

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

JULY 29, 2020

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 10:46 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
CARLTON HART, Vice Chair (NCPC)
LORNA JOHN, Board Member

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
ROBERT MILLER, Vice Chair

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
KAREN THOMAS
MAXINE BROWN-ROBERTS
MATT JESICK
ELISA VITALE

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

DANIEL BASSETT, ESQ.
MARY NAGELHOUT, ESQ.

DISTRICT DEPARTMENT OF TRANSPORTATION STAFF PRESENT:

TED VAN HOUTEN, Planning and Sustainability Division
AARON ZIMMERMAN

The transcript constitutes the minutes from
the Regular Public Hearing held on July 29, 2020.

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

10:46 a.m.

1
2
3 BZA CHAIR HILL: So our hearings are starting, and
4 maybe we'll take a quick break before the hearings begin.
5 But can I just read into the Hearing Session, Mr. Moy, before
6 we take the break?

7 MR. MOY: Yes, please.

8 BZA CHAIR HILL: Okay. The hearing will please
9 come to order. Good morning, ladies and gentlemen. We're
10 convened and broadcasting this Public Hearing by video
11 conference. This is the July 29th, 2020, Public Hearing of
12 the Board of Zoning Adjustment of the District of Columbia.

13 My name is Fred Hill, Chairperson. Joining me
14 today is Carlton Hart, Vice Chair; Lorna John, Board Member;
15 and representing the Zoning Commission is going to be
16 Chairman Anthony Hood as well as Commissioner Rob Miller.

17 Today's hearing agenda is available on the Office
18 of Zoning's website. Please be advised that this proceeding
19 is being recorded by a court reporter and is also webcast
20 live via Webex and YouTube Live. The video will be available
21 on the Office of Zoning's website after the hearing.
22 Accordingly, everyone who is listening on Webex or by
23 telephone will be muted during the hearing and only persons
24 who have signed up to participate and testify will be unmuted
25 at the appropriate time.

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1 Please state your name and home address before
2 providing any oral testimony or your presentation. Oral
3 presentations should be limited to a summary of your most
4 important points. When you are finished speaking, please
5 mute your audio so that your microphone is no longer picking
6 up sound or background noise.

7 If you're experiencing any issues, there is a
8 hotline number to call, and I will repeat this number. The
9 number is 202-727-5471. Once again 202-727-5471. It is also
10 on the screen in front of you.

11 All persons planning to testify either in favor
12 or in opposition must have signed up in advance and will be
13 called by name. At the time of sign-up all participants
14 complete the oath or affirmation as required by Subtitle Y,
15 Section 408.7. If you wish to file written or additional
16 testimony or documents at the time of the hearing then please
17 be prepared to describe and discuss this at the time of your
18 testimony.

19 The order of procedures for special exceptions and
20 variances are pursuant to Subtitle Y, Section 409. The order
21 of procedures for appeals is in Subtitle Y, Section 507.

22 At the conclusion of each case an individual who
23 is unable to testify because of technical issues may file a
24 request for leave to file a written version of the planned
25 testimony to the record within 24 hours. If additional

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1 written testimony is accepted then parties would be allowed
2 a reasonable time to respond. The Board will then make its
3 decision at its next meeting but no earlier than 48 hours
4 after the hearing. Moreover, the Board may request
5 additional specific information to complete the record.

6 The Board and the staff will specify at the end
7 of the hearing exactly what is expected and the date when
8 persons must submit the evidence to the Office of Zoning.
9 No other information shall be accepted by the Board. The
10 Board's agenda may include previous cases set for decision.
11 After the Board adjourns the hearing, the Office of Zoning
12 in consultation with myself will determine whether a full or
13 summary order may be issued. A full order is required when
14 the decision it contains is adverse to a party including an
15 affected ANC. A full order may also be needed if the Board's
16 decision differs from the Office of Planning's
17 recommendation. Although the Board favors the use of summary
18 orders whenever possible, an applicant may not request the
19 Board to issue such an order.

20 The District of Columbia Administrative Procedures
21 Act requires that the public hearing on each case be held in
22 the open before the public pursuant to Section 405(b) and 406
23 of that act. The Board may, consistent with its rules of
24 procedures and the Act, enter into a closed meeting on a case
25 for purposes of seeking legal counsel on a case pursuant to

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1 D.C. Official Code Section 2-575(b)(4) and or deliberating
2 on a case pursuant to D.C. Official Code Section 2-
3 575(b)(13), but only after providing the necessary public
4 notice and in the case of an emergency closed meeting after
5 taking a roll call vote.

6 Mr. Secretary, are there any preliminary matters
7 for the hearing today?

8 MR. MOY: There are, Mr. Chairman, but the staff
9 would suggest that I bring that to the Board's attention when
10 I call each case.

11 BZA CHAIR HILL: Okay. All right. Let's try to
12 get back here by like 11:00, okay? All right. Thank you.

13 (Whereupon, the above-entitled matter went off the
14 record at 10:49 a.m. and resumed at 11:03 a.m.)

15 MR. MOY: The hearing is back in session after
16 a quick recess. The time is at or about 11:00 a.m.

17 Before I go further, Mr. Chairman, I just want to
18 note for the transcript that there was a case originally
19 scheduled for today, but it was withdrawn by the applicant.
20 That's Case Application Number 20251 of Martha Blalock and
21 Christine Delucchi. Again, that was a case that has been
22 withdrawn by the applicant.

23 So for today the first case in the hearing session
24 is Case Application Number 20266 of 3400 Connecticut Partners
25 LLC. This is caption advertised for a special exception

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1 under Subtitle C, Section 703.2, from the minimum parking
2 requirements of Subtitle C, Section 701.5 to construct a
3 mixed use retail/apartments development in the NC-3 Zone at
4 premises 3400 Connecticut Avenue, Northwest, Square 2069,
5 Lots 817-821.

6 As a reminder, Mr. Chair, there is a motion for
7 party status by a Mark Rosenman, and connected to his motion
8 for party status is a request for Jennifer Anderson to serve
9 as his party representative. Also, there are two requests
10 for expert status by the applicant, Erwin Andres, who was
11 already in the expert -- approved by the Board in the past
12 and a Kevin Sperry who has not been approved for -- status
13 in the past. And of course the Board may wish to address the
14 notice requirements.

15 BZA CHAIR HILL: Okay. Let me get through some
16 of this first.

17 Ms. Prince, could you introduce yourself, please,
18 for the record.

19 MS. PRINCE: Yes. Allison Prince of Goulston &
20 Storrs for the record. I am here on behalf of the applicant.

21 BZA CHAIR HILL: Okay. Ms. Prince, it is nice to
22 see you. I'm glad that you are surviving.

23 MS. PRINCE: I am surviving, and I really
24 appreciate your virtual hearing format. I know that it takes
25 a huge amount of effort.

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1 BZA CHAIR HILL: Thank you. Who is with you
2 today, Ms. Prince? Who is with you here today?

3 MS. PRINCE: Today I'm here with Meghan Hottel-
4 Cox, also of Goulston & Storrs. I don't believe she's on the
5 screen. I'll be doing the speaking today. Mr. Phil Kang who
6 is the property owner. The architect, Mr. Kevin Sperry, and
7 our traffic engineer, Erwin Andres of Gorove Slade. That's
8 our entire team today.

9 BZA CHAIR HILL: Okay. Mr. Andres, since I see
10 you already, could you put your -- could you please introduce
11 yourself for the record?

12 MR. ANDRES: Good morning, Chairman Hill, Members
13 of the Board. For the record, my name is Erwin Andres, a
14 principal of Gorove Slade Associations.

15 BZA CHAIR HILL: Ms. Hottel-Cox, could you also
16 introduce yourself for the record, please? Your microphone
17 is on, Ms. Hottel-Cox. Oh, there you go.

18 MS. HOTTEL-COX: Meghan Hottel-Cox with Goulston
19 & Storrs.

20 BZA CHAIR HILL: Okay. Mr. Kang, could you
21 introduce yourself for the record, please?

22 MR. KANG: Chairman Hill, my name is Phil Kang
23 from Velocity Property Management, and we're the owner of the
24 Macklin building.

25 BZA CHAIR HILL: Okay, great. Would you mute

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1 yourself, please, Mr. Kang? Thank you.

2 Mr. Sperry, could you introduce yourself for the
3 record?

4 MR. SPERRY: Good morning, everyone. My name is
5 Kevin Sperry with KASA Architects.

6 BZA CHAIR HILL: Okay. And, Ms. Anderson, could
7 you introduce yourself for the record?

8 MS. ANDERSON: My name is Jennifer Anderson.

9 BZA CHAIR HILL: And who are you with again, Ms.
10 Anderson?

11 MS. ANDERSON: I'm part of Mr. Rosenman's. I'm
12 one of the affected neighbors, and in order to save time
13 (audio interference) get at some of the -- some of (audio
14 interference) so I was going to be questioning the witnesses.

15 BZA CHAIR HILL: Okay. Ms. Anderson, just go
16 ahead and mute your line there for a second (audio
17 interference).

18 Mr. Rosenman, could you introduce yourself for the
19 record, please?

20 MR. ROSENMAN: Yes, sir. I'm Mark Rosenman,
21 resident of Newark Street here at the behest of 56 Macklin
22 neighbors.

23 BZA CHAIR HILL: Okay. Mr. Rosenman, you seem a
24 little fuzzy at times in terms of your audio.

25 MR. ROSENMAN: It's my beard, I think.

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1 BZA CHAIR HILL: There's a lot of that going
2 around.

3 MR. ROSENMAN: You got to blame my wife. She's
4 the one who trimmed it.

5 BZA CHAIR HILL: Okay. All right. Well, I think
6 you're doing a good job.

7 All right. So, Mr. Rosenman, I guess my first
8 question to you in terms of, you know, determining the party
9 status. I mean, you have, and I'm looking in the record here
10 (audio interference) by all these neighbors to speak on their
11 behalf, is that correct?

12 MR. ROSENMAN: Yes, sir.

13 BZA CHAIR HILL: Okay. And, Ms. Anderson, you
14 live actually --- do you adjoin the property? Your
15 microphone is on, Ms. Anderson.

16 MS. ANDERSON: I live directly across from it.

17 BZA CHAIR HILL: Okay. So, Ms. Anderson, I guess
18 what my thought would be, and Mr. Rosenman and I can let the
19 Board members go, I mean, Mr. Rosenman, honestly you're like
20 500 feet away, like if it were just you I wouldn't
21 necessarily be voting in favor of your party status because
22 I don't think you're necessarily meeting the criteria. I'm
23 just saying --- but I'm going to vote in favor because there
24 are a lot of people that are on your list that are actually
25 within the 200 feet and also Ms. Anderson is actually an

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1 adjoining property.

2 So what I'm going to suggest, Mr. Rosenman, is
3 that we do award you party status, and you can call, you
4 know, witnesses or whomever you would like in terms of ---
5 and Ms. Anderson can also ask --- I guess we'll have her ask
6 questions, and I don't know -- we'll see how that goes. I
7 mean, it's a little bit out of the line in how we would have
8 done things live in that all of the questions would have come
9 through you. But that's because you would have been sitting
10 right next to Ms. Anderson, and so that would have been an
11 easier thing to do.

12 So I'm comfortable and, Mr. Hart, I'll let the
13 Board kind of go around and everything. I'm comfortable
14 awarding Mr. Rosenman party status and then having Ms.
15 Anderson help him with questions and such, and I'll let all
16 of the people speak. But that's kind of where I am now
17 unless I get convinced otherwise, that's where I am right
18 now.

19 Mr. Hart, you had something to say?

20 VICE CHAIR HART: I did not have anything to say
21 regarding the party status. I'm comfortable with it as you
22 pointed out. I was just bringing up the issue of notice just
23 so that we can kind of go through that. But that's just a
24 reminder.

25 BZA CHAIR HILL: Okay. Great.

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1 Ms. Anderson, can I put you on mute there if you
2 don't mind, muting your microphone?

3 MS. ANDERSON: Sure.

4 BZA CHAIR HILL: Ms. Prince, do you have any
5 issues about the party status? Your microphone is on -- or
6 muted, Ms. Prince.

7 MS. PRINCE: We have no issues with the request
8 for party status.

9 BZA CHAIR HILL: Okay. Great. Thank you.

10 If the -- does the Board have anything they would
11 like to add on the party status issues? If you do, please
12 raise your hand.

13 Ms. John?

14 MEMBER JOHN: Mr. Chairman, the only question,
15 lingering question, and I recognize that the applicant has
16 no objection is that do you expect that the witnesses who are
17 within the 200 mile radius and who wish to testify would also
18 confirm that Mr. Rosenman is authorized to speak on their
19 behalf?

20 BZA CHAIR HILL: I don't know, Ms. John. I guess
21 I could speak --- I don't know, Mr. Rosenman, who of your
22 list -- I guess, Ms. John, you're asking if there's going to
23 be a repeat in terms of doing the public testimony portion?

24 MEMBER JOHN: No, my issue is that I believe you
25 said because Mr. Rosenman lives about 500 feet away from the

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1 site and he might not meet the party status criteria. And
2 I agree with that. Because I don't believe that he would be
3 able to show that he is uniquely affected by the project.
4 But other witnesses who have signed up to testify might meet
5 that criteria, in which case (audio interference) could
6 authorize him to speak on their behalf. And that's sort of
7 what I'm thinking. Now maybe Ms. Anderson does meet the
8 criteria, so I suppose she could be authorizing him to speak
9 on her behalf. But she has not requested party status.

10 I don't know if OAG has any thoughts or if I'm
11 thinking through this --

12 BZA CHAIR HILL: Okay, can I interrupt the OAG,
13 before you jump in. I guess to Mr. Rosenman, there are some
14 200 footers, people that are 200 feet, that have authorized
15 to speak -- that have authorized you to speak on their
16 behalf? Could you just acknowledge that and say correct?
17 You have to unmute your microphone.

18 MR. ROSENMAN: There are eight households within
19 the 200 feet radius who have signed on and endorsed my party
20 status. Emails from them have been provided as well as
21 emails from others now numbering --- in fact, that number I
22 think went to the nine last night when two more, another
23 household joined from within 200 feet.

24 BZA CHAIR HILL: Okay. So I guess, if you could
25 mute your line again, Mr. Rosenman. I guess, Mr. Bassett,

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1 the question from Ms. John is saying, and I don't know if
2 this is Ms. John's question or not, that are there people
3 outside of this group that Mr. Rosenman has brought forward
4 that might testify as members of the public. I assume that's
5 kind of the question.

6 MR. BASSETT: The question that I understood from
7 Board Member John was has Mr. Rosenman provided authorization
8 to speak on behalf of members of the public who are within
9 200 feet of the property, the subject property. And I'm
10 going to ask OZ to speak on this, but I believe that OZ has
11 received emails from members of the public wishing to be
12 represented by Mr. Rosenman who are within 200 feet and have
13 authorized him to act on their behalf. So I'll get OZ to
14 confirm that.

15 MR. MOY: Yes, Mr. Chairman, I can confirm that.
16 If you give me a moment, I can go into the record and pull
17 up the exhibit numbers.

18 BZA CHAIR HILL: I'm going to take Mr. Rosenman
19 at his word at this moment. And you can go ahead and look
20 through that. I want to kind of move it along here.

21 Ms. John, is there anything -- is that good enough
22 for you from OAG?

23 MEMBER JOHN: That's good enough.

24 BZA CHAIR HILL: Okay. If I could ask you, Ms.
25 John, to also mute your microphone as well. Thank you, and

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1 then we'll try to unmute you if you have problems as before
2 with technical issues, Mr. Young could help. Or maybe, Mr.
3 Young, could you mute Ms. John? Or actually just leave her
4 -- oh, never mind. Okay.

5 So the notice issues. So I do note that the
6 Office of Zoning has sent out the letters to the 200 footers
7 in Exhibit 48. The letters to the parties went out in
8 Exhibit 75. I don't know if we have an affidavit of
9 maintenance, I guess, is what Mr. Hart is speaking to.
10 Before I let Ms. Prince answer these questions about notice
11 and everything, you know, there are 54 people that have
12 signed up. The ANC's involved. I think the community knows
13 about this project.

14 But, Ms. Prince, do you have the affidavit of
15 maintenance?

16 MS. PRINCE: Are you asking me, Chairman Hill?

17 BZA CHAIR HILL: Yes.

18 MS. PRINCE: The affidavit of maintenance is
19 Exhibit 106, and the original posting affidavit is Exhibit
20 46.

21 BZA CHAIR HILL: Okay. I guess it was not
22 notarized, and I guess that's because of the whole COVID
23 thing?

24 MS. PRINCE: Right. We need relief for the lack
25 of notarization. It's been the procedure through the

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1 pandemic that we're not required to have notarization because
2 of those challenges, so the Zoning Commission has regularly
3 accepted and waived the requirement for notarization.

4 I can say for the first time in my career I posted
5 the property, so I am very confident that it was posted. I
6 personally posted the property and maintained it.

7 BZA CHAIR HILL: Okay. All right, great. So I
8 don't have any problem with notice. Does the Board Members
9 have any problem with notice? If you do so, please raise
10 your hand. I do not see anybody. Okay, great. All right.

11 So, Mr. Rosenman, so you now have been granted
12 party status. So what that means again (audio interference)
13 could I get you to mute -- thank you, Mr. Rosenman. You will
14 have the same amount of time to give your presentation as the
15 applicant. And so the applicant will go ahead and give their
16 presentation, then you as a party will have an opportunity
17 to ask questions of the applicant, and I guess we're going
18 to have Ms. Anderson do some of that. Then you will give
19 your presentation. The applicant will ask questions of you,
20 and then we'll move on to the Office of Planning. The Office
21 of Planning --- you'll have an opportunity basically to ask
22 questions of everybody is what the end of this is.

23 The applicant will then have an opportunity for
24 rebuttal. I believe that you'll have an opportunity to
25 question any rebuttal, and then the applicant will have a

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1 conclusion. And if we're lucky we can do this relatively
2 smoothly. And so we do recognize that the record is full.
3 The Board Members do read the entire record, and we have had
4 an opportunity to do so.

5 Ms. Prince, I'm going to let you start with your
6 presentation. I do see -- Mr. Young might bring it up. I
7 don't know, is that the one in Exhibit 124?

8 MS. PRINCE: 124, yes, we're checking.

9 BZA CHAIR HILL: Okay.

10 MS. PRINCE: That's the presentation.

11 BZA CHAIR HILL: Okay. And I'm going to put ---
12 how much time --- I got, Mr. Young has 20 minutes on the
13 clock right now. Do you think that will suffice?

14 MS. PRINCE: I would say more like 25 if that's
15 okay.

16 BZA CHAIR HILL: Okay. Go ahead, Mr. Young, if
17 you could put 25 minutes up on the clock?

18 And then I guess, Board Members, I don't know how
19 we want to do this. We might want to wait until the end to
20 ask our questions, but if you do have a burning question,
21 please go ahead and do so.

22 And, Ms. Prince, you can begin whenever you like.

23 MS. PRINCE: Thank you, Chairman Hill and Members
24 of the Board. I'm Allison Prince with Goulston & Storrs.
25 And as I mentioned I'm here today with Megan Hottel-Cox from

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1 my firm; Mr. Phil Kang, the owner; Mr. Kevin Sperry, the
2 architect; and the traffic consultant, Erwin Andres of Gorove
3 Slade.

4 I've been involved in efforts to redevelop this
5 property for the past 12 years.

6 BZA CHAIR HILL: Ms. Prince. Ms. Prince. Ms.
7 Prince, I apologize.

8 Mr. Moy, is DDOT here?

9 MR. YOUNG: Yes, they are.

10 MR. MOY: Yes.

11 BZA CHAIR HILL: Could you drop the presentation
12 for a minute, Mr. Young.

13 MR. YOUNG: Yes.

14 BZA CHAIR HILL: Thank you. Could you pause the
15 clock, please. And could you bring in DDOT?

16 Is that Mr. Van Houten?

17 MR. VAN HOUTEN: Yes, hello. I'm here. Also
18 joining me is Aaron Zimmerman also with DDOT.

19 BZA CHAIR HILL: Okay, great. Mr. Van Houten,
20 could you please introduce yourself for the record?

21 MR. VAN HOUTEN: Sure. My name is Ted Van Houten.
22 Joined me is Aaron Zimmerman. We're both in DDOT's Planning
23 and Sustainability Division.

24 BZA CHAIR HILL: Okay. Mr. Zimmerman, since Mr.
25 Van Houten just introduced yourself I'm going to let that

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1 suffice.

2 Mr. Van Houten, if you would go ahead and put
3 yourself on mute, please.

4 MR. VAN HOUTEN: Okay.

5 BZA CHAIR HILL: Thank you. Mr. Young, if you
6 could start once again and just start the clock back up at
7 25 minutes. And then bring up the presentation, and once
8 again, Ms. Prince, you can begin when the presentation is
9 kicked up.

10 MS. PRINCE: I'm back. I have been involved in
11 efforts to reposition this property for the last 12 years.
12 The most recent six with Mr. Kang and then the six years
13 before it with the previous owner. And then prior to that
14 owner which was before 2008 the property had been held by the
15 same owner for decades.

16 In many ways a site like this is ideal for
17 increased housing, including affordable housing which this
18 project does contain, and enhanced retail, including a public
19 plaza and direct -- with direct proximity to Metro. It has
20 very favorable zoning. In fact, we haven't used all of the
21 density available to the site. And the site is largely
22 undeveloped. A large portion of it is undeveloped.

23 So why has it taken so long to develop this
24 property? Well, 12 years ago the previous owners planned an
25 apartment addition, but the site had so many physical

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1 challenges and constraints they just couldn't get to a unit
2 count that resulted in a financeable project. And this was
3 before there was an affordable housing requirement.

4 The owner did not consider at that time the
5 current approach of utilizing the parking area for a portion
6 of the project and for a public plaza. Ultimately, after six
7 years of trying to make it work, that owner sold the property
8 to the current owner, Mr. Kang. And Mr. Kang's approach has
9 really been quite inspiring to me as a land use lawyer. He's
10 not been in a rush. He has taken a thoughtful approach to
11 the redevelopment of this site. He has spent almost five
12 years understanding the site and the neighborhood before
13 embarking on this plan. And as I said, he has not maximized
14 the density that is available on this site. That has not
15 been his goal. His goal has been to create a viable project
16 in the Cleveland Park neighborhood that will add housing,
17 affordable housing, and really be a positive for the
18 neighborhood.

19 The owner, Mr. Kang, and his family actually moved
20 into the Macklin for a time because he wanted to understand
21 Cleveland Park better. He also thoughtfully restored the
22 northern retail wing and turned away tenants that would not
23 enhance Cleveland Park. And I don't know, for those of you
24 who are very familiar with Cleveland Park, the Ireland's Four
25 Provinces' facade was really hideous. And he stripped that

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1 away, and we now have the beautiful limestone facade. He did
2 that without any knowledge or understanding that he would
3 ultimately have a larger project on the site. He acted as
4 an excellent steward of the property and has since the moment
5 he owned it. He has also acted as an excellent neighbor
6 reaching out to all members of the neighborhood to try to
7 understand what they need and what they want. And, in fact,
8 the current tenant, Orange Theory, in that retail wing was
9 a product of discussions with the neighborhood and their
10 interest in seeing a fitness use there.

11 As I said, Mr. Kang spent five years understanding
12 this site. And to make this site work for him to result in
13 a financeable project to meet the affordable housing
14 requirements and to do the quality of architecture that he
15 intends to do, he only needs one area of relief, a special
16 exception so the project can proceed without parking. The
17 project meets the special exception standards which we'll go
18 through today, specifically the project is well-served by the
19 transportation infrastructure, and Erwin will go into that
20 in much greater details.

21 We can't get parking on the site in a realistic
22 achievable way and have a project that can move forward. But
23 we believe that we've offered enough benefits, overall
24 benefits, associated with this project to offset the fact
25 that there is no parking. And one example of that is we've

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1 agreed to a very detailed list of loading conditions to
2 mitigate any impacts relating to loading, the lack of loading
3 on the site. In fact, we have added some loading to the site
4 at the rear of the property.

5 All in all when you look at the property in its
6 entirety, there are a lot of benefits that come to the
7 community as a result of this project that mitigate any
8 adverse impacts of the lack of parking.

9 The loading condition of the site will be vastly
10 improved. The 30 foot wide curb cut on Connecticut Avenue
11 will be closed and replaced with a loading zone and a parking
12 area. And as I mentioned, an entirely new loading area will
13 be installed at the rear of the property. And we have very
14 detailed loading conditions which you've seen and that are
15 contained in the ANC's letter.

16 One really important note here, while the site has
17 parking today, any redevelopment of this site, any
18 redevelopment would entail eliminating that parking because
19 that curb cut could not remain open. That curb cut is not
20 allowed under the current zoning regulations. So were this
21 site to be redeveloped with any kind of addition, I am very
22 confident that DDOT would require the closure of that curb
23 cut and the elimination of that parking.

24 I should also note that we've been through a very,
25 very thoughtful HPRB review process that resulted in

1 meaningful changes to the project. And the project now has
2 conceptual design approval from the HPRB.

3 We're very pleased that today we're here with the
4 support of the Office of Planning, DDOT, the ANC, and many,
5 many residents. However, we understand that several members
6 of the community, including many Newark Street neighbors, are
7 deeply concerned about the potential parking impacts of the
8 project. We've worked hard to address those concerns. We
9 also understand that change is hard for some of us, and I
10 include myself in this. Change is hard for some of us who
11 are part of a generation that was extremely car-dependent.
12 We have a hard time imagining that many of the 200,000 new
13 residents the city has gained over the past 20 years function
14 quite happily without owning a car. But that is reality.
15 And Erwin can get into that in greater detail, and we really
16 expect a very, very low car ownership rate for this project.

17 Also, I would note that almost all of the houses
18 along Newark Street in proximity to this project have
19 driveways, and I expect that many of those driveways would
20 never be approved today because DDOT's had a fundamental
21 shift in its view toward driveways.

22 If the Board has no questions, I'd like to proceed
23 with the testimony of Mr. Kang, our first witness and the
24 owner of the property.

25 MR. KANG: Good morning, Members of the Board.

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1 As Allison said, my name is Phil Kang. I am the owner of the
2 Macklin building. I have owned it and operated the property
3 for six years including living at the property for some time
4 with my wife and my baby daughter.

5 The plan before the Board today is the result of
6 a significant time, effort, negotiation, a lot of compromise,
7 and a lot of work on the part of our team, the community,
8 working with the community, especially with the ANC and
9 government agencies. And we are all excited to be here today
10 to present it to the Board.

11 Currently, the property includes a 17-unit
12 apartment building known as the Macklin. There is retail and
13 a service parking lot along Connecticut Avenue. I would note
14 that as part of my exploration for the parking relief needed
15 for the new development, I have reached out and I've held
16 many public forums to the current residents to understand
17 their car and parking needs for our own residents at the
18 Macklin, and only one of the current residents living at the
19 Macklin has a car, which is reflective of the overall
20 transit-oriented nature of the site and a preference of a lot
21 of our existing residents at a project of this kind could not
22 own a car.

23 In developing this project, as Allison mentioned,
24 we worked very hard to find a very balanced fit within the
25 context of the neighborhood that was economically feasible

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1 and worked with the unique site characteristics, including
2 the historic Macklin building. Kevin, the architect from
3 KASA, will detail the new project's plans. But we feel that
4 the mix of existing residential and retail, new housing and
5 including affordable housing, some new retail and a public
6 plaza strikes the best combination and an ideal project for
7 this particular site.

8 Cleveland Park is a very special neighborhood.
9 It's terrific. It's walkable. It has very close access to
10 transit. You know, residents need, like, groceries and
11 banks, it's an ideal place for an increase in housing
12 diversity.

13 Providing new housing in this transit and amenity-
14 rich neighborhood in Ward 3 furthers the city's goals of
15 providing new housing and affordable housing in a resource-
16 rich area across the city, while also fitting within the
17 context of the Connecticut Avenue corridor.

18 The Macklin is a historic resource. And we worked
19 closely with HPO, Historic Preservation Office, on the design
20 of the project. Our work with the ANC with input from
21 various neighbors and neighborhood groups in HPO which
22 resulted in a revised design and, to be quite honest with
23 you, a much better design as a result of that, received
24 support of the ANC and unanimous concept approval from the
25 HPRB earlier this summer.

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1 So before I turn it over to Kevin (audio
2 interference) to walk through the more technical aspects of
3 the application, I wanted to take a minute to touch on our
4 community outreach and really express our thanks to the ANC
5 3C for all the time that they spent with us on this project.
6 The project has really been a collaborative effort, and I do
7 greatly appreciate the ANC's effort to work with us to come
8 to an agreement on how we can make sure that the project
9 works within the neighborhood.

10 As a result of that work and back and forth and
11 coming to an agreement on both loading and parking conditions
12 detailed in the ANC's resolution, which is in support. We
13 are invested in being good neighbors to the Cleveland Park
14 community with this project. We see the conditions as an
15 opportunity to ensure that the project does not have a
16 negative impact on the neighborhood. And Erwin will also
17 detail these conditions further. But I wanted to express to
18 the Board my commitment to those conditions.

19 I also wanted to express my thanks to, you know,
20 the immense amount of support in the community for this
21 project, including those letters that have been submitted to
22 you for the record and those that are here today to testify.
23 Of course, I know that there are neighbors who oppose the
24 development and are concerned about the parking and loading,
25 and it's very hard to kind of prove a negative, but I believe

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1 that the diligent work that we have done with the ANC,
2 agreement to all of these proposed conditions, the amount of
3 support that we have here today, not only illustrates our
4 commitment in the community but also ensures that the
5 concerns can be mitigated, and we will have a successful
6 way forward for this project.

7 So with that, I'll turn it over to Kevin Sperry
8 of KASA Architects, walk through the project plans and the
9 site constraints. Thank you very much.

10 BZA CHAIR HILL: Mr. Hart, you had a question?

11 VICE CHAIR HART: Yeah. It's actually not a
12 question. It's something that we need -- that we had not
13 done. I guess there was a preliminary matter regarding the
14 expert in architecture, the witness. That's Mr. Kevin
15 Sperry.

16 I've looked over his resume. I didn't have any
17 issues with it, but I wanted to make sure that we, you know,
18 made sure that we looked at it and then agreed that he could
19 be included in the expert book.

20 BZA CHAIR HILL: Okay, thank you, Mr. Hart.

21 Does the Board Members have any issues with the
22 expert witness? If so, please raise your hand. I do not see
23 that. Okay. Thank you, Mr. Hart. I will concur.

24 Ms. Prince, I don't know where Mr. Kang was going
25 or who was up next. Are you guys moving the slide deck? I

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1 mean, I have the slide deck up so I'm playing with it myself.
2 But I mean are you guys going -- are you going through the
3 slides at some point?

4 MS. PRINCE: We are. Our next witness will go
5 through the slides.

6 BZA CHAIR HILL: Okay. All right. Thank you, Mr.
7 Kang. Who is next?

8 MR. SPERRY: Hi. This is Kevin Sperry with KASA
9 Architects. Thank you, Mr. Hill and Board, and thank you,
10 Phil, for the introduction and, of course, Allison.

11 I'll try and go quickly. I noticed we have 12
12 minutes left so that Erwin can continue with his
13 presentation. But I'd like to just go through a short
14 presentation regarding the architecture of the project and
15 some of the massing and details specifically regarding
16 parking.

17 So if we can advance the slide to the next image,
18 please. Thank you.

19 So here's basically two aerial shots of the site.
20 Obviously, we have our site outlined in yellow. The large
21 street immediately to the east is Connecticut Avenue, and you
22 can see that the Metro Station is one block to the north,
23 about 600 feet to the north, the Cleveland Park Metro
24 Station.

25 Next slide, please.

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1 So this is an existing and proposed view.
2 Obviously the proposed rendering is located on the left of
3 the slide. And we are proposing two essentially new
4 structures to co-exist within the existing two structures of
5 the project.

6 On the right side of the slide you'll introduce
7 you with the Macklin building, the 17-unit apartment building
8 in the middle of the site. To its north you can see the --
9 what we call 3412 Connecticut Avenue, the single-story retail
10 building which was recently renovated by Mr. Kang. And then
11 to its south you can see an existing asphalt parking lot
12 which is private parking specifically for the retail.
13 Leading to that parking lot, of course, is a curb cut which
14 we plan to close, and then you can see on the left the
15 proposed project.

16 So in place of the parking lot we're planning a
17 mixed use retail and residential townhome building which the
18 retail will front onto the new public plaza and four
19 residential three-story townhomes will front onto Newark
20 Street with all of their front doors being to the south on
21 Newark Street, as you can see in the image. And then to
22 left, to the west of the existing Macklin building we have
23 proposed a new 31-unit, four-story apartment building. This
24 will be a very high quality building, two subterranean levels
25 which actually do not go into the grade more than necessary.

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1 There is an existing sort of slope that goes down. The
2 Macklin has two subterranean levels, and we're simply
3 connecting to it. It will be a completely cast in place
4 concrete building as of right now, so we're really excited
5 about both of these building and how they can coexist with
6 the Macklin.

7 The design of them clearly as mentioned before
8 went through a very rigorous process with HPRB. We've been
9 working with them I would say for about a year now. We've
10 had multiple meetings with staff and multiple reviews with
11 the Board. We're very excited with how that process has
12 turned out with full support from HPRB.

13 Next slide, please.

14 Here you can kind of get a better idea of the new
15 pedestrian plaza. It's located on Connecticut Street. One
16 of those green strips in front is currently the drive lane,
17 the curb cut that connects to Connecticut street. So we're
18 envisioning really beautiful retail store fronts that open
19 up to the pedestrian plaza which, you know, gives Cleveland
20 Park some place to go which really you don't see in Cleveland
21 Park right now. It's really hard to find some place like
22 this throughout any city. So we're really excited about the
23 opportunity to provide a public space which could have really
24 nice curated retail and really be a boost to the retail of
25 Connecticut Avenue.

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1 Please next slide.

2 Here is just a closer-up view which is the same
3 images that was on the first page of the slide. So you guys
4 have seen this one already. But it kind of gives you the
5 sense of what the new corner of Newark Street and Connecticut
6 Avenue will look like.

7 Next slide, please. Great, thank you.

8 So this is the plan for the project. I'll just
9 orient everybody. The west side of the site on the northwest
10 corner there is a public alley which is located there.
11 That's roughly 26 feet higher than the plaza level. So
12 Newark Street kind of rises as it goes to the west. And
13 that's what kind of gives us our topography and some of the
14 physical challenges in locating parking within the site. But
15 it also gives an opportunity to connect to that alleyway
16 which we're very excited to take advantage of.

17 The alley as I mentioned is also --- it's also six
18 feet higher than the Newark Street facade so it kind of rises
19 from the southeast corner up to the northwest corner.

20 We are, as I mentioned, providing two loading
21 areas. One in the northwest corner directly against that
22 public alley. The other, as Allison mentioned, is spaced
23 along Connecticut Avenue along the curb which is a new 30-
24 foot space which used to be the 30-foot curb cut. So by
25 closing that curb cut which was an access to a private

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1 parking lot, we're able to provide a loading area which will
2 be able to serve all of the retail and the townhome building
3 as well as, frankly, the retail north of our project as well.
4 So we think it's a very useful addition to Connecticut
5 Avenue.

6 And as I mentioned the other loading area is at
7 the alley. It's a 24-foot deep loading area. That was
8 recently extended from 18 feet, so we're really trying to
9 provide a good alternative for the apartment building whether
10 it's a service vehicle or a move-in vehicle so that all the
11 loading can be handled off the alley as opposed to Newark
12 Street.

13 Next slide, please.

14 And here's a quick section where you can kind of
15 understand the topography of the site. We're looking to the
16 north. The existing Macklin building is the structure in the
17 middle. The townhome and retail building is the structure
18 on the right side of this image. And you can see that we're
19 providing a slab on grade retail building here at essentially
20 the same elevation as the existing parking level.

21 To the left of the Macklin building you can see
22 our new apartment building. It's got the lobby level and
23 then three elevated residential levels above that. And the
24 kind of -- the very soft angled dash line is the line of
25 Newark Street which is roughly, I would say, about 30 feet

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1 in front of all of these buildings. And then to the left you
2 can see the more acute sharper angle which is the existing
3 grade at which the apartment building is being located on.

4 So you can see a very, very small amount of
5 excavation. We do have rock on our site, so what we're
6 trying to do is touch that site very lightly and minimize the
7 amount of excavation, and that is a key component to our
8 parking request.

9 Next slide, please.

10 This is the last slide of the architectural
11 presentation. And this kind of just goes into some of the
12 difficulty to provide parking on the site. We did try very
13 hard to study adding parking to the site and we, you know,
14 we have shown these two sort of options for providing
15 parking, neither of which are feasible. So I'll start on the
16 right side. The townhome building is located on the right,
17 and you can see it in the dash line. This gray area is
18 representing a subterranean level if it were to be
19 constructed. As mentioned before parking on site is actually
20 against regulations now so we couldn't do that. So what we
21 would need to do is go down and park below grade. But to get
22 below grade you would need roughly between 85 and 100 feet
23 of ramp dimension, and we just literally don't have that.
24 We have 45 feet before you have to start to turn and then
25 before you hit to the Macklin building as it exists. So we

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1 just don't have enough ramping area to go down.

2 Not to mention the fact that if you did have a
3 ramp there, it would entirely take up the pedestrian plaza.
4 So we do not want to do that. We really think the plaza is
5 one of the key components to the project and a real benefit
6 to the entire neighborhood.

7 Then to the left you can see we have the apartment
8 building and I have a couple of, you know, we looked at a
9 couple of ways to put parking in there. One was below grade,
10 which I mentioned before, is really infeasible because of the
11 rock as well as the dimensions. You would need the ramp, the
12 drive lane, and the parking spaces to get below grade, and
13 we just don't have that width between the Macklin building
14 and the edge of the site.

15 Then we tried to look at parking on grade, and
16 what that does is it provides a curb cut from Newark Street
17 which we didn't want. On-grade parking is not desired from
18 a residential standpoint, and then also obviously it was just
19 remove one level of parking from --- or, sorry, one level of
20 residential units from the project which really makes it hard
21 and would also relocate the stairs and elevators to the side.

22 Similar reasons why an elevated second level which
23 as I showed in the section access from the alleyway would be
24 difficult. Just the sheer necessity of having the spaces,
25 the drive lane, and then also relocating the stair and

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1 elevator is really difficult and challenging, and it would,
2 again, remove one full level of units which would be nine
3 units from the project.

4 So I've gone already too long. I'll turn it over
5 to Erwin Anders and just thank everybody for their time this
6 morning.

7 MR. ANDRES: Great. Thanks, Kevin. Good morning.
8 Again, Chairman Hill, Members of the Board. Erwin Andres
9 with Gorove Slade Associates.

10 A few of these slides you've seen presented from
11 some of my counterparts, so I'll go through these relatively
12 quickly. What is shown is the current site and the aerial
13 and the current conditions.

14 Next slide.

15 With respect to the transportation
16 characteristics, the things I want to highlight is obviously
17 the very good transit access that the site has with Cleveland
18 Park Metrorail Station a three-minute walk away as well as
19 the bike facilities right in front of the site and the
20 Metrobus access up and down Connecticut Avenue.

21 We are planning to implement the Transportation
22 Demand Management plan that DDOT supports as well as the
23 loading management plan that DDOT supports which is
24 supplemented with the conditions identified by the ANC.

25 Next slide.

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1 In our coordination with DDOT I think what was
2 critical was the identification of eliminating the curb cut
3 on Connecticut Avenue as Kevin had identified. You know,
4 this loading area will have benefits for the site as well as
5 for the community as identified in the conditions for the
6 ANC. That loading area actually will also help support Ubers
7 and car-share drop-offs as well as the farmer's market
8 loading activities that takes place on the weekend.

9 Next slide.

10 In coordinating with DDOT, this is just a summary
11 of the program, so next slide.

12 In coordinating with DDOT it was important that
13 we identified a Transportation Demand Management program that
14 was appropriate for the site.

15 Next slide, please.

16 And the TDM elements that are shown on the screen
17 are actually consistent with many of the elements that this
18 Board has seen and approved as part of some of the other
19 projects that we've worked on that required parking relief.
20 And in this case given that it's a special exception, we
21 understand that the fact that the parking is located in the
22 front yard is actually a unique issue. You know, there
23 aren't a lot of parking in the front yard along Connecticut
24 Avenue. Actually, if you look at an aerial there's no
25 parking in the front yard between the site and essentially

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1 south to the Potomac River. So the fact that we will not
2 have access to that with the redevelopment of the site it's
3 a significant issue.

4 We are committed to all of these TDM elements.

5 Next slide.

6 And as a function of -- Phil being -- I only have
7 two more slides, so I'll get through this quickly. As a
8 condition of DDOT's approval, we are committed to
9 implementing a loading management plan. Phil has identified
10 that he is committed to this as a good neighbor considering
11 that we don't have loading relief but we are committing to
12 these loading elements, most of which are associated with how
13 we manage the available alley loading area and the
14 Connecticut Avenue area.

15 Next slide.

16 In DDOT's review they've identified the
17 implementation of both the TDM and the loading management
18 plan, which we do agree with and are committed to implement.
19 But in addition to these -- next slide.

20 In coordination with the ANC we are actually
21 looking to implement additional conditions regarding parking
22 and loading and trash. The loading and trash conditions are
23 pretty extensive and are identified in the ANC resolution.
24 I can go into them in more detail if the Board likes, but
25 these are for your reference.

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1 So with that, I'm available for questions.

2 BZA CHAIR HILL: Okay. Thank you, Mr. Andres.

3 Ms. Prince, is that it?

4 MS. PRINCE: That completes our direct testimony.

5 BZA CHAIR HILL: Okay. Great. All right.

6 Mr. Young, if you could pull that back off for me,
7 if you would, thank you. Okay.

8 Let's see. So I have this up. I'll go ahead and
9 start going around the Board in terms of questions that they
10 have. Chairman Hood, I'll start with you if that's all
11 right?

12 ZC CHAIR HOOD: I'm not used to that. Okay. I'll
13 go right ahead.

14 Mr. Kang, let me see if I can find you on my --
15 I like looking at you. How are you, Mr. Kang? I have a
16 question for you. You say you live in the building now?

17 MR. KANG: Oh, no. I lived in the building when
18 we first acquired it so that I could get a better sense of
19 what's in the neighborhood, what works in the neighborhood
20 kind of like the rhythm, you know. How many people are on
21 a Thursday evening? How many people are, you know, Sunday
22 morning at 8:00? And this is, you know, I actually moved
23 from overseas, and this was kind of like our first house,
24 first home.

25 ZC CHAIR HOOD: Okay. So let me ask you. Where

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1 did you park at?

2 MR. KANG: I actually parked for a short time in
3 the parking lot at 3400 Connecticut Avenue. But later on,
4 you now, we really didn't use the car a lot because we just
5 kind of stayed in the neighborhood to be quite honest with
6 you.

7 ZC CHAIR HOOD: Okay. So I see you have agreed
8 with, and I have some other questions about this. I see you
9 have agreed with putting the car, no cars in the leases. Did
10 I get that correct?

11 MR. KANG: That's correct.

12 ZC CHAIR HOOD: So, basically, if I want to move
13 in, I cannot own a car.

14 MR. KANG: Well, I mean --

15 ZC CHAIR HOOD: I can own a car, but I can't have
16 a car in my possession. Tell me how you envision that
17 working.

18 MR. KANG: So you would -- for the RPP application
19 you wouldn't be, as a condition of the lease, you wouldn't
20 be able to (audio interference) in that section -- I forgot
21 what the exact section is.

22 ZC CHAIR HOOD: So, Mr. Kang, I was hoping you
23 would mentioned RPP at least. I was hoping those were
24 separate because I -- believe me, RPP is not one of my most
25 favorable things. I think we put people on promised land

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1 (audio interference) because I really appreciate all the work
2 that you've done. I don't take the endorsement or the
3 approval of the ANC lightly, especially under Chairman
4 MacWood because I know they're very involved and I know that
5 you had to do a lot, and they usually have that stick-to-
6 itiveness, is a word I like to use, in making you do it
7 right. So for me that gives me a comfort level, but I also
8 want to make sure we do our due diligence for impacts on the
9 neighborhood, especially for the park.

10 You know, I understand, I think someone said
11 you're double-dipping. Maybe -- this may be for Ms. Prince.
12 You already got in the beginning 50 percent and now you're
13 asking for zero. So can you help me understand that? How
14 do you feel about that? Is that --- do you feel like you're
15 double-dipping?

16 MR. KANG: I don't understand what it means to be
17 double-dipping. But what I can tell you from just my
18 experience since we owned it is that, and I'm a very strong
19 believer in market theory, meaning, you know, if there's a
20 building that provides parking it will attract people that
21 require it. If there is a building that parking is difficult
22 or will not be allowed, it will also attract people that fill
23 that requirement. And if you do have a car and you actually
24 need it, then your tendency will be to just probably not go
25 there. And that's proven in terms of the existing tenants

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1 which are now 100 percent. And I did a survey, now it's part
2 of our current application to live at the Macklin. They need
3 to give us their car make, model, license tag so that we can
4 kind of track that.

5 Right now of the 17 tenants, only one has a car
6 that they've registered with us and have admitted to. So as
7 a result of that, that gives me confidence in moving forward
8 with the rest of it, and I think, you know, there are plenty
9 of apartment that are in the immediate area in Cleveland Park
10 that do provide parking. And for an applicant that wants to
11 live there, you know, if it makes it difficult then they'll
12 probably move somewhere else. And I understand that. And
13 that's a risk that I'm willing to take. And I think, you
14 know, again it's, if you need parking probably you will end
15 up applying somewhere else. But if you don't need parking
16 and parking is not primary, then you probably, you know, then
17 our development is a good site for someone like that.

18 ZC CHAIR HOOD: Okay. I don't have any other
19 questions, Mr. Chairman.

20 MR. KANG: I hope that answers your question. I
21 didn't really understand the part of double-dipping, so.

22 ZC CHAIR HOOD: Well, when I read it, I didn't
23 present it. I read it, so I wanted to present the question
24 to you. I'm sure somebody may mention it. But I do say
25 that, you know, I'm always concerned because I know there's

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1 another building. I have other questions for DDOT, something
2 with public buildings that I know the Commission we did
3 something like this. And I never really always hear what the
4 outcomes are. What are people actually --- I hear what we
5 think like in this case what we think the outcome is going
6 to be.

7 MR. KANG: Yeah, no, I agree.

8 ZC CHAIR HOOD: After it's put in practice, I
9 don't ever hear about it unless I'm asking. I may have heard
10 about this other one that I'm thinking about. I just don't
11 recall. But, again, Mr. Kang, I will say I don't take that
12 ANC endorsed it lightly at all. Trust me.

13 MR. KANG: I appreciate it.

14 ZC CHAIR HOOD: Okay. Thank you, Mr. Chairman.

15 BZA CHAIR HILL: Okay. Great. Thank you.

16 Mr. Hart?

17 VICE CHAIR HART: So following up on Zoning
18 Commission Chair Hood's question. Mr. Kang, the double-
19 dipping is really just in reference to as part of the --- you
20 get a 50 percent reduction in parking because of your
21 proximity to (audio interference) and so you're asking now
22 for another 50 percent or basically 100 percent relief from
23 all parking. And so what Chairman Hood was talking about was
24 that you get one because of the, you know, proximity to the
25 Cleveland Park Metro, and then you're requesting this other.

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1 So I don't know if Mr. Andres or Ms. Prince can respond to
2 that. That would be helpful. And if you want to respond to
3 it, that's fine, too, Mr. Kang. I just wanted to make sure
4 we --

5 (Simultaneous speaking.)

6 MR. KANG: I can kind of put that in reference and
7 frame it more correctly. My objective in this is to not gain
8 some type of advantage in terms of asking for full parking
9 relief. It's just that, you know, from -- to build a
10 building in today's environment in D.C. when you're trying
11 to satisfy so many objectives and regulations and keeping as
12 many people as happy as possible, this project can't go
13 forward by instituting parking for many reasons. One from
14 a physical layout perspective architecturally, from a
15 financial perspective because to include parking where it
16 isn't physically possible would actually eliminate kind of
17 revenue producing units that actually make it a feasible
18 project, right?

19 So, you know, the intent wasn't to kind of quote,
20 unquote, double-dip, or take advantage of any type of relief
21 that was already given just because of its geographic
22 location close to Metro. The real objective is just to make
23 the best project possible. It can't include parking. I
24 believe that, you know, qualitatively, the project itself
25 more than compensates for parking. I think, you know, the

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1 giving back of a public plaza from what is currently an
2 underutilized surface parking lot where, you know, the public
3 really couldn't enjoy it anyways because you had to be a
4 customer for the residential and, you know, the residential
5 is very weak right now. And so as a result of that, you
6 know, you couldn't use it as a just a public parking lot.

7 So I think, you know, the utility of kind of
8 resurface parking lot, you know, in the larger scheme of
9 things is much more beneficial. We're not looking to double-
10 dip or take advantage of any kind of regulations. It just
11 happened to be when we were designing and massing this
12 project, you know, that became the conclusion that we had to
13 go for. So that's why we needed the (audio interference) the
14 Board to ask for that waiver. I hope that kind of gives you
15 a bit more (audio interference).

16 VICE CHAIR HART: Yeah, I understand that. I
17 think that that's helpful to hear. But I'll hear from Mr.
18 Andres in one second.

19 Another kind of follow-up question to that is, and
20 actually this is probably for Mr. Andres. In terms of ---
21 in some projects we've had applicants come before us, and I
22 know that one of the things that you said was -- actually I'm
23 not sure if it was you or Mr. Sperry brought it up, about the
24 inability just architecturally to have a ramp that would
25 provide that access. In some cases we've had applicants

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1 really look at having some sort of, I guess lack of a better
2 term, elevator, but it would be a, you know, a lift to allow
3 -- to reduce the need to have a ramp, but you would allow the
4 opportunity to be able to have the cars move up and down, you
5 know, maybe just a level, but that would allow that access
6 to a below-grade parking, and partially because you all have
7 a grade that may be amenable to that. And I don't know
8 exactly if that's true, to park underneath the new
9 residential building to the west. But if you talk about that
10 possibility, and, again, I don't know if it's an elevator or
11 lift or whatever you want to call it. But I understand that
12 there's an expense to that but, you know, I'm just trying to
13 understand this a little bit better to see if you all
14 actually looked at that as well.

15 So I'll leave it there, and I know there was a lot
16 of questions in there, Mr. Andres. I appreciate your time.

17 MR. ANDRES: Sure, and I appreciate the question,
18 Commissioner Hart. With respect to the feasibility of that
19 system, I'm going to leave that to Kevin to be able to
20 answer. He's more in tune to the site conditions, especially
21 some of the rock conditions that the site is currently
22 burdened with.

23 But with respect to some of the other questions
24 that were brought up, you know, I'd just like to emphasize
25 that Mr. Kang is right. You know, with respect to the

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1 market, if you're looking as a condition, and Mr. Hood will
2 appreciate this, you know, I brought this up in front of him
3 last week for a building that didn't have any parking.

4 And the issue is that if somebody has a dog, and
5 they want to move into a dog-friendly apartment building they
6 will look for a building that accepts dogs because the dog,
7 you know, will hopefully be an important part of that
8 person's lifestyle. The same with a car, and it's been our
9 experience that people who have cars, you know, look for
10 situations where, you know, there is parking available if the
11 car is important to them.

12 And that's for two reasons. One of it is a
13 financial issue. You know, given the costs of living in the
14 District, keeping a car in D.C. is an expensive proposition
15 because you're paying for insurance. You're paying for all
16 the costs associated with owning a car. What we've seen are
17 renters who are looking to get rid of the car because they'd
18 rather pay more in rent to be able to live in favorable
19 neighborhoods. And so in that instance, you know, in fact,
20 that parking isn't free is also a condition to why people
21 choose to live in buildings without a car. And you'll see
22 that in neighborhoods not only here but in all the other
23 neighborhoods where we work and where parking is an issue.

24 And case in point is that if you do have a car,
25 if you go on apartments.com right now, in Cleveland Park

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1 there are 332 apartments that are available with parking.
2 So the options --- there are options for residents who do
3 have a car that want to look at other properties in and
4 around Cleveland Park. So the opportunity is there, and the
5 options are there. So, you know, I just wanted to make that
6 point very clear.

7 VICE CHAIR HART: Yeah, and I appreciate that.
8 I think that the use of Metro is most definitely a benefit
9 in many parts of the city. In the current climate that we're
10 in, it's somewhat problematic. I don't see that as
11 necessarily being a permanent situation, in that people are
12 not necessarily wanting to get on Metro to use it because of
13 the issue of proximity and all that during this time of the
14 pandemic. But I'm not going to get into all of that. I just
15 wanted to -- I appreciate your response.

16 And if Mr. Sperry, if you could just talk a little
17 bit about the conditions of the site and whether or not you
18 all looked at having a lift or, you know, what's the, you
19 know, there has to be a point that that makes sense or does
20 not make sense, and I'd just like to hear your viewpoint on
21 that. Thanks.

22 MR. SPERRY: Great. Yeah. I'd love to go into
23 this. I actually am a huge proponent of parking elevators,
24 and I wish I saw them more within the District of Columbia
25 and frankly America. I spend a lot of time in Asia actually,

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1 and it is very popular to have those in Asia, particularly
2 mainly I think because there is a critical mass of use and
3 people are not afraid to use them on a general level.

4 So one of the reasons why I've actually pushed a
5 number of my projects to try and use them, but at the end of
6 the day there is a strong consensus that people who do not
7 interact with these elevators every day will not want to use
8 them. They will become a little bit fearful. So on a mixed
9 use project which has a retail component, this is a big
10 problem because you can get somebody from, you know, Silver
11 Spring coming in who has never used an elevator before. This
12 is their first time, and they're just going to go somewhere
13 else. So that a problem.

14 On the east side of the site where the retail is
15 located, that's kind of the location that I was talking about
16 the ramp and its length, and that's where you would use it,
17 but that's where the retail is. So that's --- on top of the
18 fact that you're over a Metro tunnel, and we don't want to
19 go down and interrupt the sort of cone of significance for
20 the Metro.

21 On the west side of the project theoretically that
22 is a possible solution because there is no retail there.
23 It's a residential building. The problem on the west side
24 is again the rock, and we've looked at scoping of where the
25 rock lies, and frankly it's all over the place. In some

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1 areas it's just a few feet below grade, in other areas it's
2 10 feet below grade. On the whole though to get an elevator
3 and a subterranean level at all you would have to excavate
4 a large amount of rock. And with these homes on the
5 residential street we're really trying not to excavate at
6 all. One more addition to that is when you do have an
7 elevator the excavation becomes actually even greater because
8 any elevator would need to have an elevator pit and, you
9 know, sort of machinery functioning. So it exacerbates the
10 excavation requirement. And then finally it's just like you
11 mentioned. It's cost. At the end of the day, I've tried to
12 push other developers to do car elevators and, you know,
13 frankly it's not like, you know, photovoltaic cells where
14 these things are coming down very quickly. They're still
15 really expensive, particularly, like I mentioned before, again,
16 it's basically because not a lot of people use them.

17 So in this country the cost is a factor with every
18 decision.

19 VICE CHAIR HART: I appreciate that. No further
20 questions.

21 BZA CHAIR HILL: Okay. Ms. John?

22 MEMBER JOHN: Thank you, Mr. Chairman.

23 A couple of questions. And I'm not sure who would
24 field this. There's been a lot of discussion about
25 affordability, and I wanted to have some clarification on

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1 what that means in this market.

2 BZA CHAIR HILL: Ms. Prince, is maybe that helpful
3 for you? Your microphone is muted, Ms. Prince.

4 MS. PRINCE: I can address that, also Mr. Kang can
5 or the architect, but there are six affordable units in the
6 project. They will all be rental units. For that reason
7 they are at the 60 percent area median income level. The
8 total amount of affordable square footage in the project is
9 about 5,000 square feet, and that's the affordability
10 component under IZ. As I mentioned, the project, while it
11 qualified for an IZ bonus, we do not have the ability to
12 effectuate that full bonus. So the project is entitled to
13 a 2.4 FAR, and we are only at a 1.99.

14 MEMBER JOHN: Thank you very much. And the next
15 question was I guess for Mr. Andres. Where would the offsite
16 parking locations be potentially? Have you identified any
17 buildings, are there any existing agreements, or letter of
18 intent, or anything like that?

19 MR. ANDRES: So to answer the last question first,
20 Commissioner John, so we have no formal agreements in place.
21 Typically when we've worked with other developers on
22 properties, the vacancies aren't known approximately two
23 years from now when this project is probably going to
24 deliver. So those actual agreements can't take place until
25 it's closer to the delivery of the building.

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1 With that being said, there are some lots in the
2 area that -- we have a relationship with Colonial Parking
3 that manages some offsite facilities in the neighborhood and
4 we've spoken to them. In order for them to be able to lease
5 to us, they have to speak to the actual owners of those
6 properties, and we've begun discussions with that. So, you
7 know, unfortunately, right now we haven't secured anything
8 or have obtained any letters of intent. But obviously, we
9 will make a good faith effort to do so considering the ANC's
10 resolution.

11 MEMBER JOHN: Okay, thanks. And can you put up
12 a slide that clearly shows the alley so I can better
13 understand how the loading will take place?

14 MR. ANDRES: Yes.

15 MEMBER JOHN: I couldn't see that in the drawings,
16 and I don't know how I missed it, but I did.

17 MR. ANDRES: Yeah, I'll -- if you can pull up
18 probably the slides -- it is slide number six. Yes. So if
19 you're looking at the screen, Commissioner John, in the upper
20 left-hand corner is -- you can see a -- in the upper
21 left-hand corner of the property, you can see a concrete pad,
22 and that pad is 24 feet in length. And that ties into the
23 alley.

24 There's an existing alley that connects to Ordway
25 Street which is the street parallel to Newark Street to the

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1 north. And that alley also serves the back of the Uptown
2 Theatre and some apartments as well as some of the other
3 businesses that front on Connecticut Avenue. That alley is
4 used for trash and parking. So in that instance, we would
5 just piggyback on the trash collection for the trash that's
6 being served from the alley. And so that loading will be
7 available for move ins, move outs for the apartment building
8 as well as the move ins and move outs for the existing
9 Macklin Building.

10 MR. SPERRY: Erwin.

11 MEMBER JOHN: Okay.

12 MR. ANDRES: Yes.

13 MR. SPERRY: Sorry to interrupt, this is Kevin
14 Sperry. If you go to slide number two where you can see the
15 existing three dimensional aerials of the property.

16 MR. ANDRES: Okay.

17 MR. SPERRY: The alley -- there we go. On the
18 right image you can see the alley to the right of the yellow
19 outline which sits behind that row of commercial properties
20 along Connecticut Avenue. It is actually a triangular sort
21 of looping alley where you come in on the north side, come
22 down, it makes a right turn, another right turn, and then
23 back out. You can see that in both of these images, but I
24 think it's a little bit clearer on the one on the right.

25 MEMBER JOHN: Okay, thank you. No other

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1 questions, Mr. Chairman.

2 BZA CHAIR HILL: Okay, Thank you, Ms. John. Mr.
3 Young, thank you. Let's see, Mr. Rosenman, do you have any
4 questions of the applicant?

5 MS. ANDERSON: Mr. Hill, I'm going to -- this is
6 Jennifer Anderson, I'm going to ask the questions if that's
7 acceptable.

8 BZA CHAIR HILL: Sure. Yeah, that's -- okay, go
9 ahead, Ms. Anderson.

10 MS. ANDERSON: All right, thank you. So, Mr.
11 Kang, you said that -- a premise of your presentation is that
12 parking is not feasible for the location, is that correct?

13 MR. KANG: That is correct.

14 MS. ANDERSON: All right. And you have met with
15 the ANC a number of times and talked about the presentation,
16 or about the parking situation, isn't that correct?

17 MR. KANG: That's not only correct, but I, you
18 know, when we first presented the development in I think
19 October last year, it was always representatives hanging up
20 on me --

21 MS. ANDERSON: All right.

22 MR. KANG: -- before they reviewed.

23 MS. ANDERSON: However, in the meeting this year,
24 you were specifically asked about parking and the problems
25 with parking at the ANC, were you not?

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1 MR. KANG: I was.

2 MS. ANDERSON: And you deferred it to, well,
3 really that's for a later day before the BZA, correct?

4 MR. KANG: I don't think I'd characterize like
5 that. No, I would disagree.

6 MS. ANDERSON: All right, how would you
7 characterize it?

8 MR. KANG: Parking is --

9 (Simultaneous speaking)

10 BZA CHAIR HILL: Ms. Anderson?

11 MS. ANDERSON: Yes.

12 BZA CHAIR HILL: I just want to ask one thing, in
13 terms of like the questions and what you guys are doing. So
14 really you're kind of asking questions of the testimony that
15 was given. I don't mind how this is going down, I'm just
16 trying to clarify, like I don't know what Mr. Kang is really
17 talking about. Ms. Prince, if you could mute your
18 microphone. Thank you. That's all right. And, again,
19 you're asking questions of the testimony that was given, and
20 so I don't remember Mr. Kang talking about the ANC meeting
21 or whether he -- I'm just trying to -- I'm not stopping you
22 from your questions, I'm just pointing out like it's really
23 just about the testimony. So --

24 MS. ANDERSON: So I -- I'm sorry, I didn't mean
25 to cut you off.

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1 BZA CHAIR HILL: That's all right.

2 MS. ANDERSON: So I recognize that limit, and I
3 would stick to that except I do think goes to credibility,
4 and I think credibility is always going to be relevant in
5 your assessment of the testimony and the feasibility of this
6 project.

7 BZA CHAIR HILL: Okay. So I don't -- and this is
8 actually -- when we're usually face to face, it's easier to
9 kind of gauge everyone. And so I guess I'm always cautious
10 when people are kind of talking about -- you're using the
11 world credibility, so I don't know if that's going to
12 eventually lead to character or, you know, these type of
13 things. And so, you know, I'm just kind of -- we're here to
14 look at zoning issues and zoning questions. I'm going to
15 continue, I'm not trying to stop you.

16 MS. ANDERSON: Okay.

17 BZA CHAIR HILL: I'm just letting you know that
18 what I'm trying to listen for is whatever the testimony was
19 given. And it might be in the records somewhere that you're
20 asking towards. But whatever the testimony was given and how
21 that relates to the zoning criteria. But please go ahead and
22 continue, I'm just kind of pointing that out.

23 MS. ANDERSON: All right. So at the ANC meeting
24 when you were asked about parking, you did tell the ANC that
25 you would provide parking if it was required, did you not?

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1 MR. KANG: Let me clarify about that because there
2 is a lot of misunderstanding in the last ANC meeting. A lot
3 of people have said that I would provide parking if needed.
4 If we were able to -- if we were required by the BZA to
5 require parking, we would find an alternative. But as you
6 heard today, the way the development is maxed out and
7 forecasted and projected and designed, we cannot provide
8 parking.

9 So when I say that we're going to providing
10 parking, it would be at an offsite spot. I wouldn't be able
11 to build parking. So I think that was very big
12 misunderstanding with a lot of people that were opposing at
13 the ANC. But that is what I meant, and that is what's agreed
14 to do with the ANC and it's in the resolution. And so that
15 still stays the same. So I have not changed my -- I've not
16 changed my resolve, I've not changed in terms of how we would
17 approach this in the event that we were not able to make a
18 distinction.

19 MS. ANDERSON: Well, it's pretty fair to say that
20 you did not make that distinction at the ANC hearing,
21 correct?

22 MR. KANG: No, no, that was always the
23 distinction.

24 BZA CHAIR HILL: And this is -- again, I just want
25 to point out. I guess, Ms. Anderson, the problem that I'm

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1 having, I wasn't at the ANC meeting.

2 MS. ANDERSON: I'm sorry.

3 BZA CHAIR HILL: And so we haven't had testimony
4 about the ANC meeting. We're just talking about things in
5 the record. So I would like you to move on from the ANC
6 meeting.

7 MS. ANDERSON: All right. Now you've testified
8 that currently only one person in the building has a car, is
9 that correct?

10 MR. KANG: According to our survey questionnaire
11 and what's on our leasing applications, that's correct.

12 MS. ANDERSON: All right. And you were asked --
13 so this gets back a little bit to that, but you were asked
14 to determine how many people in the building in the cars
15 because you initially were not able to answer that question,
16 correct?

17 MR. KANG: That's correct.

18 MS. ANDERSON: And you or your representatives
19 made two different FOIA requests to determine from the city
20 who had residential parking spots, correct?

21 MR. KANG: That's correct.

22 MS. ANDERSON: And you were not able -- they
23 basically said that's private information, so you were not
24 -- you're not -- you will not have access.

25 MR. KANG: I didn't say that was private

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1 information.

2 MS. ANDERSON: No, no. Sorry. In response to the
3 FOIA request, right?

4 MR. KANG: Yeah. That was -- again, the city said
5 that was private, that's not me.

6 MS. ANDERSON: All right. And then your
7 representatives reached out to DDOT and DDOT told you
8 specifically that they do not enforce the residential parking
9 restriction, correct?

10 MR. KANG: That was DDOT's response.

11 MS. ANDERSON: All right. Now you base on your
12 testimony on that only person in this current building has
13 a car based upon a survey. When did you do that survey?

14 MR. KANG: Three weeks ago.

15 MS. ANDERSON: And how did you conduct that
16 survey?

17 MR. KANG: Emailed every tenant and asked them to
18 basically provide car information. I've also told our
19 leasing agent to include car information as a requirement of
20 the application.

21 MS. ANDERSON: All right, but you have not done
22 that up to date, correct, prior to now?

23 MR. KANG: Up until three weeks ago, no. But as
24 of three weeks ago, we have all the car information for the
25 Macklin which I think is relevant.

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1 MS. ANDERSON: And so in response to the request,
2 you got one person back to say they had a car?

3 MR. KANG: I will correct you. I had 17
4 responses, 100 percent response rate with one confirmation
5 of a car.

6 MS. ANDERSON: Now would you be surprised to learn
7 that in fact there's at least seven people in your building
8 that have cars, that we, the neighbors, see constantly and
9 know them to be tenants?

10 MR. KANG: I would ask -- I mean I don't know how
11 to respond to that. I mean that's -- what I have available
12 is what I've given. I'm happy to give to the board or anyone
13 that want it, so.

14 MS. ANDERSON: All right. So if my information
15 is correct, that would indicate that your system for keeping
16 track of that is somewhat flawed, fair to say?

17 BZA CHAIR HILL: Ms. Anderson, Ms. Anderson.

18 MS. ANDERSON: Yes.

19 BZA CHAIR HILL: Are you somehow providing
20 testimony and that there's something that you are saying that
21 there are -- and I don't necessarily know if this is speaking
22 to the regulation. I'm just saying you're somehow providing
23 something, that's you're saying that there's seven additional
24 people that have cars in that building?

25 MS. ANDERSON: We anticipate putting evidence from

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1 other people in the neighborhood who are familiar with the
2 tenants in the Macklin, and who they park on our street, and
3 so we're going to --

4 (Simultaneous speaking)

5 BZA CHAIR HILL: But there's nothing in the record
6 right now, correct?

7 MS. ANDERSON: Right. But is that how that would
8 normally work? Normally you would ask the question of Mr.
9 Kang and then come back with your own evidence about the --
10 I mean he's testified about that there's only person. So --

11 BZA CHAIR HILL: I'm just trying to understand
12 where your -- and we can talk about this later. But I'm just
13 trying to understand where your facts are that mister -- and
14 again -- please continue. Please continue.

15 MS. ANDERSON: Okay. And with regards to the
16 tenants you have, you currently -- not a single one of your
17 tenants have a provision in the lease that precludes them
18 from obtaining the residential parking permit, isn't that
19 correct?

20 MR. KANG: It was never required.

21 MS. ANDERSON: So the answer is no, right?

22 MR. KANG: And I'll qualify it because it was
23 never required.

24 MS. ANDERSON: All right. And you understand from
25 -- have you done any research on D.C. landlord/tenant law as

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1 to whether or not you can put in a requirement like that
2 after the fact?

3 MR. KANG: I'm told I am.

4 MS. ANDERSON: You were told that you can put in
5 a requirement after the fact?

6 MR. KANG: The intention is to basically put in
7 the parking requirement when the additional building is up
8 and ready to be delivered to the parcel. But up until --
9 there is no current restrictions on the parking lot. There
10 is no current restrictions on tenants. They are also D.C.
11 tenants, they're also, you know, people that also live in
12 Cleveland Park just like you do and have the same rights to
13 this as you would as well.

14 MS. ANDERSON: All right. Isn't it a fact though,
15 D.C. law does not allow you to amend a lease with a later
16 condition?

17 MR. KANG: We can put in lease amendments, and
18 they have to be countersigned for each of the tenants.

19 MS. ANDERSON: And if the tenant does not
20 countersign agree to it, the tenant doesn't have to sign the
21 lease, correct?

22 MR. KANG: That's correct.

23 MS. ANDERSON: And the tenants --

24 MR. KANG: But it's not as simple as black and
25 white, you trying to bring me to some type of conclusion,

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1 right, because a lot of these tenants can just move.

2 MS. ANDERSON: Right. But they don't have to.
3 They can -- D.C. law allows them --

4 (Simultaneous speaking)

5 BZA CHAIR HILL: Okay, Ms. Anderson. Ms.
6 Anderson.

7 MR. KANG: I --

8 BZA CHAIR HILL: I just wanted to let you know,
9 all these questions seem to be directed to Mr. Kang.

10 MS. ANDERSON: Okay.

11 BZA CHAIR HILL: Mr. Andres is the transportation
12 expert. Ms. Prince is the zoning attorney.

13 MS. ANDERSON: Okay.

14 BZA CHAIR HILL: So I'm just trying to get, again,
15 to questions that are about the zoning issues that are before
16 us.

17 MS. ANDERSON: All right.

18 BZA CHAIR HILL: And also realizing that you guys
19 haven't even done your presentation yet and we're already an
20 hour and a half into this. And there is still now a full day
21 ahead of us. Would you go ahead please, ask your next
22 question?

23 MS. ANDERSON: Sure. You are currently
24 advertising a space for rent on the property that's adjacent
25 to the parking lot with four parking spaces, correct?

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1 MR. KANG: We are no longer -- we are telling
2 applicants that the parking will no longer be available.

3 MS. ANDERSON: But your sign is still up.

4 MR. KANG: Yeah, but when people ask us, we can
5 correct that. So it's up, but that's not illegal so.

6 MS. ANDERSON: All right. I'll switch over to the
7 architect, Mr. Andres.

8 BZA CHAIR HILL: Mr. Sperry I think it is.

9 MR. SPERRY: Yes, thank you.

10 MS. ANDERSON: I'm sorry, Mr. Sperry, you talk
11 about that there is no way to provide parking on the site,
12 and your testimony kind of assumes that the parking lot
13 currently there has to be removed, isn't that correct?

14 MR. SPERRY: Yes.

15 MS. ANDERSON: But in fact, that parking lot is
16 grandfathered in.

17 MR. SPERRY: I was told by the zoning attorney
18 that it is against zoning regulations, and any new project
19 here would not allow parking in front, on site -- I'm sorry,
20 on grade in front of an existing or a new proposed building.

21 MS. ANDERSON: Can you point the Board to a
22 regulation that would actually require that?

23 (Simultaneous speaking)

24 MS. PRINCE: Ms. Anderson, I can address that
25 question.

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1 MR. SPERRY: Thank you.

2 MS. PRINCE: The curb cut on Connecticut Avenue
3 is absolutely not permitted under the current regulations,
4 nor is the surface parking on Connecticut Avenue. It's
5 DDOT's longstanding policy and DDOT is here today, it can
6 testify to this, that when a site is redeveloped, there is
7 no continued entitlement to a curb cut. All bets are off,
8 all curb cuts are reexamined. So the grandfathered right
9 does not apply in the instance of a redevelopment of the
10 site. The grandfathered right only applies if the status quo
11 is maintained. And DDOT can address that.

12 MS. ANDERSON: All right. Well, you could get --
13 well, first of all, there's no actual regulation, right?
14 It's DDOT's policy, but there's no current regulation.

15 MS. PRINCE: DDOT has full jurisdiction over curb
16 cuts. The Public Space Committee has jurisdiction. And the
17 Public Space Committee -- it is my view that the Public Space
18 Committee would not allow that curb cut on Connecticut Avenue
19 to remain in the event of a redevelopment of the site. DDOT
20 is here, they can testify to that.

21 MS. ANDERSON: All right, we can ask DDOT that.
22 And so the alleyway that leads to -- excuse me, the alleyway
23 that is going to be utilized here, that comes off of Ordway
24 Street, correct?

25 MR. SPERRY: Yes, that's correct.

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1 MS. ANDERSON: And that is a very narrow street
2 with parking on both sides?

3 MR. SPERRY: Yes, that's correct.

4 MS. ANDERSON: And there is typically really very
5 little space on that street, would that be fair to say, for
6 cars because it's basically a single lane that's coming down
7 there?

8 MR. SPERRY: So the alley currently serves
9 commercial businesses that front on Connecticut Avenue, so
10 their trash is also picked up in the same alley that we're
11 utilizing. So that condition is consistent with DDOT policy
12 as well as with the current utilization of the commercial
13 businesses that front Connecticut Avenue.

14 MS. ANDERSON: But you're adding a pretty
15 extensive load to the alley, right, because the management
16 for the building is having loading, unloading, delivery, and
17 trash, isn't that correct?

18 MR. SPERRY: So in the applicant's desire to be
19 a good neighbor, there are existing conditions where Newark
20 Street is being used for some of these activities, for move
21 in into the Macklin, for trash into the Macklin. As a
22 function of us trying to be a good neighbor, we're trying to
23 relocate that off of Newark Street. And we've heard from the
24 neighbors that the activity on Newark Street was a concern.
25 So in response to that we have identified Connecticut Avenue

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1 loading area as well as the loading area in the alley to
2 facilitate those functions.

3 MS. ANDERSON: Right. And in terms of the -- you
4 still have the trash and everything for the retail and the
5 four units, the four townhouses, where will that be taken
6 from?

7 MR. SPERRY: As identified in the ANC resolution,
8 it's being coordinated within the Connecticut Avenue loading
9 space that we've created.

10 MS. ANDERSON: All right. And there's nothing
11 that would prevent the applicant from seeking an exemption
12 from closing the curb cut to maintain the parking that he
13 already has, isn't that correct, if --

14 MR. SPERRY: Well, that is a Public Space
15 permitting function. As Allison had identified, once you
16 touch the site for redevelopment, any existing rights to a
17 curb cut, especially on Connecticut Avenue where DDOT's
18 driveway design manual states that all driveways on major
19 streets should be avoided. And so in that instance, the
20 redevelopment of the site will trigger a Public Space purview
21 and review.

22 MS. ANDERSON: Right. But if you're not touching
23 the parking lot, especially when the parking regs require
24 parking for the unit, that would be a basis to seek an
25 exemption for that, if in fact, you have to do so.

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1 MR. SPERRY: So the only way to keep the curb cut
2 to the parking facility is to essentially reoccupy the
3 building as currently configured. If we were to change the
4 use of a site or add additional units to the site, then DDOT
5 has the purview to reexamine and reconsider the curb cut on
6 Connecticut Avenue. So that's our primary crux here. That's
7 one of our issues that we're dealing with other than the
8 feasibility of put parking on the site, it's to have access
9 to the parking on the site.

10 MS. ANDERSON: And can you -- and I'm not sure who
11 this question would be to, but can you point us to another
12 building where the BZA has given 100 percent parking relief
13 to a building that required 15 or more units?

14 MR. SPERRY: Yes, 14 and Wallach is actually a
15 project that this Board considered that also included an RPP
16 restriction. The case number is 18632. It's located
17 probably three blocks from the Cardozo, U Street Metro
18 Station. That's one of them. I had a case before Chairman
19 Hood last week for Market Terminal D in Union Market which
20 was also 100 percent loading relief. So the concept of 100
21 percent loading relief in the District in areas that are well
22 served by transit are not unique in the District.

23 MS. ANDERSON: And when was the 14th and Wallach
24 -- when was that approved?

25 MR. SPERRY: I believe the order is dated 2013.

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1 MS. ANDERSON: And has anybody gone back and
2 looked to see how that worked out in that particular area?

3 MR. SPERRY: Well, it's a very successful project,
4 you know? So I'm not sure --

5 BZA CHAIR HILL: Can I interrupt the answers real
6 quick?

7 MS. ANDERSON: Yes.

8 BZA CHAIR HILL: Ms. Anderson, I'm sorry, the
9 Office of Planning always reminds me that we never look at
10 any other cases.

11 MS. ANDERSON: Okay.

12 BZA CHAIR HILL: We only look at the case that's
13 before us. So just for whatever that's worth.

14 MS. ANDERSON: All right, thank you. Then I'll
15 move on. With regards to the transportation witness.

16 BZA CHAIR HILL: Yeah, Mr. Andres?

17 MS. ANDERSON: Mr. Andres. So, Mr. Andres, you
18 were part of the group that did the transportation study?

19 MR. ANDRES: For this project? Yes.

20 MS. ANDERSON: Yes. All right. So have you
21 determined what regs were in effect at the time the Macklin
22 was built, what parking regulations were in effect?

23 MR. ANDRES: Well, the zoning regs took place --
24 I guess were instituted in 1958 and were updated in 2016.
25 It's my understanding that's a historic building, so I'm

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1 assuming that it pre-dated 1958, so I could be wrong.

2 MS. ANDERSON: All right, well there were some
3 zoning regs that required parking at least back as far as
4 1947. Have you all looked back prior to that?

5 MR. ANDRES: Well, with respect to the
6 transportation components? You know, we're subject to ZR
7 2016 and the policies instituted by DDOT.

8 MS. ANDERSON: Well, doesn't the parking
9 administrator have a policy that if the parking was required
10 when the building was built, then that parking has to remain?

11 MR. ANDRES: I think Ms. Prince can answer that
12 question.

13 MS. PRINCE: Allison Prince here. We are here
14 today to seek full parking relief. The building predates the
15 1958 regulations. Whatever the parking requirements were at
16 the time of the building's construction are irrelevant
17 because we are seeking full parking relief as been sought for
18 other buildings in the District, and it has been granted by
19 this Board.

20 BZA CHAIR HILL: Okay. Hey, Ms. Anderson?

21 MS. ANDERSON: Yes.

22 BZA CHAIR HILL: I'm trying to gauge how many more
23 questions you have because I still need to get to your
24 presentation.

25 MS. ANDERSON: I probably have about maybe 15 for

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1 the transportation and that's it. I'll move along.

2 BZA CHAIR HILL: Okay. That's a lot of questions,
3 but okay. Go ahead.

4 MS. ANDERSON: All right. Well, the -- all right.
5 So your parking study looked at a two-block radius, correct?

6 MR. ANDRES: Yes, that's correct.

7 MS. ANDERSON: And it's fair to say that the
8 blocks that were used because of the nature of Connecticut
9 Avenue were fairly long, longer than the typical block?

10 MR. ANDRES: Yes. You know, the block sizes vary,
11 but, yes.

12 MS. ANDERSON: All right. And your report says
13 that the project is expected to create a minimal parking
14 demand, right?

15 MR. ANDRES: Yes. As I expressed earlier, it's
16 our contention that, it's like a pet, if somebody has a car,
17 they will look for apartments that provide parking.

18 MS. ANDERSON: In your report, in making that
19 conclusion, you don't distinguish between the impact of
20 residents' visitors that would visit the building or retail
21 demand created by the new retail, correct? You don't talk
22 about that anywhere in your report.

23 MR. ANDRES: So, yes, that's correct. The demands
24 associated with the site and the demand identified, the
25 parking requirement is identified by zoning based on square

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1 footage. It's important to understand the context of the
2 demand. In this case we're providing no parking and are
3 identifying a market of people who don't drive to use the
4 building.

5 With respect to retail, the retail is of a size
6 that it, you know, it is geared to neighborhood serving. The
7 fact that it's a pedestrian plaza, we want to take advantage
8 of the people who are walking. So in that instance, we are
9 looking at both retail and residential uses that won't
10 adversely impact the parking situation.

11 MS. ANDERSON: All right. I mean obviously you
12 want to take advantage of people walking to your site, but
13 it's also likely that some people will drive to some of the
14 retail, correct?

15 MR. ANDRES: Well, it's, you know, we have a
16 condition where there is little parking availability in and
17 around the neighborhood, and we've confirmed that in our
18 parking study. And I verbally have identified that in public
19 meetings. We understand that there is a parking issue, and
20 we understand that parking is limited.

21 BZA CHAIR HILL: Okay, Mr. Andres, I'm just trying
22 to get -- Ms. Anderson, what's your next question?

23 MS. ANDERSON: All right.

24 BZA CHAIR HILL: How many more do you have -- and
25 how many more do you have?

1 MS. ANDERSON: I probably have about 10, but I'll
2 move quickly.

3 BZA CHAIR HILL: Okay.

4 MS. ANDERSON: In your study you don't take into
5 account the loss of three or four spots for the streetscape
6 study which is now being implemented on Connecticut, correct,
7 Connecticut Avenue?

8 MR. ANDRES: When we did the study, those spaces
9 were in place. So we do the study based on the --

10 BZA CHAIR HILL: The answer's no, Mr. Andres. The
11 answer is no. Okay.

12 MS. ANDERSON: All right.

13 BZA CHAIR HILL: Ms. Anderson.

14 MS. ANDERSON: You have not taken it -- or you
15 have not taken into account nor have you updated your report
16 the loss of 28 spots with the closure of the service lane
17 currently?

18 MR. ANDRES: Which was based on the COVID
19 situation, that's correct.

20 MS. ANDERSON: All right. And we have no idea how
21 long that will last, correct?

22 MR. ANDRES: That's correct.

23 MS. ANDERSON: Are you aware that DDOT is in the
24 process of studying the reverse of the lanes to enhance
25 safety in the neighborhood and perhaps add bicycle lanes, and

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1 three of their four proposals recommend taking away parking
2 off Connecticut Avenue?

3 MR. ANDRES: Yes, that's correct, I am aware of
4 that.

5 MS. ANDERSON: And that would dramatically also
6 affect the parking situation, correct?

7 MR. ANDRES: Not necessarily, depending on what
8 alternative they select.

9 MS. ANDERSON: Well, if they select three of the
10 four, it will markedly decrease parking available, correct?

11 MR. ANDRES: Well, that selection has not been
12 made, but, yes.

13 MS. ANDERSON: All right. And you did not take
14 into account in your analysis the 17 -- or the 13 spaces that
15 are currently on the lot, correct? You've kind of in essence
16 -- you have doubled counted those spaces. Those spaces were
17 available for use when you did the traffic study.

18 MR. ANDRES: So our parking count and our parking
19 supply is specifically for on-street parking spaces. So, no,
20 we did not take into account those spaces.

21 MS. ANDERSON: But presumably people would have
22 been parking in those spots that would not have to park on
23 the street? They are --

24 MR. ANDRES: If they were visiting those specific
25 retailers, then yes.

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1 MS. ANDERSON: All right. And as part of your
2 traffic management plan, you say that residential loading
3 such as moving in and out of the building will take place in
4 the afternoon or evening?

5 MR. ANDRES: So we have agreed to pretty
6 restrictive loading terms with the ANC, and they agreed that
7 this was appropriate. And so in that instance as being good
8 neighbors, we are trying to address the existing loading
9 concerns on Newark Street, so yes.

10 MS. ANDERSON: And your transportation plan is
11 basically geared to people who take the Metro or ride bikes,
12 but it doesn't really take into account older people or
13 people with children, isn't that fair to say?

14 MR. ANDRES: That's not true. That's assuming
15 that those older people and people without children don't
16 take transit which is, you know, in an urban condition there
17 are people of many ages and families who do choose to not
18 drive and not have a car.

19 MS. ANDERSON: And you're talking about providing
20 a biking membership, what about people that can't or don't
21 want a bike in a busy city right off a major road?

22 MR. ANDRES: Well, then if they're living in this
23 building, then likely if they're not biking, then chances are
24 they work nearby where they can walk to or they work at home.
25 And so that condition is not unique throughout the District.

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1 MS. ANDERSON: All right, I don't have any further
2 questions, Mr. Hill.

3 BZA CHAIR HILL: Okay. Thanks, Ms. Anderson. All
4 right, Mr. Rosenman. So you'll go ahead and have time there
5 to give your presentation. Ms. Anderson, if you'd also mute
6 your microphone if you don't mind. Thank you. And you can
7 go ahead and begin -- I can't hear you, Mr. Rosenman.

8 MR. ROSENMAN: Can you hear me Chairman Hill, sir?

9 BZA CHAIR HILL: Pardon me?

10 MR. ROSENMAN: How much time do we have for the
11 complete party status presentation?

12 BZA CHAIR HILL: Okay. So Ms. Prince I think went
13 a little bit over. We started at 25 minutes, so you'll have,
14 you know, we'll go ahead and give you 30 minutes.

15 MR. ROSENMAN: Okay. I don't think we'll require
16 that, but I will try to move quickly, sir.

17 BZA CHAIR HILL: Okay, that's all right.

18 MR. ROSENMAN: I'm going to first begin by
19 thanking Chairperson Hill and the other Board members for
20 allowing us to assume party status. As mentioned, I'm
21 speaking on behalf of 56 Macklin neighbors, eight of whose
22 residences are, I think as of last night, nine of whose
23 residences are within 200 feet of the Macklin. We believe
24 firmly that the waiver request should be denied because it
25 is not in harmony with zoning regulations, and that it will

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1 have an adverse impact on neighboring residents and
2 businesses.

3 As you know, ANC 3 zoning among other things
4 includes the goal to enhance pedestrian activity, safety and
5 consumer support for businesses in the commercial area.
6 That's something the applicant by the way failed to mention
7 in his submissions. Key to all of that goal is safe and
8 adequate parking.

9 For over a decade businesses along Connecticut
10 Avenue have fought any effort to diminish parking. In 2013
11 businesses on both sides of Connecticut Avenue created a Save
12 Our Service Lane to insist that parking was necessary. If
13 I may have slide number one, in 2016, the DMPED study if you
14 can move that up a bit. The DMPED study -- DMPED, the Deputy
15 Mayor for Planning and Economic Development commissioned a
16 commercial market analysis and enhancement study for
17 Cleveland Park. What I want to point out with this slide is
18 that in identifying their most significant problem, 86
19 percent of the businesses said it was a lack of available
20 parking. That's twice, you will note, the percentage for the
21 next response.

22 Last week, Pierre Abushacra who was forced to
23 close Firehook Bakery on Connecticut Avenue said in an email
24 there is no doubt that businesses in Cleveland need
25 accessible parking now more than ever. If we can have slide

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1 2A please. DDOT's streetscape improvement project, this is
2 a picture of what they envision for the new exit from the
3 service lane.

4 (Simultaneous speaking)

5 BZA CHAIR HILL: And Mr. Rosenman? Mr. Rosenman?

6 MR. ROSENMAN: Yes, sir.

7 BZA CHAIR HILL: Mr. Rosenman, is this slide deck
8 in the record somewhere? I just want to pull it up. Do you
9 know?

10 MR. ROSENMAN: I sent it in, sir. It should be
11 part of -- I was told -- well --

12 BZA CHAIR HILL: That's okay.

13 MR. ROSENMAN: -- I quite honestly don't know if
14 it appears in the record.

15 (Simultaneous speaking)

16 BZA CHAIR HILL: Mr. Young, is it in the record
17 somewhere? All right, Mr. Young, it's all right. Just keep
18 on going.

19 MR. ROSENMAN: Okay.

20 BZA CHAIR HILL: And Mr. Rosenman.

21 (Simultaneous speaking)

22 MR. ROSENMAN: I --

23 BZA CHAIR HILL: And Mr. Rosenman, if you could
24 make sure you upload it into the record afterwards, okay?

25 MR. ROSENMAN: I did send it in already, but I'll

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1 be certain that they go into the record.

2 BZA CHAIR HILL: Okay, thank you.

3 MR. ROSENMAN: Thank you, sir. This slide shows
4 relocating the service lane exit. If you can go to the next
5 slide, you will see that what is envisioned by DDOT now will
6 require the loss of three or four parking spaces. There is
7 a parking space in front of the first car that is shown
8 there.

9 The applicant, if we can go to the next slide, and
10 Ms. Anderson referenced this, this sign is still up on the
11 façade of an empty storefront. The reason this is important,
12 and I bring it up why? Is concern about a lease condition
13 for whoever may move in there, but the fact that it is
14 enumerated as one of the key items shows that Mr. Kang
15 himself understands how important parking is.

16 The applicant's statement and his traffic study
17 assert that there really are no parking issues that will
18 prevent them from removing 15 surface parking spots while at
19 the same time they're requesting a waiver from the need to
20 replace them, or to comply with other parking requirements.
21 I could cite elements of that study, but I will let it go
22 that Mr. Andres previously and today acknowledged that there
23 really are no parking spaces in the neighborhood. And he
24 said that before we lose the 15 spaces in the lot before, if
25 we get back to 28 spaces in the service lane which I remind

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1 everyone is part of a DDOT streetscape improvement. And the
2 way the design is being brought forward, it looks much more
3 like it'll accommodate patio seating rather than parking.

4 The lack of parking for businesses and residents
5 is not offset by proximity of the Cleveland Park business --
6 I'm sorry Red Line. Metro has been around since 1981, but
7 parking problems have not disappeared, and in fact, arguably
8 they're worse. Metro does not serve Ward 3 well. It gets
9 people in and out of town, but not around ward, not east to
10 west, in order to facilitate their shopping in the area. In
11 fact, Metro makes things worse here because other Ward 3
12 drivers use local Cleveland Park streets as all day Metro
13 parking lots.

14 The applicant has already received a 50 percent
15 waiver as has been pointed out for being close to Metro, and
16 we think that BZA ought not to extend it to 100 percent. The
17 plan development will triple the number of residential units
18 on the site. It will more than triple the number of
19 residents. It will likely add two retailers. It will
20 increase parking demands for their needs, for the needs of
21 their visitors, their overnight guests. It doesn't deal with
22 delivery trucks -- and thank you, I'm done with the slides
23 -- and of retail customers and staff. We believe that it
24 ought to be rejected because the requested waiver is in
25 conflict with the intent and purpose of zoning. It does not

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1 support businesses in the area.

2 The waiver adversely affects neighbors in other
3 ways. The parking study and the consultant already verified
4 what people have said in testimony or you'll hear in
5 testimony and what letters have said, is that there's simply
6 no street parking in the neighborhood now. Aggressive and
7 inattentive drivers search for parking circling blocks,
8 making U-turns in the middle of side streets, and otherwise
9 present a danger for residents and visitors, especially
10 elderly who are trying to age in place, and those with
11 disability.

12 Out of frustration, drivers block some driveways,
13 they turn into, and have actually stopped and parked in
14 driveways. They drive up on to the curb, otherwise park
15 where no parking is allowed. And create not only a nuisance
16 but a safety issue. Newark has only very narrow sidewalk
17 with obstructions, people are often forced into the street
18 by those obstructions and by inconsiderate parking. Illegal
19 parking is so rampant that it makes it almost impossible to
20 enforce prohibitions. Macomb and Ordway Streets are
21 similarly overburdened and have their own problems. The
22 applicant relies on a traffic management plan that asserts
23 it will effectively manage all adverse effects on the
24 neighboring property, but that plan is mostly soft-marketing
25 programs and unreliable or perhaps unenforceable promises.

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1 The BZA we believe should deny the waiver request
2 because the applicant has not persuasively accounted for why
3 he can't comply with the zoning regulations. The applicant
4 has existing today 15 parking spaces, only two short of the
5 requirement. And the applicant wants to eliminate those
6 spaces because he has a more profitable use for the lot. He
7 has fashioned an argument for why these spaces must go, and
8 suggests there's no choice in the matter.

9 If BZA accepts that conclusion that the surface
10 lot in effect doesn't exist, then it might move on to
11 question why other arrangements, as I have heard some of you
12 begin to do, are seen as so impractical, or we would suggest,
13 simply less profitable. The problem of the applicant's logic
14 is parking spaces do exist, and the dilemma is being created
15 by the removal of them.

16 The arguments you've heard about zoning you know
17 better than I, but for instance, we know that a new curb cut
18 has been put in on Cleveland Park on Wisconsin Avenue. So
19 the notion that the curb cut at this lot must disappear if
20 any of it is used or reconfigured seems a little silly to us.
21 The BZA ought not to be persuadably believe by the
22 applicant's flimsy arguments, and in the face of their own
23 acknowledgement that beginning of this process there are more
24 parking spaces, and that's before these other factors make
25 that worse, not counting this development.

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1 As I said, 50 percent waiver has been received
2 already, and as you know, it's been received. And we believe
3 that the waiver would adversely affect neighbors, it would
4 certainly hurt businesses. I want to note that our
5 businesses are struggling now, and anything that flies in the
6 face of that reality I think works to the detriment of this
7 neighborhood as a viable and vibrant community. We believe
8 that it places unreasonable burdens on neighbors and
9 businesses and that the waiver request should be requested.
10 Thank you. There are a few other people who would like to
11 offer very brief testimony, may I call them now?

12 BZA CHAIR HILL: Sure. Let me just try to
13 understand what we're trying to do here now. So these are
14 people that you have -- you put forward as witnesses?

15 MR. ROSENMAN: Yes, sir.

16 BZA CHAIR HILL: Okay. And I think you put that
17 forward in one of your exhibits, correct?

18 MR. ROSENMAN: I put it forward in the request for
19 party status.

20 BZA CHAIR HILL: Okay. And how many people are
21 there?

22 MR. ROSENMAN: There are in addition to me, five
23 other people. All have agreed to keep their comments to
24 about two minutes.

25 BZA CHAIR HILL: Okay. So let me try to -- do

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1 you, Mr. Young, have those names?

2 MR. ROSENMAN: I've asked them all to register to
3 speak as individuals by the way.

4 BZA CHAIR HILL: Okay.

5 MR. YOUNG: Can you let me know what the names are
6 and I'll bring them in?

7 MR. ROSENMAN: Certainly. The first name is
8 Alejandro Sanguinetti.

9 BZA CHAIR HILL: Mr. Rosen, can you do them in --
10 you said how many are there?

11 MR. ROSENMAN: There are five if Ms. Anderson
12 wishes to offer comments outside of her questioning.

13 BZA CHAIR HILL: Okay.

14 MR. ROSENMAN: And please, I'm sorry, I just got
15 an email, Peter Edelman who was on the list has been called
16 away by his wife to do something and is not available.

17 BZA CHAIR HILL: Okay. Well, we all know how that
18 works.

19 MR. ROSENMAN: Yeah.

20 BZA CHAIR HILL: Let's see. So, okay, I'm just
21 trying to figure out how many people I can get on the screen
22 at one time. So I guess let's go ahead and see what happens.
23 So you want to list those names again. If you can, can you
24 -- Mr. Rosenman, can you write them all down? So go ahead
25 and give the names, Mr. Rosenman.

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1 MR. ROSENMAN: Send them in an email to Mr. Young?

2 BZA CHAIR HILL: No, just go ahead and write it
3 down real quick, but just tell the names.

4 MR. ROSENMAN: The first name is Alex or Alejandro
5 Sanguinetti, he lives directly across from the Macklin.
6 S-A-N-G-U-I-N-E-T-T-I, Alex.

7 BZA CHAIR HILL: Okay, I see an Alex. Okay.

8 MR. ROSENMAN: Okay.

9 BZA CHAIR HILL: Okay, so let's do this one at a
10 time. Alex, are you there?

11 MR. SANGUINETTI: Yes, I am. How are you?

12 BZA CHAIR HILL: Okay. Could you please state
13 your name and address for the record please?

14 MR. SANGUINETTI: Sure. Alex Sanguinetti, 2922
15 Newark Street Northwest.

16 BZA CHAIR HILL: Okay. I'm going to put two
17 minutes up on the -- well, I don't know now whether you --
18 and this is -- Mr. Rosenman, could you mute your microphone
19 please? Thank you. And I apologize, I'm going to -- I can't
20 remember how to say your last name, Alex, so I'm going to use
21 Alex as --

22 MR. SANGUINETTI: Sanguinetti.

23 BZA CHAIR HILL: Oh, Sanguinetti.

24 MR. SANGUINETTI: Alex Sanguinetti.

25 BZA CHAIR HILL: Sanguinetti. So, Mr.

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1 Sanguinetti, normally what happens is that you are given
2 three minutes to testify as a member of the public, and so
3 I'm a little confused right now as to how this is part of the
4 presentation. So I'm going to give everybody three minutes
5 to testify as part of the public. And so we're just going
6 to handle this all at once. So you can go ahead there --

7 MR. YOUNG: Mr. Chairman?

8 BZA CHAIR HILL: Yes.

9 MR. YOUNG: I was just notified that this
10 individual did not sign up ahead of time, so therefore he has
11 not been administered the oath. I don't know if Mr. Moy has
12 any information about that, but that's what I just told.

13 BZA CHAIR HILL: Okay, how did he get in?

14 MR. YOUNG: The public gets information for WebEx,
15 so anyone can log into the WebEx. But --

16 BZA CHAIR HILL: I see.

17 MR. YOUNG: -- in order to testify, they're
18 supposed to sign up in advance.

19 BZA CHAIR HILL: Okay. Mr. Sanguinetti, is there
20 a picture there that you can show me?

21 MR. SANGUINETTI: Yes. Start video. Okay, I'm
22 starting the video now. All right.

23 BZA CHAIR HILL: Okay, great.

24 MR. SANGUINETTI: Is that better?

25 BZA CHAIR HILL: Dan Bassett from OAG, this is a

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1 strange fricking world, people. So Dan Bassett from OAG, can
2 Mr. Moy swear Alex in?

3 MR. BASSETT: I don't know off the top of my head
4 based on our virtual rules. I would have to go look at that.
5 Give me a second.

6 BZA CHAIR HILL: Okay.

7 VICE CHAIR HART: Mr. Chairman?

8 BZA CHAIR HILL: Yes.

9 VICE CHAIR HART: Could we -- this is Vice Chair
10 Hart, if we could possibly -- not table, but put Mr.
11 Sanguinetti at the end of the people that are going to
12 testify in case there are other people that have actually
13 done this, then Mr. Bassett could figure out whether or not
14 we could do that and maybe give us a little bit of time to
15 kind of work through that? So --

16 BZA CHAIR HILL: That's fine, that's fine. I was
17 going to suggest that anyway. But, Mr. Sanguinetti, just
18 give me a second. So, Mr. Young, what I'm trying to
19 understand is those people that did administer and take the
20 oath, you have them in a separate room, is that correct?

21 MR. YOUNG: Yeah, I have a list of the names for
22 people that have signed up.

23 BZA CHAIR HILL: Right. And now I'm looking here
24 as well. So you got in support -- and I don't know if
25 they're out there yet or not, but in support I got four

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1 names, and then in opposition I have one, two, three, four,
2 five, six, seven names. And then in addition to these names,
3 it seems like Mr. Rosenman, you have your witnesses, is that
4 correct, Mr. Rosenman? You have to unmute your line.

5 MR. ROSENMAN: I'm sorry, Mr. Chairperson. I
6 asked all of them to sign up as individuals, so you may have
7 them on the list of individuals.

8 BZA CHAIR HILL: Okay, all right. Okay. So give
9 me one -- and Mr. Sanguinetti, we'll put you on hold for a
10 second. I see Mr. Edelman, that's one of the people that you
11 had, correct, Mr. Rosenman?

12 MR. ROSENMAN: Right. I believe if he's still on
13 line, then it's a surprise to me.

14 BZA CHAIR HILL: Oh, that's the one that --

15 MR. ROSENMAN: He emailed and said he was leaving.

16 BZA CHAIR HILL: Okay, right. And then what about
17 -- is it Mr. Eidelson?

18 MR. ROSENMAN: He was not part of the party.

19 BZA CHAIR HILL: How about Ms. Anderson?

20 MR. ROSENMAN: Jennifer Anderson.

21 BZA CHAIR HILL: Okay. Would you bring in Ms.
22 Anderson, Mr. Young?

23 MS. ANDERSON: Still here.

24 BZA CHAIR HILL: Oh, Jesus.

25 MS. ANDERSON: It's nice to be memorable.

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1 BZA CHAIR HILL: I'm sorry, Ms. Anderson. No, I'm
2 just like I'm confused.

3 MS. ANDERSON: No worries.

4 BZA CHAIR HILL: Ms. Anderson, why don't you go
5 ahead take three minutes and give us some testimony, okay?

6 MS. ANDERSON: Sure, I'll be brief. So my name
7 is Jennifer Anderson, I live at 2924 Newark Street which is
8 directly across the street from the Macklin. And I just wish
9 to testify in terms of -- to say that there are far more than
10 one individual that live in the building that have cars.

11 During the pandemic I've been home so I've been
12 home during the day, there are at least seven individuals who
13 own cars who live in the building. And how do I know that?
14 Because I see them, they go in and out. They are here for
15 extended periods of time. They bring groceries. And they
16 do the kinds of activities that you would expect residents
17 in the building -- they hang out on the front stoop. So I
18 think Mr. Kang's representation that there's only person in
19 the building is not accurate. And those are the seven that
20 have cars and consistently park them on Newark Street.

21 And in addition, we do have -- if you look at
22 Newark Street, it's a very narrow street. It's used for also
23 for the thoroughfare for MPD. It's got a direct shot from
24 the second police department up at the -- I guess it would
25 be the top of Newark. It's only one lane and it's constantly

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1 blocked as is now with cars. It's a, at least on this end
2 of the street, it's a fairly dangerous street because it
3 curves, and so cars, or Ubers, or delivery trucks often times
4 stop and block the road.

5 You'll notice if you have pictures of the streets,
6 that the sidewalks are very narrow. Several spots in the
7 sidewalk, they have actually light poles in the middle of the
8 sidewalk. So what ends up happening is people get off the
9 sidewalk and stay on the road. But that becomes a hazard
10 because of the narrowness of the street and because of cars
11 kind of constantly coming up and looking for parking, and
12 then turning around.

13 Often times cars -- a lot of cars come on to
14 Newark because they think that they can park on the right
15 side where there's no parking. So it creates a dangerous
16 situation, and I think it's unrealistic to think that in this
17 day and age people who are living in the building won't be
18 utilizing things like Uber and car serving, like food
19 delivery and things like that, Amazon deliveries which I
20 think will further cause problems on this street. Thank you.

21 MR. ROSENMAN: If I may, Mr. Chairperson, the next
22 person I would ask to speak is Judith Kennedy.

23 BZA CHAIR HILL: Okay, great. That'd be great.
24 Mr. Young, could you bring in Ms. Kennedy?

25 MS. KENNEDY: Hello?

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1 BZA CHAIR HILL: Yes, I can hear you, Ms. Kennedy.

2 MS. KENNEDY: Great.

3 BZA CHAIR HILL: Could you introduce yourself for
4 the record please? And then, Ms. Kennedy, you'll have three
5 minutes to speak.

6 MS. KENNEDY: Sure. So I live just up the hill
7 from the Macklin. I know all of the owners of the cars that
8 Mr. Kang has never acknowledged. And I understand that the
9 regulation is supposed to require that the applicant has met
10 its full burden to prove there will be no adverse impacts.
11 And I and my neighbors live with those adverse impacts from
12 the existing Macklin, so we're worried about the future.
13 Boiled down, the developer has 15 parking spaces now. He
14 wants to eliminate them and triple the number of the
15 residences and double the number of retail at significant
16 harm to neighboring properties and our businesses down below.

17 This development may boast a Connecticut Avenue
18 address, but the reality is that it's shoehorned into a 19th
19 Century narrow meandering hillside lane that follows the
20 contours of the land as developed by Frederick Law Olmsted
21 in his contract with the District of Columbia in 1895. The
22 developer's own traffic consultant has told the ANC and the
23 public, let's just admit that there's no available parking
24 spaces, from his December analysis which you've just heard
25 is already out of date.

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1 Stress on parking is already extreme, and the
2 pandemic has greatly increased the likelihood of more cars
3 on the street given the month's long Metro shutdown and the
4 further loss of 28 parking spaces in the retail service road
5 that some argue should be made permanent.

6 Newark neighbors view the possibility of 51
7 residences without any parking on our street as a 70 percent
8 increase in residences on a street that was designed to be
9 two narrow lanes with sidewalks on one side. As it works
10 now, trucks loading and collecting trash at the existing
11 Macklin bar two-way traffic sometimes for hours. And, Mr.
12 Young, can you show my photo now? Mr. Young?

13 BZA CHAIR HILL: He's pulling it up, Ms. Kennedy.

14 MS. KENNEDY: Thank you so much, you guys have
15 been wonderful. In addition to saying since October, as Mr.
16 Kang has, that he only has one resident in the building who
17 has a car when we know that not to be the case, he also said
18 at the October, November and December meetings that nobody
19 moves into or out of the Macklin with a moving truck. This
20 is an example of the moving truck that sits for four hours,
21 usually on a weekend, but sometimes on a weekday, barring
22 east/west traffic without, frankly, some dislocation. So the
23 acknowledgements of Mr. Kang that he will commit to further
24 mitigation, frankly, raise a lot of questions for our
25 neighbors.

1 BZA CHAIR HILL: Ms. Kennedy, I'm just letting you
2 know you're out of time.

3 MS. KENNEDY: Okay.

4 BZA CHAIR HILL: But please --

5 MS. KENNEDY: No, I'm just going to talk one
6 minute about Connecticut Avenue businesses. You've heard
7 they rank parking as their number one problem. Eliminating
8 the 15 parking spaces at the Macklin and then the three
9 public spaces aside the Macklin, 18 spaces gone from the
10 crisis that we're already in as he adds 35 new units and
11 doubles the retail. It's not sustainable, we hope you will
12 reject his request for relief and give us some relief. Thank
13 you.

14 BZA CHAIR HILL: Okay. Thank you, Ms. Kennedy.
15 Hey, Mr. Young, do you know if that neighbor -- Thanks, Mr.
16 Rosenman. Does that timer show how much somebody's gone
17 over? It does not.

18 MR. YOUNG: It does not.

19 BZA CHAIR HILL: Okay, well, that's not helpful.
20 All right. Let's see, is Ms. Lightfoot another one of your
21 people, Mr. Rosenman? Is not?

22 MR. ROSENMAN: Yes, she would like to speak to
23 next please.

24 BZA CHAIR HILL: Great. Could you let Ms.
25 Lightfoot in please? Ms. Lightfoot, can you hear me?

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1 MS. LIGHTFOOT: Yes, I can hear you.

2 BZA CHAIR HILL: Could you please go ahead and
3 introduce yourself for the record? And you'll have three
4 minutes to give your testimony.

5 MS. LIGHTFOOT: Yes. Can you hear me?

6 BZA CHAIR HILL: Yeah, we can see you now, too.

7 MS. LIGHTFOOT: Oh, perfect, thank you. I'm Karen
8 Lightfoot. I have at 2904 Ordway Street. One of the primary
9 issues the developer has failed to adequately address is how
10 to deal with loading, deliveries, and garbage collection
11 without adversely impacting the neighborhood. The developer
12 is proposing using alleyways off of Ordway and 29th for
13 loading, deliveries and garbage collection.

14 A number of households next to and near the allies
15 have small children. Many people and their children walk
16 down Ordway sidewalks to get to the post office, library and
17 neighborhood stores. The zoo goes park on Ordway, walk down
18 to the zoo. And many people park on Ordway to walk to the
19 Metro.

20 The allies off of Ordway and 29th are extremely
21 tight, turning into the small alley that feeds to the rear
22 of the Macklin is unsuitable for large trucks. The allies
23 are 14 ½ feet wide at some point with brick buildings on both
24 sides of the alley. And as you all know too well, trucks
25 can't make 90 degree turns as easily as smaller vehicles, so

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1 they compensate by widening their berth, and they have
2 extended blind spots on the left side making it more
3 difficult for truck drivers to see cars next to them and
4 pedestrians on the sidewalk. Turning into the alley would
5 require that the trucks cross over a sidewalk with all this
6 pedestrian traffic, and even exiting is very difficult due
7 to limited sight lines of cross traffic.

8 The traffic study for this project did not look
9 at the required turning radiuses for trucks of any size to
10 see how they could do so safely. If any delivery sized
11 trucks are allowed to use the alley for loading, there must
12 first be a study to analyze a turning radius requirement so
13 there can be an appropriate limitation on the size of the
14 trucks that enter the alley.

15 Regardless of size, no trucks should be permitted
16 to exit the alley and turn west up Ordway deeper into the
17 residential neighborhood where more children live.
18 Connecticut Avenue is the best option for commercial trucks
19 and traffic services needed to serve development. I hope you
20 will oppose the waiver requirement, and thank you so much for
21 your time.

22 BZA CHAIR HILL: Thanks, Ms. Lightfoot. And, Mr.
23 Young, let's leave as many people in the room as we can. But
24 is Ms. Tennille part of your group, Mr. Rosenman?

25 MR. ROSENMAN: No, she is not. She's a neighbor,

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1 but not -- was not --

2 (Simultaneous speaking)

3 BZA CHAIR HILL: Okay, we'll --

4 MR. ROSENMAN: The -- The one -- I'm sorry, the
5 one remaining person is to go back to Alex and that will
6 cover my list.

7 BZA CHAIR HILL: Okay, got it. So if you could
8 mute there for one second. Dan, did you figure it out?

9 MR. BASSETT: Yes. So any individual or
10 organization can sign up to testify prior to the conclusion
11 of public testimony at the online virtual public hearing per
12 the instructions of the zoning website. And when they sign
13 up to testify, they take an oath of affirmation. You also
14 could just have the secretary administer the oath or
15 affirmation online through this video, have the witness raise
16 his hand and swear. But it's a judgment call as to whether
17 you want to send him through the normal OZ process before the
18 end of public testimony or start administering oaths in the
19 middle of the testimony in the middle of hearings.

20 BZA CHAIR HILL: Okay, Dan. So what I don't
21 understand and this is where -- and I haven't done the portal
22 yet, so how is this different? Like Alex is here now and
23 you're saying there's something where you sign up, and when
24 you sign up you click the box, right?

25 MR. BASSETT: Yes. And that's what all of the

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1 other witnesses do that come before you. So before they come
2 before you, they have sworn an oath or affirmation that they
3 are testifying -- that they are --

4 BZA CHAIR HILL: And you do that through the
5 Office of Zoning website?

6 MR. BASSETT: Yes.

7 BZA CHAIR HILL: So you'd have to go through the
8 Office of Zoning website. All right. So anyway, I'm going
9 to swear him in right now. So, Mr. Moy, are you there? I
10 lost Mr. Moy. Or maybe he's going to go get oath, I think
11 he maybe should have --

12 MR. MOY: I'm here.

13 BZA CHAIR HILL: -- it memorized by now.

14 MR. MOY: I'm here.

15 BZA CHAIR HILL: I should have it memorized by not
16 to be quite honest. Mr. Moy, you want to swear in -- and
17 Alex, I'm sorry, your last name is not on your little bubble
18 so I can't even try. Can you go ahead and give me a -- could
19 we get a picture from you, Alex? Alex, you want to raise
20 your right hand and take the oath that Mr. Moy's about to
21 give?

22 TARY MOY: All right, Mr. Alex, do you solemnly
23 swear or affirm that the testimony you're about to present
24 is the truth, the whole truth, and nothing but the truth?

25 MR. SANGUINETTI: I do.

1 MR. MOY: Thank you, sir.

2 BZA CHAIR HILL: Okay, great. All right, Alex,
3 you have three minutes. And it's up in the left-hand corner,
4 you begin whenever you like. And, Alex, I want to ask you
5 a question. You're not going to show me any video testimony,
6 correct?

7 MR. SANGUINETTI: No.

8 BZA CHAIR HILL: Okay, because we don't take that.
9 Okay. So go ahead and give your testimony. Thank you.

10 MR. SANGUINETTI: Okay. Thank you very much. My
11 name is Alex Sanguinetti. I live in 2922 Newark Street right
12 -- I'm the first house next to the new library. And I will
13 really encourage the Board to deny this variance for several
14 impacts that we live daily in our community. Being the first
15 house and being the first driveway, it's a turning point for
16 cars that, you know, they made a wrong turn, they were there
17 looking for parking spot. So our driveway gets used on a
18 daily basis causing damage to our cars and also safety. And
19 as a matter of fact, one of my son's friends almost get hit
20 by a car that turned in our driveway.

21 So why I'm bringing this up is that being Newark
22 Street's such a narrow street, it's -- and trying to bring
23 all these residents and businesses, it's going to make our
24 street and community a nightmare, not even for existing
25 residents, but for new residents and commercial businesses

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1 around the area.

2 On another note, I would like to testify that we
3 met, I even had dinner with -- lunch with Mr. Kang and he
4 never mentioned about the development, and that really loses
5 credibility about him being -- and he keeps on emphasizing
6 that he wants to work with the community. All of the
7 neighbors on Newark street, Macomb in Cleveland Park find out
8 about this development because of the hearing signs posted
9 in front of the Macklin six months ago.

10 And another -- where the new development's going
11 to happen, a chain link, very sloppy chain link was installed
12 right before the pandemic started, and that can give you some
13 sense of how he cares about the community being adversely
14 impacted. And there's a lot of residents with pets. I mean
15 that green area can be used, and right now it's a mess. It's
16 not being maintained. He's even using public space.

17 So I'm really concerned about his assurance that
18 he wants to work with the community, with the neighborhood.
19 I think it's going to be disaster putting 50 plus units
20 without parking spot, parking areas. So, yeah, I really
21 encourage the Board to deny his request. That's what I have
22 to say. Thank you very much.

23 BZA CHAIR HILL: Ms. Tennille? Cheryl Tennille,
24 T-E-N-N-I-L-L-E.

25 MR. YOUNG: Did you want me to bring them on?

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1 (Simultaneous speaking)

2 VICE CHAIR HART: We heard only the end of that.

3 BZA CHAIR HILL: Oh. Cheryl Tennille?

4 MR. YOUNG: I think that the last two were
5 individuals wanting to testify, so I didn't know if you
6 wanted to move --

7 BZA CHAIR HILL: Yeah, I was -- go ahead. I'm
8 going to go ahead and take public testimony now.

9 MR. YOUNG: Okay.

10 BZA CHAIR HILL: So go ahead and --

11 VICE CHAIR HART: Mr. Chairman.

12 MS. TENNILLE: Hello?

13 MR. YOUNG: This is Paul again. So she's unmuted.

14 VICE CHAIR HART: Mr. Chairman?

15 BZA CHAIR HILL: Yeah, Mr. Hart?

16 VICE CHAIR HART: Yeah, I'm sorry. I didn't know
17 if you wanted to bring in Ms. MacWood, Commissioner MacWood
18 only because the ANC is a party in this and I'm realizing
19 that they may want to be a part of this.

20 BZA CHAIR HILL: Okay. When did you see the
21 commissioner?

22 VICE CHAIR HART: I just looked at the
23 participants. She's listed as the --

24 BZA CHAIR HILL: Okay. All right. Ms. Tennille
25 --

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1 (Simultaneous speaking)

2 VICE CHAIR HART: -- ANC Commissioner.

3 BZA CHAIR HILL: Ms. Tennille?

4 MS. TENNILLE: Yes.

5 BZA CHAIR HILL: Can you hear me?

6 MS. TENNILLE: Tennille.

7 BZA CHAIR HILL: Tennille.

8 MS. TENNILLE: Can you hear me?

9 BZA CHAIR HILL: Yes.

10 MS. TENNILLE: Okay.

11 BZA CHAIR HILL: Could you please -- and state
12 your name and address for the record, and then give your
13 testimony? And you have three minutes.

14 MS. TENNILLE: I'm Cheryl Tennille. I live at
15 2950 Newark Street, which is within 200 feet of the
16 development. I want to talk about the specifics of extreme
17 use. There are many immediate residents who do have
18 driveways. Our residents here mostly have two cars. They
19 often have a service car in the driveway and need the street.
20 There are the Connecticut Avenue diners and shoppers,
21 delivery vehicles, oversized service vehicles, the D.C.
22 public library people. The zoo people park here. And
23 commuters to the Metro. We're a favorite of the McLean
24 Gardens people.

25 And speed is a factor. And why is speed a factor?

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1 Because we to back out of our driveways, and uphill is a
2 blind curve and downhill is a blind curve. And so when cars
3 are parked close to the driveway, we have to back out several
4 times maneuvering around at great risk because there are cars
5 speeding that we can't see. Danger is the key here. This
6 is a horse and buggy street, a stable is up the street to
7 show it. And so heavy use. NCRC Nursey School comes through
8 here. Maryland drives cut through here at great speeds. And
9 then all the other construction and delivery people. There
10 is a danger here, and therefore, deny this.

11 And please, 51 units? Please think 51 cars, 51
12 friends and relatives, 51 units are not going to be without
13 many more cars. Right now there's a Macklin car that's been
14 parked a month and a half without moving out front. That's
15 the end. Thank you.

16 BZA CHAIR HILL: Thank you, Ms. Tennille. All
17 right, Mr. Young, do you have a Ms. Holen or Holen?

18 MR. YOUNG: Yeah, she's unmuted now, just brought
19 her in.

20 BZA CHAIR HILL: Ms. Holen, can you hear me?

21 MS. HOLEN: Yes. Can you hear me?

22 BZA CHAIR HILL: Yes. Could you please give your

23 --

24 MS. HOLEN: Are you calling on me?

25 BZA CHAIR HILL: Yes, I am. If you could please

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1 state your name and address, and then you'll have three
2 minutes to give your testimony.

3 MS. HOLEN: Yes, thank you so much. My name is
4 Arlene Holen, H-O-L-E-N. I live at 2928 Connecticut Avenue,
5 very close to the -- very close to the Macklin. I think
6 we're barely more than 200 feet from the Macklin. Parking
7 conditions are just awful even now as others have said. Our
8 driveways are often blocked. We often have cars illegally
9 parked where we have to call the police. It's an extremely
10 difficult and unsafe situation that would get, of course,
11 very much worse with more residents living on the property
12 and more commercial activity.

13 I'd also like to make the point that the
14 accessibility to Metro is far exaggerated as alleviating
15 traffic and parking. In fact, it makes it much worse for us
16 because people from elsewhere come and park on our streets
17 in order to use the Metro. So that is very bad. It makes
18 things even worse. And one really should not discount -- one
19 should not discount what's going on now with the virus and
20 with changes in work patterns. The Metro is certainly not
21 able to function as originally envisioned as taking people
22 elsewhere -- downtown and elsewhere in the city.

23 I'd also like to mention in terms of the Board's
24 public perception perhaps of where the neighborhood is. I
25 know the ANC, for example, and they try to do an excellent

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1 job, and I think the members, I congratulate all of them, but
2 they are besieged by commenters way outside the area who
3 speak from a theoretical and very -- I don't know, points of
4 view that are simply not realistic and simply don't take into
5 account the immediate adverse effect on the neighbors. Many
6 of the comments ANC has received I think should receive much
7 less weight than the comments of the immediate neighbors I
8 think are more important.

9 If I may, I hope I'm still within my time, I'd
10 like to make one other point. And that is when people move
11 into a building, they may intend to have no cars. However,
12 as they may have -- as disabilities may arise, as they may
13 age, as they may have visitors, as other things change in
14 their lives, they will, of course, have needs for cars and
15 generate the need for parking spaces. So I think these
16 points, although, you know, well-intended on their face, are
17 really quite unrealistic.

18 So all in all, I certainly hope that the BZA will
19 turn down this request. The developer has already received
20 a huge waiver of half the requirements, and to grant the
21 other half I think is just simply unconscionable and
22 unrealistic. Thank you. I also would like to commend those
23 who are running this meeting under difficult circumstances
24 for managing to do such a fair and orderly job in presenting
25 this meeting. Thank you.

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1 BZA CHAIR HILL: Thank you, Ms. Holen, that's kind
2 of you to say and I hope I'm included in that comment. Let's
3 see. Okay, so that -- Ms. Prince, do you have any questions
4 for anyone that has given testimony? Ms. Holen -- Mr. Young,
5 could you mute Ms. Holen?

6 MS. PRINCE: Chairman Hill.

7 BZA CHAIR HILL: Yes.

8 MS. PRINCE: Procedurally, I think it might be
9 more efficient if I just offer rebuttal testimony that
10 addresses some of the comments that were made rather than do
11 individual cross-examination.

12 BZA CHAIR HILL: That's fine. I wasn't asking you
13 about the cross yet for the testimony. I was asking you if
14 you had any questions for the witnesses because I'm about to
15 let them go.

16 MS. PRINCE: You can let them go.

17 BZA CHAIR HILL: Okay, thank you. All right, so,
18 Mr. Young, you can let everyone go that you let in if you can
19 keep track of that, I don't even know. And then keep Ms.
20 Anderson here because she was here helping Mr. Rosenman. And
21 then we're going to go ahead and do testimony in support.

22 And I'm looking at my fellow Board members, and
23 I want to just -- I wish I could reach out and grab Mr. Moy
24 and just shake him. Like I don't know how we're going to get
25 through, we still have two more cases that are controversial,

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1 and then we still have our regular cases. And we haven't
2 even gotten to the Office of Planning yet. So I don't know
3 what's going to happen, Mr. Moy. So I'm just throwing that
4 out, right? So, okay, Mr. Young, were you able to find Mr.
5 Ward, I assume Mr. Keefe, Mr. McCarthy, and Ms. Duffy?

6 MR. YOUNG: Yeah. You want me to bring them all
7 in?

8 BZA CHAIR HILL: Bring them in one at a time if
9 you can, I guess.

10 MR. YOUNG: Okay.

11 MR. MOY: Mr. Chairman?

12 BZA CHAIR HILL: Yes, Mr. Moy?

13 MR. MOY: While there's a moment pause, I want to
14 come back to you from earlier on regarding the authorization
15 for Mr. Rosenman to represent other neighbors, and that is
16 under Exhibit 122 in the record. So that's what I wanted to
17 pass on to you.

18 BZA CHAIR HILL: Okay, great. Thank you. Mr.
19 Ward, can you hear me?

20 MR. WARD: Yes, I can.

21 BZA CHAIR HILL: Could you please give us your
22 name and address? And you have three minutes to provide your
23 testimony.

24 MR. WARD: Sure. My name is Bob Ward. I live at
25 2930 Macomb Street around the corner from the Macklin

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1 Project. I am speaking on behalf of Cleveland Park Smart
2 Group, which supports this application and we have submitted
3 written testimony as well.

4 From the outset it's been made clear that this
5 project would not include parking. Given the design
6 constraints imposed by both historic preservation and the
7 topography, adding onsite parking would not be a viable
8 option. The addition of parking would detract from the
9 benefits of this project which is adding more homes,
10 improving the streetscape, closing the curb cut, and adding
11 to public plaza.

12 The questions are is the site suitable for a
13 special exception, and are the potential negative impacts
14 being mitigated, and to both the answer is yes. The site is
15 well suited for a special exception, it is extremely well
16 served by transit as others have said, walkable to everyday
17 needs, easy to hail a cab or a car share as is Bike Share
18 which is being expanded. I mean you would really be
19 hard-pressed to find a location in the city that's better for
20 living car free than this one.

21 As for mitigation, the owner has been extremely
22 proactive, addressed the issue of residential parking permits
23 which also received action by the D.C. Council last week,
24 providing access to offsite parking, addressing the issue of
25 loading and trash collection to move activity off of Newark

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1 Street, providing on-site bicycle parking, expanded Bike
2 Share, free memberships and more.

3 Requiring onsite parking would be a huge loss for
4 the neighborhood including our commercial area. In our
5 group's winter newsletter, the head of District Bridges which
6 runs Cleveland Park Main Street, and I think you have an
7 exhibit 127 in the record from Main Street, the head of that
8 organization said, from a Main Street perspective, the
9 activation of both public and private space is very important
10 to create a vibrant commercial corridor. The proposal of the
11 plaza in the Macklin redevelopment project presents a
12 tremendous opportunity to have space that invites and engages
13 the community to spend more time in and around Cleveland
14 Park. Partnering with the developer from the beginning can
15 ensure that the plaza is designed and programmed in a way
16 that'll have a cascading, positive impact on the Cleveland
17 commercial corridor.

18 Retail in this neighborhood needs a sense of place
19 more than it needs parking. It needs a compelling draw to
20 compete with many other possible destinations consumers have
21 access to regardless of their mode of transportation. This
22 project is a big positive step forward in creating that
23 better destination while imposing little hardship to the
24 community, especially with the extensive commitments the
25 applicant has agreed to. And so we ask that the Board

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1 approve this application. Thank you.

2 BZA CHAIR HILL: Okay, thank you, Mr. Ward. Mr.
3 Young, you want to bring in the next person who you have
4 there? Got you. Mr. Keefe, can you hear me?

5 MR. KEEFE: Yes, I can.

6 BZA CHAIR HILL: Would you like to go ahead and
7 give your name and home address, and then provide three
8 minutes of testimony?

9 MR. KEEFE: Yeah. My name is Ryan Keefe. My
10 address is 3405 Garrison Street Northwest. And I am
11 providing testimony on behalf of Ward 3 Vision in support of
12 this special exception. We are a group of residents
13 advocating for better urban places through a more walkable,
14 sustainable, and vibrant built environment.

15 We believe that granting this special exception
16 and allowing 35 new homes, retail, and additional public
17 space be constructed on this site furthers these goals as
18 well as being consistent with both the letter of the law and
19 the spirit of the zoning code requirements around reducing
20 parking requirements.

21 Cleveland Park is a walkable urban neighborhood
22 anyone would be lucky to live in. This location is close to
23 a number of amenities as well as transit service on five bus
24 lines, three of which are full time, as well as the Red Line
25 station within approximately 600 feet of this project. The

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1 developer is also funding an additional Capitol Bike Share
2 dock that are located in front of the project. It should
3 also be noted that buildings without parking along this
4 stretch of Connecticut Avenue are not uncommon, and many
5 provide little or absolutely none.

6 ACS American Community Survey data shows that a
7 plurality of residents within this -- track where the Macklin
8 is located already take transit to work, and an outright
9 majority do in the track that is across the street from this
10 project where there is a higher percentage of multi-family
11 housing. Given this, we believe it's reasonable that this
12 will attract largely car-free residents, and this project
13 will also provide additional units in the Rock Creek West
14 area, one that has a huge deficit in both market rate and
15 procedurally affordable housing right now.

16 The project will help reach the Office of
17 Planning's goals for housing on this site, especially through
18 ordinary zoning requirements being met with this project.
19 And on that note, I should say Cleveland Park as of early
20 2019 had zero affordable units in ANC 3C. This will be the
21 first six income restricted units to be built. And we
22 believe that going through with this project without the
23 parking requirements will present a real asset to the
24 neighborhood through transit-oriented housing, but also
25 providing additional ground floor retail to activate the

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1 street as well as the inviting public plaza that is proposed.
2 Because of these benefits, we strongly urge the BZA to grant
3 this special exception.

4 BZA CHAIR HILL: Okay, thank you, Mr. Keefe.
5 Let's see, Mr. McCarthy. Mr. McCarthy, can you hear me?

6 MR. MCCARTHY: Yes, sir, sorry.

7 BZA CHAIR HILL: That's all right.

8 MR. MCCARTHY: I was waiting to unmute, sorry.

9 BZA CHAIR HILL: Would like to go ahead and give
10 us your name and home address, and then give your testimony?
11 You'll have three minutes.

12 MR. MCCARTHY: Yeah, hi, I'm Joe McCarthy. I'm
13 the managing partner of Tino's Pizzeria right there on 3420
14 Connecticut Avenue. So I'm in support of this amendment.
15 You know, we've been there just under a year and it's really
16 foot traffic that Cleveland Park needs, and I'm very much in
17 favor of some mixed use public space to promote that. I
18 think parking is not -- I mean I have good faith that Mr.
19 Kang is going to find residents that don't need cars, and
20 there's many buildings that are not using parking in their
21 building. I actually lease a space in one of the buildings
22 because they have extra spaces because I travel from Virginia
23 to work there.

24 I think it's really the -- vibrance that Cleveland
25 Park needs for retail is the foot traffic. One of the draws

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1 that we came there for was there was 37,000 residents within
2 the mile of our location. So the docking area that we could
3 utilize as a business that he's proposing in the front would
4 be very beneficial for us because we have trouble sometimes
5 with trucks pulling up. Actually, during COVID I think the
6 west side of the street has benefitted by the closure of the
7 service lane because they've got their dining out on the side
8 walk as we do, and it's bringing a little more vibrance to
9 the neighborhood to promote that foot traffic.

10 Parking is going to be, you know, an issue from
11 the zoo people coming to park along those side streets
12 anyway. But, you know, it's really not the parking so much
13 as it is the need for foot traffic and some mixed use in the
14 neighborhood, that's my true belief as a retailer that's been
15 there just under a year, totally respect the neighbors and
16 the folks that have been there for many years and accustomed
17 to being able to drive up to some of those businesses, but
18 I think they're more in the minority now. I think more
19 people are using public transportation and Uber and walking,
20 and that neighborhood certainly promotes that. So that's
21 kind of my thoughts. So I really do, you know, believe what
22 Phil is trying to do to develop that Macklin building in that
23 corner is a positive thing for the Cleveland Park.

24 BZA CHAIR HILL: All right, Mr. McCarthy, thank
25 you. As you know, you have a pretty scary name, Mr.

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1 McCarthy.

2 MR. MCCARTHY: Yes, I do.

3 BZA CHAIR HILL: Okay. All right. Ms. Duffy, are
4 you there? Is it Ms. Duffy? Can you hear me, Ms. Duffy?

5 MS. DUFFY: Yes, I can hear you.

6 BZA CHAIR HILL: Oh, great. Could you go ahead
7 and give us your name and home address, and give us your
8 testimony? You'll have three minutes.

9 MS. DUFFY: Sure. My name is Maura Duffy and I
10 live at 3945 Connecticut Avenue, Apartment 516. Thank you
11 for the opportunity to comment today. I strongly support the
12 application to waive the parking requirement. I've lived in
13 Cleveland Park since 2011 and I believe the proposed
14 development at the Macklin site will have enormous benefits
15 to the community, and requiring parking will undermine those
16 benefits.

17 First and foremost, this development will add more
18 homes which Ward 3 desperately needs without displacing any
19 families. The development will also bring new businesses and
20 a public plaza where anyone is welcome to meet up with
21 neighbors and take in the charm of Connecticut Avenue. This
22 is a better way to use the space than a parking lot. More
23 neighbors, more retail opportunities, and the new public
24 plaza will make our neighborhood more vibrant and inclusive.

25 More to the point of parking, the primary reason

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1 that I've chosen to stay in Cleveland Park for nearly a
2 decade is the walkability and access to transit. I hope to
3 never deal with the hassle of owning a car and Cleveland Park
4 makes this dream come true. It's easy to commute downtown
5 by Metro or hopping on one of the L buses. It's easy to
6 accomplish any errand by walking to the grocery stores, dry
7 cleaners, pharmacies, takeout restaurants, or the Target.
8 It's easy to get my hair cut or get a manicure walking to the
9 salons. It's easy to have a fun night out by walking to the
10 restaurants or the local bars. I believe this development
11 will draw future residents that like me, are also eager to
12 live car free, and more residents walking to neighborhood
13 shops is exactly what this neighborhood needs to thrive.

14 All told, requiring parking in such a walkable
15 neighborhood that is right by several modes of transit and
16 Capitol Bike Share just does not make sense. The Macklin
17 Project will benefit everyone by adding more homes, improving
18 the streetscape, creating new retail opportunities,
19 encouraging public transit use, and adding a new public space
20 that all can enjoy. Please approve of this waiver and keep
21 Cleveland Park moving in a positive direction into the
22 future.

23 Thank you for your consideration and for all the
24 work that you put into our city. And as a last note, I would
25 just hope that even after the pandemic, that you continue the

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1 opportunity to testify virtually because it makes it a lot
2 easier to participate in this process. Thank you.

3 ZC CHAIR HOOD: Mr. Chairman, if you don't mind,
4 I want to thank everybody. But I really appreciate Ms. Duffy
5 because we really actually going to be legislating some stuff
6 tomorrow night, and your comments are exactly something I was
7 going to mention tomorrow night. I know that has nothing to
8 do with this case, but I think it's very important when the
9 numbers go up and the participation go up, and I appreciate
10 your comments and I appreciate everyone's testimony thus far.
11 Thank you, Mr. Chairman. Mr. Chairman, you're on mute.

12 BZA CHAIR HILL: Okay, great. Thank you. All
13 right, thank you, Ms. Duffy. All right, and I think that's
14 the end of our -- leave them here, Mr. Young, that's the end
15 of all the support, correct?

16 MR. YOUNG: That's correct.

17 BZA CHAIR HILL: Okay. Ms. Prince, are you still
18 there? I've lost you.

19 MS. PRINCE: Chairman Hill, I'm here. Sorry,
20 we're having some connectivity issues.

21 BZA CHAIR HILL: Okay.

22 MS. PRINCE: But I'm here.

23 BZA CHAIR HILL: Do you have any question for
24 anybody that presented testimony?

25 MS. PRINCE: I do not.

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1 BZA CHAIR HILL: Okay. Mr. Rosenman, do you have
2 any questions for anybody who presented testimony? Your
3 microphone is -- you can shake your head no if it's no.
4 Okay, great, thank you. For the record, Mr. Rosenman shook
5 his head no. All right. So go ahead, Mr. Young, and you can
6 excuse everybody then please. Now Mr. Hart had mentioned
7 that the ANC commissioner was around. Do you know who that
8 is, Mr. Young?

9 ZC CHAIR HOOD: The chairperson is Nancy MacWood.

10 BZA CHAIR HILL: Yeah, but I don't see it listed
11 anywhere.

12 ZC CHAIR HOOD: She may not be listed, she was on
13 the letter and I think she was on board at one time.

14 MR. BASSETT: Yeah, she's authorized to represent
15 the ANC based on that submission, yeah.

16 BZA CHAIR HILL: There's Ms. MacWood.

17 MS. MacWOOD: Am I unmuted?

18 BZA CHAIR HILL: Yes, I see you Ms. MacWood.
19 Well, welcome. I haven't seen you since obviously this
20 started. Glad to see that you're still around. Let's see,
21 so, I guess -- well, let's do it this way, I guess.
22 Commissioner, you're authorized for your ANC, correct? You
23 need to turn on your microphone, Commissioner. Go ahead.

24 MS. MacWOOD: Is it on?

25 BZA CHAIR HILL: Yes.

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1 MS. MacWOOD: Yes? So you want me to go ahead and
2 testify now?

3 BZA CHAIR HILL: Yes. Are you authorized for the
4 hearing?

5 MS. MacWOOD: Yes.

6 BZA CHAIR HILL: Okay, great. Yes, please go
7 ahead and give your testimony.

8 MS. MacWOOD: Okay. I'm Nancy MacWood. I live
9 at 3417 Woodley Road. I'm the Chair of ANC 3C and I'm
10 authorized to testify on behalf of the Commission.

11 If I could take just a point of privilege and step
12 outside my authorized testimony for a moment. I just wanted
13 to make a very quick comment in response to what Mr. Keefe
14 testified to because it's a very sensitive issue.

15 He said we have zero IZ housing in ANC 3C. That's
16 not correct. We have 13 units at Cathedral Commons; we have
17 approximately 70 being built at the Fannie Mae project; and
18 there are approximately 70 IZ units that will also be
19 included at 4000 Wisconsin, which is about to begin
20 construction.

21 The other is --

22 BZA CHAIR HILL: Okay, Commissioner, I'm going to
23 interrupt one second. You wanted to do something? You
24 wanted to outside you said?

25 MS. MacWOOD: Well, that's not part of my

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1 authorized testimony. I just wanted to comment on the point
2 that he made because it's not correct.

3 BZA CHAIR HILL: Oh, because I thought you meant
4 you physically wanted to go outside.

5 MS. MacWOOD: Oh, no, no. The other point I
6 wanted to make is that we do have quite a bit at market-rate
7 housing. We have the second most rent control housing in
8 Ward 3 in the city, and I believe that ANC 3C has the most
9 rent control housing in Ward 3. So now we'll get back to my
10 authorized testimony. Thank you for the opportunity to make
11 those comments.

12 I believe you have our resolution which is 2020-
13 006, which was approved at a publicly noticed meeting with
14 a quorum present on July 20, 2020. The resolution
15 conditionally supports the approval of the parking waiver if
16 the conditions listed in the resolution are included as
17 conditions of the zoning order. And if the conditions are
18 not included, the ANC does not support the parking waiver.

19 The ANC heard from many nearby residents who
20 expressed concerns about parking, trip traffic and loading.
21 We also heard from some residents in 3C who think a Metro
22 station on Connecticut Avenue is sufficient to offset parking
23 demand.

24 The ANC looked at some of the history of the
25 parking supply/demand story in Cleveland Park and the

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1 applicant's parking consultant's report. This concluded that
2 there is an imbalance between supply and demand, particularly
3 near the Metro station and in the evenings.

4 We also noted that the applicant included in the
5 traffic demand management plan details for two loading areas
6 that include using Connecticut Avenue for retail and
7 residential loading, and the public alley off Ordway Street
8 for residential loading. The ANC found that those spaces
9 should be used in a professional, predictable way to try to
10 avoid adverse impacts on the neighbors.

11 I negotiated some of the conditions included in
12 the resolution with the applicant and his counsel. And
13 during the ANC July 20th meeting, the applicant said that he
14 supported all of the conditions.

15 With regard to parking, the applicant stated at
16 every ANC meeting where this project was reviewed that he
17 would prevent residential tenants from securing restrictive
18 residential parking and visitor parking permits. This
19 prohibition is included in the application, and the ANC has
20 made it a condition of our support for the waiver.

21 More recently, the applicant told an ANC 3C
22 commissioner that he was working with an apartment building
23 garage management company to secure at least eight parking
24 spaces that future tenants could lease. If tenants will have
25 access to off-street, off-site parking spaces, we would like

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1 that to be a continuing arrangement, and thus, we ask that
2 it be included as a condition of the order.

3 With regard to loading, the ANC asked that it be
4 clear which building tenants will be using each loading area
5 and when the loading areas are open for use. Both serve
6 multiple users.

7 Public alley access from Ordway Street is used by
8 residents as well as businesses on Connecticut Avenue. And
9 Ordway Street itself is a local street with parked cars on
10 both sides. Connecticut Avenue is a major arterial with no
11 parking during morning and evening rush hours.

12 The ANC's proposed loading conditions include
13 scheduling the Macklin and the 31-unit addition tenants to
14 use the 24-foot alley loading area for move-in/move-out
15 operations between 9:30 a.m. and 4:00 p.m. Monday through
16 Saturday.

17 All deliveries for these buildings would also
18 occur in the alley loading area. Any vehicle that couldn't
19 fit into the 24-foot space would be directed to the
20 Connecticut Avenue loading area.

21 Trash pickups for the Macklin addition would occur
22 in the alley loading area and on Connecticut Avenue for the
23 Macklin tenants. There would be no trash pickups,
24 deliveries, or loading and unloading on Newark Street.

25 The proposed loading conditions affecting the use

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1 of Connecticut Avenue include scheduling the townhome
2 residents and retail lessees to use Connecticut Avenue for
3 move-in/move-out operations between 9:30 a.m. and 4:00 p.m.
4 Monday through Friday, and 1:00 p.m. to 5:00 p.m. on
5 Saturdays, which is after the Cleveland Park farmers market
6 uses the sidewalk and curb space.

7 Retail deliveries would also be scheduled to avoid
8 conflicts and the --

9 BZA CHAIR HILL: Commissioner, are you just you
10 all's resolution?

11 MS. MacWOOD: Nope.

12 BZA CHAIR HILL: Oh, okay, sorry.

13 MS. MacWOOD: I'm adding a few additional words
14 here and there.

15 BZA CHAIR HILL: Oh, okay.

16 MS. MacWOOD: But I'm tracking it.

17 BZA CHAIR HILL: No, no. I'm just saying like if
18 you're basically just reading through the resolution, then
19 I have some questions about stuff anyway so I don't think you
20 have to -- that's what they've agreed to do, correct?

21 MS. MacWOOD: Yes, they have.

22 BZA CHAIR HILL: Okay. So then we do have some
23 questions about some of those. I don't think you have to
24 read through them all is what I was trying to get at.

25 MS. MacWOOD: Okay, all right. Well then, I will

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1 go to the end.

2 BZA CHAIR HILL: Okay. Because I'm sure we'll
3 have some questions for you anyway. And by the way, I don't
4 know if you caught any of this, this is the first case. Like
5 we haven't even gotten -- I don't even know if anybody's
6 going to bed tonight. Okay.

7 MS. MacWOOD: Yes, I'm well aware of this first
8 case. It would be nice to be in the same room with you all
9 since I haven't seen you in a long time, but this is a
10 humbling experience doing it this way.

11 BZA CHAIR HILL: Go ahead, Commissioner.

12 MS. MacWOOD: Let me sum up here then. In
13 recognition of the parking issues in the neighborhood, ANC
14 asks the BZA to include a condition that no on-street parking
15 spaces will be removed to accommodate loading, and that on-
16 street parking spaces could be added on Connecticut Avenue
17 in the evenings and on Sunday when the space is not used for
18 loading.

19 We would also like a condition that trucks will
20 comply with the DDOT truck restrictions on neighborhood
21 streets so that we can avoid as much possible safety concerns
22 associated with trucks trying to squeeze through narrow
23 residential streets with parked cars, bikers and pedestrians.

24 Thank you for the opportunity to testify. I'd be
25 happy to answer any questions you may have.

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1 BZA CHAIR HILL: Okay, thanks Commissioner. I'm
2 going to let my Board members start. We'll go around the
3 table. But the questions that I have, or one of the
4 questions, I know Commissioner that you know in the past some
5 of the things that the ANC asked for isn't necessarily within
6 our purview and so I have to try to figure what those things
7 are.

8 However, it doesn't keep the applicant and the ANC
9 to having an agreement, right, as to what they're going to
10 go ahead and do. What ends up happening sometimes -- again,
11 what ends up happening is we can't include it in the order
12 because it's not necessarily things that are within our
13 purview, so I have to kind of shake all or some of that out.

14 And the one thing I did want to ask about with
15 DDOT, when we do get to DDOT, is again, and Chairman Hood,
16 I know you mentioned to some of this, but the whole RPP
17 thing, like I know we've talked about it many times about
18 trying to keep people from getting RPP. And I've been around
19 now long enough that how that actually gets implemented was
20 something that I hadn't figured out yet. So --

21 MS. MacWOOD: Can I respond to that?

22 BZA CHAIR HILL: Sure.

23 MS. MacWOOD: Because we looked at that.

24 BZA CHAIR HILL: Sure.

25 MS. MacWOOD: I have also encountered situations

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1 where it doesn't appear that RPP restrictions are actually
2 being implemented or enforced. So when the applicant first
3 mentioned this to the ANC back last year, last fall sometime,
4 I asked them about that, and I wasn't convinced that indeed
5 such a restriction could be implemented.

6 So I went to DDOT policy folks and I asked them
7 about it, and I was told they do not implement. That neither
8 DDOT nor DMV implements restrictions on a block where RPP has
9 already been designated.

10 I then went to the Zoning Administrator and I
11 said, well, these restrictions are conditions of BZA orders,
12 you know, I could recite, you know, four of them. And I
13 said, do you have the authority to enforce these conditions?
14 Aren't you the person who would be enforcing these? And he
15 said, I don't know if I have the authority. I'm going to
16 have to check with my council.

17 BZA CHAIR HILL: Commissioner, I'm going to have
18 to interrupt you. I mean, we've gone through this a lot, and
19 I'll let Chairman Hood speak because it looks like he wants
20 to. But we're going to go around and ask some questions.
21 It wasn't that we haven't done it before, it's that there's
22 not necessarily a mechanism.

23 Like, if somebody goes and applies for RPP, for
24 some reason DDOT can't just put that building in the system
25 so that when that address pops up, they can't get RPP. So

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1 that's all I'm trying -- I'm actually speaking from an
2 implementation standpoint. So --

3 MS. MacWOOD: Well, last week the council passed
4 emergency legislation to deal with that. The legislation
5 specifically was introduced by Council Member Cheh. It was
6 passed unanimously, and it authorizes DDOT to create an
7 implementation process that would implement these sorts of
8 restrictions in zoning orders.

9 BZA CHAIR HILL: Got it. Okay. All right, Mr.
10 Hart, do you have any questions for the Commissioner?

11 VICE CHAIR HART: Just about the meeting that you
12 had. It's good to see you, Commissioner MacWood. Just about
13 the meeting that you had. I'm assuming it was a fairly --
14 I won't say contentious -- but there were different sides to
15 this. And you believe that the conditions that you have
16 agreed to will help to alleviate some of the issues that
17 people have raised during that process?

18 MS. MacWOOD: We hope that's true.

19 VICE CHAIR HART: Okay. I don't have any more
20 questions but I appreciate that.

21 BZA CHAIR HILL: Okay. Chairman Hood?

22 ZC CHAIR HOOD: Yes, good afternoon Ms. MacWood.
23 I was just curious -- I'm glad you were providing the update
24 because I've been getting an update from DDOT for a while on
25 the RPP, as you may well know. I'm glad you provided a

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1 different update and I'm glad to see there's some legislation
2 going forward.

3 My only issue with RPP and developers offering
4 that as a way to lessen the impact on neighborhoods, it's
5 almost like putting them on promised land. Because we know
6 that that data base that I've been told about years ago
7 doesn't exist.

8 We really have no way to -- whether it's a
9 residential street or, you know, we really have no way to
10 keep track. I know we probably have our best efforts, but
11 I'm glad to hear now that it sounds like we're getting ready
12 to get to where we should have been some time back.

13 I just don't want to put residents, including
14 myself because I'm a resident, on promised land about
15 something that's going to work, as we know, Ms. MacWood, over
16 the years has not worked.

17 Let me just, I just have one question. And I can
18 tell you, and I said this earlier, when I see a -- and this
19 is by no means a slight, this is actually commendable because
20 I know how you all work through things. When I see an
21 endorsement with your name at the bottom, I know they have
22 been through some rigorous involvement which, for me, gives
23 me a comfort.

24 I still have some impacts and things that I'm
25 looking at. And I don't want anybody to think that I've

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1 already made my mind up just because the ANC or Commissioner
2 MacWood and them have endorsed this I think with terms.

3 And as the Chairman said, some of those terms may
4 not be within our jurisdiction, but I believe Mr. King needs
5 to really understand that if he wants to be a good neighbor
6 and stay up there in that neighborhood in peace, he's going
7 to have to endure and make sure he holds in respect what you
8 all have worked out.

9 The only question I really have is the single-
10 member district commissioner. Who is the single-member
11 district commissioner? And I can't remember the vote.

12 MS. MacWOOD: It's vacant.

13 ZC CHAIR HOOD: Oh, it's vacant. So that means
14 the Chair has to fill in, correct? That's the procedure.

15 MS. MacWOOD: Yes.

16 ZC CHAIR HOOD: Okay. Was there some support
17 within that seat because I heard testimony about, and
18 oftentimes I've realized that. I've realized that some of
19 the commissioners live outside of the area and they have
20 lesser impacts. But for me, impacts, they may start on my
21 street but they're eventually going to work their way on and
22 on and on.

23 But since you were the one that had to fill in for
24 that vacant seat, what was the response from, more or less,
25 the single-member district? Did you have some, like,

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1 support? This is not popular, I'm just curious. I know some
2 probably supported it and some people didn't support it. Is
3 that a fair assessment?

4 MS. MacWOOD: Well, it's fair, but actually
5 because the seat was vacant, what I -- my SMD is adjacent.
6 In fact, the boundary goes up Newark Street. And I have the
7 part of the neighborhood that is the south part of Newark
8 Street and then south part of Cleveland Park.

9 So, what I did was I put information on the
10 neighborhood LISTSERV with a fair amount of detail about this
11 project and what was being requested. And I asked anyone who
12 wanted to comment to comment to the entire ANC since this
13 seat is vacant.

14 We got back a lot of comments. I then looked at
15 them because I wanted to see how many people that were
16 actually nearby that were commenting. So I looked at the
17 comments. I collected the comments from Macomb Street, from
18 Newark Street, and from Ordway Street on that side of
19 Connecticut Avenue, on the west side of Connecticut Avenue.

20 I heard from about, I would say 40 to 50 -- the
21 entire ANC did -- 40 to 50 people who lived in that section.
22 And all of them but four people opposed the waiver.

23 ZC CHAIR HOOD: All right, okay. Thank you, Mr.
24 Chairman.

25 BZA CHAIR HILL: Ms. John, do you have any

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1 questions for the Commissioner?

2 MEMBER LORNA JOHN: No, Mr. Chairman. I think the
3 Commissioner did a good job of clarifying, you know, how the
4 neighbors on the south side, you know, responded to her
5 survey and informal survey. And I think that's (telephonic
6 interference) comments we've heard today in opposition.
7 Let's leave it at that.

8 BZA CHAIR HILL: Okay. Ms. Prince, do you have
9 any questions for the Commissioner?

10 MS. PRINCE: I do not.

11 BZA CHAIR HILL: Mr. Rosenman?

12 MR. ROSENMAN: Yes, sir, I do. I have to
13 appreciate Mr. Hood's question which was one of them that I
14 wondered about, is how the neighborhood broke out in terms
15 of communications of the ANC. But I'm also wondering, given
16 the fact that the possibility of enforcing an RPP seems so
17 moot, as I understand it, that possibility wasn't really
18 there when the resolution was passed but became possible the
19 next day when Council Member Cheh introduced some
20 legislation.

21 So what I'm wondering is how confident you are
22 given your experience with the District that an RPP exclusion
23 would really be enforced?

24 MS. MacWOOD: Well, prior to the legislation Mr.
25 Rosenman, I would say I wasn't confident. (Telephonic

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1 interference.) Since then -- this is emergency legislation
2 so parts of it need to be passed as (telephonic interference)
3 but I think the fact that a majority are unanimous, is a
4 unanimous vote on the council, I would hope that the new
5 legislation would also receive that level of support. And
6 I think (telephonic interference) legislation, DDOT would be
7 accountable to the council for making sure that these other
8 conditions are implemented so the Zoning Administrator can
9 enforce them.

10 BZA CHAIR HILL: Your microphone is going in and
11 out. What's your next question, sir? Do you have another
12 question?

13 MR. ROSENMAN: I do not, thank you.

14 BZA CHAIR HILL: Okay, thank you Mr. Rosenman.

15 MR. ROSENMAN: Thank you, Mr. Chair.

16 BZA CHAIR HILL: Thank you Commissioner. I'm
17 going to put you on -- could you mute yourself there,
18 Commissioner?

19 MS. MacWOOD: Yes.

20 BZA CHAIR HILL: Could I turn to OP please?

21 MS. VITALE: Yes, good afternoon Mr. Chair. Elisa
22 Vitale with the Office of Planning for BZA case 20266. The
23 Office of Planning is recommending approval of the requested
24 special exception relief and will rest on the record of the
25 staff report. I'm happy to answer any questions. Thank you.

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1 BZA CHAIR HILL: Thank you. Does the Board have
2 any questions for the Office of Planning, and if so, could
3 you raise your hands? Mr. Hart.

4 VICE CHAIR HART: Yes, just -- I guess it's not
5 necessarily the Office of Planning, but DDOT? Are you going
6 to have them?

7 BZA CHAIR HILL: I'll get to DDOT.

8 VICE CHAIR HART: Okay, just them.

9 BZA CHAIR HILL: Okay. Ms. Johns, Chairman Hood,
10 do you have any questions? If not, okay. Ms. Prince, do you
11 have any questions for the Office of Planning?

12 MS. PRINCE: I do not.

13 BZA CHAIR HILL: Mr. Rosenman, do you have any
14 questions for the Office of Planning?

15 MR. ROSENMAN: I believe Ms. Anderson is prepared
16 to ask them some.

17 BZA CHAIR HILL: Okay. Ms. Anderson?

18 MS. ANDERSON: I do have some questions just
19 briefly. When you talk about --

20 BZA CHAIR HILL: Ms. Anderson, your camera's not
21 on. I don't know if you intended that or not.

22 MS. ANDERSON: I'm sorry, thank you. Thank you.
23 Okay. And I'm sorry, Ms. Vitale, is that how you say it?

24 MS. VITALE: Yes, that's correct.

25 MS. ANDERSON: All right. You don't mention, in

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1 assessing the standard you don't talk about NC3 which is to
2 provide for the retention of existing housing to enhance
3 pedestrian activity, safety, and consumer support for
4 businesses in the commercial area, correct?

5 MS. VITALE: The Office of Planning analyzed the
6 criteria that are outlined in subtitle C, Section 703.2.
7 This is for relief from the minimum parking requirements, and
8 the Board may grant a full or partial reduction in the number
9 of required parking spaces subject to the general special
10 exception requirements, and those do have to -- those relate
11 to, you know, being in harmony with the general purpose and
12 intent of the zoning regulations.

13 And then also tending to not adversely affect the
14 use of neighboring property in accordance with the zoning
15 regulations. But in the required special exception criteria
16 findings for the Board for the parking relief, the Board just
17 has to find that the applicant demonstrates that the
18 application meets one of the following, and there are a
19 number of criteria.

20 And those relate to physical constraints of the
21 property that would limit the ability to provide the required
22 parking on site. We did speak to the NC3 zone. In
23 discussion, Connecticut Avenue is a designated street. Curb
24 cuts are not permitted on designated streets in the NC3 zone,
25 so we did speak to that there.

1 And then we did find that there were a number of
2 other areas within the various 3.2 sub criteria that this
3 application did meet that would warrant granting the parking
4 special aid section.

5 MS. ANDERSON: In section 4A you said the extra
6 labor was in harmony with the general purpose and intent of
7 the zoning regulations and you only address 703.2. You don't
8 address in that section the NC3 zoning requirements, correct?

9 MS. VITALE: We don't address that specifically.
10 If you have a question about that, I'd be happy to answer any
11 questions that you might have.

12 MS. ANDERSON: All right. And then you said in
13 that same section in B, you said it will not tend to affect
14 adversely the use of neighboring property in accordance with
15 zoning regulations. And isn't it a fact that it will adverse
16 parking congestion of adjacent residential properties?

17 MS. VITALE: I think we've heard in the testimony
18 from the applicant today that they recognize that there is
19 parking congestion in this area, but this is outweighed by
20 the fact that this property is in close proximity to a Metro
21 station. It's well-served by bus. And I believe that
22 through the closure of the existing curb cut on Connecticut
23 Avenue that this project would result in safety and other
24 improvements to the pedestrian realm and the pedestrian
25 environment along Connecticut Avenue.

1 MS. ANDERSON: But the standard actually is will
2 not tend to affect adversely, so the use of neighboring
3 property. You really haven't dealt with that. You're
4 talking about the Metro which is a given that the Metro is
5 there, but you haven't addressed whether or not it will tend
6 to affect adversely neighboring properties.

7 MS. VITALE: I don't believe that the proposed
8 development would tend to adversely affect neighboring
9 properties.

10 MS. ANDERSON: I'm sorry, I couldn't hear you.
11 Did you say it would or would not?

12 MS. VITALE: In our review we believe that the
13 project would not adversely affect neighboring properties.
14 We have found, based on the criteria outlined in subtitle C
15 that are appropriate for the evaluation of the parking
16 special exception request, that the applicant has met the
17 burden and that granting the requested relief from the
18 parking requirements is appropriate.

19 MS. ANDERSON: So what consideration did you give
20 at all to neighbors indicating that there would be additional
21 congestion on the street, Newark Street; that there would be
22 additional problems with parking. You don't view that as an
23 adverse -- that would adversely affect neighbors?

24 MS. VITALE: Not to a degree that would merit the
25 denial of this application. I think we have to balance the

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1 provision of housing, including affordable housing units on
2 this site. As I mentioned previously, the proximity of the
3 Metro station.

4 Furthermore, the designation of Connecticut Avenue
5 as a designated street, and the prohibition of a curb cut
6 along Connecticut Avenue. As you've heard, any redevelopment
7 or any development on this site would trigger a fresh look
8 in terms of the zoning requirements.

9 So, to say that -- that basically would say that
10 the applicant couldn't do anything with this site. They
11 couldn't redevelop it at all. So I think this is a
12 balancing. We're looking at a number of factors. There are
13 an addition of units that may result in additional cars, but
14 I don't believe that granting this relief would unduly affect
15 or negatively impact the surrounding properties to a degree
16 that would merit denying the applicant's request.

17 MS. ANDERSON: In that same section you said that
18 the applicant is proposing to close an existing curb cut that
19 would restore some on-street parking spaces. What is your
20 understanding of what some means there?

21 MS. VITALE: I would defer to DDOT obviously as
22 they would review any public space applications and be
23 involved with any striping or signing that would take place
24 for parking on Connecticut Avenue.

25 I know there have been some discussions between

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1 the applicant and the ANC about using the area that's closed
2 where the curb cut exists today as a loading space. I also
3 understand there's some desire for when that space isn't
4 being used as loading that it could be used for parking. But
5 again, I would defer to DDOT to discuss that in more detail.

6 BZA CHAIR HILL: Ms. Anderson, can I ask her a
7 question? So just for clarification for what you're speaking
8 to, everything that -- well not everything -- there's always
9 an impact. There's something that's always going to happen.

10 The Office of Planning is looking as to whether
11 or not it's an undue impact or it's an impact that is going
12 to meet the criteria. So that's that the Office of Planning
13 is speaking towards.

14 Like, you know, anything that happens will have
15 some kind of an impact. And so, just to kind of clarify that
16 line of questioning. And how many questions do you have?

17 MS. ANDERSON: I just have a couple more.

18 BZA CHAIR HILL: Okay.

19 MS. ANDERSON: If you look at the, on page 4 where
20 you talk about the additional 35 additional units would not
21 be expected to significantly increase traffic congestion.
22 It's fair to say that you don't address the second part of
23 the standard regarding parking demand a new building would
24 create in the neighborhood.

25 MS. VITALE: I'm sorry, I don't see parking demand

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1 in that. In D, it's just traffic congestion. I guess I'm
2 not following your question exactly.

3 MS. ANDERSON: All right. I guess I would include
4 traffic congestion which would include people looking for
5 cars and things like that. You don't address that at all,
6 do you?

7 MS. VITALE: I believe in D we've addressed the
8 standard. As I mentioned before, the applicant just needs
9 to meet one of the items in section 703.D. I believe
10 probably Standard A may be the most compelling. We did speak
11 to a number of those other standards, but I believe the
12 applicant has met the burden for the requested special
13 exception relief.

14 MS. ANDERSON: Pardon. In E, you say that this
15 is not applicable, regarding the nature of the use of the
16 structure. By noting that it's not applicable, you
17 acknowledged that the building would not generate a demand
18 for less parking than the minimum standards, correct?

19 MS. VITALE: No, that's not correct. As I just
20 stated, the applicant just has to demonstrate that they meet
21 one of the items, one of the criteria in 703.2. OP believes
22 that the applicant has met that test, and we did not fully
23 elaborate an analysis under each of these standards.

24 MS. ANDERSON: Are there instances where an
25 individual, where there is a curb cut, where the curb cut is

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1 grandfathered in and particularly if it would allow parking
2 to remain for a project?

3 MS. VITALE: The Office of Planning, particularly
4 in this instance, I can't speak to curb cuts or curb cuts
5 being grandfathered. I think that question is probably more
6 appropriately addressed by DDOT. As I stated previously, a
7 curb cut on Connecticut Avenue is not permitted under zoning.

8 BZA CHAIR HILL: Ms. Anderson -- all right.
9 Thanks Ms. Vitale. Let's see, so DDOT, are you there? And
10 I know you are, but I don't know which one. Is it Mr. Van
11 Houten?

12 MR. VAN HOUTEN: Yes. I'll be delivering the
13 testimony and then both myself and Mr. Zimmerman will be
14 available for questions after.

15 BZA CHAIR HILL: Okay, great. So Mr. Van Houten,
16 are you going to use your camera? You don't have to, I just
17 want to know.

18 MR. VAN HOUTEN: Oh, I can.

19 BZA CHAIR HILL: Okay. That'd be great.

20 MR. VAN HOUTEN: All right. Okay, ready for
21 testimony?

22 BZA CHAIR HILL: So I think we just have
23 questions. Okay, like, you know you guys. You can use your
24 three minutes if you want.

25 MR. VAN HOUTEN: I have three paragraphs so I

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1 won't need the full three minutes. Okay, so thank you
2 Chairman Hill and BZA members. For the record again, my name
3 is Ted Van Houten. Joined with me is Aaron Zimmerman. We're
4 both in DDOT's Planning & Sustainability Division and we
5 conducted a thorough review of the application.

6 DDOT is supportive of the request in parking
7 relief. The site is located one block from a Metrorail
8 station. The land use mix nearby is conducive to non-auto
9 ownership lifestyles due to the presence of grocery stores
10 and other amenities in walking distance. And the on-street
11 parking analysis demonstrated that there are available spaces
12 should some residents choose to own a vehicle.

13 With the implementation of the transportation
14 demand management and learning management plans proposed by
15 the applicant in the April 16, 2020 transportation statement,
16 which is Exhibit 32A on the record and listed in our report
17 included as a condition, DDOT has no objection to the
18 approval of this application and we're happy to answer
19 questions.

20 BZA CHAIR HILL: Okay. Let's see, does the Board
21 have questions for DDOT? I'm going to start with, who wants
22 to go first? Mr. Hart? Here you go.

23 VICE CHAIR HART: Yes, thank you. Hi, how are you
24 doing Mr. Van Houten? So, I guess the question that I have
25 is about the issue of this curb cut has kind of come up a

1 couple of times. Could you just talk about the curb cut and
2 the existing parking on the site? So I'll just leave it
3 there.

4 The curb cut is, would it be allowed to remain,
5 and the existing parking, would that be allowed to remain?
6 Ms. Anderson has talked about there being a covenant that
7 would basically protect it. I'm not really sure what the
8 time frame is around that, but if you could talk about that,
9 that'd be helpful.

10 MR. VAN HOUTEN: Yes, I mean, we reviewed all of
11 the submissions and the curb cut on Connecticut isn't allowed
12 and I think the applicant's statement outlines the reasons
13 why it isn't. That's Exhibit 12, pages 6 and 7.

14 Eliminating the curb cut has safety benefits. It
15 removes a conflict point along Connecticut Avenue. It
16 removes that conflict for both other vehicles and for
17 pedestrians. And then, you know, you can't have the parking
18 without the curb cut, and if you can't have the curb cut then
19 you can't have the parking.

20 Aaron, I don't know if you have anything else to
21 add to that response?

22 MR. ZIMMERMAN: Yes. So, the Public Space
23 Committee which as you know is made up of not just DDOT, but
24 Office of Planning and other government agencies, they have
25 a policy that all curb cuts have to be re-reviewed when a

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1 project comes in for redevelopment.

2 So the only time that you would be grandfathered
3 in is if you're refiling an existing building with the same
4 land use. But any major renovation, change of land use,
5 redevelopment, triggers a fresh, new review of the curb cut.

6 And so, you know, just looking at this project in
7 a vacuum, if there was to be parking, you know, the first
8 thing we would ask is that the curb cut on Connecticut Avenue
9 be closed. And then it would have -- our policy in the
10 Design & Engineering Manual, which is 31.5 in DEM would be
11 that it has to move to the lower volume side street.

12 So like if there were to be parking on this
13 property, we would be pushing for a curb cut on the side
14 street. However, I think as you heard in the applicant's
15 presentation, there's all kinds of grade issues on the site.
16 And so my perspective, from all the reasons Ted just
17 mentioned, the safety reasons, the quality of streetscape
18 reasons, you know, we support not having the parking so that
19 you don't need the curb cut.

20 VICE CHAIR HART: Thank you. And kind of a
21 follow-up to some of the other comments that we've heard
22 today. So can you talk a little bit about the amount of
23 traffic that would be generated in your -- and I'm not sure
24 if this is Mr. Van Houten or Mr. Zimmerman -- how much
25 traffic would you anticipate being generated by this proposal

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1 versus how much traffic is along Connecticut or any of the
2 side streets that are there?

3 MR. ZIMMERMAN: So, I don't have the trip
4 generation numbers handy. Perhaps Mr. Andres has that. But
5 we wouldn't expect there to be a significant amount of
6 traffic considering the number of units is relatively low.
7 And then by not providing parking, it's sort of choking off
8 the source of traffic generation. So like there's no origin
9 or destination for the cars other than maybe some like Uber
10 trips that would come and be pick-up and drop-off on
11 Connecticut Avenue.

12 So we would not -- to us this not a very large
13 project. Even if there were parking, we wouldn't expect it
14 to generate all that much during the work hours.

15 VICE CHAIR HART: So a large part would be
16 something that would be what in comparison?

17 MR. ZIMMERMAN: Yes, I mean I would say when you
18 start getting up into the 100, 150 unit range, that's when
19 we would start to see some noticeable traffic on the road
20 generated by the project.

21 VICE CHAIR HART: And then the, I guess the final
22 question that I have is would there be parking availability
23 along Cleveland Park? You've heard some conversation about
24 the loss of parking because of the service road being kind
25 of removed that's on the, I guess, north side of Connecticut.

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1 North or west or east, I don't know which one you'd call
2 that.

3 But could you -- the issue of just parking in
4 general around the Cleveland Park Metro station just for
5 people that are not residents.

6 MR. ZIMMERMAN: Yes, so the previous speaker had
7 mentioned the Connecticut Avenue streetscape project that
8 DDOT has done the design for. That eliminates, again, about
9 three to four parking spaces at the Connecticut and Ordway
10 intersection. And those were eliminated to improve safety
11 at that intersection.

12 The temporary closure of the service lane to
13 parking is for the coronavirus pandemic which, of course, is
14 shaping all of our lives and none of us know how long it
15 will end. But, you know, that's intended currently to be a
16 temporary situation.

17 And, you know, the applicant did do an on-street
18 parking study which we reviewed, which they were required to
19 do and we reviewed it and we supported the outcomes of that.

20 So, you know, parking is certainly challenging.
21 This is an urban environment at times, it's challenging at
22 times, there's a Metro station, there are businesses, there
23 are residences, you know, there are things that people drive
24 to and need to park to. But there are also a lot of
25 alternative options to driving in this neighborhood.

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1 VICE CHAIR HART: Thank you. No more questions.

2 BZA CHAIR HILL: Ms. John, do you have any
3 questions for DDOT?

4 MEMBER LORNA JOHN: No questions for DDOT.
5 Initially, I had a questions about the rationale for
6 eliminating the curb cut and Mr. Hart answered that question,
7 and I'm satisfied with DDOT's response.

8 BZA CHAIR HILL: Chairman Hood, do you have any
9 questions for DDOT?

10 ZC CHAIR HOOD: Yes, I have my standard question
11 for DDOT. And I know DDOT, and I'm going to preface it with
12 I know DDOT is an award-winning government organization. I
13 know about all the awards they get across the country, so I
14 have a lot of respect. But we need to deal with this RPP and
15 I'm glad to hear Commissioner MacWood talk about what's being
16 introduced on the council level.

17 Mr. Zimmerman, Mr. Van Houten, do we have a track
18 record of what the BZA or the Zoning Commission has already
19 done, a track record of how successful where we have allowed
20 no parking. Do we have any evidence of how things have been
21 working or do we track it, are we looking at it, are we
22 making sure it works so we won't continue to have people come
23 down and offer it to us, and the residents and all of us
24 think that that is a mediation or a solution. Can either one
25 of you help me with that?

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1 MR. VAN HOUTEN: Well, I'll respond briefly and
2 then I'll turn to my colleague. But, as you know, the
3 applicant listed an RPP restriction as part of their
4 transportation demand management or TDM plan. We don't find
5 the RPP restrictions, we don't count those as the TDM
6 measure.

7 Our support for the application isn't contingent
8 on an RPP restriction. And I think if the applicant had not
9 included that -- or I know if the applicant had not included
10 that, we still would have supported this application. And
11 I'll let my colleague respond as well.

12 MR. ZIMMERMAN: Chairman Hood, to answer your
13 question directly, no, we have not been tracking that. We
14 don't have easily accessible data on how that's been working
15 over the last four or five years.

16 I do remember you asking that a couple times in
17 the Zoning Commission of various applicants, and based on
18 your, you know, questions over the last couple years about
19 that, we are in the process of scoping out a research project
20 at DDOT that will get funded this year. We'll have to data
21 collection next year.

22 But what we wanted to do was to go back and look
23 at buildings around the city that don't have parking,
24 residential buildings. And there's some that have come to
25 the BZA, some to the Zoning Commission, some that are a

1 matter of right in certain districts.

2 And go back and take a look at some of those
3 buildings and just see what happened in terms of like, you
4 know, running license plates from the DMV and seeing if any
5 of those buildings without parking are actually bringing cars
6 into the District. If so, how many.

7 But also, you know, how does that impact the
8 travel loads? Are people shifting from personal vehicles to
9 trains and walking, or are they just shifting to Uber trips
10 which are still trips on the road.

11 So, that's sort of where we stand right now, you
12 know, with the buildings with no parking.

13 ZC CHAIR HOOD: Okay. I thank you both. I'm
14 going to put both of those answers in my bank, in my parking
15 lot, because I'm going to continue to ask that until we get
16 to the point where we need to be. So I appreciate your
17 candidacy, and I appreciate both of you answering the
18 question for me to remember. So just know that I'll be
19 asking that again.

20 Thank you, Mr. Chairman.

21 BZA CHAIR HILL: Okay. The only question I had
22 again, and I don't know which one of you, and maybe -- I
23 don't know whether it was answered or not from Chairman Hood.
24 So there's not a mechanism right now, right? Like you guys
25 don't have -- there's not a building that like you can put

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1 in the address, and then when you go down to the DMV to get
2 your parking permit, there's nothing in there that shows that
3 the building can't have RPP. That's correct, right? Either
4 one of you.

5 MR. ZIMMERMAN: Well, I can go. So right now,
6 yes, there's no mechanism for DDOT to (telephonic
7 interference) the lease restrictions of the developer, the
8 number the developers have put into their approvals, and like
9 what is being proposed in this case.

10 You know, we can't restrict RPP based on, like,
11 address. We can't take individual addresses out of the RPP
12 database. It really has to be done by the entire block. And
13 this block of Connecticut has RPP restriction, virtual RPP
14 restrictions. It doesn't have signage on the ground.

15 But in the database, this block is in the RPP
16 database because just north of this site there's a couple of
17 apartment buildings, you know, where residents have been
18 eligible historically to get those RPP passes.

19 So as of right now, we don't have any mechanism
20 to just take this address out under just normal DDOT
21 procedures. But Commissioner MacWood referenced the
22 emergency legislation that passed last week. You know, we're
23 still trying to digest that legislation, but our first
24 reading of it is that it gives the Mayor the authority to
25 designate some city government agency to actually enforce

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1 these.

2 But that would require a further implementation
3 plan. That would require, you know, directives from the
4 Mayor's office for us to get going, or whatever agency winds
5 up getting that.

6 BZA CHAIR HILL: Mr. Zimmerman, I'm going to --
7 okay. Ms. Prince, do you have any questions for DDOT?

8 MS. PRINCE: I do not.

9 BZA CHAIR HILL: Okay. Ms. Anderson, do you have
10 any questions for DDOT? I can't hear you, I'm sorry. You
11 do not?

12 MS. ANDERSON: No.

13 MR. ROSENMAN: I have a couple if I may, Mr.
14 Chair.

15 BZA CHAIR HILL: Mr. Rosenman, you turned over
16 your questions to Ms. Anderson. Why can't she do both?

17 MR. ROSENMAN: It's a tag team.

18 BZA CHAIR HILL: Mr. Rosenman, go ahead. Ms.
19 Anderson if you could mute your line. I'm sorry.

20 MR. ROSENMAN: Ms. Anderson may well have
21 something that I haven't thought of. The first question to
22 DDOT is when you talked about, in effect, there being
23 adequate parking, did you factor in those three or four
24 spaces? Did you factor in the loss of 15 spaces from the
25 surface lot? If I may? Were you aware that Mr. Andres, the

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1 applicant's traffic consultant, acknowledged at an ANC
2 meeting that there is functionally no parking in the area?
3 No street parking in the area?

4 And I have one last point if I may. Do you have
5 any concern, as you put it, currently temporary restriction,
6 current temporary restriction may become a permanent
7 restriction on the service lane?

8 MR. VAN HOUTEN: Well, we reviewed everything that
9 the applicant submitted to -- on the record which included
10 the parking study. Of course, it was done in December before
11 the disease, before the pandemic. So, it was -- and first
12 of all it looked at on-street parking, so it didn't look at
13 any off-street parking spaces of which there are other places
14 of off-street parking in the neighborhood.

15 We've looked at -- I don't think that a loss of
16 three or four spaces is going to make or break the results
17 of the parking study that they provided. And as far as the
18 --

19 MR. ROSENMAN: What about adding 15 cars to the
20 road once the surface lot is closed. Did you consider that?

21 MR. VAN HOUTEN: Well, we looked at the
22 application as a fresh application, and they're asking for
23 parking relief for both the existing and the new residential,
24 and the existing and the new retail.

25 MR. ROSENMAN: I understand the nature of the

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1 request. But it seems to me what DDOT did was repackage what
2 it received from the applicant. And it didn't conduct its
3 own inquiry. It did not factor --

4 MR. VAN HOUTEN: That's not correct.

5 MR. ROSENMAN: Well, there's no evidence --

6 BZA CHAIR HILL: Mr. Rosenman, you've got to let
7 him answer the question. I don't even know what the question
8 is. You started berating them, and then --

9 MR. ROSENMAN: Forgive me, I'm sorry Mr.
10 Chairperson.

11 BZA CHAIR HILL: That's all right. Do you have
12 a question?

13 MR. ROSENMAN: In retrospect at this point, do you
14 think that the conclusions you reached might be modified by
15 what you've heard today? That's the first question.

16 MR. VAN HOUTEN: No.

17 BZA CHAIR HILL: Okay.

18 MR. ROSENMAN: I will suggest, but I won't berate.
19 The second thing is, are you aware of the fact that Wayside
20 Development has received permission for a curb cut on
21 Wisconsin Avenue?

22 MR. VAN HOUTEN: As part of what project?

23 BZA CHAIR HILL: Mr. Rosenman, what does that have
24 to do with this project?

25 MR. ROSENMAN: I'm sorry, I forgot your note --

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1 BZA CHAIR HILL: Mr. Rosenman, do you have any
2 more questions for DDOT?

3 MR. ROSENMAN: One last question which is, you
4 talked about the absence of a curb cut on Connecticut or
5 Newark. Did you examine the possibility of parking in the
6 new building on grade or the second floor with entry from the
7 alleyway?

8 MR. VAN HOUTEN: The applicant I think looked at
9 a variety of ways to provide off-street parking, none of
10 which were feasible.

11 BZA CHAIR HILL: Okay. Commissioner MacWood, do
12 you have any questions for DDOT? Okay. All right, Mr.
13 Rosenman, if you could just mute your line please. Thank
14 you. All right, okay, did I miss anybody? Okay. So now I'm
15 back to Ms. Prince. Ms. Prince, do you have any kind of
16 rebuttal?

17 MS. PRINCE: I do have some brief rebuttal,
18 Chairman Hill. And thank you for your time. I know we want
19 to move things along.

20 Just to clarify, because there were some
21 misstatements made, we are not removing any parking.

22 BZA CHAIR HILL: Actually Ms. Prince, before you
23 do go into your rebuttal, I have a couple of questions real
24 quick.

25 MS. PRINCE: Sure.

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1 BZA CHAIR HILL: So there was a bunch of
2 compromises that were kind of mentioned at the very beginning
3 of this testimony. Do you know kind of like -- so I'm just
4 curious, I don't want them all listed or anything. Do you
5 know what some of those compromises were?

6 In terms of negotiations with the ANC or like how
7 the building was going to be one way, and then the building
8 was going to be another way?

9 MS. PRINCE: Sure. There were changes to the
10 building's massing in response to community and HPRB
11 comments. The RPP suggestion was something that was
12 discussed heavily with the neighborhood. There were
13 discussions.

14 The loading was heavily negotiated. And as it was
15 pointed out, the move-in activities now will no longer occur
16 from Newark Street. So we were happy to see Ms. Kennedy show
17 the moving van on Newark Street, which will no longer be
18 there because all loading activities will happen off the
19 alley. There were hourly restrictions on loading. I mean,
20 these are the nature of the compromises and discussions that
21 happened.

22 BZA CHAIR HILL: Okay. And then that parking lot
23 that's there now, that's for the retail and the apartment
24 building, correct?

25 MS. PRINCE: It actually is not used by the

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1 apartment residents at all. It's only been used by the
2 retail. It's not available for residents of the Macklin.

3 BZA CHAIR HILL: Okay. And this is kind of just
4 anecdotal I suppose, Commissioner. Commissioner MacWood,
5 like, is that lot usually full?

6 MS. MacWOOD: No, because it's restricted to the
7 commercial tenants in the Macklin.

8 BZA CHAIR HILL: Oh, okay.

9 MS. MacWOOD: They don't generate very much
10 parking traffic.

11 BZA CHAIR HILL: Okay, all right. Because I just
12 know that area also, and I remember that parking lot and it
13 just seemed like for some reason it wasn't always full and
14 I couldn't understand why.

15 MS. MacWOOD: It's restricted.

16 BZA CHAIR HILL: Okay. Let's see, I've got DDOT,
17 okay, all right. Then in terms of your applicant, Ms.
18 Prince, they agreed to all of the conditions that the ANC had
19 put forward, correct?

20 MS. PRINCE: Yes.

21 BZA CHAIR HILL: As well as the TDM plan, correct?

22 MS. PRINCE: Yes.

23 BZA CHAIR HILL: Okay. And we'll see whether I
24 need it or not or whether we need it or not. It'd be nice
25 if we could have like one document somewhere that it's all

1 kind of put together. I guess you can kind of -- as we're
2 going through this, if somebody can look into the record and
3 just kind of refer me again.

4 I just want to see whether the -- I know I see the
5 ANC's report as well as all of their conditions. And then
6 I see the TDM plan. I guess that's good enough, actually.
7 I'm not terribly sure whether all of those are things that
8 we necessarily could put into the order, and therefore you
9 would need to -- you're telling me on the record right now
10 that your client is agreeing to all those conditions,
11 correct?

12 MS. PRINCE: We made a good faith representation
13 to the ANC that we will honor all those conditions.

14 BZA CHAIR HILL: Okay. All right, Ms. Prince, you
15 can go ahead with your rebuttal.

16 MS. PRINCE: All right. As I mentioned, we are
17 not removing any parking. In fact, by closing the curb cut
18 on Connecticut Avenue, there will be after hours parking
19 that's no longer available, that's not available now, and
20 that will be with DDOT approval.

21 As for the Macklin, the current residents do not
22 have any restriction in terms of RPP or car ownership. They
23 also have no motivation to misrepresent whether or not they
24 have a car. So we, in good faith, surveyed the residents and
25 determined that only one has a car. If the neighbors feel

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1 in actual fact that's incorrect, so be it. They're not doing
2 anything they're not allowed to do.

3 However, on a going forward basis, all new tenants
4 will have an RPP restriction in their lease. And in
5 addition, existing tenants who renew their leases will have
6 an RPP restriction.

7 And we understand Ms. Anderson's comment and we
8 agree with it. An existing tenant cannot, after the fact,
9 be forced into an RPP restriction unless the lease is
10 amended. So that was a very accurate point that she made and
11 we agree with that.

12 But this project is more than two years away.
13 Tenants will leave, leases will get renewed, and in every
14 instance where there's an opportunity to introduce an RPP
15 restriction, it will be added.

16 And I know there's been a lot of talk of
17 enforcement, and I understand that, and I appreciate what the
18 council's done. So just from the standpoint of a future
19 resident moving into the neighborhood, I really like Mr.
20 Andres's pet analogy. If you've got a dog, you don't look
21 at buildings that don't allow pets. If you have a car, and
22 you have many options in Cleveland Park that allow you to
23 have a car that provide parking, why would you choose a
24 location that has none?

25 I'd also like to note that with respect to our

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1 good faith commitment to attempt to find some off-street
2 parking, we will absolutely do that. We will look for eight
3 spaces. We will use commercially reasonable efforts to do
4 so.

5 Again, the project's over two years off. We
6 cannot make any kind of commitment along those lines at this
7 point. For example, one of the buildings with whom we are
8 engaged in a dialogue, there's a complicated process by which
9 they would even allow the use of any of their parking for
10 another project.

11 Really significantly, you've heard from a lot of
12 supporters, many of whom are in the single-member district.
13 Some of whom may not have participated in Commissioner Wood's
14 initial outreach, but you heard from them in person today or
15 in letters in the record.

16 But also, you heard from many people on Newark
17 Street, a lovely, lovely street, where there are 24 driveways
18 from Highland Place to Connecticut Avenue. We've heard a lot
19 about parking impacts from people who have parking. They
20 have their own parking.

21 So, what we're really talking about is an
22 inconvenience factor, admittedly, where if your driveway
23 doesn't fit the number of cars you have, you'd like to use
24 the street. Or you have a contractor, you'd like to use the
25 street. We understand that. That is an inconvenience.

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1 But we need to look at the greater good here and
2 the neighborhood in its entirety and the kinds of benefits
3 that the project will offer. And I think when you look at
4 that comprehensively, especially in this particular
5 neighborhood with its lack of community area, this is a
6 pretty compelling project.

7 This 24 curb cut situation, some of those are
8 tandem driveways. They serve more than one house. This is
9 a very unusual condition. That condition, in and of itself
10 creates some traffic problems on Newark Street and it would
11 never be approved today. We would never ever be able to get
12 24 curb cuts on Newark Street.

13 So, great that they have their driveways, great
14 that they can park their vehicles, but then to imply that our
15 project is going to create a huge parking burden on them I
16 think is a little bit inconsistent.

17 That's all I have in rebuttal and we really thank
18 you for your time. You've been very patient today.

19 BZA CHAIR HILL: Okay. Thank you. Ms. Anderson,
20 do you have -- only on the rebuttal that Ms. Prince gave, do
21 you have any questions?

22 MS. ANDERSON: No, I don't have any questions.

23 BZA CHAIR HILL: Okay. All right. Then Mr.
24 Rosenman, I believe in the regulations it doesn't state that
25 the applicant -- I'm sorry -- a party in opposition has any

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1 conclusion, it's only for the applicant. But I like to give
2 a couple of minutes just at the end to hear from the
3 different parties.

4 So I'm just going to put a couple minutes on the
5 clock there, Mr. Young. If you could just, if you have
6 anything that you'd like to add -- not add, add's the wrong
7 word, if you'd like to leave us with anything in terms of
8 your conclusion.

9 MR. ROSENMAN: Thank you. Jenny, did you want to
10 say something?

11 MS. ANDERSON: Sure, I can speak instead.

12 MR. ROSENMAN: Well, I'd be happy -- may I make
13 a quick -- no, you go ahead.

14 MS. ANDERSON: I think the question for you is,
15 does this project get to have a waiver when they've already
16 gotten --

17 BZA CHAIR HILL: Mr. Rosenman, you need to mute
18 your microphone. Hi, Ms. Anderson, sorry.

19 MS. ANDERSON: All right. The question for the
20 BZA is whether the Macklin project gets to have a waiver when
21 they have already gotten a 50 percent reduction because of
22 proximity to Metro. And nothing that you've heard today
23 really justifies that.

24 If you look at the standard that it has to be in
25 harmony with the general purpose and intent of zoning regs,

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1 and not affect adversely the use of the neighboring property,
2 and not affect or support the business for the commercial
3 area. And I guess I disagree with Ms. Prince in terms of
4 it's not that we're concerned about parking per se, it's that
5 the added traffic to the street creates problems, creates a
6 dangerous situation.

7 It also limits. There should be the ability for
8 people to park on the street and use the commercial area.
9 Use the library, the brand new library which we have, and
10 that is a constant use that people in those parking slots
11 turn over.

12 I think the vast majority of the neighbors who
13 oppose the waiver, we recognize the need for development.
14 We recognize and are happy to have the additional affordable
15 units in the area. But at the same time, we want to see that
16 our streets are safe, that we're not over-burdened with cars
17 creating dangerous situations, and we want to ensure, I think
18 pretty importantly, actually, that the commercial strip
19 remains viable and that our beautiful library is used. And
20 I --

21 BZA CHAIR HILL: Ms. Anderson, you've got one more
22 minute. I'm just letting you know.

23 MS. ANDERSON: All right. And I recognize that
24 the owner of Tino's has said that he thinks we will do
25 better. But I would note that just a couple of years ago,

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1 the Kennedy-Warren put a massive addition onto their
2 building, and that has not really helped -- all that
3 additional foot traffic has not helped our commercial spot.

4 The owners of the buildings over here, the
5 commercial units that have been here for quite some time,
6 have emphasized the need for parking. And so I think to
7 bring this level of activity into the neighborhood will
8 really undercut and will adversely affect the neighborhood.
9 So we ask that you deny the waiver.

10 BZA CHAIR HILL: Okay.

11 MR. ROSENMAN: Mr. Chairman, I failed to thank
12 you. That's all I want to do is just thank the Board for
13 having heard us. I apologize for my rookieness at all this,
14 and really appreciate the opportunity that you've given us
15 to be heard.

16 BZA CHAIR HILL: Thank you Mr. Rosenman. Mr.
17 Rosenman, you haven't been any more aggressive than anybody
18 I've -- in fact, you're quite tame. So I hope that, you know
19 --

20 MR. ROSENMAN: In that case, I've got a few more
21 questions.

22 (Laughter.)

23 BZA CHAIR HILL: Yes, that's okay. All right.
24 Ms. Prince, you want to leave us with anything?

25 MS. PRINCE: Just very briefly. I ask you to

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1 consider the project in its entirety; its holistic impact
2 on the immediate neighborhood. It will provide more housing,
3 affordable housing, a community plaza where there's a real
4 shortage of community-type activities outdoors, greatly
5 enhanced loading right at the Metro.

6 I ask you to evaluate this project, and when you
7 consider the comments from the opponents, please think of it
8 against the larger backdrop of the impact of a project like
9 this in the neighborhood. The many positive impacts that
10 outweigh any potentially negative impacts.

11 That's all I have and we appreciate all your time
12 today.

13 BZA CHAIR HILL: Okay, all right. So unless --
14 I don't need anything else, unless the Board needs anything
15 else. So we can go ahead and think about all this and
16 deliberate for one last time with Mr. Hart next Wednesday.

17 And so, unless the Board raises their hands, I'm
18 going to go ahead and close the record. All right, the
19 record is closed. Mr. Moy, if you can go ahead and close the
20 record.

21 To all of you who were here with us, so nice to
22 see you. You know, congratulations on a very long hearing,
23 and we will be here for a very long day. But you all have
24 a good day, and so goodbye. We're going to go ahead and
25 break for lunch. And Mr. Moy, can you put this on for

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1 decision for 8/5?

2 MR. MOY: Yes sir, done.

3 BZA CHAIR HILL: Okay. And so it's -- well now
4 I guess let's talk a little bit. I mean, how are we going
5 to get through this day? It's like -- it's 2:30 now.

6 ZC CHAIR HOOD: I don't know.

7 BZA CHAIR HILL: I mean, it's 2:40 now, and I know
8 those last two cases also have party status in opposition.
9 Mr. Moy, I might give you a call at the lunch break, okay?

10 MR. MOY: Yes, sir.

11 BZA CHAIR HILL: All right. So we'll go ahead and
12 take lunch. You want to come back at like, gosh I can't
13 believe it, 3:30?

14 VICE CHAIR HART: Oh no, how about 3:15?

15 BZA CHAIR HILL: We can try -- I have to eat. We
16 can try 3:15? 3:15. See you guys then.

17 ZC CHAIR HOOD: See you all later.

18 (Whereupon, the foregoing matter went off the
19 record at 2:40 p.m. and back on the record at 3:24 p.m.)

20 MR. MOY: Okay. The Board is back in session
21 after a quick lunch recess, and the time is at or about 3:24.

22 (Telephonic interference) according to the
23 scheduled agenda is case application number 20204 of 1001
24 Bryant Street, LLC. This application is captioned and
25 advertised for a special exception under the new residential

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1 development provisions, Subtitle U, § 421.1, to combine two
2 lots into one record lot and construct a new 16-unit
3 apartment house in the RA-1 zone. This is at 1001 through
4 1003 Bryant Street N.E., Square 3869, Lots 25 and 26.

5 For the program matter, Mr. Chairman, I believe
6 there's a request from ANC 5C05 for postponement.

7 BZA CHAIR HILL: Okay. Let me, is the next one --
8 I got a little out of order -- is it 20260? The next one on
9 the agenda Mr. Moy? Yes. Mr. Hart's nodding yes. Okay,
10 that's all I need.

11 I thought I saw Mr. Sullivan there a minute ago.
12 He disappeared. Okay, Mr. Sullivan, could you please
13 introduce yourself for the record?

14 MR. SULLIVAN: Hi, yes. Martin Sullivan with
15 Sullivan and Barros on behalf of the applicant.

16 BZA CHAIR HILL: Is Mr. Cross here with you Mr.
17 Sullivan?

18 MR. SULLIVAN: Mr. Cross should be here as well
19 as Matt Scorzafava, representative of the property owner.

20 BZA CHAIR HILL: Okay, and then Ms. Stuart, is
21 that the ANC or is she with you?

22 MR. SULLIVAN: Ms. Stuart is with the architect,
23 with Michael.

24 BZA CHAIR HILL: Okay, all right. Mr. Cross, if
25 you could introduce yourself for the record please?

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1 MR. CROSS: Certainly. Michael Cross, Architect.

2 BZA CHAIR HILL: Ms. Stuart, could you introduce
3 yourself for the record?

4 MS. STUART: Certainly. Elizabeth Stuart, Project
5 Designer.

6 BZA CHAIR HILL: Mr. Scorzafava, I'm sorry, could
7 you introduce yourself for the record?

8 MR. SCORZAFAVA: Yes. Matt Scorzafava, the
9 applicant.

10 BZA CHAIR HILL: Okay. I just thought I saw --
11 oh, there we go, jumping around. Commissioner, could you
12 introduce yourself for the record?

13 MR. MONTAGUE: Commissioner Jeremiah Montague,
14 Jr., ANC 5C. There's also supposed to be another
15 Commissioner, Darlene Oliver, on here but I don't see her.

16 MR. YOUNG: I have her calling in so I'm going to
17 unmute her now.

18 BZA CHAIR HILL: Okay, please. Can you introduce
19 -- can you hear me?

20 MS. OLIVER: Yes, I can hear you.

21 BZA CHAIR HILL: Okay, great. Could you introduce
22 yourself for the record please?

23 MS. OLIVER: Sure. Darlene Oliver, ANC
24 Commissioner, 5C05.

25 BZA CHAIR HILL: Okay. So Commissioner, I think

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1 that you were the one who was asking for a postponement, is
2 that correct?

3 MS. OLIVER: Yes, Chair.

4 BZA CHAIR HILL: Okay. So, I mean, with all due
5 respect, Commissioner, like I've kind of looked through this
6 one and, you know, it seems as though there's a long list of
7 them trying to reach out to the ANC and just trying to deal
8 with it. And then this has also been on our docket for a
9 really long time.

10 So I'll let you make your case for a postponement,
11 but I'm just kind of letting you know where I am right now,
12 which would be to go ahead and hear it. And then if we, the
13 Board, thinks that more time is necessary or if you all think
14 there is something different that would be helpful, then we
15 might try to kind of put it off a little bit.

16 But since everybody's here, I would be more in
17 favor of moving forward with it. However, since it's your
18 motion, do you want to go ahead and clarify your request for
19 postponement?

20 MS. OLIVER: Yes, yes. Are you ready?

21 BZA CHAIR HILL: Yes, I can hear you.

22 MS. OLIVER: Okay. EZR Properties LLC came before
23 my SMD and was instructed by me to have a meeting with the
24 impacted residents. Then he came before the Committee of the
25 Whole who did not give their approval of this application

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1 because he did not hold a series of meetings with the
2 impacted residents.

3 EZR Properties never held any meetings with the
4 impacted residents. Therefore, I sent a letter to BZA
5 requesting postponement and the Chair sent a letter also to
6 BZA requesting this hearing be postponed for these reasons.

7 Increasing the number of units, not enough parking
8 spaces for the units, construction concerns, one-way street
9 which cannot accommodate through traffic. The LLC did not
10 come to the impacted recent meeting with the residents this
11 past Sunday. And above all, is the community input.

12 Clearly, the developer has bypassed the guidelines
13 set by the D.C. Government and not worked within the
14 Committee as a Whole, or ANC committee, or the community.
15 That's why ANC 5 is opposed to this application.

16 I, Darlene Oliver, as ANC 5 request that this SMD
17 am opposed to giving this property and developer approval for
18 this application. There are African-American senior
19 residents who live on this (telephonic interference) drive
20 will be turned upside down by this project.

21 BZA CHAIR HILL: Okay, Commissioner, I'm going to
22 interrupt you. Like, you'll have an opportunity to testify.
23 I was just trying to figure out about your postponement
24 request.

25 MS. OLIVER: Okay, okay.

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1 BZA CHAIR HILL: And I'm looking -- there was
2 something in the record that listed how long they've been
3 trying to get in front of you guys and so on, and I'm trying
4 to look for that. Mr. Sullivan, do you know where that is
5 in the record? You don't know off the top of your head?

6 MR. SULLIVAN: I could find it. I have the
7 exhibit list here.

8 BZA CHAIR HILL: Oh, it's 59D as in David.

9 MR. SULLIVAN: Right.

10 BZA CHAIR HILL: Okay. So, Commissioner, I'm
11 going to put you on mute for a second now. Does the Board,
12 Mr. Hart or Ms. John have any thoughts to the postponement?
13 I'm looking at Exhibit 59D as in David, and the outreach that
14 they have been trying to achieve from November 26, 2019.

15 And I'm not saying that -- and I don't even know
16 if we have an exhibit yet from the ANC that they're in
17 denial, but it seems that that's the testimony so far from
18 the Commissioner. But do you all have a thought in terms of
19 the postponement? Mr. Hart?

20 VICE CHAIR HART: Yes, I guess everyone is here
21 and we could properly hear it. As you noted with this
22 Exhibit, there seems to be quite a bit of -- the applicant
23 seems to have tried to reach out and there was some response
24 back, but it just had not continued.

25 And I don't know if, Commissioner Oliver, if

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1 you're able to just describe like what occurred that didn't
2 enable you to hear or at least have any meetings with the
3 applicant back in January. If you could just talk a little
4 bit about that, that'd be helpful. Thank you.

5 BZA CHAIR HILL: Ms. Oliver, were you able to hear
6 the question? Commissioner?

7 VICE CHAIR HART: Commissioner Montague, I don't
8 know if you're able to provide any information or maybe she's
9 muted. I just can't hear anything from her.

10 MS. OLIVER: Hello?

11 BZA CHAIR HILL: Yes, we can hear you now
12 Commissioner.

13 MS. OLIVER: Okay. I don't recall receiving a
14 notification in January to meet with the developer.

15 VICE CHAIR HART: It just looks like from their,
16 the emails that they sent out, and I understand that we, you
17 know, we all have a lot of emails that come in to our email
18 box. But it looks like there was some email back in
19 November, in December, January.

20 There was a response back, I guess from the
21 Chairperson Manning. There was a response back and actually
22 from you, Commissioner Oliver, back in January of this,
23 January 14th.

24 But what I'm trying to understand is what happened
25 between January and when we had to kind of close down for

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1 COVID?

2 MS. OLIVER: Well, that was the reason, sir, it
3 was COVID. We had to shut down.

4 VICE CHAIR HART: What I'm saying is in January
5 we were still kind of in meetings and things were going on.
6 In February the meetings and things were going on. Not until
7 March were we really looking to actually shut down. I think
8 it was, actually I'm not even sure when it was. Sometime mid
9 to late March when things shut down. I'm just trying to
10 understand what happened between the January and March
11 timeframe.

12 MS. OLIVER: Sir, I don't have those records in
13 front of me, but I just don't recall those notifications.

14 BZA CHAIR HILL: Okay, all right. Ms. John, do
15 you have any thoughts on the postponement?

16 MEMBER LORNA JOHN: Mr. Chair, I think it's
17 possible for us to go ahead and hear from the applicant and
18 the witnesses who are here, and perhaps continue to a later
19 date to allow the ANC to weigh in. We've used this process
20 in the past and it might be one solution here because we
21 leave for the summer vacation in a week.

22 BZA CHAIR HILL: Okay. So, Commissioner, we're
23 going to go ahead and move forward. You will have an
24 opportunity to testify, as will you, Commissioner Montague.
25 I'm a little confused as to how many commissioners I've got

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1 here from your ANC and also as to who is the representative
2 from the ANC. And I see Commissioner Montague you're about
3 to say something. Give me one second. So -- oh,
4 Commissioner Montague, go ahead.

5 MR. MONTAGUE: Chairman Hill, Commissioner Oliver
6 is the lead person on this project because it's in her
7 single-member district. I am second-chair to answer
8 questions that perhaps that Commissioner Oliver may not be
9 able to answer.

10 BZA CHAIR HILL: Okay, so Commissioner Oliver is
11 going to -- I just want to know who the lead is.
12 Commissioner Oliver is going to give her testimony, correct?

13 MR. MONTAGUE: Right. And I'm the Vice Chair of
14 the Commission so that's why I'm here.

15 BZA CHAIR HILL: Okay, got you. So Commissioner
16 -- go ahead Commissioner Oliver, I'm sorry.

17 MS. OLIVER: Okay, I'm a little confused now.
18 Where are we in this process?

19 BZA CHAIR HILL: So I went ahead and asked the
20 fellow Board members if they have any thoughts on the
21 postponement, and everyone has agreed to go ahead and move
22 forward. And then we'll see at the end of the hearing what
23 we decide in terms of like maybe we'll continue this to give
24 an opportunity for the ANC to continue to weigh in.

25 But since everybody's here, and I don't know if

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1 you've been with us already, you know, it's been five hours
2 for us just to get to this point. So we're going to go ahead
3 and try to move through this.

4 And so you will have an opportunity to testify as
5 the representative for the ANC, and you'll have an
6 opportunity to ask questions of the applicant. And also I
7 see that Commissioner Montague is here as well, and he, since
8 he has a video camera, it might be easier for him at times
9 to clarify questions.

10 But, we're going to go ahead and move forward
11 today. Do you understand?

12 MS. OLIVER: Yes, sir.

13 BZA CHAIR HILL: Okay, all right, great. All
14 right, so Commissioner Oliver I can't see, unfortunately, you
15 or know when you're on mute or not, so I guess I'll just put
16 you on mute because there tends to be feedback. And then
17 I'll come to you when it's your turn to testify or ask
18 questions.

19 And also, if Mr. Montague, if you have his cell
20 phone, if you want to text him, then he could always raise
21 his hand as well. But you will have an opportunity to speak
22 when it's your turn to testify. You understand?

23 MS. OLIVER: Okay, yes.

24 BZA CHAIR HILL: Okay, thank you. Mr. Sullivan,
25 do you want to go ahead and give your presentation, please?

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1 MR. SULLIVAN: Yes, thank you Mr. Chairman and
2 members of the Board. My name is Marty Sullivan with
3 Sullivan and Barros on behalf of the applicant.

4 This is a request for special exception relief in
5 the RA-1 Zone for 1001-1003 Bryant Street N.E. for a new
6 residential development, and I will turn it right over to the
7 architect to present the project. Thank you.

8 MS. STUART: Hi, Elizabeth Stuart here again, the
9 project designer. I will run us through the project. Can
10 we skip ahead a couple slides? One more. Okay, right here,
11 perfect.

12 So, the subject property at 1001 Bryant Street
13 N.E. is a corner lot that faces Rhode Island Avenue. It's
14 a few feet from the Home Depot and the Rhode Island Metro
15 station.

16 BZA CHAIR HILL: Ms. Stuart, can I interrupt you
17 for one second? Mr. Sullivan, I'm still looking through your
18 presentation. When we circle back at the end, I would like
19 to hear a little bit about what's been going on with the ANC,
20 okay?

21 MR. SULLIVAN: Okay.

22 BZA CHAIR HILL: Just kind of remind me about
23 that. So, go ahead Ms. Stuart.

24 MS. STUART: Sure, thank you. The property is in
25 the RA-1 Zone and has a total land area of 10,355 square

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1 feet. The project proposes at least one IZ unit in
2 additional to habitable penthouse contribution fees. And we
3 are proposing five parking spaces, which is well above the
4 two required. Next slide please. I'm sorry, one more.
5 Thank you.

6 The project is conforming with the RA-1
7 regulations as a matter-of-right mass. We're proposing three
8 stories over a cellar plus a penthouse, and the building
9 conforms with all yards and setbacks. It is also under the
10 allowable lot occupancy and provides more than twice the
11 required number of parking spaces.

12 The project is located in an area with many
13 commercial structures. This map in red denotes all
14 commercial and multi-family structures within close proximity
15 to the property. The property can be seen there with the
16 blue dot with the address pulled out on the corner.

17 Also, I wanted to note that the two properties to
18 the east as well as those directly across Rhode Island Avenue
19 from the proposed project are multi-family structures. Next
20 slide please.

21 This again explains how we are conforming with the
22 RA-1 regulations. This goes for each individual point again
23 stressing that we are over on the parking and within the
24 matter-of-right on all other points. Next slide please.

25 This site, as shown here, the project is a fully

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1 detached structure which provides lots of light and air for
2 the residents and neighbors. We're also proposing a lot of
3 green space around the structure as can be seen by all of the
4 plantings, and the hatch with the plus signs is green space.

5 We worked with OP early on for this project as
6 they wanted us to try to address the Rhode Island corridor
7 as best as possible. As seen by the crosshatch at the north-
8 northwest corner of the property, there's a large DC Water
9 easement that restricted us from being able to build in that
10 corner.

11 So to address OP's concerns, we rotated the
12 building so that the front entrance is addressing Rhode
13 Island Avenue to the best of its ability with that easement
14 in place. Next slide please.

15 The typical floor plan has four units per floor,
16 making it up to be a 16-unit structure with three stories and
17 a cellar. Most units are two-bedroom, two-bathroom,
18 providing family-size units with ample light and air.

19 A handful of units are also three-bedroom units.
20 The IZ unit will be a three-bedroom unit and is going to be
21 provided at a 60 percent AMI. Next slide please.

22 These are the primary elevations that are seen
23 from the intersection of Bryant, 10th Street, and therefore
24 Rhode Island Avenue. We developed these with a lot of input
25 from OP and are intended to address that corner of the lot.

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1 And with that, I will turn it back over to Mr.
2 Sullivan to discuss how we meet the requirements for the
3 relief being sought.

4 MR. SULLIVAN: Thank you. If you could go to the
5 next slide please. Does the Board have any questions yet for
6 the architect or would you like me to complete this?

7 BZA CHAIR HILL: No, please go ahead Mr. Sullivan.

8 MR. SULLIVAN: Okay. First of all, the general
9 special exception requirement is in harmony with the general
10 purpose and intent of the Zoning Regulations and will not
11 tend to affect adversely the use of neighboring property.

12 This is actually, it's two properties being
13 combined into one. It's 1001 and 1003. And as you noted on
14 that map, the properties to the -- on the other side of the
15 Rhode Island Avenue on Bryant Street there's already two
16 multi-family buildings recently developed on Bryant Street.

17 So this property sort of cut off a little bit from
18 the single-family community that's remaining on Bryant
19 Street, and more configured to Rhode Island Avenue, close to
20 the Metro, close to the Home Depot. This is an apartment
21 zone of course, and for the other reasons listed here, we
22 believe it is in harmony with the general purpose and intent.
23 Next slide please.

24 It's very close to the Rhode Island Metro and
25 several bus lines in a very dense area of Rhode Island

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1 Avenue. Next slide please.

2 So the specific requirements for the RA-1 special
3 exception, as you know, are quite limited. The first
4 requirement is that the BZA shall refer the application to
5 relevant D.C. agencies for adequacy of the following existing
6 and planned area schools.

7 So we have not heard back from the D.C. schools.
8 I don't know if the Office of Planning has, but it's just 16
9 units, mostly two bedrooms. So a project of this size should
10 not have a material impact on the schools. Next slide
11 please.

12 The other requirement is that public streets,
13 recreation, and other services to accommodate the residents
14 that can be expected to reside in the project. And as
15 mentioned, we think this is a well-located use here for this
16 area up against Rhode Island Avenue, close to the Metro,
17 close to these services, and close to the transportation
18 center here.

19 And also regarding parking, the parking
20 requirement is two, and we have provided five spaces. Next
21 slide please.

22 And I will refer to the Office of Planning for
23 their report on this criteria. It's just the referral to OP.
24 Next slide please.

25 And we have submitted the required plans. Next

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1 slide please.

2 The Office of Planning and DDOT are in support.
3 And then that's all I have. And then I'm happy to talk about
4 -- if you would like me to talk about the ANC interaction at
5 this point, Mr. Chair, I'm happy to do that.

6 BZA CHAIR HILL: Not just yet, Mr. Sullivan.

7 MR. SULLIVAN: All right, thank you. So that's
8 it for our presentation. I'm happy to answer any questions.

9 BZA CHAIR HILL: Okay, does the Board have any
10 questions for Mr. Sullivan?

11 VICE CHAIR HART: Just, and I guess this is for
12 Mr. Cross, or actually Ms. Stuart. You're removing the two
13 houses that are currently on the site, correct?

14 MS. STUART: Yes, that is correct.

15 VICE CHAIR HART: And are there any -- there are
16 some larger trees, but I can't quite tell how large the trees
17 are that on the site just looking at Google, you know, street
18 view. Are there any significant trees on the property that
19 you're aware of?

20 MS. STUART: There are not any heritage trees.
21 There's a couple special trees but we are intending on
22 keeping, I believe, the majority if not all of those special
23 trees, especially the ones along 10th Street. I don't have
24 the full number on that though. We do have that information
25 that is required.

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1 VICE CHAIR HART: And the houses that are there,
2 they are not historic or anything?

3 MS. STUART: No, they are not.

4 VICE CHAIR HART: Okay. I don't have any other
5 questions.

6 BZA CHAIR HILL: Okay, Ms. John?

7 MEMBER LORNA JOHN: No questions, Mr. Chairman.

8 BZA CHAIR HILL: Commissioner Miller?

9 COMMISSIONER MILLER: No questions, thank you.

10 BZA CHAIR HILL: Okay. Commissioner Olivia, can
11 you hear me? I think it was Olivia.

12 MS. OLIVER: Yes.

13 BZA CHAIR HILL: Were you able -- do you have any
14 questions for the applicant?

15 MS. OLIVER: Why does the applicant, they came
16 before our Board at least twice, and they never -- they were
17 asked to meet with the residents, and the impacted residents
18 said that never happened.

19 They've never talked to the impacted residents and
20 they were instructed to do that at my ANC meeting and also
21 the committee as a whole. And they never asked. They were
22 asked to have a series of meetings and nothing ever happened.
23 So the residents have no idea what's going on.

24 BZA CHAIR HILL: Okay, so your question, and
25 Commissioner I'll come back to it, but your question is again

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1 about the outreach to the community, correct?

2 MS. OLIVER: Yes, sir.

3 BZA CHAIR HILL: Okay. Do you have any questions
4 for the actual content of the presentation?

5 MS. OLIVER: No.

6 BZA CHAIR HILL: Okay. Mr. Sullivan, can you
7 respond to the Commissioner's question?

8 MS. OLIVER: Oh, I'm sorry, sir. Yes, I do.

9 BZA CHAIR HILL: Okay, sure.

10 MS. OLIVER: I am very sorry about that.

11 BZA CHAIR HILL: That's all right.

12 MS. OLIVER: I wanted to ask about the parking
13 spaces. You have a unit that has, what is it, 16 -- a total
14 of 16 units but you only have five parking spaces. That's
15 going to force the people who are in there, who are living
16 there, onto the street.

17 Now, three people will have at least one car, and
18 possibly two cars, and it's only a very narrow, one-way
19 street. How is that going to affect the residents? That's
20 not going to be good.

21 BZA CHAIR HILL: Mr. Sullivan, do you have an
22 answer about the parking?

23 MR. SULLIVAN: Sure. I would say it's a policy
24 issue, and the Zoning Commission has made the determination
25 of what the parking requirements should be for a building in

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1 this location, and it's just two spaces. We provided as many
2 as we could. We were somewhat restricted by the --

3 BZA CHAIR HILL: Mr. Sullivan, and you're
4 providing five?

5 MR. SULLIVAN: Yes.

6 BZA CHAIR HILL: And you're required to provide
7 two?

8 MR. SULLIVAN: Correct.

9 BZA CHAIR HILL: Right. So Commissioner, what the
10 applicant is saying is that for this particular development,
11 they're supposed to provide two spots, they're providing five
12 spots. So they're providing more parking than they're
13 supposed to provide for this development project.

14 MS. OLIVER: Okay, we're back. As you can see,
15 they know that this is a very narrow street, very narrow, and
16 there are aging residents on that street. The aging
17 residents are going to be forced off their own street for
18 parking, and that's going to be a major problem.

19 BZA CHAIR HILL: Okay. So that's going a little
20 -- I'm not -- that's going a little bit more to testimony,
21 Commissioner. Meaning that like the zoning criteria, they're
22 not asking for parking relief. They're giving -- that's
23 something that's kind of out of our control at this point,
24 like they're giving more parking than they're supposed to
25 give. Do you have another question for the applicant

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1 concerning the content before we get to the --

2 MS. OLIVER: So a letter, a letter was sent to the
3 residents in late January that the hearing was scheduled for
4 the 18th with the Agency Board. Then they came to our SMD
5 meeting, along with the agency and asked for a letter of
6 support. It was denied again because they -- this is twice.
7 They have never met with the residents. I mean, I'm probably
8 testifying, but that's very important.

9 CHAIRPERSON HOOD: That's okay. So you had -- so
10 they -- and I was looking through the -- and Commissioner
11 Montague, I'll get to you in one second. And they -- it
12 seems as though they have testified before the full ANC,
13 correct? And you guys have denied them twice.

14 MS. OLIVER: No. They testified before us, but
15 they did not follow through with meeting with the residents.

16 BZA CHAIR HILL: You're saying you didn't take a
17 vote.

18 MS. OLIVER: Yes.

19 BZA CHAIR HILL: Okay. All right. Do you have
20 any other -- so your question again to Mr. Sullivan was about
21 outreach, and I'll let him answer. Do you have any other
22 questions other than the outreach question?

23 MS. OLIVER: No.

24 BZA CHAIR HILL: So Mr. Sullivan, the question
25 again is why did you guys not outreach to the community in

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1 the way that the ANC Commissioner is saying you should have?

2 MR. SULLIVAN: Thank you, Mr. Chair. And I may
3 have the property owner weigh in too after I answer that
4 question. We, as a policy, we're very proactive in reaching
5 out to the ANC. We want to get information out there and
6 engage as much as possible. And so following that policy
7 that we have, we reached out to the SMD in November, and it
8 took six weeks to get a response. That was multiple emails,
9 so.

10 And the reason we reach out to the SMD, and it
11 wasn't just the SMD, it was the chair -- there were other ANC
12 commissioners on that email -- is for some direction on what
13 we should do, who we should be talking to. And we finally,
14 after we postponed the first time because we could not get
15 in front of the ANC before the first scheduled hearing, we
16 did get to an SMD meeting and we tried to get on the full ANC
17 agenda at that point. And we could not get on the agenda.

18 However, coincidentally, the property owner and
19 the architect happen to be at that full ANC meeting. And at
20 some point, they ended up presenting. So there was a
21 presentation. So there's been two presentations to the
22 community and it's at that point that they mentioned they
23 wanted this series of in-person meetings shortly after that.

24 Well first we had our hearing postponed again, and
25 then shortly after that, COVID happened. The property owner

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1 was in the process of preparing the house, one of the houses,
2 which was not in good shape, to have an open house where
3 people from the community could come in. And then COVID
4 happened. Once COVID happened, he sent out over 50-plus
5 certified packages with the entire set of plans to everybody
6 that was anywhere near the site. Bryant Street, 10th Street,
7 Rhode Island Avenue because, to make sure that everyone was
8 fully informed. And then offering to meet as well.

9 This past Sunday, he was asked to come to a
10 meeting. He's in quarantine. He couldn't come to the
11 meeting, but he offered to join by phone and they again said
12 no, that's not sufficient. It has to be in-person.

13 So we feel like we haven't been avoiding the ANC.
14 We feel like we're doing everything we can. We've done a lot
15 of ANC meetings virtually.

16 BZA CHAIR HILL: Okay, I --

17 MR. SULLIVAN: A lot of problems solved virtually.

18 BZA CHAIR HILL: Okay. Commissioner, did you hear
19 that answer?

20 MS. OLIVER: Yes. I was at that meeting this past
21 Sunday and we were never informed that he was in quarantine.
22 He just did not come to the meeting. We were never informed
23 that that's what was going on. We just thought he wasn't
24 coming to the meeting.

25 MR. SULLIVAN: Happy to send you the email that

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1 will prove that.

2 BZA CHAIR HILL: Okay. All right. Commissioner
3 Montague, you had your hand up?

4 COMMISSIONER MONTAGUE: Can you hear me?

5 BZA CHAIR HILL: Yes.

6 COMMISSIONER MONTAGUE: I want to step back just
7 a second. Question's specifically to the presentation, which
8 is what you really want.

9 BZA CHAIR HILL: Oh, Commissioner, we hear it all
10 and you know we do, so.

11 COMMISSIONER MONTAGUE: So getting back to the
12 subject property and the intent to subdivide, so they're
13 currently on the lot, there are two separate lots and each
14 one has a single family residence on it. Those have been
15 slated for demolition and the demolition permits have been
16 approved. The question, and then in the architect's
17 presentation, she mentioned that there is a water -- DC Water
18 easement on the property, which influences the orientation
19 of the proposed building.

20 So that is a commentary, but my question is, one,
21 a question which you will always hate, if you couldn't the
22 subdivision, not saying that you couldn't, but because you
23 can't build this one building as a matter of right because
24 it sits across two lots, okay If you didn't get the
25 subdivision, what would you do?

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1 MR. SULLIVAN: I'm not sure who the question's
2 for, but the subdivision is a matter of right, and actually
3 nothing's possible. No multifamily project is possible in
4 the RA-1 without coming to the BTA.

5 COMMISSIONER MONTAGUE: So you're saying the
6 subdivision --

7 MR. SULLIVAN: I'm not sure if I answered --

8 COMMISSIONER MONTAGUE: Well, my question is is
9 that subdivision you're claiming is your right to do. So
10 you're going -- your own two properties are going to merge
11 to this one.

12 MR. SULLIVAN: Well, I mean, technically, I mean
13 I'm not sure if the minimum lot area might be whatever the
14 Board provides as part of the RA-1 case. But in the context
15 of this project, it's an administrative function. The
16 subdivision isn't really the critical action.

17 BZA CHAIR HILL: Commissioner, I know the answer,
18 I know your question. I don't know what they're going to do
19 and they might not know what they're going to do. Right?
20 You're saying if he didn't get this, right?

21 COMMISSIONER MONTAGUE: The second question is
22 that in the presentation, it mentions that the design is in
23 consultation with the Office of Planning. But that design
24 does not reflect consultation with the nearby community or
25 as it's called, the affected community. Is that correct?

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1 MR. CROSS: Michael Cross. We did, as Ms. Stuart
2 suggested, we met with OP in-person once, I believe, very
3 early in the project and had some follow up meetings with
4 them, I think largely via email, regarding shape, massing,
5 and orientation of the building on the site. That stuff is
6 reflected here and obviously in their report.

7 I do know that when we attended the full ANC, we
8 did get some feedback on some materiality, at least. And I
9 do believe that some of that is incorporated into the project
10 that you see before you today. I don't know if I can speak
11 to which elements, specifically.

12 COMMISSIONER MONTAGUE: Yes that's fine. So my
13 second question to you is that you're really not sure -- your
14 design as presented that stands before us today is reflected
15 of OP and feedback that came from the full commission, but
16 not any feedback -- it's not reflected that any feedback by
17 those who are immediately adjacent or nearby, within the 200
18 feet or whatever?

19 MR. CROSS: I don't actually think that that's a
20 fair representation of my position. I am recalling a
21 conversation at your ANC and some of your direct comments.
22 And I believe that we did work to try to update those
23 elements.

24 I just can't say specifically which elements in
25 this presentation reflect your comments. But I do know that

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1 we heard those comments. We discussed those comments with
2 our clients, and we tried to implement those solutions that
3 we could.

4 COMMISSIONER MONTAGUE: Okay. Fair enough.

5 BZA CHAIR HILL: Okay. Ms. -- Commissioner
6 Oliver, can you hear me?

7 MS. OLIVER: Yes.

8 BZA CHAIR HILL: You go ahead. You have an
9 opportunity now to give a presentation or testify before the
10 Board. Would you like to go ahead and do so?

11 MS. OLIVER: Yes.

12 BZA CHAIR HILL: Okay. Please go ahead.

13 MS. OLIVER: Okay. ERZ Properties came before my
14 SMD and was instructed by me to have multiple meetings with
15 the community. I set multiple dates for them. They never
16 responded. Then they came before the committee as a whole
17 in February who did not give their approval for this project
18 because they must hold the meetings, and they never did.

19 I think they never held the series of meetings
20 with the impacted residents. Therefore, I sent a letter to
21 BZA asking for a postponement, and the Chair also sent a
22 letter to BZA asking for a postponement of this hearing for
23 these reasons: reduce the number of units, not enough
24 parking spaces for units, for the units and the residents,
25 construction concerns; previous construction concerns with

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1 previous machinery was very dangerous; one way street which
2 cannot accommodate new traffic. This Sunday, the
3 representative did not appear for the meeting from the
4 developer. And above all, no community impact.

5 Failure of the developer has bypassed the
6 guidelines set up by the DC government, and not working with
7 the ANC as a whole, or the ANC, or the community. That's why
8 the ANC is opposed to this application.

9 I, Darlene Oliver, representing the SMD, am
10 opposed to giving ERZ Properties approval to proceed with
11 this application. There are African American senior
12 residents whose lives will be turned upside-down by this
13 project. The senior residents have lived on this property,
14 or in their homes for over 40 years. The senior residents
15 want to age in place, and want the peace and tranquility that
16 they earned. Remember all lives matter. Thank you.

17 BZA CHAIR HILL: Okay Commissioner. Okay. Well
18 thank you for your testimony. I mean, you know, I'm looking
19 here at again Exhibit, and you'll have an opportunity, if you
20 can, to look at this. And Mr. Commissioner Montague, I don't
21 know if you've looked at this, it's 59-D as in David, 59-D
22 as in David. But, you know, it talks about outreach to --
23 Commissioner, it talks about outreach to you starting in
24 November 26, 2019, and then there's a series of
25 communications, one of which even is, again, communication

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1 on January 13th, 2020.

2 And I'll let you go ahead and take a chance at
3 looking at that exhibit, and then we can leave the record
4 open, I suppose. Or we'll see what happens in terms of, you
5 know, if you were going to respond to any of that. But it
6 seems fairly detailed in terms of how they've kind of reached
7 out to you to try to get community feedback.

8 And I guess in terms of what the applicant is
9 supposed to do, they have, I believe, done what they're
10 supposed to do in terms of posting, in terms of reaching out
11 to the SMD -- I'm sorry, reaching out to the ANC and trying
12 to do a presentation there.

13 What I'm just trying to clarify is I don't think
14 they've tried to go around any type of information that they
15 might be able to share. That's not to say that we might not
16 -- there might not need to be more of an opportunity if he
17 has to actually submit something into the record because I
18 don't think we have a report from you.

19 And I can't see it, but, Mr. Commissioner
20 Montague, you guys actually haven't submitted a report.
21 Correct? I cannot hear you Commissioner.

22 COMMISSIONER MONTAGUE: I'm sorry. Can you hear
23 me now?

24 BZA CHAIR HILL: Yes.

25 COMMISSIONER MONTAGUE: I don't believe so because

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1 we didn't formally vote on it. I think we allowed a
2 presentation but for informational purposes and with
3 instructions to the applicant about community outreach. And
4 that's been the end of it. So there is -- no, there is no
5 129 as far as I know. I could be in error on the rest of it.

6 BZA CHAIR HILL: Okay. And Commissioner, you guys
7 haven't voted. That's what I'm just trying to clarify.

8 COMMISSIONER MONTAGUE: Not that I know of.

9 BZA CHAIR HILL: Commissioner Oliver is speaking
10 to what her vote would have been.

11 MS. OLIVER: Okay. You want me to, I would not
12 have approved the project.

13 BZA CHAIR HILL: Right. I'm just saying
14 Commissioner, you guys actually haven't taken a vote yet.
15 You're testifying as to what your vote would have been.

16 MS. OLIVER: Yes.

17 BZA CHAIR HILL: Okay.

18 MS. OLIVER: We have not taken a vote.

19 BZA CHAIR HILL: Okay. Great. All right.

20 COMMISSIONER MONTAGUE: Chairman Hill?

21 BZA CHAIR HILL: Yes?

22 COMMISSIONER MONTAGUE: In the absence of what the
23 request of the community involvement, regardless of what's
24 been placed on the record, the Commission would not be --
25 because that's one of our hallmarks of getting people to do

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1 what they're supposed to do without that community feedback.
2 And, I'm suggesting that the full Commission would not be in
3 favor of this until there was proof that that had occurred.

4 I understand that, given the pandemic, face to
5 face meetings are almost impossible at the moment. But I
6 don't, as a Commission, until we're clear that the community
7 has had its say because outside of the full Commission in
8 general, is that fact I have strongly voiced an opposition
9 or a displeasure with the project.

10 BZA CHAIR HILL: Well Commissioner, I mean, I'll
11 push back a little bit on you. I mean, what do you expect
12 people to do? It's 11/26 that they started this
13 communication, and even now we're here in, you know, this is,
14 what month are we in? My God, we're in July, you know.

15 And so even with the pandemic, I mean, you can see
16 that we've tried, we continue to have to move forward, right.
17 And the applicant has stated that they have sent out plans
18 to everybody so they can see what's going on. I mean, what
19 else is it that you would like the applicant to do?

20 COMMISSIONER MONTAGUE: If I'm right, I think the
21 applicant was sent an email. I got one yesterday by the
22 resident in the adjacent building, asking for the
23 postponement, feeling that they had not weighed in. I
24 understand what you're saying and I'm simply voicing
25 community concerns, as I'm required to do.

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1 BZA CHAIR HILL: Yes that's okay. I'm just, I
2 mean, I'm not, anyway, you understand what I'm saying. I
3 mean, what are we supposed to do also, right? You know. So
4 I mean you guys have to move forward with the business there
5 in the neighborhood. And so, you know, anyway.

6 So Mr. Sullivan, actually, hold on. Mr. Hart, Ms.
7 John, do you have any questions for Commissioner Oliver?

8 VICE CHAIR HART: I guess, Mr. Chairman, I think
9 I would ask Commissioner Oliver, are you looking to have a --
10 does your ANC have virtual meetings or only in-person
11 meetings?

12 MS. OLIVER: Because of our aging population, we
13 have in-person meetings. Our aging population does not,
14 they're not -- they don't have computers.

15 VICE CHAIR HART: No, and I understand that. So
16 is it possible to have the, an in-person meeting in terms of
17 your community, but have the applicant not necessarily be
18 there in person, but you have, you know, either a couple of
19 laptops that people can look at, or some way to be able to,
20 you know -- right now, it seems like there's like an impasse.
21 The --

22 MS. OLIVER: Yes. I understand that.

23 VICE CHAIR HART: That you're not able to meet,
24 that you haven't seen this information, but you would like
25 to meet in-person and the applicant's saying, well in one

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1 case, I guess there was this inability to meet because of a
2 quarantine issue, and I understand that that may not have
3 been relayed to you.

4 But it just seems as though there's -- I am
5 somewhat curious as to if the community, it is not a large
6 number of folks that we're talking about along 10th Street,
7 and I'm not exactly sure how many folks along Bryant Street
8 are interested in this. But it would be, I think, somewhat
9 helpful to have the folks that are local to this be able to
10 weigh in on, or at least be able to say this is, you know,
11 we like this or could you do that.

12 And right now, I just feel like we, you know, we
13 tend to do this, and this is not just for you Commissioner
14 Oliver, this is kind of for everybody. We tend to want to
15 have some feedback from the community and this seems like
16 it's somewhat of a different development. You know, along,
17 at the corner of 10th and Bryant than the rest of the
18 community, or at least the kind of adjacent community.

19 And I'm just a little concerned that we don't
20 really have enough people that have weighed in on this, and
21 it's changing from two single, looked like single-family
22 units, and I could be wrong. But it looks like single-family
23 detached units to a multifamily unit building. And I just
24 feel like we haven't heard enough from the community about
25 that.

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1 MS. OLIVER: I agree with you that you have not
2 heard from, you know, all aspects of our community. And I
3 do think that we can come to a compromise as to how we can
4 arrange a meeting.

5 VICE CHAIR HART: Yes. I don't know if it's in,
6 you know, maybe outdoor. And I heard that Mr. Sullivan said
7 that, who's the attorney for the owner, he said that there
8 had been plans and things kind of mailed out to folks, but
9 in some ways I think if you receive something like that,
10 you're like, what is this?

11 You know, it's kind of the devoid of the context,
12 and it then makes it, why did I receive these things that I'm
13 not, I didn't, I don't want plans for a building. And you
14 know, it gets a little bit confusing if it's not expected
15 that that would be submitted to them.

16 And I understand why Mr. Sullivan did it because
17 they're trying to find ways of getting the information out.
18 But I always feel like there's another, there may be another
19 way to do this. And I'm not exactly sure what that is.
20 They're just some thoughts. I don't know where I'm coming
21 down on all of this, I'm just thinking that there might be
22 a little bit more community, just conversation for the
23 adjacent folks that are along Bryant and 10th Street. So
24 those are my thoughts.

25 MS. OLIVER: Okay. I think we are thinking along

1 the same lines. I think the residents would be agreeable to
2 some sort of outdoor meeting that we can do safely and
3 arrange either a screen, one screen, one large screen, or
4 several tablets that could be set up. And that way, the
5 seniors would be able to totally understand what this project
6 is, and how it's going to be constructed, and weigh in, give
7 their comments.

8 VICE CHAIR HART: Thank you. And we can't hear
9 you, Mr. Chairman.

10 BZA CHAIR HILL: Commissioner Montague? Can you
11 hear me? You guys don't meet virtually?

12 COMMISSIONER MONTAGUE: We actually, the full
13 Commission does meet virtually. We were off in July. We
14 will meet again on August the 12th because we have a full
15 financial matter that has to be taken care of with the city
16 government.

17 BZA CHAIR HILL: Okay.

18 COMMISSIONER MONTAGUE: But during this time, yes,
19 we do. I think what Commissioner Oliver was speaking about
20 was the single member district. The preference there is for
21 in-person. And I don't know whether -- and no disrespect to
22 Commissioner Oliver, I don't know whether or not they conduct
23 virtual meetings.

24 I think a lot of those, their communication
25 amongst residents and constituents tends to be old-school.

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1 Okay? And papers circulating, face-to-face. I'm sure at
2 this time because there are seniors involved, the fragile
3 community involved, it has to be done in this way.

4 So, and I'm sure Commissioner Oliver will correct
5 me if I'm wrong, but --

6 BZA CHAIR HILL: Okay. Okay. All right.

7 MS. OLIVER: That's, hello, that's what I was
8 referring to, actual residents. But also the block captain
9 is online and I think you should hear from him.

10 BZA CHAIR HILL: Okay. Well, oh, you mean in
11 terms of testimony? I guess, and I mean this respectfully
12 for the ANC Commissioners here, I mean, I'm just kind of at
13 a little bit of a loss again as to how long this has gone on.
14 And I know that COVID is going on, and I guess we're all
15 trying to figure out how to get this information out.

16 And I suppose, you know, it's like, and I'll let
17 Commissioner Miller speak up and maybe he has a suggestion.
18 So Mr. Commissioner Montague, do you know whether they can
19 get on the agenda to speak at the August meeting?

20 COMMISSIONER MONTAGUE: Commissioner Oliver can
21 request it, yes, because there's still time to do it.

22 BZA CHAIR HILL: So Commissioner Oliver, would
23 they be able to present at your next ANC meeting, so at least
24 you guys could give a vote?

25 MS. OLIVER: Yes. Would they present before the

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1 community before that?

2 BZA CHAIR HILL: I guess that's the problem that
3 I'm trying to figure out what that means, right? Like, we're
4 not allowed --

5 MS. OLIVER: That's what we were discussing, how
6 we would arrange it.

7 BZA CHAIR HILL: Right.

8 MS. OLIVER: I think that an outdoor meeting can
9 be arranged.

10 BZA CHAIR HILL: Okay. Well I guess even that's
11 kind of like, I mean, that sounds kind of, all right. I
12 mean, you know, you're talking about at risk population,
13 right? Like, you know, I mean these are seniors, you know.
14 And I don't even think, and you're not even supposed to have
15 more than, I think, nine people together, you know. So --

16 MS. OLIVER: Well, if they have to do the meeting
17 twice, then they have to do, and that should be -- that's
18 accommodating the population.

19 BZA CHAIR HILL: Right but, anyway, so,
20 Commissioner Montague, you were about to say something?

21 COMMISSIONER MONTAGUE: Commissioner Oliver
22 clarified it. I believe that when we move to change phases,
23 the Mayor increased the number of people who could meet, as
24 long as they were six feet apart, and masks, and this, that
25 and the other. The issue would still be, as you said, a

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1 fragile population. And so you don't want to increase
2 community spread amongst that population unnecessarily.

3 BZA CHAIR HILL: Commissioner Miller, you look
4 like you're about to say something. Were you?

5 COMMISSIONER MILLER: No I wasn't about to say
6 anything. I just, I think the applicant's statement about
7 its efforts to try to, in Exhibit 59, in terms of its ANC and
8 community outreach, and efforts to get on a virtual meeting,
9 well first a regular meeting agenda before there was a
10 pandemic, and this Board, I think, directed the, put it on
11 an agenda of a future meeting and that didn't happen, whether
12 it was virtual or otherwise.

13 That was, I think, back in March when, well, it
14 was originally scheduled for a hearing in February before the
15 Board. And I think that I'm just -- I just share the
16 applicant's frustration that there's been a lot of
17 opportunity to have this on a virtual meeting agenda for the
18 -- Commissioner Oliver has expressed her concerns with it.

19

20 The ANC could, if they need more information, what
21 information they want now, they can ask for it. And they
22 need to just have a meeting and vote on it. We've given them
23 nine, you know, we've given them many months and as the
24 applicant has tried to get, if they want to oppose it, just
25 oppose it, you know. Don't be asking for multiple

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1 postponements or waiting for an in-person meeting after the
2 pandemic is over, and who knows when, is really ridiculous,
3 I think. It's unreasonable.

4 BZA CHAIR HILL: Okay. So, Mr. Sullivan, can you
5 guys, so and I'm going to -- we're spending a lot of time
6 trying to figure this out and I know that Ms. John was about
7 to maybe say something. I'll reach out to her in a second
8 as well.

9 But the, Mr. Montague, Commissioner Montague, and
10 I'm picking on you because I can see your face. So your next
11 meeting is August 5th. Is that what you said? I can't hear
12 you.

13 COMMISSIONER MONTAGUE: August the 12th.

14 BZA CHAIR HILL: Okay. So if they can get on
15 August 12th, right, then, Mr. Sullivan, can you try to, I
16 mean, whether you can or not, just try to figure out
17 something that you can organize with Commissioner Oliver.
18 And Commissioner Oliver?

19 MS. OLIVER: Yes. I'm here.

20 BZA CHAIR HILL: Commissioner Oliver, I'll have --

21 MS. OLIVER: Yes.

22 BZA CHAIR HILL: Mr. Sullivan is going to email
23 you today, I'm sure, right? And try to figure out some way
24 to have some kind of involvement and if you guys can't figure
25 it out, then I still think you have to allow them to present

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1 at the ANC meeting, or not, but that's your prerogative.

2 MS. OLIVER: Okay.

3 BZA CHAIR HILL: And then we will at least have
4 some information from you because they, the whole point of
5 the ANC meeting, that is for the public. That's how the
6 applicant reaches out to the public is through an ANC
7 meeting. And so, you know, and currently we're doing
8 everything virtually, so people have to call in and do
9 exactly what you all are doing.

10 So Mr. Sullivan, do you know if you can reach out
11 to the Commissioner and see if you can kind of arrange
12 something and still get yourselves on the agenda by the 12th?

13 MR. SULLIVAN: I'm sure that the applicant, I
14 mean, we'll do whatever we can. This will be the third time
15 that we've had to reach out to Ms. Oliver, and not have a
16 response, and not get on a meeting. And I think it's
17 intentional because they do have virtual meetings, they have
18 voted on projects, they won't vote on this one.

19 BZA CHAIR HILL: Okay. All right. So regardless,
20 Mr. Sullivan -- so Ms. -- Commissioner Oliver, can you hear
21 me?

22 MS. OLIVER: Yes.

23 BZA CHAIR HILL: Okay. So Mr. Sullivan is going
24 to reach out to you.

25 MS. OLIVER: Okay.

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1 MR. SULLIVAN: I wasn't finished.

2 BZA CHAIR HILL: And I'll let you finish. Let me
3 -- give me one second. Mr. Sullivan's going to reach out to
4 you, okay? And you guys try to figure out whatever you need
5 to figure out and then you can get a presentation on the
6 12th. And I haven't even gone through this yet, but you can
7 do your ANC meeting on the 12th, and then we can come back
8 here on the 19th, depending upon what else anybody needs.
9 Oh shoot, we're not here. So then we can, so we'll figure
10 out those dates, right? We'll figure out those dates.

11 MS. OLIVER: Okay.

12 BZA CHAIR HILL: Because we got our summer break.
13 But what I'm saying is we're not going to hold this up
14 anymore, right? You all got to figure out what you want to
15 do by your ANC meeting on the 12th. Okay?

16 MS. OLIVER: Yes. Would you like to hear from the
17 block captain before we get --

18 BZA CHAIR HILL: I still have to go through my
19 hearing in terms of like the Office of Planning, et cetera,
20 and so forth. If that's someone who is wishing to testify
21 as a member of the public, then we can do that. Is that what
22 you're trying to ask?

23 MS. OLIVER: Yes, sir.

24 BZA CHAIR HILL: Okay. So then when we get to the
25 public portion of the hearing -- and has that gentleman

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1 already, or woman, already signed up?

2 MS. OLIVER: Yes. Signed up.

3 BZA CHAIR HILL: Okay. And what is their name?

4 MS. OLIVER: Raymond Chandler.

5 BZA CHAIR HILL: Okay. So, Mr. Young, if you can
6 remember that when we get to that point. All right. So I'm
7 going to go ahead and move to the Office of Planning.

8 MS. MYERS: Hello commissioners. Crystal Myers
9 for the Office of Planning.

10 BZA CHAIR HILL: I'm a board member, I'm a board
11 member. I am not a commissioner.

12 MS. MYERS: My apologies. Hello board members.
13 Crystal Myers with the Office of Planning. As has been
14 noted, Office of Planning is in support of this case. We did
15 have some concerns about the design when we reviewed the
16 original plans, but the applicant did meet with us and worked
17 with us, and we are satisfied now, which is why they revised
18 their plans.

19 When it comes to the other standards of this case,
20 when it comes to the review of this case, they're meeting all
21 of the development standards and we thought that the site
22 plan met the requirements. So we are recommending support
23 and we'll stay on the record for everything else. If you
24 have questions, of course, I'm here for that.

25 BZA CHAIR HILL: Okay. Mr. Sullivan, do you have

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1 any questions for the Office of Planning?

2 MR. SULLIVAN: No. Thank you.

3 BZA CHAIR HILL: Commissioner Oliver, do you have
4 any questions for the Office of planning?

5 MS. OLIVER: No. I don't.

6 BZA CHAIR HILL: Okay. Board members, do you have
7 any questions for the Office of Planning? Okay. All right.
8 So, Mr. Young, if you could please bring in the members of
9 the public. Mr. Young, are you bringing them in one at a
10 time or no?

11 MR. YOUNG: I have -- a few of them are calling
12 in. So if people are calling in, I would do them one by one.

13 BZA CHAIR HILL: Okay. Let me go ahead then and
14 do Mr. Guidry. Is it Guidry? Okay, could you unmute your
15 microphone sir?

16 MR. GUIDRY: It's Guidry.

17 BZA CHAIR HILL: Guidry?

18 MR. GUIDRY: Guidry, yes.

19 BZA CHAIR HILL: Guidry. Okay. Mr. Guidry,
20 you'll have three minutes to testify as a member of the
21 public and you can begin whenever you like.

22 MR. GUIDRY: Sure. My name is Theo Guidry and my
23 address is 1007 Bryant Street. I'm personally opposed to the
24 proposed development. I do live in a new development on
25 Bryant Street, but it's significantly smaller than the

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1 proposed building. I am a new resident, so I know that
2 development's going to happen, but there needs to be more
3 community engagement.

4 I appreciate the package provided by ERB, but
5 that's not engagement. I know they are providing more
6 parking spots, but there still is not enough in this area.
7 And there also needs to be more IZ units in the plans. In
8 addition, there are also other planned elements that will be
9 taking place at the same time. And all of that construction
10 can be very disruptive, especially now that more people are
11 working from home.

12 And on a personal note, aesthetically, the
13 proposed development doesn't blend well with the
14 neighborhood, I don't think. I hope that you guys and the
15 board members vote to oppose this development. I just want
16 to thank the board members for listening to me at this time.
17 And that's it. Thank you.

18 BZA CHAIR HILL: Okay. Thank you, Mr. Guidry.
19 Does anybody have any questions for Guidry? Okay. All
20 right. Mr. Guidry, I'm going to leave you there. Can you
21 mute your microphone please, sir?

22 MR. GUIDRY: Sure.

23 BZA CHAIR HILL: Thank you.

24 MR. GUIDRY: Thank you.

25 BZA CHAIR HILL: Your microphone's not muted, sir.

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1 There you go. Great. All right, Mr. Young, can you bring
2 in another one?

3 MR. YOUNG: Yes. I have Raymond Chandler, who I'm
4 going to unmute now.

5 MR. CHANDLER: Good afternoon. Can you hear me?

6 BZA CHAIR HILL: Yes. Is that Mr. Chandler?

7 MR. CHANDLER: Yes. It is.

8 BZA CHAIR HILL: Okay. Mr. Chandler, could you
9 please introduce yourself for the record and then go ahead
10 and give your testimony?

11 MR. CHANDLER: My name is Raymond W. Chandler,
12 former ANC Commissioner, 5B03. I'm a resident at 1003, which
13 is three doors over from the proposed project. I am totally
14 opposed. I am the block captain, one of three block captains
15 representing our community.

16 I'd like to speak to several areas of concern.
17 One, they are asking for special variances knowing that this
18 property is not zoned for what they're trying to do. We are
19 totally against that. When the first set of letters were
20 sent out, they were sent out dated December 20, 2019.

21 They were sent to the impacted residents. We did
22 not receive them until January of 2020, mid January, the week
23 of January the 20th. When the letter was sent to the newly
24 ANC Commissioner, Darlene Oliver, the letter that they
25 emailed was to the former, Regina James, who was sick, and

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1 that seat was vacant. Darlene Oliver was not sworn in until
2 late November.

3 BZA CHAIR HILL: They're up there, they're up
4 there.

5 MR. CHANDLER: If I may?

6 BZA CHAIR HILL: Yes. I'm sorry, Mr. Chandler.
7 It was technical issue.

8 MR. CHANDLER: Okay.

9 BZA CHAIR HILL: Please continue.

10 MR. CHANDLER: Okay. I'm reclaiming my time.

11 BZA CHAIR HILL: Go ahead. Sure.

12 MR. CHANDLER: Thank you. Once those letters were
13 sent out, when we received the letters during January 2020
14 for the first hearing was set up by ERB Properties, that
15 hearing was set up with no community engagement, no ANC
16 meetings.

17 I immediately sent a letter of opposition. I also
18 went around and had all of my neighbors sign in a petition
19 of opposition, and it was submitted to BZA regarding that
20 project.

21 The developer then had, once he realized that
22 there was an issue on hand, he came before the single member
23 district meeting, public meeting in February with Darlene
24 Oliver, then with the ANC Commission as a whole, seeking a
25 letter of support. It was denied because there was no

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1 community engagement.

2 The community was very, we are very opposed to
3 this project due to certain areas of concern. And if I'd
4 like to list those, we would like it to stay a single family
5 member home, reducing the number of units, construction
6 concerns, traffic concerns, no community input, rodent
7 concerns during construction, dust caused by construction,
8 health concerns for many of the senior who are dealing with
9 health issues, trash bin placement.

10 There was a concern when a fire truck was sent out
11 on our street, they could not get, two incidents prior to the
12 prior construction could not get to the homes because of the
13 trash bins placed out in front of the homes during
14 construction, and blocking the trash -- the alleyway.

15 So those are a lot of areas. Property, parking
16 because it's a one way street. Crime has gone up in our
17 neighborhood once they put the new development in there. We
18 had people coming through looking through people's homes,
19 cars are being broken in. Every time a new development comes
20 through, crime goes up.

21 We already are facing three other developments on
22 a one-way street. We're fighting one at 1018. We're
23 fighting two at 1001 Rhode Island and 1003. Now these two.
24 Our neighborhood cannot sustain what is trying to be placed
25 before us.

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1 The email concerning, after we had the meetings
2 in February --

3 BZA CHAIR HILL: Okay. Can I just point out
4 again, you have only probably like one more minute.

5 MR. CHANDLER: Okay. Good. Well I've been with
6 you since 9:30 this morning. Please allow me to have that
7 one minute.

8 BZA CHAIR HILL: Oh, you don't have to worry. I'm
9 going to be here until 11:00 p.m. tonight, so.

10 MR. CHANDLER: I believe you. I believe you. I
11 know the process. And we're spinning. I'd like to reclaim
12 my time because having this rebuttal is taking my minute.

13 When the email was sent after the missed February
14 meeting with the ANC as a whole and the ANC Commissioner, as
15 a block captain, I sent dates to Darlene, cc'ing everyone
16 involved. There was a list of dates concerning for the 1018
17 project, and the 1001, and 1003. The only person that
18 responded was the 1018 developer. He set up a meeting at
19 Carolina Kitchen with us, met, came back, redeveloped, and
20 was willing to work with us. We never heard from 1001 or
21 1003, ERB Properties as a whole.

22 Then we received a letter for the virtual meeting
23 being held today without still any community engagement. I'm
24 very concerned of how this is looking when things are done
25 very covertly. And it seems to me, my community is up in

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1 arms, and they should be.

2 Then one of our neighbors, Justin, put out a
3 letter and reached out to the developer. We had a meeting
4 where many of our residents who are seniors, sat in 97 degree
5 weather on Sunday in chairs along the property, six feet.
6 It was 25 of us that gathered.

7 We were there under the assume, assuming that the
8 developer was going to be there. He sent a text, I do
9 believe, because the young man, Justin, read it, saying he
10 could not come during COVID-19. If we could be there, masked
11 in 97 degree weather, so can he. We can make this work if
12 they're willing to work with us and it seems that they are
13 not.

14 BZA CHAIR HILL: Okay.

15 MR. CHANDLER: Thank you for your time. Thank
16 you.

17 BZA CHAIR HILL: Thank you. All right. Mr.
18 Young, we have one more person. Is that correct?

19 MR. YOUNG: Yes. Leroy Hall.

20 MR. HALL: Hello?

21 BZA CHAIR HILL: Mr. Hall, can you hear me?

22 MR. HALL: Yes.

23 BZA CHAIR HILL: Could you please go ahead and
24 introduce yourself, and you'll have three minutes.

25 MR. HALL: Leroy Hall at 1019 Rhode Island NE, not

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1 far from the development. First, the first thing I'm going
2 to say is the city government, which includes our mayor,
3 council, and all the various agencies like the Board of
4 Zoning. They should stop approving any development without
5 approval of the community, and this will be an ANC, or any
6 community organization.

7 They need to stop pushing excessive entities.
8 They need to stop changing the character of our community.
9 That is the big issue. Building extra units on the spot of
10 a single family home is a destructive practice that destroys
11 the character of the community, and this is one of the main
12 issues besides parking. I mean parking goes without saying.

13 But the point is this, the community should decide
14 whether or not there should be any development. Any
15 development at all should come through a community meeting,
16 ANC or any of the community meetings.

17 Another thing is this. The Office of Planning
18 over the years that I've been in this city, I've been here
19 80 years. I came here when I was about a year old. I've
20 been here in this neighborhood probably 56 years or so. The
21 Office of Planning, as far as I could see, with all the
22 different, various projects over the years, has never been
23 friendly to our grassroots community.

24 And so I'm telling the community, we need to just
25 stop any development, that we will decide if or when anything

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1 comes into our neighborhood. We're being inundated with
2 upscale, overpriced condos and apartments, all in an area
3 here, Edgewood, Brentwood, Brookland. There's too many units
4 being built, which will not help us at all in maintaining the
5 character of our community.

6 How much time I got?

7 BZA CHAIR HILL: You still got 30 seconds.

8 MR. HALL: All right. I want to make this point
9 very clear. I've been here a long time and the city
10 government needs to start listening to the community, act as
11 though they care about the taxpayers and voters, and people
12 who have to pay the high fees, exorbitant tax, property
13 taxes, and all the expected problems. And I'm suggesting
14 that they not allow any developer to come in without first
15 contacting some members of the community, and ask them do we
16 want development, yes or no. That's it. These hearings make
17 no sense otherwise. Thank you.

18 BZA CHAIR HILL: Okay. Thank you, Mr. Hall. So,
19 Mr. Hall, I just want to mention one thing. Do you have,
20 have you had the ability to look at the record of the Board
21 of Zoning Adjustment?

22 MR. HALL: The 103, you talking about?

23 BZA CHAIR HILL: Two, yes, this case record.
24 2024.

25 MR. HALL: No. This is the first time I've seen

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1 this one. I've had a problem with one right behind me and
2 I see some more going on on Bryant Street.

3 BZA CHAIR HILL: Right. All I was trying to
4 suggest was, if you go to the Board of Zoning Adjustments'
5 website --

6 MR. HALL: Yes.

7 BZA CHAIR HILL: You can look up the record and
8 you can see the report from the Office of Planning, and kind
9 of all of the community input, and what we as a Board go
10 through to hear from the community. What we're supposed to
11 do at the Board of Zoning Adjustment is give great weight to
12 our report from the ANC.

13 And that, it's not that the ANC gets to decide,
14 but we give that great weight. And we're supposed to do that
15 through the regulations. I guess that's what, what I'm
16 trying to say is that's how we get the vote from the
17 community.

18 MR. HALL: Yes. After all these years of being
19 at all those hearings, downtown, and community meetings of
20 all kinds, all I see is over-development and the excessive
21 density driving out residents and compromising the character
22 of our community. That is the issue.

23 The Washington Post says that gentrification was
24 the main problem in Washington DC, and that is the issue.
25 I've talked about this all the years that I've been here, on

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1 the internet and also with the neighbors, talking about if
2 the city wants to, if the city cared about any input from,
3 great weight doesn't anything to me. All it means is that
4 you would just listen. But we should make the decision and
5 that's my main point.

6 BZA CHAIR HILL: Okay. All right, Mr. Hall. Does
7 anybody have any questions for the witness?

8 MR. HALL: Should have.

9 BZA CHAIR HILL: Okay. Thank you all very much.
10 Thank you. All right. So we've had testimony. There's no
11 one here speaking in support. Correct Mr. Young?

12 MR. YOUNG: That's correct.

13 BZA CHAIR HILL: Okay. Ms. Myers? I'll get you
14 in one second, Mr. Hart. Ms. Myers?

15 MS. MYERS: Yes.

16 BZA CHAIR HILL: Can you clarify again with me
17 that you said that they met all the development standards.

18 MS. MYERS: Yes. So in order to determine the,
19 if there's a substantial impact to the neighbors' privacy,
20 light, and air, that there's considered a substantial or
21 undue impact, we would look at if there's any issues when it
22 comes to the development standards. They're meeting all of
23 their development standards.

24 So for example, what's been discussed earlier,
25 parking. The parking development standard is two parking

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1 spaces for a building this size, and they're exceeding that
2 with five. And so for our review of the zoning regulations,
3 we would say that they are okay when it comes to the parking
4 impact.

5 These are referring to the RA-1 zone, and the 54
6 side yard, and the other development standards. So for just
7 complying to the zoning regulations, when it comes to the
8 impacts on the nearby neighbors, we would say that they've
9 satisfied that issue by complying with the regulations on the
10 development standards.

11 We still look at the site plan, and that's one of
12 the reasons for the review under RA-1, is to see how it is
13 configured on the site. But we thought that they complied
14 with that.

15 Our biggest issue was design and, you know, as I
16 mentioned, we worked with them on that and we got to a point
17 where we were able to be satisfied.

18 BZA CHAIR HILL: Okay. Mr. Hart, you had wanted
19 to say something? You're on mute, Mr. Hart.

20 VICE CHAIR HART: Hi. Thank you. I just realized
21 that. I thought there was another person, a Ron Chandler?
22 There's Raymond Chandler and Ron Chandler that were listed
23 on our, and I just didn't know if there was another person
24 or if that was just, I don't know. Just curious.

25 BZA CHAIR HILL: Do you have a Ron Chandler out

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1 there, Mr. Young?

2 MR. YOUNG: No. I don't see him on the call.

3 VICE CHAIR HART: That's fine. I just wanted to
4 double-check. That's all.

5 BZA CHAIR HILL: Sure. Thank you for clarifying.
6 Does, okay, Mr. Miller?

7 COMMISSIONER MILLER: Thank you, Mr. Chairman.
8 I just have -- responding to Ms. Myers' report, right, I just
9 had a comment to her, about one of their original
10 recommendations, which they thought would, which was to
11 consider adding balconies to a residential building to give
12 it a residential character.

13 And the applicant responded about, they would need
14 further relief than, I think, from the lot occupancy or the
15 FAR, or maybe both, I don't know.

16 I just wanted to share with Ms. Myers what you may
17 have heard me had a dialogue with other Office of Planning
18 folks in the past about that issue. And I thought OP might
19 be looking into, at some point, proposing an ABA text
20 amendment that wouldn't count balconies toward FAR or lot
21 occupancy, so that we don't run into this extra relief that's
22 needed when, on almost every case that in a multi-unit
23 building, residential building, it always looks better with
24 a balcony.

25 It always looks more residential with a balcony.

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1 I know the other nearby multiple unit property does not have
2 it, apparently. But the older multi-unit buildings in this
3 area, which actually look kind of pretty with their
4 balconies.

5 So I just wanted to just remind, if you could just
6 talk to your colleagues about the issue of balconies not
7 counting toward, or additional relief be needed, whether it's
8 FAR or lot occupancies, so that we don't discourage what was
9 your own recommendation in this case, is that they consider
10 adding them, which I think would have made the design more
11 compatible with a residential neighborhood.

12 MS. MYERS: Understood.

13 BZA CHAIR HILL: Okay. Mr. Sullivan, do you have
14 anything at the end here?

15 MR. SULLIVAN: HAS the Board, has the Board made
16 a decision about --

17 BZA CHAIR HILL: I think what we're going to try
18 to do, and this is what I thought we were going to try to do.
19 And Commissioner Oliver, are you still there? Mr. Young, is
20 Commissioner Oliver still there?

21 MS. OLIVER: Yes, I'm here.

22 BZA CHAIR HILL: Oh great. Perfect. So
23 Commissioner Oliver, what I thought was kind of on the table
24 was that you guys, Mr. Sullivan was going to get in touch
25 with you and then try to set up something, whatever that may

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1 be, that can help get your immediate SMD more plugged into
2 this, or whatever you think is necessary. I mean, I do think
3 that they've gone through a lot of the criteria already and
4 reached out to get through to your SMD, but you're going to
5 try to do that before the hearing on the 12th. Correct?

6 MS. OLIVER: Yes.

7 BZA CHAIR HILL: Okay. So then I'll put that,
8 that's now on you and Mr. Sullivan. Okay? And regardless
9 of what happens, and Commissioner Montague, if I could, you
10 know, understand with you, they will get a chance to present
11 on the 12th.

12 MS. OLIVER: Yes. I will --

13 BZA CHAIR HILL: Okay. Either way, whether they
14 present or not, that'll be the last time that we'll have an
15 opportunity to hear from you guys. And so that means we're
16 just not going to get anything from it. Okay? And that means
17 that we're back, when's our first meeting, Mr. Moy? Is it
18 the 9th of September?

19 MR. MOY: Mr. Chairman. You are, the Board
20 returns September 16, but you have an appeal that day, so you
21 currently have five applications and one appeal. This would
22 be the sixth application.

23 BZA CHAIR HILL: Yeah. I don't think we need --
24 we can put this on for decision, I think.

25 MR. MOY: Oh, okay.

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1 BZA CHAIR HILL: And so, because I don't need any
2 more information. I mean, I just want to hear from the, you
3 know, the ANC officially. And Mr. Commissioner Montague, as
4 you know the form number, so we actually can give you great
5 weight. Right? Because currently we can't give you anything.
6 Right? And so, you know, you'll get something to us, I mean,
7 if you have the hearing on the 12th, as long as we get by,
8 I mean, I don't know what date you want stuff by, Mr. Moy,
9 so that the applicant can have an opportunity and we'll put
10 this on the meeting agenda for September 16th.

11 MR. MOY: Yeah. My suggestion, Mr. Chair, that
12 gives staff time to review the submitted materials if the ANC
13 can submit their document or resolution by September the 7th,
14 which is a Monday.

15 MS. OLIVER: Okay, yes. I heard that.

16 BZA CHAIR HILL: Yes, we heard you, Commissioner.

17 MS. OLIVER: Okay. You said by September? I'm
18 sorry.

19 BZA CHAIR HILL: Seventh.

20 MS. OLIVER: Okay. Say that again. September?

21 CHAIRPERSON HILL Seventh.

22 MS. OLIVER: Seventh. Okay. I heard you.

23 BZA CHAIR HILL: That's a Monday. Thank you.

24 VICE CHAIR HART: And Chair Hill, I do want my
25 replacement to read into this case.

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1 BZA CHAIR HILL: Yes. Chris Sean, you mean?
2 Right. Yes, they're, we'll have a new person.

3 VICE CHAIR HART: You'll have three, so I just
4 didn't know if you wanted a fourth. That's all.

5 BZA CHAIR HILL: If he wants to read it, he's
6 welcome to read it.

7 VICE CHAIR HART: I'll let him know.

8 BZA CHAIR HILL: Okay. All right. All right, Mr.
9 Sullivan, do you have anything else to add?

10 MR. SULLIVAN: No. Thank you.

11 BZA CHAIR HILL: Mr. Sullivan, are you with us for
12 the rest of the day at all?

13 MR. SULLIVAN: I do have another hearing with you
14 today, yes.

15 BZA CHAIR HILL: Okay. All right. Because I, and
16 then we're -- are you with us on the fifth also?

17 MR. SULLIVAN: I don't think that I am.

18 BZA CHAIR HILL: Don't forget to say goodbye to
19 Mr. Hart because this, you know.

20 MR. SULLIVAN: Oh. Thank you for the reminder.
21 Yes. I'm happy to do that.

22 BZA CHAIR HILL: Commissioner Montague, you know,
23 say goodbye now.

24 MR. SULLIVAN: I'm glad you reminded me. Good
25 luck to you, Mr. Hart. We will miss you. It is, on this

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1 side of the table, it can be very stressful sometimes, you
2 know. I do appreciate your smile and your kind disposition
3 in handling these cases. That's really meaningful to us.
4 I appreciate that. Thank you.

5 VICE CHAIR HART: Thank you, as well. It's been
6 interesting because I hadn't done a whole lot of local stuff
7 in a while, cases in a while. And it's just very
8 interesting, kind of, you know, understanding and reviewing
9 these cases, and then having to decide upon them. And it's
10 helpful to have practitioners that are knowledgeable about,
11 you know, the process and the various aspects of zoning. So
12 I appreciate that, the kind words. And yes, I'll miss doing
13 it. I'm still going to be in the area. I still will work
14 for NCPC, I just, I am going to not be doing the BZA aspect
15 of that. So we have somebody else in my office that's going
16 to be taking over.

17 BZA CHAIR HILL: Commissioner Montague, did you
18 say you were going to -- lean forward there.

19 COMMISSIONER MONTAGUE: I will be here on August
20 the 5th, so I will say adieus then to Board Member Hart. But
21 Board Member Hart knows that I will see him at NCPC.

22 BZA CHAIR HILL: Oh, wow. All right.

23 VICE CHAIR HART: He comes to our meetings as
24 well. It's good seeing him there and here.

25 BZA CHAIR HILL: Okay. I couldn't hear you

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1 Commissioner.

2 COMMISSIONER MONTAGUE: Oh, I'm good. Can you
3 hear me now?

4 BZA CHAIR HILL: Yes.

5 COMMISSIONER MONTAGUE: All right. So I said my
6 piece and when you say that this is set for, be done for the
7 day.

8 BZA CHAIR HILL: Okay, great. All right. Okay.
9 Then everybody take care. We'll see you all for a decision
10 on 9/16. Okay. Thank you. Bye-bye.

11 What do we got next? Are we just going to keep
12 chugging along here? I guess so, right?

13 MR. MOY: Yes, yes.

14 BZA CHAIR HILL: Okay. Go ahead with our next
15 one, Mr. Moy.

16 MR. MOY: That would Case Application Number 20260
17 of 618 Randolph Street NW LLC. Caption and request for a
18 special exception under the RF-use requirements, Subtitle U
19 section 320.2. This would permit the conversion of an
20 existing attached principal dwelling unit into a three-unit
21 apartment house. RF-1 Zone at premises 618 Randolph Street
22 NW, Square 3233, Lot 99.

23 BZA CHAIR HILL: Okay. Mr. Cross, are you on this
24 as well? Okay. All right. Let's see who we got here.
25 Who's presenting to us? Is it Mr. Ebadi?

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1 MR. CROSS: Yes, for the architectural
2 presentation, Mr. Ebadi will be presenting here as well.

3 BZA CHAIR HILL: Oh, Mr. Cross. Are you going to
4 do this for us?

5 MR. CROSS: I believe --

6 BZA CHAIR HILL: Are you presenting?

7 MR. CROSS: I believe Mr. Ebadi will be presenting
8 here today.

9 BZA CHAIR HILL: Okay.

10 MR. CROSS: Are you ready for that?

11 BZA CHAIR HILL: All right. First of all, Mr.
12 Cross, will you introduce yourself for the record?

13 MR. CROSS: Sure. My name's Michael Cross. I'm
14 the architect responsible for the project at 618 Randolph
15 Street NW.

16 BZA CHAIR HILL: Okay. Mr. Ebadi, could you
17 introduce yourself for the record?

18 MR. EBADI: Hi everyone. I'm Amir Ali Ebadi,
19 project design.

20 BZA CHAIR HILL: Okay. Mr. Cross, so you're going
21 to walk us through the presentation. Correct? Or start at
22 least? Oh, no, Mr. Ebadi is. Okay. Fine.

23 MR. CROSS: Yes.

24 BZA CHAIR HILL: So Mr. Ebadi, and you can speak
25 to this or we can talk to the Office of Planning also.

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1 There's, in some of my notes, that you might need three
2 waivers. One from the chimney, the rooftop element, and then
3 the one that you're asking for from the ten -- Are you aware
4 of the other two waivers?

5 MR. CROSS: We are not. We are not intending to
6 get reliefs from rooftops, nor chimney. We have a signed
7 chimney agreement with the neighbor and the rooftop, the
8 additional story has been set back behind the existing
9 rooftop.

10 BZA CHAIR HILL: All right. I'm going to jump
11 around because we just have so much stuff going on here
12 today. Ms. Myers, are you there?

13 MS. MYERS: Hi. Crystal Myers for the Office of
14 Planning. I was trying to also understand that comment. I
15 know that, you know, we knew about the ten-foot requirement,
16 they need a waiver for that. I know that they got the
17 chimney agreement from the neighbor, so they're okay on that.
18 And you said that the third waiver they need, I just wasn't
19 aware of the third waiver. I thought they were okay.

20 BZA CHAIR HILL: The change to the rooftop
21 element.

22 MS. MYERS: I'm taking a look on that. I think
23 we wrote down that there is no rooftop element that would be
24 removed or altered. So I don't think we noted that as being
25 an issue.

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1 BZA CHAIR HILL: Okay. I just have it in my notes
2 somewhere. Okay. Let's see. Mr. Ebadi, go ahead and walk
3 us through briefly your presentation.

4 MR. EBADI: Absolutely. If we can go to the Page
5 1 of the Document Number 8.

6 BZA CHAIR HILL: And Mr. Ebadi, what happened to
7 the ANC? Oh, I got the report here. Okay. Wait a minute.
8 It came in the -- go ahead and start, Mr. Ebadi. I'm sorry.

9 MR. EBADI: Sure. We're seeking special exception
10 relief for a three-unit conversion and in the RF-1 zone,
11 pursuant to the Subtitle U, section 320.2. Our project is
12 being proposed at 618 Randolph Street NW, which is on the
13 south side of the block between 5th and 7th Streets.

14 The project as proposed is conforming with
15 requirements for conversion, as it proposes no modification
16 to the rooftop elements, and will be providing two parking
17 spaces, and we will be providing two parking spaces as
18 required.

19 And then continuing, I don't know if you have the
20 document up there, but --

21 BZA CHAIR HILL: So Mr. Ebadi, I'm going to
22 interrupt you for one second because I've gone through this
23 record pretty extensively. Does the Board have any questions
24 for Mr. Ebadi? Go ahead, Mr. Hart.

25 VICE CHAIR HART: Mr. Ebadi, are there any, are

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1 you repairing the porch roof, or the porch?

2 MR. EBADI: I'm sorry.

3 VICE CHAIR HART: Are you repairing the porch roof
4 or the porch on the front of --

5 MR. EBADI: Yes. We're intending to keep the
6 existing porch.

7 VICE CHAIR HART: Chair Hill, can you mute your
8 mic please?

9 BZA CHAIR HILL: That wasn't me, buddy.

10 VICE CHAIR HART: Oh, I could hear something
11 moving and I couldn't figure out what it was.

12 BZA CHAIR HILL: It was Mr. Cross.

13 VICE CHAIR HART: Oh, there we go. So if you
14 could say that again, Mr. Ebadi.

15 MR. EBADI: Absolutely. We're intending to keep
16 the, maintain the existing porch that we have and repair it
17 if needed. There will be no change to the porch or rooftop
18 element.

19 VICE CHAIR HART: Okay. Maybe I'm missing
20 something. So this is, I'm looking at the existing what's
21 on like Google Earth, and then what you're proposing, and it
22 looks like it's changing and I'm just trying to figure out
23 what that change is. There are currently, it looks like
24 there are metal posts that are holding up the front porch and
25 you have, it looks like, I don't know, look like they're

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1 brick. And then the porch roof itself looks like it's
2 different. There's some, you know, elements that are on
3 that.

4 And what I'm trying to gain is what's the scope
5 of what you are actually making changes to?

6 MR. EBADI: Yes. Absolutely.

7 VICE CHAIR HART: That is actually a change that
8 necessitates the waiver that the Chairman was talking about
9 earlier. So it's not the roof that we're looking at, it's
10 the roof of the porch that is in question. And again, it's
11 just looking at the, what you are proposing in the, I guess,
12 the front, the drawing, the rendering that's on the first
13 page of your drawing set. Of your, I guess, presentation.

14 MR. EBADI: Yes.

15 VICE CHAIR HART: And what's actually on Google
16 Earth, which they're two different things and it's just
17 trying to, and how they are, they're different.

18 MR. EBADI: Absolutely. The porch covering that
19 you see on the rendering is a placeholder and it's not
20 intended to reflect the finished design. And I do apologize
21 for that. But we're not proposing any changes to the porch
22 or its covering.

23 MR. CROSS: Mr. Hart, your mic might be muted.

24 VICE CHAIR HART: Yes. I know it is. My computer
25 has a fan that gets loud sometimes so I have to turn the mic

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1 off so that it doesn't, you guys don't hear that. So I
2 understand what you're saying, Mr. Ebadi. What I'm trying
3 to kind of parse out is what is the change that is happening
4 versus what it is that you're proposing.

5 I understand that you have a placeholder as an
6 element because you need to understand what aspects of the
7 porch roof need to be repaired, or replaced. And so you're
8 saying that you just don't know that. You won't know that
9 until you kind of get into the construction. Is that what
10 you're saying?

11 MR. EBADI: I think, actually, I would just say
12 it's not really a placeholder, other than it's not detailed
13 solely to show the existing condition. Because we're not
14 proposing any work there, we graphically didn't put any time
15 into that element.

16 And I understand that that can be confusing, and
17 I apologize for that confusion, but that there is no work
18 proposed on that front porch -- the porch roof, that is. I
19 will point out that the columns supporting the front porch
20 are not a restricted element, and therefore may be replaced
21 in something a little bit more traditional.

22 VICE CHAIR HART: Yes. I understand that. I was
23 more trying to figure out if that was what the extent, but
24 I think you've described it. We can move on. I just wanted
25 to make sure that we were clear on that so that if you go to

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1 DCRA and they say you need a waiver, we've had discussion.

2

3 So if you want to, you know, request it now, it's
4 probably better just to have that in. But I'm not going to
5 push it. I'm just saying that that's why I wanted to make
6 sure I had that clear. You can continue with the
7 presentation. I didn't have any further questions after
8 that.

9 MR. EBADI: Absolutely. Thank you. So --

10 BZA CHAIR HILL: Are you, actually, I cut you off,
11 Mr. Ebadi, already. Mr. Hart, you don't have any other
12 questions. Ms. John, do you have any questions? Mr. Miller,
13 do you have any questions?

14 COMMISSIONER MILLER: None. Thank you, Mr.
15 Chairman.

16 BZA CHAIR HILL: Can I turn it back over to Ms.
17 Myers for a full report?

18 MS. MYERS: Hello again. Crystal Myers for the
19 Office of Planning. The Office of Planning is recommending
20 approval of this case, and approval of the requested waiver,
21 and stand on the record of the staff report. I'll also just
22 note because this is my last case with Mr. Hart, that it's
23 been a pleasure working with you as well.

24 You've been the only NCPC rep that I've worked
25 with. So it's going to be very weird not to have you on the

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1 board anymore. But I wish you the best in the rest of your,
2 I guess, workload.

3 VICE CHAIR HART: Thank you, very much. It's been
4 a pleasure working with you as well and I feel honored that
5 you are the -- that I was the only NCPC rep that you worked
6 with. You'll --

7 MS. MYERS: You set a high bar.

8 VICE CHAIR HART: I'm sorry? You'll enjoy working
9 with my colleague, Chrishaun Smith. He's top-notch. So
10 anyhow, thank you very much.

11 BZA CHAIR HILL: Okay. Great. All right. Does
12 anybody have any questions for the Office of Planning? No?
13 Does the applicant have any questions for the Office of
14 Planning?

15 MR. CROSS: We do not.

16 BZA CHAIR HILL: Okay. Mr. Young, was there
17 anybody here testifying? I didn't see anybody either in
18 favor or in opposition.

19 MR. YOUNG: No. I don't have anyone.

20 BZA CHAIR HILL: Okay. Is there anything you want
21 to add at the end, Mr. Cross or MR. Ebadi?

22 MR. CROSS: No. Just thanks for your service, Mr.
23 Hart. Appreciate it.

24 BZA CHAIR HILL: Mr. Hart, do you have a question,
25 it looked like?

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1 VICE CHAIR HART: Yes. Just one quick question.
2 You all said that, this is toward Mr. Cross and Mr. Ebadi,
3 you all said that you had an agreement, the chimney
4 agreement. Did you put that in the record?

5 MR. CROSS: Yes. I don't believe it is in the
6 record. But we can certainly upload it to complete the
7 record.

8 VICE CHAIR HART: I would appreciate it if you
9 could. That would be helpful just so we have that. That's
10 it. Thank you. And thank you very much, Mr. Cross. It's
11 been a pleasure working with you as well.

12 MR. EBADI: Thank you so much.

13 BZA CHAIR HILL: Okay. Great. I'm going to go
14 ahead and close the record. We can close the hearing. I
15 would be happy to -- Mr. Young, could you please excuse Mr.
16 Ebadi and Mr. Cross? Can you all hear me? Okay. So I
17 didn't have a lot of issues with this application.

18 I thought that, I'm in preliminary deliberation
19 right now. Having a preliminary deliberation, and I would
20 agree with the Office of Planning's report, as well as that
21 of the analysis that were provided by the ANC 4-C, as well
22 as DDOT. And I'm going to be leaning towards approval.

23 Is there anything, Mr. Hart, you'd like to reply
24 with?

25 VICE CHAIR HART: Yes. I think that they've

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1 provided enough information for me about the rooftop
2 elements. I think if they exceed what they are, you know,
3 allowed to do for, you know, making changes to it, they will
4 have to come back to get, you know, zoning relief for that.
5 But that's on them to do.

6 I think if we get the chimney agreement, I'd be
7 in support of this as well. I think the chimney agreement,
8 you know, it sounds like they already have it. It just needs
9 to be submitted. But I would be in agreement with you. I
10 think they've, I didn't have any other concerns with regard
11 to the application.

12 BZA CHAIR HILL: Ms. John?

13 MS. JOHN: I agree with you and bless your heart.
14 I am leaning towards supporting the application when the
15 chimney agreement is submitted into the record.

16 BZA CHAIR HILL: Commissioner Miller?

17 COMMISSIONER MILLER: I concur with my colleagues,
18 thank you.

19 BZA CHAIR HILL: Okay. Mr. Moy, then we'll put
20 this on for decision on August 5th.

21 MR. MOY: Yes, done. Thank you.

22 BZA CHAIR HILL: Okay. All right let's see now.
23 We got, what's the next one we got, what's the next one we
24 got here? Okay. 20265.

25 MR. MOY: Yes. Okay, so before the Board this is

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1 as amended. Case Application Number 20265 of Michael Zgoda,
2 Z-G-O-D-A. Again, as amended for special exceptions under
3 Subtitle C, Section 703.2 from the minimum parking
4 requirements Subtitle C, Section 701.5, and under Subtitle
5 C, Section 1504.1 from the penthouse setback requirements of
6 Subtitle C, Section 1502.1(c), and pursuant to 11 DCMR
7 Subtitle X, Chapter 10 for variances from the lot dimension
8 requirements, Subtitle E, Section 201.1, from the lot
9 occupancy requirements, Subtitle E, Section 304.1, and from
10 the rear yard requirements, Subtitle E, Section 306.1, to
11 construct an attached principal dwelling unit in the RF-1
12 zone at premises 401 through 403 Richardson Place, NW, Square
13 507, Lots 81 through 82.

14 BZA CHAIR HILL: Okay. Great. Thank you, Mr.
15 Moy. Is it Ms. Themak? How do you pronounce your name?

16 MS. THEMAK: Yes. That's right.

17 BZA CHAIR HILL: Themak?

18 MS. THEMAK: Themak, that's correct.

19 BZA CHAIR HILL: Okay. Ms. Themak, are you the
20 person who's going to be presenting to us?

21 MS. THEMAK: I am.

22 BZA CHAIR HILL: Okay. Are you an attorney, Ms.
23 Themak, or is this your property?

24 MS. THEMAK: This is, I'm the discerning counsel
25 for the applicant, Michael Zgoda.

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1 BZA CHAIR HILL: Okay. Great. Have you presented
2 before us before?

3 MS. THEMAK: I have.

4 BZA CHAIR HILL: Okay. Sorry. I didn't recognize
5 you. The COVID. Okay. Or the video calls, I suppose. All
6 right. Okay, Ms. Themak, I guess if you can go ahead and
7 walk us through your presentation.

8 MS. THEMAK: I'm going to be really brief.

9 BZA CHAIR HILL: Okay. Before you start, that's
10 great, if you could just provide a little bit more
11 specificity as to how you believe you're meeting the variance
12 standard.

13 MS. THEMAK: Sure. Let me see.

14 BZA CHAIR HILL: You can start whenever you like.

15 MS. THEMAK: Great. Essentially we believe that
16 this particular property is comprised of the two smallest
17 lots in this neighborhood. They're right next to each other.
18 There are no similarly sized lots within this neighborhood.
19 They're more than, I think it's about 200 square feet smaller
20 than the otherwise smaller lots, which are 73 and 74, which
21 are right across the street.

22 And the development of each separately would not
23 be possible for a rural dwelling. It just would result in
24 an unmarketable residence. So we believe that that is really
25 the exceptional nature of the property. It requires the

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1 variance for the lot area, rear yard, and lot occupancy
2 variances.

3 BZA CHAIR HILL: Okay. Does the Board have any
4 questions for the applicant?

5 VICE CHAIR HART: Ms. Themak, good to see you
6 again. So these are record lots. Correct?

7 MS. THEMAK: Yes. They are.

8 VICE CHAIR HART: And you said these are the
9 smallest ones along this street but also just in the
10 immediate vicinity area.

11 MS. THEMAK: Yes.

12 VICE CHAIR HART: Yes. Okay.

13 MS. THEMAK: Or they've been used just as a, the
14 owners have been using them --

15 VICE CHAIR HART: As a garden.

16 MS. THEMAK: Yes. Have a community garden, but
17 a garden.

18 (simultaneous speaking)

19 MS. THEMAK: So far, yes.

20 VICE CHAIR HART: Thank you.

21 BZA CHAIR HILL: Ms. John?

22 MS. JOHN: No questions at this time.

23 BZA CHAIR HILL: Commissioner Miller?

24 COMMISSIONER MILLER: No questions, no comments,
25 Mr. Chairman.

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1 BZA CHAIR HILL: Can I please turn to the Office
2 of Planning?

3 MS. BROWN-ROBERTS: Good afternoon, Mr. Chairman.
4 Can you hear me?

5 BZA CHAIR HILL: Yes. We hear you.

6 MS. BROWN-ROBERTS: Okay. Good afternoon, Mr.
7 Chairman and members of the commission. Maxine Brown-Roberts
8 representing the Office of Planning on Zoning Commission case
9 20265. And I'm going to sort of walk you through the
10 variance tests.

11 Regarding the variances, they're asking for, this
12 is for assess for lot area, lot width, and rear yard. And
13 there's special exceptions for the penthouse and also for the
14 parking.

15 As the applicant said, the subject property are
16 two record lots and these were created in an original
17 subdivision in 1887. And as you can see in the location, the
18 second location per the report, they are the two smallest
19 lots within that subdivision. So they are that, even when
20 combined, they are still about 1,000 square feet less than
21 what is recommended for that, what's required for that zone.

22 Therefore, the location of the properties, it's
23 no additional opportunity to enlarge these lots. Meeting the
24 lot occupancy requirement will also result in a footprint of
25 about 482 square feet, which would be further reduced if they

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1 were also to meet their rear yard requirement, which is
2 (Audio interference).

3 Therefore, meeting lot occupancy rear yard
4 requirements would be a practical difficulty for the
5 applicant and would result in an exceptionally small house.
6 The inability to increase the size of the property to make
7 it conforming is an exceptional condition that was (Audio
8 interference) practical difficulty in complying with the lot
9 area, lot occupancy and rear yard requirements.

10 Regarding the no substantial detriment to the
11 public good, the property abuts rear yards of houses to the
12 east and to the north, and shadows from these properties will
13 form mainly in the rear yard of those properties. And
14 therefore, should not substantially affect the light and air
15 to those houses.

16 The side and rear of the proposed building would
17 also have windows, but they have -- but they also would be
18 looking into the rear yards of these adjacent properties or
19 adjacent homes. The proposed dwelling would be a road
20 dwelling for a single family and would be of construction,
21 which is similar to the homes within the neighborhood.

22 And granting relief would not be substantial
23 detriment to the public good. This relief would not harm the
24 RF-1 zoning regulations. The RF-1 is intended to permit
25 residential development with one family dwellings or flats.

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1 In this case, the lot would remain significantly small just
2 to accommodate a single family house, which is (audio
3 interference) with intent of that zone. The regulations
4 would not be substantially harmed as relief would only allow
5 a reasonable development on an otherwise vacant pair of lots.

6 Regarding the special exception for the penthouse,
7 the regulations require one to one setback from all sides.
8 If the applicant was to meet the setback on all sides of the
9 house, then what would happen with that, the stairs would be
10 in the middle of the house, which again reduced the habitable
11 space and circulation within this very small house that's
12 being proposed.

13 Then regarding the special exception relief for
14 the parking space, again, the property's very small and they
15 were to provide a parking space, then that would mean that
16 it would also leave even less housing space on the lot.
17 They're within ease of walking to the Metro Station and bus
18 route, and therefore, we think that this relief will not
19 affect the adjacent property or the neighborhood.

20 Thank you, Mr. Chairman, and I'm available for
21 questions.

22 BZA CHAIR HILL: Okay. Thank you. Does the Board
23 have any questions for Ms. Brown-Roberts? Does the applicant
24 have any questions for the Office of Planning?

25 MS. THEMAK: No. We do not.

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1 BZA CHAIR HILL: Okay. Is there anybody here, Mr.
2 Young, to speak?

3 MR. YOUNG: No. There's not.

4 BZA CHAIR HILL: Okay. So that's it. Ms. Themak,
5 do you have anything else you'd like to add?

6 MS. THEMAK: I would just close by saying we agree
7 with the Office of Planning's determination. We appreciate
8 the ANC's support. We've appeared before them twice. We had
9 one neighbor that had some concerns. We've worked with him.
10 So we think we've come to the best result and we're happy to
11 move this forward.

12 BZA CHAIR HILL: Okay. Then I'm going to go ahead
13 and close the hearing, close the record. If you would please
14 excuse Ms. Themak, Mr. Young. Thank you, Ms. Themak. I can
15 begin some preliminary deliberations. I would be in
16 agreement with the analysis the Office of Planning has
17 provided, as well as that of the ANC being in support, as
18 well as DDOT. I do see how they are meeting the variance
19 standard concerning the size of the lots and I would be
20 leaning towards approval.

21 Mr. Hart, would you like to add anything?

22 VICE CHAIR HART: No. I understand that these are
23 very small lots, record lots, that are in this neighborhood
24 and I would agree with your statement. I would also agree
25 with the Office of Planning report and I'd be leaning toward

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1 support of the applications.

2 BZA CHAIR HILL: Ms. John?

3 MS. JOHN: Mr. Chairman, I agree with your
4 comments, as well as Vice Chair Hart. I am leaning towards
5 support of the application. OP's analysis clearly shows that
6 the applicant meets the requirement for the variance and the
7 special exception.

8 BZA CHAIR HILL: Commissioner Miller?

9 COMMISSIONER MILLER: I concur with my colleagues
10 and in terms of the Office of Planning report, the ANC
11 support, and I would note that the ANC report did reference
12 the report of the, I think it was the Bates Area Civic
13 Association, and attached to the applicants, one of the
14 applicant's submission was a number of letters from neighbors
15 in that particular block, I believe. So I'll be ready to
16 decide this the next time we do that.

17 BZA CHAIR HILL: Okay. Mr. Moy, could you please
18 put this on the meeting agenda for next week?

19 MR. MOY: Yes sir. It's done.

20 BZA CHAIR HILL: Okay. You guys, we have two more
21 left and they're actually both going to be lengthy. So I
22 don't know what's going to happen in terms of even the last
23 one. We'll see how far we get. We're going to do our best.
24 But why don't we take a quick break and we'll come back at
25 5:30. (Whereupon, the above-entitled matter went off the

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1 record at 5:21 p.m. and resumed at 5:33 p.m.)

2 MR. MOY: Thank you, Mr. Chairman. Now the Board
3 is back in session and the time is at or about 5:30 p.m. The
4 next case application before the Board is Number 20265 with
5 Michael Zgoda. No, I take that back. Strike that. Case
6 Application Number 20214 of Jason Harris and Jenna Stark,
7 captioned and advertised for a special exception under
8 Subtitle D Section 5201 from the rear yard requirements of
9 Subtitle D Section 306.2. This would permit a rear deck
10 addition to an existing, attached principal dwelling unit R-3
11 Zone at premises 2211 38th Street, Northwest, Square 1301,
12 Lot 659.

13 There are, Mr. Chairman, two requests for party
14 status. And the Board should also address a waiver of the
15 21-day filing deadline filing from the applicant for a signed
16 signatures file under Exhibit 53.

17 And I think -- I haven't checked whether or not
18 there's an affidavit posted or dated.

19 BZA CHAIR HILL: Okay, great. Thanks, Mr. Moy.
20 All right, let me see. Mr. -- Ms. Mladnov?

21 MS. MLADNOV: Mladnov.

22 BZA CHAIR HILL: Could you say that again?

23 MS. MLADNOV: Mladnov.

24 BZA CHAIR HILL: Mladnov, Mladnov. Okay. You
25 just have one --

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1 MS. MLADNOV: Ann Mladnov.

2 BZA CHAIR HILL: Pardon?

3 MS. MLADNOV: Yes?

4 BZA CHAIR HILL: Hello? Ms. Mladnov?

5 MS. MLADNOV: Yes?

6 BZA CHAIR HILL: I'm sorry, I just couldn't hear
7 you for --

8 MS. MLADNOV: Yes.

9 BZA CHAIR HILL: Okay, could you please --

10 MS. MLADNOV: Can you hear me?

11 BZA CHAIR HILL: Yes. Could you please introduce
12 yourself for the record?

13 MS. MLADNOV: My name is Ann Mladnov. I am ANC
14 Commissioner from the 3B01.

15 BZA CHAIR HILL: Okay, great. Commissioner, if
16 you could just go ahead and mute your microphone when we're
17 not talking to you because there's a lot of different
18 feedback that goes on.

19 Mr. Sullivan, could you introduce yourself for the
20 record?

21 MR. SULLIVAN: Thank you, Mr. Chair, members of
22 the Board. My name is Marty Sullivan on behalf of the
23 applicant.

24 BZA CHAIR HILL: Okay. All right, is it Mr.
25 Harris and Ms. Stark? Could you please introduce yourselves

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1 for the record?

2 MR. HARRIS: Jason Harris.

3 MS. STARK: Hi, Jenna Start.

4 MR. HARRIS: 2211 38th Street NW. We're the
5 owners. Thank you.

6 BZA CHAIR HILL: Okay, great. And is it Ms.
7 Gillespie? How do you say your name?

8 MS. GILLESPIE: It's Gillespie

9 BZA CHAIR HILL: Gillespie.

10 MS. GILLESPIE: Kathryn Gillespie.

11 BZA CHAIR HILL: And then could you introduce
12 yourself, please?

13 MS. GILLESPIE: Sure, I'm Kathryn Gillespie from
14 2213 38th Street NW.

15 BZA CHAIR HILL: And I guess it's Mr. Gillespie
16 also? I saw him a minute ago. Oh, there we go.

17 MR. GILLESPIE: Yeah, I'm with -- I was.

18 BZA CHAIR HILL: Okay, are you two together?

19 MR. GILLESPIE: We're in the same house --

20 BZA CHAIR HILL: I'm sorry, I can't hear you.

21 MR. GILLESPIE: We're in the same house on
22 different floors.

23 BZA CHAIR HILL: Okay, I just got confused.
24 That's all right. Okay, and then is it Ms. -- is Mr. Burke
25 around? Now I see a Mr. Dudley. Oh, there's Mr. Burke.

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1 Hello Mr. Burke. Yeah, could you introduce yourself for the
2 record, please?

3 MR. BURKE: My name is Mark Burke. I live at 2209
4 38th Street NW.

5 BZA CHAIR HILL: Okay, Mr. Burke -- Mr. Burke, are
6 you choosing not to use video, which is fine? I just want
7 to know?

8 MR. BURKE: No, I did choose video, I thought.
9 Let's see here. Oh, here we are. Sorry.

10 BZA CHAIR HILL: Okay, good.

11 MS. BURKE: I'm Elysia Pidoway Burke. We're
12 married here and we live next door.

13 MR. BURKE: Yeah, Elysia Pidoway Burke is with me.

14 BZA CHAIR HILL: Okay, great. And I see -- is it
15 Mr. Dudley?

16 MR. DUDLEY: Yes, and I'm --

17 BZA CHAIR HILL: Can you hear?

18 MR. DUDLEY: Yes, Charles Dudley and my wife,
19 Karen T. Dudley, previous owners of --

20 MS. DUDLEY: Previous homeowners.

21 MR. DUDLEY: -- of 2211 38th Street.

22 BZA CHAIR HILL: Oh, you're here to help out the
23 applicant?

24 MR. DUDLEY: Correct.

25 BZA CHAIR HILL: Okay, all right. Okay, then you

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1 can go ahead and put yourselves on mute as well. Let's see,
2 first of all, let's go ahead and do this.

3 I mean, Mr. Sullivan, in terms of the posting and
4 the maintenance, I can see that the Office of Zoning letters
5 went out to the 200 footers. I see that the Office of
6 Zoning letters went out to all the parties. Was this posted
7 and maintained?

8 MR. SULLIVAN: It was.

9 BZA CHAIR HILL: Okay.

10 MR. SULLIVAN: And the affidavit's here. I think
11 they've been filed.

12 BZA CHAIR HILL: Okay. All right. There's a
13 waiver request for the 21-day filing deadline. Is that for
14 -- that's for the surveyors plat?

15 MR. SULLIVAN: Yes.

16 BZA CHAIR HILL: Okay.

17 MR. SULLIVAN: Yeah, that was for the revision,
18 to pull the deck width back a little bit.

19 BZA CHAIR HILL: Got it. Okay, I don't have any
20 issues waiving that filing deadline because I'd rather have
21 the record complete. Does the Board have any issues with
22 that? If you do, raise your hand. Okay, nobody's saying
23 anything.

24 All right, the next is party status in opposition.
25 So again, it's for Mr. and Ms. Gillespie and also for, I

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1 guess, Mr. and Ms. Burke. And that's correct.

2 Now, as I understand it, you're both adjoining --
3 well, Mr. and Mrs. Burke, I'm going to start with you because
4 you're in one place. So you guys are both adjoining
5 neighbors, correct? That's not correct? No?

6 MR. BURKE: That's correct.

7 MS. BURKE: Yes.

8 BZA CHAIR HILL: And then, Mr. and Mr. Gillespie,
9 are you also both adjoining neighbors?

10 MS. GILLESPIE: Yes, that's correct.

11 MR. GILLESPIE: Yes.

12 BZA CHAIR HILL: Okay, so I don't have any issue
13 giving you guys both party status. What I'd like to try to
14 do, though, is do this as officially as possible, I suppose.
15 But I guess, since you're not together, it'll be kind of hard
16 to do. So what I'm going to do is -- normally how this works,
17 can you all hear me okay? Okay, thank you. And, Ms.
18 Gillespie, your microphone is off, just so you know.

19 And then what normally -- so how this works is the
20 applicant will have a certain amount of time and were you
21 guys watching at 9:30 this morning? That's cool. You heard
22 --

23 ((Simultaneous speaking))

24 MR. GILLESPIE: Yeah, it's been a great education.

25 BZA CHAIR HILL: Great. So you saw how the first

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1 one -- okay. So the applicant will have an opportunity to
2 present. You all will have the same amount of time, but
3 you'll have to split the time, okay? And so -- and then
4 you'll have to split the time for also -- I mean, questions
5 are questions. There's not necessarily a time limit, but as
6 you've seen, I try to reign it in a little bit as to, you
7 know, staying on topic and on point.

8 And really, what we're -- and I -- you guys aren't
9 zoning experts, or maybe you are. But, you know, we're
10 primarily looking at the zoning issues and asking questions
11 about the zoning issues. That's what we're trying to hone
12 down on. So, Mr. Sullivan will have an opportunity to
13 present. You'll ask your questions. You'll have an
14 opportunity to present. They'll ask their questions. We'll
15 go to the Office of Planning, the same thing.

16 And then at the end we'll have rebuttal from Mr.
17 Sullivan. You all will have an opportunity to ask questions
18 of the rebuttal. the Commissioner will have an opportunity
19 to present in the same amount of time because the
20 Commissioner is a party. Commissioner, you do have the
21 authority to speak for your ANC. Correct? You can just nod,
22 that's great. Okay, perfect.

23 All right, so, Mr. Sullivan, how much time would
24 you like me to start, with you, for now?

25 MR. SULLIVAN: I think ten to 12 minutes is

1 plenty.

2 BZA CHAIR HILL: Okay, I'm going to put 15 minutes
3 on there because it's easier for me. And you can begin
4 whenever you like.

5 MEMBER JOHN: Mr. Chairman?

6 BZA CHAIR HILL: Yes, Ms. John?

7 MEMBER JOHN: There's a question about whether the
8 notice for request for party status was filed, was served on
9 the applicant. And I believe staff reached out for
10 confirmation. I don't believe anything is in the record.
11 So, we still --

12 BZA CHAIR HILL: You're speaking, I think, of Mr.
13 and Mrs. Gillespie. And --

14 MEMBER JOHN: Mrs. Burke. I believe it's Mr. and
15 Mrs. Burke who did not serve their request for party status.

16 MR. BURKE: Yes, we did, on the 19th of February.

17 MEMBER JOHN: Oh, so then it must be Mrs.
18 Gillespie.

19 BZA CHAIR HILL: Right. Let's see here.

20 MR. GILLESPIE: It's in the record.

21 BZA CHAIR HILL: They submitted one day late.
22 They submitted one day late past the one-day party status
23 filing deadline. And then did they notify -- were you
24 notified, Mr. Sullivan, of the request for party status from
25 the Gillespies?

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1 MR. SULLIVAN: Yeah, I'm sure we were. I mean,
2 we've known about it for a long time. I can't remember
3 exactly when, yeah.

4 BZA CHAIR HILL: Do you, Mr. Sullivan, have any
5 opposition to the party status?

6 MR. SULLIVAN: No.

7 BZA CHAIR HILL: Okay. All right, so, Mr.
8 Sullivan -- thank you, Ms. John. So, Mr. Sullivan, you can
9 begin whenever you like.

10 MR. SULLIVAN: Thank you, Mr. Chair, members of
11 the Board. I do have -- we submitted a PowerPoint
12 presentation so Mr. Young could put that up there of a -- in
13 the meantime, I do have something I want to say to start,
14 before we get into the PowerPoint.

15 The issue before the Board, of course, is whether
16 or not granting the requested relief which, in this case, is
17 an additional seven feet of deck depth -- whether or not that
18 additional deck will have a substantially adverse effect on
19 the use or enjoyment of any abutting or adjacent dwelling or
20 property.

21 And I'm going to do my best to focus on that in
22 this presentation regarding the extraneous information in the
23 record, and there's a lot of it. We could spend a lot of
24 time disputing much of that information. But I want to focus
25 on what's before the Board. I would like to clarify the

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1 encroachment issue for the Board, right off the bat. The
2 encroachment is likely resolved --

3 BZA CHAIR HILL: Mr. Sullivan, may I interrupt you
4 for one second?

5 MR. SULLIVAN: Sure.

6 BZA CHAIR HILL: Is anybody on the Board having
7 trouble accessing the files?

8 MEMBER JOHN: Yes, I'm having trouble.

9 BZA CHAIR HILL: You are having trouble?

10 MEMBER JOHN: Yes.

11 VICE CHAIR HART: Yes I am too.

12 BZA CHAIR HILL: Okay, all right.

13 MEMBER JOHN: It disappeared.

14 BZA CHAIR HILL: Okay so we'll see how this goes.
15 Mr. Sullivan, we are relying now on your PowerPoint, so you
16 can go ahead now and take your time to walk us through. You
17 were speaking about, again, the encroachment issue, I
18 believe?

19 MR. SULLIVAN: Right, and if you could -- if we
20 could go to Slide 2. On the right side there you see a
21 fence. And the encroachment issue, obviously, I mean,
22 apparently comes from the fact that that fence is not on the
23 common property line. It's several inches over.

24 And regardless of how the deck encroachment came
25 to be, because, apparently, the deck, as it's built now,

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1 which, as you know from the record, was built without a
2 permit and without BZA approval. It encroaches on the common
3 property line, but it doesn't go over the fence. It's on
4 this side of the fence. Regardless how it came to be, the
5 applicant has always been in agreement with the neighbors
6 that the encroachment would be corrected at the end of this
7 process, when the deck is pulled back from that encroachment.

8 But we couldn't go forward without a permit and
9 we couldn't get a permit until the BZA issues a decision on
10 this. So, but regardless of what the Board does today, we
11 want to make it clear that the applicant acknowledges that
12 the deck should not be encroaching on that property. I don't
13 think there's any dispute on that point, and I don't think
14 there ever has been. Also, I want to acknowledge that the
15 Board's decision, of course, doesn't validate or invalidate
16 any encroachment situation. It's completely separate from the
17 relieve being requested, so that's all I want to say about
18 that.

19 And then I'd like to turn it over for a, really
20 a brief statement by the homeowners, Jenna and Jason.

21 MR. HARRIS: Good afternoon. Thank you for being
22 here on this long fruitful day. We purchased the home last
23 April and soon thereafter, some of these issues that Mr.
24 Sullivan is referring to started popping up, that we had no
25 idea about at the time of purchase.

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1 In the process of trying to remedy them, we
2 discovered that the deck had no permit and was also --
3 required a special exception as to 2(d). And throughout the
4 process, those various different questions, we did our best
5 to resolve these situations as closely as we can, as quickly
6 as we can. And as Mr. Sullivan mentioned, unfortunately, to
7 resolve the questions of the encroachment, we had to go
8 through this process first, and that has been delayed, of
9 course, due to COVID.

10 So one thing I want to note specifically in there
11 is, when we began this application process back in October-
12 November, we specifically reached out to the Gillespies
13 because we knew there were these other outstanding issues to
14 get their support. And they offered it. And, in fact, if
15 you look at the record, you'll see a letter of support from
16 them originally, which they have now revoked and replaced.
17 They had said that the depth of the deck was never an issue
18 for them. They just wanted to make sure these other issues
19 were taken care of.

20 So those are the kind of -- that's the kind of
21 work we were trying to do to make sure we'd solved this. And
22 then one other thing we wanted to note, you'll also note
23 multiple letters from the ANC. And what happened with the
24 ANC is we were told not to come to an ANC meeting without
25 letters of support both from neighbors on both sides.

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1 So, because their policy is not to weigh in if
2 there is a dispute between neighbors. And so we didn't go
3 because we didn't have those two letters. And,
4 unfortunately, they decided to discuss -- the case was
5 brought up while we were not there and was discussed with us
6 and voted on without us being able to present any evidence.

7 And their first letter includes a lot of
8 misinformation. It's just not accurate. And we weren't
9 there to be able to provide our perspective. So, in June we
10 were able to -- so they -- we were very appreciative they
11 were accommodating of us and had us come back to be able to
12 share our perspectives.

13 And upon hearing it the second time, they
14 maintained that they could not support because we don't have
15 letters of support from both sides, which we totally
16 understand as their policy and that makes sense to us. But
17 we appreciated them coming back with that so that -- because
18 it -- that is their, the rationale there and that way our
19 perspective and some of the more of the accurate information
20 is out there.

21 And we maintain our commitment to resolving all
22 of these issues and have been continuing communication to try
23 and do so. Thank you.

24 MR. SULLIVAN: Thank you, Jason. And if we could
25 go -- so we'll start with this slide here. This shows the

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1 deck. As mentioned, the deck was constructed about three or
2 four years ago as a result of a contractor.

3 And from all evidence that I can see, it appears
4 that he was -- he probably promised a deck. This is a 60
5 percent lot occupancy with the deck. So, he must have
6 assumed that that's what he could do. And then when he was
7 told no, rather than telling the homeowner that, the previous
8 homeowner, Mr. Dudley, he went ahead and built it. And then
9 it was discovered in 2019.

10 So, next slide, please. This is the plaque
11 showing where the deck is. So the relief -- I mean, there's
12 a 13-foot rear yard there as existing and proposed and what's
13 permissible would be five and a half foot. So, it's a 12 and
14 a half-foot deck, and we're asking for an additional seven
15 feet of deck.

16 Next slide, please. This is an elevation showing
17 the deck. And the next slide, please. Here's the deck
18 section, and you see the stairs. The area on the left there
19 is where there is an encroachment. Now, this plan, we
20 believe, proposes a deck.

21 And, I mean, there's some comments in the record
22 about the plans no longer match the existing deck. That
23 would be correct because the plans are the proposed deck.
24 And we are pulling it back to where we think we are no longer
25 encroaching. If there was some discussion in the future

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1 between surveyors and they picked the property line, it would
2 be moved back to that property line.

3 It would have to be moved back to that property
4 line, actually. Nobody's disputing that. So, the next
5 slide, please. Next slide, please. And I've gone over these
6 items, so I'll get into the requirements, the general special
7 exception requirements. The addition's in harmony with the
8 general purpose intent of regulations. It's just a main
9 level deck, not an addition to the building. We're within
10 the 60 percent lot occupancy. Next slide, please. So the
11 specific criteria, so the criteria for approval, of course,
12 is that granting relief can't substantially adversely affect
13 the use enjoyment of neighboring property. And in
14 particular, there's three main criteria under that criteria.

15 The first is that light and air available to
16 neighboring property shall not be unduly affected. The
17 deck's fully at the main level. It's not an upper level deck.
18 It only goes seven feet beyond what's permissible. It's an
19 open structure without solid walls. And we don't think that
20 it has any effect at all on light and air. It certainly
21 wouldn't have any effect on the property to the south or the
22 property to the north. It's open near the north because of
23 the stairway too. Next slide, please.

24 Privacy -- privacy of use and enjoyment is not
25 unduly compromised by an additional 7 feet of deck And this

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1 is where it's important to recognize the situation. What's
2 permissible is a 5.5-foot deck, and what's being asked for
3 is a 12.5-foot deck.

4 So the question is, how does that additional 7
5 feet -- or does that additional 7 feet substantially
6 adversely affect or unduly compromise the privacy of use and
7 enjoyment of neighboring properties? And we don't believe
8 it does.

9 There are abutting decks on either side. What it
10 comes down to is, if you're on the 5.5-foot deck and you have
11 -- you can oversee both yards. If your deck's 7 feet longer,
12 nothing has changed about that privacy situation. I mean,
13 privacy is an interesting situation in rowhouse neighborhoods
14 anyway. Sometimes it's hard to talk about things. Usually
15 we're talking about it in the context of a building or an
16 upper level deck.

17 And privacy I will say, in a rowhouse district,
18 it is what is. You could look out your back window and you
19 could see their yard and you can see everything you can see
20 without a deck. In this case we have a deck, we could have
21 a five and a half foot deck and we go another seven feet.
22 The point is, that seven feet, whatever the privacy situation
23 is in a rowhouse area, it's no different because of the
24 additional seven feet. Next slide please.

25 The addition or accessory structure together with

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1 the original building is viewed from the street, alley or the
2 public way shall not substantially visually intrude upon
3 character, scale and pattern. There are, this deck is
4 actually opposite a row of accessory buildings on the other
5 side of the street. I don't think and typically, I mean, the
6 language itself here too talks about scale and pattern of
7 houses along the subject street frontage. Decks are rarely
8 discussed by the Board in this relief when it comes to
9 talking about character, scale and patterns. Especially main
10 level decks. Many of the surrounding properties have rear
11 decks.

12 But it's the accessory buildings in particular
13 across the alley that go up to the lot line, which we've
14 submitted some information on those in the record that I
15 think make it impossible for this to visually intrude upon
16 the character, scale and pattern of the houses.

17 Next slide please. We believe we've submitted
18 photographs and drawings sufficient to represent the proposed
19 deck. Next slide please. The Office of Planning is in
20 support of the application. Next slide please.

21 I put this information here, I don't want to get
22 into this too much. I mean, I think it's outside the narrow
23 issue before the Board. Regarding -- I would add to what
24 Jason said, we specifically reached out to the ANC and they
25 told us in February, you're not on the agenda, there's no

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1 need to come to the meeting. And the neighbors went to the
2 meeting and that meeting produced a letter, which said some
3 things about the level of outreach which we think was not
4 accurate.

5 Because there's been considerable outreach and
6 interest in resolving the neighbor's issues, which we think
7 are unrelated to the extension of the deck and were related
8 to some work that was done when the deck was constructed.
9 Next slide please. But I think that's it. So, that's it.
10 Any questions?

11 VICE CHAIR HART: Mr. Chairman, I had one
12 question. Oh, we can't hear you. Okay, thank you. So, Mr.
13 Sullivan, just out of curiosity did the applicant ever think
14 about putting up any, I don't know, like screen walls or
15 anything on the sides or at least a small portion of the side
16 of the deck?

17 I know it's not a large deck but I was just
18 curious as to where if that is something that is on other
19 decks in the, you know, among the back, the rear of the
20 building.

21 MR. SULLIVAN: It's not on the other decks
22 adjacent to these. I don't know, maybe the applicant or Mr.
23 or Mrs. Dudley could talk about the rest of the neighborhood.
24 I think the feeling was that a screening would detract from
25 the situation, from the open air of the situation.

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1 And wouldn't, I mean, the screening you would put
2 probably in the area of the deck where it's permissible. So,
3 I'm not sure if it's, if it relates to relief being requested
4 or not. I don't know if the homeowners or previous
5 homeowners have any input on that, that you might find
6 helpful.

7 MR. HARRIS: I'll just add one thing. We had a
8 conversation once we saw the letter of opposition from the
9 Burke's around their privacy, which Mr. Sullivan, I think has
10 made a good point about like, not necessarily not just seven
11 feet, if that really impacts it. However, as new neighbors
12 we really wanted to figure something and we offered to work
13 with them for some privacy screening options and they
14 rejected it.

15 VICE CHAIR HART: Okay. Thank you.

16 BZA CHAIR HILL: Okay. I'm going to follow a
17 little bit of this line. Mr. Sullivan, I guess I got a
18 little curious, I mean, are they tearing down the deck? Are
19 you guys completely tearing down the deck and you're putting
20 up a new deck?

21 MR. SULLIVAN: Hopefully not. I mean, the deck's
22 been built. But it's going to need some reconstruction
23 because it's definitely coming off the north property line
24 a little bit. If it was approved as proposed. So, the
25 proposal is going to change.

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1 So, you know, of course what's before you is a de
2 novo request, it doesn't matter one way or the other whether
3 the deck was up. It doesn't help us or hurt us but --

4 BZA CHAIR HILL: I understand. I'm sorry to
5 interrupt you but the reason I was asking was again more in
6 line with what Mr. Hart was saying in terms of, if it's new
7 and additional privacy screening or things such as that.

8 I mean, so you're just going to be pulling back
9 the deck concerning the encroachment issues?

10 MR. SULLIVAN: Correct. We want to, we want to
11 correct the encroachment and honor the property line. Now
12 I mean, in the end if the Board thought that the privacy
13 screening was critical, we're not opposed to that.

14 We just, you know, we had a -- I think we have a
15 thought, we have our thoughts on what would work but there's
16 no objection to it if that's what the Board thinks is
17 mitigating if they think there's any concerns on privacy.

18 BZA CHAIR HILL: Okay. All right. Let me see,
19 where are we? Okay. So, I guess it does matter to me and
20 I'm trying to figure out, you would not be tearing the deck
21 down, right? You are just going to -- and I'm actually
22 looking at different photographs here.

23 I'm trying to understand, maybe if you could,
24 which one's that slide in your presentation that had the
25 deck?

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1 MR. SULLIVAN: Two I think. Slide two.

2 BZA CHAIR HILL: Mr. Young, could you pull up that
3 presentation just so my fellow Board members could see what
4 I'm talking about and then that second slide. So when you
5 say north, it's to the left --

6 MR. SULLIVAN: To the right. To the right.

7 BZA CHAIR HILL: That railing is encroaching on
8 the property line?

9 MR. SULLIVAN: I may let the, Mr. Dudley talk
10 about that because I think he has a better idea of what
11 exactly is encroaching. There was a piece of deck or
12 stairway that goes beyond that railing that --

13 BZA CHAIR HILL: Okay. So anyway if you -- it's
14 okay, and --

15 MR. SULLIVAN: -- and I think we are leaving that
16 railing at this point, yes.

17 BZA CHAIR HILL: The stairwell. It's just, so
18 that's a walkway, the stairs, right? So I don't see any part
19 of the deck being cut back. That's what I'm trying to
20 understand. The deck is remaining the same exact size and
21 I see the applicants nodding, right? So the encroachment
22 issue is the stairs? Okay.

23 MR. SULLIVAN: Yes, yes. So, yes. The
24 encroachment's separate from the extension of the deck area,
25 yeah.

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1 MR. HARRIS: Sorry. One little piece, so the line
2 where it's over is not even, it's not a straight line. So
3 where the stairs are there's maybe five-ish inches that is
4 over but the very top of the stairs right where the deck
5 connects to the house, it is over -- the surveyor made the
6 marks in a black marker and the black marker literally,
7 there's no space between the black marker and the end of the
8 deck.

9 So there is a tiny, little piece of the deck that
10 will also need to be shaved. Less so than in the railing
11 space and in the stair space but the line appears to be
12 diagonal, if you will. So the stairs --

13 BZA CHAIR HILL: As I'm looking to this
14 photograph, you're talking about the deck to the left? The
15 line to the left of the deck? No.

16 MR. HARRIS: So, at the top of those stairs --

17 BZA CHAIR HILL: Yes.

18 MR. HARRIS: Then there's a little bit of landing
19 space between the stairs and the house and right along there
20 it is like, maybe according to the property surveyors --

21 BZA CHAIR HILL: Everything's happening over on
22 that side of the deck?

23 MR. HARRIS: Correct.

24 BZA CHAIR HILL: All right. Okay, Mr. Young, you
25 can pull that off. Commissioner, just quickly before I

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1 forget, are you, Commissioner Mladnov, are you here speaking
2 for the ANC or yourself?

3 You're speaking for the ANC? So you have a --
4 because I'm looking at the record and there's a letter
5 somewhere that you are speaking on behalf of the ANC? Do you
6 know which Exhibit it's in? No? That's all right. You can
7 look at it while I ask other people for their questions
8 anyway.

9 Mr. Hart, you've asked all your questions or do
10 you have more for Mr. Sullivan? Ms. John, do you have any
11 questions?

12 MEMBER JOHN: Mr. Chairman, I asked Mr. Sullivan
13 to elaborate a bit more on how the deck came to be built.
14 I believe he said that the contractor thought that he had a
15 60 percent lot occupancy and went ahead and built the deck.

16 MR. SULLIVAN: Yes and I think Mr. Dudley is
17 probably the best person to answer questions about the
18 history of it. So, Chad, if you want to explain how this
19 came to be.

20 MR. DUDLEY: Yeah. So, just a little background.
21 I bought this house in 2015. This deck, which you'll see in
22 the portal we had a contract stating that the builder was of
23 stateness, supposed to obtain permit for this deck.

24 They constructed the deck without me knowing that
25 they did not obtain the permits. After the sale of the

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1 property, Jason and Jenna bought it and through the course
2 of this encroachment we're speaking about, the neighbors
3 found out the deck was not permitted at that time.

4 I was unaware as well and that's why you see that
5 I'm here today trying to assist Jason and Jenna in getting
6 this deck permitted. The encroachment, we've agreed to
7 satisfy the entire time and, you know, now we are in that
8 situation I don't know if this answers your question or not.

9 MEMBER JOHN: Yes, it does. Thank you.

10 BZA CHAIR HILL: Commissioner Miller.

11 COMMISSIONER MILLER: No questions, Mr. Chairman,
12 thank you.

13 BZA CHAIR HILL: Okay. Let's see now,
14 Commissioner -- and I'm having a hard time, I'm sorry,
15 Mladnov. Commissioner Mladnov, do you have any questions for
16 the applicant and did you find your Exhibit, I'm trying to
17 see --

18 MS. MLADNOV: 6-9. 6-9.

19 BZA CHAIR HILL: Got it.

20 MS. MLADNOV: Can you hear me?

21 BZA CHAIR HILL: Yeah, I can hear you. I'm just
22 looking for where it says your, where --

23 MS. MLADNOV: It's in 2B.

24 BZA CHAIR HILL: Pardon me?

25 MR. SULLIVAN: I'm sorry, Mr. Chair, the ANC

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1 letter is Exhibit 52.

2 BZA CHAIR HILL: Yeah, I know. And maybe OP, I
3 mean OAG can help me if there was an -- Commissioner, I'm
4 just trying to find out where it says that you're, and maybe
5 it's in this one here, where it says that you're speaking on
6 behalf of the ANC.

7 MS. MLADNOV: My statement is Exhibit 6-9.

8 BZA CHAIR HILL: No, I got your statement. I'm
9 just trying to --

10 MS. MLADNOV: There is no other document. Our
11 standard is that the Chairman designates who can speak and
12 I did not share that email.

13 BZA CHAIR HILL: Okay. So you're testifying that
14 you, your Chairman has indicated that you will speak on the
15 ANC's behalf?

16 MS. MLADNOV: Yes.

17 BZA CHAIR HILL: Okay. All right.

18 MS. MLADNOV: That is correct.

19 BZA CHAIR HILL: That's good enough for me. All
20 right. Do you have any questions for the applicant?

21 MS. MLADNOV: No.

22 BZA CHAIR HILL: Okay. All right. Let's see, Mr.
23 and Mrs. Burke, do you have any questions for the applicant?

24 MR. BURKE: Well, we take some issue with some of
25 the claims. We did meet with Jenna and Jason, we did not

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1 reject the idea of a screen. What we had indicated, that we
2 discussed with them what our issues were and basically we
3 thought the house could have a, you know, a deck that was up
4 to code and we thought a screen would make a lot of sense.

5 BZA CHAIR HILL: Mr. Burke, I'm sorry I'm just
6 clarifying a couple things and I'm going to give my little
7 speech here now as well. So, we hear these cases pretty,
8 well we hear a lot, you know, this is probably just the first
9 day you guys will be with us and probably it's the only day
10 you'll ever be with us.

11 But, you know, when neighbors are next to each
12 other it all -- and I'm just kind of throwing this out across
13 the back, it always get hot. People, emotions run and I'm
14 just going to try to keep as calm as I can and get everybody
15 calm and so I would appreciate it, even for the applicant.

16 I didn't give my little speech beforehand. But
17 again, let's try to not use loaded words that get everybody
18 kind of agitated and try to just keep it all together, okay.
19 So, that's my first little speech.

20 Then after that, Mr. Burke, at this point kind of
21 questions. You'll have an opportunity to give your
22 testimony. I mean, I do understand your, you were making a
23 statement that you had, you were taking issue with the fact
24 about the screening.

25 So, that's something you can talk about in your

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1 testimony. I was just asking do you have any questions or,
2 you know, would you like to --

3 MR. BURKE: I do have a question, I do have
4 question. Has a design been submitted for approval or
5 replacement of the deck or is it just to approve what it
6 currently exists? Is there a new design that is compliant
7 to building codes and zoning that has been submitted? I
8 didn't see it in the record?

9 BZA CHAIR HILL: Mr. Sullivan?

10 MR. SULLIVAN: There is, we are asking for
11 approval of the plat and plans, which were submitted in the
12 last few weeks. But the only change from what was originally
13 submitted and what exists would be what we talked about with
14 the encroachment. So, as it borders Mr. Burke's property
15 there's no change proposed.

16 MR. BURKE: And is there any change to the
17 stanchions or footings or any of that sort of thing in the
18 new proposal?

19 BZA CHAIR HILL: Mr. Sullivan?

20 MR. SULLIVAN: No. I mean, it's obviously subject
21 to building permit review because it didn't get a building
22 permit. So, if DCRA requires something different or if
23 there's something not compliant with building code then that,
24 obviously that would have to be corrected as well.

25 But the, you know, the BZA, typically the BZA

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1 plans are architectural or they're not structural plans.
2 We're showing you what's, what the deck's going to look like.

3 BZA CHAIR HILL: And so, Mr. Sullivan, if you can
4 clarify for me also, can you point me to the Exhibit that
5 shows what we're approving?

6 MR. SULLIVAN: Sure.

7 BZA CHAIR HILL: Or whatever, it's closest to?

8 MR. SULLIVAN: I think it's 48C. There's the
9 architectural applies with like the last ones.

10 BZA CHAIR HILL: 48C as in Charlie?

11 MR. SULLIVAN: Yes.

12 BZA CHAIR HILL: Think you have a chart.

13 MR. SULLIVAN: And the plat is 48B.

14 BZA CHAIR HILL: And the plat is 48B.

15 MR. SULLIVAN: They're B and C.

16 BZA CHAIR HILL: Okay. Commissioner Hart can you
17 please mute your microphone. Mr. Burke, could you please
18 continue with your questions if you have any.

19 MR. BURKE: And has a licensed contractor been
20 assigned to this as yet because I noticed the structural,
21 there is a structural details that has, you know, a 2.6 foot
22 depth, 1.6 foot footings. They don't exist now I understand
23 so, that will be a change correct, to the structural
24 integrity of the proposed deck?

25 MR. SULLIVAN: I would defer to Jason on that if

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1 he has a contractor but if that's required, if DCRA requires
2 that, that would be a change as well, yes.

3 MR. BURKE: Yeah but that's what's in your
4 submittal is a footing that currently does not exist.
5 Foundation exactly of a stanchion. And also, the size of the
6 stanchion, the joist size, you know, all that may be somewhat
7 different than what's currently installed.

8 MS. STARK: Just to answer your question, we have
9 interviewed a number of different licensed contractors in the
10 D.C. area but we are waiting to know exactly what we'll be
11 doing with the deck before we choose one and proceed from
12 there.

13 MR. BURKE: And to submit any --

14 BZA CHAIR HILL: Mr. Burke, can I, Mr. Burke, Mr.
15 Burke, can I interrupt you for one second and this is
16 actually going to go to the Office of Planning when we get
17 there. Like I always sometimes get a little confused as to
18 what we're approved sometimes. I mean, I thought we actually
19 got to see everything that we were going to approve and there
20 seems to be a little of a discrepancy even right now just in
21 terms of the questions as to what Mr. Burke thinks is going
22 to get -- is before him and then, and I know there hasn't
23 been a great deal of communication.

24 And some areas it's starting to breakdown, but I
25 don't think it's unreasonable to understand what is actually

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1 going to be built there. And so, it's more for -- and that,
2 by the way, Mr. and Mrs. Harris, is not saying that your
3 contractors or you should know either, right? So, but I'm
4 going to go at some point and ask about the Office of
5 Planning so, Mr. Burke, please continue your next question.

6 MR. BURKE: Sure. So, in the plan and in the
7 process of this upgrade --

8 BZA CHAIR HILL: Are you in 48C? Are you in
9 Exhibit 48C? I just want to know where you are?

10 MR. BURKE: Yes. In 48C they have a number of
11 details, right.

12 BZA CHAIR HILL: Okay.

13 MR. BURKE: And probably the most important detail
14 is detail three, four and five. Because those are relevant
15 to the material, structural integrity and support of the,
16 essentially cantilever that's coming from the building.

17 And it is substantially different than what's
18 installed today both in substance and scope and I'm just
19 wondering, is there a plan to demolish the, or, it's quite
20 difficult to build structures when existing are in place.

21 You know, typically the typical construction
22 process is you demolish what's there, you survey the ground,
23 you do some soundings perhaps and then you build the deck or
24 any other structure with the foundation installed. So, the
25 first thing to be -- and so, is there a plan such as that to

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1 reconstruct the deck with the appropriate footings and
2 structural members that are currently in the plan of record
3 of the 48C?

4 BZA CHAIR HILL: Mr. Sullivan.

5 MR. SULLIVAN: We're not, these aren't
6 construction level plans. These aren't structural plans.
7 They're plans to represent what's going to be there so that
8 the Board can evaluate what's going to be there and I don't
9 know if Mr. Dudley has anything to add to that.

10 BZA CHAIR HILL: Okay, but before and maybe I'm
11 not, I'm also just trying to, I mean, Mr. Sullivan, I do
12 understand that what's before us, whether this thing was here
13 or not, we would be evaluating this, right? That's not what
14 I'm also now curious of, okay. What I am curious of is what
15 originally was the question, is this thing getting torn down,
16 right? And I think that's kind of what we're speaking to,
17 right? Is that, and you're telling me you don't know. Is
18 that what you're telling me?

19 MR. SULLIVAN: Well, I don't know. I don't know
20 if Chad would know but because I'm not an engineer. I just
21 know we'd be held to the standard, we can only build what the
22 Board approves.

23 BZA CHAIR HILL: Got it. Who'd Chad?

24 MR. DUDLEY: He's the previous owner.

25 MR. SULLIVAN: Previous owner.

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1 BZA CHAIR HILL: Okay. Yeah, you know something
2 about the deck, Mr. Dudley? About whether they're going to
3 tear it down?

4 MR. DUDLEY: Well I know that what DCRA is
5 requiring of us and I don't know if the Board cares to know
6 but we haven't been able to apply for a permit, which DCRA
7 is requiring us to get a structural engineer to approve this
8 deck prior to obtaining a permit.

9 But we cannot get the permit or even apply for a
10 permit until this special exception hearing has taken place.
11 I've been in touch with Virgil Williams who is the Inspector
12 at DCRA and he knows this and he understands that we have to
13 have this hearing and then we will go to DCRA and get a
14 structural engineer and then apply for a permit. So all
15 those concerns will be taking care of, we just have not had
16 the opportunity to do so because of this hearing date.

17 MS. DUDLEY: Because the intention is not to tear
18 down the deck. That is what we are hoping to, for the
19 outcome to not tear down the deck.

20 BZA CHAIR HILL: Right, but you don't know is what
21 you're saying?

22 MS. DUDLEY: Correct.

23 MR. DUDLEY: Correct. But it has to be
24 structurally sound to get a permit and we know that, yeah.

25 BZA CHAIR HILL: All right. Okay. Mr. Burke, I

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1 don't know if you're going to get an answer other than what
2 you've gotten thus far. Do you have another question?

3 MR. BURKE: Will there be another, once the plan
4 is finalized and permitted will there be another opportunity
5 to get the alignment with the neighbors?

6 BZA CHAIR HILL: I can answer that one. They're
7 getting -- this is the approval process.

8 MR. BURKE: Okay.

9 BZA CHAIR HILL: And so, what's happening now is
10 and we're going to get clarification from the Office of
11 Planning because I'm going to ask as to again, how this part
12 of it works and maybe, Mr. Hart, you can chime in -- well,
13 let me get through the questions and answers first.

14 But like, I think at least I'm understanding your
15 questions, Mr. Burke. You have anymore at this point?

16 MR. BURKE: No.

17 BZA CHAIR HILL: Okay. Ms. and Mr. Gillespie, who
18 would like to ask a question?

19 MS. GILLESPIE: I'll go first. I just have a
20 super short one and it's on this Exhibit that we're talking
21 about, it's the plan. And so, I noticed in the cross section
22 of the footing, which doesn't exist, it's a nine inch
23 diameter footing and there are, there's at least one of these
24 footings to be placed on the northern edge supporting the
25 stairs.

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1 That footing as shown in this drawing would need
2 to accommodate that nine inch diameter while not crossing the
3 property line, which it does even in this revised drawing.

4 You can see that the circle diameter of the
5 concrete footing -- and so, if you think you're just trimming
6 back the step and that you'll still have a regulation size
7 step, which must be at least three feet wide, how are you
8 also going to accommodate that nine inch diameter concrete
9 footing on the property line, which doesn't yet exist?

10 I mean, I'm just thinking you're going to have to
11 move the entire set of stairs over to the south. It's not
12 a simple matter of trimming some stuff. Also --

13 BZA CHAIR HILL: Okay, okay. Okay, okay, no, no,
14 no, no. So, your question was --

15 MS. GILLESPIE: How they contemplated --

16 BZA CHAIR HILL: -- how this is going to happen
17 and not encroach on your property?

18 MS. GILLESPIE: Correct.

19 BZA CHAIR HILL: Okay. Mr. Sullivan, do you have
20 an answer?

21 MR. SULLIVAN: Does Mr. Dudley want to tackle that
22 one? I mean, I'm not -- again, we're not structural
23 engineers. The deck has to --

24 BZA CHAIR HILL: Perhaps Mr. Dudley does.

25 MR. SULLIVAN: -- comply.

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1 BZA CHAIR HILL: Right.

2 MR. SULLIVAN: Well he's been involved from the
3 beginning in trying to resolve the issue for his buyers.

4 BZA CHAIR HILL: Okay. Well I thought, and Mr.
5 Dudley, you can then clarify, what I thought is that you're
6 going to not encroach is what your answer is going to be.
7 Correct?

8 MR. DUDLEY: Absolutely.

9 BZA CHAIR HILL: All right. So, that's the
10 answer. And then so, Ms. Gillespie, I guess whenever they
11 get it all taken care of, they're just not going to be, you
12 know, they're not going to get the permit. They won't be
13 getting one, right. Do you have another question, Ms.
14 Gillespie? Mr. Gillespie?

15 MR. GILLESPIE: No other questions. I just want
16 to note that the footing on the brick side is also over the
17 property line in the next sketch so, they'd have to trim that
18 edge of the deck and then move that post as well if they
19 wanted to not encroach.

20 BZA CHAIR HILL: Okay. So, this is going to go
21 to my questions for the Office of Planning again, and Mr.
22 Hart, I also get a little confused in terms of the
23 architectural drawings like, you know, sometimes what are we
24 approving then, you know, and so, okay. I'm going to go to
25 the ANC Commissioner -- oh, hold on, I'm sorry, did everybody

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1 get their questions? Mr. Hart, Ms. John, Mr. Miller? You
2 all got your questions, correct? Okay --

3 MEMBER JOHN: I have no questions.

4 BZA CHAIR HILL: Commissioner, you want to go
5 ahead and give your presentation?

6 MS: MLADNOV: Thank you very much, can you hear
7 me?

8 BZA CHAIR HILL: I can and I'm going to put 15
9 minutes on the clock there. You get the, I think you get the
10 full 15 because you're the ANC.

11 MS. MLADNOV: Well that's more than enough. Thank
12 you. I really appreciate your holding this hearing and
13 bearing with this very long day and it's a particular honor
14 to have this whole group including Vice Chairman Hart, we
15 wish you well. We wish we had more chance to work with you.
16 Anyway, thank you to all the Board.

17 My name is Ann Mladnov, I'm Commissioner of ANC
18 3B01, that is not the single member district in which this
19 subject property is located, that district is Chairman Brian
20 Turmail SMD but he is not able to participate today so, he
21 agreed to have me represent the ANC.

22 I'm also generally the commissioner who delves
23 into the details of zoning cases affecting our ANC area and
24 I've read all the case files and other documents provided to
25 the ANC over the months. As you can see in the record, the

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1 ANC filed two letters in the case -- one dated March 13 and
2 one dated July 9. We continue to oppose a special exception
3 for the existing deck based on the concerns raised by
4 residents and the criteria in this case.

5 And in our March 13 letter we express a number of
6 concerns that neighbors shared about some of the elements of
7 the application, which haven't been resolved. The Commission
8 doesn't usually get involved in a request for a special
9 exception for a rear deck addition unless the applicants have
10 support from the nearby neighbors as Mr. Sullivan said. And
11 then the traditional practice is to vote to send a formal
12 letter to the BZA in support of the application. In some
13 zoning cases though, the Commission also takes a position if
14 the cases raises matters of precedent that are important to
15 the Commission area.

16 This zoning case has been unusual for several
17 reasons. First, as you've heard the case relates to a rear
18 deck addition that was constructed four years ago without the
19 required building permits or zoning approval. Second, our
20 meetings, sort of like many other ANC's have been affected by
21 the COVID-19 public health emergency and the schedule and
22 conduct of our meetings has not followed the usual pattern.

23 It is our practice to hear from all parties on a
24 case before taking a final position and that is an important
25 commitment that we make. In March, we had only heard from

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1 the adjoining neighbor who shared multiple serious concerns
2 about a special exception for the existing deck. At that
3 time in mid-March we were very concerned because of the
4 COVID-19 restrictions that were just going into effect,
5 thinking we might not be able to have another ANC public
6 meeting before the ANC held a hearing at that time and that
7 hearing was scheduled for April 1st.

8 So, we adapted our initial letter in the
9 opposition supporting the adjoining neighbors. In our letter
10 to the BZA because of our concern that we hadn't heard yet
11 from the applicants, we also asked for the hearing on the
12 case to be postponed until the ANC had had a chance to hear
13 formal presentation so we could hear from all of the parties.

14 And we were able to get the applicants and the
15 adjoining neighbors into an ANC3B public meeting by Zoom on
16 June 11th where we heard presentations from all of them and
17 we then took another vote at the July 9 ANC public meeting.
18 We voted unanimously to reiterate our opposition to the
19 request for a special exception for the rear deck addition
20 and added the one update, since the ANC letter dated March
21 13, that we had been able to hear a presentation by the
22 applicants at the June 11 public meeting.

23 The letter stated that it was intended to amend
24 the March 13 letter. The Commission action on July 9 did not
25 replace the previous letter or withdraw it, and it remains

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1 in the case record. But many other neighborhood residents
2 expressed concern about the zoning application to the ANC
3 both during the June 11 meeting and then after the meeting.
4 It was apparent that the large majority of residents felt it
5 was unacceptable for illegal construction to be allowed or
6 rewarded. And the Commissioners are sympathetic with that
7 view.

8 Property owners have the responsibility to obtain
9 the required permits or approval for any work they are having
10 done. Our position remains to oppose the special exception.
11 We do not believe the BZA should give approval for a deck
12 that encroaches so significantly on a neighboring property
13 or violates building code and has been identified as creating
14 substantially adverse effect on the use and enjoyment of the
15 abutting properties.

16 And we leave it generally to the neighbors to
17 present the details on those specific issues which I believe
18 they have done on the visual intrusions and the effects on
19 the privacy of use and enjoyment of their property. The
20 applicants have the burden of proof on those issues. But the
21 adjoining neighbors have presented a good deal of evidence.
22 And we recognize the BZA has multiple tools for finding a
23 remedy. I'm going a bit beyond what's in the ANC letters,
24 but the concerns were particularly expressed about the
25 existing deck.

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1 However, the current owners of the residence at
2 2211 38th indicated in the owner's affidavit, which is
3 Exhibit 6, that what they're looking forward as a goal to
4 address the neighbors' concerns is a modification or
5 replacement of the deck. And I noted that the recent OP
6 report also mentioned that, should BCR order the deck to be
7 demolished, that their holding would still apply, but that
8 was a consideration that could occur.

9 Based on that and other indications, the
10 applicants seemed to be willing to modify or replace the
11 deck, so there could be room for an acceptable design for a
12 deck going forward that would be constructed to code, with
13 permits and entirely within the property lines. And that is
14 a point that OP made in its initial report, Exhibit 44. And
15 just in summary, this case is a sensitive one for many ANC-3B
16 constituents. The outcome of the case affects several
17 constituents' homes and their interests, including three
18 households on 38th Street as well as the applicant's agent.

19 We are all neighbors. We have wonderful neighbors
20 in this case. The commissioners would like all residents to
21 be able to have the use and enjoyment of their homes and
22 property while at the same time preventing significant harm.

23 The Commission cannot support illegal
24 construction. And we do not want to create an incentive or
25 send any message that illegal construction can stand. Thank

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1 you very much.

2 BZA CHAIR HILL: Thank you, commissioner. Mr.
3 Sullivan, do you have any questions for the Commissioner?

4 MR. SULLIVAN: No, thank you.

5 BZA CHAIR HILL: Mr. Burke, do you have any
6 questions? And Mrs. Burke, do you have any questions for the
7 Commissioner?

8 MR. BURKE: No.

9 BZA CHAIR HILL: Ms. and Mr. Gillespie?

10 MS. GILLESPIE: No, I don't.

11 BZA CHAIR HILL: Are one of you guys quarantining?

12 MS. GILLESPIE: We have kids all over the house.

13 BZA CHAIR HILL: Oh. That's a legitimate
14 question, Mr. Hart. It's okay. Just asking if somebody's
15 quarantining.

16 VICE CHAIR HART: No, it is not, sir.

17 BZA CHAIR HILL: All right, maybe I should not.
18 I don't know. Maybe you're right. Maybe that'll turn into
19 a problem later.

20 MS. GILLESPIE: Oh, please.

21 BZA CHAIR HILL: Let's see. Does anybody have any
22 questions -- does the Board have any questions for the
23 Commissioner? Did I already ask that?

24 Okay, Commissioner, if you'd mute your microphone,
25 please -- thank you. All right, so Mr. Burke and Ms.

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1 Gillespie, I guess, I saw -- Mr. Burke, do you actually have
2 a PowerPoint or no?

3 MR. BURKE: Ms. Gillespie has a PowerPoint.

4 BZA CHAIR HILL: I noticed that one, so why don't
5 we go ahead and start with Ms. Gillespie then. Okay, Ms.
6 Gillespie, are you going to walk us through the PowerPoint?

7 MS. GILLESPIE: Sure. Yeah, I would be happy to
8 do that.

9 BZA CHAIR HILL: Okay.

10 MS. GILLESPIE: I think it would be useful to see
11 some more pictures.

12 BZA CHAIR HILL: Can I ask a quick question? So
13 you guys have 15 minutes. Again, you have to split it with
14 the Burkes, okay? So how much time do you want to cede? Or
15 what do you want to do, Mr. and Mrs. Burke?

16 MR. BURKE: I think our comments could be done in
17 three or four minutes.

18 MS. GILLESPIE: Yeah, why don't you go first then?

19 MR. BURKE: Okay.

20 MS. BURKE: I have a comment also.

21 MR. BURKE: All right, so as indicated -- first
22 of all, I want to congratulate the Board. This is my first
23 BZA meeting, and I've been on since 9:30 and it's a long day.
24 I compliment you all on being able to stay on task and also
25 going through these sessions. So I thought it was a --

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1 BZA CHAIR HILL: I won't count that against your
2 time, Mr. Burke. You can go ahead.

3 MR. BURKE: Okay, all right. Also, the first
4 thing is, I do think that decks are valuable in D.C. We have
5 a fairly warm climate and I think it's one of the benefits
6 of living in D.C., to have a deck. And I wish that Jenna and
7 Jason have one that they can enjoy. And I don't wish to
8 impose upon that. But I do think it's prudent to have a
9 structure that is safe and does not adversely affect, you
10 know, the security, the privacy and the value of the adjacent
11 properties.

12 So, you know, I -- so, as it currently exists, I
13 don't believe it can be asserted that it's safe since there's
14 no inspection or permits. It does -- I would claim that, you
15 know, the 7-feet additional length does adversely affect our
16 privacy based off of some minor issues with previous tenants,
17 and we wish to avoid that. And so, I think it would behoove
18 Jenna and Jason to perhaps, you know, submit a design that's
19 a bit smaller that can be fully approved by both zoning and
20 building codes, built by a licensed contractor and who isn't
21 a fly-by-night. And so, I would hope that we could have an
22 amicable resolution to this.

23 I really want them to have a wonderful time in
24 this neighborhood. And, but I don't think just leaving the
25 structure as is and doing the minimum possible is a prudent

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1 way to go. Elysia?

2 MS. BURKE: I just have one small comment. I
3 don't think the pictures -- maybe Kate's pictures will show
4 it, but we have an oddly-shaped house that goes out in a
5 point, like that, in a triangle. And so I don't think Jason
6 and Jenna realize that our bedroom window on the second floor
7 overlooks their deck.

8 And so when -- and faces that. And so when Mr.
9 Sullivan says that a 5-foot deck or a 13-foot deck is exactly
10 the same; it's just a deck, I don't agree with that. It's
11 very different. And I think we can find a compromise
12 somewhere in the middle, and I agree with Mark, you know,
13 we're together on this.

14 We want you to be happy and to have a deck, to be
15 able to enjoy it. But a big large deck like that is going to
16 mean more, you know, enjoyment of the deck, every single
17 night, when it's hot during the day, et cetera. And so that
18 is the problem I have with the privacy there, is that, you
19 know, we're older. We don't --

20 MR. BURKE: We have to yell at times. So we yield
21 our time --

22 MS. BURKE: Yeah, and so the privacy is also
23 because a window faces their deck, basically.

24 MR. BURKE: Yeah.

25 MS. BURKE: It doesn't face out to the alley. It

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1 faces the deck.

2 MR. BURKE: Okay, we got to give them our time
3 now. Thank you so much. We yield our time to Kate.

4 BZA CHAIR HILL: Okay, Mr. Young, can you hear me?

5 MR. YOUNG: Yes.

6 BZA CHAIR HILL: Can you put 12 minutes up there
7 for me and just pause it?

8 MS. GILLESPIE: And, John, why don't you go ahead
9 and then I'll just end with the pictures?

10 BZA CHAIR HILL: Okay, give me one second. Give
11 me one second. Okay, does anybody -- does the Board have any
12 questions for the Burkes? I'll start because I do have a
13 question. Mr. Burke, you mentioned a window. What are you
14 talking about with the window? Can you just tell me? And
15 maybe it'll come up in the presentation later, but what's the
16 window about?

17 MS. BURKE: Okay, so they're not -- you know, we
18 have a small addition that was built before we purchased the
19 house. And so our house doesn't go out straight out. It
20 goes out in a point. And so we have a window that faces our
21 neighbors, basically.

22 BZA CHAIR HILL: Okay, that's fine. I understand.
23 So is that window affected by the larger deck? Or it
24 wouldn't have been affected by any deck?

25 MS. BURKE: Because of the noise.

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1 MR. BURKE: Yes, well, the larger deck. If it was
2 a bit smaller, we wouldn't see the deck. It wouldn't be
3 quite so loud and things like that. We've had difficulties
4 in the past and we've also had difficulties with people
5 dropping things from the large deck into our back yard.

6 BZA CHAIR HILL: And when you say difficulties,
7 you're saying it was a rental at some point or there was
8 people there?

9 MR. BURKE: Yes, it's been a rental -- it has been
10 a rental in the past, yeah.

11 MS. BURKE: All these years.

12 MR. BURKE: Yeah. Yeah, yeah.

13 BZA CHAIR HILL: All right, and then I guess when
14 you say like a compromise, right, what does that kind of mean
15 to you?

16 MR. BURKE: A shorter deck that's fully compliant
17 with, you know, the building codes and construction standards
18 and things like that.

19 BZA CHAIR HILL: Well, I mean, so, I mean, they're
20 allowed five feet, by right, right? So you're talking
21 compromise meaning past the five feet or they're allowed what
22 they're allowed?

23 MR. BURKE: No, we'd be open to a new design, but
24 past the five feet, yes. And we have --

25 MS. BURKE: Or somewhere in-between. We're

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1 willing to negotiate and to look -- this deck, as it stands
2 right now, goes way beyond what it's allowed.

3 MR. BURKE: Yeah, we can't support the current --

4 BZA CHAIR HILL: Okay, I gotcha. All right, Ms.
5 Gillespie, you want to pull up -- or do you want Mr.
6 Gillespie to go first? Is that what you said?

7 All right, I'm going to -- now, Ms. Gillespie, you
8 can see the timer, right? So you're in charge of your
9 husband, okay?

10 MR. GILLESPIE: Hello. All right, so John
11 Gillespie. I live in 2213 38th Street. That's the currently
12 northern bordering house. I'm also a licensed engineer in
13 D.C. -- not a structural engineer either, but I'm a
14 mechanical engineer. So code, compliance and permits is kind
15 of what I do for my living.

16 The way that this desk was constructed is both
17 kind of personally and professionally offensive to me.
18 Personally, it's, you know, it's across the property line.
19 There's no guarantee of safety against the house, because
20 it's never been inspected or the plans have never been
21 reviewed.

22 This wasn't a case of not knowing a permit was
23 required by the applicant. Mr. Dudley applied for a permit
24 in September of 2016, got comments saying -- I assume that
25 he had to go get a zoning exception in order to proceed. And

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1 then I assume it became inconvenient to his schedule and/or
2 budget.

3 And so they built the deck without correcting it
4 and --

5 BZA CHAIR HILL: Hello, Mr. Gillespie. Come on,
6 man, you're getting really close to that line right there,
7 all right?

8 MR. GILLESPIE: I am -- I'm done. But it's, you
9 know, it got built. It's not in compliance. And nobody
10 knows what structural supports are there and what are not.
11 And the only way to find out would be to break up the
12 concrete which you could do -- probably you could build a new
13 deck possibly from that.

14 Professionally, I just took -- it took that end
15 run and it bothers me. So I'm -- the reason for the
16 duplicate letters from us for support and then opposition is
17 we specified with the new owners that we would only support
18 a new deck. And we're told a month later that they were
19 applying for a BZA exception with the existing deck and no
20 real renovation/inspection changes to make.

21 And so that was why we initially went into
22 opposition. Yeah, let's see. We haven't heard anything
23 about concerning any other end solution other than the
24 existing deck. And I think, you know, whatever opposition
25 that we filed yesterday or two days ago, I mean, laid out

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1 what we would consider. And, yeah, it has always been -- and
2 I guess my last point is that I don't feel that it meets the
3 minimum requirements for an exception since its both abutting
4 neighbors are concerned that it impinges upon their privacy
5 and enjoyment of use of their backyard.

6 And this is a rare zoning case in that it's not
7 theoretical, like this deck has been there for almost 4
8 years. So it's not that we think it's going to be a problem,
9 it's that it is a problem. And I don't -- I understand that
10 privacy is a subjective matter, but there's really nobody
11 else to offer an opinion other than the three people that
12 already have -- three groups of people. Yeah, I will cede
13 the rest of the time for Kate to go through her presentation
14 unless you've got any questions.

15 BZA CHAIR HILL: Okay, Mr. Young, could you pause
16 the clock for me? Thanks. Let's see, I had a question
17 again. And it's kind of back over to the Burkes real quick.
18 You guys mentioned again safe, security and like Mr.
19 Gillespie has also mentioned safe. I mean, there's a
20 difference between safe and privacy and things like that.
21 And so -- and I'm not trying to -- I am trying to parse it
22 out a little bit, so some of what you're concerned about is
23 the safety of the deck. Correct?

24 MR. BURKE: That's correct.

25 BZA CHAIR HILL: But you are also concerned with

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1 the privacy of the deck?

2 MR. BURKE: That's correct.

3 BZA CHAIR HILL: Okay, and the same goes for you,
4 right, Mr. Gillespie?

5 MR. GILLESPIE: Correct. It's more safety for
6 us because we have the natural barrier of the stairwell on
7 our side. So, it's -- we have fewer problems with people
8 walking directly over our yard than the Burkes.

9 BZA CHAIR HILL: Got it. Okay, does the Board
10 have any questions for Mr. Gillespie?

11 MEMBER JOHN: Perhaps. Mr. Chairman, I have a
12 quick question. So, Mr. Gillespie, so if the -- if, instead
13 of a deck, there was a patio and the entire back yard was
14 used for entertaining, would you have similar concerns with
15 your window would still -- your window that overlooks the
16 deck?

17 MR. GILLESPIE: I think that was directed to my
18 wife.

19 MEMBER JOHN: Yeah.

20 MR. GILLESPIE: Yeah, we've -- we might. We
21 hadn't considered that. But the thing is, if they're at a
22 lower level, right -- right now, they're -- I don't know the
23 height of the deck, but it's maybe ten feet above ground
24 level, something like that. And so if it was a patio at
25 ground level, right, we wouldn't have the problem with

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1 falling items. That's what we've had before with tenants.
2 I mean, they'd have a party and we'd end up with, you know,
3 beer cans and whatnot in our yard and stuff like that as well
4 as loud music.

5 If it's a patio on ground level, right, well,
6 unless they're throwing the stuff over the fence, we won't
7 see it, all right? But as it exists now, it has been a
8 problem.

9 As far as the noise, you know, it would probably
10 be very similar, right, because if you have a full length of
11 a patio, it would be rather -- it could be loud. As far --
12 what we're proposing is that that be shorter, right, so that
13 it's less likely that there'll be things falling into our
14 back yard and it would be less obtrusive in the window
15 arguing or noise. That's all.

16 MEMBER JOHN: So follow-up question, so could
17 tenants not throw things over into your yard from a 5-foot
18 deck as well?

19 MR. BURKE: Well, technically, yes, but what is
20 the difference is they would abut up to our deck because it's
21 also compliant, and it would go into our deck. I mean,
22 anybody can throw anything at the greatest, you know, if they
23 really want to throw it, they can throw, you know, across the
24 alley if you have a good arm and stuff like that.

25 But what we have experienced is, with the size of

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1 the deck and it goes, you know, halfway the length of our
2 back yard, you know, there, just inadvertently, you know,
3 things will happen. And we would prefer that not to occur.
4 And that's what our concern it.

5 MEMBER JOHN: Okay, thank you.

6 MR. BURKE: The primary concern, with -- in order
7 of magnitude, in order of precedence, is safety. This was
8 built not by a -- we don't even know if the contractor was
9 licensed, but there's no structural design that we could,
10 that's evident. Standards of practice were not assured. And
11 in discussions previously with the new owners, they can't
12 even find the old contractor. So that's number one, is the
13 safety.

14 Number two is privacy and number three is the
15 value of the property. We've already been told by, you know,
16 visitors that this --

17 MS. BURKE: And the size. Everybody comments, oh,
18 so, look, what happened there.

19 MR. BURKE: Yeah, and that's one of the
20 challenges, is the adverse effect on the value of our
21 property.

22 MEMBER JOHN: So, okay, I'll hold that question.

23 BZA CHAIR HILL: Okay, Ms. Gillette -- Gillespie,
24 if you want to go ahead and give your presentation. Mr.
25 Young, you can start the clock when she does.

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1 MS. GILLESPIE: Sure, and thank you to the Board
2 for a big day. This has been a big day for everybody and I
3 know you're day's not over. So I think we, Jon and I, have
4 pretty well covered the specific points of our opposition in
5 the various exhibits that we've uploaded to the file. And
6 I don't want to go through all of those points today. I hope
7 that the Board can take the time to review the materials at
8 your convenience and that all of the information will be
9 useful in forming your deliberations.

10 Now in contrast, I do not think that the
11 applicants have at all met their burden of proof for
12 demonstrating that a special exception is warranted. They
13 barely submitted any relevant photographs, and none that
14 adequately show that the structure in question in relation
15 to the character, scale, and pattern of the adjacent
16 properties. And I'll show some photos that do show it.

17 They haven't adequately considered the adverse
18 effects of this very large deck on all of our relatively
19 small properties. Saying that the abutting neighbors are
20 protected from adverse effects by our privacy fences, and now
21 that doesn't make any sense at all to me considering the deck
22 is situated fully above the privacy fences on both adjacent
23 properties.

24 And to Mr. Sullivan's early verbal comment on
25 privacy and specifically what's the difference between a 5-

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1 foot deck and a 12.5-foot deck, well the difference is that
2 when you're standing on the end of a 12.5-foot deck, you can
3 definitely see directly into our home, including into our
4 powder room. Like I see from my bathroom, I can see out to
5 Jenna and Jason's deck.

6 If the deck was only five feet back from the
7 dwelling, we wouldn't see into that. You know, they wouldn't
8 be able to see in and we wouldn't be able to see them on
9 their deck. There's more privacy. And if the deck itself
10 falls because it isn't structurally sound, well that too
11 would affect our privacy use and enjoyment of our property.

12 Additionally, as we've noted, we don't have to get
13 into it, but the applicants have filed a series of internally
14 inconsistent and factually incorrect exhibits in support of
15 their application. And we noted that in our oppositions.
16 So I hope you'll take the time to read through that.

17 So I believe the applicants would like to argue
18 that this is just a really routine simple case before the
19 BZA, but we don't see this as a routine case at all. I've
20 listened to quite a few BZA hearings that were archived on
21 line in preparation for today and through all the cases we
22 sat through today, I have not heard a single case presented
23 in which there was such disregard for the rules and the
24 proper sequencing of permitting and construction.

25 The rules and codes exist for a reason. They keep

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1 us safe and they protect the rights and interests of the
2 residents of the district. The case that's before you today,
3 due to a series of really unfortunate events, it's really
4 unfortunate that Chad Dudley went ahead with this
5 construction without the proper permits and exceptions. It's
6 really unfortunate that Chad Dudley did not hire licensed and
7 --

8 (Simultaneous speaking)

9 BZA CHAIR HILL: Ms. Gillespie, again. I had to
10 -- you guys are -- I don't know what's going on with the Chad
11 Dudley thing, but like just quit, I mean --

12 MS. GILLESPIE: Yes. Well, you know --

13 BZA CHAIR HILL: It doesn't -- I don't want to
14 know. I don't want to know. I don't to know. Okay? I
15 don't want to know. All right. Thank you. Please continue.

16 MS. GILLESPIE: That's fair. So none of the
17 unfortunate circumstances that exist today have anything to
18 do with --

19 BZA CHAIR HILL: Say the previous owners. You
20 want to say the previous owners. Say the previous owners.

21 MS. GILLESPIE: Yes. None of the unfortunate
22 circumstances that exist today have anything to do with us.
23 And I think it's quite apparent that we're the party that,
24 to date, has been most adversely affected. So we're asking
25 you to please deny this request for a special exception.

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1 Please do not reward the wrongdoers and punish those of us
2 in the right.

3 Please affirm that the rules and codes exist for
4 a reason. Thank you. And I'd like to flip through some
5 photos. It's very -- I think it's just illustrative. So if
6 Mr. Young has this slide deck, that would be great. We can
7 do this pretty quickly. And I do apologize for referring to
8 Mr. Dudley. I mean, he has inserted himself into this case
9 and so it's very hard to ignore that. So here, this first
10 photo is just a summary of the reasons to oppose the request.
11 And you can look at this in your leisure. But the green
12 arrow points at the deck in question, which already exists.

13 Next slide, please. Okay. The photo on the left
14 shows our property at the bottom, and then the deck in
15 question at the top. And the photo on the right shows the
16 deck in question and then the Burke property on the top. I
17 hope that's clear. And what we were just trying to show in
18 this set of photos is the size of the deck and the setback
19 relative to the abutting properties. It's quite different
20 in size and scale. In our property, the properties have
21 about 25 feet down the dwellings, between the dwelling and
22 the alley, so given that there's a 20 foot requirement that
23 allows for about a five foot deck. We have a three and a
24 half foot deck, and the Burke's also have a three and a half
25 foot deck.

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1 Next slide, please. Okay. So this is a view of
2 the deck looking north. You can see that the deck is fully
3 visible above the Burke family fence. Next slide, please.
4 And this is a view from our property and you can see, again,
5 that the deck is fully visible above our privacy fence.

6 Next slide. This is just showing, you were asking
7 earlier, where do the encroachments exist. The red dashed
8 line very roughly indicates the location of the
9 encroachments. I would say that they can't keep the railings
10 in place because the vertical pieces that support the
11 railings are sunk into our property. So the railing itself
12 has to be moved. The white hash lines along the bottom show,
13 you know, it's just a way to show the relative size of the
14 existing deck to what would be allowed by zoning.

15 Next slide, please. Okay. So this is more on the
16 encroachment, which you don't want to talk about too much.
17 But I would like to say that the property line has been
18 surveyed three times by the same registered surveyor. The
19 most recent survey shows encroachments of up to 7.6 inches.
20 In this little red rectangle, you can see. Jason earlier
21 referred to like portions of a landing that jut out farther.
22 That's this part. There is -- this is the section that juts
23 out the furthest, and it's at 7.6 inches.

24 Next slide, please. Okay. So that little white
25 piece of broken railing. That used to be attached to our

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1 white trim board. You can see it was removed in order to cut
2 open the space -- the area way between the two properties.
3 This is a view looking down from the roof. All of the
4 vertical supports in that red rectangle are sunk fully within
5 our property. So some of them are our own fenceposts and
6 some of them are new four by fours which were installed just
7 into the dirt in our property. Not into concrete. And of
8 course, our fencepost wasn't meant to be a load-bearing
9 structure. So the fact that our fencepost was incorporated
10 into the design of the deck is problematic as well.

11 Next slide, please. Yes. So this is just a
12 summary. We believe that this is retroactive approval of the
13 structure would set a terrible precedent. We think this is
14 a straightforward denial due to the sequence of events that
15 occurred. The developer was aware of the need to obtain a
16 building permit in order to build the deck, as shown by the
17 fact that he applied for one. The developer's permit
18 application was not approved by DCRA. The developer went
19 forward with construction without permits, without protecting
20 the property line, in violation of the zoning, and without
21 regard for his neighbors. The developer got caught and the
22 developer, on behalf of the new owners, is now applying for
23 retroactive approval in order, we presume, to minimize his
24 expense.

25 We noted that the BZA application contains

1 numerous factual errors regarding the deck dimensions and
2 structure, which we've spent a lot of time and energy trying
3 to rebut. And the abutting neighbors oppose the request for
4 this zoning exception based on our experience. We've lived
5 next to this deck for four years now and we know that it
6 adversely affects our lives.

7 Next slide, please. I think the last few slides
8 are just, yes, we can skip these if you want. That's fine.
9 That's the property line. That was in the area where it was
10 enclosed. You can keep going, if you want. It's very quick.
11 We have 23 seconds. That's showing we've reopened the gap,
12 but our property is still damaged. Twenty feet of vertical
13 board is permanently damaged. Next slide. And this is the
14 note from Virgil Williams who inspected the property a year
15 ago and issued multiple citations and it hasn't been
16 rectified. Thank you. That's all.

17 BZA CHAIR HILL: Okay. Great. Mr. Young, if you
18 could pull the slide back up. Does the Board have any
19 questions for Ms. Gillespie?

20 VICE CHAIR HART: Yes. Ms. Gillespie, so thank
21 you very much for the presentation. And I, you know,
22 understood it as I was kind of looking through here.
23 Something that kind of stood out, was a little bit odd, the
24 -- your deck is about, I don't know, it's a few feet. I'm
25 not sure how many feet it is. But it -- there's a set of

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1 stairs that goes down to a patio that you have, or backyard.
2 Not a large backyard but a backyard, nonetheless. It seems
3 as though the applicant is looking at the patio, at the deck
4 as being their patio because they have parking back there,
5 and I know it's a choice to have parking next to there, and
6 I'm not really sure what happens on the other part of it.
7 And is that accurate, what I'm looking at?

8 MS. GILLESPIE: Yes. That's correct. They paved
9 over the entire rear of the property. Every square inch of
10 their entire -- they could have left some of it to be green
11 space, but they chose not to. But yes, I believe they have
12 told us that they view their deck as their primary outdoor
13 space.

14 VICE CHAIR HART: Understood. And currently the
15 image that you have is, it looks like it's a table and
16 chairs, a couple other chairs, and I don't know, it looks
17 like a little growing box or something, like a little garden
18 or something that's back there. But that's what's there now.

19 MS. GILLESPIE: No. That photo was taken in
20 advance of the ANC meeting. We were supposed to discuss this
21 in April. And so the owners had tenants until June. So that
22 picture was taken immediately preceding the April meeting.

23 VICE CHAIR HART: Oh. Okay. I just was looking
24 to see what was actually there, to basically understand what
25 that is. Okay. I don't have any other questions. Thank

1 you.

2 BZA CHAIR HILL: Ms. John, Commissioner Miller?

3 MS. JOHN: No questions, Mr. Chairman.

4 VICE CHAIR HART: Actually, I do have a question
5 for the Gillespie's. Sorry. It dawned on me. And I guess
6 I should have asked this to the Burke's as well. So screens?

7 MS. GILLESPIE: Yes. So that's a really good
8 question. So we're the property to the north.

9 VICE CHAIR HART: Yes.

10 MS. GILLESPIE: So I am firmly opposed to having
11 a screen. Sunlight is at a premium in these row houses in
12 Glover Park. So I would much rather not have screening. If
13 that is a choice that I wanted to make, that would be my
14 choice. In terms of alternative designs, as put in our
15 recent filing, we are definitely open to compromising with
16 our neighbor, doing this the proper way. Starting from
17 scratch. Coming to terms with something everybody could be
18 happy with. And I, you know, we put a specific proposal for
19 what we would be comfortable with, you know, as long as the
20 parties agreed.

21 VICE CHAIR HART: Which is what?

22 MS. GILLESPIE: For a seven foot deck, which is
23 about 40 percent larger than what's allowed by right, and
24 which is consistent with the front deck. We use our front
25 deck all the time. It's a lovely outdoor space. We have a

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1 family of five with two big dogs, and we all fit on it, all
2 the time, with a couch, with a stroller. It's a good space.
3 And that would be, I think that would be adequate. That
4 would address my concerns about them seeing into my powder
5 room from their deck. And it's a compromise. Right? It's
6 --

7 VICE CHAIR HART: I understand. I just wanted,
8 I was just trying to understand what you were seeing as a
9 compromise. And for the Burke's. I understand that you said
10 that a screen would be -- you would be at least amenable to
11 discussing that. Did you have a specific idea about the size
12 of the deck that you're thinking about?

13 MR. BURKE: No. We didn't have a specific size.
14 But we'd be open to, you know, something that's larger than
15 ours and smaller than, you know, than what they currently
16 have.

17 VICE CHAIR HART: Understood.

18 MR. BURKE: Ideally, I'd like to see that in the
19 plan as opposed to -- I just can't support this plan.

20 VICE CHAIR HART: I understand.

21 MR. BURKE: Yes.

22 VICE CHAIR HART: It sounds as though there,
23 typically some of these things wouldn't have occurred if
24 there was a level of, quite honestly, a level of trust
25 between neighbors and there was an idea that, okay, we, you

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1 know, handshake, we're going to do this. But that doesn't
2 seem to be here at present. So we have to do a more formal
3 discussion about what, you know, the neighbors would be
4 interested in. And I understand that. I'm just saying that
5 some of the issues that are raised, and I was somewhat
6 concerned, I shouldn't say concerned, I think that the
7 drawings that the applicant has put forward with the footers
8 across somebody else's property line, you just can't do that.
9 I mean, that's just not, it's not something that you can
10 propose because you're taking somebody's property, regardless
11 of the size of it, it's still, you have your property, they
12 have their property.

13 If they wanted to put the same size deck in,
14 they'd have to then, you know, have to deal with that portion
15 of the footer that's on their property -- that's on the
16 neighbor's property. The neighbor's footer that's on their
17 property. And that's just something that nobody wants to
18 have to deal with.

19 Mr. Sullivan, this is a correction that needs to
20 happen with the drawings that you all have submitted. And
21 again, I'm not saying that I'm supporting it. I'm just
22 saying that that's a correction that needs to occur because
23 it just isn't -- if it is something that we have to look at,
24 we can't say we're looking at these drawings and we can
25 approve or not approve them. They're just not correct. So

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1 that needs to be corrected on them. So it's just a point
2 that I was making. I don't have any other questions outside
3 of that. Thank you.

4 BZA CHAIR HILL: Commissioner Miller?

5 COMMISSIONER MILLER: Thank you, Mr. Chairman, and
6 thank you to the Gillespie's for providing those photographs.
7 That gave me a much clearer --

8 BZA CHAIR HILL: Commissioner Miller, your video
9 went off. I don't know if you care or not.

10 COMMISSIONER MILLER: Okay. I'm sorry. I was
11 eating a slice of watermelon and didn't want to eat in front
12 of everybody. So thank you to the Gillespie's for providing
13 those photographs. I think that shows the relationship a lot
14 better than I understood from the applicants presentation.
15 If it's possible to put up that last photograph with the
16 summary that shows both the Gillespie's, I don't know what
17 slide it was, but it was -- yeah. Oh. Well. It was next.
18 I guess it was the last one. Oh no, I guess it was a few
19 back. Well that's good enough.

20 So the compromise that you were putting forward,
21 Mr. and Ms. Gillespie, if it was only to go back seven feet,
22 that's going back -- where does the seven feet get?

23 MR. GILLESPIE: It's roughly where that offside
24 in the deck railing is.

25 MS. GILLESPIE: Exactly. Our deck is three and

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1 a half, so it's twice the size of our deck. It would be a
2 rectangle. It would be cutting off that small piece that's
3 overhanging their car, basically.

4 MR. GILLESPIE: That's if they're building a new
5 deck that size, not cutting off the piece in reality.

6 (Simultaneous speaking)

7 COMMISSIONER MILLER: And ideally, you would,
8 toward the encroachment, where the, I guess the covered grill
9 is, outdoor grill is, you'd want that area, maybe that would
10 be where the deck, where everything has to move to to get the
11 stairwell away from you.

12 MS. GILLESPIE: I'm not sure how they would work
13 that out, but there are posts on either side of the stairs.
14 So those posts all have to shift over if they were going to
15 somehow keep this. But I just can't see a way that they
16 would keep this if you wouldn't --

17 MR. GILLESPIE: I'm sorry. I can't in good
18 conscious support keeping the deck at all. Like it's --

19 (Simultaneous speaking)

20 COMMISSIONER MILLER: They're probably talking
21 about keeping -- I just was talking about the dimensions of
22 a deck that you would be supportive of. That's all I was --
23 yes, I can understand why you think this needs to start over.
24 I guess for the applicant, in terms of the notice of
25 infraction, you don't need this approval to apply for a

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1 demolition permit of that deck.

2 MR. HARRIS: The reason that we were not able to
3 deal with the infractions is because we were trying to cut
4 the -- move the encroachments and keeping the current deck.
5 And we can only do that through this approval process.

6 COMMISSIONER MILLER: Okay.

7 MR. HARRIS: And that was, and we explained that
8 up front.

9 COMMISSIONER MILLER: And again to the applicant,
10 or Mr. Sullivan, the seven feet that they would be supporting
11 in terms of the deck, that would be how much beyond the
12 matter of right? Two feet?

13 MR. SULLIVAN: A foot and a half.

14 COMMISSIONER MILLER: Yes. Okay. Thank you.

15 BZA CHAIR HILL: Okay. I forget who I even asked.
16 Mr. Sullivan, did you have any questions for the opponents?

17 MR. SULLIVAN: No.

18 BZA CHAIR HILL: Commissioner, do you have any
19 questions for the opponents?

20 COMMISSIONER MLADNOV: (No audible response).

21 BZA CHAIR HILL: No. Okay. I'm going to turn to
22 the Office of Planning.

23 MR. MORDFIN: Good evening. I'm Stephen Mordfin
24 with the Office of Planning. And the Office of Planning's
25 report in this case, recommended approval of the application.

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1 But I think there's some things that need to be clarified
2 that are not understood through this hearing. Is first of
3 all, if the deck does not meet building code, this is not the
4 process to circumvent that. The Board cannot approve and
5 say, you know, this improperly constructed deck can stay.
6 It can't happen. That's DCRA's calling and the BZA cannot
7 override that. So I wanted to -- it seems that there's a lot
8 of confusion that, you know, even if the Board were to
9 approve the existing deck as is, they would have to have
10 something that met building code, according to DCR, whatever
11 that might be.

12 I'm not going to comment on whether the deck is
13 legal or illegal in terms of the construction. I know there
14 was a raise order. But that's not my purview.

15 Now the Office of Planning did support this. They
16 did find that in our opinion, that privacy would not be
17 adversely affected. To the north you have the property where
18 you have the staircases there, align with each other,
19 separating the decks. It's kind of interesting what's going
20 on on this half where they have a building addition.
21 Typically what happens when people build on an addition, in
22 the back, we encourage them not to put windows facing into
23 the rear yard of an adjoining property because that adversely
24 affects the privacy of that property. So it was kind of
25 interesting to hear the way this was presented, that the deck

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1 would adversely affect their windows. I disagree with that
2 and because they have the windows there, I don't see that the
3 larger deck, as is proposed for this rear yard, would
4 adversely affect their privacy.

5 I think, you know, the pictures, it depends on how
6 many pictures you take and how far up that alley you go. You
7 go further up the alley, there are larger decks. I think a
8 lot of the photos, you know, you can restrict it to show
9 whatever you want. But because there's a variety of deck
10 sizes and depths along this alley, I don't see that this deck
11 is out of character. And so therefore, you know, OP also did
12 not find that it would, you know, change the character of the
13 alley behind this row of houses or this row of alley within
14 that square.

15 So those are the reasons why OP supports the
16 application and is available for questions.

17 BZA CHAIR HILL: Okay. Thanks, Mr. Mordfin. I'll
18 start real quick. So the additional seven feet. Right? I
19 mean they can do -- no, it's five and a half by -- 5.5 by a
20 matter of right. Right? I think? And then -- is that
21 right, 5.5?

22 MR. MORDFIN: I believe so.

23 BZA CHAIR HILL: Yes. And they're going to 12-
24 1/2. So and I know that the Office of Planning looks at this
25 as if nothing were there. I mean, you guys are going ahead

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1 and approving something. So I ask these questions and I know
2 I'm not necessarily going to get an answer, Mr. Mordfin,
3 that's why I'm already laughing. How far back would the
4 Office of Planning had said it's okay to go with this deck?

5 MR. MORDFIN: Right. And then because we don't
6 have that application in front of us, we really can't address
7 it because, I mean, you know why I was going to say that.

8 BZA CHAIR HILL: Okay. Fine. I don't why I even
9 bother asking the question sometimes, but so I guess that's
10 what I'm just trying to kind of -- what's the -- yes, okay.
11 All right. Does anybody else have any questions for the
12 Office of Planning?

13 MR. GILLESPIE: I'd like to. So --

14 BZA CHAIR HILL: Mr. Gillespie, I apologize, I
15 meant the Board Members first.

16 MR. GILLESPIE: Oh, I'm sorry.

17 BZA CHAIR HILL: That's all right. Mr. Hart? No?
18 Ms. John? No. Commissioner Miller? Yes.

19 COMMISSIONER MILLER: To Mr. Mordfin's point about
20 either photographs, another photograph, showing all of the
21 decks on that block as they face the alley, that might be a
22 -- I'm not necessarily asking for this at this point, but if
23 we're going to ask -- if we're going to get something in
24 addition to -- if we're going to get additional information,
25 that might be a photograph that somebody, the Applicant, I

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1 guess, should provide to show that it isn't substantially
2 changing the character, because there are larger decks, there
3 are smaller decks, and I just -- that would be a -- I could
4 just ride by it, I guess, tonight and see it, but we usually
5 don't do site visits and enter things into the record that
6 other people can't cross-examine us about.

7 So anyway, it might be useful to have that
8 photograph to make that point with that criteria that Mr.
9 Mordfin, which I totally trust what he's saying, that it's
10 being made that it doesn't substantially alter the character
11 of the facade to the back, but I like all the additional
12 photographs that we got tonight from the Gillespies, and that
13 additional one might be useful if we need other additional
14 information.

15 I wouldn't want to delay things -- delay decision
16 or deliberations for just one thing.

17 BZA CHAIR HILL: Mr. Gillespie, you had a
18 question?

19 MR. GILLESPIE: I guess in relation to the Office
20 of Planning's assertion that they don't say whether it's okay
21 that it's existing or not, I guess your report specifically
22 says that the existing deck is okay, so can you at least
23 modify that to get rid of that, since that's not your purview
24 and you should know by now, if you looked at the survey, that
25 what was depicted on that plat isn't the existing deck.

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1 MR. MORDFIN: Yes, I realize that. I know that
2 was -- unfortunately, those weren't my words that got added
3 to my report. I did issue a supplemental report that I
4 thought corrected that. Another supplemental report needs
5 to be issued that further does that. OP can submit that.

6 BZA CHAIR HILL: Okay. Ms. Gillespie, you have
7 any questions for OP? Mr. and Mrs. Burke, do you have any
8 questions for OP?

9 MR. BURKE: Yes, there was a question about the
10 other decks in the region, in the alley, and there are
11 properties across the alley that are on Huidekoper, and they
12 have much larger decks -- much larger land areas, so part of
13 the -- is part of the consideration the actual layout of each
14 property or is it in the region there are bigger decks?

15 I mean, there's a reason there's offset
16 requirements and, you know, the property dimensions vary
17 quite a bit in this neighborhood, and the size of the
18 backyards vary quite a bit, and those that have large
19 backyards tend to have, you know, bigger decks.

20 So is that a consideration when you consider what
21 would be appropriate for the neighborhood, or in particular,
22 this consideration; the size of the backyards?

23 MR. MORDFIN: That would be part of it and part
24 of it, the way it appears, also, the other decks that are on
25 the same side of the alley as you are, where the lots are

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1 generally about the same.

2 MR. BURKE: Yes.

3 MR. MORDFIN: I haven't checked the lot sizes, but
4 they were all built together at once. I assume they're the
5 same. So we look at all in a context and formulate an
6 opinion on how we interpret that it would affect the
7 neighborhood, and then that's a recommendation we make to the
8 Board.

9 MR. BURKE: Okay. Thank you.

10 BZA CHAIR HILL: Okay. Let's see -- oh,
11 Commissioner, do you have any questions for the Office of
12 Planning? You're muted, Commissioner.

13 MS. MLADNOV: Got it. Thank you. I was going to
14 ask Mr. Mordfin if he was able to visit the site and look
15 down that line of houses fronting on 38th Street?

16 MR. MORDFIN: Yes, and I happen to have
17 photographs of it going down, which is how I formulated that
18 opinion, was how it appeared to me.

19 MS. MLADNOV: Thank you.

20 COMMISSIONER MILLER: There's the -- if you can
21 submit that, unless you already have, Mr. Mordfin.

22 MR. MORDFIN: No, I haven't submitted that, but
23 I can do that.

24 COMMISSIONER MILLER: Then we don't have anybody
25 else having to do work. You've already done the work.

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1 BZA CHAIR HILL: Okay. Mr. Sullivan, do you have
2 any rebuttal?

3 MR. YOUNG: Mr. Chair, we've --

4 BZA CHAIR HILL: Oh, yes, yes, okay. Go ahead,
5 Mr. Young. Thanks. It's getting long. All right. So we're
6 going to go to the public testimony. Mr. Young, can you
7 bring in the members of the public? I think the only person
8 is Mr. Howie, is he --

9 MS. HOWIE: Actually, I'm a woman.

10 BZA CHAIR HILL: Oh, Ms. Howie. Sorry.

11 MS. HOWIE: That's okay. Okay. So is my three
12 minutes starting?

13 BZA CHAIR HILL: Yes, sure. If you could please
14 introduce yourself for the record with your name and address.

15 MS. HOWIE: My name is Goopie Howie. I live on
16 the 3800 Block of W Street, in particular, 3819 W Street, NW.

17 BZA CHAIR HILL: Okay.

18 MS. HOWIE: Okay. So I strongly object to
19 retroactively approving a deck that was built without a
20 permit and without discussion with the adjacent neighbors.
21 If the BZA allows this to stand, what is to stop my adjacent
22 neighbor from constructing an illegal structure that affects
23 the enjoyment of my own property?

24 Recently, my husband and I have completed a full
25 1st floor and kitchen gut renovation, using very professional

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1 and licenses contractors. We received what we paid for, a
2 well-done, permitted and code-compliant kitchen and 1st
3 floor. Everything was done by the books.

4 Based on what I saw in the exhibits for this case,
5 the contractor hired by the previous owner doesn't even have
6 a valid license to work in D.C. While I paid my contractors
7 to pull permits for us, I understood that as the property
8 owner, it was ultimately my responsibility to make sure the
9 work was done legally.

10 We also were aware that we would not authorize
11 work to begin on our house until the contractor had the
12 permits in hand. They were displayed on our front window in
13 view of anyone who was unsure if we had them.

14 As a non-real estate affiliated citizen, I assume
15 this is common sense and standard practice. I feel bad for
16 the current owners Jason and Jenna, they bought what they
17 thought was a perfectly renovated house only to find out that
18 they are -- they now own an illegal deck that the seller was
19 fully aware of at the time of the sale and did not disclose.

20 Mr. Sullivan states it was not discovered until
21 2019. That is completely false. The seller knew this at the
22 time of sale to Jenna and Jason. We all live in close
23 quarters. The zoning laws and required permits are put in
24 place to prevent exactly this type of situation that we are
25 currently in.

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1 If the BZA rules in favor of the Applicants and
2 the real estate agent and developer who sold them the house,
3 you are rewarding unethical behavior and actions, and
4 essentially saying that homeowners in D.C. can build whatever
5 they want with no accountability or fear of repercussion
6 because they can just apply for approval after the fact.

7 The precedent that this would set would be
8 terrible for not only Glover Park, but for the entire city.
9 No one person, neighbor, developer, or real estate agent is
10 above the law and ignorance is not a legitimate excuse.

11 At the end of this day, they are asking for a
12 variance that both the adjacent neighbors object to. Why
13 should that be allowed? It is already illegal for them to
14 build what they want to build. If the deck was not there,
15 but just imagine it's not there, they bought the house with
16 no deck, they want to have this deck, the both adjacent
17 neighbors don't want it, why should it be allowed to go
18 forward. I'm done. Thank you.

19 BZA CHAIR HILL: Okay. Thanks, Ms. Howie. Just
20 for the record again, they're here for a special exception,
21 not a variance, and the way that we look at things is if it
22 wasn't there. That's how we take a look at it.

23 MS. HOWIE: But my issue is that it is there.
24 Like, I don't even know if we're in the right -- like, the
25 right forum to even be discussing this. The fact of what

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1 they're asking for is already there and --

2 BZA CHAIR HILL: Ms. Howie, I was just trying
3 clarify how we look at it. That's all. I understand your
4 opinion. I was just kind of clarifying that it's not a
5 variance, it's a special exception, and we look it -- we look
6 at it as if it wasn't there. I'm just saying that's the way
7 we look at it.

8 MS. HOWIE: Thank you.

9 BZA CHAIR HILL: Okay. All right. Does anybody
10 have any questions for the witness, and if you do, just raise
11 your hand. Anybody? Okay. All right. Okay. All right.
12 Thank you, Mr. Young. There's no one else from the public?

13 MR. YOUNG: That's correct.

14 BZA CHAIR HILL: Okay. If you could please excuse
15 the public witnesses and then let's see, all right, so now
16 back to you, Mr. Sullivan. You did have rebuttal?

17 MR. SULLIVAN: If I could have one second to just
18 confer with the Applicant, if they want to say anything.

19 BZA CHAIR HILL: And before you --

20 MR. SULLIVAN: And so Jason would like to --

21 BZA CHAIR HILL: Yes, hold on. Before you -- I
22 have a question for you. Never mind. Let's go to rebuttal.
23 Okay. Go ahead.

24 MR. SULLIVAN: Okay. Jason.

25 MS. STARK: Sorry. We'll be quick. We just

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1 wanted to clarify a few points. The first was in regards to
2 this as a rental property. We had tenants for one year.
3 Jason and I are living here now and we have no intention of
4 renting it out again, so it will be us living here.

5 The second is in regard to our tenants dropping
6 things our neighbors' yard. We are sorry if that occurred.
7 We would just note that that seems like part of the deal of
8 living in a row house. Our neighbors to the south of us have
9 a roof deck and they water their plants on it and the water
10 continually falls on our deck, which is just, I think, part
11 of living in a row house.

12 We also wanted to just highlight again that the --
13 this deck will be inspected by DCRA and we will be taking
14 care of any of the issues that exist with the deck, but we
15 wanted to go through the process of getting the approval for
16 the decks.

17 Jason, do you have anything you want to add?

18 MR. HARRIS: And I think the only other thing we
19 would say is, you know, there was an assertion earlier about
20 being the most adversely affected, and I think we, as the
21 current owners, having to go through this, are probably --
22 feel like we're the most adversely affected, and what we are
23 -- while we understand the concern about precedent and
24 retroactive approval, we also appreciate the previous owner
25 taking ownership of this to rectify the problem, and also,

1 taking on the fine from DCRA as -- yes.

2 MS. STARK: Thank you.

3 BZA CHAIR HILL: Okay. Great. So, Mr. Sullivan,
4 is there any rebuttal on your part?

5 MR. SULLIVAN: Just a short, you could call it a
6 closing, if we're ready for that.

7 BZA CHAIR HILL: I'm not ready for closing. If
8 you have any rebuttal? No?

9 MR. SULLIVAN: No.

10 BZA CHAIR HILL: Okay. Do any of you guys have
11 any questions on the brief rebuttal? It's only on the
12 rebuttal and I don't think there's really any questions, but
13 do you have any questions on any of the rebuttal that the
14 Applicant just gave? And if you do, raise your hand.

15 MR. BURKE: No questions.

16 BZA CHAIR HILL: Okay. Great. All right. Mr.
17 Sullivan, yes, go ahead. You can do a closing.

18 MR. SULLIVAN: Thank you. Just a couple points.
19 One, we, you know, obviously get the concern about safety,
20 anybody would, and the concern about non-compliance at the
21 beginning, and we can see how that starts things off on the
22 wrong foot and concerns neighbors, definitely, and I think
23 that seems to be the source of a lot of the passion behind
24 this.

25 Two points that I'll mention, one is, somebody

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1 testified that this is just two people's opinion on the
2 privacy issue, and it's subjective. I would, in that case,
3 defer to the Office of Planning has reviewed hundreds of
4 additions that require special exception relief for this
5 privacy situation.

6 And again, I would submit that the privacy, it
7 doesn't matter whether there's a patio down here, we can look
8 up at a window that Mr. Mordfin pointed out is now facing our
9 property when it's an at-risk window. It's not much
10 different from the roof deck that the Burkes have on their
11 property looking down on the entire yard of the Applicant.

12 And the last thing I'll mention is, it seems to
13 me -- now, it's important, any house before 1958 didn't have
14 a parking requirement, and so you weren't required to have
15 it, however, the zoning administrator has found that if you
16 have a parking space, if you use it, if you ever have any
17 space that could be a parking space, you cannot remove it,
18 so you could not put a patio down there. They have to keep
19 their parking space.

20 So their only living space is this deck and it
21 seems like the neighbors are determining that we can have --
22 we can get rid of our parking space and maybe they never had
23 one, and have a patio, but you shouldn't have a patio, or any
24 outside living space, but we can't do the patio because we
25 have to keep the parking space.

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1 That's all I have. If the Board has any other
2 questions.

3 BZA CHAIR HILL: Okay. I am going to allow, just
4 because I don't know what Mr. Gillespie, he has a question,
5 and I don't know -- because now, Mr. Sullivan, even what you
6 just mentioned, did sound a little new to me, and so I do
7 have a question about it, but, Mr. Gillespie, you're raising
8 your hand for some reason?

9 MR. BURKE: No, you go first. I just wanted to
10 rebut that whenever you're done.

11 BZA CHAIR HILL: He was just giving a conclusion.
12 He wasn't giving -- there was nothing to rebut.

13 MR. BURKE: I just wanted to point out that nobody
14 wants them to not have a deck. That's why we gave a
15 compliant solution. We want you to not have an unpermitted
16 illegal deck.

17 BZA CHAIR HILL: Okay. All right. Okay. So back
18 to me, so yes, so Office of Planning, so, Mr. Mordfin?

19 MR. MORDFIN: Yes.

20 BZA CHAIR HILL: I forget, is that right? So once
21 they have a parking space, they can't get rid of a parking
22 space?

23 MR. MORDFIN: Correct. Once they have a parking
24 space, even if the house was built prior to '58, when there
25 was no parking requirements, once you put one in, then it's

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1 required. You can't remove it.

2 BZA CHAIR HILL: Right. Mr. Miller, this one's --
3 I forget about that. So you guys know about that, right,
4 Commissioner?

5 COMMISSIONER MILLER: That sounds familiar.

6 BZA CHAIR HILL: Okay. All right. So that's one,
7 just, thing that's a little additional kink. So then, Mr.
8 Sullivan, this is the last little thing that I have for you,
9 and this is going back to, just, kind of legal stuff, or
10 whatever, like, if they -- I'm just hypothetically talking,
11 right, like, so if they -- if this didn't get approved,
12 right, and they had to tear down the deck, right, and they
13 wanted to come back and try to do the 7 feet, which means
14 that they're still going to be a foot and a half past matter
15 of right, they'd be back here again, right?

16 And so you would have to start again with the 7
17 feet and they would have to refile, repay, redo everything,
18 versus if they change the design now with a new design,
19 they'd be here with the 7 feet and they wouldn't have to
20 start again, correct?

21 MR. SULLIVAN: Yes, that's correct.

22 BZA CHAIR HILL: They'd have to go back in front
23 of the ANC, probably, but they wouldn't have to refile, repay
24 -- they would save a lot of effort.

25 MR. SULLIVAN: Yes.

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1 BZA CHAIR HILL: Okay. I'm just --

2 MR. SULLIVAN: Yes, if they were willing to agree
3 to that, yes. I mean, obviously, our position is that it
4 doesn't change the --

5 BZA CHAIR HILL: Right. I mean, I'm just kind of
6 toying as to where I am right now. I don't know where
7 everybody else is, okay, but I'm just kind of toying as to
8 where I am, so all right. Does anybody have anything to add?
9 I'm sorry, but you guys have all had your chance. I just
10 meant the Board.

11 MEMBER LORNA JOHN: I have a question for OP.

12 BZA CHAIR HILL: Sure, Ms. John.

13 MEMBER LORNA JOHN: Do any of your photographs
14 show a roof deck on the Burkes' house? Is that what I
15 understand that Mr. Sullivan said?

16 MR. MORDFIN: I don't know, but I didn't notice
17 any roof deck, I mean, anything on a roof deck or anything
18 like that, so no, I don't have that.

19 MEMBER LORNA JOHN: Okay. Then I'll ask the
20 Burkes, is there a roof deck on your house?

21 MR. BURKE: Yes, there is. We have planters up
22 there.

23 MEMBER LORNA JOHN: Okay. All right. Thank you.

24 BZA CHAIR HILL: Okay. Mr. Miller, you had wanted
25 to see the photograph. Did you still want to see that?

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1 COMMISSIONER MILLER: Yes, Commissioner.

2 BZA CHAIR HILL: Mr. Hart, could you mute your
3 microphone?

4 COMMISSIONER MILLER: Mr. Mordfin said he had some
5 photographs that showed from the alley, the backs of the
6 houses along that side of the block, including the different
7 size decks and I personally would find that to be helpful to
8 meet one of the criteria. Although, I totally trust Mr.
9 Mordfin's report on that point, but if he has it, and if he
10 could provide that into the record.

11 BZA CHAIR HILL: Okay. So the reason why I asked
12 that, Commissioner Miller, and, Mr. Moy, you can let me know,
13 because I'm trying to see whether or not we're going to get
14 to deliberate with Vice Chair Hart or not next week, right?

15 So if --

16 COMMISSIONER MILLER: I don't need it if it's
17 going to delay it. I don't need it, if it's going --

18 BZA CHAIR HILL: Okay. All right. Okay. So then
19 never mind, Mr. Moy. So, Mr. Mordfin, don't worry about it,
20 okay? So I'm going to close the record, close the hearing,
21 and then we can deliberate next week. Mr. Hart?

22 VICE CHAIR CARLTON HART: Yes, I just wanted an
23 updated drawing for the, what do you call them, the footers
24 that were shown over the property line in the plan that they
25 provided?

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1 BZA CHAIR HILL: Mr. Sullivan?

2 MR. SULLIVAN: We can get that by Monday.

3 BZA CHAIR HILL: What?

4 MR. SULLIVAN: By Monday?

5 BZA CHAIR HILL: Okay. So that's just -- okay.

6 Right. So we'll go ahead and put this on for decision on

7 8/5, okay? Okay. Does the Board need anything? I'm looking

8 around at my Board Members. Okay. All right. We will --

9 I'm going to excuse all of you. Thank you very much.

10 MR. SULLIVAN: Thank you.

11 BZA CHAIR HILL: I'm going to speak with the Board

12 for one minute. We have -- Mr. Moy? Yes.

13 SECRETARY CLIFFORD MOY: Mr. Chairman? So just

14 for the record, the Applicant's going to make a submission

15 with an updated drawing by this Monday, right? So that would

16 be July the -- it would be August 3rd, correct?

17 BZA CHAIR HILL: Yes.

18 SECRETARY CLIFFORD MOY: Was there anything else

19 that you want into the record?

20 BZA CHAIR HILL: No.

21 SECRETARY CLIFFORD MOY: Okay. Good. Thank you.

22 COMMISSIONER MILLER: Mr. Chairman?

23 BZA CHAIR HILL: Yes, Mr. Miller.

24 COMMISSIONER MILLER: I know we've lost our --

25 BZA CHAIR HILL: Mr. Mordfin.

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1 COMMISSIONER MILLER: We've lost people, but
2 they're probably still listening, I would just encourage the
3 parties to make a last-ditch effort to try to reach some kind
4 of compromise, even though trust may be frayed at this late
5 stage, because I think it comes down to a numbers game. When
6 it's a numbers game, there's a number to be found which
7 everybody can live with, where neighbors will be living next
8 to each other.

9 So that, I just would -- I wouldn't want not an
10 effort to be made if it might be productive.

11 BZA CHAIR HILL: Mr. Young, there's no way to get
12 people back, right? I'm just curious. They're gone now.

13 MR. YOUNG: I can bring them back if you would
14 like.

15 BZA CHAIR HILL: Oh, yes, bring in Mr. Sullivan.
16 I mean, if they're still there, but I'm just curious now.
17 I'm just -- now I just want to learn something new because
18 we're apparently going to be here forever anyway.

19 MR. YOUNG: We're still here. I don't know if he
20 is. We can reach out. Oh, here he is.

21 BZA CHAIR HILL: Okay. That's one. So did
22 anybody else --

23 MR. SULLIVAN: Long time no see.

24 BZA CHAIR HILL: I'm just curious how this works.
25 How many can I get back?

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1 MR. YOUNG: If they're still here, I can bring
2 them all back.

3 BZA CHAIR HILL: Okay. See if you can bring them
4 all back. I'm just darn curious now. Okay. There's one.
5 Okay.

6 MR. SULLIVAN: They're going to sign back on.

7 BZA CHAIR HILL: Yes, yes, yes.

8 COMMISSIONER MILLER: I didn't mean to prolong
9 this very long day.

10 BZA CHAIR HILL: No, no, I mean, I'm learning --
11 honestly, I'm learning how to do this, Commissioner Miller,
12 and I don't necessarily know if getting rid of anybody before
13 we're all done talking is the best way anyway, but we'll see
14 how it goes. I don't know where -- all I need now is the
15 Applicant, and they're getting back on.

16 MS. STARK: We're here.

17 BZA CHAIR HILL: Oh, who?

18 MEMBER LORNA JOHN: Mr. Chairman, were you
19 planning to reopen the record?

20 BZA CHAIR HILL: I will be in about a sec. Thanks
21 a lot, Ms. John, the lawyer.

22 MEMBER LORNA JOHN: You're welcome.

23 BZA CHAIR HILL: Thank you. I appreciate it. My
24 wife would be proud. Oh, wow, I get everybody. This is
25 great. Okay. So that's all I need. I got everybody I need,

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1 you know, and there's the ANC Commissioner or not. So I am
2 officially reopening the record unless any of my Board
3 Members have an issue with it.

4 And what Mr. Miller had just said in terms of the
5 last -- in terms of a discussion, was along the lines of, Mr.
6 Sullivan, what I was also kind of getting to, right? Okay.
7 I don't know -- Mr. Sullivan, we've been -- you know me a
8 little bit, right, I don't know where we are. I kind of know
9 where I am, okay? And so, but I don't know where we are,
10 okay?

11 And so I don't know how, if there is, as I said,
12 that new application, if there is a new application, how that
13 works or whatever, if there's any kind of compromise that's
14 possible, if there isn't a compromise that's possible, then
15 that is just what it is, and there you go.

16 What Commissioner Miller was pointing out is,
17 again, in the words of our Chairman Hood, the good neighbor
18 policy, if there is any way to get anywhere, it might be
19 worth one last discussion, but if not, then not. And I'm
20 just basically telling you, Mr. Sullivan, with everybody in
21 front of us, that's what Mr. Miller kind of meant, is that
22 correct, Mr. Miller?

23 COMMISSIONER MILLER: That's correct. I realize
24 trust is frayed at this last stage, but I think a last-ditch
25 effort might be worth it, since they are going to be living

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1 together next to each other for many years, hopefully.

2 BZA CHAIR HILL: Okay, Mr. Sullivan. I just want
3 everybody to get -- to see in front of us and that was it,
4 okay?

5 MR. SULLIVAN: Chair, I'm going to ask a question
6 --

7 BZA CHAIR HILL: Sure.

8 MR. SULLIVAN: -- probably for OAG, that I've
9 asked offline and not received an answer, it's regarding the
10 alternative proposal question, which we've had in the past.
11 There's been discussion now with the Board that you don't
12 take alternative proposals, however, the regulations seem to
13 provide for it.

14 I just wanted to get OAG to weigh-in one way or
15 the other, like, can we or can't we, you know? Because that
16 would clear-up a lot of stuff for a lot of other applications
17 as well, so this seems like as good a time as any to see if
18 they have a position on it.

19 BZA CHAIR HILL: I'll let OAG answer, or give an
20 answer, but, Mr. Sullivan, I don't necessarily think it was
21 OAG's issue, I think it was the Board. The Board doesn't
22 want to get in the middle of, like, picking left or right.
23 It's like the application that is in front of us is the
24 application that is in front of us, and I also kind of know
25 what you're asking about, but I'm just saying, that's where

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1 it gets problematic for the Board, right?

2 Like, what's before us is what's before us, and
3 so OAG, Dan, you got a comment?

4 MR. BASSETT: As Mr. Sullivan and the Board
5 probably know, we advise the Board, we don't advise the
6 public.

7 BZA CHAIR HILL: Say that again.

8 MR. BASSETT: As Mr. Sullivan probably knows, we
9 advise the Board and so we would give an answer to the Board,
10 we don't provide answers to the public.

11 BZA CHAIR HILL: Oh, okay. So in other words, I
12 guess you're not going to get an answer, Mr. Sullivan. So
13 basically, again, for you, Mr. Sullivan, what's before the
14 Board is before the Board, okay? So we don't do alternative
15 proposals at this point. I don't know whether we will in the
16 future or not, but we're not doing it now, right?

17 So that hopefully answers your question. Okay?
18 All right. Okay. Unless the Board has anything else to add?

19 MEMBER LORNA JOHN: I would just add that we have
20 not deliberated, so nobody knows where anybody is right now.

21 BZA CHAIR HILL: 100 percent true.

22 MEMBER LORNA JOHN: And I think all that I hear
23 is that as the Commissioner said, Commissioner Miller, that
24 we're repeating Mr. -- Commissioner Hood's good neighbor
25 policy. That's all this is. Not an indication that we're

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1 going to go one way or the other. And so this is just
2 encouragement. We're not trying to put the burden on anybody
3 to come to any different solution.

4 And so that's where I am. I'm holding my cards
5 close to my vest.

6 BZA CHAIR HILL: Yes, and I agree. And I -- Ms.
7 John, you said it well, right? This is not an deliberation.
8 This is not an indication. We have no idea what is going on,
9 right? Mr. Miller just made a comment about communication
10 and I was just clarifying that comment, but you are correct,
11 we do not know where we are at all. I definitely don't know
12 where we are at all.

13 So that all being the case, Mr. Sullivan, I'm
14 going to excuse us all, okay? All right. I'm closing the
15 record again. Okay. Bye-bye. Mr. Miller, Mr. -- okay. Do
16 we want to take a break before our last hearing?

17 MEMBER LORNA JOHN: Yes, Mr. Chairman.

18 BZA CHAIR HILL: Okay. How much time? We want
19 to do ten minutes?

20 MEMBER LORNA JOHN: That's good.

21 BZA CHAIR HILL: Okay. All right. Thank you.

22 (Whereupon, the foregoing matter went off the
23 record at 7:39 P.m. and went back on the record at 7:52 P.m.)

24 SECRETARY CLIFFORD MOY: Okay. So, let's see, the
25 Board's back in session and after a very brief break and the

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1 time is at or about 7:50 p.m. Case application before the
2 Board is Number 20238 of James Silk, as amended for a special
3 exception under Subtitle G, Section 1200, from the side yard
4 requirement, Subtitle G, Section 1104.1, from the alley
5 centerline setback requirement, Subtitle G, Section 1105.1,
6 and pursuant to 11 DCMR Subtitle X, Chapter 10 for area
7 variance from the minimum alley width requirements, Subtitle
8 C, Section 303.3(a), basically, construct a second story
9 addition to an existing semi-detached principle dwelling
10 unit, MU-26 Zone at premises 203 Rear 3rd Street, SE, Square
11 0762, Lot 0823.

12 BZA CHAIR HILL: Okay. Mr. Silk, if you could
13 please introduce yourself for the record.

14 MR. SILK: Hey, guys, this is Jimmy Silk. The
15 owner of the property.

16 BZA CHAIR HILL: Okay. Mr. Dzierzanowski, is that
17 correct? Your microphone's on, sir.

18 MR. DZIERZANOWSKI: Yes, can you hear me?

19 BZA CHAIR HILL: Yes. If you can introduce
20 yourself for the record.

21 MR. DZIERZANOWSKI: Yes, Mateusz Dzierzanowski
22 with D.C. Architecture on behalf of the property owner.

23 BZA CHAIR HILL: Okay. Is it Mr. Wise, are you
24 there?

25 MR. WISE: Yes, I'm here.

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1 BZA CHAIR HILL: Okay. Mr. Wise, are you choosing
2 not to use your camera? I just want to know.

3 MR. WISE: I can turn it on. One second. Can you
4 see me?

5 BZA CHAIR HILL: No, not -- there you go. Okay.
6 Great. Okay. All right, Mr. Wise, could you please
7 introduce yourself for the record?

8 MR. WISE: Sure. Brian Wise, adjacent property
9 owner, 205 3rd Street, Southeast.

10 BZA CHAIR HILL: Okay. So, Mr. Wise, if you
11 wouldn't mind muting your microphone first, and if you guys
12 have been watching all day, you kind of probably know how
13 this works now. So, Mr. Silk, you're going to go ahead and
14 give your presentation first, and then Mr. Wise will have an
15 opportunity to ask questions of you, then we're going to do,
16 Mr. Wise will have an opportunity to give his presentation,
17 and then you'll have an opportunity to ask your questions.

18 We're going to go to the Office of Planning, do
19 that as well, and then we're going to work our way through
20 the case. So, Mr. Silk, I'm going to put up -- how much time
21 do you think you're going to need?

22 MR. SILK: I guess we could start with 15 minutes.
23 I'll be doing most of the presentation architecturally, and
24 we'll see where we go from there.

25 BZA CHAIR HILL: Okay. Mr. Dzierzanowski, is

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1 there a PowerPoint presentation you need?

2 MR. DZIERZANOWSKI: Yes. We went ahead,
3 previously emailed PDFs for the project, so there should be
4 three.

5 BZA CHAIR HILL: DO you know which exhibit it's
6 in that you're going to pull up?

7 MR. DZIERZANOWSKI: Sure. So the first that we
8 would like to go with is going to be -- oh, sorry, Exhibit,
9 I believe that is, Number -- excuse me. My apologies. Oh,
10 I believe it's Number 50.

11 BZA CHAIR HILL: Okay.

12 MR. DZIERZANOWSKI: And I'm looking at that.

13 BZA CHAIR HILL: Okay. Got it. Mr. Young, do you
14 see those as well?

15 MR. YOUNG: Yes, I just need one second.

16 BZA CHAIR HILL: Okay.

17 MR. YOUNG: Okay. I have them ready if you're
18 ready to start.

19 MR. DZIERZANOWSKI: Yes, we'll be ready to start
20 and before as we get into this, we'll have Mr. Silk, property
21 owner, give just a quick opening statement, and then we'll
22 move through the PowerPoint. Do you want me to go ahead?

23 MR. SILK: Sure. I'll make this brief. I know
24 that you guys have had a long day. Good evening and thank
25 you to the Board for hearing and considering our project.

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1 My name is Jimmy Silk, a resident of the District for the
2 last 13 years.

3 I graduated from George Washington University in
4 2007 and am the proud varsity baseball coach of Wilson high
5 School in Northwest Washington for the last ten years and I
6 am currently a bit of a sweaty mess, as we just finished a
7 game.

8 I currently reside with my wife and four-year-old
9 daughter in a trimmed down neighborhood just north of H
10 Street NE. Our project lives within the Capitol Hill
11 historic district in an alley behind a restaurant I co-own
12 and have operated for the last ten years.

13 I have great respect for the historic nature of
14 our block and am excited to move my family into this full-
15 time residence. We've taken great time and effort into the
16 design and the application of the proposed structure. We
17 welcome your comments and questions, and thank you again for
18 your consideration.

19 MR. DZIERZANOWSKI: Great. All right. So yes,
20 we can bring this up. Okay. Great. So yes, we can start
21 with this, so the project is previously kind of was announced
22 as having an address of 203 Rear 3rd Street, you know, SE,
23 and I just want to clarify, while that is an address that has
24 loosely been utilized, and it is found in various locations,
25 there is not an address associated with this property yet,

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1 so Square 0762, Lot 0823 is kind of how we're identifying it.

2 There is an application in for a formal address,
3 but that will come after, obviously, hopefully being granted
4 the relief.

5 The property as you here is located within this
6 square in SE in the Capitol Hill neighborhood. The icon
7 here, the item in orange, signifies the location of our
8 property. And you can see how it kind of sits kind of in the
9 knuckle in the middle of this bisection of two different zone
10 types, again, being MU-26 zoned area classification for the
11 majority of properties along Pennsylvania Ave.

12 And then RF-3 residential zoning for a series of
13 other properties, again, adjacent to 3rd, 2nd, Independence
14 Street and so on. Next slide, please.

15 So this is a quick site survey that was done some
16 time ago. So the area shaded in blue here defines the extent
17 of our actual property. The area here highlighted is the
18 existing one-story masonry structure. A quick diagram done
19 here, what's in yellow, is the extent of what was existing,
20 what is in blue is just a high-level volumetric massing of
21 the overall intention of the 2nd story addition.

22 Next slide, please. And we're really excited to
23 take this project on over a year ago. There's a lot of
24 really unique industrial harsh characteristics to the
25 existing structure, in addition to the alley lot

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1 neighborhood. We've had to go through a rigorous historic
2 review process in recognizing that this is an historic
3 structure.

4 The structure itself consists of, again, a one-
5 story existing masonry structure with a series of garage door
6 openings, an existing pitched cast-in-place roof structure
7 system, which allows for this kind of openness of the
8 existing floor plate, and you can see, you know, by the
9 nature, it's got a unique characteristic, especially being
10 along the corner of this alley condition, and you can see,
11 from all the various sides, there's even this kind of weird,
12 you know, existing storage shed that's been there for quite
13 some time.

14 So next slide, please. And one thing we really
15 tried to work with was just the existing characteristics of
16 this alley. The alley itself presents a series of old
17 historic structures, the majority of which are accessory
18 structures to residential or multi-residential structures as
19 they face in towards the alley.

20 And so we try to identify with a lot of those
21 elements and take a look at, you know, the overall more
22 industrial and harsh nature of the alley. Next slide,
23 please.

24 And so in doing so, here's a high-level site plan
25 of the overall -- the existing conditions. What's in orange

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1 is the extent of our structure, still highlighted in blue is
2 still the extent of the property. Next slide, please.

3 And in the existing conditions, again, what exists
4 within the space is quite open and just kind of barren,
5 series of doors that line the main perimeter elevations of
6 the building. There's an existing, kind of, makeshift
7 kitchen that was kind of put in, as well as this, you know,
8 small bathroom along the side here, and kind of random access
9 points to additional areas of storage throughout the
10 structure.

11 The existing roof plan that you see here, an item
12 we'll highlight later, this denotes the existing skylights
13 that are actually kind of formed in place of the existing
14 concrete structure, with these kind of steel and safety glass
15 skylight domes on top. Next slide, please.

16 And again, just architectural elevations just
17 highlighting the existing conditions, this kind of one-story
18 condition, and all the existing character that we kind of had
19 to work with as a starting point. Next slide, please.

20 So we took this into consideration and took many
21 factors that related to adjacent structures that bordered our
22 property, whether it was from the rear or from the side of
23 the project. As you can see in the site plan, there's no
24 protruding areas of orange, so the entirety of the proposal
25 is still maintained within the perimeter of the original

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1 footprint and is actually, you know, even less than the full
2 extent of the footprint below us.

3 Next slide, please. So the overall design is to
4 create a single-family dwelling residence, which would be the
5 intended primary residence of the property owner. Again, on
6 the 1st floor level, we're able to provide areas for parking,
7 storage, and trash, you know, formal entrance, kitchen, guess
8 bedrooms, and then a bathroom, and a stairwell that takes you
9 up to the 2nd floor.

10 And in the 2nd floor, we really wanted to explore
11 the ability to give our clients a lot of green space. In
12 this big, you know, brick and concrete jungle of an alley,
13 that green space doesn't really exist for them, given the
14 existing and recently renovated conditions of that alley.

15 So in respect to many of the adjacent structures
16 and adjacent properties of the project, we removed or pulled
17 off the proposed 2nd story addition from various points, to
18 not only allow for, kind of, green garden spaces, to allow
19 for the reuse of the existing skylight openings, but then
20 also, again, meet the programmatic needs of the client in
21 wanting to have some, you know, three bedrooms, two bathrooms
22 placed on top, and then doing our best to make sure that
23 there was always some sort of an outdoor program adjacent to
24 the properties, again, to our rear and to our side.

25 Next slide, please. And the elevations kind of

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1 show this, again, a combination of what we've done to kind
2 of reach back to the existing, kind of, style of door, reuse
3 the existing brick conditions of the existing 1st floor
4 structure, even reuse the moments and portions at where the
5 copings and the parapet walls actually jump up.

6 And then anything that's proposed new being this
7 more, again, modern and industrial proposal, slightly more
8 modern finishes that allow for this nice clean juxtaposition
9 of what it is that we're proposing.

10 And again, in all of those instances, such as, for
11 example, in the front elevation here, doing our best to not
12 let new proposed architecture touch the existing historical
13 components of what's adjacent to us. We thought that was
14 very important and we know through our process with HPRB,
15 they looked at that as a very strong design point as well.

16 Next slide, please. So here's a quick overall
17 volumetric of the overall proposal. Next slide, please. And
18 what we started to do was generate some renderings and again,
19 these renderings, these drawings, all the elements you're
20 seeing here, are items that relate to what was approved and
21 on the record through HPRB, and is what has been consistent
22 in our filing.

23 So again, this kind of more modern approach to the
24 overall 2nd story addition. The initial thoughts about
25 integrating these moments of greenery throughout the project.

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1 Next slide, please.

2 Kind of view from the, kind of, rear and the side
3 alley condition here. Seeing how that can kind of terminate
4 and open up to the rear. Next slide, please.

5 Just again, a quick front elevational look where,
6 again, we're really highlighting that, kind of, nice
7 separation here. This kind of jog condition to the bookend
8 of the alley as we look down the row of these accessory
9 structures. Next slide, please.

10 And then again, just an initial sense to give you
11 that kind of thought and feel about these kind of garden
12 spaces and green moments we're trying to encourage. Again,
13 re-utilizing these existing skylight openings, doing what we
14 can to keep the space open amongst all of our adjacencies,
15 and trying to really manage greenery, screening, your kind
16 of line of sight through the project and through the
17 property, wherever we could. Next slide, please.

18 So I'll quickly walk through the forms of relief.
19 Again, as discussed, the area variance that's being sought,
20 this relates and pertains specifically to the widths of the
21 alley just within the existing condition. Again, we have
22 worked with OP on this project and, you know, highlighted all
23 the various points, and items, and made our case about why
24 we believe we meet the burden of proof here for this
25 variance. Next slide, please.

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1 This following slide, we've left in here and just
2 highlighted that, at some point, original to the application,
3 we believed we needed to seek relief from building height.
4 After a meeting with the zoning administrator and OP, due to
5 the Section B-307.2, as highlighted here, and also G-703.1,
6 we no longer need relief from the building height.

7 In our given scenario, the building height is
8 actually allowed to be measured to the underside of the
9 ceiling of the top story, therefore, allowing us to be within
10 the 20-foot two-story requirement. Next slide, please.

11 The other form of relief that was removed was the
12 rear yard setback requirement. Initially, this was filed on
13 our part as a formality, because we knew at the existing 1st
14 floor -- 1st story level, the existing structure already went
15 to the rear lot line, but again, following the meeting, the
16 same meeting with the zoning administrator and Office of
17 Planning, it was clarified that the existing 1st floor is
18 just deemed a non-conforming condition, and as long as it is
19 not made further non-conforming, could remain the way it is,
20 and in our proposal, it does so.

21 And then in the 2nd story condition, we are beyond
22 the needed requirements for the 5-foot setback. Our
23 proposal, which we'll discuss a little bit more, is actually
24 11 feet. Next slide, please.

25 So the side yard relief is the one that speaks,

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1 I think, the most to design. There are two moments at which
2 the 2nd story addition extends beyond that. Again, the
3 moment along the front here, where a part of the addition
4 encroaches by 2 feet as opposed to the 5-foot side yard
5 requirement that was initially provided.

6 We want this to be more of like a touching moment
7 where greenery, airflow, and kind of just the continuity of
8 that green space can survive. And then towards the rear,
9 where we're asking for the full 5 feet of relief, that's
10 actually the location of the stair tower, which was actually
11 relatively strategically placed, because it allowed for a
12 location that falls within the existing structural ribbing
13 of the concrete ceiling above, and it allowed us to maximize
14 the re-usage of the existing skylight openings that we showed
15 in those renderings and the 2nd floor plans along this, kind
16 of, little garden way.

17 So that's the full extent of the side yard relief
18 that's being sought. Next slide, please. And then just a
19 quick reiteration, the area in here in pink highlights the,
20 kind of, 2-foot encroachment of the center line setback
21 special exception being sought.

22 Again, as has been heard in many often in cases
23 such as this with regards to alleys or historic
24 neighborhoods, there's kind of a want to maintain a
25 continuity of the facade work along, again, a series of

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1 accessory structures, alley lot structures, or even row
2 units. So we think that this form of relief is appropriate,
3 not only in, you know, allowing for that square footage to
4 provide for the program, but it kind of helps to meet the
5 conformity of the rest of the accessory structures along the
6 street.

7 So there is an additional -- aside from this, this
8 ends this portion of the presentation. We do have an
9 additional document that was filed following the last series
10 of ANC meetings, following comments and requests received by
11 the ANC, as well as the opposition party.

12 There's additional information in there that
13 relates to screening to discuss privacy that came up. Some
14 studies that were provided, additional photographs of the
15 rear property. I leave it to the Board as to whether that's
16 something they want us to open now and quickly siphon through
17 or is that a document we should refer to when we're dealing
18 with opposition.

19 BZA CHAIR HILL: Could you repeat your question
20 again? I'm sorry.

21 MR. DZIERZANOWSKI: Sorry, Commissioner. There's
22 the additional document we have that does provide additional
23 information. The information, however, came at the request
24 of the ANC as well as the party opposition in our last go
25 around. It has been filed for the record, it includes things

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1 like suggested privacy screening, sun studies, and also,
2 additional photographs of the rear adjacent condition to
3 opposition.

4 So my question was, is, I know I'm reaching the
5 end of my time, is that a document you want us to quickly go
6 through now or is it something we should flip through --

7 BZA CHAIR HILL: Which exhibit is it?

8 MR. DZIERZANOWSKI: So the exhibit is going to be,
9 excuse me, it will be Exhibit 62, the ANC response package.
10 I could do my best to be quick and a lot of it is
11 regurgitation of information.

12 BZA CHAIR HILL: Go ahead and -- I mean, it
13 doesn't matter. I mean, the time is the time. Whenever
14 time, go ahead and, Paul, if you could bring that up.
15 Exhibit 62. And why don't you just scroll and hit whatever
16 the slide, like, don't repeat the slides --

17 MR. DZIERZANOWSKI: Correct, correct.

18 BZA CHAIR HILL: Hit the slides that are the ANC
19 slides.

20 MR. DZIERZANOWSKI: Correct. We will do so.

21 MR. YOUNG: Do you know which slide number?

22 MR. DZIERZANOWSKI: Could you just start with the
23 next slide? I think we can fast forward a few, but I'll --
24 there's a few slides in here we definitely will want to
25 highlight, so next slide, next slide, next slide, okay. So

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1 this is the first slide where it was asked for us to provide
2 additional photography of the rear condition of our building,
3 which is highlighted here in blue. To the rear condition
4 here, outlined in red, of the adjacent patio to our rear.

5 So photographs here, the first photograph here,
6 kind of, showing an overall image from our rooftop of the
7 neighboring patio area at the rear. Again, Image 2 is just
8 showing a different angle of that existing condition. Image
9 3 showing, again, a shot from the roof of our existing
10 structure as to the two-story structure of the rear
11 neighboring property.

12 Image 4 in the bottom left here, this kind of
13 shows a photographs down from the, kind of, upright corner
14 in the existing condition. So next slide, please. And two
15 forms have come up -- two items came up with regards to
16 concerns about privacy and concerns about sun, shade, so out
17 of that came studies for both sun as well as privacy
18 screening.

19 So what you see here in this dark blue is the
20 extent of our structure. Here in red is the rear neighboring
21 property of the party opposition. And again, we've kind of
22 taken a look at the sun study conditions. Next slide,
23 please.

24 So what is shown here in these four diagrams is
25 an aerial view of amassing through, kind of, the sunniest

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1 months of the year, April, May, June, July, and August, and
2 these were all kind of taken just in an understanding of
3 just, you know, how much sunlight, kind of, gets generally
4 impacted in that rear patio condition, because the reality
5 is, is, aside from some of the items we'll discuss in our
6 proposal, directly south of us is actually a three-story
7 building, which really casts the majority -- in existing
8 condition, which casts the majority of that shade.

9 Next slide, please. So this was just a screenshot
10 of it at noon, but in the next slide, what you're seeing here
11 is, all the masking towards the left is in the existing
12 condition, all the maskings here towards right would be in
13 the proposed condition, meaning that we're representing our
14 proposed 2nd story addition, as well as a screened condition
15 along the perimeter.

16 So this extent that's highlighted in dark blue is
17 your shadowing that you get in the existing condition coming
18 off of the existing structure. And what you're seeing on the
19 right columns here, both at 10:00 a.m. and at 12:00 p.m., in
20 light blue, is the extended or the additional shade and
21 shadow that we are anticipating that the property or adjacent
22 properties would be receiving from our, you know, proposed
23 design.

24 Next slide, please. This is the exact same format
25 of what I've explained, but now we're looking at it at 2:00

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1 p.m. and at 4:00 p.m. So again, you can see in the existing
2 condition, there's already a decent amount of shadow that is
3 provided by the existing structure and the existing
4 conditions at both 2:00 and 4:00 p.m.

5 The items here, again, what's highlighted in the
6 lighter blue just shows the added or the additional extent
7 of shade and shadow that we believe can be expected and
8 again, main point we want to highlight is, the overall extent
9 of shade and shadow is, from the structure, doesn't even
10 really seem to go beyond the extent of the footprint.

11 Again, we are setback 11 feet from the existing
12 rear structure. So any additional shade and shadow towards
13 the rear is going to become a discussion about what type of
14 screening or privacy can or cannot be provided, you know,
15 based on where we would want to come to terms with party
16 opposition.

17 Next slide, please. Again, and so this is kind
18 of an axonometric, so in every one of these, this is the
19 existing condition, this is the rear edge of that masking
20 structure in its existing condition, again, at 12:00 p.m. and
21 at 2:00 p.m. And you can see that this is the extent of that
22 three-story structure that is helping to wash and cast a lot
23 of that shade and shadow towards the rear property.

24 When you look on the right columns here, again,
25 at 12:00 p.m. and 2:00 p.m., our structure begins to cast

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1 shade and shadow, but it's really the potential of, again,
2 some element of privacy screening here, depicted at 6 feet,
3 that is casting off additional shade and shadow.

4 Next slide, please. And again, similar thoughts.
5 And the reality is, is, this is a really unique -- not a
6 unique square, but the reality of this square is that its
7 perimetered by a series of really, really tall buildings, and
8 very much of these alley structures, these patios, these rear
9 yards and decks, literally beyond 3:00 p.m., are almost all
10 covered or cast in shade in various ways from various
11 adjacent buildings and structures.

12 So excluding the fact that, you know, there may
13 be additional offcasting from whatever the proposed potential
14 privacy screening would be, we just want to make it clear
15 that we don't believe that the proposed addition will cast
16 off enough shade or shadow to the overall proposal. Next
17 slide, please.

18 And then again, because it was brought up, in the
19 initial renderings, you saw us kind of showcasing an
20 existing, kind of, a typical 3-foot tall railing that
21 perimetered the rear, with moments of greenery. And our
22 thought for the greenery was to play more with the idea of
23 direct line of sight, add an element of greenery.

24 Since then, since privacy and other items have
25 come up and been discussed, we've done our best and presented

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1 a scenario in which case we would be willing to consider
2 multiple forms of privacy screening along the rear,
3 everything depicted here at a 6-foot height, with a kind of
4 semi, you know, transparent and opportunity for whether it's
5 a perforated metal, or a green screen, or some sort of a
6 wood-slatted wall, we are open to that condition, being that
7 it has been brought up, but doesn't necessarily speak to the
8 relief that it is that we're seeking.

9 Next slide, please. Again, an additional section
10 diagram was really provided here just to overemphasize and
11 clarify what it is that we're proposing at the rear. So this
12 was the extent of that rear structure of party opposition.
13 This is existing level and height at which their existing
14 patio sits, and then this is our proposal, again, the rear
15 wall, starting at 11 feet back from the site, and as we've
16 diagramed in a detail from here, it would be our intention,
17 whether it's railings or a privacy screen, to be set back 1
18 foot from the exterior face of the building to kind of help
19 offset slightly from that flush condition and allow for that
20 to be the case. So we provided this diagram, as well. Next
21 slide, please.

22 And, again, this was just a high-level look at in
23 the massing, what those, you know, potential screens would
24 be like and our intention to replicate the same language to
25 the front of the project. Next slide, please. Next slide.

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1 And I believe this is just a reiteration of all
2 the plans and elevations that speak to that. So at this
3 point, we're happy to take questions. We appreciate your
4 time. I'm sorry. I tried to get through that as quickly as
5 possible. Let us know what your questions are.

6 BZA CHAIR HILL: Okay. Thanks. All right. Let's
7 see, Board Members, Mr. Hart, can I start over here?

8 VICE CHAIR HART: Yes, just one question for Mr.
9 Dzierzanowski, so I appreciate the images that you just
10 provided because that was one of the questions that I had,
11 was, you know, the screening would be helpful to at least
12 understand and see, also, the sun impact, or the shadow
13 impact, and you've provided that.

14 I did have a question, though, on what -- how do
15 you see the -- is that a proposal or is that you thinking
16 about some alternatives for what that might be? Are you
17 saying that is what the Applicant wants to do now to actually
18 have some sort of screening there, it's just what the
19 materiality is has not been decided?

20 MR. DZIERZANOWSKI: So I think what we're trying
21 to -- just, in the last many weeks, especially leading from
22 that last round of the ANC, the extent of our proposal, you
23 know, a couple items and talking points were brought up that
24 there wasn't enough consideration given with regards to
25 privacy, with regards to line of sight, with regards to light

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1 and air, and these things.

2 And you can see both in the rear yard cutback of
3 our proposal, as well as that side cutback away from the
4 adjacent lot, that we've taken great consideration into
5 trying to relieve tension from a physical architectural wall,
6 but it still allows -- gives our --

7 VICE CHAIR HART: Actually, can I hold you on for
8 a second?

9 MR. DZIERZANOWSKI: Sure.

10 VICE CHAIR HART: I understand what you're saying,
11 what I'm trying to get to is the simple, are you proposing
12 a screen around the entire -- that's on the eastern side of
13 the property? And I was just looking for a yes, we are doing
14 that, or no, we're not.

15 MR. DZIERZANOWSKI: I guess the answer is, yes,
16 we are open to doing that. The original proposal was 3-foot
17 railings with a few moments of green walls --

18 VICE CHAIR HART: Okay. I understand.

19 MR. DZIERZANOWSKI: -- and then the moment privacy
20 was brought up, we are open to doing 6-foot privacy screens
21 that we feel would be adequate in a material and a style that
22 we hope we could come to terms with, with party opposition.

23 VICE CHAIR HART: Thank you.

24 BZA CHAIR HILL: Ms. John?

25 MEMBER LORNA JOHN: Yes, to follow-up on the

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1 screening, can you pull-up a slide that shows the screening
2 in relationship to the party opposition's residence?

3 MR. DZIERZANOWSKI: So, yes, I guess, Mr. Young,
4 in that last document that you had open, I would flip back
5 a few slides. I think there's a couple things we could look
6 at. Maybe the first would be the section diagram, or I
7 guess, I mean, you could look here. Let's start here.

8 So I'm sorry, go back, Mr. Young. My apologies.
9 There we go. So this is the existing and an extent of our
10 property wall. Again, a 1-foot setback, and then this was
11 the height of a proposed potential 6-foot tall privacy
12 screen.

13 MEMBER LORNA JOHN: So is the privacy screen here?

14 MR. DZIERZANOWSKI: The privacy screen here, yes.

15 MEMBER LORNA JOHN: Okay. And it's setback 1
16 foot.

17 MR. DZIERZANOWSKI: One foot from the right, rear
18 face of the building.

19 MEMBER LORNA JOHN: Right. And this distance is
20 11 feet.

21 MR. DZIERZANOWSKI: The distance to our structure
22 is 11 feet, correct, from the rear of the structure.

23 MEMBER LORNA JOHN: Okay. And -- okay. That's
24 helpful. All right. Thank you.

25 MR. DZIERZANOWSKI: No problem.

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1 BZA CHAIR HILL: Okay. Ms. John, also, I've been
2 looking through all -- it's all in Exhibit 62, just, if you
3 were interested in playing with it. Okay. Commissioner
4 Miller?

5 COMMISSIONER MILLER: Yes. Thank you, Mr. Chair.
6 No questions or comments, but it's an interesting design.

7 BZA CHAIR HILL: Mr. Wise, can you hear me?

8 MR. WISE: I can. I can.

9 BZA CHAIR HILL: Would you like to turn on your
10 camera?

11 MR. WISE: Yes, there we go.

12 BZA CHAIR HILL: Thank you. It's just easier to
13 see whether you have a question or not.

14 MR. WISE: Fair enough.

15 BZA CHAIR HILL: Do you have a question for Mr.
16 Dzierzanowski?

17 MR. WISE: I do. I have a couple. First of all,
18 thank you all for allowing me to be here and to discuss this
19 project, which has a significant impact on our property. I'd
20 say, based on his presentation so far, do any of your sun
21 studies contemplate the shade that's created by the privacy
22 screens you've proposed?

23 MR. DZIERZANOWSKI: So in all of the proposed
24 column iterations of that sun study, we show a massing in
25 there at a 6-foot height to be representative of the privacy

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1 screening, so yes, they do.

2 MR. WISE: And do they -- first of all, well, I'll
3 get into that in my testimony, because I was literally just
4 looking out my window and realized that's not accurate, but
5 does it contemplate the impact on the light coming into
6 either the 1st floor doors or the 2nd floor doors?

7 MR. DZIERZANOWSKI: Of your property?

8 MR. WISE: Of my property.

9 MR. DZIERZANOWSKI: So we could look more closely
10 as to what that impact is. The extent of the shade and
11 shadowing is shown on, kind of, a massing scale. I also
12 think it would also depend on the relative translucency of
13 whatever kind of privacy screening we might agree to.

14 MR. WISE: Okay. Is Mr. Silk the owner of the
15 property?

16 MR. DZIERZANOWSKI: Yes, he's one of the owners
17 of the property.

18 MR. WISE: Are you -- according to the deed that
19 was entered into the record last night, isn't it true that
20 the owner of the property is an LLC called 203 3rd Street,
21 LLC?

22 MR. DZIERZANOWSKI: Yes, and I can let Jimmy speak
23 to that more following, again, the items you provided, he
24 provided us with support --

25 MR. WISE: Okay. I'm just, yeah, wondering if

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1 that's the actual owner of the --

2 MR. DZIERZANOWSKI: There is an LLC, yes.
3 Correct.

4 MR. WISE: It's an LLC, and is Mr. Silk the
5 governor of that LLC?

6 MR. DZIERZANOWSKI: You would have to ask him, but
7 I believe he has the majority percentage ownership of that
8 LLC.

9 MR. WISE: Okay. According to D.C. records, he
10 is not the governor of the LLC.

11 MR. DZIERZANOWSKI: Like I said --

12 MR. WISE: Mr. Silk is actually the governor of
13 the LLC?

14 BZA CHAIR HILL: Hold up. So I don't mind -- I'm
15 just trying to get to, kind of, where you're going, Mr. Wise,
16 and it's totally fine, in that, I remember in your testimony,
17 there was some questions about the ownership and you had some
18 issues or concerns about the ownership, which is, I guess,
19 what you're kind of starting to get to.

20 So, Mr. Silk, I guess Mr. Wise is asking you, how
21 is it all set up, who owns it, and what's the deal with it?

22 MR. SILK: Am I unmuted?

23 BZA CHAIR HILL: Yes.

24 MR. SILK: Yes. So I am currently the managing
25 member of the LLC. The building was previously owned solely

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1 by my business partner, Joe Englert, and I took majority
2 ownership of the building, I believe, in 2018, and we
3 provided that operating agreement, I believe, was uploaded
4 yesterday, Mateusz?

5 MR. DZIERZANOWSKI: Yes.

6 MR. SILK: To the file. You know, without going
7 into all the specifics, and details of the financing of the
8 project, my intention is to be the 100 percent owner of the
9 building once the construction is complete.

10 BZA CHAIR HILL: Okay. And, Mr. Wise, I'm just --
11 I'm kind of following along with your questions, but again,
12 first of all, they didn't testify to any of this, and second
13 of all, it doesn't necessarily go to the zoning issues at
14 this point, or at least I don't understand what your zoning
15 issues are about this.

16 MR. WISE: Sure.

17 BZA CHAIR HILL: So keep going.

18 MR. WISE: Yes, if you'll give me a little bit of
19 latitude, I'll get there. This specifically deals with the
20 BZA and the zoning issues on this case.

21 BZA CHAIR HILL: Okay.

22 MR. WISE: I promise. First of all, my -- the
23 reason that it applies to the testimony is that, Mr.
24 Dzierzanowski said that he intends to occupy the property as
25 a single-family residence, as his single-family residence,

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1 the application was made in his name, even though he is not
2 the owner of the property, and so the application itself, on
3 its face, all of the signs, all of the postings, and
4 everything, have his name personally on it.

5 The materials that were submitted last night, late
6 last night, almost midnight last night, to the record, show
7 that he is a 50 percent owner of this LLC and I guess my next
8 question for Mr. Dzierzanowski is whether or not there was
9 an authorization submitted to represent the LLC by either Mr.
10 Silk or Mr. Dzierzanowski, according to Section Y-200.4.

11 BZA CHAIR HILL: So you're asking whether or not
12 they can represent the LLC in this case, is that what you're
13 asking?

14 MR. WISE: That's correct.

15 BZA CHAIR HILL: Okay.

16 MR. WISE: And whether the letter of authorization
17 is in the record and was filed appropriately.

18 BZA CHAIR HILL: Okay. Well, I was going to ask
19 OAG, but, Mr. Dzierzanowski, I guess you can answer that
20 question.

21 MR. DZIERZANOWSKI: I mean, the letter of
22 authorization was filed and it was filed in Jimmy's name as
23 to the legalities of his ability to be able to fully
24 authorize the project, being the managing partner to the LLC,
25 I guess Jimmy would have to speak to that more, but it was

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1 filed and again, it was done in Jimmy's name; Mr. James Silk.

2 MR. WISE: But he is not the owner, correct?

3 MR. DZIERZANOWSKI: So the letter of authorization
4 does not list 203 3rd Street, LLC; it lists Jimmy's name.

5 MR. WISE: And did any of the other members, which
6 I believe the documents you submitted show that Mr. Silk is
7 a 50 percent owner of the LLC, not a majority owner, and the
8 other members, there are three other members that own 30
9 percent, 10 percent, and 10 percent respectively, did they
10 authorize this application in the first place or your
11 representation of the property?

12 MR. DZIERZANOWSKI: So no additional letters of
13 authorization were filed. Jimmy, I guess, can speak to more
14 about the individual other owning members of the party and
15 their understandings of this property.

16 MR. SILK: Hey, guys, so everyone is onboard. The
17 other three members are Joe and his two sons, Henry and Alex,
18 who are minors. This is a little over my head as I am not
19 an attorney or architect of any sorts, but I'd be willing to
20 supply any necessary paperwork with all signatories present,
21 confirming that we are all onboard with this project.

22 But again, this is all a bit over my head.

23 BZA CHAIR HILL: Okay. So, Mr. Wise, I'll try to
24 figure out -- well, first of all, you're trying to understand
25 representation, and I guess I can turn to Mr. Jesick in a

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1 minute and ask -- oh, not Mr. Jesick. Yes, is it Mr. Jesick?
2 No, Ms. Nagelhout, and ask her about who is technically able
3 to speak for all this, and I can ask you that, Ms. Nagelhout,
4 in a little bit if you want to kind of look at that.

5 But, Mr. Wise, what I'm trying to get at is, as
6 I remember you going through the record, you had a concern
7 about how the property was going to be used, is that what
8 you're trying to make a connection to? Could you please ask
9 a --

10 MR. WISE: I mean, that's -- sure. That's part
11 of it. It's also the posting. For instance, the posting and
12 the notifications were all in Mr. Silk's name and not in the
13 name of the actual owner of the property, so all of the
14 notices for this hearing, including in the Office of Zoning,
15 if you go into the BZA case search, if you were to actually
16 search for the owner of this building, nothing will come up.

17 And so what I'm saying is that, this hearing
18 wasn't properly noticed because the owner is not the
19 Applicant.

20 BZA CHAIR HILL: Okay. So you're speaking to what
21 you believe could possibly be a technicality as to how this
22 is being, kind of, administered.

23 MR. WISE: Sure. I think it's a little bit more
24 than a technicality, because for instance, if you -- if a
25 property owner, if a neighbor, had an issue with 203 3rd

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1 Street, LLC, and they were driving through the alley, they
2 would not know that that property was owned by that and that
3 this application was being made by that owner.

4 BZA CHAIR HILL: But how would that --

5 MR. WISE: They would just --

6 BZA CHAIR HILL: But I'm just asking, how would
7 that have any ramifications on the actual zoning issues in
8 terms of the light and air and what's being built, as to who
9 actually owns it?

10 MR. WISE: Because, yes, I would make the
11 assertion that -- well, first of all, I would make the
12 assertion that the application isn't valid on its face,
13 because of the fact that the owner wasn't the one who applied
14 for it, and was not considered by any of these agencies when
15 they reviewed the process.

16 The second part is that, the authorization was not
17 made in accordance with the BZA rules that require it to be
18 -- the letter of authorization to be submitted 14 days in
19 advance of the hearing. So, you know, it's the same thing
20 as if a corporation owned a -- or applied for a license, and
21 yet, the -- I'm sorry, if a person applied for a license on
22 behalf of a corporation, but that corporation's name was
23 never actually listed on any of the application materials.

24 BZA CHAIR HILL: Okay.

25 MR. WISE: It would never go forward, so there

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1 wasn't standing for them --

2 BZA CHAIR HILL: Okay. Let me get to this,
3 because so I don't know either. I can let OAG, the Office
4 of the Attorney General, kind of look into and speak to what
5 you're speaking of. Let's assume that they're here and are
6 able to speak for themselves, okay? So let's get -- let's
7 assume that they're all here.

8 MR. WISE: There's one other aspect to that that
9 I think the Board should consider as it's considering how to
10 move forward, and that is, the owner of this property is not
11 in good standing with the District of Columbia, and
12 therefore, they didn't have standing in the first place to
13 bring the application.

14 BZA CHAIR HILL: Okay.

15 MR. WISE: It is a revoked LLC that does not
16 actually exist right now.

17 BZA CHAIR HILL: Okay.

18 MR. WISE: And so --

19 BZA CHAIR HILL: Mr. Wise, give me a second, man.
20 I've been doing this for 12 hours.

21 MR. WISE: It's been a long day. I know we've all
22 been through it.

23 BZA CHAIR HILL: It's been a long day, Mr. Wise.
24 This has not been a long day for you. Sitting and watching
25 this is not a long day.

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1 MR. WISE: I've been on since 9:30 this morning.

2 BZA CHAIR HILL: I know. Sitting down, watching
3 things. So we've been actively participating for the past
4 12 hours. So I'm just trying to understand, so I will ask
5 OAG whether everyone is here and whether -- you haven't even
6 made your presentation. I'm just -- we're only having
7 questions here, so that's why I'm trying -- I'm confused by
8 it, right? And you've asked for a lot of latitude --

9 MR. WISE: I just --

10 BZA CHAIR HILL: You've asked for a lot of
11 latitude, and I'm trying to give you the latitude, and so
12 what you're asking currently, is, is everybody here the way
13 they're supposed to be here. That's your main question,
14 correct?

15 MR. WISE: And whether or not the postings were
16 appropriate. I'm trying to actually save everybody a little
17 bit of time after a very long day, because I believe that the
18 answer to those is that, because the LLC has been revoked and
19 is no longer in good standing, the application is not valid.

20 BZA CHAIR HILL: Okay. That's fine.

21 MR. WISE: The second part of that is --

22 BZA CHAIR HILL: That's fine.

23 MR. WISE: -- if it is valid --

24 BZA CHAIR HILL: That's fine. That's fine.

25 That's fine. So anyway, all that stuff, I understand what

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1 you just said, okay? So let's just say that everyone is here
2 and they're all supposed to be here and they're representing
3 themselves. I'll let OAG speak to this later, okay? So
4 after that, do you have any questions? Because you haven't
5 a had a chance to make your presentation yet.

6 Do you have any questions about the presentation?

7 MR. WISE: Yeah, I do. When you had done the sun
8 studies, what method did you use to determine where the sun
9 -- where the shade was going to hit?

10 MR. DZIERZANOWSKI: So having had experience on
11 this same square in the past, we have an existing three-
12 dimensional massing of this entire square that was obtained
13 by cross-referencing GIS information that's available and
14 actually circling the square with laser measure tape and
15 documentation to get good estimations of all building
16 heights.

17 Once that's created in 3-D, to scale, it was
18 geolocated in SketchUp, direct reference to Google Earth
19 imagery, and then all of these programs now, in most
20 capacities that provide these kind of 3-D and, you know,
21 aerial imagery, they provide sun and shading study.

22 So the sun and shading, all the shadows, all the
23 light tracing, all the casting of shadows in the software and
24 program, is all based on, again, sun solstice, and sun
25 studies, and diagraming as it relates to the actual location.

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1 So that physical model is geolocated right where we are, it's
2 aligned with the buildings, and then we move the meter
3 through different months of the year and different hours of
4 the day to get different impacts of sun and shading.

5 MR. WISE: Okay. And the last question for you,
6 which version of the renderings and pictures, which
7 submission was used by all of the agencies in your approval
8 process? Which version? Because there's a number of
9 versions in it. If you can point to the one in the record.

10 MR. DZIERZANOWSKI: If you're talking and asking
11 about renderings, all three of our -- any of the versions of
12 the architectural plan and elevation drawings that have been
13 filed for the record, the renderings have all been the same
14 and unchanged. Same thing with regards to -- it relates to
15 the same drawings that are on record with what was approved
16 by HPRB, as well as being reviewed by CHRS, both in the
17 capacity on the historic side, as well as the zoning side,
18 as well as the ANC.

19 MR. WISE: So all of the renderings are the same
20 now as they have been, you're saying.

21 MR. DZIERZANOWSKI: All of the renderings that
22 have received -- that were used to make final approvals, are
23 the same. So again --

24 MR. WISE: Was there ever a rendering that removed
25 our property?

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1 MR. DZIERZANOWSKI: There were early, early
2 iterations of renderings when we first took on this project,
3 and were in conversations to explore concept, and relations
4 directly to the extent of the project. Following criticism
5 from HPRB, following updates that were made with the
6 rendering team, we went ahead and had those updated to
7 represent what is final and on the record.

8 MR. WISE: So just to be very clear, were there --
9 were any of the renderings that removed our property and
10 replaced it with open space, used by -- ever sent to the ANC,
11 HPRB, OP, or used by any of those agencies in their decision?

12 MR. DZIERZANOWSKI: The only people that would
13 have seen an early version of renderings, which then was
14 reconciled after in-person meetings, would have been HPRB.
15 And you can go on to the HPRB website and look in their
16 folder to see exactly what currently exists on the record,
17 which is what matches the renderings and drawings that
18 currently exist on the record.

19 MR. WISE: So the rendering that I have that was
20 sent to me from the ANC was not sent to them by you, that
21 removes our property?

22 MR. DZIERZANOWSKI: Not presented, but there have
23 been times where information has been, as the project was
24 evolving, and again, this goes back to, probably, April of
25 last year, in the earliest conceptions of this project, there

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1 was, yeah, an earlier iteration of the design, and it's
2 evolved to where we are now for the record, both at the time
3 of the HPRB hearing as well as the BZA hearing.

4 MR. WISE: And just one more question, because it
5 came up from the ANC Commissioners, why were there inaccurate
6 drawings and why were there no pictures of our property up
7 until less than a month ago?

8 MR. DZIERZANOWSKI: So there was no specific
9 reasoning as to why there were or were not images or
10 photographs of your property specifically or, you were saying
11 errors in the drawings? Again, any time in the design
12 process, as we're developing things, whether it's renderings,
13 drawings, things will continue to be updated and made as
14 correct and accurate as possible.

15 And everything that we have filed for the record
16 that is being considered for this decision, we believe is at
17 that point. It's illustrating what our intentions are in a
18 final recorded capacity.

19 MR. WISE: I have no other questions.

20 BZA CHAIR HILL: Okay. Mr. Wise, I have a
21 question for you now. Did you go to the ANC meeting?

22 MR. WISE: I did.

23 BZA CHAIR HILL: Okay.

24 MR. WISE: I participated virtually in the last
25 one.

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1 BZA CHAIR HILL: Okay. And you presented in
2 opposition, right?

3 MR. WISE: I did. That's correct.

4 BZA CHAIR HILL: And you saw all of the slides
5 that they, the Applicant, presented, correct?

6 MR. WISE: So there were two meetings, there was
7 a planning and zoning committee meeting that was a week
8 before. During that planning and zoning committee meeting,
9 I saw the renderings that were being used, and then that led
10 the ANC to requesting the additional pictures, because they
11 recognized that there were no pictures, there was no
12 reference to my property in any of the submissions.

13 So the Applicant then submitted additional
14 pictures, those pictures he just went over, that package, he
15 submitted it the day before the full ANC hearing.

16 BZA CHAIR HILL: Okay. And just so you know,
17 like, oftentimes, when we get a lot of stuff, it doesn't
18 necessarily show anybody around it, necessarily. You know,
19 it's not -- I mean, that's just how the architects do it,
20 like, it's not --

21 MR. WISE: I understand, but --

22 BZA CHAIR HILL: I'm just --

23 MR. WISE: -- my property is -- okay.

24 BZA CHAIR HILL: So all right. So let me go ahead
25 and let you do your presentation, okay? I'll go ahead and

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1 put, I guess, I don't know why there's 25 -- go ahead and put
2 20 minutes on the clock, Mr. Young, because I started with
3 15, but they went 5 over. And, Mr. Wise, you can begin
4 whenever you'd like.

5 MR. WISE: All right. Thank you. First of all,
6 Chairman Hill and Members of the Board, thank you for having
7 me here and allowing me the opportunity to bring attention
8 to this proposal.

9 It's a unique property, as I think, probably, OP
10 and everybody else recognizes. This is a property that has
11 a unique history and poses unique challenges. So I hope to
12 go through some of those during this presentation. Mr.
13 Young, could you bring up my presentation?

14 BZA CHAIR HILL: Mr. Wise, do you know what
15 exhibit it is?

16 MR. WISE: I can look.

17 MR. YOUNG: I have it.

18 BZA CHAIR HILL: No, just so I can pull it up
19 also, Mr. Young. What?

20 MR. WISE: It's 67A1 and 67A2.

21 BZA CHAIR HILL: Yes, got you.

22 MR. WISE: All right. Yeah, so it's got a unique
23 zoning history and probably not something that is very common
24 anywhere else in D.C., because this property was only zoned
25 in 1983. It was previous to that, owned by the federal

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1 government. And so I'll go through some of the unique
2 details of this property and why it relates to the zoning
3 case that you're hearing today.

4 If you could move forward, next slide. The unique
5 zoning history on this is that in 1983, the Zoning Commission
6 granted commercial zoning to this property, against the
7 recommendation of the Office of Planning and ANC-6B. It's
8 found in Exhibit 41.

9 If you look at the zoning map, this property is
10 actually located mostly in predominantly RF-3 Zone. In fact,
11 the only property that it is actually adjacent to are RF-3
12 properties, two RF-3 properties to be exact; mine and the --
13 well, actually, three if you -- one MU-26, if you count the
14 very small connection that it has to one of the properties
15 on Pennsylvania Avenue. It's about 3 feet or so, but the
16 other parts are in an RF-3 Zone.

17 The OP and ANC-6B, in 1983, anticipated this exact
18 situation when they posed their opposition to it. OP was
19 concerned that in the future, this property, substantially
20 located within a single-family residential area of the
21 square, which, by the way, in the future comp plan, also
22 indicates that this should be down-zoned as opposed to left
23 as a commercial property, could be used for commercial
24 purposes as a matter of right.

25 The Zoning Commission order, which is in the

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1 record, specifically says, the Office of Planning, by
2 memorandum dated March 17, 1983 and by testimony presented
3 at the public hearing, recommended R4 zoning by the subject
4 light.

5 The reason for that is found in Section 18, it
6 says, the C-2-A zoning on the property could also result in
7 long-term use and/or development consequences which might
8 impact the area adversely because could then be used for any
9 use allowed in a C-2-A zone, which is now MU-26.

10 In the opinion of the Office of Planning, R-4
11 zoning on the site would ensure that the use of the property
12 would continue to remain in character with the surrounding
13 area.

14 The irony is that the property was eventually
15 zoned commercial in order to avoid a BZA hearing. If you
16 read through the Zoning Commission report, it was eventually
17 zoned commercial, but the Zoning Commission required a
18 covenant that the property only be used for off-street
19 parking purposes to serve the jointly-owned property on
20 Pennsylvania Avenue.

21 The property on Pennsylvania Avenue is still
22 jointly owned by the Applicant. Actually, by a different
23 LLC, but if you accept that the Applicant is the owner of
24 this property, then it's jointly owned. Next slide.

25 The subject's property was never intended to be

1 used for anything other than a multi-vehicle garage to serve
2 the property on Pennsylvania Avenue. In fact, it's the only
3 residential or mixed use property in -- on the interior of
4 the square. It will be the only residential property on the
5 interior of the square if this is approved, and if he uses
6 it for the purposes he says he will.

7 The only reason it was granted commercial zoning
8 was to avoid the owners from having to seek relief from the
9 BZA for parking use of the property. It was pretty much to
10 expedite it. As OP identified in 1983, the owners of Lot
11 823, who also owned the property at 843, the nearby subject
12 property, may use the property for any MU-26 allowable use
13 if relief is granted.

14 So the reason that all of this comes up is that
15 the Applicant in, it was either late 2017 or early 2018, the
16 Applicant relayed to me that the most profitable use of the
17 space would be to build a second story and be used as an
18 extension of the bar for a private club for patrons of
19 Capitol -- of Cap Lounge, which he continues to still own.

20 Next slide. The impact on my property, 205 3rd
21 Street, SE, is going to be significant. Air and light, I
22 didn't have an opportunity to have an expert review the sun
23 and shade studies, but it wasn't hard to determine that they
24 weren't accurate, because I literally was able to stand on
25 my back patio and look at the Sun, and that's a great way to

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1 figure out the impact, because I can envision where the
2 building is going to go, and if I can still see the Sun, that
3 means that there will be shade where the building is going
4 to go.

5 In addition, I can stand at my back window and I
6 can look and see where the building is going to go and where
7 the Sun is. At 7:30 tonight, I was able to still see the
8 Sun, no matter how much Mateusz will say that you're not.
9 If I'm able to see the Sun through where the building is
10 going to go, then that will have an impact on my property,
11 and I did that tonight as I was awaiting this hearing.

12 It's going to have a -- I mean, you can just
13 envision. Right now, the rear wall of their property comes
14 to the lot line. So right now, we have an 11-foot tall brick
15 wall that's there. What they're proposing is that, either
16 they have a rear patio, which seems like a roof deck to me,
17 going on the second story of that, or we have to choose
18 privacy screens, which will extend that wall 6 to 8 feet
19 higher.

20 And so, basically, it will be towering over our
21 entire property, and what we're being -- what we were asked
22 to do at the ANC was to choose either between privacy or air
23 and light. They said, you can't have both. Either you get
24 privacy with 6 to 8-foot privacy screens or you get air and
25 light with having just a 3-foot rail, and I don't think

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1 that's a choice that any homeowner wants to have to make.

2 Next slide. If you look at these pictures, one
3 is a picture of the rear, that's standing at my back door
4 looking up to where the property will be. Their property
5 will literally cover that entire area right there and will
6 shade -- it'll be even worse if there's a privacy screen
7 right at the edge there, but it will shade my entire property
8 and cut out any air and light.

9 From a privacy standpoint, the picture on the
10 right is the privacy issue where their rear patio will
11 literally look straight into that back door as well as the
12 door and window to my daughter's, my four-year-old daughter's
13 bedroom.

14 Next slide. They provide the evidence for me in
15 this case because you can imagine having someone standing 11
16 feet on -- you know, above you looking down into your yard
17 like this. I don't think this was what was contemplated when
18 they thought -- when they said that you could go all the way
19 to the rear lot line, when the zoning administrator
20 apparently said that you can go all the way to the rear lot
21 line, which, I still don't understand, but apparently that's
22 what the Applicant has represented.

23 As you can see here, the picture on the right-hand
24 side shows a view from where they would be able to stand on
25 their rear patio and look into all of our windows and doors.

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1 That is, I think, the essence of a privacy issue with regard
2 to this building. Next slide.

3 As you can see, I won't go through all of this,
4 I've already sort of said a lot of it, but if they put up
5 privacy screens, it will remove all air and light. If they
6 allow for some air and light to remain, it would remove all
7 privacy.

8 Again, without regard to the use, we have asked
9 for -- we tried to work with the Applicant, we've tried to
10 find solutions to all of this. We proposed setting back the
11 privacy screens so that there would still be some air and
12 light accessible to our property. They rejected all of those
13 options, and actually, they entered it into the record last
14 night in some of the communications that we've gone back and
15 forth with them on.

16 So we have done everything we can to try and come
17 to an agreement with the Applicant on this. Next slide. I
18 mentioned it before, but the photos and renderings were
19 wholly inaccurate in the original submissions to all of the
20 agencies. I would be interested to ask OP and all of the
21 different agencies which photos. Next slide.

22 There we go. I would be interested to ask all of
23 the agencies and the ANC which pictures and renderings they
24 used because it wasn't until that final submission to the ANC
25 that there were any depictions of our property that were

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1 accurate. And so all of -- I would seem to think that all
2 of their considerations and all of that, unless they did site
3 visits and realized they were inaccurate, which they didn't
4 reference in any of their reports, I would question whether
5 they had accurate information to make those decisions.

6 Again, noticeably absent from all pictures used
7 on Slides A1 and A2 was a depiction of our property in
8 relation to the subject property. Slide A13 in the original
9 renderings removed all fences and brick walls that currently
10 exist to indicate a wide-open alley that extends, not only
11 behind their property, but it removed a large brick wall that
12 separates three of the properties there.

13 There was a dumpster placed in it to make it look
14 like that was part of a continuing alley. So again, I don't
15 know which information was used to -- for those decisions.
16 The next slide.

17 You can see this picture that was submitted to at
18 least the ANC and HPRB in the initial renderings here. This
19 picture, very obviously, shows the -- you know, it shows the
20 difference between what is accurate and what is proposed.
21 Next slide.

22 So this is another example. This is a drawing --
23 and I mostly bring this up -- actually, next slide. I mostly
24 bring this up just so that you have a clear understanding of
25 what the actual massing in the neighborhood will be. The

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1 picture on the left is what was submitted to all of the
2 agencies. The picture on the right with the really poorly
3 drawn, and I apologize for that, I'm not an artist, but the
4 red is a rough representation of the actual massing of the
5 building according to the zoning map.

6 Next slide. The next slide brings out the issue
7 that we previously discussed, and that is that the Applicant
8 listed on all the documents is James Silk. It's also listed
9 on the posters where -- that have been posted on the
10 building, it was listed on all the notifications to all of
11 the neighbors.

12 James Silk is not the legal owner of the property.
13 The legal owner of the property has not filed anything in the
14 record showing representation authorized for James Silk and
15 certainly didn't do it on the application, which, OAG can
16 weigh in, but I don't know if that makes the application
17 invalid or what, but it's certainly something that should be
18 looked into.

19 But all of the notices, all of the postings listed
20 James Silk as the owner and not the LLC. In addition, what
21 we recently found out was that, as of today, the LLC is
22 revoked. It is not a company in good standing and it was
23 not, apparently, when the application was filed, and so I
24 don't believe that they had standing to bring the application
25 in the first place.

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1 The next thing on that is that the application
2 applied for relief stating it's an owner-occupied property,
3 and thus, being granted a lower fee. It's not something that
4 I just want to bring to your attention. It's actually a
5 short-term rental property at this point.

6 Next slide. And next slide. You can go two
7 ahead. Attempts to rectify, in order to come to an agreement
8 on the proposed plan, the things that we have asked -- that
9 I have asked for is a covenant in perpetuity, and this was
10 reiterated by the ANC as well, a covenant in perpetuity that
11 the use be restricted to a single-family residential use in
12 line with the area of the square in which it's located.

13 Also, the moving of the rear fence, or privacy
14 screening, to be in line with the end of the property at 207
15 3rd Street, SE, approximately 11-feet from the rear lot line.
16 This would alleviate some of the air, light, and privacy
17 concerns. Construction management agreement. I know some
18 of these things are outside of the purview of the BZA, so I
19 won't go into them, but I've listed them just so you know
20 what the communication between us and the Applicant has been.

21 And in conclusion, I think the Applicant, the BZA
22 can order him to pay the correct filing fee for a non-owner-
23 occupied property. It's been a commercial property as long
24 as I know of. I request that you deny the application for
25 the reasons -- oh, next slide.

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1 I request that you deny the application for the
2 reasons set forth above and/or require the owner to refile
3 under the correct ownership. And if it is approved, I would
4 ask that the relief be subject to reasonable conditions as
5 the Zoning Commission found they be reasonable. The original
6 covenants were only for 15 years, but knowing that there is
7 an interest and an ability to use this as a commercial
8 property in a primarily residential area, I'd ask you to
9 require it in perpetuity so that we don't have this problem
10 again, because once this relief is granted, they won't have
11 to come back for relief in the future, and they'll be able
12 to use it as a bar or restaurant adjacent to all of these
13 single-family homes.

14 And ordering the setback of the rear privacy fence
15 or screen to be in line with the rear of the principle
16 structure of the adjacent property at 207 3rd Street. That's
17 all I have. I'm happy to answer any questions that the Board
18 Members may have. Thank you.

19 BZA CHAIR HILL: Okay. Thanks, Mr. Wise. All
20 right. Let's see.

21 MR. WISE: It's ahead of schedule, right?

22 BZA CHAIR HILL: Yes. All right. Does the Board
23 have any questions for Mr. Wise? Mr. Hart, Ms. John, Mr.
24 Miller?

25 VICE CHAIR CARLTON HART: Yes, just a quick

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1 question, and this is just going to -- and I'm just not sure
2 what it is, Mr. Wise, your property is -- I'm not even sure,
3 10 feet, 11 feet from the --

4 MR. WISE: Ten feet. It's a little less than 10
5 feet.

6 VICE CHAIR CARLTON HART: And is that your regular
7 setback for the rear of your property?

8 MR. WISE: No, originally, there was a structure
9 on the back of our property, which, after a conversation with
10 Mr. Silk, saying he wasn't going to develop his property, it
11 was a two-story structure that we removed. We removed it
12 because we had a daughter and she wanted outdoor play space,
13 and so we -- now we look back on it, it was a big mistake,
14 but we removed that two-story structure, and actually, if
15 that was there, none of this would be a problem, because
16 there would be a wall in between us and the other property.

17 So it actually would have made things easier.

18 VICE CHAIR CARLTON HART: What I was actually
19 trying to get to was, is there a setback requirement -- are
20 you a non-conforming, like, setback currently? I just can't
21 quite understand --

22 MR. WISE: I don't know. I'm not a lawyer, so I
23 don't --

24 VICE CHAIR CARLTON HART: You're not sure? That's
25 okay. I just was curious. So typically, there's this --

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1 there's a certain setback that is required for every, you
2 know, actually, this building that the application that is
3 before us has one, and I wasn't sure what yours is, and
4 typically they have them so that you try to avoid some of
5 these issues that we're talking about now in terms --

6 MR. WISE: Yes. And I --

7 VICE CHAIR CARLTON HART: If you had a -- if there
8 was a setback for your property that was conforming to
9 zoning, then there may be less of an issue. I'm not saying
10 it wouldn't be an issue, but I just don't know what that is.

11 MR. WISE: I believe that in the RF-3 Zone, and
12 this is because we had looked at doing something on our roof
13 at one point, I believe there's a 20-foot setback, so I
14 assume -- I guess we are non-conforming, but we were even
15 more non-conforming when we had the addition on the back of
16 the house --

17 VICE CHAIR CARLTON HART: Yes.

18 MR. WISE: -- that we mistakenly took down.

19 VICE CHAIR CARLTON HART: But it was a
20 grandfathered non-conforming, so, you know, I mean, and you
21 are now too, I just was trying to understand that a little
22 bit further, but I appreciate the thorough presentation and
23 that explanation. Thank you.

24 MR. WISE: Sure.

25 BZA CHAIR HILL: Mr. Wise, now I'm a little

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1 confused, because I'm looking at, like, Slide A6 of one of
2 the presentations. I think it's the most recent one that was
3 submitted by the Applicant. There was a building that went
4 all the way up against the 203R 3rd Street, SE property? You
5 created your own --

6 MR. WISE: I'm -- do what?

7 BZA CHAIR HILL: So and I'm trying to clarify what
8 you just said, so you removed the building. You used to be
9 flush up against --

10 MR. WISE: That's correct.

11 BZA CHAIR HILL: -- 203R 3rd Street, so you
12 created this shadowing situation for yourself, which is okay.
13 I'm just saying, that's what it is. If you kept your -- and
14 I'm just trying to understand, and I'll go back, because now
15 I'm even going to look and see, so if you go to Mr. -- I'm
16 trying to understand. Where are we? Oh, Mr. Young, if you
17 could pull up Exhibit 62 and go to 85. Thank you.

18 So, Mr. Wise, I can't do this, but in Section --
19 in Photograph 1 and Photograph 2 -- well, yes, in Photograph
20 1 and Photograph 2, you're saying that there was a building
21 there at one point, is that what you're saying?

22 MR. WISE: There was. We did an extensive
23 renovation on our house in 2016, I think, 2017, and during
24 that, one of the inspectors had told us that we would either
25 have to remove the rear portion of the house or -- because

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1 it wasn't to code, we would either have to remove this two-
2 story addition that was there or we would have to go and get
3 -- we would basically have to get permits to make it legit.

4 And so we ended up -- and that's when I talked to
5 Mr. Silk, he said he wasn't planning on developing his
6 property, and so we ended up just deciding to remove the
7 building that wasn't --

8 BZA CHAIR HILL: When you say, permits to make it
9 legit, so if you look down in the one right below, where
10 there's a pink shaded area there, it says, Adjacent Patio,
11 is that the area, basically that you -- right below --

12 MR. WISE: You can actually see where the old
13 structure is. If you look on the bottom-left picture where
14 the white paint is that goes into the siding, our structure
15 was where that white paint is.

16 BZA CHAIR HILL: Okay.

17 MR. WISE: There's a white corner square.

18 BZA CHAIR HILL: I understand. Where the pink
19 square is, below, where it says, Adjacent Patio, is that pink
20 square --

21 MR. WISE: Yes.

22 BZA CHAIR HILL: -- was once your -- was what was
23 once a building?

24 MR. WISE: It is.

25 BZA CHAIR HILL: So I'm saying, you removed that

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1 pink square.

2 MR. WISE: By order of the District of Columbia.

3 BZA CHAIR HILL: No, no, but you're -- because you
4 went and started to do renovations and you said that -- and
5 I'm just trying to understand, and you said then that the
6 permitting said that you had to remove it or do something?
7 Like, you could have come before the BZA or something? I
8 don't understand.

9 MR. WISE: Right. I would have had to have -- I
10 don't know what the process would have been at that point.
11 It would have been either -- I don't know if it was just a
12 permitting issue or if it was that I would have needed to get
13 relief. We just ended up --

14 BZA CHAIR HILL: And by the way, Mr. Wise, I'm not
15 saying that I'm agreeing or not agreeing with any of the
16 arguments you're making, I'm just trying to understand, that
17 if you had kept that pink square, then you wouldn't have any
18 -- nobody would be looking into anything because there would
19 have been a building there.

20 MR. WISE: That's correct.

21 BZA CHAIR HILL: Okay. All right.

22 MR. WISE: That's correct.

23 BZA CHAIR HILL: I appreciate your honesty. All
24 right.

25 MR. WISE: Yes, no, and frankly, this wouldn't be

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1 an issue at all because the -- you can actually see from the
2 far-right picture, you can see where the roofline was above
3 the two windows there, of the structure, so we wouldn't be
4 having this issue at all if it hadn't have been for that
5 unfortunate series of events.

6 BZA CHAIR HILL: In Photo Number 3, or where it
7 says, 3: Rear Condition, you're saying that that white -- the
8 white line there where the door is, that was a structure at
9 one point.

10 MR. WISE: Where the gutter goes horizontally.

11 BZA CHAIR HILL: Yes.

12 MR. WISE: You can actually see, if you look
13 really closely, you can see the remnants of what was flashing
14 for the structure there, that was there before we purchased
15 the property.

16 BZA CHAIR HILL: It was there before you purchased
17 it?

18 MR. WISE: So if the BZA wants to give us relief
19 to -- yes, the structure was there before we purchased the
20 property in 2016 --

21 BZA CHAIR HILL: And then you had to tear it down.

22 MR. WISE: And we had to tear it down. So if the
23 BZA wants to give us relief to put it back up, we'll be happy
24 to resolve all of this. I'm sure Mr. Silk will be very happy
25 with that as well.

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1 BZA CHAIR HILL: I don't know. That sounds like
2 another application and another attorney, Mr. Wise, but I --
3 okay. Let's see. You can remove the slide presentation, Mr.
4 Young. Thank you. Does the Board -- I don't know, even
5 whether I asked anything, I don't have any more questions for
6 Mr. Wise. I think you're shaking your head no. Ms. John,
7 do you have any questions for Mr. Wise? No. Commissioner
8 Miler, do you have any questions for Mr. Wise? All right.
9 Mr. Dzierzanowski, do you have any questions for Mr. Wise?

10 MR. DZIERZANOWSKI: No questions. We'll go to the
11 Board to see when we can just clarify a few things, but no
12 questions.

13 BZA CHAIR HILL: All right. You'll get rebuttal.
14 Okay. Can I turn to Mr. Jesick and, Ms. Nagelhout, I got to
15 remember to come back to you, please, about the whole who's
16 supposed to be here thing. Office of Planning? Oh, Mr.
17 Jesick.

18 MR. JESICK: Yes, Mr. Chairman, I'm here. Can you
19 hear me?

20 BZA CHAIR HILL: Mr. Jesick, the fact that I can
21 hear you this time is good enough. I still can't see you,
22 but that's all right.

23 MR. JESICK: It's slow. There it goes. Thank you
24 again, Mr. Chairman and Members of the Board. My name is
25 Matt Jesick, presenting testimony for this case, Number

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1 20238, for the Office of Planning.

2 The Office of Planning recommends approval of the
3 variance and the two special exceptions requested by the
4 Applicant. We did feel that the property exhibited an
5 exceptional condition in that it was an existing alley tax
6 lot with an existing structure on it, and that would lead to
7 a practical difficulty for an applicant who was seeking to
8 obtain a building permit for their property, whether it be
9 running typical upgrades or maintenance, or whether it be to
10 add a second story, as is the case here.

11 We didn't feel that that satisfies creation of a
12 new record that would lead to detriment to the public good.
13 While the creation of the new record lot is not directly
14 related to the addition of a second story, we did recommend
15 that the Applicant examine additional privacy measures along
16 the rear property line, which has been discussed this
17 evening.

18 We also recommended approval of the special
19 exceptions, as I stated, and I'm happy to get into more
20 detail on those if the Board would like, but I'm happy to
21 take any questions. Thank you.

22 BZA CHAIR HILL: Okay. Can you guys hear me? Can
23 you see me, because I can't see me now. I don't know what
24 happened to me. No, Mr. Jesick is saying he can't see me.
25 Mr. Hart, you can see me? Mr. Jesick, you can't see me,

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1 correct?

2 MR. JESICK: That's correct, I cannot. That might
3 be on my end.

4 BZA CHAIR HILL: Mr. Young, how come I can't see
5 me? Forget it. All right. So, Mr. Jesick, if this were --
6 I just want to understand something, in terms of the Office
7 of Planning's analysis, whether this is an Airbnb, or owner-
8 occupied, or a lounge, does that matter in the analysis? I
9 want to understand.

10 MR. JESICK: I don't think that would impact our
11 analysis of the subdivision relief. You know, we're looking
12 at the condition of the property and is that a unique or
13 exceptional condition. The potential use, I think, does not
14 factor into the subdivision request.

15 BZA CHAIR HILL: So even as a commercial use?

16 MR. JESICK: Well, like I stated in the written
17 report and in my testimony, if any owner wished to do any
18 sort of maintenance, they would need a record lot to obtain
19 a building permit. So I think whatever owner owned the
20 property, you know, they would need this sort of relief to
21 convert their tax lot to a record lot. We don't object to
22 the ANC's recommendation of a covenant on the property to
23 maintain the residential use. That's probably appropriate,
24 but that didn't necessarily factor into our analysis of the
25 zoning criteria.

1 BZA CHAIR HILL: Say that again, please, about the
2 covenant.

3 MR. JESICK: We don't object to the ANC's
4 recommendation of a covenant to maintain the residential use,
5 but that didn't necessarily factor into our analysis of the
6 zoning criteria.

7 BZA CHAIR HILL: Okay. So then I'm going to turn
8 to OAG eventually as well, because I didn't know whether that
9 was something that was -- we were able to do in terms of a
10 covenant for that, but I don't know. Okay. All right. Who
11 has any questions for the Office of Planning?

12 Mr. Miller?

13 COMMISSIONER MILLER: Mr. Jesick, thank you for
14 your report. So the comp plan designates this entire square
15 moderate -- well, this part of the square as moderate density
16 residential along with the adjacent properties that I guess
17 don't front on Pennsylvania?

18 MR. JESICK: I'm sorry, Commissioner Miller, were
19 you asking that as a question or was that a statement?

20 COMMISSIONER MILLER: No, it was just a question
21 as to whether the MU-26 zoning is consistent with the
22 comprehensive -- or not -- whether it's consistent with the
23 comprehensive plan designation of moderate density
24 residential, and is this is a -- I assume this property is
25 not amongst the land use amendments that the Mayor has sent

1 to the Council, which, I this case, I guess, would change it
2 from MU-26 to RF something, but I assume there's no pending
3 land use amendment for this, but I assume also that the, from
4 what I've heard so far, the comp plan designates this
5 property that's the subject of this application, and the
6 adjacent properties, which are already zoned RF, as moderate
7 density residential on the future land use map?

8 MR. JESICK: I can't answer that with certainty.
9 We did not examine the comprehensive plan for this case, as
10 with any BZA case. The comprehensive plan is not a factor
11 in the BZA criteria.

12 COMMISSIONER MILLER: I mean, I wasn't going to
13 raise this issue, but when you said you supported the
14 covenant to limit it to residential use, it seems to me that
15 the more appropriate way to limit it to residential use is
16 to do a re-zoning that's more consistent with the
17 comprehensive plan than the existing zoning.

18 MR. JESICK: I want to be careful in, you know,
19 my language. I said I did not object to the ANC's
20 recommendation of a covenant, but that did not factor into
21 our zoning analysis whatsoever.

22 COMMISSIONER MILLER: Okay. Well, I have some
23 discomfort with the covenant language precluding a matter of
24 right use in perpetuity. I think the way -- if someone's
25 concerned about that, they should file a petition for a land

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1 use map amendment. It might not stop whatever's happening
2 now, but under the MU-26 zoning standards, but the covenant
3 seems to be a very -- seemed to be an unusual way to restrict
4 the use that's permitted as a matter of right.

5 And when the intended use is not to be -- and I
6 realize the intended use is to be residential, so it may not
7 be an issue, but in terms of something in perpetuity going
8 forward, a re-zoning seems more appropriate than a BZA-
9 imposed covenant that is contrary to the zoning. Anyway.
10 That's more of a comment and I made my comment.

11 BZA CHAIR HILL: Commissioner Miller, I'm just
12 curious, because I'm a little confused, because it's late
13 also, so commercial is matter of right, is what you're
14 saying.

15 COMMISSIONER MILLER: This is the old C-2-A
16 zoning, is that correct, Matt -- Mr. Jesick? MU-26.

17 MR. JESICK: Yes, the old base zone C-2-A and then
18 there was the Capitol Hill -- excuse me, the capital interest
19 overlay, Capitol Hill commercial overlay, and that was all
20 combined into MU-26.

21 COMMISSIONER MILLER: Right. All right.

22 BZA CHAIR HILL: So you preferred commercial, is
23 what I'm asking you.

24 COMMISSIONER MILLER: You're asking me a question,
25 Chairman Hill? I'm sorry.

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1 BZA CHAIR HILL: I was asking you -- I was a
2 little confused, because you're objecting to the covenant,
3 so you're saying that the matter of right is that you can --
4 it can be commercial.

5 COMMISSIONER MILLER: Right. And I guess it was
6 a garage for many, many years.

7 BZA CHAIR HILL: Right. Okay.

8 COMMISSIONER MILLER: Serving the commercial
9 frontages along Pennsylvania Avenue.

10 BZA CHAIR HILL: Got it.

11 COMMISSIONER MILLER: It's just a comment more
12 than any -- that's all.

13 BZA CHAIR HILL: Well, I think it's important.
14 I think it's important. So that's why -- so anyone else for
15 the Office of Planning?

16 MEMBER LORNA JOHN: Yes. I have a question, Mr.
17 Jesick. So in place of -- instead of a residential project,
18 the Applicant could propose anything that's allowed in the
19 MU-26 Zone, right? And that might not be residential
20 property.

21 MR. JESICK: Yes, I think they could theoretically
22 establish any use permitted in the MU-26 Zone.

23 MEMBER LORNA JOHN: Okay.

24 MR. JESICK: It might be limited -- well, no, I
25 take that back. Since it's a commercial zone, I think the

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1 uses would not be limited because it's an R lot, I think in
2 commercial zones, alley lots can do any commercial use.

3 MEMBER LORNA JOHN: Would that include a lounge
4 that's adjunct to the bar? I don't know. I haven't looked
5 at that regulation, so it's just -- I'm really curious.

6 MR. JESICK: Potentially. I can check on that if
7 you'd like.

8 MEMBER LORNA JOHN: No, you don't have to. Just,
9 if you know it off the top of your head. That's all.

10 BZA CHAIR HILL: Okay. Mr. Dzierzanowski, do you
11 have any questions for the Office of Planning?

12 MR. DZIERZANOWSKI: None at this time.

13 BZA CHAIR HILL: No. Mr. Wise, do you have any
14 questions for the Office of Planning?

15 MR. WISE: Yeah, I do. Can you hear me?

16 BZA CHAIR HILL: Yes.

17 MR. WISE: Okay. So you may have already answered
18 this, but, Mr. Jesick, did the Office of Planning consider
19 the report from the original 1983 zoning case?

20 MR. JESICK: No, we did not. We just based our
21 analysis on the current status of the property, which is, you
22 know, a property with MU-26 zoning, and then the application
23 materials that were submitted to the record, plans,
24 renderings, and that -- and the written justification for the
25 relief.

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1 MR. WISE: All right. Did you -- now that you
2 know what the history of the zoning is, would that have
3 changed your recommendation?

4 MR. JESICK: No, you know, we're just dealing with
5 the current zoning. The Zoning Commission zoned it what it
6 is. We can't change that. So in other words --

7 MR. WISE: In that case, how -- yeah, in that
8 case, how do you justify the change between, literally,
9 Office of Planning, very aggressively in the hearing, saying
10 that development consequences would -- which might impact the
11 area adversely because the property could then be used for
12 any use allowed in a C-2-A Zone?

13 That was the Office of Planning's language on this
14 subject property in 1983. Is there something that changed
15 that no longer applies with regard to that concern?

16 MR. JESICK: Well, we did examine the impacts of
17 granting the requested relief based on the materials in the
18 record. The impacts, we judged, of creating a record lot
19 would not create an undo impact to the public or impact to
20 the intent of the zoning regulations. And we also felt that
21 the relief to the sideyard and the relief to alley centerline
22 setback would also not impair the public good.

23 MR. WISE: So if it doesn't impair the public
24 good, would you consider, I don't know if you're a father or
25 not, a bar located 10 feet from my daughter's bedroom an

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1 undue impact on the public good?

2 BZA CHAIR HILL: Mr. Wise, I don't know if that
3 works exactly. How do you do that? I don't even --

4 MR. WISE: I mean, I appreciate the humor --

5 BZA CHAIR HILL: Right.

6 MR. WISE: -- behind it, but it's kind of not
7 funny to those -- to a father worried about them.

8 BZA CHAIR HILL: I'm just trying to understand the
9 question. And I don't necessarily know if that is
10 necessarily --

11 MR. WISE: Well, I wish --

12 BZA CHAIR HILL: Wait, Mr. Wise?

13 MR. WISE: -- I could show a video outside my back
14 window, but --

15 BZA CHAIR HILL: Mr. Wise, I got to tell you, I
16 can talk just as much as you can, so just give me a second.
17 I'm trying to understand the question. The question is about
18 the impact to your home and can you tell me again what the
19 question is that you're trying to give to the Office of
20 Planning?

21 MR. WISE: Yes, sure.

22 BZA CHAIR HILL: Please take out, like, father-
23 daughter stuff. What's your question?

24 MR. WISE: Sure. Okay. Yes, he said that the
25 impact would not unduly impact the public good. Well, the

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1 impact would allow for there to be a bar 10 feet from my --
2 or actually adjacent to my property line. So does the -- is
3 it -- how does it not unduly impact me to all of a sudden
4 have a property that is able to be used, a 3200-square-foot
5 property, able to be used as a restaurant and bar in now a
6 single-family residential area?

7 And the reason I ask that is because they
8 specifically cited this, the Office of Planning specifically
9 cited this, when they testified about the subject property
10 in 1983, when it was being zoned.

11 MEMBER LORNA JOHN: Mr. Chairman, may I say
12 something?

13 BZA CHAIR HILL: Of course.

14 MEMBER JOHN: If this were 9:30 in the morning,
15 I would be interested in going down this rabbit hole, but it
16 is now 9:30 at night, and I think at some point we have to
17 stay focused on what's in the application. And right now we
18 don't have an issue about a bar being established at this
19 location in this building. Commissioner Miller already said
20 that the covenant, really, is not relevant at this point.
21 The proper approach is to seek a map amendment. I would like
22 us to move on. It's really getting a little late.

23 BZA CHAIR HILL: Okay.

24 MEMBER JOHN: Mr. Chairman, I know you're very
25 patient.

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1 BZA CHAIR HILL: Okay. That's all right. So, Ms.
2 John, thank you.

3 So, Mr. Jesick, do you have any quick response to
4 Mr. Wise?

5 MR. JESICK: I guess the first basic response is,
6 we analyzed the application before us which is for a single-
7 family dwelling. They could establish the MU use today.
8 They don't need this application to establish an MU use.

9 BZA CHAIR HILL: Okay, all right. That's good,
10 Mr. Jesick. Mr. Wise.

11 (Simultaneous speaking.)

12 MR. WISE: Can I just ask one more question?

13 BZA CHAIR HILL: Sure.

14 MR. WISE: Just one more.

15 Mr. Jesick, is there any reasonable use for the
16 property without this relief?

17 MR. JESICK: I mean, they could use it for any use
18 that doesn't require a building permit, is what it boils down
19 to.

20 BZA CHAIR HILL: Okay. All right. Let's see.
21 Okay. I'm back to -- all right. Do I have anybody, Mr.
22 Young, who is planning on testifying?

23 MR. YOUNG: No, I don't have anyone.

24 BZA CHAIR HILL: Okay. All right. Let's see.
25 All right, Mr. Dzierzanowski, do you have any rebuttal?

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1 MR. DZIERZANOWSKI: Just a couple quick items
2 here. The first thing I want to kind of go over is, it's
3 been discussed loosely now the intention of this project and
4 the property. The application and the items in front of us
5 are intended for a single-family residential use.

6 To Mr. Miller's point, it has been asked in the
7 past of having a covenant signed for the residential use of
8 this project in perpetuity. In further discussion at our
9 last ANC meeting, and following an item that they listed in
10 there, the owner -- and Jim, you can speak to this a little
11 bit -- we've actually gone ahead and engaged Sullivan and
12 Barros in our scoring filing a covenant to at least give a
13 little bit of peace of mind and further reiterate the
14 intended use of a single-family residence at this location.

15 I know it doesn't speak directly to the forms of
16 relief that are being sought. It's something that's come up
17 further in our discussions with party opposition and the ANC
18 so we would be happy to do that.

19 I'll let Jimmy speak really quickly just to
20 reiterate intentions and what the goals are.

21 Jimmy?

22 BZA CHAIR HILL: Okay. Hold on, that's okay.
23 That's all right. So, the ANC, again, they had -- did they
24 have conditions for you guys?

25 MR. DZIERZANOWSKI: They provided, I believe, two

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1 or three stipulations granting their support for the project.
2 It was for us to look into a residential covenant for up to
3 15 years. It was to explore and come up with a privacy
4 screen solution along the rear. And then -- forgive me, I
5 don't have their full report, but I know those were two of
6 the main talking points.

7 BZA CHAIR HILL: I can't suss out whether there
8 are conditions or not.

9 MR. DZIERZANOWSKI: Understood.

10 BZA CHAIR HILL: Okay? So I don't know.

11 MR. DZIERZANOWSKI: Correct. There are items on
12 the record that just show our steps -- or, the process we've
13 taken to go through those steps. Again, just in support of
14 trying to reiterate and kind of squash this argument that
15 there's no intention to do a bar or restaurant here, and the
16 materials submitted for the record clearly indicate the
17 program of a single-family residence.

18 With relation to -- I'm happy to elaborate further
19 on any of the items that were suggestive of errors or
20 mistakes in the drawings. The reality is --

21 BZA CHAIR HILL: Now I'm kind of cutting to the
22 chase. So the ANC was the ANC, right?

23 MR. DZIERZANOWSKI: Sure.

24 BZA CHAIR HILL: You're got CRHRS letter in
25 support.

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1 MR. DZIERZANOWSKI: Correct.

2 BZA CHAIR HILL: Did you all talk about the
3 privacy screening and how you might be able to work with the
4 party in opposition in terms of pulling back that privacy
5 screening at all?

6 MR. DZIERZANOWSKI: So initially the thought was
7 privacy screen or any kind of screening and railings that we
8 showed were flush to the property. We started with an
9 initial one-foot setback.

10 If you were to look at the site plan of what is
11 proposed on the second-floor level with the 11-foot setback,
12 the clear area in that patio area kind of gets reduced once
13 the screen is in place to like a 9-foot-6 dimension in width,
14 part of which there is an intention to occupy a green space
15 or a garden area.

16 So, I don't think the size of the patio that we're
17 proposing along the rear of the property is too large. And
18 I think to try to push the screen back at this point will
19 start to, I think, reduce the success of the function --

20 BZA CHAIR HILL: Okay.

21 Ms. Nagelhout, are you still there?

22 MS. NAGELHOUT: I'm here.

23 BZA CHAIR HILL: Can you speak to any of that
24 stuff about whether everybody is before us properly?

25 MS. NAGELHOUT: Yeah. The Board rules say that

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1 the owner of property for which zoning relief is sought or
2 an authorized representative shall file an application. If
3 the owner is represented by a third party, that third party
4 has to be authorized by a letter of authorization.

5 So, what you have before you now is someone who
6 says -- who has asserted to you that he is the owner of the
7 property, and now the party in opposition is suggesting that
8 perhaps he's maybe a representative of the owner. You can
9 accept the testimony for what it is, you can ask the
10 Applicant to provide additional proof of ownership or
11 authorization to represent the owner.

12 BZA CHAIR HILL: Okay.

13 Mr. Silk, can you please -- I'm sorry, Mr.
14 Dzierzanowski, can you please provide evidence into the
15 record that the owner is the owner and that they are
16 authorized to be here. Okay?

17 MR. DZIERZANOWSKI: Sure.

18 BZA CHAIR HILL: Okay.

19 MR. WISE: Mr. Chair, may I ask a question?

20 BZA CHAIR HILL: Not yet.

21 MR. WISE: Okay.

22 BZA CHAIR HILL: Okay. All right.

23 So, Mr. Miller?

24 COMMISSIONER MILLER: Just a quick question to the
25 Applicant. If I heard you right, you have no objection to

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1 the ANC's recommended conditions, the covenant -- and you
2 said you were exploring it with an attorney -- the covenant
3 would restrict use for these 15 years to single-family
4 residents. That was condition number 1 of the ANC support.
5 Condition number 2 was a screening option from your own ANC
6 response package. You have no objection to those conditions
7 being part of the BZA's action?

8 MR. DZIERZANOWSKI: We have no objections to that.

9 COMMISSIONER MILLER: Okay. Thank you. I just
10 wanted to get that clarification.

11 MR. DZIERZANOWSKI: Thank you.

12 BZA CHAIR HILL: Commission Miller, can you remind
13 me of that whenever we get to daylight again?

14 ZC VIC CHAIR MILLER: Sure.

15 BZA CHAIR HILL: Okay. Thank you.

16 Ms. John. Yes, please, Ms. John.

17 MEMBER JOHN: Mr. Chairman am not sure that it
18 would be a good idea for the Board to include information on
19 the covenant.

20 COMMISSIONER MILLER: I wasn't making a judgement,
21 I just wanted to get clarification on the Applicant's
22 position.

23 MEMBER JOHN: Okay. Thank you. Yeah, it's
24 outside the scope of --

25 COMMISSIONER MILLER: I think I characterized it

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1 as a Board-imposed covenant before. This would be something
2 that the Applicant is offering to us as a condition that they
3 are willing to live with. I'm not making a judgement about
4 it, I just wanted to make that clarification.

5 MEMBER JOHN: I know. I'm just saying it's not
6 related to the zoning relief request. And if the Applicant
7 has not met the burden of proof for the relief, then we
8 should just deny the application. But if the Applicant meets
9 the burden of proof, then we should grant it. This issue of
10 the covenant is totally outside the scope of the Board's
11 jurisdiction, in my view.

12 I would also say that the screening options are
13 within the scope of the Board in terms of impacting -- any
14 potential adverse impact from the second floor. So I would
15 be interested in knowing if Mr. Wise had any thoughts on what
16 type of screening would be helpful, since apparently he
17 didn't like what the Applicant had proposed. And when we get
18 to that point, that would be a useful discussion.

19 BZA CHAIR HILL: Okay. So, Mr. Wise, first do you
20 want to respond to Ms. John?

21 MR. WISE: Sure. Thank you. Our proposal --
22 we've made a number of proposals to the Applicant regarding
23 ways to protect privacy and the air and light issue. Our
24 proposal was to move the screen back. If the screen is at --
25 basically, again, we're having to choose between privacy and

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1 air and light. If the screen is right on top of the lot
2 line, it basically creates a 20-foot tall wall just towering
3 over our space.

4 So, you know, there's no good option for us there.
5 And I think the absolute worst situation would be having just
6 a rail there, where beer cans or anything can just be dropped
7 into our rear yard. We proposed this. The Applicant has
8 denied every request that we've made for any kind of relief
9 from this. So, I don't know, I guess, what the answer is to
10 that.

11 I'm happy to continue working with the Applicant
12 and figuring out a way to resolve this but, again -- and the
13 Applicant put it into the record all of the communications
14 between us. Every time we reached out, they said no. So I
15 guess we were sort of leaving it to the Board at this point
16 to protect -- if you could imagine standing 11 feet on top
17 of --

18 BZA CHAIR HILL: Mr. Wise, I'm sorry. You had a
19 question for something at one time when I cut you off. What
20 is it you had a question for?

21 MR. WISE: Yeah, my question was for OAG, and I
22 know they represent you and not me, but the question was does
23 the Applicant need to get a waiver for 200.4 which requires
24 the 14-day letter of authorization placed in the record?
25 Because they just gave testimony during this two-hour

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1 long --

2 BZA CHAIR HILL: Hold on, Mr. Wise. One question
3 at a time, Mr. Wise.

4 Ms. Nagelhout, can you answer the question?

5 MS. NAGELHOUT: I would say no. If the Board is
6 requesting information, the Applicant should provide it at
7 the time requested by the Board.

8 BZA CHAIR HILL: Okay. So that's the first
9 question.

10 MR. WISE: There's no requirement for notice?

11 MS. NAGELHOUT: No.

12 MR. WISE: 200.4 doesn't apply?

13 MS. NAGELHOUT: No.

14 BZA CHAIR HILL: Okay. All right. Well, I guess
15 Mr. Wise, I was just trying to clarify what the Board has
16 asked clarification of. Because, again, are these people
17 here representing the correct group? And that's what I'm
18 trying to get to. They are going to provide information into
19 the record that states that they are the correct people that
20 are before us. That's what we asked Mr. Dzierzanowski to
21 provide. Okay?

22 MR. WISE: And I think my statement just to that
23 is that a revoked LLC is not authorized to act in any
24 capacity --

25 BZA CHAIR HILL: Mr. Wise, at this point in time

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1 I've got to say, I'm trying to understand what is before us.
2 You're hooked on the technicality issues of whether or not
3 we should even be here right now. Okay? So that's fine, and
4 they are going to submit something into the record that says
5 they are supposed to be here. Okay? And so you will get to
6 see what that is. Right? Okay?

7 All right. Okay. So now I'm back to Mr.
8 Dzierzanowski and the issues with the ANC. The ANC had those
9 two issues or whatever, conditions, and you stated that you
10 don't have any issues with those conditions. Whether or not
11 the Board has any issues with those conditions, that's
12 another thing.

13 Currently what they have is the screening option
14 from page A12 of the Applicant's ANC response package,
15 Exhibit 62. So, now I'm going to actually look at that:
16 Exhibit 62, A12. There are four screening options. And Mr.
17 Wise, I've kind of lost you there, I don't know if you see
18 me or know where I am.

19 MR. WISE: Yeah, I can see you.

20 BZA CHAIR HILL: Okay. So A12, Exhibit 62. Are
21 you able to pull that up? I wonder when I'm actually going
22 to lose Board members? Like they're just going to start
23 fading off. We might have to -- I'm trying to get through
24 this, and I think we're getting near the end.

25 So the ANC was in favor of these four options.

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1 Did you have any thoughts on these four options, Mr. Wise?
2 Okay, so you still have -- that's okay. Just from your sigh,
3 you're still going to have some discussion. Okay. That's
4 fine.

5 MR. WISE: I've got to talk to the boss. The boss
6 is my wife and if we're going to have this thing towering
7 over our property, she's got to make that decision.

8 BZA CHAIR HILL: I'm with you. I'm with you. So
9 Mr. Dzierzanowski -- can you say your name for me again, sir?

10 MR. DZIERZANOWSKI: You're totally fine. It's
11 Dzierzanowski.

12 BZA CHAIR HILL: Dzierzanowski. Mr.
13 Dzierzanowski, can you reach out to Mr. Wise and have a
14 discussion about A12?

15 MR. DZIERZANOWSKI: Sure.

16 BZA CHAIR HILL: All right. So that I'd like to
17 know. Does the Board need anything else from anybody?

18 Okay. I guess I would like to know that. As to
19 you, Mr. Wise and Mr. Dzierzanowski, I'm not saying anything
20 is getting approved. If something got approved from these
21 four options that the ANC has thrown out, which is Mr. Wise's
22 preference? Okay?

23 Or if there's something different, that's fine.
24 Submit it into the record. And please submit into the record
25 by -- today is Thursday. Today is Thursday, and so we're

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1 coming up on the record actually pretty soon I think.

2 Mr. Moy, when can we get it? Can we ask for stuff
3 by Monday?

4 MR. MOY: I don't remember that part, by Monday.
5 It depends on when you want to set -- clearly you're going
6 to have to allow a timeline for a response. So I don't know
7 if it's going to be really tight and you want to come back
8 to next week or are we looking at September.

9 BZA CHAIR HILL: No, I want to have Mr. Hart
10 involved in this discussion, because he's been here for us
11 this whole time. So, you know, on the previous case we asked
12 for something and we asked for something, I thought, by
13 Monday.

14 MR. MOY: I may have stepped away from the phone
15 momentarily. So, you'll have to help me there.

16 BZA CHAIR HILL: Okay.

17 VICE CHAIR HART: Chair Hill, what you're talking
18 about is a previous case that we had that we were talking
19 about what the deadlines were for getting information, and
20 that was actually the deck that we just were discussing in
21 the last case. And so we are getting information and getting
22 some drawings from them by Monday so then we could decide --
23 this coming Monday, so then we could decide on Wednesday.
24 But that was in the previous case we were talking about that.
25 We have not discussed any timeline for any of this

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1 information currently.

2 BZA CHAIR HILL: Yes. So, Mr. Moy, that's what
3 I'm saying. I would like to have this by Monday so that we
4 can then have a deliberation on Wednesday.

5 MR. MOY: Okay. I -- okay. Let me put this on
6 the table for you to discuss. If the Applicant can do this
7 to make a submission to the Board by this Friday, the 31st,
8 so that will give for the opposition party, Mr. Wise, to
9 respond to it, let's say up to Tuesday, August 4th, so that
10 the Board can decide this on that Wednesday the 5th. That's
11 a short response time for Mr. Wise.

12 BZA CHAIR HILL: Mr. Wise do you -- well, we're
13 asking Mr. Wise to be involved in the conversation. And
14 again, I'm just trying to get over one little thing. I don't
15 know whether this is actually going to pass or not, I'm just
16 trying to get one little box checked, which is that you guys
17 will have a conversation about Sheet A12. Okay? And you'll
18 have a conversation about Sheet A12 by Friday.

19 Mr. Wise?

20 MR. WISE: Yes. So I guess, if we agree to that,
21 does that mean we're assuming that -- I don't want to enter
22 anything into the record that leads anyone to believe that
23 we support putting a screen, a 6 to 8-foot screen, on the
24 back of the property. I don't want to agree to any of that.
25 And I especially don't want that to come up in an appeal in

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1 the future.

2 BZA CHAIR HILL: I understand. Okay. Now this
3 is going to take longer than I thought. Now I'm back to Ms.
4 Nagelhout, if you're still with us. Ms. Nagelhout, what I'm
5 trying to get to, and I don't want to -- if -- Mr. Wise used
6 the word appeal, which suddenly now is a whole other word,
7 okay? So if there's a time limit that something is going on
8 with, because Mr. Hart's last day is next Wednesday and I'd
9 like him -- I'd like to hear his thoughts on this case.
10 Right?

11 And so if there is something with timing or
12 anything like that, I would rather just forget it. Okay?
13 And the Board will decide what the Board's going to decide.
14 Okay? Mr. Wise, I don't need you and Mr. Dzierzanowski to
15 talk at all. Okay? We'll figure it out all by ourselves.
16 So that might be the best situation.

17 Is that the case, Ms. Nagelhout? Mr. Hart is
18 nodding yes. I'm going to say that is yes. Correct, Ms.
19 Nagelhout?

20 MS. NAGELHOUT: That's an option. If you don't
21 ask for any post-hearing submissions, other than something
22 from the Applicant demonstrating ownership, then you can set
23 it for decision on Wednesday.

24 BZA CHAIR HILL: Okay. I just need something that
25 demonstrates ownership then. Okay? And we'll figure it out.

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1 All right. So then, there you go. I guess we're done. Is
2 there anything anybody else needs?

3 MR. DZIERZANOWSKI: Just a clarification. I guess
4 we would have until this Friday or Monday to get you any
5 additional ownership supporting documents?

6 BZA CHAIR HILL: Mr. Moy, I guess, I mean they
7 -- Friday is fine with me.

8 MR. MOY: If Applicant can submit Friday, that's
9 fine. The latest would be Monday, August the 3rd. That
10 would be the latest date.

11 BZA CHAIR HILL: Now, Ms. Nagelhout, now I'm going
12 to ask you why is that now not kicking in the timing of the
13 seven days?

14 MS. NAGELHOUT: The ownership stuff was supposed
15 to have been provided initially, and that's what the party
16 in opposition was referring to, that 200 point something-or-
17 other. It's supposed to be part of the initial application.

18 BZA CHAIR HILL: So you're just asking for
19 clarification -- or, we're just asking for clarification.

20 MS. NAGELHOUT: Yeah, but if the Applicant could
21 get it in by Friday, that would be great, and give the party
22 in opposition a chance to comment only on the ownership
23 aspect, which it should be fairly easy. You can waive these
24 rules, too, so you can set different time limits if it's
25 important to you.

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1 BZA CHAIR HILL: The Board?

2 MS. NAGELHOUT: Yes.

3 BZA CHAIR HILL: Okay. Then now I'm back to a
4 different conversation. So, then, if that's the case, I'd
5 like to see by Friday whatever your ownership information is,
6 Mr. Dzierzanowski.

7 MR. DZIERZANOWSKI: Sure.

8 BZA CHAIR HILL: All right. And then, Mr. Wise,
9 you can have by Monday to go ahead and give us any kind of
10 response to their ownership information. Okay? And then
11 we'll be able to have a discussion on --

12 MR. DZIERZANOWSKI: Wednesday.

13 BZA CHAIR HILL: -- Wednesday. Thank you. And
14 this is completely outside of the Board. I'm just saying,
15 Mr. Dzierzanowski and Mr. Wise, if you all want to talk about
16 screening, that's up to you, but we don't have to have
17 anything in the record. Okay?

18 MR. DZIERZANOWSKI: Sure.

19 MR. WISE: Sure. Sounds good.

20 BZA CHAIR HILL: Okay. Do we need anything else?
21 Are we done? Okay. Gentlemen, thank you so much, Mr. Wise,
22 Mr. Dzierzanowski, Mr. Silk.

23 MR. DZIERZANOWSKI: Thank you, everybody.

24 MR. WISE: Thank you.

25 BZA CHAIR HILL: I think that's it. Oh, I forgot

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1 to say, I'm closing the record, I'm closing the hearing,
2 except for the information requested by the Board about the
3 ownership on Friday and the response by the party in
4 opposition in Monday. Then we're going to set it for a
5 hearing, Mr. Moy, on 8/5.

6 MR. MOY: Yes, sir.

7 BZA CHAIR HILL: Okay.

8 COMMISSIONER MILLER: Set it for decision? You
9 said set it for hearing. Set it for decision.

10 MR. MOY: Set it for decision.

11 BZA CHAIR HILL: Right, set it for decision.
12 Okay?

13 MR. MOY: Thank you, Mr. Miller.

14 BZA CHAIR HILL: Do we just want to like hang out
15 now for a little bit? Just kind of like hang out, you know?
16 All right. Okay. You all take care. Bye-bye.

17 MR. MOY: Thank you, everybody.

18 (Whereupon, the above-entitled matter went off the
19 record at 9:52 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 07-29-20

Place: teleconference

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