. But, okay. So around the
25 back where it is single-loaded parking.

1 MR. GRAZIANO: Uh-huh. It's 22 feet.

2 MR. MAY: And is that what's required?

3 MR. GRAZIANO: I think 20 feet is what's
4 required.

5 MR. MAY: So why do you want to have that
6 extra two feet of pavement? Civil engineers. What
7 can I say?

8 MR. GRAZIANO: The more the merrier.

9 MR. MAY: No, more grass. More green. I
10 mean, I don't think the plans need to be changed, but
11 I think, you know, only put as much asphalt as you
12 need. Don't overdo it. You don't need to be going
13 through there at 25 miles an hour either so.

14 MS. BUTANI-D'SOUZA: I'm sure the civil
15 engineer will adjust that when he has to make his
16 storm water management plans.

17 MR. MAY: Yeah, I would think so.

18 MS. BUTANI-D'SOUZA: Then those two feet will
19 become very important to you.

20 MR. MAY: Thank you.

21 CHAIRPERSON HEATH: All right. Is there
22 anybody here from ANC 8B wishing to speak on this
23 application? It appears not. We do have a letter
24 recommending approval from them, as well as a letter
25 recommending no objection from Department of

1 Transportation.

2 Is there anybody here wishing to speak in
3 support of this application? Anyone in support?
4 Anyone wishing to speak in opposition? No
5 opposition? All right.

6 MS. WARE: Yes.

7 CHAIRPERSON HEATH: Oh, you were in
8 opposition.

9 MS. WARE: Yeah.

10 CHAIRPERSON HEATH: Okay. Okay.

11 MS. WARE: I'm the tenant.

12 CHAIRPERSON HEATH: All right. We will allow
13 you to speak. We'll give you three minutes.

14 MS. WARE: Okay. My concern --

15 CHAIRPERSON HEATH: Make sure your mic is on.

16 MS. WARE: My concern is that --

17 MR. MOY: I'm sorry, ma'am, can you identify
18 yourself?

19 CHAIRPERSON HEATH: Yes, please give your
20 name.

21 MS. WARE: Ware. And I'm at 2412 Ainger
22 Place. That's the B building.

23 I've been there since when the rent was \$135,
24 so I'm you know, one of the old dinosaurs. And my
25 concern is the 90 days. I mean, I'm for the project

1 that they're presenting. We, you know -- it's a
2 need. But the 90 says, I'm doing my best to move out
3 just as fast as I can, but I need some more time
4 other than 90 days. That's one of my concerns. My
5 brother lives next door and he needs that time also.

6 So if it either could be 30 days longer,
7 another month, then I would be satisfied with that.
8 I should be out by then. But that's one of my main
9 concerns.

10 And the other concern is the payout for us to
11 move. They did offer to move and my rent is \$400 a
12 month. That's just how long I been there. Got rent
13 control. Now, I'm moving somewhere else, so that's
14 why it's going to take me a little longer, you know,
15 than 90 days, so I can find a place. I'm trying to
16 buy, maybe a condo. And I just need that time. We
17 need that time. We need like 30 days longer. I
18 believe it's 90 days, isn't it? Didn't you give us
19 90 -- yeah.

20 So that's my grievance.

21 CHAIRPERSON HEATH: Can the -- yeah, the
22 applicant can address that.

23 MS. SAREEN: So actually, Ms. Ware just
24 mentioned is, it's the relocation is under the
25 Uniform Relocation Act which requires the tenant get

1 a 90 day notice. We have not yet provided the 90 day
2 notice, but we have a relocation specialist on board,
3 we have a relocation plan. The relocation specialist
4 is working with each household and to kind of
5 accommodate and help provide the housing. I think
6 we've been working since the past three months with
7 the residents, and so we will continue to work but we
8 haven't yet given the 90-day notice. But at some
9 point we will be, and I think it's -- that notice is
10 really just to kind of start the process. It doesn't
11 mean that if 90-day happens and they're not out, we
12 still -- you know, it's a way to kind of help work
13 with the tenants to let them know that this is
14 coming. But there's definitely -- we'll have to work
15 together with them based on where -- we have to
16 provide three possible housing choices.

17 We also have to provide additional funding to
18 which -- to cover the rent difference between the
19 current and their proposed. So I think we are well
20 covered. The project is under DHCD funding so we are
21 required to meet all the requirements and there's
22 substantial oversight. And the church is also right
23 across the community, so I think we're all working
24 together to accommodate whatever is required.

25 There are just 12 families that need to be

1 relocated.

2 CHAIRPERSON HEATH: Okay. All right. Does -
3 - okay.

4 MS. WARE: You know, it was --

5 CHAIRPERSON HEATH: Yeah, your mic isn't on.

6 MS. WARE: I'm sorry. I just thought it was
7 a definite --

8 CHAIRPERSON HEATH: Okay.

9 MS. WARE: -- date.

10 CHAIRPERSON HEATH: Right.

11 MS. WARE: For the 90 days.

12 CHAIRPERSON HEATH: And it sounds like
13 they're more than willing --

14 MS. WARE: So I'm good.

15 CHAIRPERSON HEATH: -- to work with you.

16 MS. WARE: I'm good.

17 CHAIRPERSON HEATH: So, good. Excellent.
18 I'm glad we satisfied your issues.

19 MS. WARE: Yeah.

20 MS. SAREEN: It's not forever.

21 CHAIRPERSON HEATH: That was easy. That was
22 easy. All right. Thank you.

23 Anybody else wishing to speak in opposition?

24 All right. Then we'll turn back to the
25 applicant for closing.

1 MS. GIORDANO: We have no closing remarks
2 other than I think it's been said a few times, you
3 know, that this is a urgent need to get a decision to
4 meet DHCD's funding requirements.

5 CHAIRPERSON HEATH: Is the revised drawing
6 complete? Perfect. If you could give that to the
7 Board secretary we will make that a part of the
8 official record. All right.

9 So then we have updated drawings. Is the
10 Board ready to deliberate on this?

11 MS. BUTANI-D'SOUZA: Yep.

12 CHAIRPERSON HEATH: I will make a motion
13 then, that we approve the request for variance and
14 special exception to construct a new 74-unit
15 apartment building in the R-5-A District at 2409
16 through 2412 Ainger Place Southeast.

17 MS. BUTANI-D'SOUZA: Seconded.

18 CHAIRPERSON HEATH: The motion has been made
19 and seconded. Any further discussion?

20 MR. MOY: Hold on. I'm passing the --

21 CHAIRPERSON HEATH: Yeah.

22 MR. MOY: -- revised site plan to the Board.

23 CHAIRPERSON HEATH: Making sure it's correct.

24 MR. MOY: Yes.

25 CHAIRPERSON HEATH: Okay.

1 [Pause.]

2 CHAIRPERSON HEATH: So the drawing looks like
3 now it accurately reflects as Office of Planning has
4 agreed, that it turns the corner, makes an L.

5 MR. MOY: That's correct, Madam Chair.

6 CHAIRPERSON HEATH: Okay. Perfect. All
7 right.

8 [Vote taken.]

9 CHAIRPERSON HEATH: The motion carries.

10 MR. MOY: Staff would record the vote as four
11 to zero to one. This is on the motion of Chairperson
12 Heath to approve the application for the relief
13 requested. This includes the revised site plan
14 showing the masonry wall. Seconding the motion, Vice
15 Chairperson Butani. Also in support, Mr. Peter May
16 and Mr. Jeffrey Hinkle. No other board members
17 present.

18 CHAIRPERSON HEATH: Okay. If you all could
19 make sure that the court reporter gets your witness
20 cards? I think he's missing some. Or all. Thank
21 you.

22 All right. Mr. Moy, we are going to proceed
23 on with Application No. 1933 (sic) as our next, and
24 then 19101 will be our last for today. 19311.
25 19311. Manna.

1 MR. MOY: Yes. Thank you, Madam Chair.
2 Application No. 19311 of Manna, Inc. Captioned and
3 advertised for relief for variances from the FAR
4 requirements under 402.4, lot occupancy requirements
5 under 403.2, rear yard requirements under 404.1, and
6 a special exception from the residential development
7 requirements under 353, for constructing 12 row
8 dwellings in a R-5-A District, 2200 through 2210
9 Hunter Place Southeast, Square 5812, Lot 118.

10 CHAIRPERSON HEATH: All right. Please
11 introduce yourselves.

12 MR. GAON: Joe Gaon of the law firm Holland
13 and Knight on behalf of the applicant.

14 MR. SOLOMON: James Solomon, architect for
15 Manna.

16 MR. CHIEJINA: Arinze Chiejina, Dewberry
17 Civil Engineering.

18 MR. FREEMAN: And I'm Kyrus Freeman, here on
19 Leila Batties's behalf.

20 CHAIRPERSON HEATH: Okay. Thank you. So it
21 looks like you haven't met with the ANC yet, that you
22 anticipate that meeting happening in the next few
23 days?

24 MR. GAON: We're scheduled. We're on the
25 agenda for July 18th, but the applicant has

1 previously met with the ANC and discussed the project
2 with the ANC so --

3 CHAIRPERSON HEATH: With the full ANC?

4 MR. GAON: No, not the full ANC.

5 CHAIRPERSON HEATH: Okay.

6 MR. SOLOMON: Correct. We met with the
7 Executive Committee last May or May, a year ago, with
8 a constituent meeting last fall, and then plan to
9 meet with the ANC this summer. We've had no
10 questions on any of the issues with the project from
11 them.

12 CHAIRPERSON HEATH: Okay. And this has been
13 properly noticed.

14 MR. MAY: So, can I ask, why didn't you
15 actually you have a meeting -- I mean, if you've been
16 talking to them for more than a year why did you
17 actually get in front of the full ANC?

18 MR. GAON: We were scheduled in June and the
19 June meeting was canceled.

20 MR. MAY: Oh.

21 CHAIRPERSON HEATH: Okay. All right. So,
22 okay.

23 [Discussion off the record.]

24 CHAIRPERSON HEATH: So if you met with the
25 ANC on the 18th you'd at least know where they stand

1 by the 19th, and could get a letter from them if not
2 that night, than shortly thereafter.

3 MR. FREEMAN: Kyrus Freeman, for the record.
4 I think if the Board is willing we'd like to move
5 forward with the hearing and --

6 CHAIRPERSON HEATH: Sure.

7 MR. FREEMAN: -- leave the record open for
8 the ANC.

9 CHAIRPERSON HEATH: We can do that.

10 MR. FREEMAN: In the event that they -- we
11 don't know why they canceled the June, but they also
12 might cancel the July. So we don't want to --

13 CHAIRPERSON HEATH: Sure.

14 MR. FREEMAN: -- continue --

15 CHAIRPERSON HEATH: Right. That makes sense.
16 All right. We can definitely proceed on with the
17 hearing. So, did you have any questions for you?

18 [Discussion off the record.]

19 MS. BUTANI-D'SOUZA: So as long as we
20 understand that if they did cancel the July hearing
21 we are leaving the record open for them, you would
22 have to be heard in September.

23 CHAIRPERSON HEATH: Okay. Any questions?
24 Okay. All right.

25 Does the Board have any questions? All

1 right. Okay.

2 Then since the Board doesn't have any
3 questions, if you're okay with us proceeding on we
4 can hear from Office of Planning.

5 MR. GAON: We're okay with that.

6 CHAIRPERSON HEATH: At this time. Okay.

7 MR. MORDFIN: Good afternoon. Stephen
8 Mordfin and the Office of Planning supports this
9 application. And the only thing I'd like to add is
10 that since the publication of our report I've
11 received comments from DPR indicating that they had
12 no issues or comments on the application.

13 CHAIRPERSON HEATH: Okay. All right. All
14 right. Board, any questions of Office of Planning?
15 Applicant, any questions of Office of Planning?

16 MR. GAON: No questions.

17 CHAIRPERSON HEATH: All right. Obviously
18 there's no one here from ANC 8A, or this issue would
19 be resolved. So we'll hold this record open for
20 their letter.

21 We also have a letter, or we have a letter
22 from Department of Transportation recommending no
23 objection.

24 MS. BUTANI-D'SOUZA: And I believe that if
25 the ANC is meeting on the 18th we would accept

1 something short of a full report if they couldn't get
2 it to us.

3 CHAIRPERSON HEATH: Sure.

4 MS. BUTANI-D'SOUZA: So if they -- if you are
5 able to have the ANC e-mail or upload something to
6 the record, I think that would be acceptable as well
7 to allow us to make a decision on the 19th.

8 CHAIRPERSON HEATH: Is there anybody here
9 wishing to speak in support of this application?
10 Anyone in support?

11 Anyone wishing to speak in opposition? No
12 opposition? All right.

13 Then we'll turn back to you for any closing
14 if you so choose.

15 MR. GAON: No closing.

16 CHAIRPERSON HEATH: Okay. All right. Then,
17 as we've stated, we'll put this on for decision next
18 week. Or, I'm sorry, for -- it could be decision.
19 Yeah, the 19th, next week. And -- right. That's
20 fine. Yeah. We'll get absentee ballots from those
21 of us who aren't here.

22 [Discussion off the record.]

23 CHAIRPERSON HEATH: Okay. So we'll put this
24 on for the --

25 [Discussion off the record.]

1 MR. FREEMAN: I'd hate to throw the train off
2 the rails, but we believe the record as it currently
3 exists indicates that we meet the standards for
4 approval. So we believe that if the Board was so
5 inclined you could approve it now, without the ANC
6 letter.

7 CHAIRPERSON HEATH: I'm sure you do believe
8 that.

9 MR. FREEMAN: But to the extent that you want
10 to leave the record open, we're happy to do that.
11 But --

12 CHAIRPERSON HEATH: I would prefer --

13 MR. FREEMAN: -- it was noted -- okay.

14 CHAIRPERSON HEATH: We would prefer to leave
15 it open given that you're on the calendar for next
16 week, and then we'll see whether that meeting
17 happens.

18 MS. BUTANI-D'SOUZA: And I would encourage
19 you to work diligently with the ANC to have them
20 submit something to us on the evening, literally as
21 soon as they hear it, so that we can have time to
22 review it prior to the decision.

23 CHAIRPERSON HEATH: All right. So, July
24 19th. Thank you.

25 MR. FREEMAN: Thank you.

1 CHAIRPERSON HEATH: All right. Thank you.

2 [Discussion off the record.]

3 MR. MOY: Okay. I believe the next
4 application, Madam Chair, is 19101 of Darryl O. A.
5 Sulekoiki? Is that correct? Thank you, sir.

6 Request for a special exception from the
7 Inclusionary Zoning requirements under 2606.1. This
8 is for eight flats on eight record lots in the R-4
9 District, 2112 through 2126 3rd Street Northeast,
10 Square 3561, Lots 42 through 49. And I believe it
11 was amended to include required parking in an
12 adjacent lot under 2117.9, but I would ask for a
13 clarification from the applicant.

14 CHAIRPERSON HEATH: All right.

15 MR. HINKLE: And, Madam Chair, before we
16 begin I just need to note that I did review the
17 record and will participate today in this case.

18 CHAIRPERSON HEATH: Thank you. Please
19 introduce yourselves.

20 MR. BROWN: Good afternoon. Patrick Brown
21 from Greenstein, DeLorm, and Luchs on behalf of the
22 applicant.

23 MR. SULEKOIKI: Good afternoon, Darryl
24 Sulekoiki, the applicant.

25 MS. LEWIS: Hello. I'm Commissioner Renee T.

1 Lewis, ANC for 5E-03.

2 CHAIRPERSON HEATH: All right. Okay. So,
3 we've received a number of additional documents from
4 you and we're going to need to talk through both the
5 parking issues and the IZ issues. I think I'd like
6 to start with the parking issues.

7 It looks like we've now gotten a letter from
8 DDOT indicating that they would be in support of you
9 providing just the 13 spaces, because that means that
10 all 13 are accessible from the 15-foot wide public
11 alley. None are in public space, none are accessed
12 via public space. Is that what you're proposing at
13 this point?

14 MR. BROWN: Yes, Madam Chair. In our June
15 30th filing we amended the application to eliminate
16 the special exception to locate one spot on an
17 adjacent lot and went to a variance request which
18 would allow for lot 42, which is the end lot to not
19 have a required parking spot.

20 And then in the PowerPoint presentation
21 you'll see a drawing showing the 13 spaces to be
22 provided as the end result with the variance for Lot
23 42 not to provide -- and in your PowerPoint it's page
24 8. You have hard copies in front of you and we've
25 listed one through 13, the parking spaces as you

1 mentioned, that are all accessed from the public
2 alley. Lot 42 at the end will not have a parking
3 spot and all the questions about access from public
4 space fall by the wayside. They are in fact, as I
5 laid out in my second prehearing submission, they are
6 the basis for the variance as well as the shape and
7 location of lot 42, so that the -- meets the three
8 point variance test, which hopefully I don't need to
9 elaborate on much further than what we've laid out.

10 CHAIRPERSON HEATH: Uh-huh. Okay. All
11 right. Any questions on this variance request from
12 the Board? I think this now is pretty straight
13 forward. We've worked through a lot of issues to get
14 to this point. So then, I think there's going to be
15 likely more discussion on the IZ requirement. And
16 you've proposed a number of different options. One
17 that I'd also like to have you address, which I don't
18 think -- I can't remember if in our previous hearings
19 we've talked about this one, but in lieu of both IZ
20 units being off site, I wonder if you could talk
21 about the option to locate one on site at 50 percent
22 AMI, and then another at the 12th Street location
23 off-site at 80 percent. And what you've proposed at
24 12th Street are two units that would both be 80
25 percent. But in lieu of that, one onsite at 50, one

1 off at 80. Can you speak to that option?

2 MR. BROWN: Well, I'd let him -- the one
3 thing I would like to make sure we quantify in that
4 discussion is that we have a IZ requirement on the
5 underlying property of 2,467 square feet. So we need
6 to be mindful about what we end up with and certainly
7 you can speak to that as far as that issue.

8 MR. SULEKOIKI: Good afternoon, Madam Chair,
9 and Members of the Board. As of the last time the --
10 I was leaning towards providing both IZs at the other
11 location. And if you guys want me to provide one in
12 this particular instance on site, I'd rather if I
13 provide it at 80 percent and then provide the other
14 one on 12th Street. But --

15 CHAIRPERSON HEATH: At 50 on 12th?

16 MR. SULEKOIKI: If that's what you require.
17 But please be in mind that so much that has gone into
18 the conversation so far and at this present time,
19 given that the mistake is not all mine, and based on
20 the other conversations we've had so far, that so
21 much that have not been afforded in terms of the
22 bonus density.

23 So one of the suggestions in the past was at
24 least to get both at 80 percent, which at least will
25 minimize the economic impact. I mean, we have the

1 financial analysis to provide moving forward today,
2 and you will see that each month and each time we
3 wait, the economic impacts get more devastating than
4 expected.

5 So at this point, if it's absolutely required
6 I'm willing to do 80 percent onsite and then whatever
7 you say on the other site.

8 CHAIRPERSON HEATH: All right.

9 MR. BROWN: Madam Chair, and if under the one
10 unit at 3rd Street and one at 12th, you'll be
11 providing roughly in excess of the 2467.

12 MR. SULEKOIKI: Yes. But yeah, I'll be
13 providing more than that. But given that I can still
14 modify the plans on 12th Street, I can come within
15 the exact limit.

16 CHAIRPERSON HEATH: Okay. All right.

17 MR. BROWN: Okay.

18 CHAIRPERSON HEATH: And as part of the
19 PowerPoint, and these are not new documents, they're
20 just updated. We've been at this for a significant
21 period of time. He provided updated, through July
22 11th, financial things which shows the deteriorating
23 or the increasing financial imposition of this
24 situation, which he's more than happy to take you
25 through for further background if you think that's

1 necessary.

2 We've also laid out repeatedly over time, the
3 history here, which is unique.

4 CHAIRPERSON HEATH: It is.

5 MR. BROWN: One thing I would also point out,
6 and I don't think it's something that we should
7 overlook, the IZ requirements come with a carrot and
8 the stick. The stick is obviously providing the IZ
9 and the carrot is the bonus, where OP has indicated
10 85 percent of the people take advantage of. Under
11 the circumstances this project is not going to be
12 able to take advantage of that bonus which would have
13 meant at 3rd Street, two additional units about 3,000
14 square feet. So I think we need to factor that in to
15 our discussions because that's an opportunity that --
16 for circumstances that nobody wants to repeat has
17 been lost.

18 CHAIRPERSON HEATH: Uh-huh. Certainly.
19 Okay. So if you could go through the financials. We
20 have them in front of us. I don't think we're going
21 to be able to see anything on the screen.

22 MR. SULEKOIKI: I have hard copies if you
23 want.

24 MR. MAY: We have them. Just walk us
25 through.

1 MR. SULEKOIKI: Okay. Okay. All right. I
2 think the best way to look at it is if we go to the
3 summary.

4 CHAIRPERSON HEATH: Page 30?

5 MR. SULEKOIKI: Page seven of -- yeah, it's
6 page 30, right?

7 CHAIRPERSON HEATH: In what you just gave us?

8 MR. BROWN: I think so.

9 MR. SULEKOIKI: That's right, right?

10 MR. BROWN: No.

11 MR. SULEKOIKI: I'm sorry. I have it in a
12 different [simultaneous speech].

13 MR. MAY: So that was the exhibit that was in
14 the record, right?

15 MR. SULEKOIKI: Yeah, it's the same but I
16 just have a clearer copy here.

17 MR. BROWN: Yeah, but that's not the --

18 MR. MAY: Is that exhibit --

19 MR. BROWN: Looking at the summary page,
20 right?

21 MR. SULEKOIKI: Yeah.

22 MR. BROWN: Oh, 30, yes.

23 CHAIRPERSON HEATH: Okay. Thirty.

24 MR. MAY: Thirty.

25 MR. BROWN: I'm sorry.

1 MR. SULEKOIKI: Would you mind a bigger copy?

2 MR. MAY: Don't need it.

3 MR. SULEKOIKI: Okay.

4 CHAIRPERSON HEATH: I'm fine with this one.

5 MR. SULEKOIKI: Okay. All right. What I
6 have, this is updated as of July 11, 2016. And the
7 all units with bonus density, that is assuming I was
8 given the bonus density.

9 The return would be about 1.8 and then time,
10 duration of the project will have been about 19
11 months, which will have yielded about 21.63 percent.
12 The second item is as built. That is based on the
13 market rate without any IZ, based on 16 units. And
14 that is -- came out to about 20.87, which is a slight
15 difference in terms of the original number that was
16 submitted into evidence at the beginning of the BZA
17 hearing.

18 And then when you look at number 3, it's an
19 all for sale with one unit at 80 percent set aside.
20 And you see the decrease in the return which came out
21 to about 11.05. And I also did the scenario where
22 you have it at one -- if I set aside one unit at 50
23 percent it comes down to 9.5. And then you have two
24 units, both at 80 percent, which was what I thought
25 we were looking at the last time we were here, that

1 will still yield something much less at 7.65 percent
2 in return. And then you have the final at a break-
3 even of 50 and 80 as required by the IZ regulation,
4 which is the lowest of them all.

5 And one thing to note moving forward is like
6 each time, each month the expenses, maintaining,
7 upkeep, and the impact of the loan because included
8 here is loan fees which I mentioned the last time
9 that I was able to adjust and I had -- I had to pay
10 some default rates and face some for a difficulty in
11 holding on to the properties as they are right now.
12 So that's all I have for now.

13 CHAIRPERSON HEATH: So, in the -- in three
14 through six where you propose at least one IZ unit,
15 are these assumed to be at third street?

16 MR. SULEKOIKI: Yes.

17 CHAIRPERSON HEATH: In all scenarios, 3.6.

18 MR. SULEKOIKI: In all scenarios, yeah. But
19 if I now go to 12th Street I think especially if I do
20 number 5, two at 80, that would be -- that would
21 improve a little bit better. That would be much
22 better because I will be able to give the -- at least
23 come very close to the minimum square footage of
24 2467. Yeah.

25 CHAIRPERSON HEATH: All right. So it's

1 somewhere better than 7.65?

2 MR. SULEKOIKI: Yes. I mean, I don't have
3 that particular analysis laid out yet because I don't
4 know if I'm going to be allowed to do that or not.
5 It was just a presentation the last time we talked
6 about it. I was asked to at least look at the
7 options.

8 CHAIRPERSON HEATH: Okay. All right.

9 MR. SULEKOIKI: Yeah.

10 CHAIRPERSON HEATH: Does the Board have any
11 questions on this financial?

12 MR. MAY: I mean, it's hard to do any -- I
13 mean, to understand what the relative impact or, I
14 guess, cost benefit is for you and we can understand
15 what it is in these scenarios, but how does it
16 compare to what you would do at 12th Street?

17 MR. SULEKOIKI: What you will do at 12th is,
18 because the unit we have on 3rd Street right now,
19 they're all huge units. They never -- I never
20 anticipated setting anything aside. So they were
21 developed for the market rate units. I mean, they're
22 extra-large. They --

23 MR. MAY: And so how many are there at 12th
24 Street now?

25 MR. SULEKOIKI: Eight.

1 MR. MAY: And you would modify it to bring it
2 up to --

3 MR. SULEKOIKI: To two. They're just going
4 to be --

5 MR. MAY: Just add two, or you'd do two out
6 of the eight?

7 MR. SULEKOIKI: I would just do two out of
8 the eight. And those would -- I mean, I have the
9 room to adapt everything to the requirements of the
10 IZ on that particular project, so at least there
11 won't be any need for going back and forth and trying
12 to modify something that is already done because on
13 3rd Street it's almost impossible to change so many
14 things just to comply with the requirements.

15 CHAIRPERSON HEATH: You wouldn't be changing
16 anything on 3rd Street, you would just assign --

17 MR. SULEKOIKI: I wouldn't be -- yes,
18 exactly.

19 CHAIRPERSON HEATH: -- the units as they're
20 built.

21 MR. SULEKOIKI: That's correct. That's
22 correct.

23 MR. MAY: So your proposal -- I mean, the
24 square footage that's required as a result of the 3rd
25 Street project --

1 MR. SULEKOIKI: Right.

2 MR. MAY: -- that was what, 2467?

3 MR. SULEKOIKI: 2467.

4 MR. MAY: And at this moment you are
5 proposing to do that amount of square footage at
6 12th?

7 MR. SULEKOIKI: It's going to be very close.
8 Right now, without asking for any slightly larger lot
9 occupancy on 12th Street, I can do 2400 which is
10 without the 8.67.

11 MR. MAY: And you're proposing what level of
12 affordability?

13 MR. SULEKOIKI: Depending on what I'm
14 required to, I can do -- my preference is to do --

15 MR. MAY: So one at 50 and one at 80 would
16 work because that's what you would have had to do at
17 3rd Street?

18 MR. SULEKOIKI: If I have my choice I would
19 rather to do two 80s, because I mean, at the end of
20 the day --

21 MR. MAY: I understand that.

22 MR. SULEKOIKI: Yeah, because --

23 MR. MAY: If you had your choice you wouldn't
24 do any.

25 CHAIRPERSON HEATH: Right.

1 MR. SULEKOIKI: A lot, no. If I had the
2 choice --

3 MR. MAY: I mean, you can make this work --
4 well, let me put it this way, I mean, doing it that
5 way and doing one at 50 and one at 80 off-site --

6 MR. SULEKOIKI: Right.

7 MR. MAY: -- on 12th, versus doing two at 80
8 at 3rd Street, or doing even one at 50 at 3rd Street,
9 which I mean would --

10 MR. SULEKOIKI: I would do the two on 12th
11 Street, one at 50 and 80.

12 MR. MAY: Right.

13 MR. SULEKOIKI: And if you guys can allow me
14 maybe additional lot occupancy over there, which I
15 understand I can apply for, then I'll be able to
16 fulfil everything. I'll still give the 50 and 80
17 without any --

18 MR. MAY: You're 67 square feet short.

19 MR. SULEKOIKI: Right.

20 MR. MAY: And you need to get additional lot
21 occupancy. How far along is this project?

22 MR. SULEKOIKI: Just in permitting right now.
23 As -- yeah.

24 MR. MAY: And you can't like, tweak it to get
25 67 feet?

1 MR. SULEKOIKI: I would love to. Everybody
2 at DCRA know who I am right now. So it's almost
3 impossible to get everything by. And I don't think I
4 want to do it either.

5 MR. MAY: I'm not sure what you're telling me
6 there. They know you so well they don't want to deal
7 with you?

8 MR. SULEKOIKI: No, you said -- no, no, no,
9 you said, you said, I can't even tweak it to get the
10 additional 67 --

11 MR. MAY: Yeah, I asked if you could change
12 the plans.

13 MR. SULEKOIKI: The actual house plans,
14 probably. But then that would make -- that would
15 render the rest of the seven units very, very small.

16 MR. MAY: To get 67 feet?

17 MR. SULEKOIKI: Remember, if you look at the
18 layout I've taken a lot out of the other seven units
19 to get to 2,400. But I mean, yes, I mean, I can go
20 back to my architect and have them take a look at it,
21 yes.

22 MR. MAY: Okay.

23 MR. SULEKOIKI: Okay?

24 MR. MAY: I'm just trying to understand what
25 you're saying because it's like, you know, really

1 you're so close at 67 feet.

2 MR. BROWN: But is -- can I ask, Mr. May?

3 MR. MAY: Yeah.

4 MR. BROWN: As it is now it's 2,400 and four
5 feet, I think, total.

6 MR. MAY: Right.

7 MR. SULEKOIKI: So far, yeah.

8 MR. BROWN: Is the difference between that
9 and 2,467, is that a deal breaker for the Board's
10 perspective?

11 MR. MAY: You'll find out in a few minutes, I
12 think. I don't know. You know, I'm just trying to -
13 - I'm probing on the question of how difficult it
14 would be to actually meet the full requirement. I
15 mean, obviously the ideal thing would have been
16 scenario number one. Right? You would have gotten
17 the bonus density and the set-aside. But the way
18 this came about, it didn't happen.

19 MR. SULEKOIKI: Right.

20 MR. MAY: And, you know, I appreciate -- I
21 think you've been fairly frank with us in these
22 meetings. But at the same time the way this is
23 played out doesn't necessarily lend credence to the
24 notion that you were not trying to get away with
25 something. It kind of looked like you were trying to

1 get away with something. It's certainly easy to read
2 it that way.

3 And the fact that, you know, DDOT in their
4 most recent report of July 5th, reports that you have
5 some unpermitted work that was done there in public
6 space. That doesn't bode well either. So --

7 MR. SULEKOIKI: Can I speak to that?

8 MR. MAY: Sure.

9 MR. SULEKOIKI: Okay. I mean, remember the
10 last time we were here we talked about that briefly.
11 They said I have done work in a permitted area, but I
12 actually have the permits to occupy the front and
13 side and I showed you the last time. Okay?

14 And [garbled speech] for the last three
15 years.

16 MR. MAY: But that letter says that they're
17 threatening, at this point, they're threatening
18 enforcement action against you because of what you
19 did there.

20 MR. SULEKOIKI: Right.

21 MR. MAY: Clearly something is wrong.

22 MR. SULEKOIKI: All right. Okay. If they --

23 MR. MAY: Now, maybe it's another one of
24 those cases where you think you did it right and they
25 think you did it wrong, I don't know, but you know --

1 MR. SULEKOIKI: Look, I understand where
2 you're coming from, but all you have to -- just look
3 at the scenario. Okay? I've applied for removing
4 the asphalt and doing work in that area since
5 November of last year. Nothing has been approved up
6 until now. No discussions, nothing. They just held
7 it up. Okay? This is the same thing that --

8 MR. MAY: Because there's some other big
9 questions that are looming over this project, so you
10 know, I'm not surprised at all that it hasn't moved.

11 MR. SULEKOIKI: Yeah, but you see, it's not -
12 - when you look at it closely I have it documented.
13 If I'm permitted to give it to you, you can see where
14 everything originated from. This is not -- this is
15 politics because every --

16 MR. MAY: No, no, no, no, no, no, no. No,
17 we're not going to go there. I'm not interested in
18 politics.

19 MR. SULEKOIKI: I understand.

20 MR. MAY: I'm not interested in any of this.
21 I mean, what we're going by is what's in the record,
22 it's what you submitted and what was reviewed and
23 what was permitted, and the time over which that
24 occurred.

25 MR. SULEKOIKI: Okay. That's --

1 MR. MAY: If you want to try to make an
2 argument that somebody has got a bias against you,
3 I'm not interested in that.

4 MR. SULEKOIKI: No, no, no, it's not just --
5 it's not just bias against me. You're talking about
6 DDOT. I've requested three meetings with the
7 Director, with Mr. Zimbabwe (phonetic) that wrote the
8 letter. Okay. And then the Deputy Area Manager
9 Director. Neither one of them have agreed to meet
10 with me. They sent Amanda --

11 MR. MAY: I think that --

12 MR. SULEKOIKI: Amanda Stiles (phonetic).

13 MR. MAY: I think that I can understand why
14 they wouldn't be willing to meet with you here. I
15 mean, you're dealing with --

16 MR. SULEKOIKI: Why is that?

17 MR. MAY: The response, when you have a
18 permit infraction is not that you get a meeting with
19 the director of the agency.

20 MR. SULEKOIKI: Yeah, but you see --

21 MR. MAY: That's not the right response.
22 That's not what you can expect.

23 MR. SULEKOIKI: What you have to understand
24 is --

25 MR. MAY: No, what you have to understand is

1 that you have to comply with the regulations and you
2 have to do things appropriately, and right now this
3 project is messed up because a whole lot missteps.
4 Some of them are yours and some of them may be
5 attributable to some of the agencies.

6 So you're not going to get anywhere by
7 arguing that you know, you're --

8 MR. SULEKOIKI: No, I'm not trying to argue
9 with you.

10 MR. MAY: -- deserving anything because you
11 couldn't get a --

12 MR. SULEKOIKI: I'm not trying to --

13 MR. MAY: -- leave and a meeting with the
14 Director of DDOT. Okay?

15 MR. BROWN: Mr. May, can I make a suggestion?

16 MR. MAY: Yeah.

17 MR. BROWN: We're not going to -- there's
18 obviously a dispute with DDOT, and we're not going to
19 be able to solve that here today, nor is it our
20 responsibility in this forum. I think we're close to
21 resolving the zoning issues, which is our
22 responsibility here. And DDOT has made it clear,
23 they're going to tell Mr. Sulekoiki what they think
24 he needs to do and he can respond, and the burden is
25 on him to comply.

1 But those, at least from a zoning standpoint,
2 I don't think have an impact because the only --

3 MR. MAY: No, they don't. They just speak to
4 the reliability of the information that we're
5 receiving. That's all. That's --

6 MR. BROWN: This case --

7 MR. MAY: That's one of the most troubling
8 things about it. You know, we can understand when
9 there are honest mistakes made or when there's --
10 when DCRA makes a mistake, they can make honest
11 mistakes too. Certainly things like that can happen.
12 It's just that it, you know, there is evidence in the
13 record that can suggest that this has not been
14 handled on the up and up throughout by the applicant.
15 I'm sorry.

16 You know, I mean I appreciate the fact that
17 you have been very frank and honest with us, and
18 you've given us reasonable numbers. You're not
19 coming in here and trying to snow us with financials
20 that say that you're going to lose millions of
21 dollars when in fact, no, you are actually going to,
22 you know, at least break even it seems on this, which
23 is obviously not what you want to do. But you're
24 giving us honest numbers which is something that we
25 often don't get. So I appreciate that fact. You're

1 doing many of the right things in dealing with us.
2 And I do appreciate that. But the totality of the
3 record doesn't speak to a straightforward forthright
4 attempt to get these things built within the codes
5 and regulations that you have to follow. That's what
6 it boils down to.

7 MR. SULEKOIKI: Mr. May, I appreciate
8 everything you've said so far. But one thing I would
9 like to say for the last time is, I need you to
10 realize that I've been on that project for over,
11 going to almost four years. Okay? I've dealt with
12 every inspector. If you check the records, okay,
13 they have sent more inspectors out to that project to
14 come and double-check everything I'm doing, with the
15 Public Space and DCRA.

16 They have not, and I repeat, they have not
17 found anything until this issue of IZ came up.
18 Nothing. They've checked everything out. All the
19 permits, everything, up to date. More than three
20 years. I spent over \$65,000 in public space permit
21 that were -- I kept renewing over and over.

22 They sent inspectors out. At one point in
23 time they stationed a ticket officer on that job to
24 write ticket for my guys. We got well over 60 to 70
25 tickets that each one of them were revoked, each time

1 we just sent the permit department in to the hearing
2 people, they revoked it because they said there's no
3 need for anybody to give us ticket for something we
4 are permitted to.

5 And DDOT is saying that I did work. They
6 gave me permission to occupy the area. I showed you
7 pictures the last time, that this area was -- we had
8 a [garbled speech] there before. There was a
9 pavement behind it and the permit given to me allowed
10 me to use the place as staging area and construction
11 entrance. And at the minimum, I'm pretty sure if I
12 did not restore it back to its original position
13 there would have been enforcement.

14 They've been telling me there are going to be
15 enforcements since November, but nobody is moving to
16 give me permission to do anything, because it's like
17 somebody at the top is saying something, the people
18 at the permitting office, they're saying something
19 completely different. The two people are not
20 communicating, and each time I make a move to say
21 okay, please, what's going on? Let me come in and
22 explain myself, I've never been given that
23 opportunity. You've just been seeing letters.

24 MR. MAY: Right. So, I appreciate this. You
25 know you're living this and I know you want to share

1 it all with us. I think we've heard enough.

2 MR. SULEKOIKI: Okay.

3 MR. MAY: With regard to the zoning case. So
4 what's -- we'll move on to the zoning case.

5 MR. SULEKOIKI: All right. Thank you.

6 MR. MAY: And then maybe you'll be -- maybe
7 we won't have to come back again for another meeting
8 here.

9 MR. SULEKOIKI: Thanks.

10 MR. BROWN: Certainly not on the DDOT issues.
11 We won't burden you.

12 MR. MAY: No, no, no.

13 MR. BROWN: We won't burden you --

14 MR. MAY: No, no, thank you.

15 MR. BROWN: -- Mr. May, with that.

16 MR. MAY: Thank you. I have enough fun with
17 DDOT on my own. Thank you.

18 CHAIRPERSON HEATH: All right. So if no
19 other questions for the Board, I'd like to hear from
20 Office of Planning and where you stand and what your
21 thoughts are on the options that have been proposed.

22 MS. VITALE: Sure. Good afternoon, Madam
23 Chair and Members of the Board. Alisa Vitale with
24 the Office of Planning. And I will note, I am
25 stepping in for another staff member, so I've read

1 the record. I'm hopefully up to date.

2 The Office of Planning does remain opposed to
3 granting the requested relief from the IZ
4 requirements. I would note that the applicant has
5 requested that the Board permit off-site compliance,
6 and I believe that would be under 2607. If you take
7 a look at 2607.1, we don't believe the applicant has
8 demonstrated the existence of an economic hardship as
9 spelled out in 2607.1 A through C. The factors that
10 may be considered by the BZA would need to relate to
11 exceptionally high fees for a condo development,
12 provision of social or health services that would
13 create a hardship, or a change in use.

14 So therefore OP believes that granting the
15 relief would be detrimental to the intent and purpose
16 of the Zoning Regulations. Should the Board of
17 Zoning Adjustment grant the requested relief, OP
18 believes that the applicant should provide the
19 equivalent square footage, so the 2467.8 that would
20 have been required on site, the applicant should also
21 meet the 50 percent and 80 percent AMI targets for
22 the two units provided. And then we would also
23 request that the applicant document the good faith
24 effort to locate those units in the same census
25 tract. I know they did indicate that they would be

1 in the same ward, but the requirement is that they're
2 in the same census tract and they would need to
3 demonstrate a good faith effort to meet that
4 requirement.

5 That concludes my comments and I can answer
6 any questions.

7 CHAIRPERSON HEATH: Okay. Any questions from
8 the Board? Any questions of the applicant, of Office
9 of Planning?

10 MR. BROWN: No.

11 CHAIRPERSON HEATH: Okay.

12 MR. BROWN: No.

13 CHAIRPERSON HEATH: All right.

14 MS. GLAZER: Excuse me. Madam Chair, I just
15 wondered, is OP submitting this statement in writing?

16 Is there plans for a supplemental report?

17 MS. VITALE: We had not filed a supplemental
18 report.

19 CHAIRPERSON HEATH: Your position hasn't
20 changed.

21 MS. VITALE: That's correct.

22 CHAIRPERSON HEATH: So --

23 MS. GLAZER: But this is in response to new
24 information. Okay. So it's just your oral testimony
25 today.

1 MS. VITALE: That's correct.

2 CHAIRPERSON HEATH: Okay. All right. Okay.
3 So, I believe we've gone through the full hearing but
4 since you're here I will allow you time to speak as
5 the single-member district commissioner.

6 MS. LEWIS: Yeah, and the ANC as a whole.

7 CHAIRPERSON HEATH: Okay. Okay.

8 MS. LEWIS: The ANC is still in opposition of
9 this project. I think that this single-member
10 district area should definitely receive two units.
11 We live in a city where it is extremely expensive,
12 and for a developer to say that they only want to
13 give 80 percent, which is almost near market value,
14 is a slap in the face. It's like even the mayor is
15 working on making sure that we have more affordable
16 housing in the city as a whole.

17 I think he should definitely do like I said,
18 two units. Maybe a option could be two units at 60
19 percent AMI, which is actually affordable for people
20 to live in the city. But I think to ask for 80
21 percent, that's not enough. That's market value.
22 That's not truly helping people. And we need to make
23 sure that when developers develop in the city, they
24 care about not just making market value projects, but
25 actually caring about the people that live in the

1 city and having a place that people can actually
2 afford to live in. And at 80 percent AMI, it's a
3 slap in the face. It is not affordable, and we
4 really need both units in this actual building.

5 CHAIRPERSON HEATH: Okay.

6 MS. LEWIS: I believe that we will be back
7 here again for the second project and we will not see
8 the affordable housing units.

9 CHAIRPERSON HEATH: Okay. You mean the 12th
10 Street project?

11 MS. LEWIS: Yeah, the 12th Street. I don't
12 think he will create those. He's only doing what he
13 is required to do, and even what he's required to do,
14 his track record shows that he's not doing it.

15 CHAIRPERSON HEATH: Okay.

16 MS. LEWIS: Thank you.

17 CHAIRPERSON HEATH: Thank you. Is there --
18 would you like to speak to the ANC's concerns?

19 MR. BROWN: Well, I'd like to -- you go
20 first.

21 CHAIRPERSON HEATH: Or their proposals.

22 MR. SULEKOIKI: Okay. Ms. Lewis, I
23 appreciate everything you've said. I'm not going to
24 respond directly because I will respond in anger.
25 Okay.

1 You don't know me and you said you know my
2 track record. One thing you have to realize is 330
3 Rhode Island Avenue, go and look at it. It's a 29-
4 unit building. It was a low-income building. It was
5 an abandoned building when I did it, 2003, 2004.
6 Nobody wanted to come into that area. I did an all
7 affordable units at that point. So you do not know
8 my record.

9 Okay? So to say that I won't do it --

10 CHAIRPERSON HEATH: So, Mr. Sulekoiki, if you
11 could, because we've all seen --

12 MR. SULEKOIKI: Okay.

13 CHAIRPERSON HEATH: -- lots of documentation
14 in the record --

15 MR. SULEKOIKI: Right.

16 CHAIRPERSON HEATH: -- as to you know -- and
17 Mr. May has also spoken to this, about the fact that
18 there's plenty of evidence in the record that
19 suggests that you have not been above board in this
20 process.

21 MR. SULEKOIKI: Ma'am, Madam Chair --

22 CHAIRPERSON HEATH: Whether you have or you
23 have not, the issue before us right now is are we
24 going to approve your request or not.

25 MR. SULEKOIKI: Okay.

1 CHAIRPERSON HEATH: And so if you could stick
2 to --

3 MR. SULEKOIKI: Okay. Madam Chair, I will
4 say one thing. I have not responded to all the
5 documents you have in file, because of my attorney.
6 He can testify to that because he is the one that's
7 advised me that I should stick to the point.

8 CHAIRPERSON HEATH: Sure. And that's good
9 advice.

10 MR. SULEKOIKI: Because I have, I have, I
11 have enough evidence, e-mails, to support everything
12 that is alleged so far. I mean, if I have done bad
13 on that project I will have been shut down several
14 times. I mean, several times I will have been shut
15 down. I mean, not for once, I've had more inspectors
16 on that job just because my neighbors would stand on
17 the porch and call the police, call the inspectors.

18 CHAIRPERSON HEATH: Understand. Understand.
19 We've talked about all of this at length. This is
20 not our first time --

21 MR. SULEKOIKI: All right.

22 CHAIRPERSON HEATH: -- hearing about this, or
23 discussing it. So if we could move on?

24 MR. BROWN: Well, and I think in response to
25 doubts that people may have, and what I tried to lay

1 out in our second submission, is a trust and verify
2 approach where depending on the mix of units we have,
3 the way I laid it out in the original submission was
4 that there are currently two units at the 3rd Street
5 property that a certificate of IZ compliance is on
6 file with. Those units are in essence being held as
7 a security deposit, or security for providing the IZ.

8 And we would keep those being held as
9 security until, in the case I laid out, he provided
10 the 12th Street units. And in case if you wanted to
11 mix the two, we could make a similar circumstance.

12 The bottom line would be, until he meets his
13 IZ requirement, that the units either two units at
14 3rd Street, or two units -- or the two units at 3rd
15 Street would be held in abeyance. He would be
16 allowed to complete the remaining units, because it
17 doesn't make sense to keep more than his maximum
18 requirement off market. And once he provided the
19 12th Street units in the normal course of how you
20 certify IZ units and bring them online in the
21 covenants, then the 3rd Street units -- unit or
22 units, depending on how we work it out, would be
23 released.

24 So, once he's verified that he's complied,
25 then he gets his units that are being held up free

1 and clear. So I think that's an appropriate way so
2 that we don't have this who shot who scenario going
3 in the future. And I think that approach would make
4 -- should make everybody comfortable that what we're
5 going to do is going to happen.

6 CHAIRPERSON HEATH: Sure. But that's --

7 MR. BROWN: Or quite frankly, or if it
8 doesn't happen the applicant is -- he's tied up not
9 only 3rd Street, but he's also tied up 12th Street.
10 So he's dug himself a real dilemma.

11 CHAIRPERSON HEATH: Sure. That addresses
12 part of the ANC's concerns, but the other part is the
13 affordability in this location. And you know, that
14 doesn't speak to that issue. So --

15 MR. BROWN: Well, at 3rd Street, if you were
16 to -- if we were providing one unit there, under the
17 regulations he would have had to provide one at 80
18 and one at 50. So he was never going to have to
19 provide two units at 50 at 3rd Street.

20 So whether 80 percent is not effective
21 affordable housing is beyond the scope of our -- so
22 he was never going to do anything better than one 50
23 percent unit at 3rd Street. And whether, providing
24 that just a short distance away at 12th Street is
25 reasonable under all the circumstances is something

1 for the Board to consider. But there were never
2 going to be two 50 AMI units at 3rd Street. There's
3 no requirement to do that.

4 CHAIRPERSON HEATH: And I don't think anybody
5 was proposing two --

6 MR. BROWN: No, but I --

7 CHAIRPERSON HEATH: -- 50.

8 MR. BROWN: No, no, I understand.

9 CHAIRPERSON HEATH: So, okay.

10 MS. LEWIS: I would say, if you're developing
11 in a particular area, I think you need to have
12 affordable housing in that particular area. I do not
13 think it's fair to develop in one area, get all
14 market value in one area, then move on to the next
15 project and then try to pick up the affordable
16 housing there. I did not say two units at 50
17 percent. I said a compromise was two units at 60
18 percent. That's something that the city as a whole
19 is shooting for, for affordable housing, with
20 developers. So, I just think both units should be in
21 the same building. That's where you develop, that's
22 where you should do your affordable housing.

23 On his next project, if he decides to do
24 affordable housing then, then he can start all over
25 with the new affordable housing numbers for that

1 project.

2 CHAIRPERSON HEATH: Sure.

3 MR. BROWN: Madam Chair, if I could, and I
4 understand the commissioner's -- I'm not objecting to
5 her view. But two units at 3rd Street imposes an IZ
6 penalty on the applicant because it's the way it's
7 set up, he's going to have to provide excess IZ on
8 top of the fact that he got no IZ bonus. So it
9 really penalizes him.

10 I think perhaps the alternative, if the Board
11 would be to provide some on-site and off-site, where
12 we get to a closer number is a little fairer for
13 everybody involved and achieves the objectives. I
14 don't think IZ is written, intended to offer a
15 penalty excess, and then no bonus. I think that
16 would be an unfortunate outcome.

17 CHAIRPERSON HEATH: Okay. Any other
18 questions of the ANC? All right.

19 I believe we've heard from people wishing to
20 speak in support or opposition, but I'll offer one
21 last time. Right. We don't want to be duplicative,
22 but if there's someone here wishing to speak in
23 support, you can come forward now. Anyone here
24 wishing to speak in opposition?

25 If you could come forward, again, we don't

1 want to be duplicative of anything that we've heard
2 previously, but we'll allow you three minutes.

3 MR. MAY: You know, I think it's helpful if
4 you're going to come forward and speak again, that
5 you speak to any new evidence that's in the record
6 rather than repeating anything that had been
7 previously discussed. So it should be based on the
8 new evidence.

9 CHAIRPERSON HEATH: Please state your name
10 for the record and then you can begin your statement.

11 MR. HOLCOMB: Thank you. My name is Richard
12 Holcomb. I live at 2110 3rd Street Northeast. And
13 I'll keep it really brief. I just want to respond to
14 one of the things you had requested last time was for
15 them to work with us, and I noticed in the record
16 that he said that he attempted to contact me and I
17 did not respond, which I would ask him when and how
18 he attempted to contact me because I have no
19 recollection of it.

20 And the really, the reason I bring this up is
21 I think it adds to just the whole, I'd say less than
22 above board response to basically this whole project.
23 Thank you.

24 CHAIRPERSON HEATH: Thank you, Mr. Holcomb.

25 MR. BOYER: Again, thank you for another long

1 day at the BZA. My name is Robert Boyer, B-O-Y-E-R.
2 I am the adjacent homeowner as well, 2110 3rd Street
3 Northeast.

4 Since the last hearing, and I will only
5 address the evidence that I again have submitted. I
6 have thousands of documents and photos and e-mails
7 between DDOT, DCRA, and everyone that's been involved
8 with this project and this developer.

9 The statement that I'm just going to stick to
10 because I spent nine hours working on this prior to
11 him submitting anything to BZA as of last night. As
12 a legal resident of Washington, D.C. for more than 20
13 years, no criminal record, high level security
14 clearance from the ATF, financial consultant for over
15 25 years, and educated, I find it insulting to be
16 called an extortionist, evil homeowner, liar,
17 dishonest person, bad person, and overall poor
18 neighbor by this developer publically because I
19 choose to defend, protect, and preserve my rights, my
20 property, my home, my safe haven, and my quality of
21 life as a law abiding, tax paying, registered voter
22 in the District of Columbia.

23 We are not this applicant's developer
24 neighbor, friend, or hired crew giving or allowing
25 the applicant to allow, take, destroy, build, dig up,

1 dismantle, or do as he pleases on or within our
2 property to complete his project. This is our home.
3 Our quality of life period.

4 I have submitted hundreds of documents to the
5 BZA proving the type of dishonest character and
6 building practices of this applicant here today. His
7 blatant acts of working around and avoiding
8 requirements, rules, and regulations by putting the
9 blame on every D.C. agency for not educating him,
10 holding his hand, or extra special attention on this
11 building -- sorry. Attention on this building --
12 attention on building this multi-million-dollar
13 project in Eckington neighborhood of Ward 5.

14 His only defense is a financial hardship
15 and/or economic viability of this project, not
16 knowing or aware of the requirements, rules, and
17 regulations of the Affordable Housing Act, Public
18 Space permits, and the proper granting -- sorry. I
19 think I just -- well, I'm just going to just continue
20 on.

21 Granting, rewarding, or allowing any part of
22 this dishonest applicant request for skating around
23 standard written rules, requirements, regulations,
24 and safe building practices in the District of
25 Columbia is unacceptable. The law is the law. We

1 expect our D.C. elected, appointed, sworn in
2 government officials and employees to uphold,
3 support, stand behind, and defend all laws written in
4 the District of Columbia and not allow -- and not
5 find ways, paths, routes, and loopholes to reward
6 this applicant developer's bad habits.

7 He has -- he was told verbally, it's okay to
8 keep doing what he's doing regardless of the required
9 permits, written requirements, regulations, and rules
10 for building in the District of Columbia, and that's
11 his defense. Is this an acceptable standard of
12 practice within our D.C. government? He said/she
13 said.

14 The IZ requirements, Public Space permits
15 requirement -- sorry. The IZ requirements, Public
16 Space permit requirements, Public Space written uses
17 requirements, parking requirements, construction and
18 staging requirements, all have been blatantly
19 disobeyed based on this applicant's statement under
20 oath. I did not know the requirements and they told
21 me verbally to keep doing what I'm doing, by multiple
22 individuals working for DCRA, DDOT, and other D.C.
23 agencies, employees regardless of the law for
24 building and construction. And we must accept this
25 as facts.

1 The applicant to date has chosen not to
2 communicate with our community for reasons only known
3 to him and his hired attorney, which is unacceptable
4 and inexcusable by all accounts. Simply, no respect
5 has been branded on our community by this applicant.

6 The Board has asked the Office of Planning to
7 reverse its written and submitted opposition on
8 record, go back and work with this dishonest
9 applicant in order to satisfy his need to make more
10 profit on his own poorly financial managed and
11 dishonest approach to the project at 2112 through
12 2126 3rd Street Northeast.

13 Mayor Bowser and council persons have all
14 stated the major and urgent need for all types and
15 sizes of affordable housing in all wards of the
16 District of Columbia. Yet, this Board appears to be
17 on the verge of granting the relief from IZ
18 requirements for this developer at 2112 through 2126
19 3rd Street Northeast, and find ways in rewarding,
20 negotiating, honoring his dishonest -- honoring this
21 dishonest applicant's -- his requests, one way or
22 another.

23 The applicant has stolen public green space
24 from every residential in the District of Columbia
25 for his personal use, yet the Board searches for

1 reasons, excuses, and ways to grant any part of this
2 request for parking relocation, relief, regardless of
3 DDOT's Associate Director's written supplemental
4 report and recommendation in opposition submitted to
5 record.

6 CHAIRPERSON HEATH: Mr. Boyer, you're double.
7 You've doubled your time, so if you could bring your
8 statement to a close?

9 MR. BOYER: Well, this is the closing of my
10 statement.

11 CHAIRPERSON HEATH: Perfect. Thank you.

12 MR. BOYER: I thank you for your valued time
13 with continued disappointment and dismissal of
14 written opposition from the Eckington Civic
15 Association, ANC 5E, 99 percent of residents within
16 200 feet of 2112, 2126 3rd Street Northeast, and
17 every individual submission into public record in
18 opposition to the applicant's request on this case
19 with the Board of Zoning Adjustment Office of Zoning.
20 Thank you.

21 CHAIRPERSON HEATH: All right. Thank you.
22 Mr. Boyer, you don't need to elaborate on this, but
23 I'm just trying to check facts. Were you in fact
24 hospitalized?

25 MR. BOYER: I was hospitalized.

1 CHAIRPERSON HEATH: Okay. All right.

2 MR. BOYER: And I'm shaking now because my
3 blood sugar level is dropping as we speak.

4 CHAIRPERSON HEATH: Okay. All right. Thank
5 you for being here, and thank you again for both of
6 you spending so much time with this case and spending
7 a lot of time on Tuesdays to be a part of these
8 hearings. I appreciate that and it's helpful for us
9 to continue to hear from you to speak to the facts.

10 Any questions from the Board? All right.

11 Then if there's no other opposition then we
12 can conclude this hearing.

13 MR. BROWN: Yes, I think so. Unless you have
14 any questions for -- I would, and I think the Board
15 taking action as soon as possible, provision of IZ is
16 important and the sooner we resolve this the sooner
17 the IZ will be provided at a location to be
18 determined. So, and I think a decision whether
19 you're willing to decide today or whether we schedule
20 it as soon as possible for a public meeting, I think
21 there's a benefit to that.

22 CHAIRPERSON HEATH: Okay. All right. So
23 then that concludes the hearing. Is the Board ready
24 to deliberate on this?

25 [Pause.]

1 MR. MAY: I'm sorry. We need clarification.
2 Are you asking, at this point, for off-site
3 compliance? Is that -- that is your request right
4 now? Because there are too many things that are on
5 the table. We're a little confused about what you're
6 asking form.

7 MR. BROWN: Well, we've -- what we've done is
8 we had an original request for the special exception
9 relief from the IZ requirement. We've now added to
10 that, the off-site request. And they both have an
11 underlying economic --

12 MR. MAY: I'm not asking you to make an
13 argument, I'm just asking you what you're asking for.
14 So you're asking us to waive the IZ requirement whole
15 or in part.

16 MR. BROWN: On site.

17 MR. MAY: On site.

18 MR. BROWN: And to allow us to --

19 MR. MAY: So you're asking us to relieve you
20 of that request on site all together, and then -- but
21 you are requesting the relief to provide that at a
22 different location?

23 MR. BROWN: That's correct.

24 [Discussion off the record.]

25 CHAIRPERSON HEATH: We're going to take 10

1 minutes because we need some --

2 MR. BROWN: Can I interject one thing,
3 because I see the dilemma you're having.

4 CHAIRPERSON HEATH: Uh-huh.

5 MR. BROWN: The request to waive on-site and
6 then to provide off-site, now the -- you don't have
7 to waive the on-site requirement entirely to also
8 then provide -- but I think you have the ability to
9 waive in whole or part, on-site. And based on that
10 you also have the ability in whole or part to
11 authorize off-site under the statute. And I think
12 what you were discussing is some on-site and some
13 off-site. Is --

14 MR. MAY: That's not what we're talking
15 about. We're talking about how we proceed with
16 decision making and what you are asking for at this
17 time.

18 CHAIRPERSON HEATH: What relief we're
19 addressing.

20 MR. MAY: So what you're asking -- yeah. So
21 the question is, what are you asking us for at this
22 time? You're asking us to waive the requirement that
23 the IZ units be provided on site, and that we grant a
24 waiver so you can provide it at a different site, and
25 you said a slightly different square footage.

1 MR. BROWN: Yeah, that's the current request.

2 MR. MAY: That's the essence of the request.

3 Okay.

4 MR. BROWN: How you answer that request, you
5 have the flexibility to do.

6 MR. MAY: Right.

7 CHAIRPERSON HEATH: All right.

8 MS. GLAZER: Madam Chair.

9 CHAIRPERSON HEATH: Sure.

10 MS. GLAZER: I just want to state, I don't
11 know if the -- I want to call attention to one
12 provision. Section 2607.2D regarding off-site
13 compliance. I believe requires that all requirements
14 of Chapter 26, the grant be sustained and among those
15 requirements, as you know, are the square footage and
16 the AMI mix.

17 So I don't think that the regulation at least
18 contemplates any kind of waiver or watering down of
19 those requirements.

20 MR. MAY: Right. So if it's going to be off-
21 site it's got to be 50 and 80, and it's got to be the
22 full square footage.

23 MR. BROWN: Well, I disagree because again,
24 you've made --

25 CHAIRPERSON HEATH: This isn't deliberation

1 for you at this point.

2 MR. BROWN: I know.

3 MR. MAY: Right.

4 CHAIRPERSON HEATH: This is --

5 MR. MAY: We're just trying to -- mostly
6 we're just trying to understand what you're asking.
7 We're going to go into the back, take a break for a
8 minute.

9 MR. BROWN: Okay.

10 CHAIRPERSON HEATH: Yes.

11 MR. BROWN: Thank you.

12 CHAIRPERSON HEATH: All right. Thanks.

13 [Off the record from 2:31 p.m. to 2:53 p.m.]

14 CHAIRPERSON HEATH: All right. So we're
15 going to resume our deliberation. The Board felt
16 that this case was important enough as one where
17 we're looking at the IZ requirements and weighing in
18 on a number of issues related to IZ, really for the
19 first time on a case such as this. And so we wanted
20 to take some time to just go back through the
21 regulations on the sections that are applicable to
22 this case.

23 So I think in continuing our deliberation,
24 I'm -- I've struggled with this case since the very
25 beginning. It's been particularly messy and I think

1 over the course of the hearings that we've had the
2 issues have started to become more clear, but it
3 doesn't take away from the fact that there's been a
4 lot of messiness throughout the course of this
5 project. It's gone on for a number of years, and as
6 we talked today even about the issues that we've had
7 with DCRA, or that DCRA has had with this project,
8 that DDOT has had with this project, there's just
9 been a lot of -- there have been a lot of issues
10 around this.

11 We have also heard from the neighbors and
12 from the ANC on this issue, and from Office of
13 Planning, all who are adamantly opposed to the relief
14 being requested.

15 Where I am stuck on this still is the
16 economic hardship argument. I think, we went back to
17 looking at the off-site compliance request, or that
18 provision in the regulations, and under 2607.1, in
19 order to even begin to evaluate whether or not this
20 application meets the criteria for evaluating off-
21 site compliance, the applicant has to prove that
22 compliance on-site would impose an economic hardship
23 and I'm having a hard time getting over that
24 particular section.

25 I just find that -- I appreciate that the

1 applicant has provided us with what appear to be
2 factual financials on this project with a number of
3 different scenarios that we've talked about over the
4 course of the hearings. Within the summary number 6,
5 it addresses the scenario of two IZ units, one at 50,
6 one at 80, and that yields a 1.3 percent yearly
7 return, which equates to, what is it, \$538,000
8 return. I mean it just, to me, getting over the
9 financial argument was -- I just didn't, I didn't buy
10 it and so I'm not at a point where I can move forward
11 with approval to allow the IZ units off-site.

12 The other -- we've talked at length about the
13 IZ relief. I'm in support of the parking relief on
14 this. I have no problems with it as it's been
15 amended, and so I am in support of that. But I'm
16 just not in support of 2607 for the off-site
17 compliance.

18 MR. MAY: Thank you, Madam Chair. So I am
19 similarly troubled by this case and I do appreciate
20 all the information that has been submitted by the
21 applicant and what seemed to be honest financials
22 with regard to the, you know, the different
23 scenarios, and the extensive analysis.

24 I also appreciate the testimony of the ANC
25 and the Office of Planning, the neighbors, the

1 immediately abutting neighbors as well. And it's
2 clear many people feel very strongly about this.

3 I think that -- you know, and I have been
4 considering a lot of different scenarios and
5 potential solutions and whether this in fact does
6 qualify for a partial exemption from compliance.
7 Certainly a total exemption from compliance was never
8 going to fly. Partial exemption might have been a
9 viable solution, but even that the case to be made
10 there is an even hard economic argument and I
11 couldn't even get there as well for the economic
12 hardship case required for off-site compliance.

13 So I'm with you, Madam Chairman. I'm just
14 not convinced that the economic hardship case truly
15 exists here. I mean, granted this project will not
16 be a big money maker for the applicant and that is
17 unfortunate. It's also hard to say, you never know
18 when these -- you know, the economic -- the economics
19 of real estate development are always uncertain and
20 sometimes you, you know, you develop a project at a
21 time when you think it's going to make a lot of sense
22 and make good money, and it just doesn't work out
23 that way. It winds up being, you know, the way the
24 economy turns, it doesn't work out. It's a risky
25 business.

1 So in this circumstance I am sympathetic to
2 the difficulties that the applicant has had with
3 getting the project through all the appropriate
4 permitting. Again, you can look at the facts on this
5 and question whether there was some intention to
6 circumvent the Inclusionary Zoning regulations. I
7 would rather not try to judge that case, but simply
8 say that there were certainly ways that this project
9 could have been steered in a better direction earlier
10 on. It's unfortunate that we're at this case and
11 it's taken 57 months. But I just don't feel that the
12 case has been made that it's appropriate to authorize
13 off-site compliance for the Inclusionary Zoning
14 requirement.

15 I do think that the waiver for parking relief
16 can be granted, or sorry, the variance for parking
17 relief can be granted.

18 MR. HINKLE: Yeah. Thank you, Madam Chair.
19 I know I just joined this case recently, but I did
20 spend some time this weekend going over the documents
21 and I tend to be in the same position as I think both
22 of you. I found it difficult to look at the waiver
23 and I don't think the case has been made. So I
24 certainly am not prepared to grant the relief that
25 was being requested.

1 CHAIRPERSON HEATH: Okay. Then, unless
2 anybody has any other points they want to make, I
3 will make a motion that we approve the request for
4 parking relief, but deny the request for off-site
5 compliance to construct eight flats on eight record
6 lots at 2112 through 2126 3rd Street Northeast.

7 MR. MAY: Second.

8 CHAIRPERSON HEATH: The motion has been made
9 and seconded. Any further discussion?

10 [Vote taken.]

11 CHAIRPERSON HEATH: The motion carries. Full
12 order on this one, Mr. Moy.

13 MR. MOY: Yes, thank you, Madam Chair. Staff
14 would record the vote as three to zero to two. This
15 is on your motion, Madam Chair, to approve the
16 request for the parking relief, which I believe is
17 2117.9, but deny the other relief per the off-site
18 compliance relief. Seconding the motion, Mr. Peter
19 May. Also in support, Mr. Jeffrey Hunkle -- Hinkle.
20 No other board members participating. Motion
21 carries.

22 CHAIRPERSON HEATH: All right. Was it 2117.9
23 for parking? Does that --

24 MR. BROWN: We had amended to ask for a
25 variance for the parking for Lot 42. So that would

1 have been a variance from 2101.1.

2 CHAIRPERSON HEATH: Okay. That's what I
3 thought.

4 MR. MOY: 2101. Okay.

5 CHAIRPERSON HEATH: So 2101.1.

6 MR. MOY: All right. Thank you.

7 CHAIRPERSON HEATH: Great. Just wanted to
8 clarify.

9 MR. MOY: That was for lot 42, was it?

10 MR. BROWN: Yes.

11 MR. MOY: Twenty-four, or 42?

12 MR. BROWN: Yes, the end lot.

13 MR. MOY: That's right. That's right.

14 MR. BROWN: And that's laid out in the second
15 submission.

16 Logistical question. Would it be possible to
17 bifurcate the IZ decision from the parking? A fact
18 of -- I don't think the parking was opposed, and the
19 IZ decision is going to -- a full order is going to
20 be quite a lengthy endeavor. It would certainly
21 allow the Lot 42 to move forward.

22 CHAIRPERSON HEATH: Does counsel have any
23 issues with that?

24 MS. GLAZER: I mean, we've had this come up
25 all day. The problem with that, it's fine if revised

1 plans are submitted that show an IZ compliant
2 project.

3 MR. BROWN: Well, that already --

4 CHAIRPERSON HEATH: But it's not changing the
5 -- it's not changing the plans. It's the same
6 project.

7 MR. BROWN: I mean, in the record, I think to
8 your point, in the record and it was in my most
9 recent submission, 2124A and B, two units which more
10 than comply IZ are already certified as in
11 compliance. So that's the law of the land --

12 CHAIRPERSON HEATH: Right. We've gone down
13 that road --

14 MR. BROWN: -- currently.

15 CHAIRPERSON HEATH: -- already.

16 MR. BROWN: Pardon?

17 CHAIRPERSON HEATH: You've already gone down
18 that road on those two units.

19 MR. BROWN: Yeah, so that they're there and
20 more than in compliance, and we were asking for
21 relief from that. So I mean, I just -- I understand
22 your point.

23 CHAIRPERSON HEATH: So, yeah, there's no
24 plans to revise. Okay. So, sounds like we can
25 bifurcate in this case.

1 MS. GLAZER: I suppose that's fine. But I
2 think the parking order could be a summary order.

3 CHAIRPERSON HEATH: Uh-huh.

4 MS. GLAZER: There's no problem.

5 CHAIRPERSON HEATH: Right. That would --

6 MS. GLAZER: But I think to be careful we
7 should add language at the bottom indicating that
8 it's part of another application --

9 CHAIRPERSON HEATH: Okay.

10 MS. GLAZER: -- that will be forthcoming.

11 MR. BROWN: That's fine.

12 CHAIRPERSON HEATH: Okay.

13 MR. BROWN: That's fine.

14 CHAIRPERSON HEATH: All right. Okay. Thank
15 you all. Thank you for your time.

16 MR. BROWN: Thank you.

17 CHAIRPERSON HEATH: Any other matters coming
18 before the Board today, Mr. Moy?

19 MR. MOY: I think that does it for today,
20 Madam Chair.

21 CHAIRPERSON HEATH: All right. Thank you.
22 Much more than enough.

23 [Whereupon, at 3:06 p.m., the Board Hearing
24 was adjourned.]

25