

GOVERNMENT OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 20, 2021

+ + + + +

The Public Hearing by the District of Columbia Zoning Commission convened via videoconference at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

ZONING COMMISSION MEMBERS PRESENT:

FREDERICK L. HILL, Chairman  
LORNA L. JOHN, Vice Chairperson  
CHRISHAUN S. SMITH, Board Member  
CARL BLAKE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER SHAPIRO, Commissioner  
PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary  
PAUL YOUNG, Zoning Data Specialist

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OFFICE OF PLANNING STAFF PRESENT:

ANNE FOTHERGILL  
BRANDICE ELLIOTT  
CRYSTAL MYERS  
MAXINE BROWN-ROBERTS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from the Public Hearing held on October 20, 2021.

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(9:30 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen to the Board of Zoning Adjustment. Today's public hearing date is 10/20/2021. The public hearing will please come to order.

My name is Fred Hill. I'm the Chairperson of the Board of Zoning Adjustment, District of Columbia. Joining me today is Lorna John, Vice Chair; Board members, Carl Blake and Chrishaun Smith; and Zoning Commissioners Peter May and Peter Shapiro.

Today's meeting and hearing agendas are available on the Office of Zoning's website. Please be advised this proceeding is being recorded by a court reporter. It is also webcast live being Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing.

Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also, please be advised that we don't take any public testimony at our decision meeting sessions. If you're experiencing difficulty accessing Webex or with your telephone call-in, then please call our OZ hotline number 202-727-5471 to receive Webex login or call-in instructions.

At the conclusion of a decision meeting, I shall, in consultation with the Office of Zoning, determine whether a full or summary order may be issued. A full order is required when

1 the decision it contains is adverse to a party, including an  
2 affected ANC. A full order may also be needed if the Board of  
3 Zoning's decision differs from the Office of Planning's  
4 recommendation. Although the Board favors the use of summary  
5 orders whenever possible, an applicant may not request the Board  
6 to issue such an order.

7 In today's hearing session, everyone who is listening  
8 on Webex or by telephone, will be muted during the hearing and  
9 only persons who have signed up to participate or testify will  
10 be unmuted at the appropriate time. Please state your name and  
11 home address before providing any oral testimony or your  
12 presentation. Oral presentations should be limited to the  
13 summary of your most important points. When you're finished  
14 speaking, please mute your audio so that your microphone is no  
15 longer picking up sound and background noise.

16 Once again, if you're experiencing difficulty accessing  
17 Webex or with your telephone call-in, or if you've forgotten to  
18 sign 24 hours prior to hearing, then please call our OZ hotline  
19 number at 202-727-5471 to sign and testify and to receive Webex  
20 log-in or call-in instructions.

21 All persons planning to testify either in favor or in  
22 opposition should have signed up in advance. They will be called  
23 by name to testify. If this is an appeal, only parties are  
24 allowed to testify. By signing up to testify, all participants  
25 will complete the oath or affirmation as required by Subtitle Y

1 408.7.

2           Requests to enter evidence at the time of the online  
3 virtual hearing, such as written testimony or additional  
4 supporting documents other than live video, which may not be  
5 presented as part of the testimony, may be allowed pursuant to  
6 Subtitle Y 103.13, provided that the person making the request  
7 to enter an exhibit, explaining how the proposed exhibit is  
8 relevant and the good cause it justifies allowing the exhibit  
9 into the record, including an explanation of why the requester  
10 did not file the exhibit prior to the hearing pursuant to Subtitle  
11 Y 206, and how the proposed exhibit would not unreasonably  
12 prejudice any parties. The order of procedures for special  
13 exception and variances are Subtitle Y 409. The appeal order is  
14 in Subtitle Y 507.

15           At the conclusion of each case, an individual who is  
16 unable to testify because of a technical issue may file a request  
17 for leave to file a written version of the planned testimony to  
18 the record within 24 hours following the conclusion of public  
19 testimony and the hearing.

20           If additional written testimony is accepted, the  
21 parties will be allowed a reasonable time to respond as determined  
22 by the Board. The Board will then make its decision at its next  
23 meeting session, but no earlier than 48 hours after the hearing.  
24 Moreover, the Board may request additional specific information  
25 to complete the record. The Board and the staff will specify at

1 the end of the hearing exactly what is expected and the date when  
2 the person must submit the evidence to the Office of Zoning. No  
3 other information shall be accepted by the Board.

4 Finally, the District of Columbia Administrative  
5 Procedures Act requires that the public hearing on each case be  
6 held in the open before the public. However, pursuant to Section  
7 405(b) and 406 of that Act, the Board may, consistent with its  
8 rules and procedures and the Act, enter into a closed meeting on  
9 a case for purposes of seeking legal counsel on the case pursuant  
10 to D.C. Official Code Section 2-575(b)(13) -- I'm sorry (b)(4)  
11 and/or deliberating on a case pursuant to D.C. Official Code  
12 Section 2-575(b)(13), but only after providing the necessary  
13 public notice and in the case of an emergency closed meeting  
14 after taking a roll call vote.

15 Mr. Secretary, do we have any preliminary matters?

16 MR. MOY: Good morning, Mr. Chairman, and members of  
17 the Board.

18 I do have a quick announcement with regards to today's  
19 docket. Case Application No. 20529 of Oakwood, LLC have requested  
20 a postponement and their request was granted a continuance to  
21 February the 9th, 2022. Other than that, that's all I have for  
22 you for preliminary matters, Mr. Chairman.

23 CHAIRPERSON HILL: All right. Great, Mr. Moy.

24 Mr. Shapiro, you are here for --

25 COMMISSIONER SHAPIRO: I'm here, Mr. Chair, for the

1 first case which is 4404 Lee Street, N.E.

2 CHAIRPERSON HILL: Got it.

3 Mr. Moy, if you can call that case, please.

4 MR. MOY: All right. This case in the Board's meeting  
5 session. This Case Application No. 20339 of Lee Street  
6 Development, LLC as amended for special exception under the  
7 voluntary inclusionary development requirements of Subtitle D,  
8 Section 302.5 and Subtitle D, Section 5206.2. This would  
9 construct three principal dwellings with two accessory apartments  
10 in the R-2 Zone. The property located at 4404 Lee St. N.E.,  
11 Square 5125, Lots 868 and 869.

12 Mr. Chairman, a quick preliminary matter here, which  
13 is a recent update this morning, as I speak. We received a motion  
14 from the ANC. I have not read the letter, but I've been told  
15 that the contents of that letter that says apparently the request  
16 to reopen the record so that they would have the chance to review  
17 the final revised drawings. This is the motion from ANC 7D and  
18 -- yeah. So that's your preliminary matter.

19 CHAIRPERSON HILL: I'm looking at the email. I don't  
20 know if you guys want to look at the email. Maybe I --

21 COMMISSIONER SHAPIRO: I was on mute.

22 CHAIRPERSON HILL: Oh. I'm sorry.

23 COMMISSIONER SHAPIRO: I was talking, but on mute.

24 CHAIRPERSON HILL: Oh. Great.

25 COMMISSIONER SHAPIRO: I was just saying that it looks

1 | like it's from a constituent who's asking the ANC to request us  
2 | to open the record. If you go to the bottom of the communication,  
3 | so that's what spurred the communication from the ANC Chair to  
4 | us.

5 |           CHAIRPERSON HILL: Okay. And then -- the ANC then is  
6 | asking to reopen the record, correct?

7 |           COMMISSSIONER SHAPIRO: That's correct. Yes.

8 |           CHAIRPERSON HILL: Did you get it right? And, I mean,  
9 | I don't know what you guys think. I mean, this one's gone on  
10 | for a while and I don't know what additional testimony necessarily  
11 | would help us. I mean, if it were somehow to help the ANC and  
12 | provide more clarification for them, if it's just to allow other  
13 | people. I mean, the record has been open for a long time, people  
14 | have had an opportunity to testify, we've taken a lot of testimony  
15 | on this particular application. But I'm going to kind of go  
16 | around the table and I'm open to discussions on this. I don't  
17 | know, Commissioner Shapiro, if you had an opinion?

18 |           COMMISSIONER SHAPIRO: I'm feeling a bit the way you  
19 | are, which is we've heard a lot of information on this case, and  
20 | it has been hanging around for a while. I, you know, I'm inclined  
21 | to defer to the ANC if they want to open the record. Though, if  
22 | we were to do that, then I think it -- I mean, you help me with  
23 | this, but then we need to allow the applicant to respond again,  
24 | and it sort of triggers the whole process.

25 |           CHAIRPERSON HILL: Right. Okay. So you're -- we don't

1 have it and we can continue to discuss.

2 Vice Chair John, do you have any initial thoughts?

3 VICE CHAIR JOHN: My initial thoughts, Mr. Chairman,  
4 are that we should not reopen the case. The letter asks for an  
5 opportunity to review complete plans and to ask, I guess, the  
6 applicant to file complete plans, but we do have the complete  
7 plans on file. The only adjustment that was made, as I recall,  
8 was to change the location of the IZ unit from the rear, from  
9 the rear building to the one on the right, and we have had  
10 significant testimony in this case. So I'm not sure what  
11 additional witnesses. There was no proffer as to what the  
12 additional witnesses would testify to.

13 CHAIRPERSON HILL: Okay.

14 VICE CHAIR JOHN: So I'm inclined not to reopen the  
15 case at this point. It's been -- it was the application was  
16 first filed July 21st and we have had continuances, I believe,  
17 so that's it for now.

18 CHAIRPERSON HILL: Okay. All right. Well, I'm going  
19 to agree with you as well.

20 I mean, Mr. Smith, do you have anything to add?

21 BOARD MEMBER SMITH: I don't have anything to add. I  
22 agree with what all of you has stated so far. This has been open  
23 since the end of July. We have deferred to the ANC. You know,  
24 in the last hearing, there were some concerns from the ANC about  
25 the access from the paper street that is Minnesota Avenue. And

1 we've heard from the D.C. Fire Department and EMS about sufficient  
2 access to that rear property. And, you know, I'm inclined to go  
3 forward and hear this case today. I don't know if additional  
4 testimony would be helpful to the record, so I agree with them.

5 CHAIRPERSON HILL: Mr. Blake?

6 BOARD MEMBER BLAKE: I would agree with the comments  
7 that the Board members have made to this point and I, too, do  
8 not think that there would be significant benefit from it. It  
9 would be nice for the ANC certainly to chime in, but I do think  
10 that there is no additional information in the record that they're  
11 going to benefit from. That said, I'm comfortable with what we  
12 are designed to do.

13 CHAIRPERSON HILL: Commissioner Shapiro, are you on  
14 board?

15 COMMISSIONER SHAPIRO: I'm on board.

16 CHAIRPERSON HILL: Okay. All right. So let's go ahead,  
17 Mr. Moy. I don't even know. I guess. Well, I guess it's a  
18 motion to reopen the record. Is it a motion, Ms. Nagelhout that  
19 we have to respond to?

20 MS. NAGELHOUT: I think that's how it's being  
21 presented. I don't have anything except the email, so --

22 CHAIRPERSON HILL: Right.

23 MS. NAGELHOUT: -- you could consider a motion to  
24 reopen.

25 CHAIRPERSON HILL: All right. I'm going to go ahead

1 and make a motion to deny the motion to reopen the record due to  
2 the fact that the plans are already in the record. And we have  
3 taken testimony from all the different parties and so that we can  
4 get the point we can deliberate on this and ask for a second,  
5 Ms. John.

6 VICE CHAIR JOHN: Second.

7 CHAIRPERSON HILL: The motion has been made and  
8 seconded.

9 Mr. Moy, if you could take a roll call.

10 MR. MOY: When I call each of your names, if you would  
11 please respond with a yes, no, or abstain to the motion made by  
12 Chairman Hill to deny the motion to reopen. This motion was  
13 seconded by Vice Chair John.

14 Zoning Commissioner Peter Shapiro.

15 COMMISSIONER SHAPIRO: Yes.

16 MR. MOY: Mr. Smith.

17 BOARD MEMBER SMITH: Yes.

18 MR. MOY: Mr. Blake.

19 BOARD MEMBER BLAKE: Yes.

20 MR. MOY: Vice Chair John.

21 VICE CHAIR JOHN: Yes.

22 MR. MOY: Chairman Hill.

23 MR. MOY: Yes.

24 Staff would record vote as 5-0-0 and this is on the  
25 motion made by Chairman Hill to deny. Seconded -- the motion

1 was seconded by Vice Chair John. Also, in support of the motion  
2 to deny is Zoning Commissioner Peter Shapiro, Mr. Smith, Mr.  
3 Blake, Vice Chair John and Chairman Hill. Motion carries, sir.

4 CHAIRPERSON HILL: Okay. Great. Thanks, Mr. Moy.

5 All right. In terms of the case itself, I thought  
6 that, you know, a lot of things we've been going back and forth  
7 with. It was whether or not the IZ unit was for sale, I guess  
8 that has been addressed. There was also concern about whether  
9 or not the owner has to live in one of the places, you know, the  
10 accessory dwelling unit or the other unit that, I guess, is  
11 something that the developer will have to figure out because  
12 they're the ones that have to -- somebody has to live in one of  
13 those -- the primary person has to live in one of those units.

14 I think in terms of their meeting the criteria, I'm  
15 actually -- I think the Office of Planning's supplemental report  
16 was very clear in terms of the different things that were put  
17 forward. I also would agree with, you know, first of all, that  
18 analysis as well as that that the applicant had put forward it.  
19 It is the ANC voted to oppose, in a split vote, I guess, three  
20 to two; however, I'm inclined to grant this application.

21 Commissioner Shapiro, do you have any comments?

22 COMMISSIONER SHAPIRO: The only thing -- I agree with  
23 you, Mr. Chair. The only thing I would add is that DDOT supports  
24 the application even with the complexity of Minnesota Avenue, the  
25 unpaved section, and they go into a little detail around that,

1 but that they're comfortable with it. And even the D.C. Fire  
2 and EMS has no objection. So I agree with you, and I think it's  
3 unfortunate that that ANC is not on board, but I would want to  
4 support this application.

5 CHAIRPERSON HILL: Vice Chair John.

6 VICE CHAIR JOHN: So I'm in support of the application,  
7 and I agree with everything that's just been said. But I wanted  
8 to clarify what the relief is for -- to make sure that they're  
9 approving the right thing. So it's a voluntary IZ program and  
10 the subdivision of the two lots. So really, they're asking for  
11 lot width and lot area relief pursuant to the IZ program. So  
12 I'm in support, and I believe the issues as described in the OP's  
13 report were resolved. And by moving the IZ unit to the building  
14 that has no accessory structure, that the accessory unit, that  
15 the application is consistent with what the IZ program allows.  
16 And also especially important was D.C. Fire and Emergency Medical  
17 Services' approval and their acknowledgment that they would have  
18 access to the building and the rear. And I believe they will be  
19 doing that through a paved -- no, not a paved -- through access  
20 along the side of the buildings from the Lee Street location. So  
21 I thought that the issues that we struggled with have been  
22 addressed and I am in support of the application.

23 CHAIRPERSON HILL: Thank you, Vice Chair John.

24 Mr. Smith.

25 BOARD MEMBER SMITH: I have nothing to add. I agree

1 with the testimony of my colleagues thus far. And I believe,  
2 Ms. John, you were speaking about the Minnesota Avenue, paper  
3 street, which seems to -- you know, it came up as an issue the  
4 last time we heard this case. So the applicant does propose to  
5 pave that paper street. Currently, it looks to be some form of  
6 a gravel drive currently, so they do propose to pave that. But  
7 in paving it, they are not proposing to expand it. They're not  
8 removing trees. So they're essentially improving the existing  
9 pavement, if you will, the driving service that currently exists  
10 there now. So there shouldn't be any substantial change to what  
11 the residents see out there now. So I believe that the applicant  
12 has fully addressed all the comments that we asked them to comment  
13 on or an address and also what OP has asked them to address. So  
14 with that, I stand on OP's staff report and the testimony of my  
15 colleagues, and I will support it.

16 CHAIRPERSON HILL: Thank you.

17 Mr. Blake.

18 BOARD MEMBER BLAKE: Sure. I, too, agree that the  
19 applicant has addressed all the issues that were -- that came up  
20 and I would give substantial weight to the Office of Planning  
21 report, as well as supplemental report and support this.

22 CHAIRPERSON HILL: Okay. Thank you. I'm going to make  
23 a motion to approve Application No. 20339 as captioned and read  
24 by the secretary and ask for a second, Vice Chair John.

25 VICE CHAIR JOHN: Second.

1 CHAIRPERSON HILL: The motion has been made and  
2 seconded.

3 Mr. Moy, if you could take a roll call, please. Mr.  
4 Moy?

5 MR. MOY: Yes, I'm sorry, Mr. Chair. I was hunting for  
6 my icon. It's too small for my bad eyes. Okay. So let's see  
7 -- where are we?

8 So when I call each of your names, if you would please  
9 respond with a yes, no, or abstain to the motion made by Chairman  
10 Hill to approve the application for the amended relief requested.  
11 The motion was seconded by Vice Chair John.

12 Zoning Commissioner Peter Shapiro.

13 COMMISSIONER SHAPIRO: Vote yes.

14 MR. MOY: Mr. Smith.

15 BOARD MEMBER SMITH: Yes.

16 MR. MOY: Mr. Blake.

17 BOARD MEMBER BLAKE: Yes.

18 MR. MOY: Vice Chair John.

19 VICE CHAIR JOHN: Yes.

20 MR. MOY: Chairman Hill.

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: Staff would record the vote as 5-0-0 and this  
23 is on the motion made by Chairman Hill to approve. The motion  
24 was seconded by Vice Chair John. Also, in support of the motion  
25 to approve the application is Zoning Commissioner Peter Shapiro,

1 Mr. Smith, Mr. Blake, Vice Chair John, Chairman Hill. Motion  
2 carries, sir, 5-0-0.

3 CHAIRPERSON HILL: Okay. Thank you.

4 Commissioner Shapiro, is that it for you today?

5 COMMISSIONER SHAPIRO: That's it for me. Thanks all.

6 CHAIRPERSON HILL: Okay. Have a nice day.

7 Commissioner May, can you hear me? Good morning. Good  
8 morning.

9 All right. Mr. Moy, you can go ahead and call our next  
10 case.

11 MR. MOY: Thank you, Mr. Chairman.

12 This is the first case in the Board's hearing session  
13 today. And this is Case Application No. 20524 of Gregory Potts.  
14 Captioned and advertised for special exceptions from the rooftop  
15 and upper floor alteration restrictions, Subtitle E, Section  
16 206.1(a); and the rooftop and upper floor repair restrictions of  
17 Subtitle E, Section 206.2. This would construct a third story  
18 addition and convert it to a flat -- an existing attached two-  
19 story with cellar principal dwelling unit in the RF-1 Zone. The  
20 property is located at 521 Florida Avenue, N.E., Square 828, Lot  
21 48. And let's see. The preliminary matter here, Mr. Chairman,  
22 is that the applicant has filed into the record a motion to  
23 postpone.

24 CHAIRPERSON HILL: Okay.

25 Mr. Bello, can you please introduce yourself for the

1 record?

2 MR. BELLO: Good morning, Mr. Chair and Board members.  
3 Toye Bello. 1917 Benning Road, representing the applicant.

4 CHAIRPERSON HILL: Okay. Great.

5 Commissioner Eckenwiler, can you hear me?

6 COMMISSIONER ECKENWILER: I can, Mr. Chairman. Good  
7 morning. Mark Eckenwiler, Vice Chair ANC 6C on behalf of the  
8 ANC.

9 CHAIRPERSON HILL: Commissioner Eckenwiler, again, the  
10 background always just cracks me up. You know, I mean, one day,  
11 Commissioner -- when this is all over, I'm going to miss it, you  
12 know.

13 COMMISSIONER ECKENWILER: This is never going to be  
14 over, Mr. Chairman.

15 CHAIRPERSON HILL: Oh. It's definitely going to be  
16 over for you, you know.

17 Let's see. Okay. Mr. Bello, what are you proposing  
18 (audio interference)?

19 MR. BELLO: So the applicant has just retained me to  
20 try to augment the records this just past week. So I need a  
21 little bit of time to augment that record.

22 CHAIRPERSON HILL: How much time you need, Mr. Bello?

23 MR. BELLO: Not that much time, as long as we have  
24 enough of the 21 days to meet the Commissioner's demand.

25 CHAIRPERSON HILL: Okay.

1           Mr. Moy, do you have any kind of idea as to when we  
2 can come back with this?

3           MR. MOY: Well, I did, Mr. Chairman. I, last night,  
4 jotted down the dates of the ANC's next two or three meetings,  
5 but I see that there are good Commissioners here to confirm what  
6 those dates are because I must have misplaced those dates. So I  
7 suspect if we -- the Board is interested -- actually, this is  
8 October -- and I think it's the second Wednesday for the ANC 6C,  
9 that would be the second week in November. Because once the  
10 Board slides into December, it's going to be very difficult in  
11 terms of finding a room on your docket in December. So it's  
12 either going to be a date in January or date in November,  
13 depending on when the ANC can (indiscernible) --

14           CHAIRPERSON HILL: Commissioner Eckenwiler, when do you  
15 guys meet again?

16           COMMISSIONER ECKENWILER: So there are two answers to  
17 that question, Mr. Chairman. The quick answer is the full ANC  
18 will meet again on November 10th and December 8th. However, in  
19 the interest of being completely forthcoming with the Board, I  
20 do want to say that it's not at all clear whether or not the ANC  
21 will vote on this again. We'll make a decision once we review  
22 any supplemental materials. But we've certainly, in the past,  
23 and might well in this case, just stand on our prior vote if  
24 there's really not much different.

25           CHAIRPERSON HILL: Can you remind me again,

1 Commissioner, what was your prior vote?

2 COMMISSIONER ECKENWILER: Our vote in this case is to  
3 oppose, and I do want to say to the extent that -- factors into  
4 the Board's consideration. I think that this is likely to be a  
5 pretty lengthy hearing because this is going to be an involved  
6 -- there's an involved and I think heavily disputed factual record  
7 around this case.

8 CHAIRPERSON HILL: Okay. All right. Then let's see.  
9 So I mean and Mr. Bello, I know you're just starting, but I can't  
10 -- I'm just jammed up. Like today was this applicant's chance.  
11 And so now, whether or not they were prepared or ready, you know,  
12 now I can't, you know, it took them -- anyway. It took them a  
13 while to get to this spot as you know. So now, Mr. Moy, I don't  
14 know what January or even I think that the date is correct, Mr.  
15 Bello.

16 MR. BELLO: Mr. Chair, can I make a statement?

17 CHAIRPERSON HILL: Sure. Go ahead.

18 MR. BELLO: All right. So there's not going to be any  
19 substantive change to the project that the ANC (audio  
20 interference).

21 CHAIRPERSON HILL: Okay.

22 MR. BELLO: So I'm with --

23 CHAIRPERSON HILL: That's fine. So you're still  
24 probably going to get a "no." That great or whatever. I don't  
25 know. I just don't know when -- no offense, Mr. Bello. Your

1 | guy should have been ready today, you know, because I don't have  
2 | now -- particularly, if you were going to get to a "no" later,  
3 | you might as well have gotten your "no" now, and we -- I got a  
4 | lot of stuff going on, right.

5 |         So Mr. Moy, if -- I mean, when can -- I mean, we can  
6 | talk about this later. I hate doing this back and forth right  
7 | now with everybody. I mean, Mr. Moy, do you want to talk later,  
8 | and we'll find a slot for Mr. Bello and see if we can find  
9 | something or not? Otherwise, I'm saying early February is what  
10 | I'm going for right now.

11 |         MR. MOY: Well, those are the two possibilities. I  
12 | would prefer to have at least a tentative date, Mr. Chairman, so  
13 | we do -- there'll be a date set targeted in February, or knowing  
14 | that the ANC's meeting on November 10th, the Board could tee this  
15 | up for November 17th. We can squeeze this in as the eleventh  
16 | case.

17 |         CHAIRPERSON HILL: No. Mr. Moy, we're going to talk  
18 | about this later. Okay.

19 |         Mr. Bello, we'll find a time. We're going to figure  
20 | it out because I'm not going to do -- and Mr. Moy, I think you  
21 | and I need also talk about this. Like, I don't want to spend  
22 | time. There's just too many cases now. Okay. And if people  
23 | aren't prepared and ready when the time comes, then they just  
24 | have to get pushed back to the back of the line.

25 |         MR. MOY: Understood.

1 CHAIRPERSON HILL: And so I'm not going to subject the  
2 Board to an eleventh case that is apparently going to go on for  
3 however long it's going to go on, right. Okay. It's a little  
4 too early for me to get excited. Okay.

5 Mr. Bello, we'll try to do our best, but I'll let you  
6 know what's going to happen. Okay.

7 MR. BELLO: Thank you, Mr. Chairman.

8 CHAIRPERSON HILL: Okay.

9 Commissioner Eckenwiler, nice to see you.

10 And I'm going to close this portion of the hearing,  
11 whatever this is, and we'll figure out a time, Mr. Moy, and get  
12 back to them. Okay.

13 MR. MOY: Very good.

14 CHAIRPERSON HILL: Okay. Great. Thank you. All right.  
15 Thanks again --

16 COMMISSIONER ECKENWILER: Thanks, Mr. Chairman.

17 CHAIRPERSON HILL: Bye-bye.

18 Okay. All right. Mr. Moy, do you want to call the  
19 next case?

20 MR. MOY: Yes. Thank you.

21 This would be Case Application No. 20400 of Green  
22 Street Apartments, LLC. This application has been amended for a  
23 special exception under the new residential development  
24 requirements of Subtitle U, Section 421.1. This would construct  
25 a new detached three-story with a cellar and penthouse, 10-unit

1 apartment house in the RA-1 Zone. The property is located at  
2 2326 through 2328 Green Street, S.E., Square 5754, Lots 40 and  
3 41. The Board last heard this application in its hearing on  
4 September the 29th. And I believe, Mr. Chairman, that Zoning  
5 Commissioner Peter May is participating on this application now.

6 CHAIRPERSON HILL: Got it.

7 Commissioner May, can you hear me?

8 COMMISSIONER MAY: Yes.

9 CHAIRPERSON HILL: Are you up to speed?

10 COMMISSIONER MAY: Yeah. Chairman Hood asked me to  
11 take over the case because of complications with today, and I  
12 agreed to do that. And so I've read up on the case and I'm  
13 prepared to participate.

14 CHAIRPERSON HILL: All right. Thanks, Commissioner.

15 Mr. Sullivan, can you hear me?

16 MR. SULLIVAN: Yes, I can. Marty Sullivan with Sullivan  
17 & Barros.

18 CHAIRPERSON HILL: Thanks. And who's here with you  
19 today, Mr. Sullivan?

20 MR. SULLIVAN: We have the property owner and two  
21 representatives from the property owner, and I think an architect  
22 was supposed to be on, but I'm not sure if he's here yet. I'm  
23 not sure if we need him.

24 CHAIRPERSON HILL: Okay. Who is the property owner  
25 again?

1 MR. SULLIVAN: It's Haider and Jessica, if you want to  
2 introduce yourselves, please.

3 CHAIRPERSON HILL: Mr. Haimus, can you hear me?

4 MR. HAIMUS: Yes, Mr. Chair. Good morning.

5 CHAIRPERSON HILL: Good morning. Could you introduce  
6 yourself for the record, please?

7 MR. HAIMUS: Yes. Haider Haimus, owner of Green Street  
8 Apartments, LLC.

9 CHAIRPERSON HILL: And who's here with you as well, Mr.  
10 Haimus?

11 MR. HAIMUS: Jessica Bachay.

12 MS. BACHAY: Hi. Good --

13 MR. HAIMUS: She is the manager of Green Street  
14 Apartments, LLC.

15 CHAIRPERSON HILL: Ms. Bachay, can you introduce  
16 yourself for the record, please?

17 MS. BACHAY: Sure. This is Jessica Bachay, manager of  
18 Green Street Apartments, LLC.

19 CHAIRPERSON HILL: Got it. And I see is it a Ms. --  
20 is it Commissioner Moore? Or is it Ms. Moore? I think it's a  
21 Commissioner, but can you hear me in either case? Commissioner  
22 Moore?

23 COMMISSIONER MOORE: Good morning, everyone. Hello.

24 CHAIRPERSON HILL: Yeah. Maybe turn off -- there's  
25 some feedback, Commissioner. Maybe turn off the -- hear

1 something. Maybe the computer.

2 COMMISSIONER MOORE: I have you on (audio  
3 interference). Can you hear me now?

4 CHAIRPERSON HILL: Yeah. But you need to mute your  
5 computer.

6 COMMISSIONER MOORE: How about that?

7 CHAIRPERSON HILL: Yeah, that's perfect. Thank you.

8 COMMISSIONER MOORE: You're welcome.

9 CHAIRPERSON HILL: All right. Commissioner, could you  
10 introduce yourself for the record, please?

11 COMMISSIONER MOORE: Hi. Good morning. It's  
12 Commissioner Laniece Moore 8A04.

13 CHAIRPERSON HILL: Okay. Great. Thanks, Commissioner.

14 COMMISSIONER MOORE: You're welcome.

15 CHAIRPERSON HILL: All right. So let's see. I'm going  
16 to -- yeah, go ahead, Mr. Moy.

17 MR. MOY: Sorry to interrupt you, Mr. Chair. I forgot  
18 to mention. (Audio interference), I think there was a filing for  
19 a waiver to allow (audio interference). Mr. Sullivan can confirm  
20 that for me.

21 CHAIRPERSON HILL: Got it. Commissioner Moore, can you  
22 hear me?

23 COMMISSIONER MOORE: Yes.

24 CHAIRPERSON HILL: Could you mute your line? There  
25 seems to be a little bit of feedback. And when we call on you,

1 you can unmute your line. Great. Thank you.

2 Let's see. There's a couple -- well, first of all, Mr.  
3 Sullivan, can you clarify what Mr. Moy just said?

4 MR. SULLIVAN: Yes. We submitted two pieces of  
5 information yesterday that were talked about in the last -- the  
6 last time we were here. One is the complete removal of the  
7 penthouse following on the Zoning Commission decision last week,  
8 so the penthouse has been removed. It's still ten units, so  
9 nothing else has changed about the project. It's still an IZ  
10 project and it's still ten units.

11 The other thing that we submitted was an agreement  
12 between the applicant and the neighboring property owner for  
13 access to the parking spaces as the Board requested at our last  
14 proceeding.

15 CHAIRPERSON HILL: Got it.

16 MR. SULLIVAN: And so that that was just wrapped up.  
17 Those things were done last minute. And so we were hurrying to  
18 get them in, and we just got them in yesterday.

19 CHAIRPERSON HILL: Got it. And they're not in the  
20 record currently, correct?

21 MR. SULLIVAN: Wouldn't be because we filed them in the  
22 last 24 hours.

23 CHAIRPERSON HILL: Got it. Yeah. Sometimes, Mr.  
24 Sullivan, it ends up in the record and it doesn't, so like I'm  
25 just I'm looking at it right now. I can't see it. So unless

1 the Board has any questions -- I'm sorry, any concerns, I'd like  
2 to go ahead and allow that into the record. And actually, I'd  
3 like to maybe push this case after lunch or maybe a little bit  
4 later so we can have a chance to look at those items. Because  
5 now that the penthouse has been removed, I want to at least be  
6 able to kind of understand that, so that's one thought.

7 So first of all, if staff could go ahead, Mr. Moy,  
8 unless somebody in the Board has an objection and, if so, please  
9 raise your hand.

10 Okay. We'll go ahead and allow those items into the  
11 record. I'm just speaking to the Board right now, and then I'm  
12 going to ask the Commissioner about what items -- maybe she has  
13 to say, or I just want to make sure the timing of this works out  
14 for everyone also.

15 Do you, Commissioner May, have any thoughts about what  
16 I just said maybe pushing this back a little bit so we can take  
17 a look at those exhibits, or would you be comfortable just looking  
18 at them as we go through this hearing?

19 COMMISSIONER MAY: It's hard to tell without actually  
20 seeing them, but I don't have any objection to pushing it off  
21 for a bit. I don't -- I mean, the rest of the agenda, I'm not  
22 sure how quickly everything will go. We have one likely lengthy  
23 case. I think we have three pretty short --

24 CHAIRPERSON HILL: No, no, no. I understand. But I'm  
25 just saying, so you could make -- do you think you could work

1 through it now as we -- I'm actually back on --

2 COMMISSIONER MAY: Yes, I could.

3 CHAIRPERSON HILL: -- I'm back on the fence. I can  
4 maybe work through it now. If you, Commissioner May, think you  
5 can work through it now, then we'll just wait a couple of minutes  
6 for this to pop in the record. Ms. John?

7 VICE CHAIR JOHN: It's in the record now, Mr. Chairman,  
8 the signed parking access agreement and updated surveyor's plat  
9 and updated architectural plans. And perhaps since everyone is  
10 here, Mr. Sullivan can just walk us through.

11 CHAIRPERSON HILL: No, that's great. Okay. If you're  
12 comfortable with it, that's fine with me then.

13 Okay. Mr. Smith, are you in agreement?

14 BOARD MEMBER SMITH: Yes, I'm in agreement.

15 CHAIRPERSON HILL: Okay.

16 Mr. Blake, are you in agreement?

17 BOARD MEMBER BLAKE: Yes.

18 CHAIRPERSON HILL: Okay. All right. Mr. Sullivan,  
19 then we're going to keep chugging along here.

20 COMMISSIONER MAY: I think that's -- oh, wait a second.  
21 I'm having trouble accessing it. Is it available to us in IZIS  
22 because I have -- I'm having difficulties with ZDocs at the  
23 moment?

24 CHAIRPERSON HILL: I got it through IZIS.

25 COMMISSIONER MAY: Okay. I'll try again. Thank you.

1 VICE CHAIR JOHN: I got it through ZDocs.

2 MR. SULLIVAN: Same. ZDocs --

3 CHAIRPERSON HILL: Well, looks like, Mr. Sullivan,  
4 you're going to walk us through this anyway, or you can, because  
5 it looks like that exhibit has all the new plans.

6 So Mr. Sullivan, can you hear me?

7 MR. SULLIVAN: Yes.

8 CHAIRPERSON HILL: Okay. Great. So just to be clear  
9 on a couple of things, if you could just kind of like walk us  
10 through what has happened since the last time you guys were with  
11 us. And I don't know if you want to pull up the plans just to  
12 help clarify what has been removed and then also clarification  
13 on the driveway, right. And then also, just to be clear, DDOT  
14 was in support, but they had a TDM plan, and the applicant agreed  
15 to the TDM plan, correct?

16 MR. SULLIVAN: Yes, we did. I'm not sure if that is  
17 still required now that we're not asking for parking relief, but  
18 we can.

19 CHAIRPERSON HILL: I forgot. Okay. Well, we'll see  
20 how that goes. All right. Is there anything you want to pull  
21 up, Mr. Sullivan or you just want to speak?

22 MR. SULLIVAN: I can just speak and then if the Board  
23 has questions. I understand that the architect is here and needs  
24 to be let in. But why don't I just go ahead and speak briefly  
25 and then we'll go from there. But this has been through a full

1 hearing, a couple actually, and this was actually scheduled for  
2 decision two days ago. And then the Board pulled it off the  
3 decision because they wanted more information about the parking  
4 access to the parking spaces because we had withdrawn the request  
5 for a special exception for parking. So now, all we're asking  
6 for is the RA-1 relief under 421.

7           So the parking issue itself is self-certified. We have  
8 certified that we're going to meet the parking requirement. If  
9 for some reason we don't meet the parking requirement, we won't  
10 get a building permit. But the Board asked for this agreement,  
11 so we have the agreement and there is the driveway. This is  
12 shown on page 3 of the plans. There's a driveway added on the  
13 adjacent property, which was also before the Board recently for  
14 approval, and so that will be under construction. These will be  
15 under construction about the same time.

16           So they have come to an agreement that we can get to  
17 our parking spaces by way of their driveway, and so we'll meet  
18 the parking requirements. So that relief was removed actually a  
19 while ago. The only thing new here is we're submitting this  
20 agreement. Once again exhibits --

21           CHAIRPERSON HILL: (Indiscernible) the penthouse, sir.

22           MR. SULLIVAN: So the penthouse, yeah, that was one of  
23 the reasons I asked. I asked for a postponement in order to get  
24 the agreement and to get past the date of the Zoning Commission's  
25 consideration of 1413(e), which they did last week and made it

1 clear that habitable penthouse is not going to be permitted, and  
2 so we just removed that. And so it's just lopped off the top of  
3 the plan, so the massing and the height is that much smaller than  
4 it was before. And you can see on the plans on page 2 of the  
5 new plans. And at the end, there are some axiomatic -- there's  
6 some excellent views with the penthouse removed there as well.

7 And I can have them bring in -- his name is Adam Davie  
8 and if he is out there --

9 CHAIRPERSON HILL: Well, let me see.

10 MR. SULLIVAN: Oh. There he is.

11 CHAIRPERSON HILL: Oh.

12 MR. DAVIE: Yes, I'm here.

13 MR. SULLIVAN: So if you have any questions then for  
14 the architect.

15 CHAIRPERSON HILL: Mr. Davie, can you hear me?

16 MR. DAVIE: Yes, I can.

17 CHAIRPERSON HILL: Could you introduce yourself for the  
18 record, please?

19 MR. DAVIE: Yes. My name is Adam Davie, and I'm  
20 representing the architect for the Green Street project.

21 CHAIRPERSON HILL: Okay. Great. Thanks. Let's see  
22 where we get Mr. Davie.

23 Commissioner May and some (audio interference)  
24 questions, as might I, but let's just see what happens.

25 All right. Mr. Sullivan, is that it?

1           MR. SULLIVAN: Yes, that's it. Again, we fully  
2 presented a couple of times. And like I said, it was already  
3 scheduled for decision, and it was just the parking was the only  
4 question.

5           CHAIRPERSON HILL: I remember now. Okay.

6           Does anybody have any questions for the applicant?

7           VICE CHAIR JOHN: Just one question, Mr. Chairman.

8           CHAIRPERSON HILL: Sure. Go ahead, Ms. John.

9           VICE CHAIR JOHN: What slide in the updated  
10 architectural plans shows the driveway?

11          MR. SULLIVAN: Slide 3.

12          VICE CHAIR JOHN: Yeah. I think I see it. All right.  
13 Thank you.

14          BOARD MEMBER SMITH: I have a question for Mr. Davie.

15          CHAIRPERSON HILL: Go ahead, Mr. Smith.

16          BOARD MEMBER SMITH: What is the height differential  
17 in the building after you removed the penthouse?

18          MR. DAVIE: So the roof level is essentially the same,  
19 but since the penthouse roof was removed, so previously for  
20 zoning, it was 31-foot, 6-inches to the top of the roof of the  
21 third floor, and that still remains the same. So now you just  
22 have a 3-foot, 6-foot parapet wall, so technically, the overall  
23 building height is the same. You just don't have that additional  
24 nine feet of penthouse on top.

25          BOARD MEMBER SMITH: Okay. So the penthouse is nine

1 feet. Okay.

2 MR. DAVIE: Yeah.

3 BOARD MEMBER SMITH: In your estimation, does that  
4 affect the shadowing? Does that reduce some of the shadowing  
5 that we saw before?

6 MR. DAVIE: Because of the house having a one-to-one  
7 setback in the front and the back, and the one-half to one setback  
8 on the sides, the penthouse itself, really isn't going to cast a  
9 lot of shadows on the neighboring properties. So once you remove  
10 it, you're really not going to have a change in the shadowing.

11 BOARD MEMBER SMITH: Okay. Got you. Thank you. That's  
12 the only question I have.

13 MR. DAVIE: You're welcome.

14 CHAIRPERSON HILL: Anyone else? Okay. Thanks.  
15 Let's see. Is the Office of Planning there?

16 MS. FOTHERGILL: I'm here.

17 CHAIRPERSON HILL: Okay. Ms. Fothergill, could you  
18 introduce yourself for the record, please?

19 MS. FOTHERGILL: Sure. Good morning. I'm Anne  
20 Fothergill for the Office of Planning for BZA Case 20400.

21 CHAIRPERSON HILL: Ms. Fothergill, I know we've been  
22 through a lot of this. Do you have anything to add, or is there  
23 anything you want to clarify?

24 MS. FOTHERGILL: The OP report was filed in February,  
25 and we'd rest on the record of our testimony in June. But I will

1 add that they have withdrawn their request for parking relief and  
2 now show that they meet the parking requirement for the zone.  
3 And we continue to recommend approval of the application.

4 CHAIRPERSON HILL: Okay. So there's no need for a TDM  
5 plan, I would assume?

6 MS. FOTHERGILL: That was from DDOT for the -- related  
7 to the parking relief.

8 CHAIRPERSON HILL: All right. Okay. That was a  
9 rhetorical question, I guess. All right. Let's see.

10 Does anybody have any questions for the Office of  
11 Planning?

12 Okay. Commissioner Moore, can you hear me?

13 COMMISSIONER MOORE: Yes, I can.

14 CHAIRPERSON HILL: Commissioner Moore, would you like  
15 to give us your testimony, or do you have anything you would like  
16 to add?

17 COMMISSIONER MOORE: Can I ask a question? Has Form  
18 129 been submitted into the record from the ANC?

19 CHAIRPERSON HILL: Let me look, Ms. -- Commissioner.  
20 I don't know if Mr. Moy or Ms. Nagelhout, if you can help me with  
21 that one.

22 MR. MOY: I will check as well.

23 CHAIRPERSON HILL: I don't know, Commissioner. I can  
24 go ahead and find out as we kind of go through this. Is there  
25 -- but beyond that, is there anything else you'd like to ask?

1 COMMISSIONER MOORE: No, not really.

2 CHAIRPERSON HILL: Okay.

3 COMMISSIONER MOORE: Because this, the form needed to  
4 be for the ANC to receive great weight. And I submitted the form  
5 to my Chair, to the Chair Commissioner Muhammad for her to sign  
6 and enter it into the record for the case. And I'm not sure if  
7 she did or not.

8 CHAIRPERSON HILL: Okay.

9 COMMISSIONER MOORE: Yeah.

10 CHAIRPERSON HILL: We can find out about that. I mean,  
11 it seems with you guys, there's a lot of information from your  
12 ANC in the record and that we took a lot of testimony.

13 Do you have any -- does anybody have any questions for  
14 the Commissioner?

15 VICE CHAIR JOHN: Yes.

16 CHAIRPERSON HILL: Does anybody have any -- from the  
17 Board? Ms. John.

18 VICE CHAIR JOHN: Some clarification. There is an ANC  
19 8A letter in the file at Exhibit 64 and it appears to have been  
20 voted unanimously, 7-0-0 in opposition. I don't know if there's  
21 a later letter, but I believe it meets the criteria for the --

22 CHAIRPERSON HILL: Got it.

23 COMMISSIONER MOORE: Oh. Okay. That was the data --  
24 was that in March?

25 VICE CHAIR JOHN: No.

1 CHAIRPERSON HILL: July 21st is the date.

2 COMMISSIONER MOORE: July 21st. Okay. That was the  
3 July meeting. Got you.

4 CHAIRPERSON HILL: Okay. All right. Commissioner, I  
5 mean, you guys vote in opposition, correct?

6 COMMISSIONER MOORE: Yes, sir, we did.

7 CHAIRPERSON HILL: Okay. Mr. Smith, do you have a  
8 question?

9 BOARD MEMBER SMITH: Yes. So to follow up on what Mr.  
10 John was saying. I saw that there is a letter in here from  
11 Commissioner Moore, Exhibit 75 dated September 15th. Is that  
12 still an accurate letter?

13 COMMISSIONER MOORE: Could you --

14 BOARD MEMBER SMITH: (Audio interference) when it goes.  
15 It's Exhibit 75 within the record dated September 15 with your  
16 signature, and it speaks to three different exhibits. So exhibit  
17 -- you know, my questions.

18 COMMISSIONER MOORE: Oh. Okay. I got you. That was  
19 the letter for the ANC for the filings.

20 BOARD MEMBER SMITH: Okay.

21 COMMISSIONER MOORE: That was my response. Yeah.  
22 That's my response to the case number of filings.

23 BOARD MEMBER SMITH: Okay.

24 COMMISSIONER MOORE: Yeah. That was my last request.  
25 That was the last request from BZA on a letter that we received.

1 BOARD MEMBER SMITH: Uh-huh.

2 COMMISSIONER MOORE: Yeah.

3 BOARD MEMBER SMITH: Okay. So within that letter, you  
4 speak to the TDM, and you were saying that the applicant hasn't  
5 filed one. There is one in the record.

6 COMMISSIONER MOORE: It is now, but it wasn't -- it is  
7 now but it wasn't back then. It is now. Yeah.

8 BOARD MEMBER SMITH: Got you. Okay.

9 COMMISSIONER MOORE: Because the letter was due on that  
10 date, I believe, the 15th of September.

11 BOARD MEMBER SMITH: Okay.

12 COMMISSIONER MOORE: Yes, sir.

13 BOARD MEMBER SMITH: (Indiscernible).

14 COMMISSIONER MOORE: Okay.

15 BOARD MEMBER SMITH: All right. Thank you.

16 COMMISSIONER MOORE: You're welcome.

17 CHAIRPERSON HILL: Okay. All right. Does anybody have  
18 any more questions for anyone?

19 I have one question. Commissioner Moore, if you  
20 wouldn't mind, just muting your line. I'm sorry.

21 COMMISSIONER MOORE: Yes, sir.

22 CHAIRPERSON HILL: We're getting some feedback. Thank  
23 you so much. I'm just looking for something in the record.

24 All right. Mr. Sullivan, can you hear me? That whole  
25 thing about DDOT's Transportation Demand Management plan, like

1 | you guys -- I mean, it doesn't seem like anything that  
2 | unreasonable.

3 |           MR. SULLIVAN: No, we're happy to agree to that still.  
4 | I mean it isn't --

5 |           CHAIRPERSON HILL: Oh. There is --

6 |           MR. SULLIVAN: Yeah.

7 |           CHAIRPERSON HILL: I got you. So there is -- the  
8 | applicant will install one additional inverted U bicycle rack.  
9 | Is that still on the plans or is still that intended?

10 |           MR. SULLIVAN: I don't believe that that's been removed  
11 | from the plans. If I could ask Adam about that what -- there  
12 | were changes (audio interference).

13 |           MR. DANEY: Yes, we still provide (audio interference)  
14 | short term.

15 |           CHAIRPERSON HILL: So the applicant is still  
16 | comfortable with those TDM measures, even though you don't have  
17 | the parking needed anymore. Just because the community --

18 |           MR. SULLIVAN: Yes.

19 |           CHAIRPERSON HILL: -- so much about the parking and  
20 | traffic and such. And that we're going, you know, if we were to  
21 | approve this, I mean, it is something that has had a lot of  
22 | testimony and a lot of it was concerning parking.

23 |           MR. SULLIVAN: Right.

24 |           CHAIRPERSON HILL: Right?

25 |           MR. SULLIVAN: Yes, absolutely correct.

1 CHAIRPERSON HILL: Okay.

2 MR. SULLIVAN: We can do that.

3 CHAIRPERSON HILL: All right. Let's see. So does the  
4 Board have any further questions for the applicant? Okay. Mr.  
5 -- oh, sorry. Go ahead, Ms. John.

6 VICE CHAIR JOHN: Motion to strike in this case or am  
7 I confused?

8 CHAIRPERSON HILL: Yeah. But Ms. John, I think maybe  
9 we'll go ahead and if it's all right with you, we'll go ahead  
10 -- and I think we can deliberate on that on our own without  
11 everyone's with that -- unless like -- so there is a motion to  
12 strike. I'm comfortable deliberating on that motion without any  
13 testimony and just relying on what's on the record. If the Board  
14 has questions for anybody, please raise your hand.

15 Okay. So that being the case, Mr. Sullivan, do you  
16 have anything else you'd like to add?

17 MR. SULLIVAN: No. I don't think and -- I mean, I  
18 would just go over a quick summary. The project meets all the  
19 other development standards. It got a pretty low height under  
20 32 feet, two side yards, 40 percent lot occupancy, and it is an  
21 Inclusionary Zoning project. As you mentioned, the biggest  
22 complaint from the neighbors was about parking, and so we did  
23 remove that request for relief and work with the neighbor to  
24 provide a solution, which didn't take any parking spaces away  
25 from that project and provided two parking spaces for this

1 project. So unless the Board has any other questions, I don't  
2 have anything further to say. Thank you.

3 CHAIRPERSON HILL: Okay. Thank you.

4 All right. Okay. I'm going to go ahead and excuse  
5 everyone from the hearing and then close the hearing and the  
6 record. Thank you so much, everyone.

7 Okay. So as Vice Chair John mentioned, there was a  
8 motion to strike Exhibit 64 and 65, and they are duplicative, and  
9 they're also, I guess, currently under investigation. The issue  
10 that I had, I guess, with the motion to strike is that if we were  
11 to grant the motion to strike, it appears as though we might be  
12 taking a side as to whether or not we think it should or shouldn't  
13 be stricken. So it's in the record, I think we can ignore it.  
14 Meaning I don't -- I'm not giving it any credence because if  
15 it's, you know, the only thing we got from the ANC that I saw  
16 was that letter that is signed by the Chair and shows that they  
17 voted in opposition unanimously. So I don't have -- so that's  
18 where my thought is on the motion to strike. And I'm going to  
19 go around the table and see what everybody thinks. And I'll  
20 start with you, Commissioner May.

21 COMMISSIONER MAY: I'm with you, Mr. Chairman. I don't  
22 see any problem leaving it in the record.

23 CHAIRPERSON HILL: Okay. Vice Chair John.

24 VICE CHAIR JOHN: I agree with Commissioner May. I am  
25 fine with leaving it in the record because the Board can decide

1 individually how much weight to give it. And I would just note  
2 that Exhibit 85, I believe, is the exhibit that -- where the ANC  
3 voted unanimously in opposition and that their position has not  
4 changed.

5 CHAIRPERSON HILL: Okay. Thank you. Mr. Smith.

6 BOARD MEMBER SMITH: I agree with my colleagues. I  
7 don't see -- I don't -- we don't have to strike it from the  
8 record, and we can individually make a decision of whether each  
9 want to give those letters great weight, so I agree with my  
10 colleagues.

11 CHAIRPERSON HILL: Mr. Blake.

12 BOARD MEMBER BLAKE: I would agree with you all. I  
13 have nothing else to add.

14 CHAIRPERSON HILL: Okay. All right. Then I think it  
15 was a motion. So I'm going to go ahead and make a motion to deny  
16 the motion to strike, and ask for a second, Ms. John.

17 VICE CHAIR JOHN: Second.

18 CHAIRPERSON HILL: Mr. Moy, the motion has been made  
19 and seconded, if you take a roll call.

20 MR. MOY: When I call each of your names, if you would  
21 please respond with a yes, no, or abstain to the motion made by  
22 Chairman Hill to deny the motion to strike. The motion was  
23 seconded by Vice Chair John.

24 Zoning Commissioner Peter May.

25 COMMISSIONER MAY: Yes.

1 MR. MOY: Mr. Smith.

2 BOARD MEMBER SMITH: Yes.

3 MR. MOY: Mr. Blake.

4 BOARD MEMBER BLAKE: Yes.

5 MR. MOY: Vice Chair John.

6 VICE CHAIR JOHN: Yes.

7 MR. MOY: Chairman Hill.

8 CHAIRPERSON HILL: Yes.

9 MR. MOY: Staff would record vote as 5-0-0, and this  
10 is on the motion made by Chairman Hill to deny the motion to  
11 strike. The motion was seconded by Vice Chair John. Also, in  
12 support of the motion is Zoning Commissioner Peter May, Mr. Smith,  
13 Mr. Blake, Vice Chair John and Chairman Hill. Motion carries,  
14 sir.

15 CHAIRPERSON HILL: All right. Thanks, Mr. Moy.

16 Okay. In terms of the actual case, does somebody want  
17 to start -- you don't have to, but does anybody want to start?  
18 I'm not even looking at Commissioner May because he --

19 VICE CHAIR JOHN: Okay. Commissioner May, go ahead.

20 CHAIRPERSON HILL: No, no. Commissioner May didn't  
21 have to. He read in.

22 VICE CHAIR JOHN: Yeah.

23 CHAIRPERSON HILL: I just want somebody else to talk  
24 for a little while. Who wants to talk?

25 VICE CHAIR JOHN: I'll just start.

1 CHAIRPERSON HILL: Okay. Great. Thanks.

2 VICE CHAIR JOHN: This has been (audio interference).  
3 As its (audio interference), the application is straightforward  
4 in terms of how it meets the criteria for developing the -- let  
5 me see. The specific residential requirement is U 421.1 and  
6 would allow the applicant to develop a new detached 10-unit  
7 apartment house. And so the applicant made significant changes  
8 in the application, which make it less controversial. It has  
9 removed the penthouse and is no longer seeking parking relief.  
10 And throughout the separate hearings, there was significant  
11 opposition from the neighbors and the opposition was chiefly  
12 about crime and parking and congestion. And so DDOT recommended  
13 the TDM plan, which the applicant has agreed to implement and  
14 that should help with the issue of parking and traffic. So I  
15 think, based on the amended application and the fact that the  
16 shadow studies are not substantial in terms of their impact, show  
17 there's no substantial impact on the neighborhood, on the  
18 adjacent homes. And even though a lot of the applicants were  
19 concerned about the loss (audio interference). As we have noted  
20 several times, the Board, there's no protection for views. So  
21 in this case, even though some people would lose their views of  
22 certain parts of the city, there's no protection for a loss of  
23 view. So the other thing is that the application also brings,  
24 you know, new housing to the city, and I would also note that  
25 the OP is in support of the application. And I will give great

1 weight to OP's support. I am disappointed that the ANC is in  
2 opposition, but I believe the applicant has addressed a lot of  
3 the issues that the ANC had in terms of congestion and parking  
4 and loss of view. So I'm in support of the application.

5 CHAIRPERSON HILL: Okay. Thanks, Ms. John.  
6 Mr. Smith.

7 BOARD MEMBER SMITH: You know, I don't think I have too  
8 much to say. Ms. John has eloquently explained thoroughly, you  
9 know, the various inflection points in this case and how we've  
10 gotten to this point. So, you know, I will say I do support it.  
11 I am saddened that the ANC continues to not support this project.  
12 So, you know, earlier, as Ms. John stated, when we first heard  
13 this case, the neighborhood was concerned about impacts to  
14 parking and congestion, density, views and, you know, various,  
15 you know, these various impacts, and crime also. And also, just  
16 the use of an apartment building in this particular area. And,  
17 you know, I understand their concerns, but the property is zoned  
18 for apartment buildings here. So, you know, the Zoning Commission  
19 zone it as such, so way that -- the way that I look at it, this  
20 case was more so how can we mitigate those adverse impacts from  
21 this potential apartment building. So the questions that we  
22 raised as a Board, these questions related to shadowing and based  
23 on the shadow study, there aren't any adverse impacts on the  
24 surrounding properties because of shadowing of this building.  
25 The city -- I mean, the ANC was concerned about parking. The

1 applicant, you know, this is a win for the ANC. The applicant  
2 has put in additional parking spaces, two -- just two. But now,  
3 they are meeting their parking requirements. The zoning ordinance  
4 says that they -- the zoning regulations say they are meeting  
5 their parking requirement. And the applicant has agreed to --  
6 continue to agree to this TDM plan, even though they aren't  
7 necessarily required to -- TDM plan now that they are meeting  
8 their parking requirement. So I will just say that this is a  
9 win to the ANC, and I will support, including the TDM, to address  
10 the neighborhood's concerns. So, you know, Vice Chair John has  
11 eloquently stated that I do believe that the applicant has  
12 sufficiently addressed all the adverse impacts for us to be able  
13 to grant the special exemptions. And I will note that OP does  
14 support this application and I will as well.

15 CHAIRPERSON HILL: Thank you. Commissioner May.

16 COMMISSIONER MAY: Remarkably, I do not have anything  
17 to add. I think everything has been said, and I support the  
18 application.

19 CHAIRPERSON HILL: Thank you. Mr. Blake.

20 BOARD MEMBER BLAKE: Yes. So I, too, would be prepared  
21 to support it, and I do think that the applicant's actions have  
22 done a lot to mitigate some of the concerns that were addressed  
23 by -- or at least most of the concerns that were addressed by  
24 the ANC. So I'm prepared to support it.

25 CHAIRPERSON HILL: Okay. Thanks.

1           Well, I think we should do this. This is the way we  
2 should do it. I'll run the hearing and you all do the talking  
3 after that. That's what I think. We should change the whole  
4 set up, you know, because I think you all said it very well, you  
5 know. I will start -- we'll start with Mr. Smith each and every  
6 time. All right. And so but -- no, I mean, and I don't have  
7 much doubt. And again, you look at the special exception criteria  
8 for the new residential development and then the special  
9 exception general standards, and I think the applicant is meeting  
10 all those.

11           I mean, the applicant -- I mean, I understand why the  
12 ANC is voting in opposition because their job is to represent the  
13 people that are there, and the people that are there don't want  
14 the development, you know, and they don't want the development  
15 for a variety of reasons, and I can understand why they don't  
16 want the development. We, as a Board, have to vote as to whether  
17 or not they meet the standards for us to allow that or not --  
18 whether or not we want the development there or not -- do they  
19 meet the criteria for us to vote in favor.

20           I didn't think I was going to talk a little bit, but  
21 you all said so many great things. (Audio interference) that  
22 right. The parking is gone now, right, so the ANC did get the  
23 parking. They figured out how to share the driveway. The views,  
24 unfortunately, are things that again are not -- you don't get a  
25 view, right. You get light and air, but I guess, you know, we

1 are in agreement that -- and even then, you know, light and air  
2 isn't necessarily always things that we look at.

3 But I think that in this case, again, I would agree  
4 with they are meeting the criteria. I would agree with the Office  
5 of Planning's analysis, their recommendation, and also, I'm  
6 disappointed that the neighbors and the ANC are opposed. However,  
7 I think it looks like they are going to get hopefully new and  
8 good housing there. And then, also, I am in favor of leaving  
9 that TDM plan in there just so we can help to alleviate some of  
10 the congestion concerns.

11 So I'm going to make a motion to approve Application  
12 No. 20400 as captioned and read by the secretary, including the  
13 condition that the TDM plan be implemented by DDOT, and ask for  
14 a second, Ms. John.

15 VICE CHAIR JOHN: Second.

16 CHAIRPERSON HILL: The motion has been made and  
17 seconded. Mr. Moy, if you could take a roll call.

18 MR. MOY: Yes. When I call each of your names, if you  
19 would please respond with a yes, no, or abstain to the motion  
20 made by Chairman Hill to approve the application for the amended  
21 relief along with the condition of including the TDM plan as  
22 proposed in the DDOT report. The motion was seconded by Vice  
23 Chair John.

24 Zoning Commissioner Peter May.

25 COMMISSIONER MAY: Yes.

1 MR. MOY: Mr. Smith.

2 BOARD MEMBER SMITH: Yes.

3 MR. MOY: Mr. Blake.

4 BOARD MEMBER BLAKE: Yes.

5 MR. MOY: Vice Chair John.

6 VICE CHAIR JOHN: Yes.

7 MR. MOY: Chairman Hill.

8 CHAIRPERSON HILL: Yes.

9 MR. MOY: Staff would record the vote as 5-0-0, and  
10 this is on the motion made by Chairman Hill to approve and  
11 seconded by Vice Chair John. Also in support of the motion to  
12 approve is Zoning Commissioner Peter May, Mr. Smith, Mr. Blake,  
13 Vice Chair John, and Chairman Hill. Motion carries, sir, 5-0-0.

14 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.

15 The next one may be a little long. Do you all want a  
16 quick break? Okay. Let's take a quick break, and we'll be back  
17 in 10, 15 minutes. Thank you.

18 (Whereupon, the matter recessed and then resumed.)

19 CHAIRPERSON HILL: Is Mr. Blake on this next one?

20 BOARD MEMBER BLAKE: I am.

21 CHAIRPERSON HILL: Okay. Great. Are you with us, Mr.  
22 Blake? Are you -- you're not ready?

23 BOARD MEMBER BLAKE: I am ready to go.

24 CHAIRPERSON HILL: Okay. Unless you guys turn on your  
25 camera, I can't tell whether you're there or not, just let you

1 all know. I'm like, you know, I'm like, you all are still not  
2 there. That's fine with me. I just hang out here all day.  
3 (Indiscernible) eventually somebody would call somebody like  
4 somebody called me earlier. They're like, "Are you joining us  
5 today?" I was like, "I'm trying."

6 All right. Mr. Moy, you can call our next case.

7 MR. MOY: Mr. Chairman. The Board is back in its  
8 hearing session and the time is at or about 11:03 a.m. The case  
9 application before the Board is Case Application No. 20435 of  
10 2015 or 2015 Jackson Street 2019, LLC. The original caption for  
11 this application was for special exception from the rear yard  
12 requirements, Subtitle G, Section 405.2; side yard requirements,  
13 Subtitle G, Section 406.1, which would raise the existing  
14 principal dwelling unit and construct a new five-story with  
15 cellar detached 10-unit residential building in the MU-4 Zone.  
16 The property is located at 2015 Jackson Street, N.E., Square  
17 4219, Lot 812.

18 There is a preliminary matter to request to waive the  
19 filing deadline, this is from the applicant, so that they can  
20 include it in the record, this cover letter and revised self-  
21 certification, which I believe removed or is eliminating his  
22 request for, I believe, the side yard relief under Exhibit 68-A,  
23 as well as allowing his PowerPoint presentation in the record.  
24 But I would ask the applicant, Mr. Chairman, if he could confirm  
25 which relief that he is eliminating. Thank you.

1 CHAIRPERSON HILL: All right. Great.

2 Ms. Wilson, do you want to introduce yourself for the  
3 record?

4 MS. WILSON: Sure. Hi. Alex Wilson from Sullivan &  
5 Barros on behalf of the applicant.

6 CHAIRPERSON HILL: Great. Are you now arguing this  
7 case, Ms. Wilson?

8 MS. WILSON: Yes. I'll be presenting today.

9 CHAIRPERSON HILL: Okay. Mr. Sullivan, you want to  
10 introduce yourself for the record?

11 MR. SULLIVAN: Yes. Thank you, Mr. Chair. Marty  
12 Sullivan with Sullivan & Barros on behalf of the applicant.

13 CHAIRPERSON HILL: Great. Ms. Wilson, who's with you  
14 here today?

15 MS. WILSON: Sure. I'm here with Mr. Saxena, who  
16 represents the owner, and Sam Forman, who is the project  
17 architect.

18 CHAIRPERSON HILL: Got it.

19 Okay. Commissioner Montague, can you hear me?

20 COMMISSIONER MONTAGUE: Yes, sir.

21 CHAIRPERSON HILL: Could you introduce yourself for the  
22 record, please?

23 COMMISSIONER MONTAGUE: Jeremiah Montague, Jr., ANC  
24 Commissioner ANC 5C. Oh, I need to spell my name. J-E-R-E-M -  
25 - can you hear me?

1 CHAIRPERSON HILL: Yes.

2 COMMISSIONER MONTAGUE: Oh. J-E-R-E-M-I-A-H.  
3 Montague, M-O-N-T-A-G-U-E Junior.

4 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

5 COMMISSIONER MONTAGUE: Thank you. All right.

6 Ms. Wilson, what is it that you guys are trying -- or  
7 if you could clarify the relief you're actually requesting? And  
8 I see now -- so the PowerPoint is in the record as well as I  
9 guess is the updated self-cert.

10 MS. WILSON: I saw that everything is in the record and  
11 the PowerPoint was on time. I can get into this a little more  
12 in the presentation, but we're removing the request for side yard  
13 relief. We thought we needed it, and again, I'll explain that a  
14 little more, but after talking to the Office of Planning, we  
15 agreed we don't need that relief, so we were just removing that.

16 CHAIRPERSON HILL: Okay. All right. We can clarify  
17 that more during the drawings -- during the presentation. Unless  
18 the applicant -- unless the Board has any issues, I'm going to  
19 go ahead and allow this stuff into the record.

20 Mr. Sullivan, can you hear me?

21 MR. SULLIVAN: Yes, I can hear you. I just -- I turned  
22 my camera off so it's -- so I don't confuse the issue with Ms.  
23 Wilson presenting.

24 CHAIRPERSON HILL: I'm sorry, Mr. Sullivan. Before you  
25 came on, I was actually curious. I was thinking to myself, you're

1 on a lot of these. I was wondering if you just disappeared, who  
2 would do all these cases? Where would they go? And then I was  
3 like, oh, maybe Ms. Wilson. Is that -- she is just going to suck  
4 them all up? Is that what's -- you know, I mean, I got like --  
5 Mr. Sullivan, you're like, you know, I don't know what would  
6 happen if you left. The city would like -- the city would shut  
7 down. It just be like, you know. They'd be like, you are on  
8 every case.

9 MR. SULLIVAN: Knock on wood, right?

10 CHAIRPERSON HILL: Yeah. Knock on wood; I guess that's  
11 true. Hopefully, we all stay healthy. All right, Mr. Sullivan,  
12 Bye-bye.

13 MR. SULLIVAN: Thank you.

14 CHAIRPERSON HILL: All right. Let's see.

15 Ms. Wilson, you want to walk us through, you know, the  
16 new presentation and how -- because we heard the one before,  
17 right. All right. I should say, you know, what has happened  
18 before, I guess, and maybe you can tell us what happened since  
19 the last time you all were here. Do you want to pull up that  
20 PowerPoint? Is that what you want us to do?

21 MS. WILSON: Yes, that'd be great. Thank you.

22 CHAIRPERSON HILL: Okay. And I'm going to put 15  
23 minutes on the clock just so I know where we are.

24 Mr. Young, if you could start that when Ms. Wilson  
25 begins, and you can begin whenever you like.

1 MS. WILSON: Thank you all so much. So after we bring  
2 up the presentation, I'll give a quick overview of the project.  
3 I know it's been a few weeks.

4 So the applicant is proposing to raise the existing  
5 single-family dwelling and construct a new multifamily building  
6 with ten new residential dwelling units including an IZ unit.  
7 The property is zoned MU-4, and the project complies with all  
8 development standards of the MU-4 Zone except, of course, the  
9 requested rear yard relief. And the rear yard relief for 15 feet  
10 is a direct result of that 15-foot building restriction line at  
11 the front of the property, coupled with the depth of the lot.

12 Could you go to the next slide, please? In response  
13 to OP's original report and testimony at the hearing, as well as  
14 comments from the Board, the applicant has made thoughtful  
15 changes to the plans. Mr. Forman, the architect, will walk  
16 through those changes and plans in greater detail, but some  
17 changes are that the balconies have been added. A portion of  
18 the building has been set back closest to the adjacent building  
19 on 2062 Rhode Island. Windows were added to the south facing  
20 facade and angled away from the rears of the adjacent buildings.  
21 This provides more desirable views than originally proposed and  
22 more light and air to the proposed and adjacent buildings. As a  
23 result of these changes, OP submitted a supplemental report  
24 recommending approval. And we were happy to have the opportunity  
25 to work with OP and satisfy their initial concerns.

1           Next slide, please. Before I turn it over to Mr.  
2 Forman, there is some initial discussion in the last hearing  
3 about court relief. And the old plans absolutely needed the  
4 court relief because the setback was in the middle of the rear  
5 of the property. It was clearly a closed court. So we planned  
6 on adding the court relief when we were going to make our  
7 supplemental submission. And then we got new plans. We filled  
8 out a new self-certification form with the court relief with the  
9 width of three feet. But then right before we filed, on either  
10 October 8th or 9th, it was determined that this new open area in  
11 red is -- it's not a court actually. It's a side yard for G  
12 406.3. It states that any portion of a building setback from  
13 the side lot line shall be considered a side yard and not a court.  
14 This provision is odd. It's only found in the MU zones. And  
15 the setback is a side yard, not a court in this case, because a  
16 portion of the building is set back from the side lot line, even  
17 though it's sort of a partial rear yard as well. It's just a  
18 very odd provision. So on Monday, that's when we filed the  
19 updated self-certification form to clarify that we actually don't  
20 need that side yard relief that we originally filed. We have a  
21 really large side yard. It's over 27-feet wide. It's measured  
22 from the side lot line. And that 3-foot dimension is just the  
23 depth, it's not the actual width of the side yard. And then OP  
24 agreed in their report too, that we did not need this relief. So  
25 apologies for the confusion on that point. And unless the Board

1 has any questions about that, I'm going to turn it over to Mr.  
2 Forman to walk through the plans.

3 MR. FORMAN: Good afternoon. I'm Sam Forman on behalf  
4 of 3877 Architects. Can everybody hear me okay?

5 CHAIRPERSON HILL: Yes.

6 MR. FORMAN: Great. Next slide, please. So in the  
7 design, based on some of the comments we received in the last  
8 hearing, and I think a few came from Mr. May on this particular  
9 design, we actually decided to remove the facing windows that  
10 were creating light wells within the rear of the yard. So we've  
11 set back that top left plan, top left corner, three feet from  
12 the rear yard and we've angled the windows down so that all of  
13 the facing windows adhere to the 40-foot requirement and also  
14 provide a better experience within the units. The red line that  
15 you can see here is going to carry through the plans to show the  
16 15-foot setback that we were asking for relief from.

17 Next slide, please. We have one single unit on the  
18 cellar as well as the required long-term bike storage.

19 Next slide, please. On the first floor at the entry,  
20 we have two units. The entirety of the first floor is set back  
21 three feet. This allows for egress from the egress windows that  
22 we are using in the floors above, within the bedrooms. And also,  
23 we have an IZ unit which is planned left here that will be an IZ  
24 unit, which is compliant with the square footage requirements.  
25 And we have the parking space off of the alley as required, so

1 we're not seeking relief for that.

2           Next slide, please. The typical floor plan, we've  
3 peeled back the top left corner as you can see here. This gives  
4 you a better idea of how that affects the plan and how we've  
5 taken the rear yard as it relates 2062 Rhode Island. And we've  
6 also added large balconies in the front. One of the concerns  
7 was -- what we heard was, you know, just livability and making  
8 sure these units were as good as they can possibly be. So we've  
9 added 14-foot by 4-foot balconies. We've separated them four  
10 feet from the projections, so they do not count as the bay window  
11 projections over the building restriction line. And this has  
12 been added to all of the typical floors from two, three and four.

13           Next slide, please. This is another typical floor as  
14 we go up, so that -- actually not typical. This is the fourth  
15 floor. We have balconies and there's actually three units on  
16 this floor.

17           Next slide, please. To see how that reacts, so this  
18 is -- it goes up to their loft in units with bedrooms above, and  
19 then you can see the 15-foot setback there on the plan.

20           Next slide, please. This just further shows you the  
21 footprint. We have to occupiable rooftops on the left-hand units,  
22 Units 9 and 11.

23           Next slide, please. So this is the elevation sheet  
24 we're showing you. The north elevation has been revised  
25 considerably since the last time we met to include those large

1 balconies which we worked through with the Office of Planning  
2 directly.

3           Next slide, please. On the rear yard, you can see the  
4 windows. One of the considerations was south facing windows.  
5 And the last iteration we showed you, there were not any windows  
6 in that south elevation, plan right. We have added a considerable  
7 number of windows using the angles to mitigate the 40-foot  
8 setback. And also on the west side, we have more than 40 feet  
9 on the direct facing windows for those units as well.

10           Next slide, please. So this is the updated rendering  
11 to show the mass and scale and the balconies that we've added  
12 along Jackson Street.

13           Next slide, please. This is a view. Actually, we've  
14 -- in the previous version, we were showing the adjacent 2062  
15 mass as a large block. And we've actually taken a more accurate  
16 modeling stab at this to see what the view would be from that  
17 balcony. So this is actually standing on the adjacent balcony,  
18 looking down their driveway, which is the rear driveway to 2015.

19           Next slide, please.

20           CHAIRPERSON HILL: Can you do me a favor? Can you go  
21 back and show that view from -- I was trying to understand that  
22 view.

23           MR. FORMAN: Yeah. If you go back to slide 13, please.  
24 So the building to the left of this, that is their rear yard off  
25 of 2062 Rhode Island, that's the drive that connects to Jackson.

1 So you're actually standing on the left side of this building on  
2 the balcony, which in the plan is top left where we've peeled  
3 back the edge of our building, the three feet. It's standing on  
4 that balcony on the second floor.

5 CHAIRPERSON HILL: Okay.

6 MR. FORMAN: So the procedure -- can you go to slide  
7 15, please? So this is the reason we put this in here and added  
8 this was to show the view from that balcony towards Jackson  
9 Street, down the side of our side yard, which would be plan left.

10 CHAIRPERSON HILL: Got it.

11 MR. FORMAN: Slide 16, please. Yeah. So this is the  
12 direct view out to Jackson Street --

13 CHAIRPERSON HILL: Got it. On the left side of that  
14 building.

15 MR. FORMAN: -- from the rear of (indiscernible). Yep.  
16 And that was -- we heard concerns in the last meeting that -- I  
17 think it was Ms. John had requested. She was wondering if it  
18 was too tight back in that corner, so we wanted to show this  
19 view.

20 And if you go back to slide 14, please, one more.  
21 Sorry. We wanted to show this view that we do get. It is open  
22 on the rear of the building and the side of the building for that  
23 view off of the balcony, which is we believe it's the back of  
24 house balcony, but, of course, it's still within use of that  
25 building.

1 Slide 14 please. Perfect. So this is that view from  
2 the balcony looking at the rear.

3 CHAIRPERSON HILL: So it's open to the left there.  
4 That's what I got a little confused by.

5 MR. FORMAN: Yeah. That's actually, if we have a zero  
6 yard, if we were to gain that relief, that is the rear yard in  
7 the space of the back of the Rhode Island buildings.

8 CHAIRPERSON HILL: Okay.

9 MR. FORMAN: I think we can go to -- let me pull up  
10 the correct -- just for bearings. If we go to slide 4, please.  
11 We have the perspectives marked on slide 4 and you can get a  
12 better sense there. And the top left of the building, these  
13 three and four and then you can see the space there.

14 CHAIRPERSON HILL: No, I appreciate that. Thank you.  
15 Okay. Thank you so much.

16 MR. FORMAN: Perfect then. I think we can proceed to  
17 slide 16 then.

18 MS. WILSON: Great. Thank you. I'll take over from  
19 here.

20 The application meets the general special exception  
21 criteria as it is in harmony with the general purpose and intent  
22 of the zoning regulations and zoning maps, as well as the purpose  
23 and intent of the MU-4 Zone. The new multifamily building  
24 provides housing opportunities including a two-bedroom IZ unit.  
25 The subject property, it's currently improved with a long

1 neglected single-family dwelling, which has a rear yard of nine  
2 feet right now. So the applicant is only increasing the  
3 nonconforming situation by six feet on the east side closest to  
4 the neighboring building albeit with greater height. There are  
5 currently many vacant businesses fronting on Rhode Island and  
6 additional housing and some moderate density, as is permitted in  
7 the zone, would potentially help to revitalize the area.

8           Next slide, please. Regarding impacts on adjacent  
9 properties, as we've noted since the public hearing originally,  
10 the project has been revised to provide three feet of rear yard  
11 across the first floor and on the upper floors at the southeast  
12 side, where the building proximity would be the most constrained.  
13 This would allow for additional light and air between properties  
14 and for maintenance of the rear wall. Those were some concerns  
15 from OP, from the original hearing and in their original report.  
16 The applicant added windows to the rear elevations that are angled  
17 away from other buildings to provide additional light and air to  
18 the units, while better maintaining privacy between neighboring  
19 buildings.

20           The applicant also added balconies, as we've mentioned  
21 for the units, and there are roof decks providing additional  
22 access to light and air for residents. And then the rear of the  
23 building abuts non-recreational rear yard space used for those  
24 commercial buildings. And those commercial buildings are  
25 permitted to achieve the same look as the building. And the

1 functions of the commercial building will not be impacted as a  
2 result of the relief. And also, we have letters in support from  
3 the adjacent owner at 2028 Rhode Island, as well as the owner of  
4 2019 Jackson.

5 Next slide, please. The application also meets the  
6 specific requirements for rear yard relief in the MU-4 Zone.  
7 Regarding the ANC, the windows are not angled so that no window  
8 is located within 40 feet of a directly facing building and so  
9 that there is no penetration of sidelines into habitable rooms.  
10 B does not apply because this is not office use, and for D, the  
11 applicant is not required to provide any loading and is providing  
12 the required parking space.

13 Next slide, please. And that's the end of our  
14 presentation and we are happy to take any questions.

15 CHAIRPERSON HILL: Okay. Great. Thank you, Ms. Wilson.  
16 Let's see. Just wait until we get to see everybody.  
17 Right. I know that we had a lot of questions the last time.

18 Does the Board have any questions for the applicant at  
19 this point? Mr. Blake?

20 BOARD MEMBER BLAKE: Yeah. One question. There's a  
21 lot of design changes which have accomplished a lot of goals  
22 here. I'm just curious to know how much of the internal habitable  
23 space you've lost as a result of this adjustment.

24 MR. FORMAN: So we actually -- because we did have some  
25 of the facing windows, if you remember in the last, we had them

1 not angled in the courts. We lost 14 square feet per unit on  
2 the typical floors. So not considerable, especially since we  
3 added 14 x 4 balconies. We were able to shift things around  
4 within the (indiscernible) to make 14 feet square feet per unit  
5 in the (audio interference).

6 BOARD MEMBER BLAKE: Thank you.

7 CHAIRPERSON HILL: Anyone else? Okay. I'm going to  
8 turn to the Office of Planning please.

9 MS. FOTHERGILL: Good morning again, Chairman Hill and  
10 members of the Board. I'm Anne Fothergill from the Office of  
11 Planning for BZA Case 20435.

12 And at the initial public hearing, the Office of  
13 Planning was not in support of this application with concerns  
14 that it didn't meet the specific criteria for rear yard relief  
15 in the MU-4 Zone of G 1201.1. And since that public hearing,  
16 the applicant has made revisions that that are more in keeping  
17 with the intent of the criteria for issues of privacy and spacing.  
18 And OP has recommended approval at this time, the applicant has  
19 added. Initially, there were windows that were non-compliant  
20 when they moved the windows. And now, they've added windows at  
21 an angle, which this is more in keeping with the intent of G  
22 1201.1. They also hold back the rear wall along the first floor  
23 of the entire building and then half of the building at the  
24 southeast corner where the buildings were most constrained by the  
25 zero-rear yard. And that is an improvement, and it allows for

1 more light and air and space in between buildings. They also  
2 have added six balconies and more brick to the front facade in  
3 keeping with other buildings on the block. And we found that  
4 the changes shown in the revised plans better address the specific  
5 special exception criteria, Subtitle G 1201.1, and the general  
6 criteria (audio interference) X and we have recommended approval.

7 We also note that they did remove the request for side  
8 yard relief of special exception. We had supported that if it  
9 was needed, but they have removed that request. And I will rest  
10 on the record and I'm happy to take any questions.

11 CHAIRPERSON HILL: All right. Does anybody have any  
12 questions to the Office of Planning?

13 Does the applicant have any questions for the Office  
14 of Planning?

15 MS. WILSON: No. Thank you.

16 CHAIRPERSON HILL: Ms. Fothergill, I got a quick  
17 question. I mean, I know -- I mean, I think the design is  
18 improved upon what we did the last time or where we were the last  
19 time. But again, they're here for rear yard relief and you all  
20 had a discussion about the balconies on the front. Like, I'm  
21 just curious how you got to the balconies considering they are  
22 here for the rear yard.

23 MS. FOTHERGILL: So the -- part of the goal was just a  
24 better project. And the -- you may recall, the second iteration  
25 of plans showed no windows on the rear. And so then the access

1 to light and air to these units was really going to be limited.  
2 And so adding balconies to the front provides more light and air  
3 to the units and also, you know, keeps it with a residential  
4 appearance along the street front end. And since there is a zero  
5 rear yard for part of the building that access light and air for  
6 those units, was preferred and desired and we supported it.

7 CHAIRPERSON HILL: Okay. Great. All right. Thank  
8 you.

9 Commissioner Montague, can you hear me?

10 COMMISSIONER MONTAGUE: I'm sorry. I'm in two meetings  
11 and I had to drop off one second.

12 CHAIRPERSON HILL: No, that's fine. Can you hear me?

13 COMMISSIONER MONTAGUE: Yes, very well.

14 CHAIRPERSON HILL: Okay. I know, Commissioner, that  
15 we took a lot of testimony from you the last time and we're here  
16 on kind of a continued hearing.

17 COMMISSIONER MONTAGUE: Yes.

18 CHAIRPERSON HILL: However, what additional testimony  
19 would you like to give us?

20 COMMISSIONER MONTAGUE: Our position as a Commission  
21 hasn't changed as I'm here to -- as you said in the earlier case,  
22 I'm here to represent the residents and that's what I have to  
23 do. There are still objections to the project, and we have to  
24 stand on the report that we submitted.

25 CHAIRPERSON HILL: Okay. All right. Thank you,

1 Commissioner.

2 Commissioner, do you have any questions for anyone?

3 COMMISSIONER MONTAGUE: There was a statement made in  
4 our last hearing, which represented the church as being inactive  
5 behind the property, and which is not true. And also, that there  
6 was a representation made that the adverse impacts were only for  
7 the properties abutting -- adjacent and abutting Rhode Island  
8 Avenue, which is not true. The adverse impacts will flow out to  
9 the folks along Jackson Street. And just for the record, I wanted  
10 to make it very clear that the residents nearby consider that a  
11 substantial adverse to their environment if this building were  
12 allowed to be built.

13 CHAIRPERSON HILL: And Commissioner, because I just  
14 want to clarify, when you're saying, "would spill out onto", what  
15 are the adverse impacts that you're speaking of?

16 COMMISSIONER MONTAGUE: Because they've removed the  
17 parking require -- relief request and put one parking space on  
18 property. It's a 12-unit building, if I remember correctly, and  
19 therefore, it is irrational to believe that every person in there  
20 is not going to bring an additional automobile into the  
21 neighborhood. Okay. That street is saturated as it is, and we  
22 also now have another project that has been floated which is  
23 going to skyrocket the increase. So following your lead in  
24 earlier -- in early discussions, we focus only on the adverse  
25 impact of this project. And so therefore, even with bike racks

1 and this, that and the other, people are going to bring additional  
2 costs and I'm not sure that the street can absorb it.

3 CHAIRPERSON HILL: Okay. So it's, again, very similar  
4 to the testimony that you gave --

5 COMMISSIONER MONTAGUE: Yes.

6 CHAIRPERSON HILL: -- at our last hearing. Okay. All  
7 right.

8 Let's see. Mr. Smith, you seem to have a question?

9 BOARD MEMBER SMITH: You asked the question I was going  
10 to ask. In light of the revisions to the plan, what were --  
11 what's the ANC's position on adverse impacts? Is it just parking,  
12 just to reiterate? In your testimony, you just spoke about it.

13 COMMISSIONER MONTAGUE: There are a lot of older  
14 residents who simply don't understand the change in the zoning,  
15 and they can't -- in their mind, they still see it as an R-1-B  
16 and they -- their preference is a single-family residence as  
17 opposed to a multifamily dwelling, and they have strong objection  
18 to that.

19 BOARD MEMBER SMITH: Okay. Got you. Thank you.

20 CHAIRPERSON HILL: Okay. All right. Does anyone have  
21 any more questions for the Commissioner?

22 All right. Commissioner, thank you.

23 COMMISSIONER MONTAGUE: Thank you.

24 All right. Ms. Wilson, is there anything you'd like  
25 to add at the end?

1 MS. WILSON: No. Thank you.

2 CHAIRPERSON HILL: Okay. Ms. John, you had a question?

3 VICE CHAIR JOHN: I'd like to go back to the architect.  
4 So is there a three-foot rear yard?

5 MR. DAVIE: There is a three-foot rear yard along the  
6 entirety of the first floor and for 50 percent of the building  
7 above that.

8 VICE CHAIR JOHN: Okay. So the -- if I'm not mistaken,  
9 the (audio interference), I'm not clear if rear yard relief is  
10 being requested and how much. And I was just looking at the  
11 self-cert, the latest one, and it said zero rear yard to be  
12 provided. Let me make sure, 68A. Let me look at it.

13 MS. WILSON: So because the rear yard is not for the  
14 full depth of the building all of the way up, we can't count that  
15 three-foot setback as three feet of rear yard relief. But it  
16 is, as Sam said, on the first floor and then partly up the rest  
17 of the floors.

18 VICE CHAIR JOHN: Okay.

19 MS. WILSON: So that's why that technically hasn't  
20 changed, and we are asking for that relief still.

21 VICE CHAIR JOHN: All right. Thank you. And the side  
22 of the building that's clipped, is that the side that's close to  
23 2062 Rhode Island Avenue, the side --

24 MR. DAVIE: That is correct.

25 VICE CHAIR JOHN: Okay. All right. Thank you. That's

1 it, Mr. Chairman.

2 CHAIRPERSON HILL: Okay. Thank you, Ms. John. Mr.  
3 Blake.

4 BOARD MEMBER BLAKE: Yeah. I just have a quick question  
5 for the ANC Commissioner. Would you please just explain the last  
6 paragraph of the letter that the ANC provided? I just want to  
7 make sure I understand that and just go over that for me. Can  
8 you hear me?

9 CHAIRPERSON HILL: Commissioner Montague, can you hear  
10 us?

11 COMMISSIONER MONTAGUE: Yes, sir. I apologize. What  
12 was the question?

13 BOARD MEMBER BLAKE: Yeah. I was asking if you could  
14 go over the -- in Exhibit 44, go to that last paragraph of the  
15 letter from the ANC. I just want to make sure I understand what  
16 is said in that paragraph.

17 COMMISSIONER MONTAGUE: Oh, sir. I can't see that  
18 right now. Let me see. If you would -- could you just read that  
19 paragraph, please?

20 BOARD MEMBER BLAKE: Let's see. I'm most interested  
21 in the last sentence, "Should the application revise in the  
22 interim, relating to the minimum vehicle parking relief, the  
23 Commission recommends would reluctantly cease objection given the  
24 uniqueness of the inclusion within the MU-4 Zone as long as the  
25 Board of Zoning Adjustment, notes for the longer-term ill effects

1 upon the community."

2 COMMISSIONER MONTAGUE: So we've made no change in that  
3 because what happened was, there originally was -- the applicant  
4 was originally seeking relief from the parking period. They  
5 added one space back and -- to meet the minimum. And in my head,  
6 I always have a problem with meeting just the minimum, okay, when  
7 I believe that you can do more. So our position still, even with  
8 the one space, that still leaves 11 -- potentially, 11 new  
9 additional vehicles being added to the transportation mix. Does  
10 that answer your question?

11 BOARD MEMBER BLAKE: So what you're saying, you would  
12 need to have it more than the minimum requirement in order to  
13 cease the objection?

14 COMMISSIONER MONTAGUE: Yes.

15 BOARD MEMBER BLAKE: Okay. Thank you.

16 CHAIRPERSON HILL: All right. Thank you, Mr. Blake.  
17 Anyone else?

18 Okay. Ms. Wilson, is there anything you wanted to add?

19 MS. WILSON: No. Thank you.

20 CHAIRPERSON HILL: Okay. Great.

21 All right. I'm going to go ahead and close the hearing  
22 and the record. If you could excuse everyone, Mr. Young.

23 Okay. Yeah. So this was weird. It took us a while  
24 to get through this one and it was kind of weird.

25 Commissioner May, were you on this the whole time?

1 COMMISSIONER MAY: Indeed, I have been.

2 CHAIRPERSON HILL: Okay. Well, I don't know why. It's  
3 just -- it's starting to spin, like where, you know, how long  
4 things or who's on them. Anyway --

5 BOARD MEMBER SMITH: This is the one that brought up  
6 the court relief.

7 CHAIRPERSON HILL: Right. And so this one, I was a  
8 little bit uncomfortable with, just because where they were  
9 trying to put it, right? I guess they have now worked with the  
10 Office of Planning in order to remove the side yard requirements.  
11 I think that I'm comfortable with the project, I do think now  
12 that they have added those balconies on the front. I thought it  
13 was interesting that talking with the Office of Planning like,  
14 you know, that made for a better design in terms of the light  
15 and air for those units.

16 I do think that in terms of the ANC, you know, they're  
17 meeting the requirements. And so there's nothing really -- you  
18 can want more parking, but they don't -- they're meeting the  
19 requirements. I think that as far as the developmental standards,  
20 I do think I would agree with the applicant in how they're meeting  
21 the requirements in this particular zone. And I guess I'll vote  
22 in favor of the project.

23 I'm going to go ahead and turn to you, Commissioner May  
24 first, if you don't mind, Commissioner.

25 COMMISSIONER MAY: Yeah. That's fine.

1           Mr. Chairman, I'm with you. The project I thought was  
2 sort of technically okay when we looked at it last, but there  
3 were, you know, there were issues and there were things about it  
4 that made it not a very good project regardless of the zoning  
5 (audio interference). So I'm quite relieved to know that --  
6 yeah, or to see that the applicant has made changes to improve  
7 the design of the building and to satisfy concerns raised by the  
8 Office of Planning. So that, in my view, helps take it over into  
9 approvable territory. And you're right, I mean, I think the  
10 biggest concern of the neighbors has to do with potential parking  
11 impacts. But as you know, it meets the requirement of parking  
12 facing the building that size and its location, et cetera. So I  
13 don't, you know, the rear yard relief is driven by the fact that  
14 there is the setback requirement. It is a rather constrained  
15 site. And it's sort of an odd place to have a single-family home  
16 because you're right next to the rear of all of these commercial  
17 buildings along Rhode Island Avenue. So, I mean, I think all of  
18 these seems add up to a reasonable case for relief and I would  
19 support it.

20           CHAIRPERSON HILL: Okay. Mr. Smith.

21           BOARD MEMBER SMITH: As you stated, Chairman Hill, I  
22 was also torn given the location of this project, of this  
23 particular project being that it is a little bit, you know, it's  
24 within the neighborhood; once you go around the curve, it is  
25 within the neighborhood. But given the changes that were

1 presented by the applicant, I am more comfortable with this  
2 particular project.

3           And to the ANC, I completely understand, you know, your  
4 concerns. And Commissioner Montague stated that many of the  
5 residents within his ANC remember this property being zoned at a  
6 lower density. And it may have been zoned at this higher density.  
7 It was just built with a single-family house, whenever the single  
8 frame house was built. So it may have been a higher density in  
9 the '58 Zoning Regulations, as well as the current ZR16. And  
10 there are number of lots along Rhode Island Avenue that are zoned  
11 MU-4 in this particular fashion for the long block. So, you  
12 know, it is just the fact here, the property is zoned MU-4. Where  
13 just, as I stated in the previous case that we heard before, we  
14 are charged with mitigating the adverse impacts. And I do believe  
15 that the applicant has substantially, you know, mitigated those  
16 adverse impacts by adding additional windows and balconies to  
17 increase the amount of light and air available to potential  
18 residents of this particular property. And the project is meeting  
19 its parking requirement. So, you know, this commonly comes up  
20 across multiple buildings across the city. It is meeting the  
21 parking requirement, and it would be difficult for us to force  
22 them to go above the minimum under what justification.

23           So given the redesigned project, I am inclined to  
24 support it. I do agree with Commissioner May's statement that  
25 it, you know, given the geography of this lot, how the lot --

1 Rhode Island angles and Jackson Street angles, this particular  
2 lot is wedged within that -- within the angle. So whatever is  
3 put there would be fairly odd, whether it is an apartment building  
4 or whether it's a single-family house up against those dense  
5 commercial buildings along Rhode Island Avenue. But I do believe  
6 that the applicant has successfully attempted to strike a  
7 balance. So I do believe that the applicant has met the basis  
8 for us to approve the special exceptions, and I will vote, and  
9 I'll support it.

10 CHAIRPERSON HILL: Thank you, Mr. Smith. Vice Chair  
11 John.

12 VICE CHAIR JOHN: Thank you, Mr. Chairman.

13 I don't have a lot to add. I believe I agree with  
14 everything that's been said. I was initially concerned about the  
15 light and air impacts to 2062 Rhode Island Avenue, but with the  
16 changes in the design, I think those concerns are substantially  
17 satisfied. And I appreciate the comments of the ANC and the  
18 neighbors. But as everyone has noted, this is a project in the  
19 MU-4 Zone and this type of development is allowed. I especially  
20 agree with Mr. Smith's comments about the restrictions on the lot  
21 and how this particular property is so close to the commercial  
22 buildings. And you can see from the photographs that the rear  
23 in that little triangular section of Rhode Island Avenue, the  
24 building on Rhode Island Avenue is right next to this development,  
25 so it is a commercial strip in that little area. And so I don't

1 | really have any objections. I will give great weight to the  
2 | report of the Office of Planning, which (audio interference)  
3 | explains how the improvements satisfy any potential adverse  
4 | impacts, and I will support the application.

5 | CHAIRPERSON HILL: Okay. Mr. Blake.

6 | BOARD MEMBER BLAKE: I would agree that the project  
7 | meets the development standards of the MU-4 Zone. And I think  
8 | the new design really addresses a number of issues that came up  
9 | in mitigating a lot of the light and air and privacy issues from  
10 | this design without really losing a lot of the interior space,  
11 | which I think, says a lot for the architectural work that was  
12 | done. I think, you know, balconies actually do improve the look  
13 | of it, so I think that working with the Office of Planning has  
14 | really made for a better project at the end of the day, even  
15 | though it is, you know -- and part of the issue, does come out  
16 | of the fact that this lot is very unusual in its location and  
17 | the BRL (phonetic) and all of -- there are so many things that  
18 | make this a hard project to get this in. I think they've done a  
19 | great job to kind of pull it together and meet the requirements  
20 | and mitigate a lot of the risk. I am concerned obviously about  
21 | the parking issue over time, but they have met the minimum. So  
22 | I feel very comfortable in supporting this application.

23 | CHAIRPERSON HILL: Okay. Great. Thank you.

24 | Yeah, I have nothing to add. I mean, it's so funny;  
25 | in a vacuum, it's kind of a little odd project and odd space.

1 And as I'm kind of just looking again and kind of thinking about  
2 the area that it's in and everything now, just like, you know,  
3 some projects get -- I hope this housing actually happens. I  
4 hope that this gets done. And the way that development works, a  
5 lot of stuff even that we've approved never actually happens,  
6 right. I mean, there are so many factors that go into whether  
7 or not it gets done.

8 I do think, again, that it was a little -- I was a  
9 little worried about, actually, the people that are -- the MU  
10 -- I'm sorry. The people that are on Rhode Island Avenue and  
11 the buildings, what might happen to them after a while and all,  
12 you know, obviously the rear yard that little tight little area  
13 that's behind those buildings as well, but I'm comfortable with  
14 it now. So I'm going to -- base upon everything that my  
15 colleagues said, I have nothing further to add, and I'm going to  
16 make a motion to approve Application No. 20435 for rear yard  
17 requirements of Subtitle G 405.2, pursuant to G 1200 and Subtitle  
18 X 901.2, and ask for a second, Ms. John.

19 VICE CHAIR JOHN: Second.

20 CHAIRPERSON HILL: The motion has made and seconded.

21 Mr. Moy, if you could take a roll call, please.

22 MR. MOY: Yes. When I call each of your names, if you  
23 would please respond with a yes, no, or abstain to the motion  
24 made by Chairman Hill to approve the amended relief and this is  
25 for the rear yard requirements. The motion was seconded by Vice

1 Chair John.  
2 Zoning Commissioner Peter May.  
3 COMMISSIONER MAY: Yes.  
4 MR. MOY: Mr. Smith.  
5 BOARD MEMBER SMITH: Yes.  
6 MR. MOY: Mr. Blake.  
7 BOARD MEMBER BLAKE: Yes.  
8 MR. MOY: Vice Chair John.  
9 VICE CHAIR JOHN: Yes.  
10 MR. MOY: Chairman Hill.  
11 CHAIRPERSON HILL: Yes.  
12 MR. MOY: Staff would record the vote as 5-0-0 and this  
13 is on the motion made by Chairman Hill to approve, seconded by  
14 Vice Chair John. In support of the motion -- also in support of  
15 the motion, Zoning Commissioner Peter May, Mr. Smith, Mr. Blake,  
16 and, of course, Vice Chair John and Chairman Hill. The motion  
17 carries on a vote of 5-0-0.  
18 CHAIRPERSON HILL: Okay. All right. Thanks, everyone.  
19 Just so you guys know, my hope is we get through our  
20 three cases, have lunch, and then come back for the appeal.  
21 That's my hope, right.  
22 So the next case, Mr. Moy, if you want to call it.  
23 MR. MOY: Yes. This will be Case Application No. 20518  
24 of Stephen Power and Geri Guman. And this is -- as amended for  
25 special exceptions from the lot occupancy restriction of Subtitle

1 D, Section 304.1, and the side yard requirements of Subtitle D,  
2 Section 206.7. This would construct a two story with basement,  
3 rear addition to an existing nonconforming, detached two story  
4 with basement principal dwelling unit in the R-2 Zone. The  
5 property is located at 4802 41st Street, N.W., Square 1 -- Square  
6 1736, Lot 28. The preliminary is -- I believe the applicant is  
7 requesting a waiver of the filing deadline to allow kind of late  
8 submissions of a revised self-certification because they were  
9 adding the side yard relief. That's in their Exhibit 39.

10 CHAIRPERSON HILL: Okay.

11 Mr. Manion, can you hear me?

12 MR. MANION: Yes, I can hear you. Can you hear me?

13 CHAIRPERSON HILL: Yeah. Could you introduce yourself  
14 for the record, please?

15 MR. MANION: I'm Thomas Manion, architect for the  
16 project of 6617 81st Street, Cabin John, Maryland.

17 CHAIRPERSON HILL: Okay. Mr. Manion, who's here with  
18 you today?

19 MR. MANION: Yes. Basically, what we're trying to do  
20 --

21 CHAIRPERSON HILL: Mr. Manion, I'm sorry. I was asking  
22 who's here with you. I see here Mr. Power; is he with you?

23 MR. MANION: Oh. He is the owner, and I believe one  
24 of my associates is here by phone.

25 CHAIRPERSON HILL: Okay. You're trying to add or revise

1 self-cert to the record; is that correct?

2 MR. MANION: Yes.

3 CHAIRPERSON HILL: Okay. Is that in there yet? You  
4 do not know?

5 MR. MANION: We submitted everything and, yes,  
6 everything was sent in. The existing house is nonconforming of  
7 the house as --

8 CHAIRPERSON HILL: Got it, Mr. Manion. Give me a sec.  
9 I'm just trying to find your revised self-cert first and see if  
10 it's in the record.

11 MR. MANION: Okay.

12 CHAIRPERSON HILL: Does anybody else see it in there?  
13 Mr. Moy, do you know if it's in there?

14 MR. MOY: 39-B.

15 MS. NAGELHOUT: It's Exhibit 39.

16 CHAIRPERSON HILL: Thanks. 39-B. Okay. All right.  
17 So unless the Board has any issues, I'd like to go ahead and  
18 allow this into the record. I don't see anything being raised.

19 Okay. Mr. Manion, you want to go ahead and walk us  
20 through why you believe your client is meeting the criteria to  
21 grant the relief requested? You can tell us about the project.

22 MR. MANION: Okay. This particular lot, which is about  
23 2,000 square feet. It's a nonconforming lot. We have an  
24 (indiscernible) 42 percent, so we're over by two percent. There  
25 is a shed that was built at some point that takes us over. But

1 the house is situated in a way that it looks like it may have  
2 originally -- have been intended to be (audio interference). We  
3 have one foot on the north side. We have four feet on the south  
4 side. And the side that (audio interference) a little bit when  
5 we look at. So what's there now is nonconforming. The first  
6 floor looks over the side (audio interference) by about a foot.  
7 So what we were doing is we were trying to add a second story.  
8 The second story would be a bedroom, and there would also be a  
9 bathroom attached to that. That's the main addition that we're  
10 trying to do to the back of the house, more or less in the style  
11 of the house. Underneath the rear deck, we're trying to do a  
12 recreation area, shop that's (audio interference) there's any  
13 encroachment. So our main problem, frankly, is the way the house  
14 is nonconforming, it forces us into a position of asking BZA  
15 whether or not that one-foot encroachment we could build (audio  
16 interference) encroachment, basically using it for the second  
17 story.

18 CHAIRPERSON HILL: Okay. Mr. Manion, is there -- and  
19 I'm trying to look through your plans. Is there a rain barrel  
20 that the ANC was talking about somewhere in your plan?

21 MR. MANION: Yes, we have -- yes, there will be rain  
22 barrels on the back. We can provide environmental (audio  
23 interference). We're also looking at potentially to put solar  
24 panels on the (audio interference).

25 CHAIRPERSON HILL: So you -- is there somewhere on your

1 plans you can point me to the rain barrel or --

2 MR. MANION: We didn't notice it because it just came  
3 from the ANC, the relief, at the last minute.

4 CHAIRPERSON HILL: Okay. But your commitment, however,  
5 is to --

6 MR. MANION: We did commit to do the rain barrels.

7 CHAIRPERSON HILL: Say it again, please.

8 MR. MANION: We did commit to do the rain barrels.

9 CHAIRPERSON HILL: Rain barrels, plural?

10 MR. MANION: Yes. There's going to be one on each side  
11 because of the way (audio interference).

12 CHAIRPERSON HILL: Okay.

13 MR. MANION: Into the rear, they'll be in the rear.

14 CHAIRPERSON HILL: Okay. All right. Before I turn to  
15 the Office of Planning, maybe I should -- let me turn to the  
16 Office of Planning first and then I'll get my questions from my  
17 colleagues.

18 Ms. Elliott?

19 MR. ELLIOTT: Good morning, Chairman Hill, and members  
20 of the Board. I'm Brandice Elliott representing the Office of  
21 Planning. And we filed a report at Exhibit 37 in the record  
22 analyzing the requested lot occupancy and side yard relief  
23 against the criteria in Subtitle D 5201. And we found that the  
24 requested relief would not have an adverse impact -- an undue  
25 adverse impact on light and air or privacy. And we also found

1 that the addition is consistent with the existing neighborhood  
2 character. And so with that, I'll go ahead and rest on the record  
3 of our report, which recommends approval on the relief, but I'm  
4 happy to answer any questions that you have.

5 CHAIRPERSON HILL: Okay. Does the Board have any  
6 questions on either the applicant or the Office of Planning? I  
7 saw Mr. Blake. Mr. Blake, let me start with you.

8 BOARD MEMBER BLAKE: Sure. Could the -- Office of  
9 Planning. Could you go through and give us a little bit more  
10 color on the general standards and how this is met?

11 MS. ELLIOTT: Sure. Are you referring to Subtitle 10  
12 -- I'm sorry. Subtitle X, Chapter 9?

13 BOARD MEMBER BLAKE: Yes.

14 MS. ELLIOTT: The special -- the general special  
15 exception criteria. First, we have to identify -- or we have to  
16 verify that the proposal would be in harmony with the general  
17 purpose and intent to the zoning regulations and zoning maps.  
18 And the proposed addition is residential. It is a residentially  
19 zone lot. So the proposal is consistent with the intent and  
20 purpose of the zoning regulations and maps. Second, we have to  
21 demonstrate that the addition would not tend to adversely affect  
22 the use of neighboring property, and that's kind of the special  
23 exception criteria under 5201 that we've provided an analysis of  
24 in our report.

25 BOARD MEMBER BLAKE: Thank you.

1 MS. ELLIOTT: Uh-huh.

2 CHAIRPERSON HILL: Anyone else for the Office of  
3 Planning or the applicant?

4 Ms. John. No.

5 VICE CHAIR JOHN: I have no comments, Mr. Chairman.

6 CHAIRPERSON HILL: I thought you were leaning in, I'm  
7 sorry. Okay.

8 Mr. Young, is there anyone here wishing to speak?

9 MR. YOUNG: We do not.

10 CHAIRPERSON HILL: Okay. All right. Mr. Manion, is  
11 there anything you'd like to add at the end?

12 MR. MANION: I don't know if it's relevant, but the way  
13 that the house was (indiscernible), there are no windows on the  
14 side that's point with the property line. My professional opinion  
15 was that at some point, when someone (indiscernible) this house,  
16 whether it was the builder or the surveyor, they said it (audio  
17 interference) off the property line for no reason, either they  
18 (audio interference) the property line. It made no sense at all.  
19 So we felt that we weren't really reaching any kind of  
20 encroachment or additional negative effect on the neighborhood  
21 (audio interference), but there are a lot of other properties on  
22 the street that have similar unusual site constraints.

23 CHAIRPERSON HILL: Okay. Great. All right. Thank  
24 you, Mr. Manion.

25 All right. I'm going to go ahead and close the record

1 and the hearing.

2 Mr. Young, if you could excuse everyone.

3 Okay. Commissioner May, do you mind starting us off?

4 COMMISSIONER MAY: No problem. I think this is very  
5 straightforward. The site is constrained by the size and the  
6 width and the placement of the original house on it, so I think  
7 this is a very modest addition. I don't see any real  
8 complications. You know, Office of Planning support, the ANC  
9 support. I think it's pretty straightforward, so I'm in favor.

10 CHAIRPERSON HILL: Thank you. Mr. Smith.

11 BOARD MEMBER SMITH: I agree with Mr. May's analysis  
12 of this particular case. I think it's fairly straightforward.  
13 The site is constrained by the size of the lot and the placement  
14 of existing home. So based on the OP staff report, I do believe  
15 they have met the criteria for us to be able to grant special  
16 exception. And I will also note that the two adjacent neighbors  
17 on the sides of the property in question, they have written  
18 letters stating they're not in opposition to this expansion, so  
19 -- and they would be the ones that's most heavily affected by  
20 the special exception and reduced side yard. So with that, I  
21 will support the application.

22 CHAIRPERSON HILL: Thank you, Mr. Smith. Vice Chair  
23 John.

24 VICE CHAIR JOHN: I'm in support of all of the comments  
25 so far, Mr. Chairman, particularly because this is a

1 nonconforming lot. It's really very small and this is a modest  
2 addition. But more importantly, I believe the applicant meets  
3 the criteria for relief as described in OP's analysis, and I'm  
4 in support of the application. Thank you.

5 CHAIRPERSON HILL: Thank you. Mr. Blake.

6 BOARD MEMBER BLAKE: Yeah. I would too, agree that the  
7 applicant meets the criteria for relief and giving substantial  
8 weight to the Office of Planning's report, I would be prepared  
9 to support it.

10 CHAIRPERSON HILL: Okay. Great. Thank you.

11 All right. I have nothing further to add. I would  
12 agree with the comments of my colleagues and make a motion to  
13 approve Application No. 20518 as captioned and read by the  
14 secretary.

15 I don't -- well, one comment. I think that, you know,  
16 the ANC and -- unless somebody has anything else, I'll remake the  
17 motion. But I think that the rain barrels, they have stated on  
18 the record that they are going to include rain barrels. I believe  
19 that that is the case. I don't necessarily think it needs to be  
20 a condition. I don't know -- actually that. Yeah. I don't know  
21 what your thought is on that. Do you have a thought?  
22 Commissioner May, you seem to be saying something.

23 COMMISSIONER MAY: I mean, I agree. I don't think it  
24 needs to be a condition. The applicant said they're going to do  
25 it. It's a very easy thing to do. There are DOEE incentives

1 for doing these things. I'm sure it'll happen. So I'm not --  
2 it's not -- and it's, I have to say the loss of (audio  
3 interference) surface is not really anything that's related to a  
4 specific request for relief. So it's kind of hard, in my mind,  
5 to even consider it as a condition.

6 CHAIRPERSON HILL: Got it. All right. I am going to  
7 make a motion to approve Application No. 20518 as captioned and  
8 read by the secretary and ask for a second, Ms. John.

9 VICE CHAIR JOHN: Second.

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

12 Mr. Moy, could you take a roll call?

13 MR. MOY: When I call each of your names, if you would  
14 please respond with a yes, no, or abstain to the motion made by  
15 Chairman Hill to approve the amended application for special  
16 exception relief. The motion was seconded by Vice Chair John.

17 Zoning Commissioner Peter May.

18 COMMISSIONER MAY: Yes.

19 MR. MOY: Mr. Smith.

20 BOARD MEMBER SMITH: Yes.

21 MR. MOY: Mr. Blake.

22 BOARD MEMBER BLAKE: Yes.

23 MR. MOY: Vice Chair John.

24 VICE CHAIR JOHN: Yes.

25 MR. MOY: Chairman Hill?

1 CHAIRPERSON HILL: Yes.

2 MR. MOY: Staff would record the vote as 5-0-0, and  
3 this is on the motion made by Chairman Hill to approve, seconded  
4 by Vice Chair John. Also, in support of the motion to approve,  
5 Zoning Commissioner Peter May, Mr. Smith, Mr. Blake, and of  
6 course, Vice Chair John and Chairman Hill. Motion carries on a  
7 vote of 5-0-0.

8 CHAIRPERSON HILL: Thank you, Mr. Moy.

9 You can call our next one when you get an opportunity.

10 MR. MOY: Before the Board is Case Application No.  
11 20528 of Jarrett Ferrier. That's F-E-R-R-I-E-R. This is a  
12 request for special exceptions from the lot occupancy  
13 requirements of Subtitle D, Section 304.1; rear yard requirements  
14 of Subtitle D, Section 306.2. This would construct a rear deck  
15 addition to an existing attached two story with basement  
16 principal dwelling unit in the R-3 Zone. The property is located  
17 at 3824 Beecher Street, N.W., Square 1301, Lot 1023. And that's  
18 all I have, Mr. Chairman.

19 CHAIRPERSON HILL: Okay. Thank you.

20 MR. MOY: Oh, one other thing, sir. Submitted late,  
21 and it's not in the record for you to address, is the applicant's  
22 affidavit for the solar requirements. So if the Board can address  
23 that, then we could forward to allow it into the record or not.

24 CHAIRPERSON HILL: Okay. Let me see. Is it Ms.  
25 Ferrier?

1 MR. FERRIER: Hello.

2 CHAIRPERSON HILL: Yes. Hello, or Mr. Ferrier.

3 MR. FERRIER: Okay. Yes, Mr. Ferrier. Yes, sir.

4 CHAIRPERSON HILL: Could you please introduce yourself  
5 for the record?

6 MR. FERRIER: Absolutely. Do you -- is my camera on  
7 or would you like it on?

8 CHAIRPERSON HILL: It is not on. It's not necessary.

9 MR. FERRIER: Okay.

10 CHAIRPERSON HILL: I mean, if you want to, you can.

11 MR. FERRIER: Yeah. Well, you want to see me.

12 CHAIRPERSON HILL: Okay. That'd be great.

13 MR. FERRIER: So yes. My name is Jarrett Ferrier. My  
14 wife, children, and I reside at 3824 Beecher Street, N.W., and I  
15 appreciate your time today. Should I go further, or should I  
16 say -- I have a prepared statement, but it's up to you. You tell  
17 me.

18 CHAIRPERSON HILL: No, no, no. Please, Mr. Ferrier,  
19 we do want to hear from you. Let me just -- I'm trying to see.  
20 There was a solar study -- or not solar study. There was  
21 something that you were trying to get into the record concerning  
22 solar?

23 MR. FERRIER: Right. So I got -- this came to me on  
24 Monday. So this is an affidavit of the fact that neither homes  
25 that about us are -- have any kind of a solar system.

1 CHAIRPERSON HILL: Okay. All right. Unless the Board  
2 has any issues, I'd like to go ahead and allow that into the  
3 record and, if so, please raise your hand. Seeing no hands, I  
4 assume we can allow that into the record. So if the staff would  
5 please allow that into the record.

6 Mr. Ferrier, if you want to go ahead and continue with  
7 your statement, please.

8 MR. FERRIER: All right. Very good. I'm going to --  
9 it's a little dry, so I'll probably try to spice it up a little  
10 bit. I am before you today requesting a zoning adjustment to  
11 build a deck on the rear of our home. We've been here since  
12 1997. And until now, I've really not felt a need for a deck  
13 until, of course, COVID-19. A good example is the fact that  
14 we're, you know, that we're doing this virtually today and we're  
15 not meeting face to face.

16 The other thing I was thinking just now was the idea  
17 of how our city has been so proactive with the "streateries," you  
18 know, doing everything we can to get people outside and safe.  
19 So, again, it's our idea or our desire for the deck really did  
20 not come around until COVID-19. And then my wife and I thought  
21 it would be a great way to see friends and family. And, you  
22 know, I think for the most part, our city has done well to combat  
23 this, but at the same time, we just don't know where we're going  
24 from here. Everything's a big question mark.

25 CHAIRPERSON HILL: Got you, Mr. Ferrier.

1 MR. FERRIER: Yes.

2 CHAIRPERSON HILL: I've been reading through the whole  
3 record, everything and did -- so also ahead of time. And I  
4 appreciate your application. It seems relatively straightforward  
5 to me. Can I just interrupt you for a second and just turn to  
6 the Office of Planning?

7 Does the Board have any questions for Mr. Ferrier?

8 All right. Mr. Ferrier, just give me one minute. Okay?

9 MR. FERRIER: Absolutely.

10 CHAIRPERSON HILL: Okay. Ms. Myers.

11 MS. MYERS: Hello. Crystal Myers with the Office of  
12 Planning.

13 CHAIRPERSON HILL: Ms. Myers, you want to give us your  
14 summary?

15 MS. MYERS: Certainly. So again, Crystal Myers for the  
16 Office of Planning. The Office of Planning is recommending  
17 approval of this case. And we can stand on the record of the  
18 staff report, but I'm here for questions if you'd like to go into  
19 it further.

20 CHAIRPERSON HILL: Okay.

21 Does the Board have any questions for the Office of  
22 Planning?

23 Mr. Ferrier, do you have any questions for the Office  
24 of Planning?

25 MR. FERRIER: No. I -- you know what, I don't have

1 any questions, but I just have to say that she has been a joy to  
2 work with. That's -- I have no questions. I just have to say  
3 she's -- both her and Robert Reid between the two of them, it's  
4 -- I just have to just say that, so.

5 CHAIRPERSON HILL: Okay.

6 MR. FERRIER: There you go. Put that on the record.

7 CHAIRPERSON HILL: There you go. All right. Mr.  
8 Ferrier.

9 MS. MYERS: Thank you.

10 MR. FERRIER: Absolutely.

11 CHAIRPERSON HILL: Mr. Ferrier, can you turn on your  
12 camera?

13 MR. FERRIER: It's not on?

14 CHAIRPERSON HILL: No.

15 MR. FERRIER: Oh, I'm sorry. I thought it was on. Oh.  
16 That's too bad. Well, wait. Oh. I'm sorry. Is it working now?

17 CHAIRPERSON HILL: No. Oh. There we go. Oh, great.

18 MR. FERRIER: Have you not seen me this whole time?

19 MR. FERRIER: No, Mr. Ferrier? That's all right. I  
20 just want to get -- I just wanted to look at you. If I saw you  
21 on the street, just to be aware.

22 MR. FERRIER: Yeah. Watch out for me.

23 CHAIRPERSON HILL: Okay. Very good. Excellent.

24 MR. FERRIER: I'm so sorry because -- yeah. I thought  
25 I clicked on it, but I guess I didn't.

1 CHAIRPERSON HILL: It's all right, Mr. Ferrier.

2 MR. FERRIER: Yeah. Sorry about that.

3 CHAIRPERSON HILL: It's all right. You're one of the  
4 more pleasant ones today.

5 MR. FERRIER: I try to be. You know, we can't -- you  
6 don't want to make these things any more painful than they need  
7 to be, right?

8 CHAIRPERSON HILL: Well, Mr. Ferrier, only when  
9 everybody says yes, then it's a lot easier, right, you know.

10 MR. FERRIER: Yeah.

11 CHAIRPERSON HILL: You might not be as chipper if there  
12 was a lot of people here saying no. But still.

13 MR. FERRIER: Good point.

14 CHAIRPERSON HILL: Definitely nice to meet you.

15 All right. Mr. Young, is there anyone here wishing to  
16 testify?

17 MR. YOUNG: We do not.

18 CHAIRPERSON HILL: Okay. All right. Mr. Ferrier, is  
19 there anything you'd like to add at the end?

20 MR. FERRIER: Well, I guess if there's a concern, the  
21 only other additional thing in my statement that I had here is  
22 that -- and you've seen the plat, I assume, or it's part of --  
23 it's on the record. Our alley, and then there is another alley  
24 that is perpendicular, so -- and we're in the middle of our row.  
25 So we are -- if you were to allow any kind of an exception for a

1 deck to go a little bit further than what is normal, I think ours  
2 is the best candidate because it -- because again, it opens up  
3 to this other alley that extends out the back.

4 CHAIRPERSON HILL: All right. Mr. Ferrier. Yeah. If  
5 the Board had any questions, they'd offer them up, but I will.  
6 Thank you so much, sir. You enjoy your day.

7 MR. FERRIER: Thank you. Are we all done?

8 CHAIRPERSON HILL: We're done.

9 MR. FERRIER: All right. Jeez. All right. Thank you.

10 CHAIRPERSON HILL: You have a nice day.

11 COMMISSIONER MAY: Well, we have to make a decision to  
12 make a decision.

13 CHAIRPERSON HILL: Right. We have to make a decision.  
14 Right.

15 MR. FERRIER: Okay.

16 CHAIRPERSON HILL: You might want to watch for that  
17 part.

18 MR. FERRIER: Okay. Great. All right. Thank you all.  
19 I really do appreciate your services today.

20 CHAIRPERSON HILL: Thank you, Mr. Ferrier. You have a  
21 good day.

22 MR. FERRIER: Thank you. You, too.

23 CHAIRPERSON HILL: All right. I'm closing the hearing  
24 and the record.

25 That's definitely -- that's the most colorful one I've

1 had in a little while, which is great. Commissioner May, please.  
2 Someone else add on to the --

3 COMMISSIONER MAY: Yeah. So I was just going to say,  
4 I think, Mr. Ferrier's solution for grappling with COVID is a  
5 really good idea, and I was just thinking that maybe we should  
6 build a deck off of the zoning hearing room so that we can have  
7 hearings in person outside. What do you think?

8 CHAIRPERSON HILL: Oh, my gosh. That's, I mean, if  
9 this continues on for another year, it's getting cool now. It's  
10 getting cold now. But yeah, I'm down.

11 COMMISSIONER MAY: I think this is a very, very  
12 straightforward case. And I don't think I need to say anything  
13 more about it. I am in support of approving.

14 CHAIRPERSON HILL: Okay. Mr. Smith.

15 BOARD MEMBER SMITH: I agree with Mr. May. I feel like  
16 this is a fairly straightforward case. I say call the roll. I  
17 do believe that they've met the standards for us to be able to  
18 grant special exception.

19 CHAIRPERSON HILL: Okay. Oh, Vice Chair John.

20 VICE CHAIR JOHN: I agree. This is a straightforward  
21 case, and I will give great weight to the Office of Planning's  
22 analysis and recommendation and the neighbors are in support, so  
23 I have no objection to supporting this application. Thanks.

24 CHAIRPERSON HILL: Mr. Blake.

25 BOARD MEMBER BLAKE: Yes. Clearly, if the proposal

1 meets the specific criteria of D 5201, the lot occupancy and rear  
2 yard relief, as well as the general criteria, and the Office of  
3 Planning's very detailed report reflects all of that. And I  
4 would also add the letters of support from the neighbors and the  
5 support of the ANC 3B. And I'll be prepared to support it.

6 CHAIRPERSON HILL: Okay. Great. Perfect. All right.

7 I would agree with everything that my colleagues just  
8 said. I'm going to also agree with the analysis that the Office  
9 of Planning has provided in the report. Also, that even though  
10 we didn't -- I got a little confused. We got a letter from the  
11 ANC, but I don't know if we necessarily got a report for great  
12 weight. But either way, I was comfortable with the ANC's comment.  
13 In addition to that, however, I do think that they are meeting  
14 the criteria for us to grant the relief requested. And I'm going  
15 to go ahead and make a motion to approve Application No. 20528  
16 as captioned and read by the secretary and ask for a second, Ms.  
17 John.

18 VICE CHAIR JOHN: Second.

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

21 Mr. Moy, if you could take a roll call.

22 MR. MOY: When I call each of your names, if you would  
23 please respond with a yes, no, or abstain to the motion made by  
24 Chairman Hill to approve the application for the relief  
25 requested. The motion was seconded by Vice Chair John.

1 Zoning Commissioner Peter May.

2 COMMISSIONER MAY: Yes.

3 MR. MOY: Mr. Smith.

4 BOARD MEMBER SMITH: Yes.

5 MR. MOY: Mr. Blake.

6 BOARD MEMBER BLAKE: Yes.

7 MR. MOY: Vice Chair John.

8 VICE CHAIR JOHN: Yes.

9 MR. MOY: Vice Chair John.

10 VICE CHAIR JOHN: Yes.

11 MR. MOY: Thank you. Chairman Hill.

12 CHAIRPERSON HILL: Yes.

13 MR. MOY: Staff would record the vote as 5-0-0, and  
14 this is on the motion made by Chairman Hill to approve, seconded  
15 by Vice Chair John. Also, in support of the motion to approve  
16 is Zoning Commissioner Peter May, Mr. Smith, Mr. Blake, Vice  
17 Chair John, and Chairman Hill. The motion carries on a vote of  
18 5-0-0. And as a final, Mr. Chairman, as a quick staff note, the  
19 name Robert Reid that was mentioned by Mr. Ferrier is an Office  
20 of Zoning employee.

21 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Moy.

22 All right. That was very complimentary to everybody.  
23 Again, when it's working out, everybody can be happy about it.  
24 But still, it was very pleasant and very kind of you to say all  
25 those nice things.

1 All right. Mr. Moy, you want to call the next case?

2 MR. MOY: This would be Case Application No. 20530 of  
3 Gale Munro, M-U-N-R-O. This is a request for special exception  
4 from the rear yard requirements of Subtitle E, Section 306.1.  
5 This would construct a two-story rear addition to an existing  
6 attached principal dwelling unit in the RF-1 Zone. The property  
7 is located at 248 10th Street, N.E., Square 939, Lot 23.

8 CHAIRPERSON HILL: Guys, I'm sorry. You got to give  
9 me one minute. There's a little bit of emergency here. Give me  
10 one second.

11 (Pause.)

12 CHAIRPERSON HILL: Okay. Ms. John, can you hear me?

13 VICE CHAIR JOHN: Yes, I can.

14 CHAIRPERSON HILL: Okay. So somebody is locked in  
15 another room in my office, and I'm going to try to deal with it.  
16 Would you run this for me?

17 VICE CHAIR JOHN: Sure. Go ahead.

18 CHAIRPERSON HILL: Okay. I'll be back before -- I'll  
19 be back because I have a couple of things to mention before the  
20 appeal, but I'll be back.

21 VICE CHAIR JOHN: Okay. Thank you.

22 Have we called the case yet, Mr. Moy? Mr. Moy.

23 MR. MOY: Yes.

24 VICE CHAIR JOHN: Have we called 20530 yet?

25 MR. MOY: Yes. I've already teed it up.

1 VICE CHAIR JOHN: Okay. Thank you.

2 Ms. -- who do we have representing the applicant? Ms.  
3 Fowler, can you introduce yourself for the record, please?

4 MS. FOWLER: Hi. Good afternoon. I'm Jennifer Fowler.  
5 I am the architect representing the homeowner.

6 VICE CHAIR JOHN: Thank you. Do you have anyone with  
7 you today?

8 MS. FOWLER: No, just myself. Thank you.

9 VICE CHAIR JOHN: Is the ANC here, Mr. Young?

10 MR. YOUNG: No, they are not. No.

11 VICE CHAIR JOHN: All right. Ms. Fowler, can you tell  
12 us a little bit about your application and how you're meeting the  
13 relief?

14 MS. FOWLER: Sure. Yeah. Thank you.

15 So this is a very small two-story wood frame house at  
16 248 10th Street, N.E., 12-feet wide and the lot is only about  
17 35-feet deep. The houses are set back five-and-a-half feet from  
18 the front property line, so everything's kind of shifted back  
19 from what we typically see. And so what -- it's creating a rear  
20 yard issue for an addition that we would like to put on. So the  
21 proposal is for an eight foot, eight inches deep addition, that's  
22 two stories, so the same height as the existing house. And it  
23 actually lines up perfectly with 246 and 244 and the house kind  
24 of to the south. So we're really just trying to kind of fill in  
25 the gap there.

1           So when you look at the pictures, you can see that  
2 there's -- the house to the south, already has an addition. It's  
3 a similar size. The house to the north at 250 10th Street, it  
4 goes back another eight feet, five inches beyond what we're  
5 proposing. So clearly, these houses were all built before the  
6 rear yard setback limitations were put in place. So we're just  
7 trying to have -- build this property out to where their houses  
8 are. And so the resulting rear yard is 16 feet, 6 inches, but  
9 we are at the 60 percent occupancy. So the only request they  
10 were asking for is the rear yard setback.

11           We have the support of 250 and 246 10th Street, N.E.  
12 The letters of support are in the file. We've also been approved  
13 by the ANC 6A and the CHRS has also submitted a letter of support.  
14 So overall, it's been very well accepted. And with that, I'll  
15 leave it open to questions.

16           VICE CHAIR JOHN: Okay. Thank you, Ms. Fowler.

17           MS. FOWLER: Thank you.

18           VICE CHAIR JOHN: Does the Board have any questions?

19           BOARD MEMBER BLAKE: A quick question, Ms. Vice Chair.  
20 Ms. Fowler, do you -- have you presented to the HPRB yet?

21           MS. FOWLER: HPRB has said that this would be at a  
22 staff level approval.

23           BOARD MEMBER BLAKE: Okay. Yeah, that's fine. And  
24 also, you've had letters from both neighbors, adjacent neighbors,  
25 I believe. Have you had any conversation with the neighbor to

1 the rear, I think on C Street?

2 MS. FOWLER: So 919 C Street. Yeah. The ANC asked us  
3 about that, and we did. She reached out to those homeowners and  
4 dropped off a set of plans. I believe it was on September 30th,  
5 after our initial ANC meeting. And she did not hear back, but  
6 she did make sure that they were notified of the project.

7 BOARD MEMBER BLAKE: Okay. Thank you. I have no  
8 further questions.

9 MS. FOWLER: Thank you.

10 VICE CHAIR JOHN: Okay. Thank you. Are there any  
11 other questions?

12 Thank you, Ms. Fowler. So we'll go to the Office of  
13 Planning.

14 MS. BROWN-ROBERTS: Good morning, Madam Chair.

15 VICE CHAIR JOHN: Good morning.

16 MS. BROWN-ROBERTS: Good afternoon, members of the  
17 Commission. This is Maxine Brown-Roberts. And I'm sitting in  
18 for Karen Thomas today of the Office of Planning on BZA 50 --  
19 20530 for a second story rear addition that would have a 16.6  
20 feet rear yard, instead of the required 20 feet, which is required  
21 under Subtitle E 206.1, pursuant to Subtitle E 5201 and Subtitle  
22 X 902.1 -- 901.2.

23 The addition, as the applicant said, the addition would  
24 align with the home at 246 10th Street and would not go beyond  
25 the party wall for 250 10th Street. Thus, the light and air into

1 the neighbor's rear yard should not result from the proposed  
2 addition to adversely impact the light and air. There would be  
3 no windows on either side as there are both along party walls.  
4 And the only -- the windows and doors would be to the rear of  
5 the property that would look out onto the applicant's property.  
6 Again, as the applicant said, both the adjacent property owners  
7 are in support of the addition.

8           Then the rear yard, which would be reduced to 16.6 feet  
9 regarding -- there would also be the private alley to the rear,  
10 so it should not affect the neighbor across the alley. The  
11 addition would not be visible from the street and the -- it is  
12 designed to complement the rear walls of the other buildings  
13 along the alley, and it would include double hung windows and  
14 Hardie plank siding, which is similar to the other houses.

15           The addition would not result in an introduction of the  
16 expansion of a nonconforming use. It's a residential use and  
17 continues to be a residential single-family use. And the height  
18 and lot occupancy would be below the maximum allowed in the RF-  
19 1 Zone.

20           Regarding Subtitle X 901, the proposal has met the  
21 specific special exception requirements, as we discussed, and  
22 granting the relief would not result in any adverse impacts to  
23 the light and air of the neighbor's privacy. And the addition  
24 would also not be out of character with the existing line in the  
25 block. The resulting rear yard, due to the addition, should not

1 create any undue shadows or other impacts on the neighbors.  
2 Therefore, we recommend approval, and I'm available for  
3 questions. Thank you.

4 VICE CHAIR JOHN: Thank you.

5 Does any Board member have any questions? Thank you.

6 Mr. Young is the ANC here? Is anyone --

7 MR. YOUNG: No one signed up.

8 VICE CHAIR JOHN: No one signed up. Okay.

9 MR. YOUNG: Correct.

10 VICE CHAIR JOHN: Ms. Fowler, do you have any (audio  
11 interference) thoughts?

12 MS. FOWLER: No. I just have one procedural question.  
13 I heard the previous case. They had to admit the solar affidavit  
14 into the record and I just -- I filed mine two days ago on the  
15 18th. This is kind of a new, you know, this wasn't required, I  
16 think when we filed the case originally, and I was contacted by  
17 Mr. Andrews (phonetic) to do that. So I didn't know if you needed  
18 to do anything official to submit that on the record.

19 VICE CHAIR JOHN: Well, we can leave the record open  
20 for you to submit.

21 MS. FOWLER: It's already in the record.

22 VICE CHAIR JOHN: It's already in the record.

23 Mr. Moy, I don't see it. Let's see.

24 COMMISSIONER MAY: It's --

25 VICE CHAIR JOHN: Pardon?

1 MR. MOY: It should be under Exhibit 37, Madam Vice  
2 Chair.

3 COMMISSIONER MAY: It's in IZIS.

4 MS. FOWLER: Okay. I just wanted to make sure we didn't  
5 need to do anything to submit it late, because it was already  
6 late.

7 VICE CHAIR JOHN: Okay. Thank you.

8 MS. FOWLER: Uh-huh.

9 VICE CHAIR JOHN: So unless anyone has any objection,  
10 I will allow it into the record, although it's already in the  
11 record.

12 MS. FOWLER: Thank you.

13 VICE CHAIR JOHN: Is that it?

14 MS. FOWLER: That was it. Yes. Thank you so much.

15 VICE CHAIR JOHN: Thank you.

16 So I don't see any Board member requesting to make any  
17 additional comments or ask questions, and so I will close the  
18 record. Are we ready to deliberate?

19 Mr. Young, you can excuse Ms. Fowler.

20 Are we ready to deliberate?

21 BOARD MEMBER SMITH: Yes.

22 VICE CHAIR JOHN: Okay. All right. So I'll go ahead  
23 and start. This is a very small lot, and the applicant is seeking  
24 to make a modest addition of 8.8 feet deep. And so the applicant  
25 will need rear yard relief to provide a 16.5-foot rear yard. So

1 the requirement is 20 feet, and the applicant will need 3.5 feet  
2 relief. The lot occupancy is within the range allowed (audio  
3 interference) is only 60 percent. And there is support from both  
4 neighbors and ANC 6C is in support. And I recall that CHRS also  
5 supports. Mr. Blake clarified that HPRB in questioning, Mr.  
6 Blake was able to get the applicant to clarify that on the staff  
7 level, HPRB approval is required. So based on the analysis of  
8 OP, I think that this is a very -- well, let me say that  
9 differently. I will give great weight to the analysis of the  
10 Office of Planning. Essentially, it's a very straightforward  
11 application requiring only 3.5 relief from the rear yard. And I  
12 don't believe that there are any adverse impacts that would flow  
13 from granting this relief. And so I would be in support of the  
14 application.

15 Mr. May, would you like to comment?

16 COMMISSIONER MAY: I don't really have any comments.  
17 I agree with your recap, and I am prepared to vote in support.

18 VICE CHAIR JOHN: Thank you. Mr. Smith. Do you have  
19 any --

20 BOARD MEMBER SMITH: I don't have anything additional  
21 to add. I think you have, you know, sufficiently summed up this  
22 case, so I will also support the request.

23 VICE CHAIR JOHN: Thank you. Mr. Blake.

24 BOARD MEMBER BLAKE: I, too, believe it meets the  
25 criteria. I'm prepared to support.

1 VICE CHAIR JOHN: Okay. Thank you, Mr. Blake.  
2 So I would like to ask Mr. Smith to make the motion  
3 -- or Commissioner May since you --  
4 COMMISSIONER MAY: Sure.  
5 VICE CHAIR JOHN: -- seems to be up.  
6 COMMISSIONER MAY: Sorry. So I will make --  
7 VICE CHAIR JOHN: Mr. May, I'm so sorry. I'm supposed  
8 to make the motion. I would like to make a motion to approve  
9 Application 20530 of Gale Munro, as read -- as captioned and read  
10 by the secretary and ask for a second.  
11 COMMISSIONER MAY: Second.  
12 VICE CHAIR JOHN: Thank you.  
13 Mr. Moy, would you please call the roll? Mr. Moy. Mr.  
14 Moy.  
15 MR. MOY: Yes, I'm here.  
16 VICE CHAIR JOHN: The motion has been made and seconded.  
17 So it's -- you're up.  
18 MR. MOY: Yes. When I call each of your names, if you  
19 would please respond with a yes, no, or abstain to the motion  
20 made by Vice Chair John to approve the application for the relief  
21 requested. The motion was seconded by Zoning Commissioner Peter  
22 May.  
23 Mr. Smith.  
24 BOARD MEMBER SMITH: Yes.  
25 MR. MOY: Mr. Blake.

1 BOARD MEMBER BLAKE: Yes.

2 MR. MOY: Zoning Commissioner Peter May.

3 COMMISSIONER MAY: Yes.

4 MR. MOY: Vice Chair John.

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: And we have a Board member not participating.  
7 Staff would record the vote as 4-0-1, and this is on the motion  
8 made by Vice Chair John to approve, seconded by Zoning  
9 Commissioner Peter May. Also, in support of the motion to  
10 approve: Mr. Smith, Mr. Blake, and of course, Zoning Commissioner  
11 Peter May and Vice Chair John. (Audio interference), the motion  
12 carries on a vote of 4-0-1.

13 VICE CHAIR JOHN: Thank you, Mr. Moy.

14 And I believe the Chairman --

15 CHAIRPERSON HILL: Yeah. So I'm back. Thanks, Vice  
16 Chair John. Yeah. My emergency is still going on. Somebody is  
17 still locked in their office, and so I got to figure out how to  
18 fix that. I got a locksmith, thankfully, but still that that  
19 takes time.

20 So I wanted to make a comment to the appellant, so  
21 we're -- not the appellant. Yeah, to the appellant. So we've  
22 been -- coming in after lunch, right. This is my plan.

23 What I think we're going to discuss a lot is the motion  
24 of timeliness. And so just to kind of prep them, the appellant,  
25 that that's something to be prepared to talk about. And so other

1 | than that, do you want to say -- is 1:30 okay? Okay. For lunch?  
2 | I mean, I know, Mr. May, you got -- I need the hour, because I  
3 | got to get somebody locked out of their office.

4 |           COMMISSIONER MAY: That's fine by me. I think there  
5 | were some late submissions in this case anyway. It would be good  
6 | to have some time to read. And I do have an obligation this  
7 | evening, but I'm hopeful we're not going to go past like 6:30.

8 |           CHAIRPERSON HILL: Let's see what happens. We'll see  
9 | what happens. I mean, first we have to see if we get past the  
10 | first motion, right. So okay. All right everybody. I'll see  
11 | you guys in an hour.

12 |           COMMISSIONER MAY: Okay.

13 |           CHAIRPERSON HILL: Bye-bye.

14 |           COMMISSIONER MAY: Bye.

15 |           (Whereupon, the above-entitled matter recessed for  
16 | lunch and then resumed.)

17 |           CHAIRPERSON HILL: Ms. John, are you there?

18 |           VICE CHAIR JOHN: Yes, I am.

19 |           CHAIRPERSON HILL: Okay. All right. Okay. Well,  
20 | again, sorry about that, but there's just drama over here. So,  
21 | all right.

22 |           Mr. Moy, if you want to go ahead and call our next  
23 | case, please.

24 |           MR. MOY: Thank you, Mr. Chairman.

25 |           The Board is back from its lunch recess in the public

1 hearing session and the time is at or about 1:40 p.m. So the  
2 next and last case before the Board on today's docket is Appeal  
3 No. 20487 of the Advisory Neighborhood Commission 6B. This is  
4 the appeal from the decisions made on September 30, 2020, and  
5 October 23rd, 2020, by the Zoning Administrator Department of  
6 Consumer and Regulatory Affairs to issue building permits No.  
7 B2007087 and B2100034 approving the renovation of a six-unit  
8 apartment house in the RF-3 Zone. The property is located at  
9 2207 3rd Street, S.E., Square 762, Lot 26. As you cited before  
10 the lunch break, Mr. Chairman, there is a motion to dismiss the  
11 appeal as untimely filed by DCRA under Exhibit 30, as well as  
12 responses to the motion from ANC 6B. And as you know, the --  
13 apart from the typical parties to an appeal, there is also an  
14 Intervenor status to Brian Wise.

15 CHAIRPERSON HILL: Okay. Great. Thank you. All right.  
16 Let's see. Is it Commissioner Holman?

17 COMMISSIONER HOLMAN: Hi. Yes. Commissioner Corey  
18 Holman representing ANC 6B.

19 CHAIRPERSON HILL: Okay. Great.

20 Mr. Wise, can you hear me? You're on mute, Mr. Wise.

21 MR. WISE: All right. There we go. I can hear you.  
22 Can you hear me?

23 CHAIRPERSON HILL: Yes. Could you introduce yourself  
24 for the record, please?

25 MR. WISE: Sure. Brian Wise. I'm the abutting property

1 owner to the subject property at 205 3rd Street S.E.

2 CHAIRPERSON HILL: Got it. Thank you, Mr. Wise.

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

4 MR. GREEN: Yes. Good morning, Chairman and members  
5 of the Board and the other parties. My name is Hugh Green,  
6 G-R-E-E-N, attorney for the D.C. Department of Consumer and  
7 Regulatory Affairs.

8 CHAIRPERSON HILL: Great. Thank you.

9 Mr. LeGrant, could you introduce yourself for the  
10 record, please?

11 MR. GREEN: Oh, sorry, Chairman. It's Hugh Green again.  
12 Mr. LeGrant has to re-log-in. He's having some technical  
13 problems.

14 CHAIRPERSON HILL: Got it. No problem.

15 Mr. Seck, can you hear me?

16 MR. SECK: Yes, Chairman Hill. I can hear you. Thank  
17 you and good seeing you again.

18 CHAIRPERSON HILL: All right. Mr. Seck.

19 MR. SECK: Yes.

20 CHAIRPERSON HILL: Can you turn on your camera, Mr.  
21 Seck? We can --

22 MR. SECK: I think I don't -- by video, yes or no. I  
23 thought it was -- I was blocked.

24 CHAIRPERSON HILL: Could you introduce yourself for the  
25 record, Mr. Seck? Well, hold on, Mr. Seck.

1 MR. SECK: Yes. Sorry about that. Yes. Good  
2 afternoon, Board members, and everyone. My name is Oumar Seck,  
3 representing the owner of District Properties.

4 CHAIRPERSON HILL: Okay. Great. All right, Mr. Seck.  
5 Well, it's nice to see you as well. I'm glad that --

6 MR. SECK: Thank you.

7 CHAIRPERSON HILL: -- you're also surviving COVID.

8 MR. SECK: Yes, we are. Thank you.

9 CHAIRPERSON HILL: Although, Mr. Wise, I understand  
10 you're going through COVID or something.

11 MR. WISE: I did last year, so I appreciate your -- I'm  
12 one of those long-haulers, so I appreciate any patience you can  
13 give me on going through this process.

14 CHAIRPERSON HILL: Sure. No problem, Mr. Wise. We're  
15 trying -- we try to be as patient as we can on all of them. Yes.  
16 If you get real lost (phonetic), let us know.

17 MR. WISE: All right. Thank you, Chairman.

18 CHAIRPERSON HILL: All right.

19 Mr. Green, I'm going to wait for. Mr. LeGrant to join  
20 us.

21 MR. LEGRANT: Hello, Mr. Chairman. Matt LeGrant is  
22 joining. I had a little computer problem, but I think I'm back.

23 CHAIRPERSON HILL: Okay. Great.

24 Can you introduce yourself, Mr. LeGrant?

25 MR. LEGRANT: Certainly. Yes. Matthew LeGrant, Zoning

1 Administrator, DCRA.

2 CHAIRPERSON HILL: Okay. Great. Sorry, I didn't see  
3 you there for a second. Is Mr. Green still with us?

4 MR. GREEN: Yes, Chairman.

5 CHAIRPERSON HILL: Okay. So the first thing that I  
6 want to do is, you know, go through this motion to dismiss due  
7 to timeliness and, I guess, Mr. Green, it's your motion. And so  
8 if you could kind of walk us through what you believe the  
9 timeliness issues are, and then we'll let the ANC and the  
10 Intervenor have an opportunity to ask questions of you, and then  
11 also have an opportunity to present on their thoughts about  
12 timeliness. And so if you want to go ahead, and if there's  
13 anything you want to refer first to in the record, if that's  
14 helpful, whatever you think might be best.

15 MR. GREEN: Sure. Thanks, Chairman, and members of the  
16 Board. Hugh Green, attorney for DCRA.

17 Yes. We will have this pending motion to dismiss due  
18 to timeliness. The ANC Commission 6B is appealing two permits.  
19 The first is B2007087 and that was issued September 30th, 2020,  
20 which we refer to as the original building permit, and building  
21 permit B2100034 and that was issued October 23rd, 2020. As the  
22 Board is well aware, under Subtitle Y 302.2, zoning appeals shall  
23 be filed within 60 days from the date the person appealing the  
24 administrative decision had notice or knowledge of the decision  
25 complained of, or reasonably should have noticed or knowledge of

1 these terms earlier.

2 Certainly, time -- a timely appeal is certainly  
3 critical. The Board is well aware that if an appeal is not  
4 timely, then the Board is without power to consider it.

5 It's DCRA's position that the first writing in this  
6 case is the original building permit, which was issued on  
7 September 30th, 2020. And therefore, the ANC was required to  
8 file its appeal by November 29th, 2020, which is 60 days from  
9 the date of the original permit.

10 Even -- more generally speaking, the amended permit,  
11 which was issued on October 23rd, 2020, 60 days from that would  
12 have been December 22nd, 2020. (Audio interference) the ANC did  
13 not file within the 60-day time frame as required. Interestingly,  
14 -- interesting to note, they, in their filings did not -- in  
15 their original statement of appeal did not ask for waiver of the  
16 60-day requirement. And therefore, it's certainly something that  
17 they should have sought and had provided an explanation for (audio  
18 interference) appeal.

19 So with that being said, that is -- as the basis of the  
20 appeal. But I would like to draw your attention to a few things  
21 which I think are relevant. And then I will -- I'll stop because  
22 I think this is important. And what I want to bring to your  
23 attention is this. I believe the ANC's response to our motion  
24 to dismiss actually supports our position, and it actually  
25 undermines theirs that it was timely filed. The first is Exhibit

1 36-B -- 36-D, which the ANC filed which is a spreadsheet of  
2 permits which have been issued, which the ANC expressly  
3 acknowledged they had, and they filed in this case, shows that  
4 the original permit was that the permit B2007087 is on that list,  
5 and it's also showed it's permit issue. So I would argue that  
6 the ANC had actual knowledge of that permit issuance.

7 BOARD MEMBER BLAKE: Mr. Green, really quickly, what  
8 exhibit did you reference?

9 MR. GREEN: Yes. Exhibit 32, 32-D as in dog and it's  
10 that's their response to their motion to dismiss.

11 BOARD MEMBER BLAKE: Okay.

12 MR. GREEN: The other issue too. In their motion to  
13 dismiss, they reference emails, specifically an email, Exhibit  
14 32-A, which is an email from zoning -- one of the members of the  
15 Zoning Office, Mamadou Ndaw, in October of 2020. They rely on  
16 that very heavily in their (audio interference). Clearly, they  
17 had access to that email and subsequent issues regarding that,  
18 therefore, I think that counts against that -- I think it  
19 certainly cuts against their position (audio interference) this  
20 time it was appropriate and certainly had knowledge of it earlier  
21 in October.

22 And then finally, just a couple of more points. The  
23 ANC claims it was timely filed because they received notice of  
24 these permits on February 16th, 2021. That's when they said that  
25 that's when they received notice of these permits. So there are

1 two questions that I have, in their motion to dismiss in their  
2 statement of appeal. So in their motion to dismiss -- sorry,  
3 their opposition to our motion to dismiss, strike that. In their  
4 opposition to the motion to dismiss, they said that they became  
5 aware of the permits when they were -- they received a letter to  
6 DCRA's director from Mr. Wise regarding these permits. However,  
7 in their statement of appeal, which is Exhibit 6, they offer a  
8 different explanation of when they received notice of the permits  
9 and it was -- this is page 1. The SMD Commissioner for 6B01, in  
10 which the property is located, was contacted by an adjacent  
11 neighbor to the property due to the erection of a 20-foot-tall  
12 black tarp in front of the building. And this is again, their  
13 date is February 16th. So I think there are some conflicting  
14 facts regarding to when they received notice and how they received  
15 notice. But in any regard, it's clear from their own filings  
16 that there was actual knowledge of these permits, both the  
17 original and amended, which is part of the record and filed by  
18 them. Therefore, I think that this is not a timely appeal, and  
19 we would ask that it be dismissed.

20 CHAIRPERSON HILL: Okay. Thanks, Mr. Green. So I'm  
21 looking to my Board members first.

22 Do any of you have any questions for Mr. Green? No?

23 VICE CHAIR JOHN: I'll wait to hear --

24 BOARD MEMBER BLAKE: Yeah. Nothing.

25 CHAIRPERSON HILL: Got it. Okay. All right. So you

1 don't have any questions about their argument for timeliness.  
2 All right.

3 Commissioner Holman, can you hear me? Okay.  
4 Commissioner, maybe -- I'm trying to think what might be easiest  
5 to do here. Like, I mean, do you want to go ahead and give us  
6 your argument as to why you think it's timely, or do you want to  
7 ask -- I'll give you the option. Or do you want to ask questions  
8 of Mr. Green first, or do you want to do that after you give your  
9 argument as to why you think it's timely?.

10 COMMISSIONER HOLMAN: I have no questions of Mr. Green,

11 CHAIRPERSON HILL: Okay. So do you want to give us  
12 your argument as to why you think it's timely?

13 COMMISSIONER HOLMAN: Yeah, I can do that.

14 So as Mr. Green alluded to, we filed an opposition to  
15 the motion to dismiss. I really don't want to bombard you with  
16 the entire response, but just to quickly go over the timeline  
17 that Mr. Green sort of referenced. On September 30th, the  
18 original permit was issued for renovate -- for quote "renovation  
19 of an existing six-unit building with a newly excavated cellar."  
20 The next day, DCRA notified the Intervenor that they were  
21 initiating a quote "summary revocation letter" unquote, for the  
22 permit. On October 23rd, a revised permit was issued to eliminate  
23 the cellar extension but change nothing else. Submitted that  
24 with that permit were falsified records of a neighbor  
25 notification in Exhibit 32-C. On February 16th, the

1 Intervenor was made aware of the --

2 CHAIRPERSON HILL: Commissioner, what did you just say?  
3 Falsified records?

4 COMMISSIONER HOLMAN: In Exhibit 32-C, the Intervenor  
5 can speak more to this. There is a neighbor notification with  
6 the permit, the revised permit dated with the notification, was  
7 dated in May of -- for the first permit. The notification  
8 submitted for the revised permit with the notification for the  
9 original permit.

10 MR. WISE: Both the existing and the new plans.

11 CHAIRPERSON HILL: Okay. I'm sorry to interrupt you,  
12 Commissioner. Go ahead.

13 COMMISSIONER HOLMAN: No, that's fine.

14 CHAIRPERSON HILL: I just -- there's a lot of different  
15 moving parts. I just want to make sure I'm thinking about it.

16 COMMISSIONER HOLMAN: Yeah, I know. Mr. Wise, I'm sure  
17 will expand a little bit more on that because I didn't receive  
18 the neighbor notification, he did. So after that -- after the  
19 ANC was made aware of the sort of underlying permits were not  
20 revoked as Mr. Ndaw said that they would be -- and the falsified  
21 -- or the neighborhood notification records were not sent, the  
22 ANC immediately took action to file its appeal. DCRA's narrow  
23 reading on the timeliness is here -- here is undercut by the  
24 actions of DCRA. The appeals filing is the direct response to  
25 DCRA's actions, telling us the permit was going to be revoked

1 when it wasn't. The initial issuing of a revision with disputed  
2 neighborhood notification letters, and then withholding plans  
3 from the Intervenor as well, as described in our opposition at  
4 Exhibit 32. ANC 6B acted as soon as it was noticed. And we will  
5 just note here that the harm to the property -- there's no harm  
6 to the property owner, who continued working on the property  
7 until a stop work order was issued. There's certainly no harm  
8 to DCRA who could have filed this motion to dismiss back in April  
9 or last month, and we had another preliminary motion rather than  
10 waiting six months until a week before the hearing. Anyway,  
11 that's sort of where the ANC comes at. We understand that it is  
12 not an easy 60-day argument, but it was the actions of DCRA that  
13 conspired to prejudice the ANC to not be able to file the appeal  
14 until we did in March. Thank you.

15 CHAIRPERSON HILL: Okay. Does the Board have questions  
16 of the -- Commissioner May?

17 COMMISSIONER MAY: Yeah. So I've read through  
18 everything, but I'm sure, you know, it's kind of a confusing  
19 record. DCRA said that the permit would be revoked, that was  
20 after the October 23rd?

21 COMMISSIONER HOLMAN: No, that was in between. They  
22 sent a letter on -- the day after the original permit was issued.  
23 In Exhibit 32-A, there's a letter. It's sort of hard because  
24 Mr. Ndaw put his response is in the quoted email, but so you'll  
25 have to see it was sent on October 1st. And in there, there's a

1 highlighted portion that says DCRA will issue a summary notice  
2 to revoke the permit.

3 COMMISSIONER MAY: And they never did?

4 COMMISSIONER HOLMAN: I don't -- as far as we can tell,  
5 they didn't, I don't know what DCRA's -- they may define revoke  
6 differently than we do, but that is we -- it was certainly not  
7 revoked, it was revised.

8 COMMISSIONER MAY: Okay. But then -- so then subsequent  
9 to that, they issued the revised permit on --

10 COMMISSIONER HOLMAN: Correct.

11 COMMISSIONER MAY: -- October 23rd. But were you aware  
12 of that?

13 COMMISSIONER HOLMAN: We received the email (audio  
14 interference) DCRA to start that 60-day clock, so yes. We  
15 received that email. But, you know, that email again, it  
16 contains, you know, it contained information that said it was a  
17 revision to a permit that we assumed to be revoked. It was --  
18 there's sort of -- something got lost in the issue of revocation  
19 in there that certainly --

20 COMMISSIONER MAY: Right. So did you contact DCRA  
21 about that?

22 COMMISSIONER HOLMAN: I believe the --

23 COMMISSIONER MAY: That question about why did you  
24 issue a revised permit for something you said that was going to  
25 be revoked?

1 COMMISSIONER HOLMAN: We were not. I assume the  
2 Intervenor had been.

3 COMMISSIONER MAY: All right. Well, we'll get to him,  
4 I'm sure. And when you filed the appeal, were you aware of the  
5 60-day issue at that time?

6 COMMISSIONER HOLMAN: Yeah. There was a discussion of  
7 our ANC, both the committee and the full ANC. We understand that  
8 it's not a hundred percent, you know, this was not sort of  
9 something that this was going to be an issue. We understood this  
10 was going to be an issue, and we think the actions of DCRA sort  
11 of conspire to bring into this appeal being timely.

12 COMMISSIONER MAY: Okay. And then did you -- why didn't  
13 you note this in the appeal and request a waiver to the 60-day  
14 provision?

15 COMMISSIONER HOLMAN: I don't really have a good answer  
16 for that.

17 MR. WISE: Can I answer that as the --

18 CHAIRPERSON HILL: Hold on. Who's talking? Yeah.  
19 Just let me get to Mr. Wise.

20 COMMISSIONER MAY: Mr. Wise, one at a time, please.

21 CHAIRPERSON HILL: One at a time.

22 COMMISSIONER MAY: I think that answers my question  
23 about -- on the timeliness.

24 CHAIRPERSON HILL: Thank you. Okay. All right. Okay.  
25 Anyone else for the Commissioner? Sure. Ms. John.

1 VICE CHAIR JOHN: Thank you, Mr. Chairman.

2 I'm looking at the emails in Exhibit 32-A. And so is  
3 Mr. Rueda Guillermo with the ANC. Was he communicating with DCRA  
4 on behalf of the ANC?

5 COMMISSIONER HOLMAN: He was communicating with DCRA  
6 on behalf of the Intervenor, I believe. The Intervenor can answer  
7 that question. He was not -- the ANC was not in communication  
8 with DCRA at that time. (Audio interference) with us by the  
9 Intervenor.

10 VICE CHAIR JOHN: So at what time did the ANC become  
11 involved?

12 COMMISSIONER HOLMAN: April -- or February 16th, when  
13 Mr. Wise first notified the ANC of the issues.

14 VICE CHAIR JOHN: And do you know who at the ANC would  
15 have reviewed the weekly permit?

16 COMMISSIONER HOLMAN: The weekly permit emails are sent  
17 to every commissioner and the ANC for all of the permits that  
18 issued in the ANC. So I could have -- Commissioners -- 6B01  
19 anybody could have.

20 VICE CHAIR JOHN: Okay. And so with respect to the  
21 original and the amended permit, was there a sheet that showed  
22 the existing configuration of the building?

23 COMMISSIONER HOLMAN: In the original permit?

24 VICE CHAIR JOHN: Yes.

25 COMMISSIONER HOLMAN: Yes, I believe so.

1 VICE CHAIR JOHN: And the amended permit as well?

2 COMMISSIONER HOLMAN: I, honestly, I focused more -- I  
3 don't know. I assume so, but I don't know.

4 VICE CHAIR JOHN: And -- well, okay. I'll leave it at  
5 that for now. Thank you.

6 COMMISSIONER HOLMAN: Thank you.

7 CHAIRPERSON HILL: All right. Anyone else for the  
8 Commissioner?

9 All right. Mr. Wise, can you hear me?

10 MR. WISE: Yes, I can. Thank you, Chairman.

11 CHAIRPERSON HILL: Just like -- you're welcome. Just  
12 like before. Do you want to present first and then ask some  
13 questions, or do you have any questions and then present? What  
14 do you like to do?

15 MR. WISE: I can present just based on what's already  
16 been said, and then if I can answer questions or ask questions  
17 at your pleasure.

18 CHAIRPERSON HILL: No, no, that's great. Go ahead and  
19 again, just talk about the timeliness issue.

20 MR. WISE: Yeah, no problem.

21 So to understand this entire process, beginning in  
22 about May of 2020, I began dialogue, both myself and  
23 representatives of mine, Mr. Rueda and Ms. Englebert began  
24 communication with DCRA to understand what the plans were for  
25 this property. We received -- we actually didn't receive any

1 neighbor notification at first, and then finally received a  
2 neighbor notification on May 15th for an original set of plans  
3 that did not have the as is configuration in it. It was just  
4 the plans for the renovation, for the new construction. And then  
5 from that point on, we attempted to make technical objections to  
6 various plans. These plans were rewritten and rewritten and  
7 rewritten over and over and over again. Until such time as we  
8 were notified, and we notified them of the objections to the  
9 expansion and to some of the other zoning violations between May  
10 2020 and September 2020. And during that time, I have emails  
11 over and over and over again, Mr. Ndaw and Dinesh Patel saying  
12 that they were not issues of concern and that they were going to  
13 issue the permits. We were notified that on September 22nd that  
14 the permits were stamped, and they would be issued on September  
15 30th.

16 As Commissioner Holman mentioned, on October 1st, we  
17 received an email. Mr. Rueda, on my behalf, received an email  
18 from Mr. Ndaw saying that they have realized that those objections  
19 were valid and that the excavation of the entire property and  
20 connecting the -- sorry, the excavation of the entire property  
21 and connecting the carriage house in the back with the front of  
22 the house was not proper and was a -- constituted an expansion  
23 of the property. So he said that a summary revocation letter  
24 (audio interference) permit.

25 At that point, we figured that meant that a summary

1 | revocation letter would be issued for the permit and that that  
2 | permit was no longer valid. And we were then notified that there  
3 | may be another -- there may be a revision that was in the works.  
4 | We were not notified as to the details of that revision. We were  
5 | not given the opportunity for technical objections. I sent  
6 | numerous emails to DCRA requesting that. I think we cite over  
7 | ten emails in our response. And I kept being told that I was  
8 | not permitted to have those. I was told that it was not required  
9 | for the applicant to give them to me. And I was -- and when I  
10 | did finally get a response, Mr. Patel at DCRA sent a copy of the  
11 | permits which were stamped 9/22, which was prior to the time of  
12 | the revocation. I continued to ask month after month, all the  
13 | way into January 11th, continued to ask for a copy of the permits.  
14 | They were not available on DCE records, for some reason, so they  
15 | were not available to the public. And I kept being told I've  
16 | been given neighbor notification, and that's all that was  
17 | required. And when I would ask for that neighbor notification,  
18 | they would send me -- and to clarify they would send me a  
19 | fraudulent neighbor notification. If you could --

20 |           MR. GREEN: Objection, Mr. Chairman.

21 |           CHAIRPERSON HILL: Mr. Wise, give me a second. Go  
22 | ahead, Mr. Green.

23 |           MR. GREEN: Sorry to interrupt, Mr. Wise. I just had  
24 | to object about two things. One is this -- the throwing around  
25 | the terms of fraudulent neighbor notification just as a -- you

1 know, what -- in our brief -- one of our -- in our brief, the  
2 neighbor notification is under the Board's purview. I understand  
3 Mr. Wise is giving his position on things. I just have an  
4 objection with that. That's all.

5 CHAIRPERSON HILL: Okay.

6 MR. WISE: (Audio interference) as well as the  
7 notification --

8 CHAIRPERSON HILL: I understand. Give me a second.  
9 Let's just not use the word fraudulent. Okay? I'm not -- I'm  
10 just trying to get through time wise right now and trying to  
11 understand things. And so let's both, Commissioner and Mr. Wise,  
12 just not use the word "fraudulent". Okay.

13 All right. Go ahead, Mr. Wise.

14 MR. WISE: So an incorrect, I guess, it's --

15 CHAIRPERSON HILL: Mr. Wise, you're not really, really  
16 -- you asked me to cut you a break. Why don't you cut me a break,  
17 right? If you use a different word that says the same thing,  
18 what do you think, right? Just tell the story.

19 MR. WISE: Okay.

20 CHAIRPERSON HILL: What you thought is wrong --

21 MR. WISE: I would direct you --

22 CHAIRPERSON HILL: -- how's that? What you thought was  
23 wrong?

24 MR. WISE: Sure. I would direct your attention to  
25 Exhibit 32-C, which is the supposed neighbor notification form,

1 | which the form has a date --

2 |           MR. GREEN: Again, the same objection, Mr. --

3 |           MR. WISE: -- on May 7th.

4 |           CHAIRPERSON HILL: Okay. I'm just like it does not  
5 | matter. I'm also kind of tired. So you've got a neighbor  
6 | notification form. We can argue about whatever it is, whatever  
7 | it is -- you're losing your audience, Mr. Wise, so try to tighten  
8 | it up.

9 |           MR. WISE: Okay. So it's got plans stamped September  
10 | 22nd and a Certified Mail receipt that says May 15th. It's  
11 | impossible to send a document from September 22nd on May 17th.  
12 | This was what was issued to DCRA --

13 |           CHAIRPERSON HILL: I don't even know what the -- the  
14 | neighbor notification letter. I don't even know if that's within  
15 | our purview, right. And I can find that --

16 |           MR. WISE: It's --

17 |           VICE CHAIR JOHN: May I --

18 |           MR. WISE: If it's material to why we couldn't file the  
19 | appeal on time.

20 |           CHAIRPERSON HILL: Ms. John.

21 |           VICE CHAIR JOHN: I'm going to stop and ask Mr. Wise  
22 | if he received notice of the second permit.

23 |           MR. WISE: I did not.

24 |           VICE CHAIR JOHN: Okay. And why didn't you receive  
25 | notice? Did you check all of the public records?

1 MR. WISE: I did. And I sent emails almost weekly to  
2 DCRA requesting them, and they continued to send me -- and that's  
3 why this document is so important -- they continued to send me  
4 this neighbor notification that had plans stamped from 9/22,  
5 which we were told were revoked and a Certified Mail receipt from  
6 5/7/2020. They can -- based on two occasions, that's what they  
7 sent to me in response to those requests.

8 VICE CHAIR JOHN: And I'm sorry to interrupt, but did  
9 you have any conversations with anyone from the ANC during all  
10 of this time about --

11 MR. WISE: I did not, because one thing to note, we did  
12 not believe that the permit was finalized at this point. During  
13 this time, we were told that there was a revision in process,  
14 and I guess up until 10/23, there was a revision in process. And  
15 then subsequent to that, there is another revision in process,  
16 and that revision is actually still open right now. So the permit  
17 itself has not been finalized, and so I don't know what we could  
18 have appealed. As we said in the response, if the permit isn't  
19 finalized yet, and if there are still revisions being made to it,  
20 wouldn't it have been premature to have brought the appeal? And  
21 wouldn't it have been thrown out because it was premature?

22 What did prompt us to -- what did prompt me to go to  
23 the ANC, Mr. Green cites that on the same day, February 16th,  
24 that I did two things. I sent a letter to Director Chrappah,  
25 and I sent a notice to the ANC about this. The reason was because

1 on that day, no construction had happened for the last two months  
2 or so on it. And on that day, a large black tarp went up and  
3 they began construction on the building. Up until that point,  
4 we thought DCRA was still evaluating it. In fact, on February  
5 24th, I received an email from Mr. Ndaw saying that they were  
6 still going in and inspecting the property to see if it lined up  
7 with zoning code. So they were continuing to engage with us and  
8 that engagement with us made us believe that the permits were not  
9 final. And that because we were told that they would be revoked  
10 and because they continued to ask the applicant to, you know,  
11 revise the permits, and like I said, there is still an open permit  
12 for this. So we still don't know what the full scope of the  
13 project is because this open permit seeks specifically to revise  
14 that initial permit that DCRA is claiming was the first writing.

15 COMMISSIONER MAY: Can I ask, when did that black tarp  
16 go up?

17 MR. WISE: February 16th. Until then, we did not know  
18 that they were moving forward with construction.

19 COMMISSIONER MAY: Right. And when did you finally get  
20 copies of the plans or the permit, or both?

21 MR. WISE: I'm trying to -- I think it was in the  
22 beginning of March that I got the final ones that they appeared  
23 on E-records.

24 COMMISSIONER MAY: The permit and the drawings --

25 MR. WISE: The permits. Yeah, the drawings and the

1 | permits.

2 |           MR. WISE: And again, during this time, I had emailed  
3 | DCRA --

4 |           CHAIRPERSON HILL: What are you saying, Mr. Blake.

5 |           MR. GREEN: -- numerous times.

6 |           CHAIRPERSON HILL: You said (audio interference). Mr.  
7 | Blake?

8 |           BOARD MEMBER BLAKE: Yeah. Mr. Wise, I just want to  
9 | make sure I understand. You keep indicating that "we" and "us."  
10 | Could you just explain who the "we" and "us" is that you're  
11 | talking about? Is it you, individually, or some other people  
12 | that you're working with? I just want to make sure I'm clear.

13 |           MR. WISE: Yeah. So I -- when this became obvious that  
14 | there were going to be that, for instance, the -- there was going  
15 | to be significant underpinning and construction on a party wall  
16 | that we have, I had retained the services of MCP Inspections,  
17 | which is Guillermo Rueda and Delaine Englebert, and they reviewed  
18 | the plan throughout this and communicated with DCRA for the most  
19 | part.

20 |           BOARD MEMBER BLAKE: Okay. But at no point did you  
21 | mention it even to either the ANC, SMD or anything like that  
22 | until February?

23 |           MR. WISE: I didn't, because I didn't realize that that  
24 | they considered the permit to be final. And so it wasn't an  
25 | appealable -- in my mind, it wasn't an appealable action. Yeah.

1           BOARD MEMBER BLAKE: But did you -- didn't you mention  
2 as an inconvenience or something like that? You would think if  
3 you were (audio interference), you'd be like, I got to tell  
4 somebody something. You didn't (audio interference).

5           MR. WISE: We actually -- I thought we had a working  
6 relationship with DCRA because they -- on October 1st, they  
7 acknowledged the -- some of the technical objections that we had  
8 -- that we had identified, that they had already approved in the  
9 issue -- in the permit issuance. And so we believed that we  
10 could just bring some of these issues to their attention and that  
11 they would respond, you know, appropriately. It wasn't until we  
12 found out that two permits had been issued and a third was being  
13 -- had been applied for, or was going to be applied for, and  
14 construction had started, that I went to the effort of -- I sent  
15 the letter to Director Chrappah asking him to look into it, and  
16 the fact that we couldn't get any of these documents. We were  
17 having real trouble getting any copies of anything. And the fact  
18 -- this has a significant impact on our property. And so one of  
19 the reasons that we expect a neighbor notification was because  
20 there were structural implications to our house, which ended up  
21 proving accurate, because we have a hole in our wall right now  
22 between the two properties, and there's a stop work order on the  
23 property. So we thought that if there's a revocation of the  
24 original permit that there would need to be no -- neighbor  
25 notification for any revision after that, especially that had a

1 substantial impact on our property. And it sounds like the  
2 applicant -- and I'll be careful, because I want to be respectful.  
3 But it sounds like the applicant agreed with that, because they  
4 submitted to DCRA a neighbor notification, which they never sent  
5 to us, that has those stamped permits from 9/22 with the old  
6 Certified Mail things. That was never received by us, and I  
7 don't have any evidence that it was ever sent to us.

8 BOARD MEMBER BLAKE: Okay. Thank you.

9 MR. WISE: But it's in the record as having been  
10 submitted.

11 CHAIRPERSON HILL: Okay. Mr. Wise, I'm sorry I got a  
12 little bit excited right there. I didn't get to eat anything  
13 for lunch. I had to deal with my colleague being locked --

14 MR. WISE: I got that.

15 CHAIRPERSON HILL: My colleague was locked in an office  
16 for the whole lunch break.

17 MR. WISE: How does someone lock themselves in these  
18 office buildings nowadays?

19 CHAIRPERSON HILL: It's an interior office and the lock  
20 stopped working. So anyway, I don't want to get excited. So  
21 let's see. We got that. I don't know.

22 So does anyone have any more questions?

23 MR. WISE: Could I ask you one question --

24 CHAIRPERSON HILL: Sure.

25 MR. WISE: -- of Mr. Green.

1           Mr. Green, when do you contend that the 60 days started?

2           MR. GREEN: I contend that it's in -- it's in our brief.  
3 It says it right there. It's on the date of the original permit,  
4 which is --

5           MR. WISE: Okay. So --

6           MR. GREEN: Excuse me. Can I just finish, sir? So  
7 September 30th, 2020, is the 60-day time frame is when the appeal  
8 should have been filed. And just so we're clear, that's the date  
9 we cite as the time frame in which the appeal should have been  
10 filed.

11           MR. WISE: And so just to clarify the record. Fifty-  
12 seven days after that was when I first got any notification from  
13 DCRA of the permit, any notification that it had even been issued,  
14 so I wouldn't have had time. I would have had three days to do  
15 that.

16           MR. GREEN: I'm sorry.

17           MR. WISE: Do you dispute -- I'm sorry. I'm just -- I  
18 have one more question. Do you dispute Mr. Ndaw -- did Mr. Ndaw  
19 have authority to send an email saying that he was going to revoke  
20 that permit?

21           MR. GREEN: We're not dealing with Mr. Ndaw's email,  
22 and so we're talking about timeliness. So at this point, I don't  
23 think it's relevant as to whether or not he sent an email  
24 regarding whatever he said. What's your specific question about  
25 --

1 CHAIRPERSON HILL: Hold on a second. This is way worse  
2 on video.

3 Mr. Wise, you just said something that I thought was  
4 interesting. So September 30th is when supposedly the original  
5 permit was issued. Then October 23rd, 2020, is when the revised  
6 permit was issued, right. So you're saying that September 30th,  
7 2020, you got something 57 days later. What did you get 57 days  
8 later?

9 MR. WISE: I received -- after asking for documents  
10 having to do with -- I'm sorry. I just moved (audio  
11 interference). After asking for documents constantly having to  
12 do with this permit, I received from Dinesh Patel an email that  
13 included that neighbor notification that had the 9/22 permit --  
14 listed permit that I was told was revoked.

15 CHAIRPERSON HILL: Okay. Hold on a second. So you got  
16 that 57 days after the September 30th, but you just said that  
17 you had said was revoked. When did -- can you clarify again what  
18 you said in terms of when something was revoked?

19 MR. WISE: So on October 1st, Mamadou Ndaw, who is the  
20 supervisory zoning technician, sent the email, which is Exhibit  
21 32A, and he sent that email on October 1st saying and I quote  
22 --

23 CHAIRPERSON HILL: That's okay. So that was the October  
24 1st email. So what are you -- so then I don't understand the 57  
25 days later. You're saying that on October 1st, you thought that

1 | this was suspended, right, and then later on, you received  
2 | something that said that it was not suspended. Can you just  
3 | clarify that? I'm just trying to (audio interference).

4 |           MR. WISE: No, no, no. I received the old permits.  
5 | DCRA sent me the old permits that I believe was revoked. And so  
6 | I responded saying, "These aren't the correct permits. Can you  
7 | send me the correct permits?" And they refused to do so.

8 |           CHAIRPERSON HILL: Okay. All right. Okay. Mr. Wise.  
9 | And by the way, we're going to talk about all this, and everybody  
10 | will get to figure this out. The problem -- and we're just trying  
11 | to get to the timeliness issue. The problem that I'm having the  
12 | most right now, Mr. Wise, unfortunately, is this is your appeal.  
13 | This is the ANC's appeal. So that's the problem that I'm kind  
14 | of struggling with. I clearly think that you didn't know whatever  
15 | you -- you know. I clearly understand that you were going to  
16 | appeal whatever the permit was. I'm not looking for a response  
17 | just yet. I'm just saying that's what I'm kind of struggling  
18 | with.

19 |           So does my fellow Board members have any questions of  
20 | anybody?

21 |           VICE CHAIR JOHN: Just to clarify one more time for Mr.  
22 | Wise. So a couple questions. On the public records, was that  
23 | first permit ever revoked on the -- in the public documents or  
24 | could you still have pulled it up?

25 |           MR. WISE: I'm sorry. You mean was it still available?

1 VICE CHAIR JOHN: Yes.

2 MR. WISE: The permit was never officially revoked.

3 VICE CHAIR JOHN: No, no. That's not the question.  
4 The question is if someone went to the public records, could they  
5 still pull up that first permit? Was it B2007087, was that ever  
6 removed from the public records?

7 MR. WISE: It was not. So what happened was in our  
8 review.

9 VICE CHAIR JOHN: That's my question. Now --

10 MR. WISE: It was all of the old information.

11 VICE CHAIR JOHN: That is my question. Was it ever  
12 removed from the public domain? So if I logged in, regardless  
13 of what Mr. Mamadou said, that permit would still be available  
14 online.

15 MR. WISE: It would. In the old -- with the old  
16 information, yes.

17 VICE CHAIR JOHN: (Audio interference) you said, and  
18 the Chairman was trying to get at this, and it got a little  
19 confusing. So when did you receive the notice with the second  
20 permit? Could you explain that answer? When did you have actual  
21 notice of the second permit?

22 MR. WISE: I did not receive the second permit until  
23 early March.

24 VICE CHAIR JOHN: Okay. And what did you receive in  
25 February?

1 MR. WISE: In February, I received a copy of the 9/22  
2 stamped original permit that I was told was revoked.

3 VICE CHAIR JOHN: But it was still available online,  
4 so okay. That clarifies it for me. And so I have a couple of  
5 questions for DCRA, but I can wait.

6 MR. WISE: Can I clarify one thing? The reason that  
7 this never came up to the ANC was because if you -- the  
8 description of this case would not have raised any objection to  
9 it, because it was falsely written in that thing. It's an  
10 existing (audio interference) building.

11 VICE CHAIR JOHN: Since that was my question, I'm going  
12 to stop you right there with the allegations of falsehood and so  
13 on. So let's just not go there. Okay? This is the ANC's appeal.  
14 And the ANC had an obligation to review the application and the  
15 permit, and that's within 60 days. So that's all I'm going to  
16 say, and I'll wait to hear from DCRA.

17 CHAIRPERSON HILL: Okay. So Mr. May -- Commissioner  
18 May?

19 COMMISSIONER MAY: Yeah. Mr. Wise, if you had not  
20 received word from DCRA in the email from Mr. Ndaw that the  
21 original permit was going to be revoked, what would you have  
22 done?

23 MR. WISE: We would have continued -- we would have  
24 appealed at that point.

25 COMMISSIONER MAY: Right. Okay.

1 MR. WISE: And as soon as --

2 COMMISSIONER MAY: You did not know that the original  
3 permit was not going to be appealed, or rather was not going to  
4 be revoked until you received the permit in March, the following  
5 year, I mean, March of '21?

6 MR. WISE: Yeah. We were still operating off of the  
7 assumption that the original permit would be revoked, and that  
8 we would receive through a new notification process and go through  
9 a 60-day technical objection period after we received the new  
10 plans, and we never received any of those new plans until March  
11 and that was only because we pulled them off of the public  
12 document.

13 COMMISSIONER MAY: When you learned of the October  
14 permit, you made several efforts to get that permit and to get  
15 those (audio interference), and you did not do that until March.

16 MR. WISE: No, no, no. As soon as we learned of the  
17 October permit, we made several efforts. I sent multiple emails  
18 to get those. Those emails were responded to by Mr. Patel with  
19 the original documents which were, in our mind, revoked. And so  
20 we never -- we were not able to receive those documents because  
21 if we had, we would have immediately filed an appeal at that  
22 point.

23 COMMISSIONER MAY: Okay.

24 MR. WISE: The idea that -- the idea trying to get  
25 that.

1           COMMISSIONER MAY: I mean, you know, it's one thing to  
2 allege that within 60 days, you know, of your knowledge of the  
3 permit or knowing or could have reasonably known about the permit.  
4 It's, you know, the permit itself doesn't have enough  
5 information, or the notification of the permit that comes to the  
6 ANC because they don't have enough information for anyone to  
7 understand really whether there's an issue. And so access to the  
8 permit drawings is critically important. And if you're operating  
9 under the assumption, based on your communications from DCRA,  
10 that the permit, the original permit had been revoked. You're  
11 -- basically, what you're saying is that the ANC wouldn't know  
12 because you didn't know that there was, in fact, a problem until  
13 February or March.

14           MR. WISE: That's right.

15           COMMISSIONER MAY: Okay.

16           CHAIRPERSON HILL: Okay. Thanks, Commissioner May.

17           All right. Anybody else?

18           Okay. All right. I don't know -- I got two things  
19 here, right? We're either going to excuse everybody, and we can  
20 deliberate on this and talk about this. We can do an emergency  
21 meeting, if for some reason you want to talk to counsel. But  
22 either way, I'm going to -- we're not going to have the -- I got  
23 your hand, Mr. Wise. We're not going to have like Hollywood  
24 Squares thing while we figure this out.

25           Mr. Wise, what would you want to say?

1 MR. WISE: I just have one quick question. If the  
2 Board does decide to dismiss this appeal, is it appropriate for  
3 -- would it be appropriate then, or can the Board consider  
4 allowing the appeal to be reintroduced following the resolution  
5 of the open permit, which seeks to revise that original permit?  
6 Does that restart the 60 days?

7 CHAIRPERSON HILL: I don't know. You'd have to -- I  
8 don't even know. You might have to talk to a different attorney  
9 about that one, because I don't actually even know. So because  
10 I had a hard time kind of following along with that a little bit,  
11 Mr. Wise.

12 MR. WISE: Okay.

13 CHAIRPERSON HILL: So Mr. -- okay. So Mr. Wise has  
14 clarified his position. It is the ANC's appeal, does the ANC  
15 have anything they'd like to clarify, and then I'm going to --  
16 well, I'm forgetting how the order goes.

17 Ms. Nagelhout, does the ANC have the last word? I just  
18 want to let everybody -- I just want anybody to have anything  
19 they want to say before we excuse everybody and talk about this.

20 Ms. Nagelhout, is there any order to this?

21 MS. NAGELHOUT: Well, it was DCRA's motion, so you  
22 might give them the last word.

23 CHAIRPERSON HILL: Okay. So Commissioner, do you have  
24 anything you'd like to add before we excuse everybody and talk  
25 about the timeliness?

1 COMMISSIONER HOLMAN: No, nothing that will  
2 substantially add to your discussion. Thank you.

3 CHAIRPERSON HILL: Okay. Thanks.

4 Mr. Green?

5 MR. GREEN: Yeah. Thanks, Chairman. Just very briefly.

6 I think it does (audio interference) a question. I  
7 understand there -- it's a very complex and certainly, there's  
8 some complex pieces to it. However, in the filings, this is the  
9 ANC's appeal, and the question still remains. Why was not --  
10 why wasn't it filed timely? I think the issues are that, in  
11 short, the ANC cannot use that as a basis, Mr. Wise's clear  
12 knowledge of the permits or delay of Mr. Wise getting from the  
13 ANC of issues to use that as a basis to file the appeal. In  
14 other words, the potential would be, okay (audio interference)  
15 bring something to the attention of the ANC, then they have the  
16 ability to file because they weren't aware of it. I think there's  
17 a two-fold examination here. And it's clear, going back to the  
18 original purposes, that it is really the ANC's appeal. They had  
19 actual knowledge of these permits and did not file this appeal  
20 within the time frame. And that's why I think it warrants  
21 dismissal based on the evidence in the record and the (audio  
22 interference). Thanks.

23 CHAIRPERSON HILL: Okay. All right. Okay. Thanks,  
24 Mr. Green.

25 Okay. All right. Mr. Young, right, you guys -- and

1 so as I understand how this works, I'm just excusing you all for  
2 a minute. And then I guess, if we decide this, this is untimely,  
3 then I guess we won't see you again. And then I don't know what  
4 the next thing is. If we decide that this is timely, or we want  
5 to do something else, then we'll see you guys again. Okay. So  
6 just give me a couple of minutes and see how this goes.

7 So Mr. Young, if you could excuse everyone, please.

8 Okay. I don't know if you guys want to do an emergency  
9 meeting, or we can talk. And then if there's -- if we need legal  
10 counsel for whatever reason to help clarify this discussion. I'm  
11 just opening up discussion and maybe you all got, you know, some  
12 of the conversation. I think that the struggle that I'm having  
13 as I said before, it's the ANC's appeal, right? I definitely  
14 don't think Mr. Wise thought that any permit had been issued that  
15 was necessarily actionable to create an appeal. But at least I'm  
16 a little confused as to that, because Mr. Wise definitely seems  
17 like he would have brought an appeal forward.

18 Now, again, this is not to say whether or not this  
19 appeal would even -- we're not even talking about the appeal,  
20 right. I mean, an appeal is that the zoning administrator erred  
21 in issuing building permits. And so that's where we're going to  
22 have to struggle with next, which is not an easy argument to  
23 make, right. But I'm just saying that we're just trying to  
24 understand whether or not this is actually before us, and the  
25 struggle that I'm having with it is that, again, it's the ANC's

1 appeal. And the 60 days is pretty serious in that, you know,  
2 people go ahead and get a building permit. They get their bank  
3 loans, they get all their ducks in a row, they start construction,  
4 you know, and work starts after 60 days, right. You think you're  
5 free and clear to go ahead and work. This was five months after  
6 the second permit, which was October 23rd, which, to me, is a  
7 pretty long time after the second permit. So people would have  
8 started construction, would've start work. And I think that I'm  
9 kind of leaning towards it is untimely just because then this is  
10 going to put -- this sets kind of a weird precedent in that --  
11 if somebody comes forward and wants the ANC to file something or  
12 I don't know, maybe if Mr. Wise had filed this, maybe that could  
13 have been an argument that he didn't know. I just don't know.  
14 So I'm a little torn. Does anybody want to go -- by the way torn  
15 is the word, Mr. May, that you introduced me to five years ago  
16 or whatever it was. And one time I said, I'm a little torn, and  
17 you said, "Well, I'm not a little torn at all." And I was like,  
18 "Okay. Well, it was your word?" Okay.

19 So Commissioner May, please go ahead and give us your  
20 clarity.

21 COMMISSIONER MAY: Yeah. So I'm not going to use the  
22 word torn, but I will admit that this is complicated, and there  
23 are extenuating circumstances sort of all around, right. I think  
24 the essential -- but I am leaning in favor of dismissing the  
25 motion to dismiss. No, denying the motion to dismiss because of

1 the chain of events, right. The, you know, the initial permit  
2 was issued. Mr. Wise raised issues with that permit and -- well,  
3 the ANC was technically aware of it because they get this thing  
4 in the mail that says, you know, all the permits are issued.  
5 There is nothing on there that flags it as an issue of concern.

6 And Mr. Wise, very carefully watched what was happening  
7 and was assured that the permit was going to be revoked. And as  
8 far as he knew, he didn't know what the project was. I mean,  
9 the project could have been -- the October 23rd permit could have  
10 been completely unobjectionable, right. It could have been --  
11 they're going back to, you know, a single-family home or a duplex,  
12 which is a matter of right. I mean, a flat as a matter of right.  
13 You know, it could have been anything. But he doesn't know  
14 because he never got those permits. He was never able to get  
15 those permits, and he made every effort to do so.

16 Now, the fact that he didn't -- you know, I mean, yes,  
17 it might have been clear if he filed the appeal himself. However,  
18 if I were, in a similar situation, I would certainly want to take  
19 the matter to the ANC, because the ANC carries more weight in an  
20 argument like this, or in a case like this, than just an  
21 individual. At least that's the perception. It's probably not  
22 technically true, but that's the perception. So I can understand  
23 why it all came to pass. And I don't know that there was  
24 necessarily any deliberate attempt to disguise information or to  
25 withhold information or anything else on the part of DCRA. It's

1 just how things played out. And I just feel that, you know, the  
2 way it played out, severely disadvantaged Mr. Wise and the ANC.  
3 And so I'm inclined to hear the appeal because they, you know,  
4 they were they were doing things what they -- in the way that  
5 they thought was the right way to do it. Certainly, if Mr. Wise  
6 knew on October 23rd that the plans were still for six units, he  
7 would have gone to the ANC immediately and there would have been  
8 an appeal immediately, but the information was not there, right.  
9 He could not have known, and I think that's maybe what it hangs  
10 on. That's like, you know, even if the ANC paid attention to  
11 the notice of the October permit, they wouldn't have gotten the  
12 information any faster than Mr. Wise. So they did not have a  
13 reasonable opportunity to know about it until the time when Mr.  
14 Wise got the permit information in March.

15 CHAIRPERSON HILL: Okay. So what do you think, and I  
16 love we're having a little bit of a discussion here just you and  
17 I. What do you think of like the fact that it's five months?  
18 And I'm not disagreeing with your argument by the way.

19 COMMISSIONER MAY: Right. Right.

20 CHAIRPERSON HILL: What do you think of the fact that  
21 it's five months after the October 23rd issuance?

22 COMMISSIONER MAY: Well, again, nobody knew what was  
23 in the October 23rd issuance. That information was not available.  
24 Mr. Wise was not able to get it.

25 CHAIRPERSON HILL: No, I understand. Let's say the

1 property owner, the builder knew.

2 COMMISSIONER MAY: Right. Oh, so you're worried about  
3 him being disadvantaged by this?

4 CHAIRPERSON HILL: Yeah. Can you all hear me?

5 COMMISSIONER MAY: As soon as he started construction,  
6 he knocked a hole in Mr. Wise's wall. He got a stop work order  
7 and he's been hung up since then. There hasn't been anything  
8 happening and he's trying to sell the property. I think it's  
9 kind of hard to argue that he was disadvantaged.

10 CHAIRPERSON HILL: Let me just open the door. Give me  
11 one second. I'm sorry.

12 COMMISSIONER MAY: Yeah. I thought he meant  
13 metaphorically, when he said open the door.

14 (Pause.)

15 CHAIRPERSON HILL: Okay. Sorry. Okay. All right.  
16 Okay. That was Commissioner May -- all right. Commissioner, is  
17 that the end?

18 COMMISSIONER MAY: Yeah. I don't think I have anything  
19 to add.

20 CHAIRPERSON HILL: Okay. Okay. All right. Who wants  
21 to go next? Vice Chair John.

22 VICE CHAIR JOHN: I have to take a different approach  
23 than Commissioner May because the original permit, which is why  
24 I asked the question, was never removed from the system. So  
25 regardless of what was going on behind the scenes, that permit

1 is still (audio interference) because it was never removed or  
2 marked as revoked in the system. And there's case law that says  
3 -- Ms. Nagelhout can correct me if I'm saying this incorrectly  
4 -- that the discussions between an applicant and DCRA, after the  
5 permit has been issued doesn't really stop the clock.

6 So the applicant, notwithstanding all of the  
7 discussions happening between -- with DCRA, the clock is still  
8 running. Now I agree with Mr. -- Commissioner May that there's  
9 a little bit of confusion, but that's on the part of Mr. Wise.  
10 I agree with the Chairman, that if Mr. Wise was bringing the  
11 appeal, he could have an argument that the whole thing was  
12 confusing. But at the same time, I still believe that that permit  
13 was never -- the first permit was never revoked in the system.  
14 So I think that the ANC had actual (audio interference). And  
15 because this is the ANC's appeal, then the appeal is untimely.

16 Now, the third potential revision is not part of this  
17 appeal and so we can't discuss that. And the issue of the  
18 neighborhood notification is not relevant to the motion to  
19 dismiss with respect to whether or not the ANC had actual notice  
20 and whether there was some unique situation that would allow the  
21 Board to overlook the fact that the ANC had actual notice. So  
22 those are my thoughts, and I would like to hear what everyone  
23 else thinks.

24 CHAIRPERSON HILL: Okay. We're going to go round and  
25 round for a while because I'm now on the fence, right. And so I

1 can't tell I got -- well, I got Commissioner May because  
2 Commissioner May always knows what he wants (audio interference).  
3 Go Mr. Smith.

4 BOARD MEMBER SMITH: I know what I want.

5 CHAIRPERSON HILL: You know. All right.

6 BOARD MEMBER SMITH: Out of this one. So I agree with  
7 Ms. John's argument on this. So -- and that was a great question  
8 that you asked Mr. Wise regarding if that permit was still able  
9 to be viewed. You know, we -- what I heard from Mr. Wise was he  
10 didn't know that the permit was final. A building permit is  
11 final when it's issued, and DCRA reserves the right to revoke  
12 that permit or pull that permit back within a certain amount of  
13 time, and they did, you know, in some way, shape or form. I  
14 don't -- the permit wasn't revoked, but they exercised their  
15 right to require the applicant to revise the permit.

16 Exhibit 32A that he's referencing, this email between  
17 Mr. Ndaw and Rueda Guillermo (sic), it does acknowledge a  
18 revocation, but the revocation wasn't a revocation related to the  
19 use, which seems to me the issue raised by the -- by Mr. Wise.  
20 He believes that the use isn't allowed within the zone. The  
21 second point raised in this email, Mr. Ndaw responded, saying  
22 that the permit will be revoked because of an expansion of the  
23 cellar, but the use will continue to be a six-unit apartment  
24 building. So to me, at that particular point, if he had concerns  
25 about that -- it is just reducing the scope, it's not changing

1 the use. I would have gone, you know, I think the ANC -- I would  
2 probably have reached out to the ANC.

3 All of this to me is, you know, irrelevant because this  
4 is a question regarding the building permit. I'm with you,  
5 Chairman Hill. This is an appeal of the ANC. The ANC does have  
6 a responsibility to review these building permits. And if they,  
7 you know, have any questions about those building permits, they  
8 can refer those questions to the DCRA or filed that appeal, or  
9 Mr. Wise could have filed his appeal after this particular email  
10 related to the use because that seems to be, you know, based on  
11 the argument. (Audio interference) get past this timely -- the  
12 timeliness of the issue. That that is the issue that he's raising  
13 in the appeal. So at that point, I would have appealed it. So  
14 I'm -- I am inclined to dismiss this now as untimely.

15 CHAIRPERSON HILL: Okay. Mr. Blake.

16 BOARD MEMBER BLAKE: I agree with the comments that  
17 Vice Chair John and Mr. Smith made. I look at it a little simpler  
18 than that because the notification to the ANC is actually -- the  
19 issue at hand is this is an existing six-unit building or not.  
20 That information is in the title of the permit. So there is --  
21 was something -- you don't need to see the plans, you may need  
22 to see the plans to answer the question, but you don't need to  
23 see the plans to know that this was here. So typically, if this  
24 is the zone that it is such a building would be -- would draw  
25 your attention to it. So I would argue that they would -- they

1 had notification of it. And the issue in question ultimately is  
2 not something that can be resolved without a lot more information,  
3 but the notification of the issue is in the title of the permit,  
4 so that's all I'm going to say about that. So I -- but I agree  
5 with the other statements that were made on this topic, and I  
6 would not be comfortable. I think it's untimely, from the ANC's  
7 perspective. Also, I note that the ANC Commissioner admitted  
8 that there was an issue with timing, and they felt that there  
9 was. And I understand extenuating circumstances and if it was  
10 Mr. Wise, himself, a different situation there because his  
11 notification is different because as -- you know, as a neighbor,  
12 you don't necessarily get notification if it's not something that  
13 requires some type of additional relief or something like that.  
14 So I can understand that, but I would -- I feel in this case  
15 because the ANC, I would be in the camp of agreeing with the  
16 motion to (audio interference) with it. Okay.

17 CHAIRPERSON HILL: Yeah, Commissioner May. You're on  
18 mute, Commissioner May.

19 COMMISSIONER MAY: I have a question for Board Member  
20 Blake. What you're saying is that because the ANC received notice  
21 of a permit involving a six-unit building because it was in that  
22 notice that they should have known it was a problem?

23 BOARD MEMBER BLAKE: No, they would not initially know  
24 it's a problem, but they would certainly have been on notice that  
25 there was something about it. And that it's different than what

1 is typically allowed in that zone. It's a unique element.

2 COMMISSIONER MAY: Right.

3 BOARD MEMBER BLAKE: Now, they would not know if there's  
4 a problem and they may not be a problem. We don't know that.  
5 But the -- they would not -- that's a unique issue that came up  
6 that they would have been -- acknowledged. Now, (audio  
7 interference) we have learned that they had more additional plans  
8 and information, what would they have known more to do at that  
9 point? I don't think there's anything else they would know.  
10 They have a better idea of the evidence supporting it, but would  
11 they actually know anything more about it?

12 COMMISSIONER MAY: Right. Yeah. They would not have  
13 known anything about the problem without hearing from Mr. Wise,  
14 who knew what the use was and that the use as a six-unit apartment  
15 building had lapsed because the notification of the permit was  
16 -- it had to do with an existing six-unit building. And there  
17 are many existing multiple unit buildings in RF zones. They're  
18 either pre-existing or they've been converted legally. There are  
19 plenty of them, so they exist. Its mere existence wouldn't have  
20 raised any flags. They wouldn't have known there was an issue  
21 without hearing from Mr. Wise or somebody else who knew about  
22 the, you know, the prior use as a single-family home.

23 BOARD MEMBER BLAKE: But we also just -- just to answer  
24 to the question. We also don't know necessarily that if it wasn't  
25 used in that (audio interference), if it was configured that way

1 or not, we don't know that information and I don't know that Mr.  
2 Wise actually -- has he been in the house? Does he know what  
3 the house is configured as? I don't know.

4 COMMISSIONER MAY: Right. I don't think it has anything  
5 to do with configuration. I mean, we would get into this if we  
6 got into the debate on the merits of the case. I think the  
7 regulations are really about the use, the actual use, so you can  
8 live, one person can -- or one family can live in an apartment  
9 building. That's -- it's on how it is used, right. And that's  
10 -- the fact that there might be multiple kitchens or bathrooms  
11 is not relevant, so --

12 VICE CHAIR JOHN: So I think that --

13 COMMISSIONER MAY: I'll talk about that more later.

14 VICE CHAIR JOHN: I think we're getting into the  
15 discussion of the merits and the issue is whether the ANC --  
16 let's just stay with what the issue is -- did the ANC have actual  
17 notice? The answer is yes. What did the ANC tell us that would  
18 excuse the ANC's ability to file within that timely manner? And  
19 the ANC has not presented any information. We have heard from  
20 the Intervenor about what the Intervenor was doing, but that's  
21 if the Intervenor had brought this appeal. And there's also case  
22 law that says, even if you're having discussions with DCRA, you  
23 still have to meet that 60-day window. So that's my understanding  
24 of that case law, so I haven't changed. Now, it's unfortunate,  
25 and I don't know that the use had been abandoned, that's a factual

1 determination that we would have to make if there is a full  
2 hearing. So anyway, those were my thoughts.

3 CHAIRPERSON HILL: No, I was laughing, I'm also -- you  
4 know, this is the longest we've had this kind of discussion in a  
5 while. I think that you're very concise, Ms. John. I'm just  
6 -- I don't know who -- I mean, if we want to -- I mean this is  
7 now just now going on and on, right. Like, I mean, if we wanted  
8 to, we can hold this argument in abeyance, hear the appeal and  
9 then come back and determine this, whether or not we think it's  
10 timely or not, right. And so --

11 COMMISSIONER MAY: (Audio interference).

12 CHAIRPERSON HILL: -- (audio interference) which we've  
13 done before though. Commissioner May, we've done that before,  
14 right.

15 COMMISSIONER MAY: I know I think I might have been  
16 part of one of those cases. No, I don't recommend that. I mean,  
17 if there isn't, you know, if we're going to go through all of  
18 that discussion and then get to the end and say, well, it's not  
19 timely, so we're going to dismiss it.

20 CHAIRPERSON HILL: Well, my -- well, and the reason why  
21 this is -- and I'm not trying to press this one also, but during  
22 the course of a full hearing, other things do get fleshed out a  
23 little bit at times, right. But still, I don't think that my  
24 issue is still the one that Ms. John is saying, which is that  
25 this is the ANC's appeal, right. And so I think that the -- I

1 mean, I don't -- I definitely think, Mr. Wise, if you bring in  
2 Mr. Wise's discussion, it convolutes my thought process.  
3 However, it's the ANC's appeal, I don't think they're timely.  
4 The ANC also didn't think they were timely. They were also  
5 concerned whether or not they were going to be timely. So much  
6 so, that they can even file a waiver for the 60 days. I kind of  
7 don't get that, like why wouldn't they --

8 COMMISSIONER MAY: They didn't explain why they didn't.  
9 They didn't have an answer for that. They didn't say one way or  
10 the other.

11 CHAIRPERSON HILL: Okay. So --

12 COMMISSIONER MAY: It's not an admission that they  
13 didn't have an argument.

14 CHAIRPERSON HILL: Okay. And the part that I like  
15 about this is, I also -- I mean, we all are property owners,  
16 right? We all have neighbors and we're not supposed to be legal.  
17 You know, we're not lawyers, we're not zoning experts, we're not  
18 architects, you know. Even though I've had this job for a while,  
19 I don't consider, you know, I don't know what's going on next  
20 door, right, and I'm trying to do my best to figure out what's  
21 going on next door and then all of a sudden there's a hole in my  
22 wall, right. So that, by the way, just sounds awful, right. So  
23 I completely empathize, I mean, Mr. Wise, you know, we got a job  
24 here. I'm running all around. I'm doing as a volunteer for the  
25 city, right. And so I feel bad for you in what's going on next

1 door and hopefully that can get resolved to where it's not so  
2 stressful. But I know -- if I got a solid three and that's --  
3 then there we go. And then somebody can make a motion and see  
4 how it flies.

5 VICE CHAIR JOHN: Okay. I'll bite the bullet. So I  
6 will make a motion to dismiss Appeal No. 20487 of Advisory  
7 Neighborhood Commission 6B and ask for a second.

8 COMMISSIONER MAY: Second.

9 CHAIRPERSON HILL: The motion has been made and  
10 seconded.

11 Mr. Moy, could you take a roll call?

12 COMMISSIONER MAY: Hold on.

13 CHAIRPERSON HILL: All right.

14 COMMISSIONER MAY: I have the opportunity to comment  
15 once the motion is made and seconded, right?

16 CHAIRPERSON HILL: Oh. I didn't know this. This is  
17 new, Mr. May -- Commissioner May, no.

18 VICE CHAIR JOHN: Commissioner May, please go ahead.

19 COMMISSIONER MAY: Yeah. So, I mean, clearly, I'm not  
20 going to prevail, right. It's obvious -- I can count the numbers.  
21 But I do want to say something related to the merits of the case  
22 that I think has to be set. And I think that if we -- had we  
23 gotten to the merits of this case, there are two major flaws in  
24 DCRA's argument here. And this is where I'm just talking to  
25 DCRA, because I think DCRA should, at this point, revoke the

1 permit. Number one, it has -- it includes an expansion, right.  
2 There is an expansion of the building. It's not an expansion of  
3 the footprint, but I don't believe that the regulation says an  
4 expansion of the footprint. It says an expansion.

5           They are digging down. They are excavating on the  
6 basement level in order to make space -- additional space for a  
7 unit, maybe not an extra unit, but additional space for a unit.  
8 I don't believe that that is -- I believe that constitutes an  
9 expansion. It's also different from what was permitted. I won't  
10 get into the details of that, because it was previously just a  
11 basement use. But there's a real concern about how they regard  
12 an expansion.

13           The second thing is that -- the use. The fact that  
14 they can go back to a certificate of occupancy, that is, you  
15 know, very old, I mean, certificates of occupancy don't expire,  
16 I understand that. But it is not about the certificate of  
17 occupancy that determines use when it comes to a lapse of a  
18 nonconforming use. Now, they'll argue that it's a conforming use  
19 because our four apartment buildings are considered conforming,  
20 but it was no longer an apartment building. And that, you know,  
21 you have to look at how long that use lapses before you have to  
22 be considered whether it can, in fact, be an apartment building,  
23 right.

24           It hadn't been an apartment building according to the  
25 next-door neighbor. There's no evidence that it was an apartment

1 building in terms of a business license or anything like that.  
2 I think that they should look more carefully at that. The mere  
3 existence of a C of O for an apartment building is not evidence  
4 that the use is still valid. If that were the case, I could  
5 still be running a beauty parlor in my kitchen. Because that  
6 use -- there's probably a valid C of O for that, but the use of  
7 that stopped 20 years ago, so I just think they have to look more  
8 carefully at this.

9 And then the last thing I'll say is that if there is,  
10 in fact, another permit issued for this, I would encourage Mr.  
11 Wise or the ANC to appeal it no matter what it says. If it's  
12 going to be a six-unit building, they should appeal it. So I've  
13 given my speak.

14 CHAIRPERSON HILL: So I'm going to -- now, I'm going  
15 to and I -- Commissioner May, this is fascinating to me now, this  
16 all legal stuff. So I don't even know -- I'm going to let --  
17 Ms. John was so kind to take the bullet on the -- throwing it  
18 out. Now, I'm back to like, you know, I think that you can even  
19 -- we can even withdraw this. And I'm still that, you know, it's  
20 only 3 o'clock now and we'll see how long we get. But I'm still  
21 back to, you know, we can do the abeyance (audio interference)  
22 the whole thing, you know, see what we think. Now, Mr. May has,  
23 you know, expressed where now I'm uncomfortable, right, to where,  
24 you know, I don't want to shirk whenever I'm supposed to maybe  
25 be doing, right because there is, you know, something that --

1 | because I think there was confusion, right. I mean, Mr. Wise  
2 | was going to file an appeal, right. You know, and so. And now  
3 | --

4 | VICE CHAIR JOHN: So may I jump back in?

5 | CHAIRPERSON HILL: So back to the thing --

6 | VICE CHAIR JOHN: -- in Mr. --

7 | CHAIRPERSON HILL: Ms. John, sorry.

8 | VICE CHAIR JOHN: Mr. Wise could have brought the appeal  
9 | citing the confusion. He did not bring an appeal. The ANC  
10 | brought the appeal. The ANC was not confused. The ANC had an  
11 | actual notice of the permit. I mean, what is the process that  
12 | the ANC goes through in evaluating a permit? I agree with  
13 | Commissioner May, the issue of abandonment of the certificate of  
14 | occupancy is still there and different members of the Board might  
15 | come to different conclusions. So it's an important principle.  
16 | But also, another important principle is timeliness of appeals.  
17 | And I think that if on these facts, we said that this appeal is  
18 | timely, I think we're setting ourselves up for another situation  
19 | close to this or similar to this, where we sit on these facts,  
20 | the appeal would be timely because this -- we're making a decision  
21 | in an appeal. So this becomes part of the law of the Board.

22 | So I agree that the facts in terms of what the substance  
23 | of the appeal are sort of murky. But on the facts of the  
24 | timeliness, it's really quite clear. The ANC did not bring the  
25 | appeal within the time limit, and the ANC did not give a good

1 reason why the Board should waive that limit. So I agree with  
2 everything Mr. May says in terms of the murkiness of the subject  
3 matter and that it's worthy of explanation, but that's sort of  
4 where I am.

5 CHAIRPERSON HILL: Ms. John, I think that was well said  
6 again. I think that was well said again. So you --

7 VICE CHAIR JOHN: Well --

8 CHAIRPERSON HILL: -- may --

9 VICE CHAIR JOHN: -- maybe we can take a quick recess  
10 and seek counsel from our lawyers.

11 CHAIRPERSON HILL: Okay. Does anybody want to take a  
12 recess and seek counsel?

13 COMMISSIONER SHAPIRO: No.

14 BOARD MEMBER BLAKE: No.

15 CHAIRPERSON HILL: -- going to go ahead. Okay. Ms.  
16 John, I thought that was well said. Okay. And, you know, and  
17 Commissioner May, would also agree that that was well said, I'm  
18 sure, right. So --

19 COMMISSIONER MAY: Even if I disagree --

20 CHAIRPERSON HILL: You got a second. I don't even know  
21 if you necessarily disagree with what was just said. You know,  
22 you just made a -- you made a statement about what you thought  
23 about the merits of the appeal.

24 COMMISSIONER MAY: I disagree with her conclusions,  
25 right. She's not, you know -- I have a difference of opinion

1 because I do think that Mr. Wise's understanding of the situation  
2 was essential to the ANC's understanding of the problem. Without  
3 him, you know, notifying the ANC of the issue, the ANC would  
4 never have known. There was not information that was available  
5 to them, even if they got word that a permit had been issued. So  
6 yeah, technically they have notice. However, there's a  
7 difference between the technical requirements and actual  
8 knowledge. And there was not actual knowledge and it required  
9 -- it's all strung together back to the October 1st email from  
10 Mr. Ndaw that threw the whole thing into question.

11 CHAIRPERSON HILL: Okay. I mean, I could give Mr. --  
12 let's give the emergency meeting. Let's do it, and we can go  
13 ahead and talk to legal counsel because, you know, this -- and  
14 we'll see if we get to the appeal, then my (audio interference)  
15 here, and I'm going to do the emergency meeting. I'm going to  
16 the emergency. We're going to do the emergency meeting. Hey,  
17 Commissioner, you're the one who added the thing at the end.  
18 Okay. Let me just get my little -- okay. Just give me -- I  
19 still need to get a second for it, but I think I have it here.

20 MR. MOY: Do you have it, Mr. Chairman, do I need to  
21 --

22 CHAIRPERSON HILL: I think I got it. I think I've got  
23 it. I think I got it.

24 As Chairperson of the Board of Zoning Adjustment of the  
25 District of Columbia, in accordance with Section 406 of the

1 District of Columbia Administrative Act, I move that the Board  
2 of Zoning Adjustment hold a closed meeting on 10/20/2021 for the  
3 purposes of seeking legal counsel on Appeal No. 20487 and  
4 deliberate upon, but not vote on 10/20/2021 for reasons cited in  
5 D.C. Official Code, Section 2-575(b)(13). Is there a second?

6 VICE CHAIR JOHN: Second.

7 CHAIRPERSON HILL: All right. I got a motion made and  
8 seconded.

9 Mr. Moy.

10 MR. MOY: All right. When I call each of your names,  
11 if you would please respond with a yes, no, or abstain to the  
12 motion made by Chairman Hill to hold an emergency closed meeting.  
13 The motion was seconded by Vice Chair John.

14 Zoning Commissioner Peter May.

15 COMMISSIONER MAY: Yes.

16 MR. MOY: Mr. Smith.

17 BOARD MEMBER SMITH: Yes.

18 MR. MOY: Mr. Blake.

19 BOARD MEMBER BLAKE: Yes.

20 MR. MOY: Vice Chair John.

21 VICE CHAIR JOHN: Yes.

22 MR. MOY: Chairman Hill.

23 CHAIRPERSON HILL: Yes.

24 MR. MOY: Staff would record a vote of 5-0-0, and this  
25 is to the motion made by Chairman Hill to hold an emergency closed

1 meeting. It was seconded by Vice Chair John. Also, in support:  
2 Zoning Commissioner Peter May, Mr. Smith, Mr. Blake, Vice Chair  
3 John, and Chairman Hill. Motion carries, sir.

4 CHAIRPERSON HILL: Okay. Great. So the public knows,  
5 we're going to send the link to go to the emergency closed  
6 meeting, and then we're going to come back to this link again  
7 after the emergency closed meeting. Okay, you guys. I'll see  
8 you at the next link. Bye-bye.

9 (Whereupon, the above-entitled matter went off the  
10 record and then resumed.)

11 CHAIRPERSON HILL: All right. Okay.

12 All right. Mr. Moy, are you there?

13 MR. MOY: I'm here. I heard everything.

14 CHAIRPERSON HILL: Thanks. Can you call us back into  
15 this appeal?

16 MR. MOY: Yes. The Board is back in session after a  
17 brief emergency closed meeting, and the time now is at or about  
18 3:29 p.m.

19 CHAIRPERSON HILL: Okay. I mean, I think it was helpful  
20 to have a chance to speak with counsel. And I think our  
21 deliberations are basically going to be the same as to where we  
22 were beforehand, so I don't know whether we want to deliberate  
23 or not again. I still was -- I think we're all kind of in the  
24 same place.

25 Ms. John, if you wouldn't mind re --

1 BOARD MEMBER BLAKE: Restating the motion.

2 CHAIRPERSON HILL: Yeah, restating --

3 BOARD MEMBER BLAKE: The one still on the table. Yeah.

4 CHAIRPERSON HILL: Good. All right. Everybody's  
5 shaking their -- I'm glad that you all know what's going on  
6 because I didn't know how you do it. Mr. -- Commissioner May is  
7 like I know we can take a vote now. Okay. Fine.

8 COMMISSIONER MAY: Yeah. It's time to go -- I mean  
9 that's the motion only to vote.

10 CHAIRPERSON HILL: So you're the one that stopped in  
11 the middle. So the motion has been made and seconded.

12 Mr. Moy, would you please take a roll call?

13 Ms. Nagelhout, you know what the motion is, right?

14 MS. NAGELHOUT: I think the motion was to dismiss the  
15 -- to grant the motion to dismiss the appeal as untimely.

16 CHAIRPERSON HILL: Yes. Okay. The motion has been  
17 made and seconded. All right. Mr. Moy.

18 MR. MOY: All right. When I call each of your names,  
19 if you would please respond with a yes, no, or abstain to the  
20 motion made by Vice Chair John to grant DCRA's motion to dismiss  
21 the appeal as untimely. The motion was seconded by Mr. Smith.

22 Zoning Commissioner Peter May.

23 COMMISSIONER MAY: I vote no. I do not support  
24 dismissing the motion.

25 MR. MOY: Mr. Smith.

1 BOARD MEMBER SMITH: Yes.

2 MR. MOY: Mr. Blake.

3 BOARD MEMBER BLAKE: Yes, to dismiss the motion.

4 MR. MOY: Vice Chair John. Vice Chair John.

5 BOARD MEMBER BLAKE: You're on mute.

6 VICE CHAIR JOHN: I vote yes to dismiss the appeal.

7 MR. MOY: Chairman Hill.

8 CHAIRPERSON HILL: I vote yes, because -- I vote yes  
9 to dismiss the appeal as untimely as it was ANC's appeal that  
10 was put forward, and I vote yes on the motion.

11 MR. MOY: In that case, staff would record the vote as  
12 4-0-1. And this is on the motion made by Vice Chair John to  
13 grant the motion to dismiss the appeal as untimely. It was --  
14 the motion was seconded by Mr. Smith. Also in support of that  
15 motion is Chairman Hill, Mr. Blake and, of course, Vice Chair  
16 John and Chairman Hill. Zoning Commissioner Peter May voted in  
17 the other direction as no. So the final vote is 4-0-1. The  
18 motion carries, sir.

19 CHAIRPERSON HILL: All right. So 4-0-1 is that what  
20 you said?

21 BOARD MEMBER BLAKE: 4-1-0.

22 COMMISSIONER MAY: 4-1-0.

23 MR. MOY: Yeah. I'm sorry, 4-1-0. That's correct.

24 CHAIRPERSON HILL: Got it. Okay. All right. Well,  
25 thank you all.

1           Mr. Moy, is there anything else in front of us for  
2 today?

3           MR. MOY: Nothing from the staff, sir.

4           CHAIRPERSON HILL: Okay. Well, you guys have a good  
5 day. Okay.

6           VICE CHAIR JOHN: Go in peace.

7           CHAIRPERSON HILL: Bye-bye. Right.

8           BOARD MEMBER SMITH: Thank you.

9           CHAIRPERSON HILL: What Ms. John?

10          VICE CHAIR JOHN: I said, go in peace.

11          CHAIRPERSON HILL: Oh, go in peace.

12          COMMISSIONER MAY: Oh, okay.

13          CHAIRPERSON HILL: Bye-bye.

14          VICE CHAIR JOHN: Bye.

15          (Whereupon, the above-entitled matter went off the re  
16 record at 3:35 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: DCBZA

Date: 10-20-21

Place: Teleconference

was duly recorded and accurately transcribed under my  
direction; further, that said transcript is a true and  
accurate record of the proceedings.



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WALTER MURPHY