

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 9:43 a.m. to 12:13 a.m.

14

Tuesday, October 25, 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 HILL: Okay. Good morning,
3 everybody. The hearing will please come to order.
4 We're located in the Jerrily R. Kress Memorial
5 Hearing room at 441 4th Street Northwest. This
6 October 25th public hearing of the Board of Zoning
7 Adjustment of the District of Columbia.

8 My name is Fred Hill, Chairperson. Joining
9 me today is Anita Butani-D'Souza, Vice Chairperson,
10 Jeffrey Hinkle, Board Member, and representing the
11 Zoning Commission today is Anthony Hood.

12 Copies of today's hearing agenda are
13 available to you and are located in the wall bin near
14 the door. Please be advised that this proceeding is
15 being recorded by a court reporter and is also
16 webcast live. Accordingly, we must ask you to
17 refrain from any disruptive noises or actions in the
18 hearing room.

19 When presenting to the Board please turn on
20 and speak into the microphone, first stating your
21 name and home address. When you're finished speaking
22 please turn off the microphone so that your
23 microphone is no longer picking up sound or
24 background noise. All persons planning to testify
25 either in favor or in opposition must have raised his

1 or her hand and been sworn in by the secretary.
2 Also, each witness must fill out two witness cards.
3 Those witness cards are located on the table near the
4 door on the witness table. Upon coming forward to
5 speak to the Board please give both of those cards to
6 the reporter sitting at the table to my right.

7 If you wish to file written testimony or
8 additional supporting documents today, please submit
9 one original and 12 copies to the secretary for
10 distribution. If you do not have the requisite
11 number of copies, you can reproduce copies on an
12 office printer in the Office of Zoning located across
13 the hall.

14 The order of procedures for special
15 exceptions and variances, you can look at a handout
16 and refer to a handout that's on the back table there
17 in terms of the order in which those will be heard.
18 And then also if it's an appeal or -- appeal is on
19 the agenda. Also in the back there, there is a
20 handout that refers to how the appeal will be heard.

21 Let's see. The record will be closed to the
22 conclusion of each case except for any material
23 specifically requested by the Board. The Board and
24 the staff will specify at the end of the hearing
25 exactly what's expected and the date when the persons

1 must submit the evidence to the Office of Zoning.

2 After the record is closed no other
3 information will be accepted by the Board. The
4 District of Columbia Administrative Procedures Act
5 requires that the public hearing on each case be held
6 in the open before the public, pursuant to Section
7 405(b) and Section 406 of the act. The Board may,
8 consistent with these -- it's rules of procedures on
9 the act, enter into a closed meeting on a case for
10 purposes of seeking legal counsel on a case pursuant
11 to D.C. Official Code, Section 2575(b) (4), and/or
12 deliberating on a case pursuant to D.C. Official Code
13 Section 2575(B) (13), but only after providing the
14 necessary public notice. And in the case of an
15 emergency closed meeting, after taking a roll call
16 vote.

17 The decision of the Board in these contested
18 cases must be based exclusively on the public record.
19 To avoid any appearance to the contrary the Board
20 requests that persons present not engage the members
21 of the Board in conversation.

22 Please turn off all beepers and cell phones
23 at this time so as not to disrupt the proceedings.

24 Preliminary matters are those which related
25 to whether a case will or should be heard today, such

1 as request for postponement, continuance, or
2 withdrawal, or whether proper and adequate notice of
3 the hearing has been given.

4 If you're not prepared to go forward with the
5 case today, or if you believe that the Board should
6 not proceed, now is the time to raise such a matter.

7 Mr. Secretary, do we have any preliminary
8 matters?

9 MR. MOY: Good morning, Mr. Chairman, Members
10 of the Board. The only item I have which relates to
11 the docket for today, Mr. Chairman, is that
12 Application No. 19358 of Bearden Arts, LLC. has been
13 postponed and rescheduled to November 30th, 2016.

14 CHAIRPERSON HILL: Okay. Great. Thank you.
15 Then, if that's the case let's go ahead and start the
16 hearing. And if you want to administer the oath, and
17 if anyone would stand and please take the oath if
18 you're going to present today.

19 MR. MOY: Good morning.

20 [Oath administered to the participants.]

21 MR. MOY: Ladies and gentlemen, you may
22 consider yourselves under oath.

23 CHAIRPERSON HILL: Thank you, Mr. Moy. When
24 you're ready to, I'd like to call the first case.

25 MR. MOY: Yes. Thank you, Mr. Chairman. I

1 believe the first case is Appeal No. 19337, this is
2 the appeal of Robert A. Shelton and Mark Flynn as
3 captioned and advertised. This is appeal of the June
4 1st, 2016 decision by the Zoning Administrator,
5 Department of Consumer and Regulatory affairs to
6 grant Building Permit Number B, B as in Bravo,
7 1604403, which granted to permit the construction of
8 a three-story addition to the rear of an existing
9 one-family dwelling.

10 This is the cap or CAP/R-4 District, 30 --
11 325 5th Street Southeast, Square 820, Lot 17, and 49.
12 And I think the only thing I have to add to this, Mr.
13 Chair, is that the applicant also filed a request to
14 waive the filing time for an additional prehearing
15 statement which is on your Exhibit 24 and 25.

16 CHAIRPERSON HILL: If it's okay with the
17 Board I'm fine waiving the time. Okay.

18 All right, good morning. If you could please
19 introduce yourself? You won't mind going from that
20 side over to that way?

21 If you could just push the button there until
22 the green light comes on and then turn it off again.
23 Thank you.

24 MR. FLYNN: Okay. Mark Flynn, 323 5th Street
25 Southeast.

1 MS. PENCE: Mary Pence, 2736 Rittenhouse
2 Street Northwest.

3 MR. SHELTON: Bob Shelton, 323 5th Street
4 Southeast.

5 MS. EPPOLITO: Gina Eppolito, 325 5th Street
6 Southeast.

7 MS. FOWLER: Jennifer Fowler of 1819 D Street
8 Southeast. I'm the architect.

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

11 MR. TONDRO: Maximilian Tondro representing
12 the Zoning Administrator and DCRA.

13 CHAIRPERSON HILL: Okay. Great. Thank you.

14 So, as the appellant, I guess what we're
15 going to do here is you can go ahead and present your
16 case and all of your witnesses, and I'm going to turn
17 to DCRA and hear their response, and then also then
18 you'll have a chance to rebut their case or comments
19 and ask some questions of them.

20 So I assume you're prepared to go forward.
21 Who is going to speak on behalf of the appellant?

22 MR. SHELTON: I am.

23 CHAIRPERSON HILL: Okay. Great. May I ask
24 how long you think you might need?

25 MR. SHELTON: I think I'll probably speak

1 maybe 10 minutes.

2 CHAIRPERSON HILL: Okay. Okay, great.
3 Please, begin.

4 MR. SHELTON: Oh, okay. This is the second
5 time I've had the privilege and pleasure to appear
6 before this Board. I think I've learned a lot since
7 the last I was here, which is, you may not think it's
8 a good thing but it's happened.

9 When I looked over recently, the zoning
10 introduction on the internet, it started out by
11 saying that the zoning law is highly technical. And
12 I think I will like to address some of the parameters
13 of the law this morning. And it's also going to be
14 necessary for me to revisit some of the issues in the
15 original proceeding, still pending because an order
16 hasn't been issued in order to get to the point that
17 I'm coming to.

18 I know that Mr. Tondro, who has been very
19 helpful in facilitating one meeting thinks this is a
20 cut and dry matter. And I hope to convince you to
21 the contrary.

22 Let me start out by saying a little bit about
23 our involvement with the house that we're in. We
24 moved into that house 39 years ago, I think, almost
25 to the day. We have seen families start out with

1 children and those children have grown up and have
2 children. There have always been children on that
3 lot. Sharon Ann Rose (phonetic) raised four in a
4 home that's the size of ours. One door down the
5 Sloans reared three in a house that's the size of the
6 adjacent house. Across the street we've seen a
7 little boy who sold us Christmas cards now have a
8 family of his own. And we've been deeply involved in
9 that community and it's a lovely block. Maybe one of
10 the blocks, best blocks on the hill because it's --
11 there's a park on both sides of it, and very secluded
12 and close in, and been a wonderful place to live for
13 these last 39 years.

14 Let me tell you a little bit about how the
15 houses are approximated, 323 and the neighbor, which
16 is 325. Our house was built in 1890, give or take.
17 It's a relatively small house, even for that part of
18 the hill. In total it has 1,500 square feet. And
19 the house adjacent was built some probably 20 years
20 later. And it's 20 feet longer -- 12 feet longer
21 than our house, and it's adjacent right along the
22 party line.

23 There's no court in that place. It's right
24 along the party line. And it's not two stories high.
25 I stop here to note that the building permit says

1 that it's approval to build two-story addition. It's
2 two-stories, which in those days are not, you know,
3 they're big stories, 10 or 12 feet. Plus a basement.
4 So it's roughly two and a half stories high right
5 outside our sliding glass door.

6 And I would say, and I think this is a major
7 point as far as we're concerned, is that our house is
8 now really dwarfed by the adjacent property at 325.

9 Our house in the back is only 13 and a half
10 feet wide on a 16 and a half foot lot. And currently
11 we have 12 feet, two and a half story masonry going
12 out the party wall from our back door.

13 The proposal is to enclose a two-story open
14 porch, which extends from the current 12 feet. That
15 again is an anomaly in terms of Capitol Hill; very
16 rare. There was a porch put on that I'm familiar
17 with, but a two-story open porch is what exists
18 currently behind 325.

19 And the proposal is to enclose the first
20 story, extend the basement. Here again I note that
21 the building permit says two stories, but it's really
22 two stories plus a basement if you look at the
23 building permit that's been filed. That's in error.

24 But in any event, passing on from that is a
25 proposal is to enclose the six feet, plus add the

1 four feet on the first floor to extend the basement.
2 And then the second floor will have this, I call it
3 estate room balcony, extending from the second floor
4 bedroom, out above the kitchen into the back yard.

5 CHAIRPERSON HILL: Mr. Shelton, may I
6 interrupt you just for a moment?

7 MR. SHELTON: Sure.

8 CHAIRPERSON HILL: So again, what I'm trying
9 to get to and understand is that, again, this is an
10 appeal in terms of the --

11 MR. SHELTON: Well, let me get to --

12 CHAIRPERSON HILL: -- specificity as to how
13 the ZA erred.

14 MR. SHELTON: All right.

15 CHAIRPERSON HILL: I mean, I understand and I
16 do appreciate and want to hear more about it, I mean,
17 I was here for the reconsideration and I remember the
18 -- again, the reconsideration of the actual special
19 exception that led to the development moving forward.
20 And so really what would be best for you here in
21 terms of convincing us how the ZA erred in terms of
22 the specifics of your case.

23 MR. SHELTON: I'll move on.

24 CHAIRPERSON HILL: Thank you. No, I'm just
25 trying to gear you, steer you in that --

1 MR. SHELTON: Well, I wasn't allowed -- I
2 stayed up here for two weeks and I wasn't allowed to
3 speak on that occasion, and I understand the rules
4 didn't permit it. But I did think that since two you
5 weren't here that I would set the table because I
6 think also the reason why I stop here is, this is a
7 value judgment that you're making. It's not just
8 light and air.

9 I mean, what you're really doing in a certain
10 way is you're saying, look, what's the relative merit
11 of infringing our enjoyment? This is a zero sum game
12 to a certain extent. No question about it.

13 So, I do think that it's relevant to set the
14 table, but your point is well taken sir and I'll move
15 on. The applicant's theory of this exception is
16 shown in front of the ANC Architectural Review
17 Committee, and in the supplementary filing to the BZA
18 is that they are entitled as a matter of right to
19 enclose six feet.

20 And so they look at it as it's just an
21 application for the extension of the four feet. They
22 are wrong about that. The code and the sections
23 which I have provided to you make it clear that in
24 1928, 1958, when that zoning code was promulgated, is
25 there was a special exception made for nonconforming

1 structures. A structure if existed at that point in
2 time could continue to exist. But the law is very
3 clear both in terms of the statute that I put, and
4 also 2113, that cannot be used as a basis to
5 piggyback an extra extension. I have those two that
6 are quoted in my submission. And that's exactly the
7 theory the applicant used in front of the ANC and
8 their submission to the Board of Zoning Appeals.

9 Counsel for the Board of Zoning Appeals
10 accepts the fact that it cannot be used as a basis, a
11 piggyback. And if you look at the order, nowhere do
12 you see Section 2001.3 cited. Why? Because the
13 Board and its counsel know that you cannot piggyback
14 on the basis of existing nonconforming structure.

15 The evidence adduced by the applicant was
16 based on an existing six feet. The so-called sun
17 study is for an existing six feet, plus four, is what
18 the applicant shows in his submission. Not only that
19 is the sun study which is right out of Google,
20 assumes that the existing six feet is enclosed. So,
21 the applicant, both in its presentation and its
22 proof, and it has the burden of proof, assumed that
23 the six feet was already in place as a matter or
24 right, and the law does not permit that.

25 From there how do I get to the instant case?

1 And that's a very good question which I have been
2 puzzling about. This is what the lawyers call a
3 collateral proceeding. What Mr. Tondro would have
4 you believe, and I think in his position, is that
5 it's cut and dry because the BZA has already ruled on
6 this issue.

7 But implicitly, the only way that you can
8 tell what they've done is you look at that one
9 phrase, assuming that the building is already in
10 place. So it is a mistake of law in terms of the
11 Zoning Regulations that would previously apply.

12 Now, in terms of where you are right now,
13 even if it is a mistake in law, what is your
14 jurisdiction? Well, the fact of the matter is, is
15 that the BZA has no jurisdiction over 2001.3, which
16 is the modernization section.

17 The DCRA has to rule on that, and they have
18 not. If you look at the materials that I previously
19 submitted, they assumed that the six feet was in
20 place. The BZA has not ruled on that six feet.

21 Who has ruled on that six feet? The BZA
22 doesn't have the jurisdiction to rule on the six
23 feet. The only institution that has the ability to
24 rule on that is the DCRA, and they have not done so.

25 So that, Mr. Chairman, is the essence of my

1 remarks. But let me let you have the indulgence for
2 me to go back just to note, I do think also if you
3 look at the Google shadow study that I presented
4 previously in my materials, which you've admitted
5 this morning, you see to the extent that our house
6 already exists in the shadows because of that 12
7 feet, two and a half story. And I think the BZA, as
8 a matter of law, also had to look at that. And I
9 think it should affect the context of the enjoyment
10 of our property.

11 So my argument is essentially, and I
12 appreciate your indulgence, is a legal one. The
13 statute was improperly applied the first time around,
14 given the burden of proof. And nobody has yet to
15 rule on the assumption that the BZA order had that
16 that six feet was properly enclosed. Thank you, sir.

17 CHAIRPERSON HILL: Thank you, sir. Okay.
18 Are you all here to speak as witnesses, or also
19 speaking today?

20 MS. PENCE: I'm in support of Mr. Shelton.

21 CHAIRPERSON HILL: Okay. All right. Is
22 there anything you would like to say now?

23 MS. PENCE: No.

24 CHAIRPERSON HILL: Okay. All right. All
25 right. Then, if that's okay I'm going turn now over

1 to hear what DCRA has to say. Mr. Tondro.

2 MR. TONDRO: Thank you. Good morning,
3 Chairman Hill and Members of the Board. Thank you.

4 I did want to respond to Mr. Shelton if I
5 can, first however, take a brief excursus just to
6 sort of underline an issue. Mr. Shelton, as well as
7 Ms. Fowler, the parties in this appeal, all agreed
8 very kindly to come together to address the condition
9 that was imposed by the Board in BZA Application
10 18938. I just want to call attention. I think it's
11 a minor matter, but I raised it last, which was this
12 modification of the green screen that was per that
13 condition.

14 I believe the authority in the Board's order
15 gives the room, the flexibility for the applicant to
16 change it as is shown in the Exhibit 27. That was in
17 response, the permit holder or the applicant and BZA
18 in 18398, Ms. Fowler agreed to accommodate the
19 request made by Mr. Shelton, that rather than having
20 the Hardy Plank siding and the green screen that have
21 been proposed, that they would rather have the brick
22 facades.

23 I just wanted to clarify that now, that that
24 was a meeting that all the parties agreed to come
25 together to try to take that off the table, but I

1 wanted to make sure that the Board had an opportunity
2 to consider that and to agree that that modification
3 is as it were, kosher, under the BZA 18938. So
4 that's just, as it were, a note of Tondro's score.

5 In terms of responding to Mr. Shelton's
6 appeal, I want to, I think first of all point out
7 that I think that the board order does specifically
8 address 2001.3 and granting relief from 2001.3
9 pursuant to Section 223, and in Board Order 18938.

10 Second of all, in terms of, I think, the
11 fundamental issue that Mr. Shelton raised, which is
12 this question of the ability to modernize, to take
13 the open porch and to enclose that, that is allowed
14 under 2001.2, that specifically allows for
15 modernizations. And I'll just read to you, 2001.2,
16 except as provided in 2001.11, 2001.12, ordinary
17 repairs, alterations, and modernizations to the
18 structure, including structural alterations shall be
19 permitted. And that has been understood by the
20 Zoning Administrator, been long practiced, that that
21 would include this type of modernization to enclose
22 an existing structure.

23 But I would like to turn it now to the Zoning
24 Administrator just so you can hear directly from him
25 as to how he has interpreted that in the past. Thank

1 you.

2 MR. LeGRANT: Good morning, Members of the
3 Board.

4 So, as Mr. Tondro points out, the provision
5 that allows for continuation of an existing
6 nonconforming feature through maintenance,
7 alterations, and modernizations, is a long standing
8 provision of the code that my office supplies
9 probably every day, somebody comes in with a
10 nonconforming aspect of a building. In this case it
11 contributes to exceeding the lot occupancy and it
12 borders a substandard open court in terms of width.

13 And of course, as the Board knows, that was
14 where the extension of that feature needed relief,
15 which the Board granted in the previous -- it's
16 approval.

17 But for -- if it was just a question of
18 maintaining that existing porch or that projects six
19 feet from the rear of the building, and/or enclose
20 it, that is the matter of right situation that
21 applicants come in and, or in this case could come in
22 and continue that without need for any relief.

23 I guess I will note, more of a hypothetical,
24 if you lose a nonconforming feature when a building
25 is razed, and that's not the case here, but that

1 would -- that's been a longstanding interpretation of
2 the Zoning Regulations that if there was a razed
3 building, it was a clean slate, the nonconformity
4 would disappear and then there would be a different
5 type of relief.

6 So I just, that's just to focus a little bit
7 on that provision of the code, how it applies in
8 situations such -- like this, in this particular
9 case.

10 MR. TONDRO: And so I would just conclude
11 again on nothing that this is an issue about whether
12 the Zoning Administrator had the authority to deny
13 the permit, and I think he relied on the Board's
14 order that granted relief, specifically included
15 relief under 2001.3 as well as for lot occupancy and
16 for minimum court width under 403 and 406. And
17 therefore the Zoning Administrator did not believe
18 that he had the discretion to deny the permit. It
19 met all the requirements, so I'll rest with that.
20 Thank you.

21 MR. SHELTON: May I cross-examine?

22 CHAIRPERSON HILL: You may. Just one moment,
23 though, please. I just had a quick question.

24 As far as the lot occupancy again, I know I
25 saw it in the record and everything, but you guys

1 agree with the 63.6 percent?

2 MR. LeGRANT: Yes, we do.

3 CHAIRPERSON HILL: Okay.

4 MR. LeGRANT: My staff looked back and did a
5 separate calculation and it confirmed the 63.6
6 percent that was noted in a finding of fact in the
7 board order.

8 CHAIRPERSON HILL: Okay. Okay. Thank you.

9 MR. LeGRANT: Go ahead.

10 MR. TONDRO: And you can look at Exhibit 25
11 which has that drawing that was made by the zoning
12 technician that very clearly lays out both the
13 existing as 60.8 percent, and then the proposed as
14 63.6 percent.

15 CHAIRPERSON HILL: Okay. Thank you. Yeah,
16 Mr. Shelton, please, you may go ahead and ask
17 questions of the Zoning Administrator and also just
18 want to mention if any board members have any
19 questions, please feel free.

20 MR. SHELTON: Well, I might have miss cited
21 because I didn't have my documents with me. Is
22 2001.2 cited in the Board's order? Am I incorrect
23 about that? That's the one that you're referring to.

24 MR. LeGRANT: I'll have to go back and look
25 at the order. It doesn't come to mind that it was

1 cited, but I believe it does not have to be cited
2 because that was not a question of relief. What was
3 a question of relief before the Board was the relief
4 under 223.

5 MR. SHELTON: Well, are you relying in terms
6 of issuing this building permit on 2001.2?

7 MR. LeGRANT: I would say that both the areas
8 that the Board granted relief was the key basis for
9 granting the building permit. When we look at any
10 building permit application, there are areas that are
11 not relevant to the relief, and therefore we look to
12 see if it meets the matter of right provisions that
13 are set forth throughout the Zoning Regulations, and
14 that's in granting the building permit, that was the
15 conclusion.

16 MR. SHELTON: Can I have a yes or no to that
17 question?

18 MR. LeGRANT: Restate your question, please.

19 MR. SHELTON: Was DCRA relying on 2001.2 when
20 it issued this building permit?

21 MR. LeGRANT: I'd say yes, in part.

22 MR. SHELTON: Yes. Are you familiar with the
23 statute that provides that a nonconforming structure
24 cannot be used as a basis to extend that structure?

25 MR. LeGRANT: Well, I'll put it this way, I'm

1 generally familiar with the statute. But as Zoning
2 Administrator I rely on the implementing regulations
3 of the statute which guide the work in my office, and
4 I'm very comfortable to state that 2001.2 as we've
5 discussed a little bit today, is an adequate basis
6 for continuing or modernizing an existing
7 nonconforming feature.

8 My counsel is pulling up --

9 MR. SHELTON: Well, could I ask you to answer
10 the question opposed from your counsel? You can look
11 at what he puts in front of you.

12 MR. LeGRANT: Yeah, this is -- he's simply
13 putting the zoning code in front of me.

14 MR. SHELTON: Okay. Could I have a yes or no
15 answer to that question? Can the 2001.2 be used as a
16 basis for extending the nonconforming structure, yes
17 or no?

18 MR. LeGRANT: No, well, we were talking
19 about --

20 MR. SHELTON: Yes or no?

21 MR. LeGRANT: Well, let me say this --

22 CHAIRPERSON HILL: Mr. Shelton, let him
23 answer the question. That's okay. That's all right.

24 MR. LeGRANT: We were talking about the
25 continuation of the existing nonconforming feature,

1 2001.2. An extension, it's a different provision,
2 and that's the provision that the Board was posed
3 with and granted relief for.

4 MR. SHELTON: Okay. But the board can only
5 grant relief from that prohibition if it looks at the
6 entire project. Is that not correct?

7 MR. LeGRANT: I would refer to --

8 MR. SHELTON: In other words, that would --

9 MR. LeGRANT: -- the Board if you --

10 MR. SHELTON: No, no. No, no. No, no, let
11 me ask you --

12 MR. LeGRANT: Yes.

13 CHAIRPERSON HILL: Mr. Shelton, I guess
14 that's the kind -- that's all right, but that's kind
15 of the problem that I'm having here a little bit in
16 the discussion, is that again, you're here for an
17 appeal as to how the Zoning Administrator erred. And
18 a lot of what I'm hearing you discuss to me is really
19 kind of like how the Board, the BZA erred in granting
20 the special exception.

21 And so that was something that had already
22 happened, and then you came before the Board for a
23 reconsideration, which was also rejected. And so now
24 you're here as an appeal to how the ZA erred.

25 And so, you know, you continue to seem to

1 keep going back to how the BZA erred, you know, in
2 its original judgment, and I don't think that that's
3 helping you out. And the question that I'm going to
4 -- and I'm interested in, and I'm going to let you
5 finish answering -- asking your questions, right, but
6 I am curious also, and I've read all the documents in
7 the record, but to how you went about then working
8 with the builder, I guess, the neighborhood who is
9 doing the project. And I know that there was some
10 discussion about, you know, the bricks in terms of,
11 you know, what happened there, and then the railings
12 and those things got changed.

13 But before I get to that point I'm just
14 saying that's what I'd like to ask you some questions
15 about. I just wanted to go ahead and let you finish
16 having an opportunity to ask questions of how the ZA
17 erred in making his decision.

18 MR. SHELTON: You have raised a point I think
19 I raised about 15 minutes ago, which is how these two
20 issues are tied together. And I think I am
21 permitted, since he stated that 2001.2 is something
22 that he relied on, is how that ties in with the rest
23 of the permit.

24 His counsel has pointed him to a section
25 which says, is that, that limitation can be lifted.

1 But I think I am permitted to ask him is, doesn't the
2 whole 10 feet have to be addressed in order to list
3 that restriction?

4 MR. LeGRANT: I believe the Board did so when
5 it granted the relief.

6 MR. SHELTON: Okay. Well, I'm not going to
7 be able to say anything other than I think the law is
8 clear to the contrary.

9 CHAIRPERSON HILL: Okay. All right. So I
10 just have some questions for you, I suppose. So what
11 happened after the permit -- well, before the permit
12 was issued, I mean, you sat down with the neighbor
13 and discussed the materials that were going to be
14 used on the side of the expansion. Is that correct?

15 MR. SHELTON: Well, let me go back to the
16 original hearing if I can, how that arose. Is when -
17 - as you see in my prefile materials there was no
18 discussion about changing the composition of the wall
19 from masonry to siding in the hearing.

20 CHAIRPERSON HILL: But since then did you
21 guys get to a place where you agree?

22 MR. SHELTON: Well, we did agree. In other
23 words, assuming that this goes through, Mr. Chairman,
24 we agreed that the wall with the masonry and the
25 railing on the second floor would be whatever it is,

1 not masonry but some sort of other open material.
2 And we did agree to that. And Mr. Tondro is accurate
3 in his presentation.

4 MR. TONDRO: Thank you. And I would
5 indicate, I believe that's Exhibit 27 on the -- what
6 shows both, on the left-hand side, the original --
7 the revised plans that are approved by the BZA, on
8 the right-hand side what is proposed that corresponds
9 to what Mr. Shelton wanted.

10 CHAIRPERSON HILL: No, I saw it.

11 MR. SHELTON: We agree that we're agreed on
12 that issue.

13 MR. TONDRO: Yes.

14 MR. SHELTON: The answer to that question is
15 yes.

16 CHAIRPERSON HILL: Okay. All right. So, do
17 you have any more questions for the Zoning
18 Administrator?

19 MR. SHELTON: No, sir.

20 CHAIRPERSON HILL: Okay. In that case I'm
21 going to ask if there's anybody here to speak in
22 support of the application, or the appeal. Oh, I'm
23 sorry. Sure. More questions from the -- or the Vice
24 Chair had some questions. Please, go ahead.

25 MS. BUTANI-D'SOUZA: Thank you, Mr. Chair.

1 Okay.

2 So, I've got a couple of questions because
3 I'd just like to clarify. Sometimes we talk about
4 sections of the code and it gets a little bit
5 confusing for the lay person so I just want to make
6 sure that I'm understanding all the issues here.

7 So, Mr. Tondro, can you just confirm, did the
8 applicant in their original application apply for
9 additions to a nonconforming structure to extend the
10 nonconformance when they were applying for relief?

11 MR. TONDRO: Yes.

12 MS. BUTANI-D'SOUZA: Yes. Okay. So that was
13 applied for and the BZA did grant relief to allow
14 additions to the nonconforming structure to extend
15 the nonconformance. So that clarifies a lot for me.

16 Second, now I looked at the applicant's, I
17 believe it's Exhibit 2, the original prehearing
18 statement. It looks to me as if Mr. Cochran from the
19 Office of Planning did analyze the full wall. There
20 is a highlighted section of testimony in the
21 prehearing statement, where -- and this is a question
22 for you, Mr. Shelton, where Mr. Cochran says that the
23 sun study measures the entire proposed addition. It
24 doesn't just measure four feet.

25 So I was looking at, I assumed, the results

1 of the sun study of the entire proposed addition. So
2 I guess, Mr. Shelton, I am a little bit confused as
3 to why you keep arguing that, that the full addition
4 was not analyzed in the sun study.

5 MR. SHELTON: Well, the reason why I quote
6 that is to show that Mr. Cochran knows what the law
7 is. You will see that he's very confused. It takes
8 me four pages to get out of him that it's 10 feet.
9 And I subsequently asked Mr. Tondro -- I mean, Mr.
10 Cochran, he said it's not additive. The reason that
11 he thinks it's 10 feet is because it has to be 10
12 feet.

13 And when you see what Ms. Fowler has in her
14 submission, she agrees that it's four feet. And see,
15 this is the whole point I'm making. The burden of
16 proof and her theory is it's based on a 2001.2. Mr.
17 Cochran knew that, and that's why after four pages he
18 says, I guess it's 10 feet.

19 And so, I'm the one that's quoting that,
20 showing that Mr. Cochran knows what the law requires.

21 MS. BUTANI-D'SOUZA: So when OP recommended
22 approval for the relief, as I read this, they analyze
23 the full 10 feet. So I'm still not entirely clear on
24 your argument.

25 MR. SHELTON: Well, if you look at the

1 materials I've submitted, in her supplementary
2 submission she says, the sun study is for four feet.
3 The sun study is for four feet.

4 The reason why Mr. -- and I'm repeating
5 myself. I said to Mr. Cochran when I met with him,
6 why -- he says they're not additive. And if you look
7 at the statute they're not -- and it doesn't make any
8 sense that you can use a nonconforming that's
9 permitted under 1958 zoning as the piggyback basis to
10 increase it an additional four feet. The law is
11 clear, you have to look at the enjoyment and the
12 light and air for the entire amount. And that was
13 not done in this case, and it's out of her own
14 submission. It's for four feet.

15 And not only that, the sun study is also
16 inappropriate because it assumes that it's not an
17 open porch, but it's a closed porch. That porch, if
18 you look -- it's a canned Google study. That
19 additional six feet is not open. It's closed.

20 MS. BUTANI-D'SOUZA: So, Mr. Shelton, so then
21 if I'm understanding you correctly, what you're
22 saying is that Ms. Fowler, when she created the sun
23 study, looked at it for four feet. And OP, when he
24 analyzed it, he analyzed it for 10 feet. Is that
25 what you're arguing?

1 MR. SHELTON: No, Mr. Cochran knew it had to
2 be 10 feet because he knew what the law was. If you
3 look at this -- it's four pages of back and forth,
4 back and forth. He says, it's got to be 10 feet.

5 MS. BUTANI-D'SOUZA: Okay. All right. I
6 think I understand on this point. Let me ask a
7 couple of other questions. And I'm sorry to
8 interrupt you but I, you know, I'm cognizant of time.

9 MR. SHELTON: No, I'm repeating myself. My
10 sorry.

11 MS. BUTANI-D'SOUZA: Okay. So, this is a
12 question for Mr. Tondro.

13 So in the applicant's statement I just want
14 to understand your response to this portion of their
15 argument. I just want to make sure that I'm clear on
16 exactly what it is.

17 So the applicant stated that -- or the
18 appellant, excuse me, stated, applicant seeks yet
19 another form of piggybacking, and claims a three-step
20 process.

21 First the porch is grandfathered, second that
22 it may be demolished, and third, it can thereafter be
23 rebuilt. So then he goes on to say, "To the extent
24 that there are existing grandfathered rights, first
25 went to 2000.2, in the existing two-story open porch.

1 They are extinguished when the structure is
2 demolished."

3 So as I understand it what Mr. LeGrant has
4 said is that this question of demolition
5 extinguishing certain existing non-conforming
6 structures and their ability to remain, only pertains
7 to when the full structure is raised. Okay, that's
8 correct.

9 MR. TONDRO: Yes.

10 MS. BUTANI-D'SOUZA: Okay.

11 MR. TONDRO: An different I might point out
12 too, the application itself, they specifically asked
13 for relief from lot occupancy for not just the
14 addition, because remember that it was already an
15 existing nonconforming by .8 percent for lot
16 occupancy, but they actually asked for the entire
17 3.6. In other words, the addition they were building
18 on as well as that which was originally
19 nonconforming. And the Board granted that.

20 So the Board, when they granted that, they
21 granted relief for both the existing excess of lot
22 occupancy, plus that addition. So the Board did
23 consider that overall.

24 MS. BUTANI-D'SOUZA: Okay. Got it. So then
25 my last question on this -- actually, that leads

1 right to my last question. Mr. Tondro, you mentioned
2 Exhibit No. -- I think in our documents it's a
3 different exhibit number than what you mentioned. I
4 think it's Exhibit 25 in the record. But the
5 analysis that the Zoning Administrator -- the zoning
6 technician did to show that this is a 63.3 percent.
7 Can you just walk us through that argument very
8 briefly because I think there is still some confusion
9 about why it's 63.6 percent and not the 66 percent
10 figure that the appellant is citing.

11 MR. TONDRO: Sure. Yeah, I apologize for the
12 -- if I misidentified the exhibit. I believe it's --
13 I'm looking at, I pulled up the one from the board.
14 I believe it's 23-A2, I think for the case. If I'm
15 reading correctly.

16 MS. BUTANI-D'SOUZA: Okay.

17 MR. TONDRO: Which corresponds, sorry, to
18 this -- just make sure we're all on the same page
19 quite literally.

20 So the issue you can see the calculations up
21 on the top where they've identified the various
22 different portions thereof that lead to the lot
23 occupancy. And I believe that the key issue here is
24 the fact that this is -- I'm sorry. You can see the
25 various different portions. A and B, which are parts

1 of the main building. C, which is the nonconforming
2 4.5 foot wide court. And then D, which is the
3 addition to the existing structure.

4 And so the issue is that C is counted in to
5 the lot occupancy because it is under the five foot -
6 - is under five feet wide. And therefore, under the
7 definition of building area, which in turn goes to
8 the definitely percentage of lot occupancy, and open
9 court, which is less than five feet, must count
10 towards lot occupancy.

11 Whereas the extension does not because that
12 extension is five feet, and so the definitely of
13 building areas is an open court less than five feet.

14 This is an open court because it is not
15 enclosed per the definition of 199.1, the definition
16 of a closed court would have it enclosed by exterior
17 walls and lot lines, whereas an open court, which
18 this is, is open to a yard, and that's exactly what
19 happened. As you can see, it opens to the rear yard
20 and then out to the -- it's at the alley in the rear.

21 MS. BUTANI-D'SOUZA: Okay. So basically when
22 they extended the Court they widened it so that it no
23 longer counts towards the lot occupancy.

24 MR. TONDRO: Yes, thank you.

25 MS. BUTANI-D'SOUZA: Got it. Okay. Those

1 are all my questions. I understand. Thank you.

2 CHAIRPERSON HILL: Okay. Great. Thank you.
3 So now I'm going to -- I'm sorry, I went out of the
4 order. So the property owner was supposed to have an
5 opportunity to speak. Would the property owner like
6 to say something?

7 MS. EPPOLITO: Thank you, Chairman Hill and
8 Members of the Board. Good morning.

9 I'm Gina Eppolito, resident of 325 5th Street
10 Southeast, and I just would like the Board to
11 understand that we have been trying to get to a
12 resolution since we had first thought of doing this
13 renovation, which was October 2014.

14 I have two growing children and an 80 pound
15 dog and a husband, and we are using every square inch
16 of our house and enjoying it fully. That's our only
17 house we have and we spend most of our time there.

18 So, with the many meetings that we've had and
19 the many hearings that we've had, and we've tried to
20 agree and making solutions and resolutions to issues
21 that have been not pleasing to our neighbors and
22 we've made a lot of exceptions and changed a lot of
23 plans, and I really am hoping that we can come to a
24 resolution at this point because we're ready to move
25 on.

1 So, thank you very much for your time.

2 CHAIRPERSON HILL: Okay. Thank you. You
3 have any questions?

4 All right, Mr. Shelton, I'm going to let you
5 go ahead and close then, if you want to go ahead and
6 wrap it up here if you have anything else to add and
7 say before you get to close the hearing.

8 MR. SHELTON: I'm just trying to, just in
9 response to -- the problem with this sort of an issue
10 is it's a zero sum game to an extent. And that's
11 always a problem in these cases.

12 But the bottom line is 325 is a 3,000 square
13 foot house. Ours is a 1,500 square foot house.

14 I also would like to reiterate that there's
15 no question that the DCRA is the only entity with the
16 authority to rule under 2001.2. And irrespective of
17 what the Zoning Administrator said today, if you look
18 at the building permit they did not rule. They
19 assumed. They assumed that there was a two -- that
20 there was a one-story enclosed nonconforming
21 structure. That issue has not been raised
22 previously. And that's why you have the authority to
23 act because they are required to rule on it, assuming
24 that that's the way to go, which it's not. They have
25 never ruled. Thank you, sir.

1 CHAIRPERSON HILL: Okay. Thank you. Okay.
2 Well, with that I'm going to close the hearing. Does
3 anyone have any more questions before I close the
4 hearing? Oh, sorry. DCRA, I'm sorry. I apologize.
5 I'm new at this.

6 So, you have a closing as well?

7 MR. TONDRO: I'll try to keep it as brief as
8 possible, thank you very much.

9 Just wanted to call your attention once again
10 to the interaction of 2001.2, which authorizes just
11 ordinary repairs, alterations, and modernizations,
12 specifically refers to structural alterations as
13 well. So I think that's a fairly wide agreement.

14 But more importantly, 2001.3, which grants
15 the -- which governs the issue of extent -- of
16 enlargements or additions to a nonconforming
17 structure, that was what the Board specifically
18 granted relief from. As I said before, they granted
19 relief based on the entire 3.6 excess lot occupancy,
20 and therefore it was under that context that the ZA
21 issued the permit. Thank you.

22 CHAIRPERSON HILL: Thank you. Okay. Now I
23 can close the hearing? All right. I'm going to
24 close the hearing.

25 So, is the Board ready to deliberate? Okay.

1 Well, I can start off where I am. I was, again from
2 reading the record and having an opportunity to hear
3 from the appellant, I had a difficult time hearing
4 how the ZA erred.

5 I heard from the appellant, again, how the
6 BZA erred in terms of its initial granting, and then
7 again spoke about the reconsideration that came
8 forward. I'm very appreciative to the appellant in
9 terms of, you know, the neighborhood and what is
10 happening next door. However, I'm also appreciative
11 to the fact that the property owner has been doing
12 its best to work with the neighbor to get to some
13 resolution.

14 I'm sorry that these things happen this way
15 in terms of -- I mean, I live in the city. I've
16 lived in the city my whole life as well. And so,
17 that these things happen with neighbors but I wasn't,
18 you know, convinced that from the appellant's
19 argument, how the ZA erred in getting to its decision
20 for the appeal. I mean, for the permit.

21 MS. BUTANI-D'SOUZA: Okay. All right. So,
22 you know, I looked over this very carefully and I had
23 a couple of questions. I think to me this really
24 turns on whether the relief was applied for and
25 granted. So, you know, based on the testimony that

1 we've heard here today, the applicant did apply for
2 relief to the additions to nonconforming structure.
3 The Zoning Administrator has clarified how the clause
4 is interpreted with regard to structural
5 modernizations. It's very clear that that's been
6 interpreted to be -- to allow this type of addition
7 for many, many years and I think we, you know, need
8 to defer to how this has been interpreted.

9 I think it was very helpful to hear DCRA walk
10 through why the 63.3 percent relief which was granted
11 does in fact match what the building permit shows, or
12 whether the building permit application shows. And I
13 think I was also glad to hear that the applicant had
14 met with the appellant to discuss the masonry wall,
15 versus Hardy Plank wall, and that there was a
16 positive resolution on that.

17 So, in my mind I you know, I would tend to
18 agree with the chair that I don't see that there was
19 a mistake made by the Zoning Administrator in this,
20 or in the original relief granted, actually. I think
21 the BZA granted the correct relief here. So that's
22 where I am on this.

23 MR. HOOD: Mr. Chairman, I would agree. I'm
24 still trying to figure out how the ZA erred, and I
25 think you've been on it the whole time that we've

1 been hearing this appeal. Mr. Shelton, I don't
2 think, produced any evidence of how the ZA erred, and
3 I was trying to get that.

4 I think the way I interpreted it, and I was
5 not here for the original case or the
6 reconsideration, but it looks like we're trying to
7 revisit all of those, the case and the
8 reconsideration.

9 But with all due respect I think that the ZA
10 in this case interpreted, how he normally does, and I
11 believe that this was the correct ruling. Again, it
12 looks like the decision, as you stated, Mr. Chairman,
13 of the BZA, was being questioned. And I don't
14 question my previous colleagues, but I will tell you,
15 and he threw out some names, Ms. Ambrose, very -- I
16 have a lot of respect for former councilmember
17 Ambrose. She is one of the reasons I'm here.

18 But I will tell you that I just could not get
19 in this appeal, where Mr. Shelton was going and I
20 think you were dead on, Mr. Chairman, with what this
21 is all about. But then again, it seems to me that
22 we're just trying to rehear the hearing and redo the
23 reconsideration, and then now we have an appeal.

24 So I do not see where the ZA erred and I
25 don't think he's proved his point, and I think the

1 evidence shows it. Thank you.

2 MR. HINKLE: Well, I was on the original
3 case. I'm the only one on the Board that was. But I
4 tend to agree. I've been studying every paper in
5 this appeal and I don't see any evidence that the ZA
6 erred in terms of reading the order and looking at
7 the permits. I think the Board was pretty clear in
8 terms of our action originally, and I tend to agree
9 with what has been stated in that it seems like today
10 it's just another attempt to try to rehear the case
11 and the original BZA application, and I don't think
12 that's appropriate.

13 Again, I tend to fall on the thought that the
14 Zoning Administrator did not err in this case.

15 CHAIRPERSON HILL: Okay. Thank you. I mean,
16 I also just thought it was interesting. I did go
17 back to the original case that you were on, and this
18 isn't the form for that to rehear that or try to do
19 that. But again, that was you know, went through the
20 Office of Planning, the ANC was in support six to
21 zero, and I'm sure that the appellant also had a
22 chance to go before the ANC and present their case at
23 that time.

24 But regardless then, so I think that we're
25 all on the same page. So I'd go ahead and make a

1 motion to deny Appeal No. 19337 and ask for a second.

2 MR. HINKLE: I'll second.

3 CHAIRPERSON HILL: Motion has been made and
4 seconded.

5 [Vote taken.]

6 CHAIRPERSON HILL: Thank you, Mr. Moy. The
7 motion passes.

8 MR. MOY: Staff would record the vote as four
9 to zero to one. This is on the motion of Chairman
10 Hill to deny the appeal or affirm the ZA's decision.
11 Seconding the motion, Mr. Hinkle. Also in support,
12 Vice Chair Butani and Mr. Hood, board seat vacant.
13 Motion carries.

14 CHAIRPERSON HILL: Thank you. Thank you all
15 very much.

16 Mr. Moy, we're going to take just a five-
17 minute break real quick.

18 MR. MOY: Very good.

19 [Recess.]

20 CHAIRPERSON HILL: All right, Mr. Moy, if we
21 could get started once again, please. And with our
22 next case?

23 MR. MOY: Yes, sir. Thank you. All right.
24 The next case before the Board, parties to the table
25 to Application No. 19350 of Art Charo, if I

1 pronounced that correctly. And Maude Fish. As
2 captioned and advertised for a special exception
3 relief under the side yard requirements of Subtitle
4 D, Section 307. This has also been amended, I
5 believe, Mr. Chairman, to include Subtitle C, Section
6 202.2, which is the nonconforming structure
7 provisions. And this would construct the rear
8 addition to an existing one-family dwelling, R-1-B
9 zone, 3224 Oliver Street Northwest, Square 2022, Lot
10 48.

11 CHAIRPERSON HILL: Okay. Great. Thank you,
12 Mr. Moy. Good morning. Would you please introduce
13 yourselves?

14 MS. NOEL: My name is Catherine Noel of Noel
15 Design Build, 3224 North Hampton Street Northwest,
16 D.C.

17 MR. CHARO: Art Charo, the homeowner, 2344
18 Oliver Street Northwest.

19 MS. MAYDAK: Rebecca Maydak. I'm the ANC
20 Commissioner 3G-04. I live at 5900 Utah Avenue
21 Northwest.

22 CHAIRPERSON HILL: Great. Thank you. Well,
23 Mr. Charo I don't think we have a lot of questions,
24 actually. I'll see if any of my colleagues have any
25 questions. It seemed fairly complete to me. Does

1 anyone on the Board have any questions right now?

2 MR. HOOD: Just wanted to ask the
3 Commissioner, you say 3G or 3 -- is it 3/4G, or I
4 always get confused on that.

5 MS. MAYDAK: On the official website we're
6 3G, but because part of us, I'm in Ward 4, when we
7 talk we usually say 3/4G.

8 MR. HOOD: Okay. Okay, good. All right.
9 And that was not germane but I just wanted
10 clarification. Thank you, Mr. Chair.

11 CHAIRPERSON HILL: That's all right, Mr.
12 Chairman, we're all here to learn.

13 So, as I just mentioned, we don't have any
14 real questions at this time and so what I'd like to
15 do if you're comfortable with it, is turn to the
16 Office of Planning to hear what they have to say.

17 MR. JESICK: Thank you, Mr. Chairman and
18 Members of the Board. The Office of Planning is
19 happy to recommend approval of the application and I
20 can rest on the record and take any questions. Thank
21 you.

22 CHAIRPERSON HILL: Thank you. Does the Board
23 have any questions for the Office of Planning?

24 Okay. Then what I'm going to do is ask if
25 there's anyone here in the audience for in support of

1 the application. Anyone here in support?

2 Is anyone here from the ANC? And yes, that
3 would be the case. And I assume you're here in
4 support?

5 MS. NOEL: Yes, we're in support.

6 CHAIRPERSON HILL: Okay. Well, thank you for
7 coming down. That's very nice of you. Are you a
8 neighbor?

9 MS. NOEL: Yes.

10 CHAIRPERSON HILL: Okay.

11 MS. NOEL: They have to live in my single-
12 member district.

13 CHAIRPERSON HILL: Oh, okay. Oh, there you
14 go.

15 MS. NOEL: Yeah.

16 CHAIRPERSON HILL: That's all I needed. And
17 then is anyone here wishing to speak in opposition?
18 Anyone here in opposition?

19 Okay. All right. Well, then with that I'd
20 turn back to the applicant and see if there was
21 anything that you had to add.

22 MR. CHARO: No, I think you have the record
23 in front of you.

24 CHAIRPERSON HILL: Okay. Great. Thank you.
25 Well, then in that case I'd also like to thank the

1 ANC Commissioner to come on down. That's nice of her
2 to do that, and in support. And I'm sure now you'll
3 be supporting her in the next election campaign.

4 MR. CHARO: Even if she wasn't unopposed.

5 CHAIRPERSON HILL: That's also helpful. I'm
6 going to close the hearing then. Was the Board ready
7 to deliberate?

8 MS. BUTANI-D'SOUZA: Yes.

9 CHAIRPERSON HILL: Please.

10 MS. BUTANI-D'SOUZA: Okay. Well, I thought
11 that this was a very compelling application. I
12 thought it was great that there was unanimous
13 approval from the ANC and I know Commissioner Maydak
14 does excellent work in that ANC, and I appreciate her
15 presence here.

16 So I would make a motion to approve the
17 relief as captioned.

18 MR. HOOD: Second. Second.

19 CHAIRPERSON HILL: Second. The motion has
20 been made and seconded.

21 [Vote taken.]

22 CHAIRPERSON HILL: Mr. Moy, the motion
23 passes.

24 MR. MOY: Thank you, sir. Staff would record
25 the vote as four to zero to one. This is on the

1 motion of Vice Chair Butani to approve the amended
2 relief requested. Seconded the motion, Mr. Anthony
3 Hood. Also in support, Chairman Hill and Mr. Hinkle.
4 We have a board seat vacant. Motion carries, sir.

5 CHAIRPERSON HILL: Thank you, sir. Summary
6 order, please?

7 MR. MOY: Thank you.

8 CHAIRPERSON HILL: Thank you. Thank you,
9 guys.

10 MS. NOEL: Thank you.

11 MR. CHARO: Thanks a lot.

12 CHAIRPERSON HILL: Mr. Moy, whenever you're
13 ready.

14 MR. MOY: Parties to the table to Application
15 No. 191 -- or rather 19351 of P.A. Properties, LLC.,
16 and as captioned and advertised for a special
17 exception relief under the MU Group E use
18 requirements, Subtitle U, 513.1 C. This would
19 operate a fast food establishment in the M-U-4 Zone,
20 3827 Pennsylvania Avenue Southeast, Square 5673, Lot
21 803.

22 CHAIRPERSON HILL: Okay. Great. Thank you.
23 Good morning. If you could please introduce
24 yourselves?

25 MR. SINGH: My name is Manish Singh. I'm

1 from Singh and Associates doing business as Papa
2 John's, one of the owners.

3 MR. RICHARDSON: Kendrick Richardson, RDS
4 Architecture. I'm the architect.

5 MR. ANDERSON: Donovan Anderson, 2630 -- 2516
6 34th Street Southeast, and I'm the ANC Commissioner,
7 7B-06.

8 CHAIRPERSON HILL: This is great. We've got
9 ANC people coming down all today. That's wonderful.
10 This is a good day.

11 Okay, great. Again, I'm turning to the Board
12 to see what kind of questions they have. I'm finding
13 the application to be relatively complete. I mean, I
14 did have a question just in terms of, again, one of
15 the issues that was brought up with the dumpster and
16 the ANC concerns. It seems as though that's been
17 resolved. Correct?

18 MR. RICHARDSON: Yes.

19 CHAIRPERSON HILL: And how has that been
20 resolved again?

21 MR. RICHARDSON: So we, myself as well as the
22 property manager, Jackson Prentice of P.A.
23 Properties, and Mr. Singh met with the community and
24 the ANC on two occasions.

25 The first meeting was to discuss what are the

1 options for this fence enclosure that's the community
2 wanted to see. And we proposed doing landscaping to
3 screen it, and we also proposed the chain link fence
4 with screening. And a lot of the community members
5 didn't agree with that approach. They wanted
6 something with more curb appeal.

7 So we met with them again the following week
8 and we proposed to do brick piers with Trex fencing
9 in between the piers.

10 CHAIRPERSON HILL: Okay. Okay, great. And,
11 Mr. Commissioner, are you the SMD for that?

12 MR. ANDERSON: Yes.

13 CHAIRPERSON HILL: And so you are now in
14 agreement with what was proposed?

15 MR. ANDERSON: Yes. Yes, I am. I'm in
16 agreement provided as I've stated in my answer,
17 provided that they comply. It's not completed as
18 yet. Four structures have been completed so the
19 project has not been completed as yet.

20 CHAIRPERSON HILL: Okay. And, Mr.
21 Richardson, your intent is to complete the project.

22 MR. RICHARDSON: Yes.

23 CHAIRPERSON HILL: Okay. Thank you.

24 MR. HOOD: Do we have a date certain?

25 MR. RICHARDSON: I actually spoke with a

1 contractor a couple of minutes ago and he said that
2 the Trex material was received yesterday, so they're
3 anticipating early next week to have it all installed
4 and finished.

5 MR. HOOD: You know, I'm going to say this;
6 every time I ask a question like that, not just you,
7 everybody always say, they just did it a few minutes
8 ago. Or just before they came down here it just
9 happened. So we need to make sure that that happens
10 because that is --

11 MR. RICHARDSON: I understand.

12 MR. HOOD: -- complying with the community.

13 But let me ask you, is it still in the front,
14 the dumpster?

15 MR. RICHARDSON: Yes.

16 MR. HOOD: But we're going to make it
17 attractive?

18 MR. RICHARDSON: Excuse me?

19 MR. HOOD: It's going to be attract --

20 MR. RICHARDSON: Yeah.

21 MR. HOOD: More attractive.

22 MR. RICHARDSON: Yes.

23 MR. HOOD: Okay.

24 MR. RICHARDSON: So, yeah, so the corners of
25 the fence has the brick piers, 18 by 18 inch brick

1 piers, and then in between that is the Trex material.

2 MR. HOOD: Okay. Thank you.

3 MR. RICHARDSON: The composite wood fence.

4 MR. HOOD: We just need to make sure we have
5 a date. I guess we can put that, if we put that in
6 the condition or something. We'll figure that out.

7 MS. BUTANI-D'SOUZA: Can I just ask -- let me
8 -- I just want to make sure that I understood this
9 correctly.

10 So, the Papa Johns has been operating under a
11 temporary C of O for 10 years? Is that correct?

12 MR. RICHARDSON: That's correct. There was a
13 change in ownership approximately 10 years ago and
14 they were given a one-year -- a one-year grace period
15 to apply for the BZA exception, and that was not
16 done. And so now when we came back to it we
17 approached them and told them that they had to
18 actually get the special exception to operate at
19 Fairfax Village.

20 MS. BUTANI-D'SOUZA: And during those 10
21 years were any efforts made -- was this always the
22 issue, that there was a community -- a concern about
23 the dumpster that was just never addressed for --

24 MR. RICHARDSON: I think the community has
25 always had concerns about the dumpsters.

1 MS. BUTANI-D'SOUZA: Wow.

2 MR. RICHARDSON: When --

3 MS. BUTANI-D'SOUZA: It's taken 10 years to
4 address it.

5 MR. RICHARDSON: Yeah. The community, I
6 believe the community has always had concerns about
7 the dumpster. There was one period where there were
8 shrubberies that, you know, approximately 10 feet
9 tall. You can look at some Google images and see
10 that it provided screening, but it wasn't necessarily
11 a, you know, three-sided enclosure, a formal three-
12 sided enclosure.

13 So, now the community -- the property manager
14 and Papa Johns are, you know, looking to comply with
15 what the BZA requirements were, as well as meet their
16 conditions that the community has set forth.

17 MS. BUTANI-D'SOUZA: Okay.

18 CHAIRPERSON HILL: To speak to Chairman
19 Hood's comments, so when do you think that the
20 structure will be finished?

21 MR. RICHARDSON: We're anticipating Tuesday.

22 CHAIRPERSON HILL: Tuesday? Okay, that's --

23 MR. RICHARDSON: Next Tuesday, the --

24 CHAIRPERSON HILL: What's the date there?
25 The 2nd.

1 MS. BUTANI-D'SOUZA: The 1st.

2 MR. RICHARDSON: That would be November 1st.

3 CHAIRPERSON HILL: Okay. So by Friday that
4 would be fine? November 4th?

5 MR. RICHARDSON: Yes, sir.

6 CHAIRPERSON HILL: As a condition. Mr. Moy,
7 can we put a condition in there?

8 MR. MOY: Yes, sir.

9 MR. HOOD: I actually was thinking a little
10 more time, but you know, typically we don't do --
11 well, I haven't seen -- I mean, I agree with it.
12 Let's get it done, but you know, the weather and from
13 what I'm looking at what they're proposing --

14 CHAIRPERSON HILL: Chairman Hood, what would
15 you like? What date sounds good?

16 MR. HOOD: I just want them to get it done.
17 But I was thinking maybe to -- and I will check with
18 the Commissioner, but maybe November 30th.

19 MR. ANDERSON: November what?

20 MR. HOOD: 30th.

21 MR. ANDERSON: That's fine, I -- and I'll
22 just give some background information. This has been
23 going on for a very long time. In 2010 they have
24 another hearing and at least from my perspective,
25 improper information was given. So, this is Papa

1 John's got caught up in the middle of this whirlwind.
2 But we have had some significant problems with this
3 management and so I'm glad that based on Papa John's
4 misdeeds, that we are fourth in management. So I do
5 appreciate and agree that some timeline should be
6 given by the BZA to say that we're not going to
7 approve this unless it's done by a date certain. I'm
8 completely in support of that.

9 And November 30th will be fine. Because I
10 want them to comply.

11 CHAIRPERSON HILL: No, that's great. Thank
12 you. And if we get to that point we're going to put
13 that in as a condition.

14 So, does anyone have any more questions for
15 the applicant? If that's the case then if it's all
16 right with you I'm going to turn to the Office of
17 Planning and see what they have to say.

18 MS. FOTHERGILL: Good morning. For the
19 record, I'm Ann Fothergill with the Office of
20 Planning and with the installation of the screening
21 for the dumpster we find that it meets the specific
22 criteria for the special exception and we support the
23 zoning relief and rest on the record.

24 CHAIRPERSON HILL: Okay, great. Thank you.
25 Does the Board have any questions for the Office of

1 Planning? All right.

2 So, with that then I'll turn to the audience
3 and see if anyone is here in support of the
4 application? Anyone here in support?

5 Anyone here in opposition to the application?
6 Anyone here in opposition?

7 All right. Well, then that I'd turn back to
8 the applicant and see, is there anything you'd like
9 to say in closing?

10 MR. RICHARDSON: Thank you very much. I have
11 nothing.

12 MR. ANDERSON: I don't have anything, I just
13 thank you for the opportunity to be here today and
14 thank you. The community supports Papa John. We
15 also want to make sure that they are a good operator,
16 and we also want to make sure that it's unfortunate
17 that has taken 10 years, but --

18 CHAIRPERSON HILL: Well, glad we can be here
19 to help rectify.

20 MR. ANDERSON: Yes, thank you.

21 CHAIRPERSON HILL: You know, thank you. So
22 with that then I'm going to call the hearing to a
23 close and is the Board ready to deliberate?

24 Okay. Well, again, based on the support from
25 the community, the ANC being in here, and also the

1 fact that this has gone on I guess, for 10 years,
2 that the dumpster issue is going to be resolved as a
3 condition, Mr. Moy, by November 30th. And I would
4 make a motion to approve Application No. 19351 for
5 special exception under the MU Group E use
6 requirements of Subtitle U, Section 513.1(c) to
7 operate a fast food establishment in the M-U-4 Zone
8 at premises 3827 Pennsylvania Avenue Southeast.

9 Could I get a second?

10 MS. BUTANI-D'SOUZA: Second, subject to the
11 condition that you've described added in there.

12 CHAIRPERSON HILL: Thank you. Motion has
13 been made and seconded.

14 [Vote taken.]

15 CHAIRPERSON HILL: Motion carries, Mr. Moy.

16 MR. MOY: Staff would record the vote as four
17 to zero to one. This is on the motion of Chairman
18 Hill to approve the application for the relief
19 requested with the one condition as cited by the
20 Board. Seconding the motion, Vice Chairperson
21 Butani. Also in support, Mr. Hood, Mr. Hinkle. We
22 have a board seat vacant. The motion carries, sir.

23 CHAIRPERSON HILL: Thank you, Mr. Moy. If we
24 can do a summary order.

25 MR. MOY: Yes, sir.

1 CHAIRPERSON HILL: Thank you, gentlemen.

2 MR. RICHARDSON: All right. Thank you.

3 CHAIRPERSON HILL: Mr. Moy, whenever you'd
4 like you're welcome to call the next case.

5 MR. MOY: With pleasure, Mr. Chairman. That
6 would be Application No. 19353 of 770 Park, LLC., as
7 captioned and advertised for a special exception
8 relief under the R-F use requirements, Subtitle U,
9 Section 320.3, variance from the use requirements of
10 Subtitle U, Section 301.1. This would convert a non-
11 residential building into an eight-unit apartment
12 building with ground floor commercial uses in the R-
13 F-1 Zone, 770 Park Road, Northwest, Square 2829.
14 2829, Lot 915.

15 CHAIRPERSON HILL: Thank you, Mr. Moy. I'm
16 trying to open these updated architectural plans. I
17 can't seem to open them. Okay.

18 Good afternoon. Good morning. Good morning.
19 Could you please introduce yourselves?

20 MR. REISHMAN: Lindsay Rieshman, I'm a
21 developer.

22 MR. KADLECEK: Cary Kadlecek from Goulston
23 and Storrs on behalf of the applicant.

24 MR. LINAM: I'm John Linam, the architect for
25 the project.

1 MR. MEYER: Jared Meyer with Street Sense
2 Retail Advisors on behalf of the applicant.

3 MR. REISHMAN: Just so the Board is aware, I
4 just handed in two things. One of them is a letter
5 from the directly adjacent neighbor. It's in the
6 record but it just came in this morning so I wanted
7 to make sure that the Board has had the opportunity
8 to review it. The plans that are in the record that
9 came with that letter, those are plans that are
10 already in the record. It was just that the neighbor
11 included those plans to make it know that they had
12 reviewed the same things.

13 And then the second thing is some elevation
14 drawings that the architect will discuss.

15 CHAIRPERSON HILL: Kadlecek, all right. All
16 right. All right. Okay. So, Mr. Kadlecek --
17 Kadlecek?

18 MR. KADLECEK: Yes.

19 CHAIRPERSON HILL: There is a few issues in
20 terms of, you know, things that the Office of
21 Planning has brought forward, and you know, I don't
22 know if anything has changed. And, you know that
23 they are not able to make a recommendation for the
24 special exception and they're unable to support the
25 use variance that you're looking for.

1 And so you know, you can go ahead and move
2 through your presentation, primarily focusing on
3 those issues so that we can understand where the
4 Office of Planning is and then move forward.

5 MR. KADLECEK: Yeah, absolutely. And just so
6 the Board is aware, we're going to basically cover
7 two things just to hone it down what the issues are.

8 One is, to walk through the illustrations
9 that are already in the record that we filed last
10 week, just to give the Board a little more color to
11 those. And those were, as you can tell, those were
12 in response to the Office of Planning's comments,
13 with the addition of two things that -- or one thing
14 that we just handed in, which is some elevations.
15 Those were something that the Office of Planning
16 requested in a subsequent conversation we had with
17 them.

18 And then the second is with respect to
19 conditions on the use variance and that's why Mr.
20 Meyers is here is to speak specifically to the
21 conditions relating to service of alcohol and a full
22 scale kitchen for eating and dining establishments.

23 So I'll let the architect begin.

24 CHAIRPERSON HILL: And if you could,
25 actually, what I'm curious of as well as is what was

1 presented to the ANC in terms of what is going to be
2 in the property.

3 MR. LINAM: Okay.

4 CHAIRPERSON HILL: Okay?

5 MR. LINAM: Sure. I can do that. What I'll
6 start with, and I'm sorry that these images are a
7 little bit difficult to see on your screen but I
8 trust that you do have images there for your -- okay.
9 Great. Just walk through the design here a little
10 bit.

11 The proposal is to take the existing three-
12 story masonry building, which was built in roughly
13 1911 and originally housed a grocery store and ground
14 floor -- or at the ground floor and residences above.
15 The site is about 8,200 square feet and the existing
16 three-story building is around 8,800 square feet
17 above grade.

18 We're proposing a three-story addition. I'll
19 show the site plan. The next page. That is also
20 three stories in keeping with the existing massing of
21 the existing building.

22 We are showing about 8,000 square feet of
23 above-grade space in that addition over those three
24 stories.

25 We're proposing a design that is to be in

1 keeping with the proportions and details of the
2 current building elevation, so I'm going to forward
3 to the prospective images that we have. Give me just
4 a moment. I think these tell a little bit better
5 story.

6 The image in the upper right-hand corner on
7 the screen is along Sherman Avenue. This is the
8 street along which the addition is visible. The
9 addition does not impact the Park Road elevation in
10 terms of being adjacent to it, other than the
11 penthouse element that's proposed at the roof.

12 But on the Sherman Avenue side, due to the
13 age of the building and the materials there, we're
14 not proposing to try and perfectly match that
15 elevation, but instead use materials that are
16 complimentary, proportions and details that are
17 contextual with that building, as well as other
18 buildings along that block along Sherman Avenue.

19 There is a proposed penthouse mezzanine
20 structure, but as you can see in the lower right-hand
21 corner, as well as the other images, this element is
22 being set back significantly a 12-foot minimum from
23 the street elevations to minimize the impact on the
24 street views.

25 The project site is proposed to house eight

1 parking space. And lastly the existing building does
2 contain some storefront elements. Well, let me back
3 up and say that we are not proposing any changes to
4 the masonry openings or the detailing of the existing
5 building facades. There are, however, some existing
6 store fronts at the ground floor that are currently
7 in very bad shape, plywood and wood frame
8 construction, and the proposal includes replacing
9 those with a newer storefront but with detailing that
10 fits within the existing masonry opening so that it
11 provides a better streetscape.

12 MR. KADLECEK: Mr. Linam, can you talk just
13 briefly about the impact on light and air and privacy
14 with respect to the property directly to the east?

15 MR. LINAM: I'm sorry, what was that? Me?
16 I'm sorry. I thought you were talking -- I'm sorry.
17 I thought you were -- could you repeat the question?

18 MR. KADLECEK: Yeah. If you could just
19 explain a little bit about the impact of the addition
20 on the property directly to the east with respect to
21 the separation and so forth.

22 MR. LINAM: With that let me back up to the
23 site plan. So, what we have done is instead of
24 taking the addition and proceeding straight to the
25 south along the east property line, continuing the

1 existing line of the existing massing, we've actually
2 taken the proposed addition and moved it over an
3 additional eight feet to pull back from the property
4 line to the east, and that adjacent property, that
5 adjacent building, so as to minimize any impact,
6 light and air to that property.

7 MS. BUTANI-D'SOUZA: Sorry. Just to clarify.
8 So, if we're looking at the plans, which way is east
9 on these?

10 MR. LINAM: East is to the right side of the
11 page.

12 MS. BUTANI-D'SOUZA: Okay.

13 CHAIRPERSON HILL: So, Mr. Kadlecek, have you
14 had opposition from the neighbor to the east?

15 MR. KADLECEK: No, we have not.

16 CHAIRPERSON HILL: Okay.

17 MR. KADLECEK: That's the letter in support
18 that's entered in the record. That person is in
19 support.

20 CHAIRPERSON HILL: The one you just submitted
21 this afternoon?

22 MR. KADLECEK: Correct, yes.

23 CHAIRPERSON HILL: Thank you. Okay. Please
24 continue. Thank you.

25 MR. KADLECEK: I think that concludes what we

1 have to say about the architecture.

2 With respect to -- we're going to move on now
3 with the use variance, unless the Board has any
4 questions about the architectural piece.

5 CHAIRPERSON HILL: Well, only just that again
6 how you're meeting the criteria for the special
7 exception. I mean, for the -- yeah, for special
8 exception.

9 MR. KADLECEK: Sure. I think Mr. Linam hit
10 on that in the last point which is why I asked the
11 question, which is with respect to --

12 CHAIRPERSON HILL: The light and air of the
13 property to the east.

14 MR. KADLECEK: The light and air of the
15 property. And then as he was describing a little bit
16 earlier, the continuation of the materials, the
17 continuation of the massing that's consistent with
18 the other buildings along Sherman Avenue. But you
19 can certainly speak more to that if you have
20 questions.

21 CHAIRPERSON HILL: Sure. Now if you could
22 just pull back up the slide that you had there with
23 the color, yeah, of the buildings? Yeah.

24 So what again just real quick, is new from
25 the massing? What's existing now and what's new?

1 MR. LINAM: What's existing now is the
2 reddish brick building with the yellow trim.

3 CHAIRPERSON HILL: Uh-huh.

4 MR. LINAM: What we're proposing that is
5 visible from the street is the element to the right
6 side of that and the images on the upper of the top
7 of the page that is in sort of a neutral color
8 pallet. But proposing brick on that elevation so
9 that it's in keeping with the material of the
10 existing building. You can see we're taking the
11 freeze or cornice line, as well as the line of the
12 roof where it actually is sort of a mansard type with
13 the dormers at the third level, and continuing that
14 with those proportions and details to try just in
15 keeping with the existing building, but not trying to
16 perfectly match that building because we found that
17 if you try to match brick of that age, often you can
18 do a worse job in making something stand out, than
19 trying to complement that.

20 MS. BUTANI-D'SOUZA: And just a quick
21 question since we're looking at this rendering.
22 What's the setback there from the -- I don't know
23 what road that is because I can't see it from here,
24 but can you just describe the setbacks? Is that a
25 penthouse that you're showing there and --

1 MR. LINAM: That's correct. It is 12-feet
2 set back from the street. And we're also trying to
3 take advantage of some existing attic space in the
4 building to set that penthouse mezzanine down as low
5 as possible.

6 MS. BUTANI-D'SOUZA: So is it set back 12
7 feet on all sides? Is that -- I guess I'm just
8 wondering if that's in keeping with the penthouse
9 regulations regarding setbacks.

10 MR. LINAM: It is. I would have to open my
11 drawing. It is at least 12 feet on all sides. I
12 think it's actually greater than that on the east
13 side.

14 MS. BUTANI-D'SOUZA: I note that it's visible
15 -- is that the street-level view or -- it looks like
16 it's visible from the street and I thought that if
17 you had a one-to-one setback it wouldn't be visible.
18 So can you just maybe explain what the angle of the
19 rendering is that you're showing us there?

20 MR. LINAM: Sure. Well, it is intended to be
21 a street-level view of a real perspective. The
22 setback is actually greater than one-to-one because
23 we're actually taking the building and trying to set
24 the penthouse structure and set it down into the
25 attic space so that it's only rising up out of the

1 attic roughly nine feet. But we actually have a 12-
2 foot setback to the street, so it's set back greater
3 than one to one.

4 MS. BUTANI-D'SOUZA: And that's on both, both
5 sides, correct?

6 MR. LINAM: That's correct. Both street
7 fronts.

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

9 MR. HOOD: Mr. Chairman, I just wanted to
10 ask, and you have photographs. What would have been
11 helpful for me, and I see that you're preserving a
12 lot of the existing building. But what would have
13 been helpful for me is to see exactly that and how
14 that's going to fit; a rendering how that's -- and
15 maybe you can direct me to it. A rendering how
16 that's going to fit in a live scenario of exactly
17 what's going on there.

18 MR. REISHMAN: Okay.

19 MR. HOOD: Do you have that already in the
20 file, because I didn't see it. I saw where you had
21 some color photographs.

22 MR. REISHMAN: Excuse me. Mr. Hood, are you
23 asking for a photograph with the rendering dropped
24 in?

25 MR. HOOD: Right. Yeah.

1 MR. REISHMAN: Okay. I don't believe we have
2 that.

3 MR. HOOD: That would have been very helpful
4 because I can see what's existing and then see what
5 some of the changes are. And then that would give us
6 more of aerial view, some street views of the
7 penthouse setbacks.

8 MR. REISHMAN: Understood.

9 MR. HOOD: Okay. Because I don't know where
10 we're going but I think that would be -- well, it
11 would have been helpful. And I'm not sure if that's
12 what the Office of Planning was asking for.

13 MR. REISHMAN: Okay. I wanted to just bring
14 up a couple points regarding the light and air. Just
15 wanted to make sure that it was clear that the
16 buildings to the south that you can see, there is an
17 alley that separates the 770 Park from those
18 buildings, and there are no windows on that alley, so
19 I just want to make sure that --

20 CHAIRPERSON HILL: Now, I'm sorry, which way
21 is south?

22 MR. REISHMAN: This is the grayed out
23 building.

24 CHAIRPERSON HILL: Uh-huh. Okay. I see,
25 that's the south.

1 MR. REISHMAN: I mean, going up and down. So
2 really the only structure that would potentially be
3 impacted would be to the east, and that is the
4 building where we've received the letter from the
5 neighbor.

6 CHAIRPERSON HILL: Uh-huh.

7 MR. REISHMAN: And we've also not -- we've
8 intentionally not gone all the way to the rear
9 setback and we've pulled it off of the property line,
10 the addition that we're proposing, in an effort to
11 make sure that that does in fact not address that
12 light and air. So I just wanted to make sure those
13 points were clear.

14 CHAIRPERSON HILL: That's a warehouse now?
15 IS that what you said? I'm sorry. There's no
16 windows along that line now.

17 MR. REISHMAN: They are renovated townhouses
18 but it is just on an alley and therefore there are no
19 windows on that alley facing portion of that
20 structure.

21 CHAIRPERSON HILL: Okay.

22 MR. KADLECEK: So if the Board is ready we'll
23 proceed to talk a little bit about the use variance
24 piece.

25 So as you noted in -- or as you probably saw

1 in the Office of Planning report, they were
2 supportive of the use variance but for some
3 conditions. And that's where we had some slight
4 disagreement as you probably saw in our filing in
5 response to that request from the Office of Planning.
6 We proposed a series of conditions, three of which
7 were consistent with what the Office of Planning
8 recommended and two of which, which I believe is
9 really the only difference between where we are and
10 where the Office of Planning is, is with respect to a
11 full-service kitchen and the ability to serve
12 alcohol.

13 And I don't want to speak for the Office of
14 Planning, but I don't think they were necessarily
15 saying that they can't recommend it, but without a
16 known tenant they were uncomfortable basically giving
17 that sort of blanket, I think as they put it, type of
18 recommendation.

19 So, we have Mr. Meyer here, and the reason we
20 wanted him to talk a little bit about is why for this
21 particular retail space as opposed to a corner store,
22 it's important for the ability to have a full-service
23 kitchen, and/or the ability to serve alcohol.

24 So, Mr. Meyer, if you could just speak to
25 that for a minute or two?

1 MR. MEYER: Thank you. Good morning,
2 everyone. Just a quick background as far as my
3 experience in the retail real estate world. I've
4 actually been with Street Sense now for 10 years. I
5 have 12 years of experience in the industry in
6 general. Predominantly over the last seven years my
7 focus has been within the District, working in --
8 well, I have a variety of product that I'm working on
9 in the downtown core. A lot of that has been
10 neighborhood centric.

11 So, this is in assets like this, existing
12 structure is new mixed use construction in emerging
13 neighborhoods. And for myself, this is both on --
14 pardon me. This is both on land, the representation,
15 and helping advise clients, good folks like this, as
16 well as tenant representation. And most of that work
17 is actually local operators, folks just as names that
18 would go, All Purpose, Tail Up Goat, the Dabney.
19 These are recent restaurants who have opened up in
20 very similar settings, very similar size ranges as
21 the square footage that's being proposed here, and
22 multilevel operators as well who can use it.

23 So when the site was presented to me one of
24 the first things that jumped out at me was the idea
25 of a great historic preserved building on a corner in

1 a neighborhood setting, and immediately drew me to
2 the type of operator that would be, in my opinion, a
3 -- what's called a local operator, ideally from the
4 neighborhood itself; somebody who would come in and
5 really create a great identity on this corner.

6 Some of the things that have been presented
7 to me as the restrictions, I actually feel fall in
8 line -- the restrictions that are being proposed be
9 placed on this as far as timelines that a tenant
10 would be able to operate, lack of outdoor dining,
11 things of that nature. These are all already
12 conditions that are being utilized by many of the
13 local operators in our market.

14 Many folks who are getting and providing a
15 great high-end product, they are not the groups that
16 are looking for a last-call component for their bars.
17 They are just, you know, looking for last table
18 service at 10:00, 11:00, and so these are things that
19 in my mind synch very much with the type of operator
20 that you would attract for this location.

21 In addition, just the opportunity that you
22 have of multilevel use and you know, what can be, I
23 believe, a 4,000 square foot space combined. The
24 ability to be able to produce food on premise and
25 sell alcohol are vital for operators looking for that

1 type of commitment. You're just realistically a
2 single user for that size range is not able to
3 support both the rent or overall investment into a
4 space or generate the sales without being able to do
5 on-premise production of this product and create that
6 environment.

7 So, there are a variety of things that come
8 into play as far as the opportunity itself. Also,
9 what I feel is a great opportunity for the
10 neighborhood when you really focus on the type of
11 operators and both clientele who would be attracted
12 into this type of opportunity.

13 I also just, as the corner store discussion
14 was brought up, one of the influences that we were
15 seeing throughout our market are grocery store
16 smaller format, and a lot of those, just to take into
17 consideration, are groups that are producing product
18 onsite, whether that is prepared product, just
19 healthier goods and options. So the idea to limit
20 this down without being able to -- just the food
21 component itself, I'll mention Union Kitchen Grocery,
22 who has popped up and done a couple of new locations
23 in the market. Glen's Garden Market. That also
24 serves alcohol on site.

25 These are influences that we're seeing in the

1 retail and trends that we have. It also creates the
2 opportunity for that healthier neighborhood
3 environment for production on premise, to limit the
4 idea, and by packaged goods I'm not mentioning
5 liquor. I'm going to just say the, just products
6 that are just full of preservatives, things of that
7 nature. Just box the products that you would find in
8 a typical corner store outlet. I think it's just a
9 new trend and wave that we're seeing in this type of
10 smaller grocer format. And I believe that those are
11 again, value-add components from the ground floor,
12 both from the retail perspective, as well as to the
13 neighborhood.

14 MS. BUTANI-D'SOUZA: Clarifying question.
15 Actually, I'm going to hold off.

16 CHAIRPERSON HILL: Okay. I'll ask -- Ms.
17 Butani has some questions and we'll get to those in a
18 moment. I just have a quick one which is to say,
19 what was it again that was presented to the ANC?

20 MR. REISHMAN: When we met with the ANC we --
21 I guess two pieces. We went to the neighborhood
22 first and solicited some feedback. And what we heard
23 was actually that people very much wanted the idea of
24 alcohol in that establishment being served, or food.
25 A lot of people were very positive about that.

1 And so when we went to the ANC we -- what did
2 we do? We proposed that, right? That we have that
3 sort of flexibility in this space and we be able to
4 put that sort of attendant and if we found the right
5 tenant to -- would be appropriate for the space.

6 MS. BUTANI-D'SOUZA: Sorry. I'm going to ask
7 my --

8 MR. REISHMAN: If you're asking from a
9 architectural --

10 CHAIRPERSON HILL: No, I'm sorry. And I --
11 if you're not --

12 MR. REISHMAN: If you're asking from an
13 architectural --

14 CHAIRPERSON HILL: Okay.

15 MR. REISHMAN: -- building standpoint, you're
16 seeing what was presented to the ANC.

17 CHAIRPERSON HILL: Sure. No, what I was
18 speaking to was more along the lines, and Mr.
19 Kadlecek, you know, there was discussion about
20 restaurants, times, that's what might go in there.
21 Not just a corner store. And the ANC was all on
22 board with, you know, restaurants, bars, that
23 situation.

24 MR. KADLECEK: I actually wasn't present.
25 I'll let --

1 CHAIRPERSON HILL: Okay.

2 MR. KADLECEK: -- Mr. Reishman speak to that.
3 But I believe that all of that was discussed pretty
4 thoroughly with the ANC.

5 MR. REISHMAN: That is correct. That is what
6 we proposed to the ANC and the ANC was in support of
7 -- they had really no red flags that I saw that were
8 brought up. The issues -- the challenges we faced in
9 terms of use have come up with discussions with
10 Office of Planning.

11 CHAIRPERSON HILL: Are they the ones that
12 came up with the conditions about 12 midnight Fridays
13 and Saturdays, no later than -- they operate no later
14 than 12:00 on Fridays and Saturdays, and no later
15 than 11:00 Sundays through Thursdays. Was that the
16 ANC that came up with that?

17 MR. REISHMAN: I wasn't -- I believe -- I
18 can't recall 100 percent for sure. I believe we may
19 have proactively offered that up --

20 CHAIRPERSON HILL: Okay.

21 MR. REISHMAN: -- just as a mechanism to make
22 sure that the --

23 CHAIRPERSON HILL: Okay.

24 MR. REISHMAN: -- ANC was in support because
25 of a few of the comments that we heard from the

1 neighbors. That's my recollection.

2 CHAIRPERSON HILL: Okay. I'm sorry. Go
3 ahead. Sure. Of course.

4 MS. BUTANI-D'SOUZA: So, just to clarify
5 before we go to OP. So you brought up this
6 interesting point about the evolution of corner
7 grocery stores and I'm curious about whether the
8 reason you're bringing it up is because, Mr.
9 Reishman, you guys are sort of open to either a
10 corner store that has the ability to sell alcohol
11 along the lines of a Glens Garden Market, or a
12 restaurant? Or is that that you're really focused on
13 the restaurant only? I'm just a little confused.

14 MR. REISHMAN: The former. I mean, our
15 preference is to have as much flexibility as we can
16 be granted for that space because, you know, we have
17 condominiums above it that are going to be the
18 priority to make sure that who -- whatever we put in
19 that space is going to have to float with the
20 condominiums, the people who are going to purchase
21 those. So we have no desire to put anything in to
22 the space that's going to be controversial, so we
23 actually have gone to the ANC and said, what would
24 you and the community like to see in this space.

25 The feedback we heard was along these lines

1 and that's why we're submitting what we're submitting
2 and asking for what we're asking for.

3 MR. MEYER: To add to that I think a lot of
4 my role from an advisory perspective is that
5 flexibility in leasing. And there are a lot of, just
6 from a pure architectural perspective, restrictions
7 on the type of uses that can go in here, depths of
8 space, preservation of store fronts, lower level
9 versus ground floor as it relates to just traditional
10 goods and service retail.

11 So, I think that it is just a matter of -- it
12 is not -- it's to provide the option to go for F and
13 B in this use. It is not the sole idea of being able
14 to use -- my role, a lot of times, is creating that
15 parallel path, merchandising strategy. And it's very
16 similar, the idea of not having a tenant in hand to
17 present here, is because this is a local focus. I
18 mean, this is a very delicate timeline without
19 actually having the right to do the use, to have
20 somebody committed and walk -- to present that. So,
21 there is various challenges that I feel have -- you
22 know, are influenced -- really set by the just type
23 of real estate we have here. And I think the goal is
24 what highest and best uses can be brought forth to
25 the community.

1 CHAIRPERSON HILL: Okay. If the Board is all
2 right I want to turn to the Office of -- is the
3 applicant? Okay. I'm good. Turn to the Office of
4 Planning and they're the ones who are in your way to
5 a certain extent. And so, I'd like to hear what the
6 Office of Planning has to say, please.

7 MS. VITALE: Sure. Good morning, still.
8 Good morning, Mr. Chair and Members of the Board.
9 Elisa Vitale with the Office of Planning.

10 I do want to clarify one thing quickly. I
11 think it was captioned and announced that they were
12 seeking relief for eight units. It is in fact a
13 nine-unit building that's being proposed so I just
14 want to make sure that that's on the record
15 correctly.

16 As you noted in its report, OP could not make
17 a recommendation with respect to the special
18 exception request for the addition that would extend
19 beyond 10 feet, you know, past the adjoining property
20 and we did in fact recommend support of the use
21 variance subject to conditions. The applicant did
22 submit late filings in the record in response to some
23 of OP's concerns and obviously there's some
24 additional information that's come in this morning so
25 we haven't been able to fully evaluate that.

1 I do believe there is some additional
2 information that would be helpful with respect to the
3 special exception and I think some of the questions
4 were items that you, yourselves, were getting at.
5 You know, a photograph rendering, or you know, a
6 photo that drops the rendering in to really show this
7 in the context of the adjoining properties.

8 I do think there are still questions in my
9 mind in terms of materials. I know that you had said
10 you're carrying the brick over and using a neutral
11 color pallet. I think it would be helpful to have a
12 little bit more specificity with respect to the
13 addition, and we just got the dimensioned
14 architectural elevations so I really haven't had an
15 opportunity to look at that.

16 I do appreciate that this is set back. It's
17 very helpful to see that the adjoining property owner
18 doesn't object. I don't know that there are major
19 concerns. I just think there's some additional
20 information that could be helpful there.

21 And I do think our concerns remain with
22 respect to the use variance when the whole notion of
23 a corner store use was introduced with the zoning
24 update. The one corner store use that is permitted
25 as a matter of right is a corner grocery that has a

1 certain percentage of the goods that are, you know,
2 healthy. Fresh foods. Items that someone would buy
3 and take home and use to prepare a meal. So, I think
4 that really is what we were aiming to permit with the
5 introduction of the corner store use.

6 So, I think our concerns remain that we don't
7 necessarily want to give blanket permission for, you
8 know, a full-service restaurant or bar in a
9 residential neighborhood because that really isn't in
10 keeping with the intent of the residential flat zone,
11 which is the zone that this property is located in.

12 That concludes my comments. I'm happy to
13 answer any questions.

14 CHAIRPERSON HILL: I'm sure my colleagues
15 might have some questions. The use variance, what's
16 the percentage with the corner store. Like how --
17 and how would one go about, and I'm not clear as to
18 how one would go about limiting the percentage as to
19 what -- you know, what Office of Planning would
20 consider a corner store that has food and alcohol on
21 site versus a bar or restaurant. That's what I
22 struggled with when I was looking at it.

23 MS. VITALE: Oh, sure. I think the main
24 difference there would be a bar or restaurant would
25 permit on-site consumption where as a corner store

1 that's purely purchased for off-site consumption.
2 And then there is a certain limit with respect to the
3 amount of kind of square footage that could be used
4 for sale of alcohol. And I think that's a maximum of
5 15 percent of the gross floor area of a corner store,
6 could be devoted to the sale of alcohol for off-site
7 consumption. And that's not -- that wouldn't be a
8 matter of right corner store use. That would still
9 require a special exception.

10 And again, that's because these are retail
11 uses that are embedded in residential neighborhoods
12 so we wanted to provide for that opportunity for
13 neighborhood comment and input and that's why there's
14 that special exception provision there if a corner
15 store was going to sell alcohol for off-site
16 consumption.

17 CHAIRPERSON HILL: So again it would just
18 only be off-site insofar as, like, you know, this
19 market concept where there's a small area that has
20 food and wine, perhaps or something that wouldn't be
21 covered in this corner store.

22 MS. VITALE: That's correct.

23 CHAIRPERSON HILL: All right.

24 MS. VITALE: Yeah, like something like they
25 mention like a Glens Garden Market, where there's on-

1 site consumption. That's not contemplated under the
2 corner store provisions.

3 CHAIRPERSON HILL: Yeah, does anyone have
4 questions for office of planning?

5 MS. BUTANI-D'SOUZA: So I just want to make
6 sure that I clearly understand. So, Office of
7 Planning would not be amenable to the use variance
8 with the alternate conditions that the applicant has
9 proposed.

10 MS. VITALE: That's correct.

11 MS. BUTANI-D'SOUZA: Okay. Just bear with me
12 while I go through. I've got my questions in a
13 couple different places.

14 I notice that there was some difference of
15 opinion on the location of trash. So, OP is saying
16 that the trash -- OP's proposed conditions that trash
17 be stored within the building area devoted to the
18 approved use, whereas the applicant is stating that
19 the trash will be stored with enclosed containers and
20 screened. So, can you just clarify what the issue is
21 with the proposed trash location? Or is there an
22 issue?

23 MS. VITALE: I think there's just a
24 difference of opinion with respect to what would be
25 appropriate. Generally, for a commercial use in a

1 residential zone the trash is kept, you know, fully
2 contained within the building, say in a cellar or a
3 hallway, and then taken out to the street for
4 collection at the appropriate time.

5 The applicant's condition, they're saying
6 that their trash for the commercial use would be
7 stored, you know, outside in an area that's screened,
8 so that was just -- it's a difference of opinion.

9 MS. BUTANI-D'SOUZA: So, it's the Office of
10 Planning's opinion that the trash should be stored
11 inside.

12 MS. VITALE: That's correct.

13 MS. BUTANI-D'SOUZA: Okay. So, I suspect
14 that you guys are going to have to provide some
15 additional information here just based on the
16 comments that we got from OP. So, that may be
17 something to consider addressing in your revised
18 plans.

19 Let's see. I have -- I also noticed that the
20 applicant is proposing three secured and covered
21 bicycle spaces in the parking area between the
22 parking spaces and the building. And DDOT is stating
23 that just the three spaces be provided on site. Did
24 OP have any issues with the proposed location for the
25 bicycle parking?

1 MS. VITALE: No, and we would defer to DDOT.

2 MS. BUTANI-D'SOUZA: On that issue? Okay.

3 All right. I have additional questions but they are
4 for the applicant so I'll just wait until we get
5 there.

6 CHAIRPERSON HILL: Okay. Great. Thank you.
7 Does anyone else have some questions for the Office
8 of Planning?

9 No? All right, great. Then we can turn back
10 -- you said you had some questions for the applicant.
11 I mean, I think that we're going to have to come back
12 and --

13 MR. HINKLE: I'm sorry, I just have one
14 question I wanted --

15 CHAIRPERSON HILL: Sure.

16 MR. HINKLE: -- point of clarification I
17 wanted to ask.

18 CHAIRPERSON HILL: Sure. You want to ask
19 Office of Planning?

20 MR. HINKLE: Yeah.

21 CHAIRPERSON HILL: Of course.

22 MR. HINKLE: So if I'm -- I'm just trying to
23 -- we're trying to understand with respect to the use
24 variance.

25 It wasn't that the Office of Planning

1 objected to the idea of a restaurant, full service
2 restaurant and/or service of alcohol per se, but it's
3 the unknown tenant if that's -- we're just trying to
4 understand what the basis of the objection is.

5 MS. VITALE: Sure. I think generally given
6 that this -- like I said, this is a residential
7 neighborhood and generally they're, you know, a full-
8 service restaurant or bar, isn't a contemplated use,
9 I think if the applicant was coming in with a
10 specific tenant whereby we could know very
11 specifically the hours of operation, the type of
12 user. If it's a corner grocery I think that the
13 trash and noise and signage and hours of operation
14 issues could be very different than if it's a full-
15 service restaurant.

16 So, I think normally in these instances when
17 there have been use variance requests for this type
18 of use and the particular user is known, then it's
19 easier for us to get our arms around specific
20 conditions that could begin to address potential
21 neighborhood impacts without a known user. I think
22 it's difficult to wrestle with the conditions that
23 would be appropriate to insure that any potential
24 impacts to the neighborhood were minimized.

25 MS. BUTANI-D'SOUZA: So, just to clarify.

1 So, Office of Planning would not be opposed to like,
2 a Glen's Garden Market type tenant. Is that correct,
3 or no?

4 MS. VITALE: That's not a permitted use. I
5 think if the applicant wanted to bring forward of a
6 use variance request with a particular tenant in mind
7 we would evaluate that application at that time.

8 MS. BUTANI-D'SOUZA: Okay. Thanks.

9 CHAIRPERSON HILL: Sure, just one second.
10 Yeah, okay.

11 So, I'm sorry. Yeah, Ms. Butani, please ask
12 your questions for the applicant. I mean, I think
13 that depending upon what the Board thinks that I'm
14 going to ask the applicant to -- I have some
15 questions. One of the things that Mr. Hood mentioned
16 that I'd like to see the next time coming back, I
17 don't think that I am going to be able to deliberate
18 today. But please, go ahead and ask your questions
19 so that we can have further clarification the next
20 time we're here, if -- depending upon where the rest
21 of the Board is, that is.

22 MS. BUTANI-D'SOUZA: Okay. So, I just want
23 to pick up on the question that Chairman Hill had
24 asked previously with regard to how this was
25 advertised in the neighborhood.

1 So, I note that in the additional documents
2 that you've provided, including the letter of support
3 from the adjoining neighbor, that the plans -- they
4 included the plans and the plans show a bookstore, a
5 yoga studio, and a corner store. And so, my concern
6 is that the neighborhood is under the impression that
7 they are going to be getting a bookstore, a yoga
8 store, and a corner store at this location, and that
9 they're not aware that what you're requesting is the
10 ability to really put anything here.

11 So, that's really a big concern for me,
12 especially given I believe that we did have a letter
13 in opposition here, pertaining to parking issues. I
14 know also that there is quite a few restaurants that
15 are pretty close by here. So, I think it would be
16 helpful to just understand with something in writing
17 from the community, just clarifying that they
18 understand the request that's being made here. So,
19 that's --

20 MR. KADLECEK: One thought is, we're not
21 asking for any -- so I mean, there were the four uses
22 that are permitted as corner stores and that's
23 consistent but for this idea of a full-service
24 kitchen and the service of alcohol. The request that
25 has always been advertised from the beginning of this

1 case being filed has been one of those four uses that
2 are permitted as corner stores. So, anyone in the
3 community who has paid attention to that has seen
4 that that's what we've requested.

5 I can -- I'll let Mr. Reishman speak a little
6 bit to more about what exactly they discussed with
7 the community, but I don't think that there was ever
8 an impression that what the community was agreeing to
9 or being kind of aware of is, you know, just any sort
10 of use that would be allowed. That it was always
11 restricted to certain types of these corner store
12 related uses.

13 MS. BUTANI-D'SOUZA: Right. And I'm not
14 trying to argue with you here, but you know, a
15 picture is worth a thousand words and so a lot of the
16 technical jargon related to the use categories goes
17 above the head of many people in the community when
18 they look at a picture and they see a bookstore, a
19 corner store, yoga studio, that conveys a certain
20 message that doesn't really appear to be in line with
21 what you're actually requesting.

22 MR. REISHMAN: I definitely understand that
23 concern and I actually do recall that when we went to
24 the -- well, first when we went to the neighborhood
25 group before going to the ANC, we explicitly stated

1 that these were just ideas for the types of uses that
2 we could envision in this, and they actually said
3 they would very much -- like there was a large
4 contingent to us in favor of a gastro pub type
5 concept. And so, based on that we went back and
6 revised what we were originally sort of discussing
7 and said, well let's, let's consider that because
8 that's what the neighborhood wants. And then that is
9 ultimately what we went to the ANC with.

10 And in the ANC meeting we were again clarify
11 -- I mean, we were very transparent about the fact
12 that the intended uses that were -- you know, that
13 are shown on there were just ideas of things that
14 could go in.

15 MS. BUTANI-D'SOUZA: Sure. So, I'm just
16 asking that you capture that in the record with
17 something from the community directly.

18 So, the other -- so I think Mr. -- the
19 gentleman from Street Sense, you made a very
20 interesting point about the evolution of corner
21 stores and Chairman Hood from the Zoning Commission
22 is here, who is the one who I believe was
23 instrumental in those regulations. So, there's an
24 interesting point that you made.

25 MR. HOOD: For the record, I actually voted

1 against corner store, so I didn't --

2 MS. BUTANI-D'SOUZA: Well, never mind then.
3 But one thing that I would ask is, you know, if you
4 guys are able to, as you do come back here, craft
5 perhaps a condition that more clearly spells out what
6 it is that your retail broker has described here,
7 which perhaps may give the Office of Planning more
8 comfort in providing you with the relief that you're
9 looking for to do what it is that you've described
10 here today that you'd like to do.

11 So, if there is a way for you to capture, in
12 language that we could put into an order, this
13 concept of a local operator, either from market use
14 or for a restaurant use, I think that would be
15 helpful.

16 And I believe -- let me pause in case other
17 folks have a question. Let me go through my notes
18 and see if I have any more.

19 MR. HOOD: Mr. Chairman, did we talk about
20 the letter in opposition? I've been looking at this
21 letter and looking at this letter, and I'm trying to
22 figure out whose name is on the letter in opposition.
23 Unless I'm missing it because if it jumps out at me
24 maybe I'll --

25 CHAIRPERSON HILL: No, I had a difficult time

1 figuring out who that was as well, Mr. Chairman.

2 MR. HOOD: Typically I don't know how we
3 handle it because that can come from anybody. I'm
4 just --

5 CHAIRPERSON HILL: Well, we'll see if
6 somebody is here, perhaps.

7 MR. HOOD: Who wrote this letter that's in
8 opposition.

9 Is the person who wrote this letter in
10 opposition here today?

11 MR. HOOD: It seems to be anonymous, but I
12 just was curious because, anyway.

13 CHAIRPERSON HILL: Okay. All right. Well,
14 what I'd like to do is just go ahead and see if
15 there's anyone here in support or opposition, then we
16 can come back and see if there's any other questions
17 from the Board. And then I think there's some
18 further clarifications we're going to need in order
19 to get back here again, to bring you all back.

20 MS. BUTANI-D'SOUZA: I think it would also --
21 sorry, just since you --

22 CHAIRPERSON HILL: Sure.

23 MS. BUTANI-D'SOUZA: I think it would also be
24 helpful when you return to tease out your -- what's
25 going on in this neighborhood. You're on Sherman

1 Avenue, so the Office of Planning has made the point
2 that this is a neighborhood and that a full-service
3 restaurant or bar is not -- is sort of envisioned
4 within this zone because it is a neighborhood. So, I
5 think it may be helpful for you to tease out the
6 location here and perhaps provide us with some more
7 insight around what's going on adjacent, across the
8 street, because I think that that's a part of the
9 argument that you're making that there is some --
10 that there is sort of an emerging commercial corridor
11 in this area that you're trying to connect to. So
12 just helping us understand it a little better would
13 be helpful.

14 CHAIRPERSON HILL: Okay. Is there anyone
15 here who is wishing to speak in support of the
16 application? Anyone here wishing to speak in
17 support?

18 Anyone here wishing to speak in opposition of
19 the application? Opposition?

20 Okay. Then I'm going to come back to the
21 applicant now and just see if you have anything else
22 to add. What I would suggest is again there are
23 certain things that the Office of Planning would like
24 to see. One of which I guess was a photograph that
25 might lay down or on top, or somehow show us what is

1 existing and what is proposed.

2 I still don't -- personally, again, my issues
3 are those that the Office of Planning has brought up.
4 I mean, they're not in favor of the special
5 exception, which it sounds like perhaps you might be
6 able to get to. I don't know. Right? Because like,
7 they didn't have enough drawings, they didn't have
8 what they needed. You know, I definitely encourage
9 you to work with the Office of Planning to get to the
10 next time we come here. Okay?

11 Then what Vice Chair Butani just mentioned,
12 which also I would kind of like to know is something
13 from the ANC, or the community or the SMD, that says
14 what it is you guys are actually maybe going to plan
15 to put in. And however, that might be written so
16 that we could put that in the order or you know,
17 whether it's a market like you're speaking of, the
18 Glen's, I don't actually know what that one is, the
19 Glen's Market or -- but again, making myself at least
20 feel more comfortable that the community understands
21 that a full-service restaurant is something that
22 possibly could go there, as opposed to right, the
23 yoga studio, the other things that were put in the
24 renderings. That would be good for me to see.

25 Was there anything else anyone would like to

1 see when they come back?

2 MR. HOOD: I think, did you cover the
3 rendering? I think you did. Okay.

4 CHAIRPERSON HILL: The photograph or what,
5 you know, what's there now and --

6 MR. HOOD: What's there. Okay.

7 CHAIRPERSON HILL: And then I think Ms.
8 Butani also mentioned like something to tease out
9 kind of what's around the area. And again, if you
10 can get Office of Planning to understand and agree
11 that you need the relief that you're seeking, that
12 would be good.

13 So, how long do you think all this might take
14 you and when would you like to come back?

15 MR. KADLECEK: Are you, just for point of
16 clarification, are you contemplating a continued
17 hearing or just a public meeting with filings? I
18 think we're --

19 CHAIRPERSON HILL: I think I'd be fine with
20 the public meeting. I mean, I'm sorry, just a
21 meeting with filings.

22 MS. BUTANI-D'SOUZA: I think it would be
23 helpful to hear again from Office of Planning in case
24 -- I mean, we could always go to a meeting pretty
25 quickly if there's not much to discuss. That's just

1 my view.

2 MR. KADLECEK: I almost think it might be
3 better to do a limited hearing just so we can maybe
4 explain some things if it's still not clear from the
5 record. But it's up to, of course, the Board, its
6 preference.

7 CHAIRPERSON HILL: If you want to go with a
8 limited hearing that's fine with me. So, then a
9 limited hearing, Mr. Moy. And when would you like to
10 do a limited hearing that works out for you?

11 I think they're trying to check when you'll
12 have the company of Chairman Hood again.

13 MR. KADLECEK: We can probably go as soon as
14 possible, so --

15 MR. HOOD: So in other words, he doesn't care
16 whether I'm here or not, so --

17 MR. KADLECEK: Well, of course we would love
18 for you to be here.

19 [Discussion off the record.]

20 MR. MOY: Mr. Chairman, Mr. Hood is due to
21 participate with the Board on November 30th. I don't
22 know if that's too long or not. Today is the 25th of
23 October.

24 MR. KADLECEK: In the alternative, if there's
25 a public meeting that Mr. Hood might attend sooner

1 we're comfortable with just doing filings to expedite
2 it a little bit more.

3 CHAIRPERSON HILL: I think, let's do a
4 continued hearing and let's do it on the 30th, okay,
5 because then you can meet with the ANC, you can get
6 together with the Office of Planning.

7 MR. KADLECEK: Okay.

8 CHAIRPERSON HILL: I mean, I think that
9 that's pretty close, actually. It's not that far
10 away.

11 Okay. So, then you would need to give us
12 filings by when so that the Office of Planning could
13 also have an opportunity to weigh in?

14 MR. MOY: Then --

15 MS. BUTANI-D'SOUZA: And the holidays are
16 there as well. Just --

17 MR. MOY: I know. I know. So, Thanksgiving
18 is on the 24th, right? Which is a Thursday. So,
19 let's see, working backwards to allow time for Office
20 of Planning to file a supplemental report. Maybe the
21 supplemental report to be due let's say Monday,
22 November 21st. Supplemental. And perhaps the
23 applicant to make their filings, let's say the week
24 before, November 14th. Would that do?

25 MR. KADLECEK: Yeah, that's fine. Thank you.

1 CHAIRPERSON HILL: Okay. All right, great.
2 Well, good luck.

3 MR. KADLECEK: Thank you.

4 MR. MOY: All right. So, the next
5 application before the Board is Application No. 19354
6 of XM 1500 or 1-5-0-0 Eckton -- Eckinton, Eckington.
7 Eckington, LLC. Captioned and advertised for a
8 special exception relief under the roof-mounted
9 antenna requirements of Subtitle C, Section 1304.2,
10 to relocate three existing roof-mounted antennas
11 exceeding 12 feet in height in the PDR-2 Zone, 1500
12 Eckington Place Northeast, Square 3518, Lots 29 and
13 30.

14 CHAIRPERSON HILL: Great. Thank you, Mr.
15 Moy. I still get to say good morning, so good
16 morning. Would you please introduce yourselves?

17 MR. PERDOMO: I'm Alfredo Perdomo. I'm a
18 manger of the maintenance division.

19 MR. BLITZ: Good morning, I'm Jim Blitz with
20 Sirius XM. My work address is 1500 Eckington Place
21 Northeast. I'm a resident of Cabin John, Maryland.

22 MR. COLLINS: Chris Collins with Holland and
23 Knight, representing the applicant.

24 CHAIRPERSON HILL: All right. Mr. Collins, I
25 don't have a lot of questions and depending upon if

1 the Board has a lot of questions or what they'd like
2 to see, I mean, the only thing that I'd like you to
3 speak to, I suppose, is the setback that the Office
4 of Planning is speaking to. And then also, you know,
5 how the unused antennas are going to be removed from
6 the roof. And then, and I guess, you know, you could
7 speak to some of the community outreach you had.

8 MR. COLLINS: Sure. Thank you. The best
9 thing to do in terms of looking at the setback
10 question is if you refer to Exhibit 36 of the record
11 on page 4, there is a chart that shows the existing
12 and proposed heights and setbacks. And just to
13 summarize the antennas were placed on the building
14 when XM Radio moved in and that predated the antenna
15 regulations. And antennas at that point were treated
16 as architectural embellishments. And there was no
17 requirement for setbacks of antennas.

18 So, the antennas were not setback a distance
19 equal to their height, which is the current
20 regulation. And in so doing, in making these
21 modifications, you -- we will meet or exceed the
22 setback requirements.

23 Also, it would be interest -- good for you to
24 take a look at Exhibit 36D, which is the photo of the
25 antennas that are being replaced. If you have those

1 photos in front of you there are two photos there
2 that the first is the three antennas on the top of
3 the building you can see, Florida Avenue kind of off
4 to the left side of the photo. These are three
5 existing antennas taken looking west on the roof.
6 And then the second photo is a close-up of the one
7 that is furthest set back of the three, but the other
8 two sit very close as you can tell, to the edge of
9 the building.

10 And this is the existing condition and the
11 antennas will be moved back when they are placed on
12 the dunnage.

13 CHAIRPERSON HILL: Okay. And the condition
14 about the removal of the unused antennas?

15 MR. COLLINS: The two antennas will be
16 removed. They are obsolete and will be removed from
17 the roof.

18 CHAIRPERSON HILL: Okay. Does anyone here on
19 the Board have other questions or areas that the
20 applicant should speak to?

21 All right. Well, then if it's all right with
22 you, Mr. Collins, I'm going to turn to the Office of
23 Planning.

24 MR. COLLINS: That's fine.

25 CHAIRPERSON HILL: Okay.

1 MS. THOMAS: Good morning, Mr. Chair. Karen
2 Thomas with the Office of Planning. We -- the
3 applicant has met the criteria for special exception
4 relief and we believe the relief is minimal, and we
5 will stand on the record of our report as presented.
6 Thank you.

7 CHAIRPERSON HILL: Thank you. All right.
8 Does anyone have any questions for the Office of
9 Planning?

10 So, with that I would go ahead and turn to
11 the audience to see if there's anyone here who would
12 like to speak in support of the application? Anyone
13 here wishing to speak in support?

14 Anyone here wishing to speak in opposition of
15 the application? Anyone here in opposition?

16 Okay. Well, then with that I would turn back
17 to the applicant and see if there anything else you
18 would like to add in conclusion and also if the Board
19 has any further questions for the applicant.

20 MR. COLLINS: The only points I'd like to
21 make is in addition to Office of Planning we have the
22 support or no opposition from DDOT, from the
23 Eckington Civic Association, and from the ANC.

24 CHAIRPERSON HILL: Thank you. Does anyone
25 have any more questions for the applicant?

1 Okay. With that I would then close the
2 hearing. Is the Board ready to deliberate?

3 Well, I think that again I'm satisfied with
4 the analysis of the Office of Planning, particularly
5 again special exception relief that's pursuant to C,
6 Section 1312 and then the criteria under 1312.1, A,
7 B, C, D, E, F, G, H, and then also 1312.2. And also,
8 the fact that the ANC voted in unanimous support,
9 they do again, as the applicant mentioned, has a
10 letter from the Eckington Civic Association in
11 support.

12 I suppose again the applicant did agree to
13 the two conditions, one of which was the one-to-one
14 setback from the edge of the roof shall be maintained
15 for the proposed installations. And then the unused
16 antennas shall be removed from the roof. So, those
17 conditions have been agreed to and I would -- does
18 the Board have anything else to add?

19 Then I would make a motion to approve
20 Application No. 19354 of XM 1500 Eckington, LLC.

21 MR. HOOD: I will second. Second the motion,
22 Mr. Chairman.

23 Also, let me just add that XM really started
24 the uplift of things that are going on in the
25 Eckington area, XM Satellite. So, I wanted to put

1 that in there. I remember when they came.

2 CHAIRPERSON HILL: No, that's nice of you to
3 say. I remember when they came and I remember there
4 was nothing around there to eat. And then Big Bear
5 came in and you know, so yes, in any case, thank you,
6 Mr. Chairman. That is very well brought up and said
7 that that area has improved dramatically and changed
8 a lot since you guys have come in. So, so the motion
9 has been made and seconded.

10 [Vote taken.]

11 CHAIRPERSON HILL: Mr. Moy, the motion has
12 passed.

13 MR. MOY: Staff would record the vote as four
14 to zero to one. This is on the motion of Chairman
15 Hill to approve the application for the relief
16 requested, and as the conditions as cited by the
17 Chair. Seconding the motion, Mr. Anthony Hood. Also
18 in support, Vice Chair Butani, Mr. Hinkle, and the
19 Board seat vacant. Motion carries, sir.

20 CHAIRPERSON HILL: Thank you, Mr. Moy.
21 Summary order.

22 MR. MOY: Yes, thank you.

23 CHAIRPERSON HILL: Thank you, gentlemen.

24 MR. COLLINS: Thank you.

25 MR. MOY: The next application is Application

1 No. 19357 of James and Lisa Hobbs as captioned and
2 advertised for variance relief from the nonconforming
3 structure requirements, Subtitle C, Section 202.2,
4 lot occupancy requirements of Subtitle E, Section
5 304.1, and the rear yard requirements of subtitle E,
6 Section 306.1. This would construct a rare deck
7 addition to an existing one-family dwelling in the R-
8 F-1 Zone, premises at 712 8th Street Northeast,
9 Square 890, Lot 66.

10 CHAIRPERSON HILL: Good afternoon.

11 MS. HOBBS: Good afternoon.

12 CHAIRPERSON HILL: If you could please
13 introduce yourself? Oh, I'm sorry, you have to push
14 the button there.

15 MS. HOBBS: My name is Lisa McCabe-Hobbs.
16 I'm both the homeowner and architect for 712 8th
17 Street Northeast.

18 CHAIRPERSON HILL: Okay. Great. Thank you.
19 All right, Ms. Hobbs, I don't have a lot of questions
20 about your application. I don't know if my
21 colleagues have anything they'd like to drill down on
22 with the applicant.

23 MR. HOOD: When I asked the letter we just
24 got to Commissioner Eckenwiler, what is that, just
25 to --

1 MS. HOBBS: Oh, yeah. I'm sorry. That's one
2 additional letter of support from the neighbor that
3 owns the lot directly behind our home, so he is --
4 it's an alley lot directly behind our back yard.

5 MR. HOOD: Okay. Thank you.

6 MS. HOBBS: I did upload that letter this
7 morning. I just wanted to make sure that everyone
8 was aware of it.

9 CHAIRPERSON HILL: Okay. I'm sorry, could
10 you say that again? What did you say?

11 MS. HOBBS: I just distributed a letter from
12 the remaining neighbor adjacent, directly adjacent to
13 our lot. He has the -- he owns the lot directly
14 behind ours that's an alley lot. So directly behind
15 our rear yard. I did upload it earlier today, this
16 morning, to IZIS, but I wanted to make sure that
17 everyone had a copy of it.

18 CHAIRPERSON HILL: Okay, great. Thank you.

19 The Office of the Attorney General just
20 brought it to my attention, there seems to be some
21 discrepancies between the lot occupancy relief that
22 you're asking and that of the Office of Planning. Do
23 you -- are you aware of this?

24 MS. GLAZER: No, Mr. Hood.

25 CHAIRPERSON HILL: No?

1 MS. GLAZER: I'm sorry, Mr. Hill.

2 CHAIRPERSON HILL: Yes.

3 MS. GLAZER: I think it was the rear yard
4 calculations. Just the numbers were not consistent
5 between the ZA memo, the OP report, and the
6 applicant's filings.

7 MS. HOBBS: I believe they were -- Just
8 checked them this morning. I think the only -- yeah,
9 I believe that the rear yard dimensions that we
10 submitted, or that I submitted are the same as on the
11 Office of Planning's report.

12 MS. GLAZER: Then maybe it was the ZA memo
13 that was different. Just, I think we should compare
14 all three sets of figures.

15 MS. THOMAS: Madam Chair --

16 CHAIRPERSON HILL: One moment. I'm sorry.
17 Yes, please, go ahead. One second. So, if it's all
18 right I'm going to turn to the Office of Planning to
19 help clarify.

20 MS. HOBBS: Yeah, I'm going to grab my
21 drawings that are just right here at my --

22 CHAIRPERSON HILL: Okay. Thank you.

23 MS. THOMAS: Yeah. Good afternoon, again.

24 CHAIRPERSON HILL: Good afternoon.

25 MS. THOMAS: Karen Thomas sitting in for

1 Stephen Mordfin. I believe that we have 10 feet on
2 the table proposed, and I think it might be an error.
3 The front of the report where it says, 5.4 feet. So,
4 is it 10, or is it 5.4? Ten feet?

5 MS. HOBBS: I'm sorry.

6 MS. THOMAS: Is the rear yard proposed at 10
7 feet?

8 MS. HOBBS: Yes.

9 MS. THOMAS: Okay. Then it's OP --

10 MS. HOBBS: Ten feet, one and three eighths
11 of an inch.

12 MS. THOMAS: Right. We do have it in the
13 chart, in our report, on page 2 of our report. But
14 on page 1 where we recommend approval it says E, rear
15 yard 5.4 feet. So, it should say 10 point -- 10
16 feet, one and 3/8 inches.

17 CHAIRPERSON HILL: Okay. So, that's
18 something that the Office of Planning --

19 MS. THOMAS: Yes.

20 CHAIRPERSON HILL: -- can rectify?

21 MS. THOMAS: Yes. That's fine.

22 CHAIRPERSON HILL: All right. And will that
23 be sufficient for the Office of Attorney General?

24 MS. GLAZER: Yes, it's just whether the
25 figures are consistent.

1 CHAIRPERSON HILL: Sure. No, thank you.

2 Okay. So --

3 MS. BUTANI-D'SOUZA: Sorry. Can I just
4 clarify? So, this is going to be a one -- a five-
5 foot one-inch deep rear deck. And the remaining rear
6 yard is going to be 10 feet. Ten feet with a couple
7 of inches. Is that correct?

8 MS. HOBBS: Yes. Yes.

9 MS. BUTANI-D'SOUZA: Okay. It's confusing
10 because I think OP's report also mentioned something
11 about 20 feet, but maybe that's just the regulation
12 that's required.

13 CHAIRPERSON HILL: All right, Ms. Hobbs, I
14 think we're kind of on -- it was Ms. Hobbs. Is that
15 correct?

16 MS. HOBBS: Uh-huh.

17 CHAIRPERSON HILL: I think we're all on the
18 same page here now and I also again don't have a lot
19 of questions for you as the applicant. Does anyone
20 on the Board here have some questions?

21 All right. Well, then if it's all right with
22 you we are not going to need a full presentation here
23 and I'd like to just turn to the Office of Planning
24 to fully hear if they have anything else to add, and
25 if they're now in support again on the record for the

1 10 feet. Thank you.

2 MS. THOMAS: Mr. Chairman, nothing further to
3 add. We are in support of this application and as
4 corrected, 10 feet. Ten feet one and 3/8 inches.
5 Yes. To be exact.

6 CHAIRPERSON HILL: Okay. Great. Thank you.

7 MS. THOMAS: Thank you.

8 CHAIRPERSON HILL: All right. With that I'd
9 turn to the audience here, who there aren't any, and
10 ask for any -- is there any support -- anyone here
11 who is in support of the application? Anyone here in
12 support?

13 Anyone here who is in opposition of the
14 application? Anyone who is here in opposition of the
15 application? Anyone here from the ANC who would like
16 to speak? No? All right.

17 So, then in that case I would turn back to
18 the applicant and see if the applicant has anything
19 to say in conclusion.

20 You can push the button again, I'm sorry.

21 MS. HOBBS: No comments.

22 CHAIRPERSON HILL: Okay. Great. Thank you.
23 With that, does the Board have anything else to add?

24 MS. BUTANI-D'SOUZA: I would just like to
25 note that I think -- it's my understanding that we

1 don't typically grant relief where the justification
2 is a nonconforming nature of the lot. But in this
3 case, and I can save my comments for the
4 deliberation, but I think in this case, this is a
5 unique situation that in my view does pass the
6 variance test. Five feet, to me, seems like truly
7 the minimum amount of space that you would be able to
8 construct something within code. You know, you're
9 not going to make me repeat it.

10 But it does seem to be the minimum amount of
11 space that you would need in order to be able to
12 construct a code compliant, or even just practically
13 usable set of stairs where you could turn around on
14 them. So, I did appreciate that it seemed like Ms.
15 Hobbs, as the owner and architect, really did take
16 into consideration the code and tried to minimum the
17 amount of the relief being requested here for this
18 unusual situation.

19 CHAIRPERSON HILL: Okay. Great. Anyone else
20 have any comments before I close the hearing?

21 Okay. Then I'm going to close the hearing.
22 Thank you very much. Is the Board ready to
23 deliberate?

24 All right. Well, as Vice Chair Butani had
25 spoken very clearly, I think, about the arguments

1 with the case and also that the Office of Planning is
2 in support, and I rest on their analysis, and also
3 that the ANC 6C was in support four to zero, there
4 was also four letters of support in the application.
5 I would make a motion to, if the Board doesn't have
6 anything else to add, I would make a motion to
7 approve Application No. 19357 of James and Lisa Hobbs
8 as advertised.

9 MS. BUTANI-D'SOUZA: Seconded.

10 CHAIRPERSON HILL: That motion has been made
11 and seconded.

12 [Vote taken.]

13 CHAIRPERSON HILL: All right. Motion passes.
14 Congratulations.

15 MS. HOBBS: Thank you.

16 CHAIRPERSON HILL: Mr. Moy.

17 MR. MOY: If I can do a real quick count?

18 CHAIRPERSON HILL: Please do. I'm sorry.

19 MR. MOY: No, that's -- not at all. Staff
20 would record the vote as four to zero to one. This
21 is on the motion of Chairman Hood to approve the
22 application and --

23 Chairman Hill.

24 MR. MOY: Oh, what did I say?

25 CHAIRPERSON HILL: Hood.

1 MR. MOY: Oh. It was close. Chairman Hill.
2 Seconded the motion, Vice Chair Butani. Also in
3 support, Mr. Hood, Mr. Hinkle. Board seat vacant.
4 Motion carries, sir.

5 CHAIRPERSON HILL: Thank you, Mr. Moy.
6 Summary order.

7 MR. MOY: Thank you.

8 CHAIRPERSON HILL: All right. Thank you.

9 MS. HOBBS: Thank you.

10 CHAIRPERSON HILL: Mr. Moy, do we have
11 anything else coming before the Board today?

12 MR. MOY: No, but you do.

13 CHAIRPERSON HILL: Oh, yeah.

14 MR. MOY: You have the --

15 CHAIRPERSON HILL: All right. Well, I'd like
16 to make a motion in accordance with Section 405C of
17 the Open Meetings Act, D.C. Official Code Section
18 2575C. I'd move that the Board of Zoning Adjustment
19 hold closed meetings on the Monday of October 31st,
20 November 14th and November 28th. Additionally, on
21 Wednesday, November 9th, the Board is scheduled to
22 conduct a closed session for training purposes.
23 These meetings, the ones on the 31st, 14th, and 28th
24 start at 4:00 p.m. and are held for the purpose of
25 obtaining legal advice from our counsel and

1 deliberating upon but not voting on the cases
2 scheduled to be publicly heard or decided by the
3 Board on the day after each such closed meeting.

4 Those cases are identified on the Board's
5 public meeting and hearing agendas for November 2nd,
6 the 16th, and the 30th.

7 A closed meeting for these purposes is
8 permitted by Section 405B, 4, and B-13 of the Act,
9 and I further move that the Board hold a closed
10 meeting on Wednesday, November 9th from 9:00 a.m. to
11 12:30 p.m. for the purpose of conducting internal
12 training as permitted by Section 405B-12 of the Act.
13 Is there a second?

14 MS. BUTANI-D'SOUZA: Second.

15 CHAIRPERSON HILL: Will the secretary please
16 take a roll call vote on the motion?

17 MR. MOY: Yes. When I call the member's name
18 if you would kindly reply with a yes or a no. Yea or
19 any.

20 [Roll call vote taken.]

21 MR. MOY: And we have a board seat vacant, no
22 vote there so the motion carries, sir.

23 CHAIRPERSON HILL: All right. I request that
24 the Office of Zoning provide notice of these closed
25 meetings in accordance with the act.

1 Mr. Moy, do we have anything else today?

2 MR. MOY: That completes it. The only thing
3 I'd like to add for our listeners, which they already
4 left the chairs, to remind everyone that hence forth
5 all of the BZA hearings will be conducted on
6 Wednesdays.

7 CHAIRPERSON HILL: Thank you. Thank you.
8 Then we are adjourned. Thank you very much.

9 [Whereupon, at 12:13 p.m., the Board Hearing
10 was adjourned.]

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