

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

+ + + + +

BOARD OF ZONING ADJUSTMENT

+ + + + +

REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 22, 2021

+ + + + +

The Regular Public Hearing of the District of Columbia Board of Zoning Adjustment convened via Video Teleconference, pursuant to notice at 9:30 a.m. EST, Lorna L. John, Vice Chair, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

LORNA L. JOHN, Vice Chair (NCPC)
CARL H. BLAKE, Board Member
CHRISHAUN S. SMITH, Board Member

ZONING COMMISSION MEMBER PRESENT:

PETER MAY, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
KEARA MEHLERT, Zoning Data Specialist

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

OFFICE OF PLANNING STAFF PRESENT:

KAREN THOMAS
MAXINE BROWN-ROBERTS
STEPHEN COCHRAN
BRANDICE ELLIOTT
ANNE FOTHERGILL
MATT JESICK
STEPHEN MORDFIN
CRYSTAL MYERS

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

The transcript constitutes the minutes from
the Regular Public Hearing held on December 22, 2021.

C-O-N-T-E-N-T-S

Application No. 20562 of Embassy of Zambia	8
Application No. 20590 of Rajiv Uppal	20
Application No. 20587 of David Wright & Gabriele G. Wright	33
Application No. 20591 of Aaron Mintz	42
Application No. 20597 of Mark Schamel and Deborah Ritter	54
Application No. 20595 of the District of Columbia	64
Application No. 20583 of SC Holdings DC, LLC	79
Application No. 20594 of Nezahat and Paul Harrison	96
Application No. 20564 of Jemal's Prospect's, LLC	106
Application No. 20585 of Jacob Hensley	117

2

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

9:36 a.m.

VICE CHAIR JOHN: Yes. Thank you. That was very smooth. So I'll go ahead and get started. Good morning, ladies and gentlemen. This is the December 2021 public hearing of the Board of Zoning Adjustment of the District of Columbia, convening to act on a chancery application pursuant to the Foreign Missions Act, 22 U.S.C. Sections 4301 through 4316, and Chapter 10 of the Zoning Regulations.

My name is Lorna John, Vice Chairperson. Joining me today is Board Member Carl Blake. The federal representatives are Marcel Acosta, the Executive Director representing the National Capital Planning Commission; and Peter May, representing the National Park Service, U.S. Department of the Interior.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised that this proceeding is being recorded by a court reporter and is also webcast live via 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's listening on Webex or by telephone will be muted during the hearing so as not to pick up sound or background noise. If you experience difficulty accessing Webex or with your telephone call-in,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 then please call our OZ Hotline number at 202-727-5471 to
2 receive Webex login or call-in instructions. To all persons
3 planning to testify either in support or opposition, please
4 remember to state your name and home address before providing
5 oral testimony or your presentation.

6 The order of procedure for foreign mission cases
7 is as follows: statement and witnesses of the Applicant;
8 government reports, including the United States Secretary of
9 State and the District of Columbia Office of Planning on
10 behalf of the Mayor; reports or recommendations by other
11 public agencies; reports of the Advisory Neighborhood
12 Commission; persons in support; persons in opposition.
13 Please note that requests for party status in a chancery
14 application are not applicable because it is a rulemaking
15 proceeding.

16 The following time constraints will be maintained.
17 The Applicant, including witnesses, will be permitted 60
18 minutes to present its case. Persons testifying, whether in
19 support or opposition, will be permitted three minutes each
20 except an ANC. These time constraints do not include time
21 used during questions from the Board. The Board may place
22 further reasonable restrictions on or permit additional time
23 for testimony as it deems appropriate.

24 Because this is a rulemaking proceeding, there are
25 no parties, and therefore there is no cross examination. The

1 record will be closed at the conclusion of each case, except
2 it will remain open for any materials specifically requested
3 by the Board. The Board and the staff will specify at the
4 end of the hearing exactly what is expected and the date when
5 the material must be submitted to the Office of Zoning.
6 After the record is closed, no other information will be
7 accepted by the Board.

8 The District of Columbia Administrative Procedure
9 Act requires that the public hearing on each case be held in
10 the open before the public. Pursuant to Sections 405(b) and
11 406 of the act, the Board may, consistent with its rules of
12 procedure in the act, enter into a closed meeting on a case
13 for purposes of seeking legal counsel on a case, pursuant to
14 D.C. Official Code Section 2-575(b)(4), and/or deliberating
15 on a case, pursuant to D.C. Official Code Section 2-
16 575(b)(1)(3), but only after providing the necessary public
17 notice and in the case of an emergency closed meeting after
18 taking a roll call vote.

19 The decision of the Board in this legislative
20 proceeding must be based exclusively on the public record.
21 To avoid any appearance to the contrary, the Board requests
22 that persons present not engage the members of the Board in
23 conversation. Preliminary matters are those that relate to
24 whether a case will or should not be heard today, such as
25 requests for postponement, continuance, or withdrawal, and

1 whether proper and adequate notice of the hearing has been
2 given.

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

6 Mr. Secretary, do you have any preliminary
7 matters?

8 MR. MOY: I do not have any preliminary matters
9 on this foreign missions case that you will be convening, but
10 I will have some after this session and when we enter the
11 Board's public hearing session. So that's it for me.

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

13 And so, Mr. Young, will you please let the parties
14 in?

15 Just a minute, please. Okay. I can see you now,
16 Mr. Snider. Are you choosing not to use your camera?

17 MR. SNIDER: No. Here we go. Okay. Hi.

18 VICE CHAIR JOHN: Good morning.

19 MR. SNIDER: Good morning.

20 VICE CHAIR JOHN: State your name for the record,
21 please, and tell us how the application meets the criteria
22 for relief.

23 MR. MOY: Shall I call the case first, Madam Vice
24 Chair?

25 VICE CHAIR JOHN: Oh, thank you, Mr. Moy. Thank

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 you, Mr. Moy.

2 MR. MOY: No, quite okay. So the case before the
3 Board is Application Number 20562. This is of the Embassy
4 of Zambia. This is a foreign missions case, and this is a
5 foreign mission application pursuant to the chancery
6 requirements of Subtitle X, Section 201, and to Subtitle Y,
7 Section 302, and the Foreign Missions Act, which would allow
8 the temporary location of a chancery for a period to end no
9 later than September 30th, 2022.

10 The property is located at 2200 R Street,
11 Northwest, Square 2512, Lot 808. And that's it from me,
12 Madam Vice Chair.

13 VICE CHAIR JOHN: Thank you.

14 So, Mr. Snider, will you please introduce yourself
15 for the record and tell us how the application meets the
16 criteria for relief?

17 MR. SNIDER: Good morning. Thank you very much
18 for working with me today. I'm a real estate agent. I've
19 been helping the Embassy of Zambia for the past six years
20 with their chancery odyssey. Their chancery at 2419
21 Massachusetts Avenue was damaged from the earthquake many
22 years ago and finally was inhabitable.

23 I helped the embassy move to its current location
24 at 2200 R Street in the summer of 2015. Since that time,
25 there's been an intention to renovate fully their home

1 embassy, their home chancery, and that is still their top
2 priority. So, for the past several years, I've been able to
3 help the embassy to stay with 2200 R Street based upon the
4 prevailing rules about diplomatic missions and the diplomatic
5 overlay in that specific area in 2200 R Street.

6 And with the substantial cooperation and
7 friendship between Zambia and the United States, the
8 Department of State has supported these applications. In the
9 past few years, the property on Massachusetts Avenue's
10 renovation has been very slow. A lot of that has been due
11 to the permits. The permit process with DCR has taken
12 several years, and the permits for the renovation were
13 finally approved in February of 2021.

14 So there is an active construction site going on
15 right now at 2419 Massachusetts. The embassy has told me
16 what specific renovations have been completed so far. I can
17 just run them by you quickly.

18 VICE CHAIR JOHN: Mr. Snider, that's fine. We
19 have read the record.

20 MR. SNIDER: Okay. Well, I don't think I
21 submitted the information from the embassy that I just got
22 yesterday, actually, with the latest update in their
23 renovations. But in any case, it's moving along. And they
24 just wanted one more year to complete all of the renovations
25 because they've had financial difficulties in the past.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 There's been slow-downs because of the permits and because
2 of COVID. But they are expecting to have it finished within
3 one year and will be able to move back to their permanent
4 chancery on Massachusetts.

5 VICE CHAIR JOHN: Okay. Thank you very much, Mr.
6 Snider.

7 Does the Board have any questions?

8 Go ahead, Commissioner May.

9 ZONING COMMISSIONER MAY: Yeah, I thought we were
10 considering an extension through the end of May, and you're
11 talking about another year. Did I get that wrong?

12 MR. SNIDER: I did add a supplement to the
13 document to say till the end of September. I think that was
14 the last document I submitted.

15 ZONING COMMISSIONER MAY: Oh, okay. I missed
16 that.

17 VICE CHAIR JOHN: Yeah.

18 MR. SNIDER: I wasn't trying to confuse anybody.
19 There was a delay in the document-submission stage that --
20 to give the embassy the most amount of time, I made an
21 adjustment to their application at the last minute to say,
22 all right, well, let's let them ask for as much as they can,
23 which is one -- I felt, and they agreed, that one year was
24 effective. So it would be one year from end of September.

25 ZONING COMMISSIONER MAY: Okay. That's fine.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Thank you.

2 VICE CHAIR JOHN: Thank you.

3 Are there any other questions from the Board? If
4 not, I'll go to the Office of Planning. Good morning.

5 MS. THOMAS: Members of the FMBZA, we are
6 recommending that the Board not disapprove the embassy's
7 request to continue its operations at their temporary
8 location while renovation is ongoing at their permanent
9 location on Mass Avenue. We find that the operations remains
10 consistent with prior approvals, and the intensity of use has
11 not increased since it has been approved for their use.

12 So we will be in support of them remaining at this
13 location so that they can get through their renovations,
14 which was hindered due to COVID and the issue of the
15 pandemic. Thank you.

16 VICE CHAIR JOHN: Thank you.

17 Does the Board have any questions for Ms. Thomas?

18 Does the Applicant have any questions for the
19 Office of Planning?

20 MR. SNIDER: No. Thank you.

21 VICE CHAIR JOHN: Mr. Young, is there anyone
22 wishing to testify? Is the ANC here? I don't believe so,
23 so let's go to the witnesses if we have anyone signed up.
24 Mr. Young? Okay.

25 MS. MEHLERT: Yes. This is Keara Mehlert.

1 VICE CHAIR JOHN: Thank you. So I will close the
2 hearing and the record. And so I'll make a motion to not
3 disapprove -- I'm sorry. Mr. Acosta, did you have a comment
4 or question?

5 MEMBER ACOSTA: Yes. I had just a quick question,
6 and this goes back to the ANC report. There was a request
7 that project contractors working on the Embassy of Zambia's
8 property no longer park on the Embassy of Pakistan's property
9 at 2201 R Street. I don't know if the Applicant has a
10 response to that. That is just a request by the ANC that we
11 received today.

12 MR. SNIDER: This is the first time I'm hearing
13 about this, but I can absolutely share that with the embassy
14 staff, and I'm sure that this will stop happening. So the
15 Zambian Embassy staff is very respectful and doesn't want to
16 cause any irritation to anybody. However, the construction
17 crew -- those guys also have to be informed Pakistan property
18 isn't a parking lot. So that's going to be an easy thing for
19 me to bring up with them.

20 VICE CHAIR JOHN: Okay. Thank you. And I forgot
21 to ask you, Mr. Snider, if you had any closing statements.

22 MR. SNIDER: No. Thank you. I appreciate
23 everyone's cooperation and assistance with the Office of
24 Zoning staff I've worked with. It's been a very
25 straightforward and positive experience.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR JOHN: Okay. Thank you.

2 So I'm going to now close the hearing and the
3 record and make a motion to not disapprove Application Number
4 20562 of the Embassy of Zambia and ask for a second.

5 Mr. Blake? Thank you.

6 Mr. Moy, would you please take the roll call? Mr.
7 Moy?

8 MR. MOY: I'm still here.

9 VICE CHAIR JOHN: Okay.

10 MR. MOY: So, when I call each of your names, if
11 you would please respond with a yes, no, or abstain to the
12 motion made by Vice Chair John to not disapprove the
13 application for the relief being requested. That motion was
14 seconded by Mr. Blake.

15 Marcel Acosta?

16 Zoning Commissioner Peter May?

17 ZONING COMMISSIONER MAY: Yes.

18 MR. MOY: Mr. Blake?

19 MEMBER BLAKE: Yes to not disapprove.

20 MR. MOY: Vice Chair John?

21 VICE CHAIR JOHN: Disapprove.

22 MR. MOY: We have a Board member not present and
23 not participating. Staff will record the vote as four to
24 zero to one, and this is on the motion made by Vice Chair
25 John to not disapprove. That motion was seconded by Mr.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Blake to not disapprove. Also in support of the motion to
2 not disapprove is Zoning Commissioner Peter May, Marcel
3 Acosta, Mr. Blake, and of course Vice Chair John.

4 The motion carries on a vote of four to zero to
5 one.

6 VICE CHAIR JOHN: Thank you.

7 So we'll now go to the regular hearing session.
8 Thank you, Mr. Acosta.

9 MEMBER ACOSTA: Thanks to all.

10 VICE CHAIR JOHN: And happy holidays to you, too.

11 So good morning again, ladies and gentlemen. The
12 Board of Zoning Adjustments December 22nd, 2021, public
13 hearing will please come to order. My name is Lorna John.
14 I'm the Vice Chairperson of the District of Columbia Board
15 of Zoning Adjustment. Joining me today are Board members
16 Carl Blake and Chrishaun Smith and Zoning Commissioner Peter
17 May.

18 Today's meeting and hearing agendas are available
19 on the Office of Zoning's website. Please be advised that
20 this proceeding is being recorded by a court reporter and is
21 also webcasting live via Webex and YouTube live. The video
22 of the webcast will be available on the Office of Zoning's
23 website after today's hearing.

24 Accordingly, everyone who's listening on Webex or
25 by telephone will be muted during the hearing. Also, please

1 be advised that we do not take any public testimony at our
2 decision meeting session.

3 If you experience difficulty accessing Webex or
4 with your telephone call-in, then please call our OZ Hotline
5 number at 202-727-5471 to receive Webex login or call-in
6 instructions.

7 At the conclusion of a decision meeting, I shall,
8 in consultation with the Office of Zoning, determine whether
9 full or summary order may issue. A full order is required
10 when the decision it contains is adverse to a party,
11 including the affected ANC. A full order may also be needed
12 if the Board's decision differs from the Office of Planning's
13 recommendation. Although the Board favors the use of summary
14 orders whenever possible, an Applicant may not request the
15 Board to issue such an order.

16 In today's hearing session, everyone who is
17 listening on Webex or by telephone will be muted during the
18 hearing, and only persons who have signed up to participate
19 or testify will be unmuted at the appropriate time. Please
20 state your name and home address before providing oral
21 testimony or your presentation. Oral presentations should
22 be limited to a summary of your most important points. When
23 you're finished speaking, please mute your audio so that your
24 microphone is no longer picking up sound or background noise.

25 Once again, if you experience difficulty accessing

1 Webex or with your telephone call-in, or if you forgot to
2 sign up 24 hours prior to this meeting, then please call our
3 OZ Hotline number at 202-727-5471 to sign up to testify and
4 to receive Webex login or call-in instructions.

5 All persons planning to testify either in favor
6 or opposition should have signed up in advance. They will
7 be called by name to testify. If this is an appeal, only
8 parties are allowed to testify. By signing up to testify,
9 all parties completed the oath or affirmation as required by
10 Subtitle Y, 408.7.

11 Requests to enter evidence at the time of an oral
12 virtual hearing, such as written testimony or additional
13 supporting documents other than live video, which may not be
14 presented as part of the testimony, may be allowed pursuant
15 to Subtitle Y, 103.13, provided that the person making the
16 request to enter an exhibit explains how the proposed exhibit
17 is relevant, the good cause that justifies allowing the
18 exhibit into the record, and including an explanation of why
19 the requestor did not file the exhibit prior to the hearing
20 pursuant to Subtitle Y 206 and how the proposed exhibit will
21 not unreasonably prejudice any party.

22 The order of proceeding for special exceptions in
23 variances pursuant to Subtitle Y 409 will be as follows:
24 preliminary and procedural matters, statement of the
25 Applicant and the Applicant's witnesses, reports and

1 recommendation from the D.C. Office of Planning, reports and
2 recommendations from other public agencies, reports and
3 recommendations from the affected advisory neighborhood
4 commission, and the ANC's witnesses, if any, for the area
5 within which the property is located, parties in support of
6 the application, individuals and organization representatives
7 in support of the application, parties in opposition to the
8 application, individuals and organization representatives in
9 opposition to the application, individuals and organization
10 representatives who are undeclared with respect to the
11 application, rebuttal and closing statements by the
12 Applicant.

13 Pursuant to Subtitle Y, Sections 408.2 and 408.3,
14 the following time constraints shall be maintained. The
15 Applicant, Appellant, and all parties except an affected ANC
16 in support, including witnesses exclusive of cross
17 examination -- maximum time is 60 minutes collectively.

18 The Appellee, persons, and parties except an
19 affected ANC in opposition, including witnesses, collectively
20 have an amount of time equal to that of the Applicant and
21 parties in support, but in no case more than 60 minutes
22 collectively. Individuals, maximum of three minutes.
23 Organization representatives, maximum of five minutes.

24 These time restraints do not include cross
25 examination and/or questions from the Board. Cross

1 examination of witnesses by the Applicant or parties,
2 including the ANC, is permitted. The ANC within which the
3 property is located is automatically a party in a special
4 exception or variance case. Nothing prohibits the Board from
5 placing reasonable restrictions on cross examination,
6 including time limits and limitations on the scope of cross
7 examination pursuant to Subtitle Y 408.5.

8 At the conclusion of each case, an individual who
9 is unable to testify because of technical issues may file a
10 request to leave or file a written notice of the planned
11 testimony to the record within 24 hours following the
12 conclusion of public testimony in the hearing. If additional
13 written testimony is accepted, then parties will be allowed
14 a reasonable time to respond as determined by the Board.

15 The Board will then make its decision at its next
16 meeting session, but no earlier than 48 hours after the
17 hearing. Moreover, the Board may request additional specific
18 information to complete the record. The Board and the staff
19 will specify at the end of the hearing exactly what is
20 expected and the date when persons must submit the evidence
21 to the Office of Zoning. No other information will be
22 accepted by the Board.

23 Once again, after the Board adjourns the hearing,
24 the Office of Zoning, in consultation with me, will determine
25 whether full or summary order may issue. A full order is

1 required when the decision it contains is adverse to a party,
2 including an affected ANC. A full order may also be needed
3 if the Board'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
6 Board to issue such an order.

7 Finally, the District of Columbia Administrative
8 Act requires that the public hearing on each case be held in
9 the open before the public. However, pursuant to Sections
10 405(b) and 406 of that act, the Board may, consistent with
11 its rules of procedures and the act, enter into a closed
12 meeting on a case for purposes of seeking legal counsel on
13 a case, pursuant to D.C. Official Code Sections 2-575(b)(4),
14 and/or deliberating on a case, pursuant to D.C. Official Code
15 Section 2-575(b)(1)(3), but only after providing the
16 necessary public notice and in the case of an emergency
17 closed meeting after taking a roll.

18 Mr. Secretary, do we have any preliminary matters?
19 Mr. Secretary?

20 MR. MOY: I'm here. Thank you. We do, Madam Vice
21 Chair. We do have preliminary matters, and because of the
22 extent of the number of preliminary matters, staff would
23 suggest that the Board address those when I call the case.
24 Other than that, since I have the mic, I do wish to announce
25 for the record case applications that are not on today's

1 docket.

2 Case Application Number 20592 of John and Linda
3 ReVeal has been continued to February 2nd, 2022. Application
4 Number 20239 -- this is of 2629 MLK LLC -- continued to March
5 30, 2022. And Application Number 20234 of Kuumba Learning
6 Center, Inc., continued to April 13, 2022.

7 Finally, we have two decisions that have been
8 rescheduled to the Board's next hearing. These two cases are
9 Case Number 20501 of Milken Center for Advancing the American
10 Dream, LLC, to January 12th, 2022, and Case Number 20541 of
11 1899 Penn Property LLC, also rescheduled to January 12th,
12 2022.

13 That's it.

14 VICE CHAIR JOHN: Okay. Thank you, Mr. Moy. So,
15 Mr. Moy, can you please call our first case?

16 MR. MOY: Thank you. With Pleasure. So the first
17 case before the Board in this public hearing session is
18 Application Number 20590 of Rajiv, R-A-J-I-V, Uppal. And
19 this is a request for a special exception from the retaining
20 wall height restrictions of Subtitle C, Section 1401. This
21 is pursuant to Subtitle C, Section 1402, and Subtitle X,
22 Section 901.2.

23 This would construct a retaining wall at the rear
24 of a property containing an existing semidetached principal
25 dwelling, two stories with basement. This is in the R-2 zone

1 at premises 840 Oglethorpe Street, Northeast, Square 3743,
2 Lot 35.

3 Finally, Madam Vice Chair, although there is a
4 PowerPoint in the case record, apparently the Applicant
5 revised it within this 24-hour plot. So I would tee that up
6 for the Board whether you wish to allow his revised
7 PowerPoint into the record.

8 VICE CHAIR JOHN: Thank you, Mr. Moy. I think
9 everyone would like to see what the changes were, so I will
10 let the revised PowerPoint enter the record. Thank you.

11 Mr. Uppal, can you hear me? Mr. Uppal? I hope
12 I'm pronouncing your name correctly. Hello?

13 Is the Applicant here?

14 MR. UPPAL: I can hear you now.

15 VICE CHAIR JOHN: Okay. Thank you. Are you
16 choosing not to use your camera?

17 MR. UPPAL: No. I'm new to Webex. I'm now seeing
18 that -- start the video. Okay. This is the first time I'm
19 using Webex, so pardon my --

20 (Simultaneous speaking.)

21 VICE CHAIR JOHN: That's fine. Am I pronouncing
22 your name correctly? Is it Uppal?

23 MR. UPPAL: Yes, very correctly.

24 VICE CHAIR JOHN: Could you state your name and
25 introduce yourself for the record, please?

1 MR. UPPAL: My name is Rajiv Uppal, and I'm the
2 owner of 840 Oglethorpe Street, Northeast, where we are
3 discussing the retaining wall. And the case number is 20590.

4 VICE CHAIR JOHN: Okay. Thank you. So you have
5 15 minutes to tell us about your project and how it meets the
6 criteria for relief. And are you planning to use your
7 presentation? Would you like us --

8 MR. UPPAL: Yes.

9 VICE CHAIR JOHN: -- to have it pulled up?

10 MR. UPPAL: I'm assuming that Ms. Keara put my --
11 it's a very simple five, six slides. I mean, I'm assuming
12 that your team is good on -- Keara is going to put my slide
13 -- yes. I can see it now.

14 VICE CHAIR JOHN: Yes.

15 MR. UPPAL: So this is regarding the 840
16 Oglethorpe of Northeast retaining wall presentation. Next
17 slide.

18 And the address is Oglethorpe Street, Northeast,
19 3743, Lot 35. The ANC is 4B, and the case number is 20590.
20 Next slide.

21 The nature of the relief sought -- this is an
22 application for special exception relief pursuant to Subtitle
23 C, 1042, and Subtitle X 901.2, for a retaining wall at the
24 back of the property. Next.

25 The Board of Zoning Adjustment has the

1 jurisdiction to grant special exception relief request of
2 hearing pursuant to Title X 901.2 of the zoning regulation.
3 Next.

4 The property and retaining wall. I purchased this
5 property in January of 2021. The retaining wall at the back
6 of the house, back of the property, supports a parking pad
7 which is six feet high and connects to a 16-foot-wide alley
8 at the back of the house. The height of the retaining wall
9 is around six feet.

10 D.C. Office of Zoning Administration retaining
11 wall requirements -- in the R-2 zone, within 20 feet of the
12 rear property line, retaining walls are limited to four feet
13 in height. The Board is authorized to grant special relief
14 to the height of the retaining wall pursuant to Section
15 1402.1 and Section X 901.2.

16 The project -- the project was to replace the old
17 retaining wall, which was in bad condition, although the same
18 height, with cracks and water leakages, and renew the new
19 retaining wall, six feet high, the same height again, to
20 support the parking pad accessed from rear alley to the
21 semidetached two-story with basement principal dwelling unit
22 in the R-2 zone. Next, please.

23 So here are reasons for having a retaining wall
24 higher than four feet. Number one, the retaining wall will
25 support a parking pad approximately six feet high, which

1 connects with a 16-foot-wide alley behind the house. The
2 alley behind the house is six to seven feet high. A four-
3 foot retaining wall will not be able to support a parking pad
4 that is six feet high. The old retaining wall was also six
5 feet high. The new retaining wall, built to provide safety
6 to residents of the house sitting in the backyard -- the new
7 wall will be more pleasing to the eye. The old wall was an
8 eyesore.

9 All these sites never had retaining walls of the
10 same height. The retaining wall is only visible to residents
11 sitting at the back of the house. Visual impact of retaining
12 wall will be minimal to neighbors due to existing fences
13 along the property lines. The wall will not be visible from
14 the alley also.

15 The retaining wall will not tend to affect
16 adversely the use of neighboring properties, in accordance
17 with the zoning regulations and zoning maps. The privacy and
18 use and enjoyment of neighboring properties shall not be
19 unduly compromised.

20 So these are the reasons why the wall that we have
21 in the back has to be six feet high. This is pretty much my
22 presentation -- next, has a few pictures that I want to show
23 the Board. Next, please.

24 So this is the house with the sign posted and
25 front of it. Next, please.

1 This is the current retaining wall, which is
2 around six feet high. Next, please.

3 This was the old retaining wall, as you can see,
4 in not good condition and not safe. Next, please.

5 This is the alley behind the house. As you can
6 see, the retaining wall is still below the height of the
7 alley, so you don't see the retaining wall from the alley.
8 The garage that you see is the house on the right side of my
9 house as seen from the front of the house. Next slide,
10 please.

11 So this is the neighbor on the right side, and
12 they have a retaining wall, also, six to seven feet high with
13 a garage in the back and the alley behind the garage. Next
14 slide, please.

15 This is the neighbor on the left side. They also
16 have a retaining wall six to seven feet high supporting the
17 apartment part which, again, connects to the alley behind the
18 house. Next slide, please.

19 This is the plat of the house. Next slide,
20 please.

21 The next of these slides are architectural and
22 instructional diagram done by the architect/structural
23 engineer, and the three slides -- go to the next one, and
24 next one.

25 And so this is all the slides I have for my

1 presentation. Thank you, Board members, for taking time out
2 to listen to me.

3 VICE CHAIR JOHN: Thank you. And I apologize that
4 my internet -- I lost my internet connection for a while.
5 I had read the record and reviewed the slides before this
6 morning.

7 MR. UPPAL: Thank you.

8 VICE CHAIR JOHN: So does the Board have any
9 questions for the Applicant?

10 Mr. Blake, do you have a question?

11 MEMBER BLAKE: Yes, I do. I have just two quick
12 questions, one with regard to the height of the retaining
13 wall. You indicated that it is a little more -- or roughly
14 six feet, but a little more than that. In the Office of
15 Planning's report, they indicated you need to do up to at
16 least seven feet.

17 Your request, again, in your plan showed six feet
18 exactly. I think this is more like seven feet is the
19 appropriate -- up to seven feet is the appropriate measure,
20 I believe. Is that right?

21 MR. UPPAL: Yeah, because we need to put something
22 to stop car from going down. So we are planning on the --
23 then we thought we would put -- somebody could post the
24 horizontal bars to take care of that.

25 MEMBER BLAKE: Okay. So up to seven feet is

1 appropriate, I assume.

2 MR. UPPAL: I think so, but I think the wall
3 currently is six feet, to the best of my knowledge.

4 MEMBER BLAKE: Okay. And my second question has
5 to just do with the overall project. Just out of curiosity,
6 what exactly is the current status of the property at this
7 point? It looked from the pictures that it was essentially
8 a work in progress that was abandoned. Can you just give me
9 a sense of where the project is today?

10 MR. UPPAL: I mean, the project is pretty much
11 finished from a structural standpoint. We just need to
12 finish it in terms of aesthetics or painting it and making
13 it looks nice, which we plan to do as soon as we get the
14 approval.

15 MEMBER BLAKE: Thank you.

16 MR. UPPAL: Thank you.

17 VICE CHAIR JOHN: Are there any other questions?

18 Mr. Uppal, in your self-certification, did you ask
19 for seven feet or six feet? I'm not quite sure.

20 MR. UPPAL: See -- I mean, this wall was such a
21 long period of time. It started off somewhere in April, and
22 it's now December. I think we asked for seven feet because
23 the parking part itself is -- parking part and the alley in
24 the back is between six to seven feet. So seven feet becomes
25 safe. Six feet is still okay.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR JOHN: Okay.

2 MR. UPPAL: Seven feet would be good, though.

3 VICE CHAIR JOHN: And the drawing shows seven
4 feet? I missed what -- the question from Mr. Blake. Did the
5 drawing say seven feet?

6 MR. UPPAL: The drawings show, I think, seven
7 feet. Oh. The drawing from the front --- I don't know.

8 VICE CHAIR JOHN: So I'll give you some time to --
9 (Simultaneous speaking.)

10 MEMBER BLAKE: I believe the drawings say six.

11 MR. UPPAL: Six feet.

12 VICE CHAIR JOHN: Say six. So are you proposing
13 to amend your application to request seven feet?

14 MR. UPPAL: No, I think I'm okay with six feet.
15 The wall currently is six feet, and it's high enough to
16 support the parking part.

17 VICE CHAIR JOHN: Okay. All right. Thank you.

18 Does the Board have any other questions?

19 Okay. I'll go to the Office of Planning. Ms.
20 Elliott?

21 MS. ELLIOTT: Thank you, Madam Chair and members
22 of the Board. I'm Brandice Elliott representing the Office
23 of Planning. I'm filling in for Matt Jesick on this case,
24 who filed OP's report. The Office of Planning is
25 recommending approval of the special exception that's been

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 requested for a retaining wall that is seven feet in height.
2 Four feet is the maximum that's permitted as a matter of
3 right.

4 So, just to clarify, OP's report does say seven
5 feet, and we are supportive of the seven feet. I will go
6 ahead and just stand on the record of OP's report, but I'm
7 happy to answer any questions that you have.

8 VICE CHAIR JOHN: Thank you.

9 Does the Board have any questions?

10 Is the ANC here? Is there anyone signed up to
11 testify?

12 I guess not. So I'm going to go to the Board.
13 So my question to the Board is I'm inclined to ask the
14 Applicant to change to amend his request to seven feet out
15 of an abundance of caution and ask to have that corrected on
16 the record and provide additional documents. I don't know
17 what the Board thinks. Mr. May?

18 ZONING COMMISSIONER MAY: It's such a small
19 change, I would think that -- and we probably need to have
20 one of our attorneys confirm this, but I would think that
21 simply a verbal request that we change from six to seven feet
22 would be sufficient and that we could vote on this matter
23 today without further documentation.

24 VICE CHAIR JOHN: Does anyone have any other
25 comments? Okay. So there are no persons signed up to

1 testify, and I believe the ANC has submitted a report but is
2 not here.

3 So, Mr. Uppal, do you have any closing comments?
4 Would you like to amend the record orally and ask for --

5 MR. UPPAL: I'd request orally to amend the
6 record.

7 VICE CHAIR JOHN: Okay. And do you have any
8 closing comments?

9 MR. UPPAL: No. I think, throughout this process,
10 there's people that -- your team and the whole Zoning
11 Department, and I just found that everyone was so helpful.
12 I mean, it was just -- I've dealt with some other parties,
13 and the amount of support I got from this party far exceeds
14 everybody else.

15 VICE CHAIR JOHN: Okay.

16 MR. UPPAL: I've been very happy with this, just
17 the process is long, but I understand -- it's a big country
18 and it tends to be long.

19 VICE CHAIR JOHN: Thank you. So I'm going to ask
20 Mr. Young to exclude Mr. Uppal, and I thank you for your
21 testimony.

22 MR. UPPAL: Thank you.

23 VICE CHAIR JOHN: And the record and the hearing
24 are now closed. So I'm going to turn to the Board and see
25 if we're ready to deliberate.

1 And, Mr. May, should --

2 ZONING COMMISSIONER MAY: I'm prepared to make a
3 motion in favor of approval.

4 VICE CHAIR JOHN: Yes. I was just hoping to get
5 to that to see if we're ready to deliberate, and I guess the
6 answer is yes. And so I will ask Commissioner May to make
7 a motion to approve as --

8 ZONING COMMISSIONER MAY: Yeah, I'm just --

9 VICE CHAIR JOHN: -- as amended.

10 ZONING COMMISSIONER MAY: -- ready to go, to just
11 jump right to the approval.

12 VICE CHAIR JOHN: I know. I know, but Mr. May,
13 if I could ask you one thing, to amend so the --

14 ZONING COMMISSIONER MAY: I will. I will state
15 clearly it's up to seven feet.

16 VICE CHAIR JOHN: Seven feet. Thank you.

17 ZONING COMMISSIONER MAY: So I would move that the
18 Board of Zoning Adjustment approve Case Number 20590,
19 construct a rear retaining wall of a height up to seven feet
20 at the property at 840 Oglethorpe Street, Northeast.

21 VICE CHAIR JOHN: Okay. Thank you.

22 Is there a second?

23 MEMBER SMITH: I second.

24 VICE CHAIR JOHN: Thank you. I'm not sure who
25 that was. I'll say it was Mr. Smith. And --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER SMITH: Yes, Smith.

2 VICE CHAIR JOHN: -- I will ask Mr. Moy to call
3 the roll, please.

4 MR. MOY: Each of your names, if you would please
5 respond with a yes, no, abstain to the motion made by Peter
6 May to approve the application for the relief requested along
7 with the amendment to increase the height of the retaining
8 wall to seven feet. The motion was seconded by Mr. Smith.

9 Mr. Blake?

10 Mr. Smith?

11 Zoning Commissioner Peter May?

12 ZONING COMMISSIONER MAY: Yes.

13 MR. MOY: Vice Chair John?

14 VICE CHAIR JOHN: Yes.

15 MR. MOY: We have a Board member not participating
16 today. Staff will record the vote as four to zero to one,
17 and this is on the motion to approve made by Zoning
18 Commissioner Peter May. Also in support of the motion to
19 approve, Mr. Smith, as well as Mr. Blake, Zoning Commissioner
20 Peter May, Mr. Smith, of course, and Vice Chair John.

21 The motion carries on a vote of four to zero to
22 one.

23 VICE CHAIR JOHN: Thank you, Mr. Moy. And can you
24 call our next case, please?

25 MR. MOY: Okay. Okay. So the next case before

1 the Board is Application Number 20587 of David Wright &
2 Gabriele G. Wright. This is a self-certified application for
3 special exception from the retaining wall height
4 restrictions, Subtitle C, Section 1401, which is pursuant to
5 Subtitle C, Section 1402, and Subtitle X, Section 901.2.

6 This will reconstruct a retaining wall at the rear
7 of a lot containing an existing semidetached principal
8 dwelling unit, two stories with a cellar. This is in the R-2
9 zone at premises 2010 Porter Street, Northwest, Square 2067,
10 Lot 16. And that's all I have. Yes. Thank you.

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

12 Good morning, Mr. Wright. Can you state your name
13 and address for the record, please?

14 MR. WRIGHT: Good morning. My name is David
15 Wright, and I live at 2010 Porter Street, Northwest.

16 VICE CHAIR JOHN: Thank you. Can you tell us how
17 your application meets the criteria for relief? You will
18 have 15 minutes, although the clock is not working today, so
19 we'll try to estimate it.

20 MR. WRIGHT: Sure. No problem. I also just
21 wanted to mention I'm being represented by the landscape
22 architects. That's who I'm working with, Holt Jordan, who
23 may be online as well.

24 VICE CHAIR JOHN: Okay. Thank you. So we'll have
25 you introduce him or have him introduce himself if we need

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 him or if you would like him to give the presentation now.

2 MR. WRIGHT: Yeah, I was thinking he would give
3 the presentation now, actually.

4 VICE CHAIR JOHN: Okay. So I don't see him on the
5 line. Let's wait for a second.

6 (Pause.)

7 VICE CHAIR JOHN: Ms. Mehlert, is the architect
8 on the line, Mr. Honeyman?

9 MR. WRIGHT: Oh, Paxton Jordan. Sorry. His first
10 name is Paxton. He goes by Holt, but I believe that's his
11 middle name.

12 VICE CHAIR JOHN: Okay. Is that the authorization
13 of Exhibit 7? Let me see if there are additional notes.
14 Hold on.

15 So, apparently, Jordan Honeyman signed up to
16 testify. Is that the same person?

17 MR. WRIGHT: Yes.

18 VICE CHAIR JOHN: Okay.

19 MR. MOY: Madam Vice Chair, I do see a listing in
20 the panel as a Paxton Holt Jordan.

21 VICE CHAIR JOHN: Okay, which is the same person
22 as Jordan Honeyman.

23 MR. WRIGHT: Yeah. Jordan Honeyman is the firm,
24 and he's a partner in the firm.

25 VICE CHAIR JOHN: I see. Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Mr. Jordan, can you hear me?

2 Ms. Mehlert, can you see if you can unmute him?

3 There he is.

4 Good morning, Mr. Jordan. We can't hear you. Mr.
5 Jordan, we can't hear you.

6 MR. MOY: Yeah, I believe he needs to unmute
7 himself.

8 MR. JORDAN: All right. Thank you. Yes.

9 (Simultaneous speaking.)

10 MR. JORDAN: I was given the oath on the phone
11 just there. Okay. All right. So --

12 VICE CHAIR JOHN: Good morning, Mr. Jordan. Could
13 you please introduce yourself for the record, please?

14 MR. JORDAN: Yes. My name is Paxton Jordan. I'm
15 with Jordan Honeyman Landscape Architecture here in D.C., and
16 I am representing the client, Dave and Gabriele Wright. And
17 we are asking for an exemption for the retaining wall height.

18 There's one we are trying to create in our parking
19 lot -- parking area, I should say -- for two cars. And we
20 have one corner that is just outside the building setback,
21 and it would be almost six feet, six inches -- just under
22 that. And then, on the opposite side, it slopes down to 4.75
23 because of the existing grade.

24 So we feel like it's a minimal impact. It is the
25 parking area. The rear yard is lower than the alley, and so

1 the only thing visible would be the cars themselves and the
2 guardrail that is necessary for the top of the wall.

3 I assume that you have the drawings in front of
4 you, and if you have any questions about those -- I was
5 unaware that I was actually making the presentation. I
6 thought that the staff was doing that.

7 VICE CHAIR JOHN: Okay. Thank you.

8 Does the Board have any questions for Mr. Jordan?
9 No?

10 I'll go to the Office of Planning. Ms. Elliott,
11 can you hear me?

12 (Telephonic interference.)

13 MS. ELLIOTT: -- and members of the Board, again,
14 I'm Brandice Elliott. I'm representing the Office of
15 Planning, filling in for Matt Jesick, who reviewed this
16 case.

17 The Office of Planning does recommend approval of
18 this special exception for the retaining wall. For BZA Case
19 20587, the overall height, according to our report, is 6.4
20 feet, where again, four feet is the maximum for a matter-of-
21 right retaining wall.

22 I'll go ahead and rest on the record of OP's
23 report, but again, I'm happy to answer any questions you
24 have.

25 VICE CHAIR JOHN: Okay. Thank you.

1 Does the Board have any questions for Ms. Elliott?
2 Does the Applicant have any questions for Ms. Elliott? No?
3 Is there anyone wishing to testify?

4 Ms. Mehlert, is anyone signed up to testify?

5 MS. MEHLERT: No one is signed up.

6 VICE CHAIR JOHN: Okay. So I had one question for
7 the Applicant. DDOT noted that there's a 15-foot building
8 restriction line along Porter Street, and that area between
9 the property line and the building restriction line is public
10 space. So is the Applicant intended to comply with the DDOT
11 recommendation?

12 MR. JORDAN: Well, is that for the front yard?

13 VICE CHAIR JOHN: It's along Porter Street, and
14 that's in the DDOT report.

15 MR. JORDAN: Okay. I mean, we're not doing any
16 work in the public space in the front on Porter Street. This
17 is all on the alley in the rear setback.

18 VICE CHAIR JOHN: Okay. I think DDOT just wanted
19 you to be aware that it should remain in a park-like setting.

20 MR. JORDAN: We're not altering the front at all,
21 so --

22 VICE CHAIR JOHN: Okay. So, Mr. Blake, did you
23 have a question?

24 MEMBER BLAKE: They had mentioned something about
25 some tree protection measures. Is there something back there

1 that is being addressed?

2 MR. JORDAN: Yes. We met with the Urban Forestry,
3 and we spoke with them about our preliminary ideas about how
4 to address the tree protection for some -- it's basically
5 three trees that are in close proximity, one on our site and
6 then two in the adjacent property.

7 And we are addressing that. We're working with
8 a structural engineer where we're doing some interesting --
9 we would be doing tree preservation with -- we would do air
10 spading to expose the roots, but we're not -- we're doing
11 more of a gravity system, which -- it's almost like a fabric
12 pillow with gravel, and that -- the structural engineer has
13 used this. We're able to put that on top of existing grade
14 as opposed to digging extensive footings so that we can
15 minimize the impact on these trees that are in close
16 proximity.

17 We would also be doing aeration piping under the
18 parking area to allow for air for those tree roots, as well
19 as doing permeable paving to allow for water to get through
20 down to those tree roots. And so I believe his name was Evan
21 with Urban Forestry -- was in agreement with our process.

22 MEMBER BLAKE: Excellent. And is HPRB involved
23 in this process as well? Are you presenting to them?

24 MR. JORDAN: HPRB -- Historic Preservation, yes.
25 We did send them preliminaries, and they had no objections.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MEMBER BLAKE: Thank you.

2 VICE CHAIR JOHN: Thank you.

3 Are there any other questions?

4 Mr. Jordan, would you like to make closing
5 remarks, comments?

6 MR. JORDAN: Yes. Thank you. I appreciate your
7 time, and thank you to the staff for helping us through this
8 process. This is a first for me for asking for a special
9 exemption or variance. And happy holidays, everyone.

10 VICE CHAIR JOHN: Thank you.

11 So, Mr. Moy, I'm closing the hearing and the
12 record. And I'll ask Ms. Mehlert to excuse everyone, and I
13 thank you for your testimony.

14 The ANC is not here?

15 MR. MOY: No, I don't believe so.

16 VICE CHAIR JOHN: Okay.

17 MR. MOY: And as of last night, I checked the case
18 record, and there was still no report from the ANC, although
19 I didn't check this morning.

20 VICE CHAIR JOHN: I checked as well, and I did not
21 see one. And I don't believe there's any report. So are we
22 ready to deliberate?

23 May I ask you to begin, Mr. Smith?

24 MEMBER SMITH: I believe this case is a very
25 straightforward case. The request before the Board is a

1 special exception to construct a retaining wall at the rear
2 of a lot containing an existing semidetached principal
3 dwelling. Because of the location of the alley and the
4 topography of the site, it would be extremely difficult for
5 the Applicant to come into full compliance, on the matter of
6 our standing point, anyway, constructing a retaining wall
7 that could accommodate the construction of a parking pad at
8 their home.

9 A parking pad constructed at the site utilizing
10 matter-of-right retaining wall would result in a fairly
11 substantial slope for those parking spaces. While I don't
12 believe we -- I mean, we have stated we didn't receive a
13 report from the ANC. We do have in the record three letters
14 of support from neighbors that are directly adjacent and
15 would be the most impacted if the special exception were
16 granted.

17 So, with that, I give great weight to these
18 analyses as contained in the staff report, and I will support
19 the request. And, if needed, I can make a motion.

20 VICE CHAIR JOHN: Okay. Thank you. I'll go to
21 Commissioner May next.

22 ZONING COMMISSIONER MAY: Nothing to add.

23 VICE CHAIR JOHN: Mr. Blake?

24 MEMBER BLAKE: The DDOT had no objection, and the
25 statement of outreach was also in the record, as well as the

1 attestation in Exhibit 17.

2 VICE CHAIR JOHN: Okay. Thank you.

3 So I will go ahead and make a motion to approve
4 Application Number 20587 as captioned and read by the
5 Secretary and ask for a second. Mr. Blake?

6 MEMBER BLAKE: Second. I'll second.

7 VICE CHAIR JOHN: Thank you.

8 Mr. Moy, would you please call the roll?

9 MR. MOY: Okay. When I call each of your names,
10 if you would please respond with a yes, no, or abstain to the
11 motion made by Vice Chair John to approve the application for
12 the relief requested. The motion was seconded, I believe,
13 by Mr. Blake.

14 Zoning Commissioner Peter May?

15 ZONING COMMISSIONER MAY: Yes.

16 MR. MOY: Mr. Smith?

17 MEMBER SMITH: Yes.

18 MR. MOY: Mr. Blake?

19 MEMBER BLAKE: Yes.

20 MR. MOY: Vice Chair John?

21 We have a Board member not present -- not
22 participating. Staff would record the vote as four to zero
23 to one, and this is on the motion to approve made by Vice
24 Chair John, the motion to approve seconded by Mr. Blake.
25 Also in support of the motion to approve, Zoning Commissioner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Peter May, Mr. Smith, Mr. Blake, and Vice Chair John.

2 Motion carries on the vote of four to zero to one.

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

4 So I'm going to suggest that we take a quick
5 break. It's a long day, so perhaps we can start again at
6 10:45. Is that enough time? Okay. 10:45.

7 (Whereupon, the above-entitled matter went off the
8 record at 10:37 a.m. and resumed at 10:48 a.m.)

9 MR. MOY: The Board is back in its public hearing
10 session after a very brief recess. And the time is at or
11 about 10:48 a.m.

12 VICE CHAIR JOHN: Thank you.

13 Ms. Mehlert, could you let the parties in?

14 MR. MOY: Shall I call the case, Madam Vice Chair?

15 VICE CHAIR JOHN: Please, Mr. Moy.

16 MR. MOY: The next application before the Board
17 is No. 20591 of Aaron Mintz, M-I-N-T-Z. This is a Request
18 for Special Exceptions, pursuant to Subtitle C, Section 1504,
19 and Subtitle X, Section 902.1, from the penthouse
20 requirements, Subtitle C, Section 1500.4, to allow a
21 penthouse on a rowhouse, and the penthouse setback
22 requirements of Subtitle C, Section 1502.

23 This would construct a new penthouse with roof
24 deck on an existing two-story, attached principal dwelling.
25 And this is in the RF-1 Zone at premises 1415 Columbia

1 Street, NW, Square 366, Lot 66.

2 And, Madam Vice Chair, the preliminary matter is
3 that there is a motion from the Applicant to waive the 21-day
4 filing deadline to allow additional renderings.

5 VICE CHAIR JOHN: Okay. Thank you.

6 Mr. Mintz, can you introduce yourself for the
7 record, please? Can you hear me, Mr. Mintz? Hello?

8 MR. MINTZ: Can you hear me?

9 VICE CHAIR JOHN: Yes, I can hear you. So, please
10 go ahead and introduce yourself.

11 MR. MINTZ: Okay. Yes. No, I'm confused.

12 Hi. I'm Aaron Mintz. This is my wife, Savina
13 Cook. We're the owners of the property, and we are applying
14 for the Special Exception for Section C, 1500.4, Section C,
15 1502.1, and Section C, 1504.2, in addition to the X, 902.1,
16 General Exception.

17 VICE CHAIR JOHN: Okay.

18 MR. MINTZ: We are just -- I'm sorry, go ahead.

19 VICE CHAIR JOHN: Thank you.

20 Before you continue, I want to go to Ms.
21 Fothergill.

22 Ms. Fothergill, can you introduce yourself,
23 please?

24 MS. FOTHERGILL: Good morning. I'm Anne
25 Fothergill with the Office of Planning.

1 VICE CHAIR JOHN: So, Ms. Fothergill, I read your
2 report, and it seems to me that the Applicant needs
3 additional relief, and if so, can you explain what that
4 relief is?

5 MS. FOTHERGILL: So, the application was referred
6 from DCRA, is my understanding. So, it's not self-certified.
7 They have a referral memo from the Zoning Administrator's
8 Office that said they required two forms of penthouse relief
9 for the setbacks as well as for having a penthouse on the
10 rowhouse in an RF-1 Zone.

11 We think it also may need relief from -- the
12 enclosed stairs have walls of unequal height, because it's
13 a staircase and that is something that also requires Special
14 Exception, but was not noted in the Zoning Administrator's
15 referral memo.

16 VICE CHAIR JOHN: Okay. And I'm sorry to ask you
17 this, you know, but do you know whether the proposed text
18 Amendment 14-13 would cover all of those three types of
19 relief?

20 MS. FOTHERGILL: Yes. My understanding is the
21 recent text amendment that was approved by the Zoning
22 Commission that is going into effect, I believe, on December
23 24th, or being published, which is the final step, would, in
24 fact, make this project matter of right for all three of
25 those areas of relief.

1 VICE CHAIR JOHN: Okay. So, thank you.

2 So now, I'm going to go to the Applicant again.
3 Mr. Mintz, did you understand everything the Office of
4 Planning said?

5 MR. MINTZ: Yeah, I understood it. We were
6 debating whether to continue and wait for that. I think it
7 goes into place in two days. But we thought, based on our
8 application, that we still had, we still qualified for the
9 exceptions, based on the fact that the penthouse stair exit
10 structure is less than 10 feet and has less than 30 feet of
11 storage, and the retaining, I mean, the party walls' railings
12 that wouldn't be set back are, would be approved, based on
13 the fact that it's infeasible to have the setbacks because
14 of the width of the roof deck.

15 VICE CHAIR JOHN: Okay.

16 MR. MINTZ: But, yes, to your question.

17 VICE CHAIR JOHN: So, you're officially amending
18 your application on the record to add the relief for the
19 uneven height of the penthouse walls?

20 MR. MINTZ: Oh, sorry. Yeah, I didn't realize
21 that was the question you were asking me. Yes. Yes.

22 VICE CHAIR JOHN: Okay. All right. So now, can
23 you tell us how your application meets the criteria for
24 relief under the current regulations, not under the proposed
25 text amendments?

1 MR. MINTZ: Sure.

2 VICE CHAIR JOHN: And you'll have 15 minutes, Mr.
3 Mintz.

4 MR. MINTZ: Okay. So, Keara -- I did have a
5 presentation, but after sitting through the other ones, I
6 think mine may be a little bit of an overkill -- but if she
7 can bring our presentation up, I can at least leaf through
8 what I think are the most pertinent parts.

9 So, if you could go to the next page? That's the
10 cover letter.

11 Basically, what we attempted to do here is to take
12 a subset of a BZA application that would be relevant to this
13 hearing and condense it to one document. But this is our
14 burden of proof. And the reasons that we think we qualify
15 are that, in statute 1500.4, the penthouse stair exit
16 structure is no more than 10 feet. It's actually 8 feet 8
17 inches. (Telephonic interference) less 30 square feet of
18 storage space ancillary to the roof.

19 And then, the reason that we think we qualify for
20 the (telephonic interference) Section C, 150 (telephonic
21 interference) 4.5, the setbacks for the five railings
22 (telephonic interference) which we received from DCRA, the
23 (telephonic interference). The middle of our property is
24 only 11 feet wide. And so --

25 VICE CHAIR JOHN: Mr. Mintz, we're having

1 difficulty hearing you. Would you like to just --

2 MR. MINTZ: (Telephonic interference) personally
3 due to (telephonic interference).

4 VICE CHAIR JOHN: Mr. Mintz?

5 MR. MINTZ: Excuse me? Sorry?

6 VICE CHAIR JOHN: You're breaking up. Would you
7 like to call back on your phone?

8 ZONING COMMISSIONER MAY: Or just try turning off
9 your video. That often helps.

10 VICE CHAIR JOHN: Okay.

11 MR. MINTZ: Can you guys hear me now?

12 VICE CHAIR JOHN: Yes, that's a little better.
13 Thank you.

14 MR. MINTZ: Okay. I'm not sure when I cut out.

15 But, from our burden of proof, we believe that we
16 qualify for the stair exit, based on the height of it. And
17 we believe we qualify for the setbacks, based on the
18 narrowness of our roof. And the Historic Board approval that
19 we received requires that the roof deck be in the middle of
20 the roof.

21 And as you can tell from our application, our
22 property is east-west-facing. So, the shadows would not
23 inhibit our neighbors, and we've received neighbor support
24 from both our neighbor on our right and our neighbor on our
25 left, and then, an additional neighbor in the neighborhood

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 also, sent, emailed a letter of support.

2 But the basic gist of the setback requirement
3 relief, the reason we think we qualify for the exception is
4 the narrowness of the roof would make us to be able to abide
5 by the setbacks and still have the usability of the deck
6 itself.

7 You mentioned at the beginning that we have this
8 -- we asked for the 21-day supplemental document relief
9 because we wanted -- the additional thing that's pertinent
10 to this application -- and if Keara can put through to the
11 renderings, it's -- keep going. I'll tell you when to stop.
12 Keep going.

13 So, yeah, we've been working with our neighbor to
14 the right, as you're facing our unit, who is going through
15 a third-floor addition project. She has received Historic
16 Board approval and ANC 2F approval. She has not gone through
17 the permitting process yet. But, given that she's received
18 that, we've had my contractor and her contractor talk. And
19 what I've attempted to do here is just illustrate how our
20 projects will appear together, so that you can see that,
21 hopefully, the Board can see that we're adhering to the
22 harmony of the neighborhood and the spirit of the Historic
23 District that we live in.

24 Keara, if you could go to the next one?

25 This is an aerial view that shows our two, her

1 proposed project and mine next door.

2 And then, one more.

3 And that's just a side view from P Street.

4 The other things that are part of this
5 presentation, which after I sat through the other ones, I
6 realized that you guys have already gone through the BZA
7 applications. So, I don't want to bore you all here.

8 But we have the neighbor support letters and we
9 have the Office of Planning's recommendation and (telephonic
10 interference), and the recommendation as well.

11 VICE CHAIR JOHN: Okay. Thank you, Mr. Mintz.

12 Does the Board have any questions for the
13 Applicant?

14 Ms. Mehlert, would you (telephonic interference),
15 please?

16 Thank you.

17 Does the Board have any questions for the
18 Applicant?

19 ZONING COMMISSIONER MAY: No.

20 VICE CHAIR JOHN: No? So, I'll go back to the
21 Office of Planning. And can you give us your report?

22 MS. FOTHERGILL: Sure. Again, I'm Anne Fothergill
23 for the Office of Planning for BZA Case 20591.

24 And the Office of Planning recommends approval of
25 the three Special Exceptions that have been requested,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 pursuant to Subtitle X, Chapter 9, as well as Subtitle C,
2 Section 1504.1, specifically, for Special Exceptions for
3 penthouses.

4 And I'll rest on the record in support of the
5 application, and I'm happy to take any questions.

6 VICE CHAIR JOHN: Thank you, Ms. Fothergill.

7 What's the section that covers the uneven setback?

8 MS. FOTHERGILL: I believe it's 1500.9, Subtitle
9 C.

10 VICE CHAIR JOHN: 1500.?

11 MS. FOTHERGILL: 9.

12 VICE CHAIR JOHN: 9? Okay. Thank you.

13 Does the Board have any questions?

14 (No audible response.)

15 Ms. Mehlert, is there anyone signed up to testify?

16 MS. MEHLERT: None.

17 VICE CHAIR JOHN: None? Okay.

18 Mr. Mintz, do you have any closing statements?

19 MR. MINTZ: I would just like to echo what the
20 other applicants have said. This process is, it's difficult
21 to navigate because I've never done anything like this
22 before, but everybody was extremely helpful from DCRA to you
23 all, to the ANC as well. So, thank you very much.

24 VICE CHAIR JOHN: Thank you.

25 And, Ms. Mehlert, is the -- well, the ANC wouldn't

1 sign up to testify, but are they on the line or anything?

2 MS. MEHLERT: No.

3 VICE CHAIR JOHN: Okay. So, I'm going to close
4 the hearing and the record, and ask if we're ready to
5 deliberate.

6 May I start with you, Commissioner Moy -- May?
7 The second time for today.

8 ZONING COMMISSIONER MAY: Thank you, Commissioner
9 Moy.

10 (Laughter.)

11 Yes, I think this is pretty straightforward. This
12 is the sort of thing that we were hoping to address in the
13 revisions to the penthouse regulations to begin with. So,
14 I think what is being proposed is quite modest. It has
15 support of the abutting neighbors. It has support of the
16 ANC. It has support of the Office of Planning.

17 I don't see any reason why we would not go ahead
18 and approve this, other than the fact that in two days it's
19 probably not really necessary. But, out of an abundance of
20 caution, I'm fine with going ahead and approving it.

21 VICE CHAIR JOHN: Thank you.

22 Mr. Smith?

23 MEMBER SMITH: I have nothing to add. I believe
24 Commissioner May was able to summarize the various
25 (telephonic interference).

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR JOHN: Thank you.

2 Mr. Blake?

3 MEMBER BLAKE: Madam Chair, I have nothing to add.
4 I agree with the comments that the other Board members made,
5 and would be prepared to support it as well.

6 VICE CHAIR JOHN: Okay. Thank you.

7 And I have nothing to add, except that the record
8 will be amended to add relief from Section 1509. What was
9 that section again? Let's see. 1500.9.

10 So, I'll make a motion to approve Application
11 20591, as amended, and as read and captioned by the
12 Secretary, and ask for a second, Commissioner May.

13 ZONING COMMISSIONER MAY: Second.

14 VICE CHAIR JOHN: Mr. Blake?

15 MEMBER BLAKE: Yes.

16 VICE CHAIR JOHN: Mr. Blake, can you second the
17 motion, please?

18 MEMBER BLAKE: Yes, second.

19 VICE CHAIR JOHN: Okay.

20 MEMBER BLAKE: Mr. May did. Commissioner May did,
21 but that's fine.

22 VICE CHAIR JOHN: Oh, okay. Thank you. I need
23 coffee.

24 Mr. Moy, would you please call the roll? Mr. Moy?

25 MR. MOY: Thank you.

1 So, when I call each of your names, if you would
2 please respond with a yes, no, or abstain, to the motion made
3 by Vice Chair John to approve the application for the relief
4 requested, as amended, to include Subtitle C, Section 1500.9.

5 A motion to approve was seconded by Zoning
6 Commissioner Peter May.

7 Mr. Smith?

8 MEMBER SMITH: Yes.

9 MR. MOY: Mr. Blake?

10 MEMBER BLAKE: Yes.

11 MR. MOY: Zoning Commissioner Peter May?

12 ZONING COMMISSIONER MAY: Yes.

13 MR. MOY: Vice Chair John?

14 VICE CHAIR JOHN: Yes.

15 MR. MOY: We have a Board member not present and
16 not participating.

17 Staff would record the vote as 4-to-0-to-1. And
18 this is on the motion made by Vice Chair John to approve, as
19 amended. The motion to approve was seconded by Zoning
20 Commissioner Peter May. Others in support of the motion to
21 approve is Mr. Smith, Mr. Blake, Zoning Commissioner Peter
22 May, and Vice Chair John. The motion carries on a vote of
23 4-to-0-to-1.

24 And as to Zoning Commissioner Peter May, the honor
25 is all mine, sir.

1 VICE CHAIR JOHN: Thank you. Thank you.

2 I'll try to keep you straight for the rest of the
3 day, hopefully. Hopefully, I'll do that.

4 So, Mr. Moy, let's go to the next case, and can
5 you call the case, please?

6 MR. MOY: Yes. This would be Case Application No.
7 20597 of Mark Schamel and Deborah Ritter. This is a self-
8 certified application for Special Exception from the
9 penthouse setback requirements of Subtitle C, Section
10 1502.1(b) and (c), pursuant to Subsection C, Section 1504.1,
11 and Subtitle X, Section 901.2.

12 This would construct a second- and third-story
13 roof deck addition to an existing three-story attached
14 principal dwelling in the RF-1 Zone at premises 941
15 Westminster Street, Northwest, Square 362, Lot 210.

16 And let's see. Yes, that's all I have, Madam Vice
17 Chair.

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

19 So, before I call on the Applicants, I need to
20 state for the record that I know the Applicants, who live in
21 the neighborhood, but I have not discussed the application
22 with them and I don't believe that there's a conflict of
23 interest. So, I will not recuse myself from this case.

24 And unless anyone has any objection -- I don't
25 believe that there are any parties in opposition -- so,

1 unless there's any objection from the Board, I will continue
2 to hear the case. Okay.

3 Mr. McDonald, will you introduce yourself for the
4 record, please?

5 MR. MCDONALD: Yes. My name is Matthew McDonald.
6 I'm the architect on behalf of Mark Schamel and Deborah
7 Ritter.

8 VICE CHAIR JOHN: Thank you.

9 And I don't know if you were listening before, but
10 this case has some of the same issues that were discussed in
11 the previous case, based on the pending text amendment.

12 MR. MCDONALD: Right.

13 VICE CHAIR JOHN: So, because that text amendment
14 is not final -- it's expected to final in two days, but we
15 cannot be sure -- we'll go ahead and hear the case, based on
16 the current regulations.

17 So, if you could describe how the application
18 meets the criteria for relief under the current regulations?

19 MR. MCDONALD: Sure. I'll let Keara pull that up.

20 VICE CHAIR JOHN: Thank you.

21 MR. MCDONALD: So, I guess to start with this
22 case, the main reason we're asking for relief is because of
23 the request from the Office of Historic Preservation. So,
24 we had originally designed it with extending the parapets,
25 and based on Historic's review of the project, they requested

1 this change that we are proposing with the deck railings.

2 So, in our opinion, I don't know if you guys have
3 read our burden of proof. It's based on -- the property is
4 an RF-1 Zone, which that itself does not prohibit roof decks.
5 There's strong, documented evidence of additional roof decks
6 in this area, balconies as well. We've documented 30 such
7 structures within several blocks of the property.

8 So, we think this will be in harmony with the
9 neighborhood because roof decks won't adversely affect any
10 of the neighboring properties, they have no effect on the use
11 of properties, all of the footprint of the project is within
12 the existing property. In some ways, granting the Special
13 Exception maintains more light and circulation for the other
14 properties. Rather than raising up a solid parapet, doing
15 this I think makes the other properties, keeps the use of the
16 properties a little more variable for the owners in that
17 regard.

18 So, a strict interpretation of this rule would be
19 prohibitively costly. And we think that by making them not
20 granting this relief, they would either have to not do the
21 project or make a very small deck that's, quite frankly, not
22 functional. So, this is, I think, a pretty clear case in my
23 opinion.

24 VICE CHAIR JOHN: Thank you.

25 Does the Board have any questions?

1 Mr. Smith?

2 MEMBER SMITH: Definitely.

3 Mr. McDonald, I didn't see any records from
4 adjacent property owners. Did you and the client
5 coordinate -- can you hear me?

6 MR. MCDONALD: Yes.

7 MEMBER SMITH: Okay. Did you or your client have
8 conversations with adjacent properties to see if they had any
9 concerns or questions regarding privacy, being the size of
10 these decks?

11 MR. MCDONALD: They did, yes. It's my
12 understanding that Mark Schamel did receive some letters and
13 support from the neighbors, and they were submitted to the
14 ANC for review. And the ANC did support this project, and
15 the neighbors seemed to agree with that.

16 MEMBER SMITH: Okay. Thank you. That was my only
17 question.

18 VICE CHAIR JOHN: Any other questions?

19 (No audible response.)

20 So, I'll go to the Office of Planning. Mr.
21 Mordfin?

22 Good morning. Mr. Mordfin?

23 MR. MORDFIN: Oh, sorry.

24 VICE CHAIR JOHN: Okay.

25 MR. MORDFIN: Good morning. I'm Stephen Mordfin

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 with the Office of Planning.

2 The Office of Planning is in support of this
3 application, and therefore, stands on the record. And I'm
4 available for any questions. Thank you.

5 VICE CHAIR JOHN: Thank you, Mr. Mordfin.

6 I don't know if you heard the previous discussion
7 concerning justifying this need for relief under the current
8 regulations. And I don't know if your report discussed the
9 current regulations or the proposed text amendment. So, can
10 you discuss how the application meets the current
11 regulations?

12 MR. MORDFIN: Yes. Yes, and the report does go
13 into the current regulations, as the proposed ones, OZ has
14 informed me, are not likely to -- well, are not scheduled to
15 become effective until Thursday of this week.

16 So, where's my report? Hold on.

17 (Pause.)

18 So, why doesn't it open? Okay.

19 So, we find in our analysis of this -- we reviewed
20 it under Section 1502.1. And the proposed 3-foot-high
21 guardrails or the railings, which will be along the edge of
22 the decks, they would be constructed to the edge of the
23 affected roofs, but not set back a distance equal to their
24 height. And that is the reason for the request for the
25 Special Exception, because of that setback.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The property is used as a rowhouse. It's a mid-
2 block property. So, everything is zoned RF-1 adjacent to it.
3 So, therefore, the properties have the same or equal
4 permitted building height.

5 So, if it's in harmony with the general purpose
6 and intent of the zoning regulations or zoning maps, OP did
7 find that it does, because -- or, rather, that it is --
8 because the use of railings, which are required to be set
9 back a distance equal from their height, are less visible
10 than if you were to extend the parapet walls, which would not
11 have to be extended back.

12 So, we find that what this does is it's a less
13 visible alternative, and it's less visible from the adjacent
14 properties. And so, therefore, we find that that would be
15 in harmony with the purpose and intent of the zoning
16 regulations.

17 And then, lastly, whether or not this would appear
18 to adversely affect the use of neighboring properties, the
19 Applicant proposes to utilize these railings instead of
20 extending their parapet walls. And as I said, as they are
21 less visible to the adjacent properties than if they extended
22 the parapet walls, we find that this will not adversely
23 affect the use of their properties. It's actually, because
24 it's less visible, it should have less of an impact.

25 And also, the Historic Preservation Office

1 informed the Office of Planning and the Development and
2 Review Division that they favor the use of railings in place
3 of the parapet walls, raising the parapet walls upward. And
4 so, therefore, because of that, we found that the application
5 is in conformance with the criteria for the approval of the
6 Special Exception.

7 VICE CHAIR JOHN: Thank you, Mr. Mordfin.

8 Does the Board have any questions for the Office
9 of Planning?

10 (No audible response.)

11 Ms. Mehlert, is anyone signed up to testify? Is
12 the ANC here?

13 (No audible response.)

14 Okay. So, I'll go ahead and close the record, and
15 thank you for your testimony, Mr. McDonald.

16 MR. MCDONALD: Do you need anything else from me
17 this morning?

18 VICE CHAIR JOHN: If you'd like to make closing
19 comments, go ahead.

20 MR. MCDONALD: We appreciate the Office of
21 Planning's support. And I know we're close to the approval
22 of this additional language, but, given the timeline, the
23 homeowners just wanted me to go ahead with the hearing today.
24 So, thank you for your time today.

25 VICE CHAIR JOHN: Thank you.

1 So, thank you for your testimony, Mr. McDonald.
2 And I'll ask Ms. Mehlert to excuse the parties.
3 Thank you.

4 Is the Board ready to deliberate? Okay.

5 So, Mr. Smith, would you like to start?

6 MEMBER SMITH: Sure. The case before us is
7 (telephonic interference) construction of roof decks. The
8 railings above the roofs of the second floor, I believe,
9 based on testimony that the information would be (telephonic
10 interference), the proposal would meet all of the (telephonic
11 interference) provisions and criteria as outlined in X,
12 901.2.

13 I believe that the Applicant meets the general
14 Special Exception provisions, in that the railings for the
15 roof deck will be in harmony with the RF-1 Zone. Given its
16 location on the roof, the stair is set back from the street
17 level, as demonstrated by Exhibit 7 in the record, and
18 complete with sightlines of an average-height along the
19 street on both sides of the street. So, showing that there
20 wouldn't be a noticeable impact along this historic street.
21 And also, the turn also provides some visual protection.
22 There's this turn on the property.

23 So, I do not believe that the proposal will have
24 any adverse impact on the use of neighboring properties. So,
25 as stated by the Applicant, they have communicated with the

1 adjacent property owners and gotten some of their feedback,
2 and they've gotten support from ANC. And then, the ANC, of
3 course, doesn't have any concerns. And also, DDOT doesn't
4 have any concerns.

5 So, with that, I'll give great weight to OP's
6 analysis and recommend approval of the Special Exception.

7 VICE CHAIR JOHN: Thank you, Mr. Smith.

8 Commissioner May? Commissioner May?

9 ZONING COMMISSIONER MAY: Nothing.

10 VICE CHAIR JOHN: Thank you.

11 ZONING COMMISSIONER MAY: Thank you.

12 VICE CHAIR JOHN: Mr. Blake?

13 MEMBER BLAKE: I have nothing to add. I do
14 believe that the Applicant has met the requirements to be
15 granted Special Exception relief.

16 VICE CHAIR JOHN: Thank you.

17 I believe the Applicant also meets the criteria
18 -- the application also meets the criteria for relief, and
19 I have nothing to add to the discussion.

20 And so, I would like to make a motion to approve
21 Application 20597, as captioned and read by the Secretary,
22 and ask for a second.

23 Mr. May?

24 ZONING COMMISSIONER MAY: Second.

25 VICE CHAIR JOHN: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Mr. Moy, would you please take the roll call?

2 MR. MOY: When I call each of your names, if you
3 would please respond with a yes, no, or abstain, to the
4 motion made by Vice Chair John to approve the application for
5 the relief requested.

6 The motion to approve was seconded by Zoning
7 Commissioner Peter May.

8 Mr. Smith?

9 MEMBER SMITH: Yes.

10 MR. MOY: Mr. Blake?

11 MEMBER BLAKE: Yes.

12 MR. MOY: Zoning Commissioner Peter May?

13 ZONING COMMISSIONER MAY: Yes.

14 MR. MOY: Vice Chair John?

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: And we have a Board member not present
17 and not participating.

18 Staff would record the vote as 4-to-0-to-1, and
19 this is on the motion made by Vice Chair John to approve.
20 The motion to approve was seconded by Zoning Commissioner
21 Peter May. Also in support of the motion to approve, Mr.
22 Smith, Mr. Blake, and, of course, Zoning Commissioner Peter
23 May, and Vice Chair John. Staff would record the vote as
24 4-to-0-to-1. The motion carries.

25 VICE CHAIR JOHN: Thank you.

1 So, Mr. Moy and the Board, we have quite a few
2 cases left. So, my recommendation is to try to get through
3 the next two cases, 20595 and 20583, and then, break for
4 lunch.

5 Any thoughts or comments?

6 (No audible response.)

7 Okay. Mr. Smith is fine with that. Okay.

8 So, let's go ahead and call the next case, Mr.
9 Moy, which I believe is 20595.

10 MR. MOY: Yes. All right.

11 The next case is Application No. 20595 of the
12 District of Columbia. This is a self-certified application
13 for Special Exception from the penthouse setback
14 requirements, Subtitle C, Section 1502.1, pursuant to
15 Subtitle C, Section 1504.1, and Subtitle X, Section 901.2.

16 This would raze an existing building and construct
17 a new, detached hospital in the StE-2 Zone at premises 2700
18 Martin Luther King Jr. Avenue, Southeast, Square 5868-S, Lot
19 859.

20 Let me check one other thing. Okay. I think
21 we're good on the fire lanes. Thank you.

22 VICE CHAIR JOHN: Thank you.

23 Good morning, Ms. Moldenhauer. Please introduce
24 yourself for the record and tell us who you have with you
25 today.

1 MS. MOLDENHAUER: Good morning. My name is
2 Meredith Moldenhauer from the Law Firm of Cozen O'Connor,
3 here on behalf of the Applicant. Here with me today is Ms.
4 Owens, as well as the project architect, Mr. Collin.

5 VICE CHAIR JOHN: Okay. Thank you.

6 So, before I have them introduce themselves for
7 the record -- no, I'll just have you do that when it's time
8 for them to testify.

9 What I wanted to suggest to you is that you try
10 to narrow your discussion to the relief without a lot of
11 background. It's a very full record, and we have all read
12 the record. And it's a long day. So, if you could go ahead
13 and give your presentation, and you'll have 15 minutes.

14 MS. MOLDENHAUER: Sure. We'll try to walk through
15 the application fairly quickly, and I think my two witnesses
16 are hearing you on that.

17 So, if we can pull up the PowerPoint, I will walk
18 through that. Thank you.

19 VICE CHAIR JOHN: Thank you.

20 MS. MOLDENHAUER: So, we're here for 2700 Martin
21 Luther King Jr. Avenue, Southeast, the St. Elizabeth's
22 Hospital Building.

23 Next slide.

24 The property is located in the StE-2 Zone.

25 Next slide.

1 The proposal is for a new, 132-bed hospital and
2 ambulatory pavilion. It includes two different wings, an
3 inpatient wing and an ambulatory wing, as well as the
4 helipad, which would be located on the roof of the inpatient
5 wing.

6 Next slide.

7 We are happy to report that we do have ANC 8C
8 support. They entered their application, or their letter of
9 support into the record. And we also have the Office of
10 Planning support, and no objection from DDOT.

11 So, a little bit of background. This project has
12 a planning process that has, obviously, started back in 2003
13 regarding the framework plan, master plan, and then, the new
14 StE Zone. There are several new projects in the last 10
15 years around this neighborhood and this area, including the
16 R.I.S.E. project, as well as the Entertainment and Sports
17 Arena. In April 2020, the Mayor announced the agreement to
18 build a new hospital operated by the Universal Health
19 Services and in connection with GW University. When opened,
20 the project will be the only inpatient hospital in the Ward
21 7 and Ward 8 neighborhoods.

22 Next slide.

23 At this point, I'll turn it over to Ms. Owens on
24 our team.

25 VICE CHAIR JOHN: Thank you.

1 Would you introduce yourself for the record,
2 please?

3 MS. OWENS: Latrena Owens, Executive Director of
4 the St. Elizabeth East Redevelopment.

5 VICE CHAIR JOHN: Okay. Thank you, Ms. Owens.
6 Please go ahead.

7 MS. OWENS: All right. Good morning, Vice Chair
8 John, Members of the Board of Zoning, and Staff.

9 My name is Latrena Owens, Executive Director of
10 the St. Elizabeth East Redevelopment in the Office of Deputy
11 Mayor for Planning and Economic Development. I am here to
12 provide testimony in support of BZA Case 20595, which seeks
13 a Special Exception to allow penthouse setback relief for the
14 proposed St. Elizabeth East Hospital, to be constructed on
15 Parcel 2 at 2700 Martin Luther King Jr. Avenue, Southeast.

16 The new hospital, to be operated by George
17 Washington Universal Health Services, is a 136-bed, full-
18 service hospital with the ability to expand by 50 additional
19 beds, an ambulatory care pavilion, and 500-space parking
20 garage. The hospital will improve access to high-quality,
21 integrated care for all District residents and address health
22 disparities and health equity for residents east of the
23 river.

24 Without support of this BZA application, it will
25 take away from the (telephonic interference), as the

1 mechanical functions for the hospital will need to be housed
2 within the building footprint.

3 Thank you for taking the time to review BZA Case
4 20595. We look forward to your feedback, and I'm here to
5 answer any questions.

6 VICE CHAIR JOHN: Thank you, Ms. Owens.

7 Just one quick question. Did you sign up to
8 testify?

9 MS. OWENS: I did.

10 VICE CHAIR JOHN: Okay. Thank you.

11 And, Ms. Moldenhauer, who's your next witness?

12 MS. MOLDENHAUER: We can go to the next slide.

13 The next witness will be our project architect.

14 MR. COLLIN: Members of the Staff and Commission
15 and Ms. John, my name is Mitchell Collin. I am a licensed
16 architect in the District of Columbia, and I am with Hellmuth
17 Obata & Kassabaum, HOK. We are the design architects for the
18 new hospital facility.

19 What you see in front of you is a plan of the new
20 hospital campus. At the center of the screen is the hospital
21 facility itself and the ambulatory pavilion. They share a
22 common base with two different distinct towers and roof
23 surfaces, which I will explain in a moment. And you can also
24 see the 500-car parking garage there to the east of the
25 campus.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 At the front side of the campus, there is parking
2 for the emergency department. And then, there is a proposed
3 public park that will have some historic heritage trees that
4 we are maintaining as part of the campus design.

5 Next slide, please.

6 The document in front of you is at the crux of our
7 application for penthouse relief. As you can see, this is
8 the roof plan for the hospital facility and the ambulatory
9 care facility. The hospital facility is the T-shaped roof
10 service. The ambulatory care facility is the other surface,
11 roof surface, there to the right.

12 The white boxes that you're seeing on the diagram
13 represent the various pieces of mechanical equipment that
14 will service the hospital, both air-handling units and Tonna
15 exhaust fans, and so on, for both the hospital facility and
16 the ambulatory care facility.

17 And the rooftop for this facility really serves
18 two functions. One, as part of the hospital program, we will
19 have a rooftop, mounted helipad, which you can see there on
20 part of the hospital roof to the left, and then, of course,
21 all of the mechanical equipment that will service the
22 hospital, feeling down through the building.

23 There will be a screen wall around that mechanical
24 equipment to shield it from view. That screen wall is 18
25 feet in height. And so, in order to accommodate the helipad

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and safety provisions around it, as well as all of the
2 rooftop mechanical equipment, we're seeking relief from the
3 one-to-one setback to accommodate all of that equipment, the
4 necessary maintenance clearances, and then, the construction
5 of the screen wall itself.

6 Next slide.

7 This is a view from the southwest corner of the
8 campus looking at the hospital main entry. You can see the
9 helipad there mounted on the top of one of the patient wings
10 of the hospital. That services directly to the emergency
11 department below. And then, you can see on the other part
12 of the wing there is a gray shape up there. That is the
13 screen wall for the mechanical yard that is on the roof, for
14 which we're seeking the variance.

15 Next slide.

16 This is a view from the southeast corner, showing
17 the same screen wall up on the hospital form that you can see
18 in the background. And in the foreground, the gray mass is
19 the ambulatory pavilion. On top of that, you see the red
20 screen wall. That is to be constructed of a precast material
21 to integrate with the building form, and that would be the
22 screen wall that would surround the equipment on the
23 ambulatory pavilion.

24 Next slide.

25 And again, just a further-away view of the new

1 hospital with the proposed screen wall as part of the form.

2 Next slide.

3 And from the north direction, showing the
4 ambulatory pavilion on the left and the hospital on the
5 right.

6 Next slide.

7 On the right side of your screen, the form that
8 you're seeing, shown in red, would be the screen wall, if we
9 were to abide by the one-to-one setback based upon the 18-
10 foot-high screen wall. And so, that would be an approximate
11 surface area that we would need to accommodate the mechanical
12 equipment.

13 On the left side is our proposal, which, of
14 course, because of the helipad, eliminates our ability to
15 include any kind of mechanical equipment on top of that
16 portion of the patient tower, limiting us to really servicing
17 the hospital from the back bar, if you will. And so, this
18 is just a comparative study of looking at what the required
19 be for the current zoning versus what our proposal is.

20 Next slide.

21 And finally, this is a site plan showing the
22 distances from the current property line to the screen wall.
23 And so, the building here is not located directly on any of
24 the property lines. We're set back quite a distance,
25 especially from the primary street on MLK Avenue, Southeast,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 which you can see on the very left part of the diagram, and
2 then, Pecan Street, which is currently to be constructed and
3 will be the main point of access to the hospital on the south
4 part of the slide.

5 In our very stringent location, the smallest
6 dimension from the property line to the edge of the building
7 is 64 feet along the north, right about 72 feet on the south,
8 and we're in excess of 200 feet to the east and west. And
9 so, we just wanted to demonstrate that we are hopeful that
10 we can achieve this relief, and that it really is not
11 impactful to the surrounding properties, given that we are
12 setting the building back a significant distance from the
13 property line.

14 Next slide.

15 And I'll turn it over to Ms. Moldenhauer.

16 MS. MOLDENHAUER: Thank you very much.

17 So, we are asking for Special Exception relief,
18 as indicated, for the following areas. And what this does,
19 it just breaks down the degrees of relief for both the
20 inpatient wing, and then, roofs to the ambulatory wing. This
21 is all in our submission.

22 So, we'll go to the next slide. Oh, I think we
23 just jumped past.

24 This is, obviously, in harmony with the purpose
25 and the intent in regards to the penthouse design. It is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 driven by the unique hospital programming needs, including
2 the helipad. Mechanical screening would not be habitable
3 space.

4 Next slide.

5 There's no adverse effects, based on the requested
6 relief. As testified to, the property is substantially set
7 back from the lot lines. It's a very large parcel, and the
8 rear of the property is very wooded, as well as the other
9 surrounding property lines have setbacks from the streets.

10 Next slide.

11 I won't go through all the details here, but I
12 can, obviously, answer any questions for the Board they may
13 have. We believe that we satisfy all of the subconditions
14 of Subtitle C, 1504.1. And again, I will answer any
15 questions. I won't go through the details here, but we'll
16 answer any questions, if the Board has any questions.

17 Next slide.

18 Final additional comments and requirements from
19 the Special Exception conditions. In regards to resulting
20 in a better design for the roof structure, we do believe that
21 the T-shaped design does create overall a better design, and
22 without it appearing to be an extension of the building,
23 especially given the fact that the front-facing of the
24 building, obviously, has the helipad. So, you do have that
25 substantial setback in the front.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Next slide.

2 Additional subconditions of 1504.1. Would result
3 in a roof structure that is visibly less intrusive. Again,
4 this is an image of kind of what could be done by right. And
5 we believe that the proposed relief is, obviously, similar
6 in nature and would not create any more -- or it would be
7 visually less intrusive than what is being provided.

8 Next slide.

9 Additional requirements. The hospital program
10 mainly results in the design needed for this penthouse
11 relief. We believe the architect has studied alternative
12 penthouse arrangements, but could not be achieved with
13 programming requirements here. And thus, we're asking for
14 the setback relief. The intent and the character of this
15 title we believe is being maintained and would not be
16 adversely affected, based on the request and the overall
17 benefit of the project of having this facility in Wards 7 and
18 8, near those communities.

19 Next slide.

20 Based on all of the above, we believe we satisfy
21 all of the various and detailed conditions with Special
22 Exception requirements for the penthouse setback. We are
23 aware of, obviously, the pending new penthouse regulations,
24 but those wouldn't impact this relief. And we're available
25 for the Board to ask any questions.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR JOHN: Thank you, Ms. Moldenhauer.

2 Does the Board have any questions?

3 (No audible response.)

4 Ms. Mehlert, could you drop the presentation,
5 please? Thank you.

6 Does the Board have any questions?

7 (No audible response.)

8 So, I'll go the Office of Planning.

9 MS. BROWN-ROBERTS: Madam Chairman and Members of
10 the BZA, Maxine Brown-Roberts from the Office of Planning on
11 BZA Case 20595, relief from the penthouse setback
12 requirements on the proposed St. Elizabeth's Hospital.

13 OP will stand on the record, as outlined in our
14 report that recommends approval of the requested Special
15 Exceptions, and I'm available for questions. Thank you.

16 VICE CHAIR JOHN: Thank you.

17 Does the Board have any questions for the Office
18 of Planning?

19 (No audible response.)

20 Does the Applicant have any questions for the
21 Office of Planning?

22 MS. MOLDENHAUER: No. Thank you.

23 VICE CHAIR JOHN: Is the ANC here?

24 (No audible response.)

25 I believe they submitted a report at Exhibit 22.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Ms. Mehlert, is there anyone signed up to testify?

2 MS. MEHLERT: There is not.

3 VICE CHAIR JOHN: Okay. Thank you.

4 So, I'll go ahead and excuse the witnesses, and
5 thank you for your -- oh, Ms. Moldenhauer, do you have
6 closing comments?

7 MS. MOLDENHAUER: No closing comments. Thank you
8 very much for your time, and we look forward to your
9 deliberation. Have a great day. Thank you.

10 VICE CHAIR JOHN: Thank you.

11 So, I'll go ahead and close the record and the
12 hearing, and ask if everyone if they're ready to deliberate.

13 Okay. And, Mr. Smith, would you like to start us
14 off?

15 MEMBER SMITH: (Telephonic interference.)

16 VICE CHAIR JOHN: I thought that's what you were
17 saying.

18 MEMBER SMITH: Sure. I'll deliberate.

19 The request before us is for Special Exception for
20 (telephonic interference) setback to (telephonic
21 interference) screening for mechanical equipment and elevator
22 (telephonic interference) lines for the new hospital at St.
23 Elizabeth's. The hospital would require extensive amount of
24 mechanical equipment, common for the operation of any
25 hospital. The Applicant has taken care to design the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 hospital in all necessary (telephonic interference) is to be
2 integrated into the overall design of the building.

3 The application (telephonic interference) outlined
4 in Subtitle X, 901.2, in that the proposed penthouses are not
5 only integrated into the design of the proposed hospital, but
6 the proposed penthouses are set back a substantial distance
7 from MLK Avenue and any residential properties, as the
8 property is surrounded by institutional uses on its north and
9 south and the Department of Homeland Security's campus across
10 from MLK Avenue. Therefore, there would be minimum impact
11 on residential properties that may be most impacted by any
12 potential decrease in light and air to their properties.

13 Therefore, I give great weight to OP's analysis
14 and will support the application. And I will also note that
15 ANC 8C is fully in support of this application and the
16 location of this hospital at the site, and DDOT has no
17 objection.

18 VICE CHAIR JOHN: Thank you, Mr. Smith.

19 May I go to you next, Commissioner May?

20 ZONING COMMISSIONER MAY: I do not have anything
21 of substance to add. I agree that the case has been made and
22 this is worthy of support.

23 VICE CHAIR JOHN: Thank you.

24 Mr. Blake?

25 MEMBER BLAKE: I believe that the Applicant has

1 presented persuasive argument as to the need for the relief
2 and how it won't adversely affect the surrounding community.
3 And I credit the Office of Planning with a thorough analysis
4 of how the standards of C 5104.01 have been met, with which
5 I agree. I give great weight to the recommendation of the
6 Office of Planning, and also note no issues or concerns, and
7 would be very supportive as well.

8 VICE CHAIR JOHN: Thank you.

9 And I am also in support. I have nothing to add
10 to the analysis so far. I give great weight to the Office
11 of Planning's analysis and recommendations.

12 And I want to thank the Applicant for such a
13 thorough and clear presentation of how the Applicant meets
14 the criteria for relief.

15 And with that, I will make a motion to approve
16 Application 20595, as captioned and read by the Secretary,
17 and ask for a second, Mr. Blake.

18 MEMBER BLAKE: Second.

19 VICE CHAIR JOHN: Thank you.

20 Mr. Moy, would you please take the roll call?

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

25 Zoning Commissioner Peter May?

1 ZONING COMMISSIONER MAY: Yes.

2 MR. MOY: Mr. Smith?

3 MEMBER SMITH: Yes.

4 MR. MOY: Mr. Blake?

5 MEMBER BLAKE: Yes.

6 MR. MOY: Vice Chair John?

7 VICE CHAIR JOHN: Yes.

8 MR. MOY: We have a Board member not present.

9 Staff would record the vote as 4-to-0-to-1, and
10 this is on the motion by Vice Chair John to approve. The
11 motion to approve was seconded by Mr. Blake in support of the
12 motion. Also in support of the motion, Zoning Commissioner
13 Peter May, Mr. Smith, Mr. Blake, Vice Chair John. The motion
14 carries on the vote of 4-to-0-to-1.

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

16 And so, we're going to go straight to the next
17 case, 20583. Could you please call that case, Mr. Moy?

18 MR. MOY: The next case is Application No. 20583
19 of SC Holdings DC, LLC. This is a self-certified
20 application for Special Exception for a new residential
21 development, pursuant to Subtitle U, Section 421.

22 This would construct a new, three-story, 16-unit
23 apartment house in the RA-1 Zone at premises 1430 Eastern
24 Avenue, Northeast, Square 5171, Lot 71.

25 Okay. So, the preliminary matter says there's a

1 motion to waive the filing deadline for the Applicant to
2 allow refinements to drawings, I think in response to the OP
3 recommendations.

4 And I believe there is a late PowerPoint
5 presentation that was within the 24-hour block.

6 VICE CHAIR JOHN: Okay. Thank you.

7 Mr. Carballo, would you introduce yourself for the
8 record, please?

9 MR. CARBALLO: Adam Carballo from Carballo
10 Architecture, the architect of record on this project,
11 representing the Applicant/Property Owner.

12 VICE CHAIR JOHN: Okay. Thank you.

13 MR. CARBALLO: As Mr. Moy stated, we recently met
14 with the ANC over the weekend, and we've also been working
15 with Ms. Elliott at OP throughout the design process in
16 preparation of submitting and presenting to you today.

17 VICE CHAIR JOHN: Thank you.

18 And is that why you need to amend the drawings in
19 Exhibit 28?

20 MR. CARBALLO: Yes, but we recently met with the
21 ANC. The last time we met them was on Sunday. So, we
22 incorporated some adjustments that they recommended at that
23 meeting on Sunday.

24 VICE CHAIR JOHN: All right. Thank you.

25 MR. CARBALLO: So, these are just within the last

1 few days, and we'd like to incorporate the suggestions that
2 we've agreed to with the ANC.

3 VICE CHAIR JOHN: Okay. Thank you.

4 So, I'll go ahead and admit those filings into the
5 record.

6 And I would also go ahead and allow the
7 presentation into the record as well, because I would like
8 to see the presentation. And if no one objects, I will ask
9 Ms. Mehlert to put up the presentation.

10 Okay. Please go ahead, Mr. Carballo, and you'll
11 have 15 minutes to provide your statement.

12 MR. CARBALLO: Thank you.

13 We are here to present 1430 Eastern Avenue,
14 Northeast. This property is located on the north side of the
15 Deanwood neighborhood. It is on Eastern Avenue, which is the
16 boundary between D.C. and Maryland. Our property is an
17 existing vacant lot that is in an RA-1 Zoning District. We
18 are proposing a new construction multifamily apartment
19 building of three stories with a cellar with 16 dwelling
20 units.

21 Go to the next slide, please.

22 These are some existing site photographs with some
23 surrounding properties presented.

24 Across the street from our property is a large
25 church and self-storage facility to the northeast. To the

1 southwest is the Deanwood Recreation Center. And we're also
2 two to three blocks away from the Deanwood Metro Station, for
3 context.

4 Next slide, please.

5 Our proposed property would add, as I mentioned,
6 a three-story new construction property facing Eastern
7 Avenue, aligning with the adjoining structures, with surface
8 parking via the rear alley to the rear.

9 Next slide, please.

10 We are in compliance with lot size, with lot
11 FAR/height, lot occupancy, rear yard/side yard, vehicle
12 parking, as well as bicycle parking.

13 Our relief, as stated in Subtitle U, Section 421,
14 states that, "All new residential developments, except for
15 those comprising of one family detached or semi-detached
16 dwellings, shall be reviewed by the BZA as Special Exceptions
17 under Subtitle X, in accordance with the standards of this
18 section." Accordingly, we're seeking Special Exception
19 relief and approval, pursuant to Subtitle U, Section 421.1.

20 Next slide, please.

21 On this plate, we're showing the floor plan for
22 cellar as well as first-floor plan. We are showing a bicycle
23 storage area in the cellar as an amenity to the building.

24 Next slide, please.

25 And we're also showing additional units on the

1 second and third floor.

2 Next slide, please.

3 We are showing an all-brick building which is --
4 I'm trying to pull up my section here. As pursuant to
5 Subtitle X, Section 901.2, Zoning Rights, the Board is
6 authorized to grant Special Exception relief where, in the
7 judgment of the Board, a Special Exception will be in harmony
8 with the general purpose and intent of the zoning regs and
9 map, and it would not adversely affect the neighborhood, and
10 to that case, specific requirements under relief of Subtitle
11 U, 421.

12 The majority of the properties in the area are of
13 brick construction, many with flat roofs. And we've designed
14 this building to be in harmony with the existing context.

15 Next slide, please.

16 I think that's our last slide, and that's all I
17 have to present.

18 We do have a letter of support from the ANC, as
19 well as from OP.

20 And I'll take any questions or hand it over to OP.
21 I believe Ms. Brandice -- Ms. Elliott is on the line, I
22 believe, as well.

23 (No audible response.)

24 Ms. John, I believe you're on mute. We can't hear
25 you.

1 VICE CHAIR JOHN: Can you tell us where the IZ
2 units are located?

3 MR. CARBALLO: Oh, yes. We have two IZ units,
4 both of which would be two-bedroom units. One would be
5 located on the first floor; the other one would be located
6 on the second floor.

7 VICE CHAIR JOHN: Okay. Thank you very much.
8 Does the Board have any questions?

9 Commissioner May?

10 ZONING COMMISSIONER MAY: Yes. The plan in your
11 PowerPoint shows the access to the parking from the alley.

12 MR. CARBALLO: Yes, parking would be accessed by
13 the alley. There was an original proposal to have a curb cut
14 on Eastern Avenue, but, based on the feedback of DDOT, as
15 well as feedback from the ANC, we have decided to put parking
16 at the rear, off the alley.

17 The alley does need to be improved. The alley
18 currently comes and terminates at our property line. So, we
19 would need to extend that paper alley and improve that paper
20 alley to gain access to the rear of the lot.

21 ZONING COMMISSIONER MAY: So, that's your plan?
22 You're going to do that little bit of extension of the alley
23 in order to access your property?

24 MR. CARBALLO: Yes, sir.

25 ZONING COMMISSIONER MAY: Okay. And is that,

1 essentially, what was updated as a result of the ANC meeting
2 on Sunday?

3 MR. CARBALLO: Yes.

4 ZONING COMMISSIONER MAY: Or was there more to it?

5 MR. CARBALLO: That was the primary update from
6 the ANC meeting.

7 ZONING COMMISSIONER MAY: Okay. Well, it's a
8 really significant improvement. So, I'm glad that that has
9 been changed.

10 MR. CARBALLO: Yes, the feedback from the ANC was
11 that there are a number of issues with Eastern Avenue.
12 There's a lot of people speeding down Eastern Avenue. And
13 collectively, obviously, the project team does not want an
14 issue with people pulling out onto Eastern Avenue. So, I
15 think this is the right decision for everybody.

16 ZONING COMMISSIONER MAY: Right.

17 MR. CARBALLO: And we're fully supportive of it.

18 ZONING COMMISSIONER MAY: Okay. Thank you.
19 That's it for my questioning.

20 VICE CHAIR JOHN: Thank you.

21 Anything else from the Board?

22 (No audible response.)

23 So, I'll go to the Office of Planning. Ms.
24 Elliott?

25 MS. ELLIOTT: Good morning, Madam Chair and

1 Members of the Board. I'm Brandice Elliott, representing
2 the Office of Planning for Case 20583.

3 The Office of Planning filed a report to the
4 record providing an analysis of the proposal against the
5 Special Exception criteria, and we do recommend approval of
6 the proposed apartment building.

7 We are very pleased to see some of the significant
8 changes, particularly regarding the elimination of the curb
9 cut and access from the alley. It came as a bit of a
10 surprise. So, we're happy to see that that actually made it
11 into the plans.

12 I would add that OP would prefer to see additional
13 landscaping along the south -- let me orient myself. I
14 believe it's the south side of the building where that
15 driveway had been proposed and where that entrance is.
16 Rather than see an extension of impervious surface there, we
17 would like to see additional landscaping and a nice entrance
18 along the side of that building. And there wasn't any
19 information in what that Applicant provided, but maybe that
20 can be up for additional discussion.

21 The Special Exception criteria does require the
22 OP review the site plan, the arrangement of buildings,
23 provisions of light, air, parking, landscaping, recreation,
24 and grading, among a few other things.

25 This building would comply with the development

1 standards for the zone. So, it's consistent with the pattern
2 of development and character that's anticipated in the RA-1
3 Zone, which does extent from Eastern Avenue.

4 We do appreciate some of the other modifications
5 that have made to the plans after we provided some initial
6 comments. And that includes the canopies that have been
7 added over the entrances and some of the landscaping on the
8 site. Additionally, the facade has been improved to include
9 a cornice element at the top of the building and the raised
10 brick pattern on the front facade.

11 OP does not expect that the proposal will
12 substantially impact light and air to neighboring properties.
13 The building mass, again, is matter of right. It provides
14 a height of 37.5 feet. Forty feet is permitted. So, it's
15 less than the maximum. It also includes compliant side yards
16 and rear yard, and it provides sufficient separation between
17 buildings on the neighboring properties.

18 The Applicant also has provided a tree
19 preservation plan for existing mature trees that are located
20 on or adjacent to the lot.

21 And again, we discussed the parking and the
22 required bicycle parking that would be provided in the
23 building.

24 So, with that, I believe we'll rest on the record
25 of our report for the remainder of the analysis, but I'm

1 happy to answer any questions that you have.

2 VICE CHAIR JOHN: Does the Board have any
3 questions for the Office of Planning?

4 (No audible response.)

5 Does the Applicant have any questions for the
6 Office of Planning?

7 MR. CARBALLO: No, and we'd be happy to explore
8 options for additional landscaping on the site.

9 VICE CHAIR JOHN: Okay.

10 MR. CARBALLO: I can bring that to the owner. I
11 don't think that would be an issue.

12 VICE CHAIR JOHN: Okay.

13 So, Ms. Elliott, what is the scope of the
14 additional landscaping on the front? So, we can be clear in
15 the record what the Applicant will do.

16 MS. ELLIOTT: Sure. It was just along the side
17 property line where the driveway had previously been shown.
18 And now, with the elimination of that driveway, there's an
19 opportunity for some additional landscaping, and perhaps a
20 sidewalk rather than a driveway, in order to limit impervious
21 surface on the lot and provide a more welcoming garden
22 entrance.

23 VICE CHAIR JOHN: Mr. Carballo? Is that the right
24 Applicant?

25 MR. CARBALLO: Yes.

1 VICE CHAIR JOHN: How much time would it take you
2 to update those plans, if you were to include them?

3 MR. CARBALLO: Given the upcoming holiday, if we
4 could have until at least next week? I'd have to communicate
5 with our landscape architect, but I can't imagine that would
6 take a lengthy time, although I'm not aware of her travel
7 arrangements this coming week.

8 VICE CHAIR JOHN: Okay.

9 MR. CARBALLO: But we could provide that for the
10 record sooner than later.

11 VICE CHAIR JOHN: Okay. So, thank you very much.

12 Is the ANC here? Is anyone from the ANC here?

13 (No audible response.)

14 Ms. Mehlert, is there anyone signed up to testify
15 in support?

16 MS. MEHLERT: No one has signed up.

17 VICE CHAIR JOHN: Anyone signed up to testify in
18 opposition? Ms. Mehlert?

19 MS. MEHLERT: We don't have anyone signed up.

20 VICE CHAIR JOHN: Okay. All right. Thank you.

21 So, if there are no other witnesses, I'll go ahead
22 and close the hearing and the record, and ask, before I do
23 that, ask Mr. Carballo if he has any closing remarks.

24 MR. CARBALLO: No, ma'am. I rest upon our record.

25 VICE CHAIR JOHN: Okay. All right. Thank you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 very much.

2 MR. CARBALLO: Thank you.

3 VICE CHAIR JOHN: I'll ask Ms. Mehlert to excuse
4 the witness.

5 And I thank you for your testimony.

6 MR. CARBALLO: Thank you.

7 VICE CHAIR JOHN: Thank you.

8 So, is the Board ready to deliberate?

9 May I ask you to start, Zoning Commissioner Peter
10 May?

11 ZONING COMMISSIONER MAY: If we're still waiting
12 for information to come into the record, how far can we go
13 with deliberation? I mean, I don't have any issues with this
14 application, but the record's not really complete yet.

15 VICE CHAIR JOHN: Okay. So, I'd like to hear from
16 the others. So, we should ask for the additional landscaping
17 information and provide the Applicant time to submit it? We
18 note that the Applicant will continue to work with the Office
19 of Planning to finalize the landscaping.

20 ZONING COMMISSIONER MAY: See, the point, I think
21 of having a deliberation in the record would be if we thought
22 that it was essential for the granting of the relief. In
23 other words, does it go to the specific requested relief?
24 Personally, I don't think so, but I had the impression that
25 you were interested in seeing that information. And if we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 going to wait and get that into the record, don't we want to
2 have that before we make a decision? I mean, I'd be fine
3 moving ahead, if you think we can go ahead without it.

4 VICE CHAIR JOHN: So, I guess I should have stated
5 this clearly. I don't think it's essential to our
6 deliberations, and it would be helpful to have that
7 information in the record, since the Office of Planning
8 recommended it and the Applicant is in agreement.

9 So, instead of closing the record completely, I
10 could leave it open for the Applicant to submit that
11 information, but I don't believe it's essential to our
12 decision of whether the Applicant meets the requirements for
13 relief. But I can be persuaded otherwise.

14 ZONING COMMISSIONER MAY: Yes, I don't feel
15 strongly that we need to have that information because I
16 don't think it really goes to the heart of the relief that's
17 requested. But I certainly would be happier if there were
18 a landscape, an accurate landscape plan in the record.

19 VICE CHAIR JOHN: Okay.

20 ZONING COMMISSIONER MAY: But I'm interested in
21 what others have to say.

22 VICE CHAIR JOHN: Mr. Blake? Mr. Smith?

23 MEMBER BLAKE: I'd just say I, too, would like to
24 see the additional information, as well as the inclusion of
25 the lighting that they also committed to do. I don't think

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that was there. But, otherwise, as long as it's,
2 effectively, in the record ultimately, so that we know that
3 it was, in fact, agreed to, I would be comfortable with that.

4 VICE CHAIR JOHN: Mr. Smith?

5 MEMBER SMITH: Well, as everyone is stating, I
6 don't think it's essential for us to experience it and see
7 it. I do agree with you; I do think we should deliberate and
8 vote on this and just leave the record open for them to
9 insert the necessary information that they have agreed to
10 provide. So, I'm comfortable with deliberating the decision
11 and just leaving it open. Maybe we want to set a date
12 whereby they would submit this information and close the
13 record. But that's my position.

14 VICE CHAIR JOHN: Okay. Thank you.

15 Mr. Blake, you mentioned something about lighting,
16 and I do not recall where that was discussed.

17 MEMBER BLAKE: It's discussed in the ANC letter.

18 VICE CHAIR JOHN: So, looking at the ANC letter,
19 the ANC says that it's signed an agreement with the Applicant
20 on certain items that are stated in the ANC letter. And I
21 do not see the lighting. I did not see the lighting.

22 MEMBER BLAKE: So, it's site improvement with
23 security cameras and lighting.

24 VICE CHAIR JOHN: Okay. So, because that
25 information is included in the construction agreement, then

1 the Applicant will comply with that, will be expected to
2 comply with that, although it's not a condition. I mean, I
3 don't believe you're proposing to make it a condition of the
4 order.

5 MEMBER BLAKE: No.

6 MEMBER SMITH: Ms. John, I don't know if it's in
7 -- I wish the ANC was here -- I don't know if the bulleted
8 list of items, any of them would be -- I don't know if that's
9 within the Construction Management Agreement. This seemed
10 to be an item that I would think we could bring into being
11 in the Construction Management Agreement.

12 VICE CHAIR JOHN: So, as I read this -- I didn't
13 mean to interrupt you.

14 MEMBER SMITH: Go ahead.

15 VICE CHAIR JOHN: So, the last sentence of the
16 report is what I think states that the ANC supports the
17 Special Exception request because the Applicant has met the
18 requirements. It says, "The Applicant agreed to all of BZA's
19 requests" -- that's the Deanwood Citizens' Association --
20 "and completed a Construction Management Agreement stating
21 those terms. Since the Applicant has met the requirements,
22 ANC supports their Special Exception request, and we look
23 forward to their market rate development at 1430 Eastern
24 Avenue, Northeast."

25 So, I think it's a clear letter of support, and

1 that the ANC is satisfied with the Construction Management
2 Agreement, which includes the lighting and other issues. So,
3 I don't believe we need to include a separate statement with
4 respect to the lighting and the order.

5 But thank you for that comment.

6 MEMBER SMITH: Thank you, Madam Chair.

7 VICE CHAIR JOHN: Okay. So now, I believe we have
8 decided that we will leave the record open for the additional
9 landscaping requirements to be reflected in the diagrams.

10 And so, with that, I will close the record, except
11 for that submission, and ask Mr. Moy if he's clear on what
12 needs to go into the record. Mr. Moy?

13 MR. MOY: Yes.

14 VICE CHAIR JOHN: Okay. So --

15 MR. MOY: I'm sorry. So, yes, I'm clear. So,
16 you're going to allow the record to be open for the Applicant
17 to file their more refined landscaping plan, as you've just
18 discussed.

19 VICE CHAIR JOHN: Okay. Thank you.

20 So, do we have any other comments from the Board?

21 (No audible response.)

22 And with that, I will make a motion, then, to
23 approve 20583 of SC Holdings DC, LLC, as captioned and read
24 by the Secretary, and ask for a second. Mr. Smith?

25 MEMBER SMITH: Second.

1 VICE CHAIR JOHN: Mr. Smith, did you second?

2 MEMBER SMITH: Yes, I seconded.

3 VICE CHAIR JOHN: Thank you.

4 Mr. Moy, would you please take the roll call?

5 MR. MOY: When I call each of your names, if you
6 would please respond with a yes, no, or abstain, to the
7 motion made by Vice Chair John to approve the application for
8 the relief requested. The motion to approve was seconded by
9 Mr. Smith.

10 Zoning Commissioner Peter May?

11 ZONING COMMISSIONER MAY: Yes.

12 MR. MOY: Mr. Blake?

13 MEMBER BLAKE: Yes.

14 MR. MOY: Mr. Smith?

15 MEMBER SMITH: Yes.

16 MR. MOY: Vice Chair John?

17 VICE CHAIR JOHN: Yes.

18 MR. MOY: And we have a Board member not present.

19 Staff would record the vote as 4-to-0-to-1, and
20 this is on the motion made by Vice Chair John to approve,
21 seconded by Mr. Smith. Also in support of the motion to
22 approve, Zoning Commissioner Peter May, Mr. Blake, and, of
23 course, Mr. Smith, and Vice Chair John. The motion carries
24 on a vote of 4-to-0-to-1.

25 VICE CHAIR JOHN: Thank you.

1 So, I know I said earlier that we would take our
2 lunch break around now, but looking at the schedule, the next
3 case is a private status request and a request for
4 postponement. So, maybe we should take this case, then break
5 for lunch. Is that okay? Okay.

6 All right. Mr. Moy, would you please call the
7 next case?

8 MR. MOY: Yes, thank you.

9 So, the next case before the Board before its
10 lunch recess is Application No. 20594 of Nezahat,
11 N-E-Z-A-H-A-T, and Paul Harrison. And this is an application
12 for area variances, pursuant to Subtitle X, Section 1002,
13 from the lot frontage requirements of Title C, Section 303.2,
14 and the minimum lot dimensions, Subtitle D, Section 502.1.

15 This would raze the existing principal dwelling
16 unit and subdivide the lot to construct two new, detached,
17 principal dwelling units in the R-8 Zone at premises 3007
18 Albemarle Street, Northwest, Square 2041, Lot 818.

19 And as you recall, Madam Vice Chair, as to
20 preliminary matters, there are at the moment three requests
21 for party status in opposition, and subsequent to the Board's
22 action on those party status requests, it would require Board
23 action on request for postpone.

24 And I believe that's it from me.

25 VICE CHAIR JOHN: Okay. Thank you.

1 Ms. Hernandez?

2 Thank you. Good morning.

3 Would you state your name, introduce yourself and
4 state your name for the record, please?

5 MS. HERNANDEZ: My name is Deborah Hernandez.

6 VICE CHAIR JOHN: Okay. Thank you.

7 VICE CHAIR JOHN: And is that Mr. Barringer? Is
8 Mr. Barringer here? Ms. Mehlert, is Mr. Barringer signed up?

9 MS. MEHLERT: No, we don't have him signed up yet.
10 We're trying to get a few people still, I think.

11 VICE CHAIR JOHN: And how about Ms. Lee? Hello?

12 MS. MEHLERT: Yes, we're still trying to get a
13 couple of people on.

14 VICE CHAIR JOHN: Okay. So, I think I'll go ahead
15 and take this case after lunch -- does the Board have any
16 comments? -- if the parties are not here.

17 (No audible response.)

18 Ms. Nagelhout? So, I was inclined to rule on
19 party status based on the record without hearing any
20 testimony. And since the other two requesters aren't here,
21 do you have any comments?

22 MS. NAGELHOUT: Well, there were some submissions
23 yesterday suggesting that the lawyer retained by Mary Lee
24 would also be retained by Mr. Barringer. So, I would like
25 to hear from them to clarify that. And so, maybe wait until

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Andrea Ferster and Mary Lee can join us?

2 VICE CHAIR JOHN: Okay. So, I think we'll go
3 ahead and take this case later on in the day. And I'm not
4 sure when yet. The case following this will be quite
5 lengthy. So, I will give some indication when we'll call
6 this case again. Okay?

7 MS. PRINCE: Chairman John, this is Allison
8 Prince. I represent the property owners.

9 Can I just add that we do not oppose these
10 parties' status requests. We've been in touch with all of
11 these owners. They're all abutters. I think there's little
12 question that they would qualify for party status. So, you
13 can wait for the others, but I just want to put that on the
14 record, that we do not oppose these requests.

15 VICE CHAIR JOHN: Thank you, Ms. Prince. I did
16 note that the Applicant was not in opposition.

17 Let me see if anyone else has signed on, I mean,
18 has joined us. No.

19 So, I think I will --

20 MS. MEHLERT: Andrea Ferster is calling in.

21 VICE CHAIR JOHN: Oh, great. Thank you.

22 ZONING COMMISSIONER MAY: Madam Chair, can I ask
23 a question of Ms. Prince?

24 VICE CHAIR JOHN: Yes.

25 ZONING COMMISSIONER MAY: Ms. Prince, I understand

1 somewhere -- I don't know where I read it -- that you also
2 have no objection to a postponement as well?

3 MS. PRINCE: Correct.

4 ZONING COMMISSIONER MAY: Okay. That's helpful
5 to know.

6 (Pause.)

7 MS. MEHLERT: Ms. Ferster should be on and
8 unmuted.

9 VICE CHAIR JOHN: Thank you.

10 Ms. Ferster, can you hear me?

11 (No audible response.)

12 Ms. Ferster, can you hear me?

13 (No audible response.)

14 Ms. Mehlert, is Ms. Ferster still trying to call
15 in?

16 MS. MEHLERT: She's been added as a panelist. I'm
17 not sure if she's having phone issues or what the problem is.

18 VICE CHAIR JOHN: Okay. So, I think while Ms.
19 Ferster is getting her connection straightened out, I think
20 we need to break for lunch. We have a very long day. And
21 so, we need to expedite the process.

22 I will ask Mr. Moy to call this case right after
23 lunch. And my plan is not to take testimony unless the Board
24 indicates that the Board would like to hear from the
25 Applicants -- I'm sorry -- the parties requesting party

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 status.

2 And so, I'm going to excuse everyone for now and
3 break for lunch.

4 So, Ms. Mehlert, would you excuse everyone,
5 please?

6 Okay. So, turning to the Board, it's 12:18. I
7 would suggest that we reconvene at one o'clock. And if we're
8 lucky, we will not need dinner. Okay?

9 ZONING COMMISSIONER MAY: Yes, one o'clock
10 certainly is fine.

11 VICE CHAIR JOHN: Okay. All right. I'll see you
12 all back at one o'clock.

13 Thank you. Bye.

14 (Whereupon, the above-entitled matter went off the
15 record at 12:19 p.m. and resumed at 1:03 p.m.)

16 VICE CHAIR JOHN: Good afternoon again.

17 Mr. Moy, can you call us back in?

18 MR. MOY: The Board is back in its public hearing
19 session after a relatively quick lunch recess. The time is
20 at or about 1:04 p.m.

21 And I believe the Board is returning to Case
22 Application No. 20594 of Nezahat, N-E-Z-A-H-A-T, and Paul
23 Harrison. And the Board is addressing the party status
24 requests.

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

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Ms. Mehlert, can you let the parties in, please?
2 (Pause.)

3 VICE CHAIR JOHN: Thank you, Ms. Mehlert.

4 Ms. Prince, can you introduce yourself for the
5 record, please?

6 MS. PRINCE: Allison Prince of Goulston and
7 Storrs. I'm here on behalf of the property owners.

8 VICE CHAIR JOHN: Thank you.

9 And is Ms. Ferster with us now?

10 Good afternoon, Ms. Ferster. Can you please
11 introduce yourself for the record?

12 (No audible response.)

13 Can you hear me, Ms. Ferster?

14 MS. FERSTER: This is Andrea Ferster. I represent
15 Mary Lee, who's requesting party status.

16 VICE CHAIR JOHN: Okay. There was some question
17 about whether you were also representing Mr. Barringer.

18 MS. FERSTER: I'm not as yet representing Mr.
19 Barringer. He was having some difficulty getting -- he's
20 been out of town and has not been able to reach me. And so,
21 I don't have the proper authorization yet.

22 VICE CHAIR JOHN: Okay.

23 So, Ms. Nagelhout, as I understand it, the party
24 requesting party status has to be present, is that correct?

25 MR. BARRINGER: Hello. Hello. This is Jack

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Barringer.

2 VICE CHAIR JOHN: Oh, great. Thank you.

3 MR. BARRINGER: I'm sorry, I was muted and I
4 didn't know what to do. My apologies. But I am here and I
5 am requesting party status.

6 VICE CHAIR JOHN: Okay.

7 MR. BARRINGER: And I have to do this by phone
8 because of my situation. But I am here and I want to be a
9 party.

10 VICE CHAIR JOHN: Thank you.

11 MR. BARRINGER: The real name is John, John
12 Barringer.

13 VICE CHAIR JOHN: John Barringer. Thank you.

14 And, Ms. Hernandez, can you introduce yourself for
15 the record, please?

16 MS. HERNANDEZ: Yes. Deborah Hernandez.

17 VICE CHAIR JOHN: And give us your address as
18 well.

19 MS. HERNANDEZ: Oh, yes, sure. I am located at
20 3009 Albemarle Street, Northwest.

21 VICE CHAIR JOHN: Okay.

22 So, where we left off, we're discussing whether
23 to grant party status to the three persons requesting party
24 status: Ms. Hernandez; Ms. Lee, represented by Ms. Ferster,
25 and then, Mr. Barringer, who is representing himself.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (Telephonic interference.)

2 I'm sorry, I'm hearing an echo from somebody's
3 phone. Will you please mute your phones, your audio, until
4 you are called, please?

5 So, as I discussed earlier, my inclination is to
6 rule on the request for party status because the record is
7 clearly quite clear.

8 Ms. Hernandez is an adjacent neighbor, as is Ms.
9 Lee. And Mr. Barringer is an abutting property, owns an
10 abutting property at 4516 30th Street, Northwest, and he also
11 shares a property line with the Applicant.

12 The Applicant's representative, Ms. Prince, has
13 stated on the record that the Applicant is not opposed to the
14 requests for party status.

15 And so, based on the record, I'd just like to note
16 that there's a presumption that adjacent property owners'
17 interest are more significantly, distinctly, or uniquely
18 affected in character or in kind than the other persons in
19 the general public.

20 And so, I'm inclined to grant party status to all
21 three requesters, and ask if my Board members have any
22 questions or comments.

23 (No audible response.)

24 Okay. So, hearing none, I will grant party status
25 to Mr. Barringer, Ms. Hernandez, and Ms. Lee.

1 And now, there's also a request for a continuance
2 filed by, I believe, Ms. Lee. Is that correct?

3 MS. FERSTER: Yes, that's correct. This is Andrea
4 Ferster.

5 VICE CHAIR JOHN: Thank you, Ms. Ferster.

6 Can you tell us why your client needs a
7 continuance?

8 MS. FERSTER: Yes. We've requested a continuation
9 for two reasons. One is, obviously, the timing of this
10 hearing three days before a major holiday, there have been
11 witnesses, and including potential expert witnesses, that are
12 unavailable, and, of course, Mr. Barringer is out of town as
13 well and he has party status. So, that was the primary
14 reason for our request for a postponement.

15 We also noted that there is some discrepancy in
16 the relief being sought, as between the notice of the hearing
17 and the Applicant's statement. And we thought it would be
18 helpful to try to get that sorted out, so that the parties
19 knew exactly what the relief was that was being requested.

20 VICE CHAIR JOHN: Okay. Can you elaborate on that
21 comment?

22 MS. FERSTER: On the discrepancy? Yes.

23 The public notice indicates that the relief is
24 requested from the lot frontage requirements and the minimum
25 lot dimension requirements. But the Applicant's form

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 requested variance from the lot frontage requirements, which
2 is what the BZA notice says, but it does not indicate that
3 variance is requested from the minimum lot dimension
4 requirements. Instead, it requests the variance from the lot
5 setback requirements. So, we were just a little confused,
6 and I think a conversation with the Applicant's counsel would
7 probably help to clarify that.

8 VICE CHAIR JOHN: Okay. Thank you.

9 Ms. Prince, did you have a comment?

10 MS. PRINCE: Postponement -- you know, the owners
11 have every effort to work with the abutting property owners.
12 There are 10 abutting property owners because this is such
13 an extraordinarily large property. We'll continue to try to
14 work with them.

15 And as for the areas of relief, you know, we
16 followed a Zoning Administrator memo. We weren't self-
17 certified, but we'll work that through and make sure
18 everybody understands the relief that we're seeking.

19 VICE CHAIR JOHN: Okay. And if necessary, file
20 an amended certification, I guess.

21 MS. PRINCE: Yes, we're looking in that.

22 VICE CHAIR JOHN: Okay.

23 MS. PRINCE: We'll re-advertise, if necessary.

24 VICE CHAIR JOHN: Thank you.

25 So, I believe that the requester has shown good

1 cause for the postponement. And so, I'm inclined to grant
2 the request, if there are no objections from the Board.

3 (No audible response.)

4 Thank you.

5 And so, I'd like to ask the requesters, the
6 persons recently granted party status, to coordinate to the
7 best of your abilities in making your presentation, because
8 it's difficult, but not impossible, to handle three parties
9 plus the Applicant and the ANC. So, it would help us greatly
10 if you could decide among yourselves how you would want to
11 present your cases, to the extent that there is any overlap
12 on the issues.

13 So, with that, unless someone has any other
14 comment, thank you.

15 So, I'd like to thank everyone for being here and
16 ask Ms. Mehlert to excuse the witnesses. Thank you. And the
17 attorneys. Thank you.

18 MS. PRINCE: Thank you.

19 VICE CHAIR JOHN: Okay. Mr. Moy, would you please
20 call the next case, please, which I believe is 20564.

21 MR. MOY: Madam Vice Chair, can I discuss with the
22 Board regarding the -- it sounded like you were granting the
23 request to postponement. Am I wrong or --

24 VICE CHAIR JOHN: Yes. Yes. Yes, Mr. Moy, you
25 were not wrong. And did I need to make a motion? I thought

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the Board could --

2 MR. MOY: No, no, you don't need to make a motion.

3 What I was getting at -- maybe I should have been
4 more direct -- is whether or not we can announce on the
5 record when the rescheduled date would be. And if you were
6 to ask me which would be a hearing date that would
7 accommodate the Board's dockets, I would respond with a date
8 of April the 13th.

9 VICE CHAIR JOHN: Okay.

10 MR. MOY: I don't think that's a Friday. So, that
11 means you're okay.

12 VICE CHAIR JOHN: Okay. Thank you, Mr. Moy.

13 And I guess the parties are aware of the response
14 times, and so on, with you having to actually set the
15 response times?

16 MR. MOY: Yes.

17 VICE CHAIR JOHN: Okay. So, thank you for that
18 note, Mr. Moy.

19 And we can move on to the next case.

20 MR. MOY: All right. The next case before the
21 Board is Application No. 20564 of Jemal's Prospect's, LLC.
22 This is a self-certified application for Special Exception
23 to allow a change from one nonconforming use to another
24 nonconforming use, under provisions of Subtitle, Section
25 204.9, pursuant to Subtitle X, Section 901.2, and area

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 variances, pursuant to Subtitle X, Section 1002. And this
2 is from the corner store requirements of Subtitle U, Section
3 254.6(g) that prohibits a corner store use within 750 feet
4 of the property line of MU Zone; the corner store
5 requirements of Subtitle U, Section 254.8 as well, which
6 prohibits installation of grease traps.

7 This is to change the existing nonconforming dry
8 cleaning and upholstery use to a new nonconforming corner
9 store with onsite cooking use in an existing semi-detached,
10 one-story commercial building, R-20 Zone, at premises 3343
11 Prospect Street, Northwest, Square 1220, Lot 30.

12 And let's see. As preliminary matters, there is
13 a request for party status in opposition before the Board.
14 There's a waiver of a filing deadline for an OP report.

15 And just to remind the Board that, on December the
16 8th, the Board granted party status to Benjamin Persina.

17 And I believe that's it for me, Madam Vice Chair.

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

19 Ms. Mehlert, will you let the parties in, please?

20 MR. MOY: While she's doing that, I should add,
21 Madam Vice Chair, that there is a letter in opposition from
22 a John Carmichael that was submitted late. I'm assuming
23 that's the 24-hour block. And so, that's not in the record
24 yet, waiting for action, the Board's action, and the
25 Applicant's revised PowerPoint.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR JOHN: Thank you.

2 And Mr. Carmichael is the witness?

3 MR. MOY: I do not know that.

4 VICE CHAIR JOHN: So, we can address that at a
5 later point, once I start up, please.

6 So, let's see. So, Ms. Swanstrom? Oh, Ms.
7 Moldenhauer. I'm sorry. You're representing the Applicant.
8 Can you introduce yourself for the record, please?

9 MS. MOLDENHAUER: Good afternoon, Board Members.
10 Meredith Moldenhauer from the Law Firm of Cozen O'Connor,
11 here on behalf of the Applicant.

12 VICE CHAIR JOHN: Thank you.

13 And who do you have with you today?

14 MS. MOLDENHAUER: So, actually, this is a
15 preliminary matter. Ms. Swanstrom, Alicia Swanstrom, who is
16 the founder of Greenheart, emailed me very, very early in the
17 morning that she is pregnant and in the hospital,
18 experiencing complications. She's not going to be able to
19 testify.

20 Based on this, we have another individual that
21 could potentially testify on behalf of Greenheart and address
22 the applications and operational questions, but we would also
23 like to ask the Board if they would be willing to grant a
24 postponement.

25 VICE CHAIR JOHN: Okay. Well, thank you for that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 clarification.

2 And let's go to the preliminary matter first.
3 That is the request for party status. And so, let's see, who
4 is the requester?

5 (Pause.)

6 Okay. Ms. Andris. Is Ms. Andris here?

7 (No audible response.)

8 Ms. Mehlert, do you see Ms. Andris signed up?

9 MS. MEHLERT: Yes, she's here, and I've added her
10 as a panelist.

11 VICE CHAIR JOHN: I'm sorry, I can't hear you, Ms.
12 Mehlert.

13 MS. MEHLERT: She's been added as a panelist.
14 She's just muted right now.

15 VICE CHAIR JOHN: Okay. I see her.

16 Okay. Ms. Andris, can you introduce yourself with
17 your name and address, for the record, please?

18 We can't hear you.

19 MS. ANDRIS: Hi. I'm Vanessa Andris. I am the
20 resident at 3341 Prospect Street. My house, my residence,
21 abuts to this property.

22 VICE CHAIR JOHN: Okay. Thank you.

23 And you are seeking party status?

24 MS. ANDRIS: Yes.

25 VICE CHAIR JOHN: Okay. So, it is my intention

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to decide the party status request on the record. And Ms.
2 Andris is an abutting neighbor, and she lives at 3343
3 Prospect Street, Northwest. And as I noted --

4 MS. ANDRIS: No, I live at 3341 Prospect.

5 VICE CHAIR JOHN: 41. I apologize. 3341 Prospect
6 Street.

7 And there is a presumption that the adjacent
8 neighbor or property owner would have a more distinctive,
9 significantly, or uniquely affected, would be more
10 distinctively or uniquely affected in character or kind than
11 other persons in the general public if this relief were to
12 be granted. And so, I will go ahead and allow party status
13 for Ms. Andris, unless any other Board member objects.

14 (No audible response.)

15 Okay. And then, the next thing, then, would be,
16 Ms. Moldenhauer, did you submit a PowerPoint that you wanted
17 admitted to the record?

18 MS. MOLDENHAUER: Vice Chair John, we did file our
19 PowerPoint in time, but we wanted to make two slide
20 corrections, just to provide some clarification on and help
21 the Board understand kind of the prior uses and where those
22 were located. So, we modified two slides and we filed that
23 yesterday afternoon.

24 VICE CHAIR JOHN: Okay. Thank you. So, I'll go
25 ahead and admit that into the record.

1 And there's a waiver of a filing deadline for the
2 OP report, which I will also go ahead and waive, because I
3 believe everyone would like to see that.

4 And so, Ms. Moldenhauer, would you like to discuss
5 your request for a continuance?

6 MS. MOLDENHAUER: Yes, and identify we do have a
7 Jennifer Speirs who's available to come and testify and
8 present the case, but we do believe that, obviously, Alicia,
9 who is the founder of Greenheart, would obviously like to be
10 present today and be able to maybe answer more questions that
11 may come up. So, we believe that we satisfy the standard for
12 a postponement, but, obviously, leave it to the Board to
13 determine how they would like to proceed.

14 VICE CHAIR JOHN: Okay. Thank you for that.
15 Is the ANC here, Ms. Mehlert?

16 MS. MEHLERT: Okay. So, (telephonic
17 interference).

18 VICE CHAIR JOHN: Okay. So, I'll turn to the
19 Board. I'm inclined to grant the continuance, based on the
20 recommendation.

21 MR. MOY: Madam Vice Chair?

22 VICE CHAIR JOHN: Yes?

23 MR. MOY: I believe Rick Murphy is the ANC.

24 VICE CHAIR JOHN: Oh, okay.

25 MR. MOY: So, he's on your screen.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR JOHN: Yes, he's there now.

2 Mr. Murphy, can you hear me?

3 He's muted.

4 MR. MURPHY: Thank you, Vice Chair John.

5 VICE CHAIR JOHN: Thank you.

6 MR. MURPHY: I am here.

7 The ANC won't object to the request for a
8 postponement under the circumstances.

9 VICE CHAIR JOHN: Thank you.

10 Would you introduce yourself, though, as the --

11 MR. MURPHY: Yes, I am. Hi. This is Rick Murphy.
12 I reside at 3136 P Street, Northwest. I am the Chair of
13 ANC 2E.

14 VICE CHAIR JOHN: Okay. Thank you.

15 So, turning back to the Board, I'm inclined to
16 grant the request, unless there is an objection from anyone
17 on the Board, based on the representation of the Applicant
18 and ANC's statement that the ANC is not opposed to granting
19 the request for continuance. Okay?

20 (No audible response.)

21 So, Mr. Moy, what date are we looking at?

22 MR. MOY: Taking a stab at the nature of this
23 application, and the size of the dockets for the Board
24 upcoming through the months, I would start with April the
25 13th, because I have room there, because I'm scheduling cases

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 for that. So, this could fit right in for April 13.

2 I daresay that, if the Board wanted something
3 sooner, it's going to lengthen your other days because we
4 have a couple of months, as you know, that we have a number
5 of appeals. So, I would have to add it to a date where we
6 have appeal cases or dates where I already have 10 or 12
7 cases. So, I'll leave that to you, Madam Vice Chair.

8 VICE CHAIR JOHN: Mr. Moy, I don't believe this
9 case should be put with any appeal. So, my recommendation
10 would be to keep it, to continue it to the 13th of April.

11 Okay. Ms. Moldenhauer?

12 MS. MOLDENHAUER: Obviously, my client would --
13 that's a really long time to have to wait between now and
14 April. Is there any earlier date?

15 And I see the party in opposition raising his hand
16 as well.

17 MR. PERSINA: Yes, I'm very sorry to hear about
18 Ms. Swanstrom's current condition and I wish her all the
19 best.

20 I would just note for the Board that she is not
21 the Applicant here. The Applicant is Jemal's Prospect's.
22 And she can speak on behalf of the initial lessee, but the
23 beneficiary of the variance and the exception would actually
24 be Jemal's.

25 And so, we have several witnesses on the line who

1 have been waiting throughout the morning. And if possible,
2 we would request that we have the hearing today.

3 VICE CHAIR JOHN: Mr. Persina, I am just not
4 inclined to hold a hearing where one of the essential
5 witnesses is not present. I don't know what my other Board
6 members think, but I can hear from everyone.

7 MS. MOLDENHAUER: Ms. John, we do have somebody
8 that could present on behalf of the operations, but there may
9 need to be continued testimony because I can't guarantee that
10 she'll have answers for all the questions in regards to
11 operations. And that was the understanding of the Applicant,
12 but we believe the major issues here are operational
13 questions under the Special Exceptions.

14 And so, we feel, you know, we do, though, raise
15 a concern about an April deadline. I mean, that's a huge
16 extension of time. I mean, if there is an earlier date
17 possible? Otherwise, maybe we will just simply move forward
18 with the case today, but with the understanding that there
19 may be questions that we have to continue.

20 MR. MURPHY: Vice Chair John, if I could be heard
21 for just a moment?

22 The ANC has consented to the postponement, and
23 April 13th is fine with us. I would be opposed, however, to
24 proceed to proceeding under any circumstances where we might
25 wind up with a bifurcated hearing with some testimony today

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and some to be heard later.

2 VICE CHAIR JOHN: Okay. Thank you, Mr. Murphy.
3 And, Commissioner May?

4 ZONING COMMISSIONER MAY: Yes. I mean, it seems
5 to me that this is a -- you know, it's really up to the
6 Applicant, right? The only time we're going to be able to
7 reschedule this is pretty clearly going to be in April. So,
8 if you don't want April, your only choice is to do it today.
9 And I would suggest that we could get through the entire
10 thing today, at least the hearing today, if not the decision.
11 You know, if there are lingering questions, maybe there will
12 have to be some small extension of it for a limited hearing,
13 but it seems to me that at this moment it's reasonable to
14 expect that we could get through the whole thing today. But
15 the Applicant really has to make a decision about what you
16 really want.

17 VICE CHAIR JOHN: Commissioner May, let me hear
18 from Ms. Andris, who has recently been granted party status.

19 MS. ANDRIS: I'm not sure that any information
20 about the details of the operation are going to change my
21 stance on this, or ANC's, or Mr. Persina's. So, again, it's
22 up to the Applicant. But those details are not going to
23 sway.

24 VICE CHAIR JOHN: Okay. So, Ms. Moldenhauer, we
25 hear it today or we continue it to April 13th.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. MOLDENHAUER: Give me just one moment. I'm
2 waiting on a text message. I'm trying to confirm with my
3 client.

4 VICE CHAIR JOHN: Okay. Let's see. Do you need
5 a moment, Ms. Moldenhauer? We can move on to the next case.
6 This is an extremely long day.

7 MS. MOLDENHAUER: I do need a moment. I'm sorry.
8 I'm trying to -- I'm not getting a response yet. If you'd
9 give me -- if you could either move on or we can -- I'm just
10 trying to communicate. With the technical world today, I'm
11 waiting on a text message.

12 VICE CHAIR JOHN: That's fine, Ms. Moldenhauer.
13 We will move on, and then, come back to this case.
14 Okay?

15 Thank you very much.

16 Mr. Moy, could you excuse everyone, please, and
17 call the next case?

18 MR. MOY: All right. The next case before the
19 Board for now is Application No. 20585 of Jacob Hensley. And
20 this is a self-certified application for Special Exceptions,
21 pursuant to Subtitle X, Section 901.2, from the penthouse
22 requirements of Subtitle C, Section 1500.4, pursuant to
23 Subtitle C, Section 1504, penthouse setback requirements;
24 Subtitle C, 1502.1, pursuant to Subtitle C, Section 1504, and
25 the rear addition requirements, Subtitle E, Section 205.4;

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Subtitle E, Section 205.5, and Subtitle E, Section 5201.

2 This would construct a two-story rear addition
3 with basement and penthouse to an existing two-story attached
4 principal dwelling in the RF-2 Zone at premises 1457 Swann
5 Street, Northwest, Square 206, Lot 170.

6 And as a reminder to the Board, on December 15th,
7 the Board granted party status to a Jeff Gay.

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

9 Are there any preliminary matters in this case?

10 (No audible response.)

11 I don't believe there are. Okay. So, I don't
12 believe we have any preliminary matters.

13 So, I will ask Ms. Mehlert to let the Applicants
14 in, please, the witness, the parties in.

15 Mr. Jones, can you introduce yourself for the
16 record, please?

17 MR. JONES: Yes. Hi. I'm Patrick Jones. I'm the
18 architect for the project.

19 VICE CHAIR JOHN: Are you presenting today on
20 behalf of the Applicant?

21 MR. JONES: No. The zoning consultant is.

22 ZONING COMMISSIONER MAY: Jacob Hensley raising
23 his hand.

24 VICE CHAIR JOHN: Oh, okay.

25 MR. HENSLEY: Ryan Beible is supposed to be

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 presenting, but he has not been let in yet.

2 VICE CHAIR JOHN: Ms. Mehlert, can you let Mr.
3 Beible in?

4 MS. MEHLERT: I see a Ryan. I see a Ryan with no
5 last name. Is that him?

6 MR. HENSLEY: It may be him. Yes, that's him.
7 Sorry.

8 VICE CHAIR JOHN: Thank you.

9 MR. BEIBLE: Hi.

10 VICE CHAIR JOHN: Okay. Go ahead, Mr. Beible.

11 MR. BEIBLE: I'm Ryan with no last name. I'm
12 sorry. My name is Ryan Beible.

13 VICE CHAIR JOHN: Go ahead, Mr. Beible. Please
14 introduce your name for the record and give us your address
15 as well.

16 MR. BEIBLE: Yes, the name is Ryan Beible. My
17 address is 42687 Leaflet Lane, and that's in Chantilly,
18 Virginia.

19 VICE CHAIR JOHN: Okay. And can you go ahead and
20 give us your presentation on behalf of the Applicant? And
21 you have 15 minutes.

22 MR. BEIBLE: Yes. We have a slide show, and I'm
23 not sure if it is up at the moment. But I'd like to run
24 through the slides, and I'll let the --

25 VICE CHAIR JOHN: Thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Is it in the record?

2 MR. BEIBLE: Yes.

3 VICE CHAIR JOHN: Okay. Ms. Mehlert, could you?

4 MR. BEIBLE: Great.

5 VICE CHAIR JOHN: So, Mr. Beible, before you
6 begin, I looked at the record before, and I believe there is
7 a lot of discussion about the purpose of the background
8 information. And so, can you focus on how the rear addition
9 meets the requirement for relief? Because once one cites
10 setback, even though we will decide under the current
11 regulations, it might be entitled to relief at some future
12 point. So, please focus, if you will, on how the rear
13 addition meets the requirement of Subtitle E, 5201, as well
14 as the general discussion of exception criteria.

15 MR. BEIBLE: Yes, I can do that. And there's a
16 number of slides about the side setback. When we get to
17 them, if you'd like, I can just skip through them.

18 VICE CHAIR JOHN: Yes. Right. Thank you.

19 MR. BEIBLE: Sure. Okay.

20 So, thank you for taking the time to hear our
21 case.

22 My name is Ryan Beible. I'm a friend of Jacob's,
23 the homeowner and Applicant, and I've been assisting him with
24 the zoning and historic preservation aspects of this project.
25 And Jacob is here today along with his architect, Patrick

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Jones. And the three of us will make up the Applicant team.
2 I'm going to present, and all three of us are available for
3 any questions any of you may have.

4 Next slide, please.

5 Jacob really likes living here at 1457 Swann.
6 It's a nice neighborhood. It's very walkable to commercial
7 areas and to public transportation, and he doesn't want to
8 move.

9 His home is not large by any means, though. It
10 is a total of 1200 square feet over two floors. And this
11 1200 square feet includes the stair footprint and circulation
12 areas. The lot is 17.5-feet wide and his house is 36 feet
13 4 inches deep. It is the smallest house tied with six others
14 on the 60-lot square.

15 He hopes to start a family in the coming years.
16 This addition will give him space for an office to work from
17 home, along with an adequately sized second bathroom and
18 second bathroom upstairs. His bedroom would also have
19 adequate closet space and the bathroom accessible from it.
20 On the main floor, he would now have space for a dining table
21 that seats at least four, and also, a family room. The roof
22 that is currently not accessible by a ladder would become
23 both accessible and usable, and the basement unit would also
24 increase the approximate 250 square feet, providing a second
25 bedroom and providing kitchen and eating space that does not

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 double as a living room.

2 So, this addition involves three Special
3 Exceptions at the moment. We've already spoken about why
4 there is this caveat at the moment, and has to do with
5 1502.1, the side setback.

6 So, the other one is C, Section 1500.4, for having
7 a penthouse on a row home, and then, Subtitle E, 205.5, for
8 a rear addition that's greater than 10 feet past the rear
9 wall of an abutting structure.

10 Next slide, please.

11 Here are floor plans of the existing basement unit
12 and of Jacob's home on the first and second floors.

13 Next slide, please.

14 Here is the lot's location in the square, along
15 with an aerial photo.

16 Next slide, please.

17 So, this is a boundary and tempo survey that was
18 performed in the spring. The building currently occupies
19 less than half of the property. The lot has a rear yard of
20 approximately 44 feet, and then, there's a 9-foot 4-inch
21 alley between these lots on the southern side of the square
22 and lots on the northern side of the square.

23 Next slide, please.

24 These are the proposed floor plans following the
25 work. The top plan is the basement unit with the second

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 bedroom and a kitchen that is somewhat in a separate area
2 from the living room.

3 The next plan is of Jacob's main level with
4 kitchen space, eating space, and a family room.

5 The next one is of Jacob's second level with an
6 office, a bathroom, and closet serving the primary bedroom,
7 and the more adequately sized second bedroom and closet,
8 along with a second bathroom off the hallway.

9 And the bottom plan is of the roof deck with a
10 penthouse for stair access and ancillary storage space.

11 Next slide, please.

12 This is a section elevation of the building
13 following this addition. The area highlighted in blue
14 represents existing.

15 Next slide, please.

16 This slide and the next three are rendered images
17 of the addition from different views. This is a view from
18 Jacob's back yard looking left.

19 Next slide, please.

20 A view from Jacob's back yard looking right.

21 Next, please.

22 A view from the east adjacent property's yard.

23 Next slide, please.

24 And a view from the west adjacent property's yard.

25 Next slide, please.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Here are existing conditions photos of the front,
2 rear, and the roof of Jacob's house.

3 Next slide, please.

4 These are shots from both ends of the alley.

5 Next slide, please.

6 These are some more additional alley shots. In
7 the photo on the left, Jacob's house is the maroon one.

8 Next slide, please.

9 And these are some more additional alley shots,
10 showing the existing conditions of the square.

11 Next slide, please.

12 So, the photo on the left is another alley shot
13 looking east. This photo was taken standing in the alley
14 behind Jacob's house.

15 And the second photo is a shot from Jacob's
16 current stoop looking out over his rear yard.

17 Next slide, please.

18 Here's a view from Jacob's stoop looking east and
19 one looking west.

20 Next slide, please.

21 The criteria and conditions for all Special
22 Exceptions includes being in harmony with the general purpose
23 and intent of the zoning regs and zoning maps, and not
24 tending to affect it adversely the use of neighboring
25 property, in accordance with the zoning regs and zoning maps.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Next slide, please.

2 These are stated purposes and intents of the
3 zoning regulations, the RF Zones, and the RF-2 Zones. I'm
4 not going to read through them. I touch on them in the
5 following slide.

6 So, next slide, please.

7 The first stated purpose and intent of the zoning
8 ordinance is to ensure properties have adequate light and
9 air.

10 Bulk standards, which are height, lot occupancy,
11 and yards and setbacks, are in the zoning regulations to
12 ensure an adequate amount of light and air are available to
13 a subject property and to neighboring properties.

14 To ensure that in each zone, no matter an
15 individual property's size, configuration, or other
16 characteristics, a structure cannot unduly affect or affect
17 adversely other properties. In other words, when a structure
18 conforms to all bulk standards, it is impossible for the
19 structure not to be within the zoning regulations pertaining
20 to light and air. And it is impossible for the structure to
21 unduly or adversely affect the light and air of neighbors.

22 Next slide, please.

23 Here is an exhibit showing this project compared
24 to the manner-of-right bulk standards in place for this RF-2
25 Zone. The yellow represents the light and air to this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 property and neighboring properties over and above what the
2 zoning regulations require.

3 Matter-of-right height is 35 feet in this zone.
4 The structure's height is approximately 29 feet, and in the
5 rear it's approximately 27 feet. The top of the penthouse
6 is almost within this 35-foot height measurement, and it is
7 more than 3 feet under the 39-foot parapet wall maximum.

8 There is approximately 10 feet of extra rear yard
9 over the 20-foot minimum required. The lot occupancy is 58.8
10 percent. Under the matter of right, 60 percent, it is also
11 important to note up to 70 percent is allowed via Special
12 Exception.

13 Again, by being within this yellow box drawn here,
14 that represents the matter-of-right bulk standards in this
15 RF-2 Zone, the structure absolutely provides adequate light
16 and air to neighboring properties.

17 Next slide, please.

18 And although this project is fully within all of
19 these bulk standards, we went ahead and commissioned a sun-
20 shade model to provide further exhibits showing how minimal
21 this additional 5-foot extension is on direct sunlight.

22 Here is spring-fall equinox at 9:00 a.m. The red
23 enclosure on this model, and all the models, points out the
24 additional shade from this 5 feet.

25 Next slide, please.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 This is spring-fall equinox at noon. So, you can
2 see there's a little bit of additional shading to the
3 property on the west.

4 Next slide, please.

5 This is spring-fall equinox at 3:00 p.m. There's
6 a little bit of additional shading on the property to the
7 east.

8 Next slide, please.

9 This is summer solstice, 9:00 a.m. Three
10 properties to the west have a little bit more shading.

11 Next slide, please.

12 Summer solstice at noon. The abutting property
13 to the west has slightly more shading.

14 Next slide, please.

15 Summer solstice at 3:00 p.m. The abutting
16 property to the east has slightly more shade.

17 Next slide, please.

18 The next three are all winter solstice, and the
19 sunlight to the neighboring properties is not affected at any
20 times throughout the year.

21 You can go ahead and move through these next two
22 slides.

23 Okay. So, preventing undue concentration of
24 population and the overcrowding of land is another stated
25 purpose and intent of the zoning regs and the conditions of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 these Special Exceptions.

2 Our project meets this condition. We have an
3 existing flat that is remaining a flat, and the structure is
4 within all of the bulk standards.

5 Next slide, please.

6 The other purpose and intent of the zoning regs
7 and zoning maps is to provide distribution of population,
8 business, and industry, and use of land that will tend to
9 create conditions favorable to transportation; protection of
10 property; civic activity; recreational, educational, and
11 cultural opportunities, and that will tend to further economy
12 and efficiency in the supply of public services. We meet
13 this condition.

14 Next slide, please.

15 For the RF Zones, one of the purposes and intents
16 is to recognize and reinforce the importance of neighborhood
17 character, walkable neighborhoods, housing affordability,
18 aging in place, preservation of housing stock, improvements
19 to the overall environment, and low and moderate density
20 housing, durable housing mix, and health of the city.

21 Our project meets this condition. It allows Jacob
22 to age in place. It's thoughtfully designed, in recognition
23 of the neighborhood character. It preserves housing stock.
24 It maintains low density housing, and it increases housing
25 affordability by turning the basement into a two-bedroom

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 unit.

2 Next slide, please.

3 The remaining purposes and intents of the RF Zones
4 are: allow for limited compatible nonresidential uses;
5 matter-of-right development on existing lots of record;
6 establish minimum lot areas and dimensions for subdivisions
7 and creation of new lots of record; allow for a limited
8 conversion of rowhouses, and prohibit the conversion of flats
9 and rowhouses for apartment buildings.

10 Our project meets these conditions, as they are
11 not applicable, and our project does not conflict with them.

12 Next slide, please.

13 The purpose and intent of the RF-2 Zone is to
14 recognize the Dupont Circle area is a unique resource in the
15 District of Columbia that must be preserved and enhanced.

16 Our project meets this condition, and existing
17 residential low density use is being preserved. And the
18 rowhouse is being made more livable while remaining within
19 the appropriate mass and scale for the location.

20 Next slide, please.

21 Another stated purpose and intent is to provide
22 strong protections to retain its low-scale, predominantly
23 residential character; independent retail/small businesses;
24 human-scale streetscapes, and historic character.

25 Our project is remaining a low-scale flat. It is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 remaining residential, and is not impacting the streetscape
2 at all. And HPRB heard this project this project in July and
3 unanimously voted to approve it 8-to-0.

4 Here is the HPO's written action: "The Board
5 found the scale and massing of the concept compatible with
6 the character of the U Street Historic District and delegated
7 final review and approval to staff." 8-to-0.

8 It's a benefit being in a Historic District, where
9 there's a set of professionals and design experts in place
10 to hold proposed projects to strict guidelines and ensure
11 that a project is not out of character or inappropriate for
12 its surroundings.

13 Next slide, please.

14 Here is a -- sorry, just a second here.

15 Okay. So, here is HPO's staff report for the
16 project.

17 VICE CHAIR JOHN: Mr. Beible?

18 MR. BEIBLE: Yes?

19 VICE CHAIR JOHN: So, can you talk about the rear
20 extension? Because that seems to be the real issue in this
21 case.

22 MR. BEIBLE: Sure. Okay. Let's go to --

23 VICE CHAIR JOHN: We're almost out of time.
24 You're way over 15 minutes.

25 MR. BEIBLE: Yes, I heard you say that, but I

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 thought we had 60, and my presentation will be about 20.

2 But I'm going to move to -- let's go to slide,
3 let's go to slide 52, please.

4 Okay. So, for the Special Exception criteria
5 specific to the rear wall extension, the following conditions
6 must be met, and we meet them.

7 The light and air available to neighboring
8 properties shall not be unduly compromised.

9 It's an important purpose of the zoning ordinance,
10 and one that's found throughout the regulations. And as
11 we've touched on previously in great detail, this addition,
12 we feel, does not and cannot unduly compromise light and air
13 to its neighboring properties, per the zoning regs.

14 Next slide, please.

15 The privacy and use adjoining and neighboring
16 properties shall not be unduly compromised. This addition
17 increases and improves the privacy for neighboring
18 properties. Not only are there no windows on the sides of
19 this proposed addition, but the number of viewpoints from the
20 alley or other properties on the square directly into
21 neighboring homes is lessened.

22 Next slide, please. Next slide, please.

23 This proposed addition to the structure together
24 with the original building or new principal building, as
25 viewed from the street or alley, or other public way, shall

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not substantially visually intrude upon the character, scale,
2 and pattern of the houses along the street or alley frontage.

3 As I mentioned, HPO and HPRB, who follow and
4 enforce very strict guidelines, have viewed this proposed
5 addition and it gained staff support and unanimous 8-0
6 approval from the Board. They reviewed it from the street,
7 where no part of the addition will be visible, and they
8 viewed it from the alley and from 15th Street. They found
9 the scale and massing to be compatible with the neighborhood.

10 Next slide, please.

11 Here are some photos, again, of the square. There
12 are many houses out as far or farther than our proposed
13 addition and a number of houses with greater heights.

14 Next slide, please. Slide 58, please.

15 This is aerial view of the square with depth
16 dimensions on a sample of houses. Jacob's house is the one
17 outlined in blue, and the solid blue rectangle represents
18 this addition. Approximately one-third of the houses have
19 a rear yard the same size or smaller than the one that Jacob
20 will have.

21 Next slide, please.

22 And then, the final condition for this rear wall
23 Special Exception is that the Applicant shall demonstrate
24 compliance by using graphical representations, such as
25 plants, photographs, elevations, and section drawings. And

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 we've included numerous photos, elevations, drawings, and
2 other graphical representations showing the relationship
3 between this proposed project and adjacent buildings, the
4 square, and views of the public ways.

5 Next slide, please.

6 Yes. So, this is a final visual that I think is
7 a good depiction of our proposed addition. I think it does
8 a good job of showing how modest it is. The blue line in the
9 right photo shows where this addition will end, and the
10 remaining 30 feet of rear yard prior to the alley.

11 Next slide, please.

12 So, I want to thank you again to have this
13 opportunity to be in front of you presenting this case. It's
14 good to be able to just discuss the zoning regs and the
15 facts.

16 This is a cumbersome process for anyone, and
17 specifically, a homeowner, to go through before even getting
18 this hearing. We presented to the ANC four times; two times
19 for the HPRB application, and two times for the BZA
20 application, and presented in front of another neighborhood
21 group once.

22 The ANC has its Land Use Committee made up of, I
23 believe, six residents. A number of them at the meeting said
24 how they couldn't support this rear addition because Jacob
25 was unable to prove any hardships or unique conditions with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the property. We tried to explain to them the differences
2 between Special Exceptions and variances, and how our project
3 only involves Special Exceptions and not variances. And they
4 continued to ask Jacob to prove hardships, like a structural
5 problem or bad soils, in order for them to support it. It
6 was frustrating and disappointing part of the process.

7 As a result of this Committee not hearing any
8 hardship or unique circumstance reasons, as if it was a
9 variance application, they wrote a motion supporting the
10 project, but not supporting the 15-foot addition. The
11 Commission has voted 6-3 to accept this motion, but I want
12 to note that the three Commissioners, including the Chair,
13 who voted against it were not against our project. They were
14 in favor of the project and against the motion because the
15 motion did not support the rear addition.

16 I also want to say that Jacob is a good neighbor.
17 He takes care of his property and the neighborhood, and he's
18 friendly. He's by no means a social butterfly, though. All
19 he's looking to do is build a modest addition that is
20 thoughtful of his neighbors and the neighborhood.

21 The opposition from his abutting neighbor to his
22 east did surprise him. He had met with him along with the
23 plans prior to beginning the HPRB process and they were
24 familiar with it. This neighbor has gone around door to door
25 trying to get people to join him in opposition, and some have

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 written letters and emails, per his request. Jacob was
2 informed of this by one of his neighbors.

3 For what it's worth, the abutting neighbor to his
4 west provided a letter in support of this addition, as well
5 as a couple of other neighbors.

6 It's unfortunate that people seem open to trying
7 to make someone look bad just because this person wants to
8 improve his house, and improve his house in a way that is
9 considerate of others. In the last ANC meeting, his next-
10 door neighbor to the east --

11 VICE CHAIR JOHN: Mr. Beible? Mr. Beible?

12 MR. BEIBLE: Yes?

13 VICE CHAIR JOHN: Can you stay with the facts and
14 try not to color the testimony? We just want to know --

15 MR. BEIBLE: Oh, yeah, yeah, yeah.

16 VICE CHAIR JOHN: Okay.

17 MR. BEIBLE: Sure. Sure.

18 VICE CHAIR JOHN: And please use last names, if
19 you don't mind.

20 MR. BEIBLE: Okay. So, the last thing I wanted
21 to say, that this application is not about a variance. It's
22 about a Special Exception. Nothing Jacob's design will do
23 is outside of what's permitted in the zoning regulations.
24 Special Exceptions are permitted by and conforming to the
25 regs as long as specific conditions are met. Again, we're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 not here seeking a variance or variances because we do not
2 have a variance case.

3 I also think it's important to understand what
4 Jacob is not seeking. From the beginning, Jacob, Patrick,
5 and I said we're not going to try to propose a larger
6 addition than what he needed, just so that, if he needed to,
7 he could scale down and make it seem like something was
8 compromised. He's just desiring to do the minimum that is
9 required for him, and to do it modestly and within the
10 neighborhood character.

11 A lot of schematic design time was spent prior to
12 producing these concept plans that went in front HPRB, and
13 now are in front of you. And they've been scaled-down since
14 the first time pencil was put to paper.

15 Our team worked to make this addition as modest
16 and appropriate as possible on our own. So, there is not one
17 bit of greed or selfishness, we feel, with this project.

18 And just, in summary, again, I want to thank you
19 for hearing us today. Sorry I took so long, but I think it's
20 important to provide and explain our case and where we're
21 coming from. And I hope you feel that we've communicated
22 effectively, not quickly, but effectively and in great
23 detail, how Jacob's desired project falls well within the
24 Special Exception conditions and criteria stated in the
25 ordinance.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So, thank you.

2 VICE CHAIR JOHN: Thank you, Mr. Beible.

3 Does the Board have any questions?

4 (No audible response.)

5 All right. Ms. Mehlert, would you mind taking the
6 slides down, please?

7 Does Mr. -- let's see -- does the party in
8 opposition have any questions?

9 MR. GAY: No, we don't.

10 VICE CHAIR JOHN: Does the ANC have any questions?
11 Mr. Murphy?

12 (No audible response.)

13 Oh, it's not Mr. Murphy.

14 Okay. I'll go to the Office of Planning.

15 MS. MYERS: Crystal Myers for the Office of
16 Planning.

17 And happy holidays.

18 VICE CHAIR JOHN: Thank you.

19 MS. MYERS: So, the Office of Planning is
20 recommending approval of this case. But I note there is a
21 bit of concern when it comes to the rear extension. So, I'll
22 just touch upon what we looked at in order to come to a
23 recommendation of approval for that.

24 The key things we look at are whether or not
25 there's an undue impact on the light and air of the adjacent

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 neighbors or to the neighboring properties. And as the
2 Applicant has pointed out, there was a shadow study done on
3 this case. And there were some points where there was
4 increased shadowing on some of the neighboring properties,
5 but it was -- we considered it very minimal and not to the
6 level of undue impact. So, we did not consider that to be
7 to a point of a problem. And when it came to the air, we
8 didn't think that that would, that what is being proposed
9 would be a hindrance on the airflow to the neighboring
10 properties.

11 When it comes to privacy and enjoyment of
12 neighboring properties, again, we didn't see that there was
13 something to the level of an undue impact. As has been
14 pointed out, the addition does not have windows that would
15 face into the neighboring houses. We did not think that this
16 would have a significant impact on the enjoyment of the
17 properties. So, again, did not recommend a problem in that
18 section.

19 And then, the last key point we look at is, does
20 the proposed addition have a negative impact when it comes
21 to the character to the street or alley? You can't see the
22 addition from the street. And from the alley, this is
23 actually very in character with a lot of the properties
24 further up and down. So, the immediate properties adjacent
25 to this do not have rears that go as far back as what's being

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 proposed. However, about three houses down, you start seeing
2 it. So, on this row, you have quite a few examples of houses
3 that have very similar rears. So, this would actually be in
4 character with those houses. And so, we felt that this was
5 not, would not be a distraction or a problem to the visual
6 character along the alley.

7 And as has also been noted, Historic Preservation
8 has reviewed this and felt that it was in character with the
9 Historic District.

10 So, those are the key things we looked at. You
11 know, we just specifically looked at those criteria and did
12 not feel that there was something that rose to the level of
13 being an undue impact to the neighborhood.

14 And when it comes to the penthouse, we did not
15 feel that there was any problems with that as well, but I
16 don't think there is as much concern about that.

17 So, if there's any questions, I'm willing to talk
18 about that further as well. But I know that the rear wall,
19 the rear extension was the key issue.

20 So, we will rest on the record of the staff
21 report, but I'm here for questions.

22 VICE CHAIR JOHN: Thank you. Thank you, Ms.
23 Myers.

24 Does the Applicant have any questions for Ms.
25 Myers?

1 MR. BEIBLE: No.

2 VICE CHAIR JOHN: Thank you.

3 I'm sorry, I should have gone to the Board first.

4 Does the Board have any questions for Ms. Myers?

5 (No audible response.)

6 And, Mr. Gay, do you have any questions for Ms.

7 Myers?

8 MR. GAY: Thank you, Chair.

9 Ms. Myers, I'm curious, for the houses that you
10 looked at further down the block that do have bumpouts, do
11 you when those occurred? Our understanding is that they have
12 been before the 10-foot by right extension rule was put in
13 place.

14 MS. MYERS: I don't know when those occurred, but
15 the criteria is just ask whether or not it's in character
16 with the neighborhood. So, looking at those being in
17 existence, you know, we were able to say that it was in
18 character.

19 MR. GAY: All right. Thank you.

20 VICE CHAIR JOHN: Okay. Thank you.

21 And the ANC is not here.

22 So, Mr. Gay, would you like to make your statement
23 for the record?

24 MR. GAY: I would. Thank you very much, Chair.

25 I've got an exhibit that I sent, that I'd look to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 show to the Board.

2 VICE CHAIR JOHN: Okay. What exhibit is that?
3 Okay.

4 MR. GAY: I think it's the last exhibit. There
5 it is. That's great. Thank you so much.

6 My name is Jeff Gay. My husband and I are the
7 owners and full-time residents at 1455 Swann Street, which
8 is the immediate neighbor to the Applicant.

9 We just want to thank you very much for hearing
10 our testimony today on this proposed Special Exception. And
11 also, thanks for your forbearance. This is our first time
12 to go through this process. I spent a few hours on your BZA
13 YouTube channel to prep for today to try to use your time
14 well.

15 And we hope that you are enjoying the holiday
16 season.

17 If you'll go to the next slide, this is a before
18 and after shot of our house on Swann Street. It was in a
19 little rougher shape when we bought it seven years ago, but
20 we're really proud of the improvements that we've made to it
21 and to our street and our neighborhood.

22 Our pride and joy is what you see here, the back
23 yard. We use it all the time. We just save up to get to
24 this place where we could do the renovation here, but it's
25 not something we use all of the time. We're very big fans

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of the improvements that all of our neighbors go through in
2 Swann Street, which we think is one of the prettiest in
3 Washington -- a provocative statement, perhaps, but we are
4 appreciative of all the improvements.

5 On the next slide, you'll see where things stand
6 from our perspective. Our neighbor are applying to go 150
7 percent of his by-right bumpout allowance. To be clear, he
8 wants to bump out 15 feet on a lot that's only 17.5-feet
9 wide.

10 The reasons he offers are because he'd prefer to
11 have a bigger house. Now the rules are the rules. The rules
12 say that he has the right to bump out 10 feet. And even
13 though we may not love the idea of a big construction project
14 next door to us, those are the rules, and we sign onto them
15 by being a member of the neighborhood.

16 But the rules work both ways. In this instance,
17 the BZA's 10-foot by-right regulation exists to allow people
18 to improve their homes, but that rule also exists to protect
19 the neighbors from getting tunneled-in. All we're asking the
20 BZA to do today is to enforce the rule that it already has
21 in place by allowing the Applicant to extend his home by 10
22 feet.

23 If you go to the next slide, you all know this
24 regulation very well. I won't read it to you. But one thing
25 that we did want to point out here is that the language

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 speaks only about the abutting neighbors, not houses at the
2 other end of the block or in another neighborhood that's a
3 few streets over.

4 Also, our neighbor has used as evidence other
5 houses further down the block that bumped out before the
6 regulation was put in place. Why, then, use those houses as
7 evidence that everybody gets to bump out -- so should I --
8 when the rule was specifically created to prevent what
9 happened at the other end? Everyone on our block speaks to
10 that one of the most egregious bumpouts is the house at 8
11 Swann Street. This regulation was put in place to protect
12 against expansions that go too far.

13 On the next slide, you're very familiar with the
14 regulations here around the terms of a Special Exception.
15 We have no confusion around what a variance is and what a
16 Special Exception is. We're very clear that a Special
17 Exception is the case we need to make for you.

18 So, on the next slide, that Section A speaks to
19 the light and air will not be unduly affected. The architect
20 says that there will be minimal impact, but we strongly
21 disagree. In the spring, the fall, and the summer, our back
22 yard will see much greater shade and reduction of airflow.

23 If you look on the next slide, here's the
24 architect's light study for summer. What you can see is that
25 today we enjoy almost full sun in our back yard. Our patio

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 sits on the portion of our yard closest to our house, or
2 towards the bottom of your screen. With this addition, it
3 would be 150 percent of the by-right allowance. Our summer
4 sun on our patio entirely goes away. It also goes away for
5 the three large trees we planted and all the other vegetation
6 we've invested in in our back yard.

7 So, if we turn to the next slide, here's a look
8 at spring and fall. Now this is the time of year when you
9 use the patio the most. Here, you, too, can see that, if the
10 addition goes in, the portion of our yard in shade now goes
11 to around 85-percent-plus, almost the full depth of our yard;
12 whereas, today it's only half.

13 We go to that next slide. Here's Section B. So,
14 the Section B takes a look at privacy and enjoyment of the
15 neighboring properties.

16 Now the neighbors you heard from in the 10 letters
17 of opposition are most upset about the third section, but,
18 for us, it's the second one that's the most concerning -- the
19 enjoyment of our property.

20 Take a look on the next slide, if you would,
21 please.

22 Thank you very much, Ms. Mehlert, for your help.

23 Here, you can see our house in white and the
24 Applicant's in red to the right. As we mentioned, for the
25 run of about eight houses -- with the Applicant's house in

1 the middle of that run of houses -- we all maintain the same
2 depth.

3 One of the ANC Commissioners who voted to oppose
4 the plan made the point that, in these rowhouses, all the
5 neighbors collectively share this outdoor space -- the light,
6 the free airflow, the general sense of a shared back yard.
7 He pointed out that, when one neighbor takes more than their
8 share, it has the effect of blocking or walling-off the
9 shared sense of outdoor space. Let me show you what this
10 will look like for all of us.

11 Next slide, please.

12 This is a perspective that the architect's
13 drawings failed to illustrate. It's the massing that will
14 loom over our back yard, just about 600 square feet of wall
15 that doesn't exist today. So, what else is that big? Well,
16 the average highway billboard measures about 600 square feet.
17 Also, a standard movie theater screen measures approximately
18 600 square feet.

19 My husband is a real estate agent. So, we have
20 a very real understanding of how such a wall will negatively
21 impact our property value. It's clear to us that the
22 proposed structure would impact the enjoyment of our space
23 and the collective space of our neighbors. In fact, the
24 Dupont Circle Conservancy agrees with us, passing a
25 resolution saying that the maximum was just too large.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 On to the next slide, if you would, in our final
2 section, Section 3. Here, Section 3 of the regulation is
3 related to Special Exceptions. "The proposed addition shall
4 not substantially visually intrude upon the alley frontage."
5 As I mentioned, this is the one that was most frequently
6 cited in our neighbors' complaints about the plan.

7 If you go to the next slide, here's just an aerial
8 footage from Google Maps of the run of houses that I
9 mentioned a few minutes ago. Now, if you look, you can see
10 the depth of the houses is maintained for all of us. If
11 approved, however, on the right side, look how it will
12 effectively wall-off one section of back yards from the
13 others. It's like cutting the sections of houses into two.

14 Mind you that it's a proposed 15-foot expansion
15 on a lot that's only 17.5 feet wide. The regulation says
16 that no addition shall visually intrude upon the alley
17 frontage." You'll hear from the neighbors immediately around
18 this home who think that it will most certainly visually
19 impose.

20 Now, at our Land Use Committee hearing, one ANC
21 Commissioner had a question for the Applicant. He simply
22 asked, "Why should the ANC vote to break the by-right rule
23 when everyone around you is maintaining it?" What was the
24 reason he needed the additional space? Now not seeking any
25 kind of a variance. He just wanted to understand, you're

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 seeking a Special Exception; why should you get it?

2 He, the Applicant, responded that it was so that
3 he could raise a family and, also, age in place, which is
4 certainly his right. But, just to be clear, our home is the
5 exact same footprint as his. He's got 1800 square feet over
6 three stories today without any renovations. We have lots
7 of neighbors on Swann who are at or close to retirement
8 living happily within less square footage. They are even
9 several families on the block who live in smaller houses than
10 his.

11 And remember, he can expand 10 feet by right,
12 which would make his home 2500 square feet. He's the only
13 permanent resident in the home today. So, we just can't
14 understand the need for that additional space when it comes
15 at the expense of all his neighbors.

16 He's also made the argument that many have bumped
17 out, and so should he have the right to. If you'll go on to
18 the next slide, please, our neighbor's agents really like
19 this slide. You saw it earlier. It's meant to convey the
20 message that lots of houses on Swann and T have already
21 bumped out, and here's just a look at how many of them have.

22 But we just caution you to be careful with this
23 graphic. The red text is meant to suggest all those houses
24 that have bumped out. But just take a look at the houses in
25 closest proximity to the project. Of all that red ink you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 see there on the right-hand side, only one of those houses
2 has bumped out. Most of them have not.

3 Second, many of these bumpouts that did occur
4 happened before the 10-foot rule was put in place. So, it
5 seems unfair to use these bumpouts as evidence, when they are
6 the precise reason that the 10-foot rule was created -- to
7 stop tunneling of neighbors.

8 If you'll move on to the next slide, I'll start
9 to wrap up.

10 In the presentation you saw earlier, the
11 Applicant's agents put "project meets the conditions" on many
12 of their slides. But, if that's true, why is there so much
13 opposition? We'll get to all the neighbors in a minute.
14 But, before that, let's take a look at the neighborhood
15 bodies who weigh-in on these issues.

16 On the next slide, please, this is a resolution
17 from the Dupont Circle Conservancy's June meeting where they
18 voted not to support the Applicant's plan. They agreed with
19 us saying, quote, "The massing is too large and we feel the
20 10-foot-deep addition would be more appropriate in the
21 context."

22 The next slide shows our ANC meetings. We had one
23 before the Land Use Committee, and then, the full Committee.
24 At the Land Use Committee, they voted to oppose the plan.
25 One Commissioner there said, if they voted with this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 application, that it would kill their ability to maintain any
2 future 10-foot by-right precedent on our block. They would
3 have to support future similar applications.

4 After voting to oppose the project, the Land Use
5 Committee forwarded their resolution on to the whole ANC, who
6 also voted to oppose the plan. You can see here on screen
7 just a couple of their callouts: "Inconsistent with the
8 character and context of the neighborhood." "The Applicant
9 should reduce his plan to the by-right limit." And then,
10 finally, at the bottom in red, "Voting to oppose the plan
11 expansion."

12 So, if go on to the next slide, let's start to
13 take a look at the voice of the immediate neighbors who will
14 have to contend most directly with this.

15 The Applicant does have three letters of support
16 for his project. One is a single-sentence text message from
17 the neighbor on the other side. Another is a letter from not
18 a resident, but a developer who owns a property on the
19 street. And a third is from someone who does not even live
20 on the block.

21 Now let me show you where the 10 letters of
22 opposition come from. On the next slide, please. Here's a
23 map of our neighborhood, and you can see Applicant's there
24 in the yellow in the middle. All those red X's are where the
25 letters of opposition are coming from -- 17 names across

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 those 10 letters.

2 But, if we zoom in just a little bit to the next
3 slide, here we can see the immediate neighbors, the ones who
4 stand to be the most impacted by this proposal. These 12
5 people see this bumpout every day. All of them think that
6 a 15-foot extension on a lot that's only 17.5-feet wide is
7 excessive.

8 On to the next slide.

9 One neighbor wrote, "What is certain is that this
10 large structure will visually intrude upon our homes and all
11 the others within view of it. These lots just were not made
12 for such massive structures."

13 On to the next slide, please.

14 VICE CHAIR JOHN: Mr. Gay, are you almost done?

15 MR. GAY: Yes. Almost finished. Three slides to
16 go.

17 VICE CHAIR JOHN: Okay.

18 MR. GAY: Yes. So, going further than 10 foot by-
19 right allowance sets precedent on its own, and so, then, ties
20 the Board's hands for the future.

21 Going on to the next slide, if you allow the
22 precedent for one major mega-house project, don't be
23 surprised when others quickly follow.

24 And the last one on the next slide, this plan
25 would create a giant wall and a bad precedent.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The final slide, and then, I'll wrap things up.

2 The Applicant has pointed to his wins on the
3 historic side of the process, but we're not arguing anything
4 about the historic question of the design. This is a zoning
5 issue.

6 He also regularly makes the case that he's not
7 going to the limit of allowable lot coverage, and that's
8 fine. Historic standards are not our concern here. Our
9 concern is the large wall that will loom over our home and
10 yard.

11 If the Applicant is in need of such space, how
12 about if he reincorporates the basement into the main home?
13 Then, he will have gotten the exact same amount of square
14 footage he seeks without having creating any undue impact to
15 his neighbors.

16 I guess what we just don't understand is this
17 reasonable, well-established zoning rule is already in place
18 that says all residents may have 10-foot bumpouts. It
19 exists, to our understanding, to protect neighbors from being
20 tunneled-in. Why, then, is the application being considered?

21 So, what should we do? Say the BZA approves this
22 application, and a developer buys the house on the other side
23 of us, and they put in the exact same application that you're
24 considering today. The BZA, I assume, would have to also
25 approve it. And now, we're sitting in a cavern of houses

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that have gone 15 feet out. So, our remedy, then, is to
2 either sell the property or to bump out to that same degree,
3 or to live in a cavern with walls 15-feet high -- 15-feet
4 deep and three stories tall.

5 So, three points and I'm finished.

6 No. 1, giving him an exception to the rule, for
7 no other reason than he wants a bigger house, effectively
8 eliminates the rule and the protections it provides.

9 No. 2, allowing a 15-foot bumpout on a 17.5-foot
10 lot creates harm to our property value and the enjoyment of
11 our home, which is exactly the scenario the rule is created
12 to prevent.

13 And finally, No. 3, the massive bumpouts at the
14 end of the street were largely built prior to the enactment
15 of the 10-foot rule, and in many ways, are the reason that
16 the rules were enacted, and therefore, should not be evidence
17 to grant an exception. And that's why I believe so many of
18 the neighbors are in opposition. There was great value and
19 wisdom in creating this 10-foot rule, and we are just asking
20 the BZA to uphold it.

21 Thank you very much for hearing our testimony.

22 VICE CHAIR JOHN: Thank you, Mr. Gay.

23 I just want to say for anyone who is listening
24 that the 10-foot rule allows additional large extensions --
25 (Telephonic interference.)

1 Someone's phone is on, or computer.

2 So, as I was saying, this is a Special Exception.
3 And so, if the application meets the criteria for relief, the
4 Board should ordinarily grant it. There is no hard-and-fast
5 rule that says a homeowner must maintain a 10-foot setback
6 for the addition.

7 So, with that, I will ask if the Board has any
8 questions for Mr. Gay.

9 (No audible response.)

10 Okay. Does the Applicant have any questions for
11 Mr. Gay?

12 (No audible response.)

13 Okay. I think I've got everybody.

14 Ms. Mehlert, is anybody signed up to testify?

15 MS. MEHLERT: There are four people signed up.

16 VICE CHAIR JOHN: I'm sorry, could you speak up
17 a little?

18 MS. MEHLERT: Yes. I said there were a few people
19 signed up to testify.

20 VICE CHAIR JOHN: Okay. Who is the first one in
21 support?

22 MS. MEHLERT: These are all in opposition.

23 Give me one second.

24 VICE CHAIR JOHN: Okay. Can you let the first one
25 in opposition in, please?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And how many people do we have to testify?

2 MS. MEHLERT: There are three.

3 VICE CHAIR JOHN: Okay. Thank you.

4 Please let the first witness in. Is that Mr.
5 Geiger? Geiger? What's the name of the witness, Ms.
6 Mehlert?

7 MS. MEHLERT: Yes, John Geiger should be able to
8 speak.

9 VICE CHAIR JOHN: Thank you.

10 Mr. Geiger, can you hear me?

11 (No audible response.)

12 Thank you.

13 Are you choosing not to use your video?

14 MR. GEIGER: Here we are.

15 VICE CHAIR JOHN: Okay. Thank you.

16 MR. GEIGER: Thank you.

17 VICE CHAIR JOHN: Could you state your name and
18 address for the record, please, and tell us why you're
19 opposed to the project? And you will have three minutes.

20 MR. GEIGER: Certainly. Thank you.

21 The name is John Geiger. I live at 1437 Swann
22 Street with my husband.

23 Even though I live a few doors away, I would be
24 affected by the 15-foot bumpout. When I sit on my back deck,
25 I'm starting to feel like I live in a narrow canyon. I also

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 contend with the bumpouts that are on T Street, which there
2 were quite a few.

3 Our lots are not huge, and I believe the 15-foot
4 bumpout will overpower the lots. I'm not against progress.
5 In fact, I was for the Masonic Temple condo build. The main
6 objection is that this sets a dangerous (telephonic
7 interference). Please do not approve the Special Exception.
8 Just enforce the rule you already have. It would change the
9 nature of our lovely Swann Street neighborhood.

10 Thank you.

11 VICE CHAIR JOHN: Thank you, Mr. Geiger. Thank
12 you.

13 Ms. Mehlert, would you let the next witness in,
14 please?

15 Thank you.

16 Is that Mr. Van Fleet?

17 MR. VAN FLEET: Can you hear me?

18 VICE CHAIR JOHN: Yes, we can now.

19 MR. VAN FLEET: Oh, okay. Great.

20 VICE CHAIR JOHN: Will you introduce yourself for
21 the record and give your name and address?

22 MR. VAN FLEET: My name is Brian Van Fleet. I live
23 at 1452 T Street. The proposed addition is almost directly
24 behind me. It's just off to the right a little bit by one
25 house.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 My husband and I are opposed to it. We feel it
2 would change the character of the neighborhood because,
3 again, the massing is so big.

4 And just to make a point to the gentleman who is,
5 the architect who was presenting, I do have a little
6 background in permitting from years ago. My understanding
7 is HPRB has only jurisdiction on the front of the buildings.
8 So, whether the rear addition conforms to historical doesn't
9 matter because the HPRB does not have that jurisdiction. So,
10 that's part of what I'd like to make clear, is that HPRB
11 doesn't really -- all they're looking at is the front of the
12 house. They are not looking at the back of the house.

13 And again, from my days in permitting, the idea,
14 my understanding of the reason the zonings were put in place
15 in the fifties to begin with were, basically, just this idea
16 that we need to keep light and air into the rear yards.

17 My house is one that -- our houses on T all have
18 the rear depth, which used to be -- and I assume still is --
19 you would have to get special variance to fill those in, just
20 because the original idea was light and air into the backs
21 of these buildings.

22 The extension on the back I think would just, is
23 so much that it would, from our perspective, not allow us to
24 enjoy the garden that we have worked hard on in our back yard
25 and be able to enjoy our back yard without having this

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 looming building just across from us.

2 I'm all for renovation and making your properties
3 better. It's what I do for a living. But this is just,
4 massing of this is just way too much for the neighborhood.

5 And I think if we allow these sorts, keep allowing
6 these sorts of projects to go through, it all but kills the
7 original intentions of all the zoning laws for the
8 neighborhood. And for that, again, I think they were put
9 there in place for a reason, and we should respect that
10 reason.

11 So, that's, basically, what I have to say. Thank
12 you.

13 VICE CHAIR JOHN: Thank you, Mr. Van Fleet.

14 Does the Board have any questions?

15 (No audible response.)

16 Thank you.

17 Does Mr. Gay have any questions?

18 (No audible response.)

19 Okay. Thank you.

20 So, we'll move on to the next witness, Ms.
21 Mehlert.

22 MS. MEHLERT: Jessica Lee is on the phone.

23 VICE CHAIR JOHN: Pardon?

24 MS. MEHLERT: Jessica Lee is on the phone now.

25 VICE CHAIR JOHN: Okay. Ms. Lee, can you hear me?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 (No audible response.)

2 Ms. Lee, can you hear me?

3 (No audible response.)

4 MS. LEE: Can you hear me now?

5 VICE CHAIR JOHN: Yes. Please state your name and
6 address for the record, please.

7 MS. LEE: Hi. My name is Jessica Lee. My husband
8 and I are the owners/occupants at 1453 Swann Street. We are
9 one of the seven houses that share the backyard space.

10 We are writing to oppose the application being
11 considered to expand the house two doors down from our own.
12 While we applaud neighbors investing in their homes, we find
13 the proposed four-story, 15-foot extension expansive in the
14 extreme. The plan would create a giant wall and a bad
15 precedent.

16 Our understanding is that the city has widely
17 accepted zoning regulations in place that limit bumpouts to
18 a depth of 10 feet past either neighbor's home. Why, then,
19 is the application moving ahead, given that it is 15 feet?

20 Thank you for taking our comments.

21 VICE CHAIR JOHN: Okay. Thank you for your
22 testimony.

23 Does the Board have any questions?

24 (No audible response.)

25 Does the Applicant have any questions?

1 MR. BEIBLE: No.

2 VICE CHAIR JOHN: Mr. Gay, do you have any
3 questions?

4 MR. GAY: No.

5 VICE CHAIR JOHN: Thank you.

6 I just want to confirm again --

7 MR. GAY: No, I don't.

8 VICE CHAIR JOHN: Thank you.

9 I want to confirm again that the ANC is not
10 present.

11 (No audible response.)

12 Okay. Is there anyone else wishing to testify?

13 (No audible response.)

14 So, I'll go you, Mr. Beible. Do you have any
15 closing comments?

16 MR. BEIBLE: I want to thank you all again for
17 taking your time to listen to us. Sorry I was long, but I
18 tried to be as prepared as possible, based on the zoning regs
19 and the criteria.

20 As you had mentioned, it's a good rule. It's not
21 that 10 feet is only appropriate in the zoning regs. It's
22 put in place five years ago to make sure there weren't any
23 inconsiderate mass of popbacks or popups, and to make sure
24 a rear addition is compatible and considerate to the
25 neighborhood, which our team has spent a lot of time working

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 hard to make sure that Jacob's is.

2 So, again, I thank you for your time.

3 VICE CHAIR JOHN: Okay. Thank you very much.

4 So, I'm going to say thank you to everyone for
5 coming down and testifying, and ask Ms. Mehlert to excuse the
6 witnesses.

7 (Pause.)

8 Okay. Thank you.

9 So, turning to the Board, are we -- I'm going to
10 go ahead and close the record. I think I said that.

11 So, are we ready to deliberate?

12 Thank you.

13 Commissioner May, I haven't called on you to start
14 all day. So, would you mind starting? Thank you.

15 ZONING COMMISSIONER MAY: So, clearly, the issue
16 here just has to do with the depth of the addition. The
17 penthouse, you know, I could quibble about, but that's not
18 really the key thing.

19 It is a Special Exception. So, there doesn't have
20 to be an exceptional circumstance. However, it is a Special
21 Exception; it's not a matter of right. It's something where
22 certain conditions have to be met. It requires that we give
23 thoughtful consideration to the potential impacts.

24 And this is not always the case, but in this
25 circumstance I am persuaded by the opposition. I do believe

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that there is a significant impact on the use and enjoyment
2 of the neighboring properties, and it would be inconsistent
3 with the character of the neighborhood and the character of
4 the homes, as viewed from the alley, which is one of the
5 considerations. I also think it would be a bad precedent for
6 the block to go all the way to 15 feet.

7 I think this sort of case, as was mentioned, is
8 exactly why the 10-foot rule exists. This is something that
9 the Zoning Commission put into place because there are quite
10 a number of homes in the District that have relatively deep
11 yards, and we were seeing very large expansions into those
12 backyard spaces.

13 And it was having a very significant and damaging
14 effect on those neighborhoods, particularly ones like this
15 where you have a number of homes that were built at the same
16 time to the same depth. It's different when there's a lot
17 of variability or there's spaces between the houses, but
18 rowhouse neighborhoods, in particular, where there will be,
19 you know, a row of 5, or 8, or 10, or 12 houses built in a
20 row, for somebody to go out more than 10 feet beyond the
21 abutting property was problematic, when the Zoning Commission
22 took action to put this into the regulations for that
23 purpose.

24 When you look at the solar study, the impact is
25 not huge compared with what's allowed by matter of right, but

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that's not really the only thing. That's not the only thing
2 that this is about. This is about being able to walk out of
3 your home and being able to enjoy the use of your yard
4 without having very long walls next to you. And again, the
5 Zoning Commission gave thought to this and decided that 10
6 feet is what is allowable as a matter of right, and beyond
7 that requires consideration of the circumstances.

8 There have been circumstances when somebody's
9 gone, you know, 11, 12 feet out because they have a very
10 constrained floor plan on the inside, and they really needed
11 that extra space. I don't think that's the case here. When
12 I look at the floor plans, it's pretty clear to me that the
13 Applicant could do a very good, very well-planned addition
14 and achieve most, if not all, of his objectives with an
15 addition of only 10 feet. I just see a plan that's not very
16 efficient and could be a little bit more compact in the way
17 it's laid out. And so, it's a solvable problem. They can
18 avoid needing this relief.

19 So, I am opposed to it and will not vote in favor
20 of granting relief for the 15-foot rear addition.

21 VICE CHAIR JOHN: Mr. Smith?

22 MEMBER SMITH: I agree with Mr. May that this is
23 a Special Exception; it's not a variance. You know, I've
24 heard from many of the members of the community that came
25 down to testify that they believe that it would not only set

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a major precedent, but also, we should hold fast to the 10-
2 foot matter-of-right rule. And going out to 15 would be an
3 extraordinary situation.

4 This is a Special Exception. So, because it's a
5 Special Exception, this particular case I believe has to
6 demonstrate the criteria met and that it doesn't have a major
7 substantial evidence impact on adjacent properties.

8 In my opinion, I do believe that this application
9 has met the criteria for us to be able to grant a Special
10 Exception. It is an additional 5 feet in the yard of the
11 maximum that can be done by right. But, based on the
12 information within the system or that's before us here, I
13 believe that the shadowing impacts are fairly minimal, and
14 major shadow impacts, it looks like from the shadow study,
15 do not come from this particular shadow that may occur if
16 this proposal is built. It comes from other buildings along
17 the block that may be higher or may stick out in front. So,
18 I do believe that what is proposed is relatively within the
19 context of what we see along that block, along R Street and
20 T street, yes, I believe is the street, isn't it? Yes.

21 So, I do believe that the Applicant has met the
22 criteria for us to be able to grant Special Exception. I do
23 not believe that it would unduly modify the light and air of
24 the neighboring properties. So, I am in (telephonic
25 interference) with what the (telephonic interference).

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR JOHN: Thank you.

2 Mr. Blake, I'm going to go to you next, if you
3 don't mind.

4 MEMBER BLAKE: Sure. I am in the same camp as Mr.
5 Smith. I totally believe, I believe that, in going through
6 the specific criteria for relief, this Applicant has met that
7 test with each of the criteria.

8 For example, the shadow study does, in fact,
9 support the fact that there is not undue impact. There is
10 impact, certainly, on the adjacent neighbor and the use of
11 the yard, but it doesn't necessarily rise to the standard of
12 undue beyond the matter-of-right option, or the matter-of-
13 right abatement, outlook, outturn.

14 The other thing that I look at, when I think about
15 this in terms of privacy, the fact that there are no windows
16 on the side of the building does, in fact, mean that there's
17 really not an issue with regard to privacy. In fact, no
18 additional windows. In fact, it kind of provides more
19 privacy in those yards, but I do understand the shading
20 effect is somewhat of an issue.

21 And I do, again, give credit to the Office of
22 Planning and HPRB in their assessment of the impact on the
23 character of the neighborhood. And we've seen many instances
24 where this type of project is happening in my short tenure
25 were we've done this. And looking at the bulk of the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 property, I consider the lot area and the fact that the lot
2 occupancy still remains below 60 percent, which is the
3 maximum lot occupancy. So, it is a substandard lot at that
4 effect, only 1575 square feet. So, yes, it is a small lot,
5 but, you know, it's within the context of the allowable
6 limits, which are really moderating and controlling that bulk
7 issue.

8 So, again, I would be in a position to support the
9 request for relief.

10 VICE CHAIR JOHN: Thank you, Mr. Blake.

11 And so, I'm going to go ahead and support the
12 application, for some of the reasons that Mr. Blake and Mr.
13 Smith have noted. But I always look at the rear yard
14 remaining after the addition is built. And in this case,
15 there will still be 29 feet of rear yard left.

16 The lot occupancy is below 60 percent. So, it's
17 not even within the Special Exception range. It's below
18 what's allowed as a matter of right. It is a small lot, 1575
19 square feet. The lot width is 17 feet, and the height of the
20 proposed addition -- I believe I had it somewhere, but it is
21 below what would be allowed as a matter of right. Let me be
22 sure about that. Yes, so it's 29 feet and it will continue
23 to be 29 feet with the penthouse, which is approved.

24 So, I understand what Commissioner May said and
25 I have always struggled with the 10-foot addition. But, with

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 small houses like this and the need for family-sized
2 dwellings, I can see the need for a 15-foot expansion.

3 So, I'm going to support the application and I'm
4 going to give great weight to the Office of Planning's
5 report, as well as -- let me see. I don't believe the ANC
6 -- yes, so the ANC is opposed to the application for the 15-
7 foot setback, but supports the penthouse setback. And the
8 ANC found that the proposed rear addition is inconsistent
9 with the character and context of neighboring residential
10 structures along this segment of Swann Street and suggested
11 the Applicant consider alternatives for reducing the length
12 of the proposed rear addition to the by-right limit.

13 So, as we stated before, the 10-foot by-right
14 extension is not mandatory and it is subject to approval by
15 the BZA. And so, I'm going to give great weight to the
16 issues raised by the ANC, but I will give great weight to the
17 Office of Planning's analysis and recommendations. And for
18 reasons I've stated before, I do not agree with the ANC's
19 analysis. So, based on all of that, I'm inclined to go ahead
20 and support the application.

21 And I'm going to make a motion to approve
22 Application No. 20585, as captioned and read by the
23 Secretary, and ask for a second, Mr. Smith.

24 MEMBER SMITH: Second.

25 VICE CHAIR JOHN: Thank you.

1 Oh, Commissioner May?

2 ZONING COMMISSIONER MAY: Yes. Once it's approved
3 and seconded, there is an opportunity for further discussion.

4 I just want to make the point that the fact that
5 the solar study doesn't demonstrate a significant impact
6 compared to what would be a by-right is not the only
7 standard. It is one, and it is one that's measurable, as
8 opposed to something like the undue impact on the character
9 of the neighborhood.

10 And I think it's the character of the neighborhood
11 issue that my fellow Board members are not giving sufficient
12 consideration to. I know I'm not going to win this vote, but
13 I do want you to think about this for the future.

14 Again, this is exactly the reason why the 10-foot
15 rule was put into place. It is to make sure that we are
16 honoring the character of the neighborhood as a whole, and
17 not just looking out for an individual homeowner's desires
18 for their property. It is a relatively small lot, but, as
19 rowhouses go, it's not bad, and the house that exists already
20 is substantial. They're still only going to have two
21 bedrooms on the second floor.

22 I don't think it is in the best interest of the
23 neighborhood as a whole to be supporting this. I think the
24 ANC was correct in their assessment of not supporting the
25 extra 5 feet.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And the way we are debating this today makes me
2 wonder whether there's ever a circumstance where a bumpout
3 like this is something that the Board would not support. I
4 mean, it really does raise the question for me. I mean, when
5 does it become too much? Does it become too much at 20 feet?
6 I mean, we drew the line at 10 feet because we thought that
7 was what was allowable, and then, anything beyond that
8 deserves this extra consideration.

9 It will have a very direct impact on the party in
10 opposition. I think it will have an impact on the
11 neighborhood as a whole. And I would love it if any of my
12 fellow Board members would reconsider their position, but I'm
13 not expecting that. And I'm really only saying this just
14 because I want everybody to understand why I think it is
15 important and why I think you should also, particularly going
16 into the future.

17 VICE CHAIR JOHN: So, Commissioner May, I don't
18 disagree with most of what you've said. I've struggled with
19 this particular provision since I've been on the Board. And
20 I believe that, if the Commission wants to limit the
21 addition, you know, the matter of right, it should be 10
22 feet. It should be mandatory. So, beyond 10 feet, it's a
23 variance. So, basically, we're limiting the property rights
24 of residents.

25 I don't know how to draw the limit between 10 feet

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 and 15 feet. It's an extra 5 feet. I shouldn't say that I
2 don't know how to draw it. It is difficult --

3 ZONING COMMISSIONER MAY: It is difficult.

4 VICE CHAIR JOHN: -- and at a certain point, it
5 is subjective.

6 And we see these additions all over the city that
7 come before the Board and we struggle with it every single
8 week, where there are properties that have not been expanded,
9 and the first homeowner to come along to say, "I need more
10 room to raise my family," that person has a difficult time.

11 So, there's no regulation that says, if the block
12 has not been changed, you must stay to 10 feet, stay within
13 10 feet. So, I would like to agree with you, Commissioner
14 May, because I respect all of your time on the Commission,
15 but this is a really hard decision.

16 ZONING COMMISSIONER MAY: I agree, yes. And, I
17 mean, it does put a point on the fact that we probably need
18 to do some tweaking of the regulations to provide the Board
19 with better guidance in circumstances like this. We thought
20 we had done that by citing the specific criteria and naming
21 those things.

22 And, you know, I personally have not had the same
23 struggle in reviewing cases like this. Like I said, there
24 have been cases where I've been in favor of it, but they
25 usually have been only nominally larger than 10 feet -- 11

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 feet, 12 feet, something like that. And they're ample yard
2 space.

3 But when we get into something that's this large
4 and it's so different from everything else around it in the
5 immediate vicinity -- the ones down the block are meaningless
6 from my perspective. If every other one was in and out, it
7 might be a different thing as well. But this is an intact
8 -- well, seven houses that don't have those. That's where,
9 to me, it's pretty clear-cut.

10 So, anyway, I'll stop going on and on about this,
11 but I do think that I'm sticking with my position, and I
12 think I'll take the matter back to the Zoning Commission and
13 the Office of Planning to see whether we need to provide more
14 guidance.

15 VICE CHAIR JOHN: I think that would be great,
16 speaking for myself. I don't know if the other Board members
17 have any comments.

18 (No audible response.)

19 Hearing none, now where was I? I believe I had
20 made a motion and I was asking for a second.

21 ZONING COMMISSIONER MAY: And I think it was
22 seconded.

23 VICE CHAIR JOHN: Oh, it was seconded? Okay.

24 So, to be continued, and I guess we'll hear from
25 the Commission. And I look forward to seeing what the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Commission comes up with because I know I can use some help
2 and some refinement.

3 So, Mr. Moy, could you please call the roll? Mr.
4 Moy?

5 MR. MOY: I'm here.

6 So, when I call each of your names, if you would
7 please respond with a yes, no, or abstain. This is to the
8 motion made by Vice Chair John to approve the application for
9 the relief requested. The motion was seconded by Mr. Smith.

10 Mr. Blake?

11 MEMBER BLAKE: Yes.

12 MR. MOY: Mr. Smith?

13 MEMBER SMITH: Yes.

14 MR. MOY: Vice Chair John?

15 VICE CHAIR JOHN: Yes.

16 MR. MOY: Zoning Commissioner Peter May?

17 ZONING COMMISSIONER MAY: No.

18 MR. MOY: And we have a Board member not present
19 and not participating.

20 I would record, the staff would record the vote
21 as 3-to-1-to-1. And this is on the motion made by Vice Chair
22 John to approve, seconded the motion by Mr. Smith. Also in
23 support of the motion to approve is Mr. Blake, and, of
24 course, Mr. Smith, and Vice Chair John. Opposed to the
25 motion to approve is Zoning Commissioner Peter May. So, the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 motion carries on a vote of 3-to-1-to-1.

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

3 So, Mr. Moy, can you recall Application No. 20564,
4 just to get a status update? And then, I want to find out
5 from the Board if the Board would like to take a quick break
6 after we introduce the parties.

7 Okay. Mr. Moy?

8 I didn't hear any or see any hands raised.

9 Mr. Moy, can you please call 20564?

10 MR. MOY: Yes. All right.

11 So, the Board is bringing back to the table
12 Application No. 20564 of Jemal's Prospect's, LLC. And, well,
13 leave that, and I'll turn it over to you, Madam Vice Chair.

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

15 Hello, Ms. Moldenhauer. Can you introduce
16 yourself for the record again, please?

17 MS. MOLDENHAUER: Moldenhauer from the Law Firm
18 of Cozen O'Connor, here on behalf of the Applicant.

19 VICE CHAIR JOHN: Okay. Mr. Persina, can you hear
20 me?

21 MR. PERSINA: Yes, I can.

22 VICE CHAIR JOHN: Okay. Could you introduce
23 yourself again for the record, please?

24 MR. PERSINA: Yes. May name is Ben, Benjamin
25 Persina, resident at 1243 34th Street, Northwest.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR JOHN: Thank you.

2 And, Mr. Murphy, are you still with us?

3 MR. MURPHY: Mr. Murphy is here. This is Rick
4 Murphy. I reside at 3136 P Street, Northwest, and I am the
5 Chair of ANC 2E.

6 VICE CHAIR JOHN: Thank you.

7 I believe that's everyone.

8 MS. ANDRIS: No.

9 VICE CHAIR JOHN: Oh, yes. I'm sorry, Ms. Andris.
10 Please introduce yourself again for the record.

11 MS. ANDRIS: I'm Vanessa Andris. I live at 3341
12 Prospect Street, next to the property being discussed.

13 VICE CHAIR JOHN: Thank you.

14 So, Ms. Moldenhauer, the Board asked you to advise
15 us if you wanted to go ahead with the hearing today or
16 postpone until April the 13th. Mr. Persina was in
17 opposition, as was Ms. Andris, and I believe Mr. Murphy.

18 So, where are we, Ms. Moldenhauer?

19 MS. MOLDENHAUER: Yes. Waiting until April 13th
20 is just not desired by the Applicant. And so, we would like
21 to move forward today.

22 I'd ask that Jennifer Speirs be admitted into the
23 hearing panel room. She's in the Webex or she's logged into
24 Webex, as a representative of Greenheart.

25 VICE CHAIR JOHN: Okay. Can you let Ms. Speirs

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in, please, Ms. Mehlert?

2 (Pause.)

3 So, Ms. Moldenhauer, while we're waiting for that
4 to happen, I'm going to advise the Board that I would like
5 to take a quick break, and maybe about five minutes or so.

6 And I'd like to ask Ms. Andris and Mr. Persina if
7 you've decided among yourselves how you would like to present
8 your cases or if you're going separately or together.

9 MS. ANDRIS: So, I had let Mr. Reed know that I
10 was giving my time to Mr. Persina, except I need two minutes.
11 All the other time I cede to Mr. Persina.

12 VICE CHAIR JOHN: Okay.

13 MS. ANDRIS: I just need two minutes.

14 VICE CHAIR JOHN: Okay. Thank you.

15 So, we will hear from you during Mr. Persina's
16 presentation.

17 MS. ANDRIS: At the end of his presentation.

18 VICE CHAIR JOHN: Yes. Okay. Thank you.

19 All right. So, let's take a five-minute, a quick,
20 five-minute coffee break, and we'll reconvene at 2:55.

21 Thank you.

22 (Whereupon, the above-entitled matter went off the
23 record at 2:51 p.m. and resumed at 3:01 p.m.)

24 VICE CHAIR JOHN: Go ahead, Mr. Moy. Thank you,
25 can you call us back?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MOY: The BZA is back in its public hearing
2 session after a very, very quick recess, and the time is at
3 or about 3:01 p.m.

4 VICE CHAIR JOHN: Thank you, Mr. Moy. Can you
5 recall Case No. 20564?

6 MR. MOY: Yes, and again, the Board is -- has
7 already convened Case Application No. 20564 of Jemal's
8 Prospect's, LLC.

9 VICE CHAIR JOHN: Thank you. Okay, Ms.
10 Moldenhauer, please introduce yourself again and tell us how
11 your application meets the criteria for relief. And I'm
12 going to put 15 minutes on the virtual clock, which isn't
13 working, and see how --

14 MS. MOLDENHAUER: Okay. Sorry, can I just see if
15 someone from the OZ staff can find if Jennifer Speirs is
16 logging in and make sure that she then can join and introduce
17 herself.

18 VICE CHAIR JOHN: Thank you. Ms. Mehlert, I don't
19 see her.

20 MS. MEHLERT: One second.

21 VICE CHAIR JOHN: Okay, thank you.

22 MS. MOLDENHAUER: She just texted saying she is
23 on. Jen, as Jen. See that.

24 VICE CHAIR JOHN: Okay, I see a Jen Speirs. Ms.
25 Speirs, can you turn your video on? Can you hear me, Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Speirs?

2 MS. SPEIRS: Hi, yes, I can. Sorry, I'm trying
3 to start my video.

4 VICE CHAIR JOHN: Okay.

5 MS. SPEIRS: For some reason it's asking me to
6 leave real quick and come back on to do the video.

7 VICE CHAIR JOHN: Okay.

8 MS. SPEIRS: Okay, be right back. I'm back, sorry
9 about that.

10 VICE CHAIR JOHN: Okay. So are you ready to get
11 started?

12 MS. SPEIRS: Yes.

13 MS. MOLDENHAUER: Yes, we are. Thank you so much
14 for the Board's indulgence for those few moments. I think
15 if Office of Zoning can bring up the PowerPoint presentation,
16 updated one that we filed, that'd be great. Next slide.

17 So the property is located at a corner parcel in
18 the R20 Zone you can see here. Next slide. As you can see,
19 the property is unique. In addition to being located in the
20 Historic District, it is one of the only one-story properties
21 in its immediate area.

22 So that also contributes to its unique character,
23 as well as having, as you can see in this picture here,
24 commercial bay windows that wrap around the entire portion
25 of the property. Next slide.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Little bit of additional background. The property
2 has been continuously used for a commercial use dating to
3 1923, that's over 98 years of commercial use at this
4 location. The current use, as you can see, this is one of
5 the images we added at the bottom of the slide here to kind
6 of help understand the property.

7 The right-hand portion along 34th St., that
8 parallels 34th Street, is used as a yoga studio. The portion
9 that we are talking about today is the portion that's on the
10 left-hand image of this slide, which is the corner portion
11 that is both on Prospect and 34th St. Uniquely there are
12 three doors that access the property right now.

13 And this property was subdivided into a dry
14 cleaner. That dry cleaner ceased operation two years ago,
15 but prior to that was having challenges in communicating that
16 to the property owner.

17 And then the furniture upholstery store which you
18 can see operated in the smaller portion that was 594 square
19 feet ceased operation over five years ago. And that space
20 has been unoccupied since. Next slide.

21 The proposal here, as you can see, is to take this
22 corner portion, which is 1,150 square feet, and proposed to
23 use it for a juice and smoothie shop in the location of both
24 the former dry cleaner and upholsterer store, which would
25 then be abutting and next to the remaining yoga studio. The

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 proposal does not propose to change any exterior elements of
2 the property. Next slide.

3 We do note that the application does have support
4 from the Office of Planning in a report, as well as no
5 objection from the Department of Transportation. The
6 Department of Transportation at Exhibit 32 does identify that
7 there would be only minor impacts that they believe that
8 would not rise to the level of not granting the support, and
9 that they indicate no objection.

10 The ANC is in opposition and there are two parties
11 in opposition. Next slide.

12 At this point I'll turn it over to Ms. Speirs to
13 walk through the operation of the proposed use.

14 MS. SPEIRS: Thank you, and thank you for giving
15 me a moment to get my camera figured out.

16 So we've been operating since 2013 in several
17 smaller Virginia communities. We're looking to expand in the
18 District, including a Union Market location as well as the
19 Georgetown one proposed. We do fresh and all natural juices,
20 smoothies, bowls, and salads.

21 Our primary revenue is a unique model where we
22 actually have a subscription service. Our main objective
23 with our locations are for people to come in and be able to
24 try out our juices and to get on a subscription-based model
25 where we deliver directly to their homes.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And those are, all those deliveries come from our
2 Sterling, VA, warehouse. So once people sign up for a
3 subscription, they no longer would be coming to our store as
4 often, and they would be receiving the deliveries directly
5 to their home. Next slide.

6 This is just a picture of what our proposed
7 interior would be. And if Meredith is able to annotate, I
8 was just going to show where the trash was going to be kept
9 inside. So the back of the house space, are you able to kind
10 of like draw where it's going to be? I'm not sure if it's
11 showing -- oh, there we go.

12 Yeah, so as Meredith drew, that is where we are
13 planning on keeping our trash. We will be keeping it indoors
14 in an area that is not able to be seen from the outside. And
15 also so that it's not outside, and yeah, so that's where we
16 are proposing to keep the trash. Next slide.

17 Sorry, for some reason it's not going to the next
18 slide.

19 MS. MEHLERT: Trying to go to the next slide with
20 the annotation not one second.

21 MS. SPEIRS: So as seen in these two photos, there
22 are two of our other shop locations. The top left one is in
23 Aldie, Virginia, and the one on the right is in Vienna.

24 So some background on our operations. We do no
25 heavy cooking or frying. All of our ingredients are prepared

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 offsite in our Sterling facility and then assembled in the
2 back-of-house area. We do use minor equipment such as
3 blenders, waffle irons, induction burner, and toaster.

4 The delivery of our ingredients will happen once
5 per day in a sprinter van. We don't use any large delivery
6 truck or food services. Everything comes directly from our
7 Sterling, VA, warehouse in sprinter vans. And those
8 deliveries would happen outside of business hours, so before
9 9:00 a.m. or after 7:00 p.m.

10 We are a neighborhood-serving business. Over 90%
11 -- 5% of our customers are expected to be walk-up in our
12 Georgetown location. We have limited seating inside, so we
13 also believe that most of our customers would be taking their
14 food away to their homes or to their jobs.

15 And based on our other Greenheart locations, we
16 believe that less than five percent of our business would be
17 from delivery apps.

18 MS. MOLDENHAUER: Thank you, Jen.

19 So the application here is requesting a special
20 exception for a change in a nonconforming use from the retail
21 use when eating and drinking used in a corner store location.

22 We are also asking for a variance from two of the
23 22 condition that would permit a corner store by right. One
24 of those is the 750-foot requirement from an MU zone, and the
25 other is the grease trap requirement. Next slide.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The change of a nonconforming use is generally
2 permitted at special exception. We believe that under the
3 special exceptions standard, we satisfy the requirements that
4 there would be no adverse impact to neighboring properties.

5 This would be a limited change to the existing
6 condition in the neighborhood in regard to the fact that
7 there obviously, you know, was a, you know, commercial use
8 here for 98 years. This neighborhood is obviously used to
9 having a commercial establishment where people come to and
10 from this property, as it obviously has been for many, many
11 years.

12 We do not believe the proposed use would increase
13 that flow of traffic for prior uses. Furthermore, there is
14 a low intensity of cooking here. As indicated, this is going
15 to be an environment in which it'll be blending and, you
16 know, creating smoothies.

17 There is a large majority of the individuals that
18 may come to the store, will come into the store will be walk-
19 up customers. That would decrease any amount of traffic.

20 In addition to that, there is two-hour nonzone
21 parking that is parallel to the site that would -- obviously
22 does not have a lot of cars parked there long-term because
23 it's only two-hour nonzone parking.

24 Additionally, there's a primary entrance and exits
25 on the corner, not using the proper -- not using the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 entrances that are closer to the residential portions of the
2 property.

3 And there's a proffered condition regarding trash,
4 following initial concerns we heard from the ANC. We did
5 pull those conditions from other ANC cases and have proffered
6 those, and we'll go through those at the end.

7 Finally, we believe that the special exception is
8 met because it would be in harmony with the purpose and
9 intent of the zone plan, permitting this 98-year commercial
10 property to continue. And to be reused in its commercial
11 historic structure would be in line with the -- harmony with
12 the zone planned intent. Next slide.

13 In addition to that, there are multiple sub-
14 conditions. We meet eight of the special specific
15 subconditions. The external impact of the proposed use we
16 deem to be no greater than that of the existing use.

17 As identified earlier, the prior use of both a
18 upholster store and of dry cleaner we believe have a similar
19 amount of in-and-out, you know, customer requirements, and
20 this would have no greater use than that.

21 There's a low intensity in regards to no cooking
22 on site. And the next requirement is that the proposed use
23 shall not adversely affect the present character or the
24 future development of the surrounding area.

25 We do not believe that this rises to the level of

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 adverse effect, again, you know, given the fact that it is
2 located in Georgetown. It's located near the Georgetown
3 University, and that this has been a continued commercial use
4 for almost 100 years. We believe we satisfy this condition.

5 The proposed use shall not create any deleterious
6 external effects, including, not limited to, noise, traffic,
7 parking, loading considerations, illuminations, vibrations,
8 odors, or design in this sitting effects.

9 We believe that, given that we've agreed to one
10 delivery of agreement is not going to create any substantial
11 impact or any adverse deleterious impacts on traffic. The
12 minimum business obviously based on our historical
13 understanding of the business, would not change the existing
14 traffic conditions of the property.

15 That the blending of smoothies and providing free
16 packaged foods would not create any exterior odors or
17 vibrations that would have any impact on neighboring
18 properties. And that trash has been addressed by substantial
19 amounts of conditions that have been proffered into the
20 record. Next slide.

21 Corner stores are permitted for eating and
22 drinking use, subject to Subtitle U254, and have 22
23 subconditions to permit them by right. We are asking for
24 variances from two of those 22 conditions. One, which is the
25 proximity to the MU zone, and the other is for permission for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 a grease trap. Next slide.

2 We believe we satisfy the variance requirement.
3 The property is an exceptional and unique property, as
4 indicated. It's a unique property. It was built as a
5 commercial site over a 100 -- and used for a commercial use
6 for over 100 years.

7 It is a corner site that has bay windows and it
8 is only a single story, which would create a challenge for
9 converting it to any other use. And the configuration of the
10 site, as indicated with the bay windows in its corner
11 location, contribute to its exceptional condition.

12 It would then create a practical difficulty, you
13 know, for complying with the MU zone requirements or
14 retrofitting it for any other non-residential use.

15 In addition to that, we believe there's no
16 substantial detriment, given the fact that it is a commercial
17 property and that this would obviously has been used for such
18 a commercial use for so long that there would be no adverse
19 impacts. Next slide.

20 The variance from the grease trap provision we
21 believe is -- we're not presenting an argument, as opposition
22 indicated, in regard to the use. We do believe, however,
23 that this is an issue of de minimis impact, and the question
24 of -- and Jen did not describe this, but we can have her
25 provide more explanation.

1 But the need for the grease trap is the nuts and
2 oils will not be cooked with, but rather they will be
3 blended. And that as they have to scrape out the blender at
4 the end of the day, any small potential minuscule amounts of
5 oils that are left inside the blender would need to then go
6 into the grease trap so they do not go into the DC Water
7 system.

8 We believe that this small degree of relief is a
9 de minimis amount of relief, and thus satisfies the variance
10 requirement. We are not asking to cook with or fry any type
11 of oils.

12 Again, it is just simply a situation of the
13 blender and blending the smoothies with these butters and
14 oils that create the need for the relief. We believe based
15 that, we satisfy the variance test. Next slide.

16 In initially talking with the ANC, we were
17 encouraged to look at liquor license applications that had
18 gone through the Georgetown ANC and pull together conditions
19 that the ANC had seen in other ABRA cases.

20 These are conditions that are part of a lot of
21 other liquor license applications, even though we're not
22 selling any liquor licenses. But to address concerns
23 regarding both trash, noise of trash collection and rodents.

24 And so you could see here we have proffered that
25 trash will be picked up one time per day at a minimum of six

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 days per week. And that would obviously reduce any concern
2 about rodents or trash.

3 As we indicated, the trash will be located inside.
4 So the Applicant will create a trash enclosure so that the
5 trash cans would not be visible to adjoining properties. The
6 trash would be located inside and then taken out when it's
7 picked up, and then put back inside obviously the empty bins.

8 During the use, trash will be stored in a rodent-
9 protected design trash cans inside the building. The
10 Applicant will work to coordinate a trash pickup in a manner
11 so that the trash waiting for this pickup is outside Prospect
12 St., and would obviously be picked up very quickly.

13 The Applicant's employees shall not dispose of
14 bottles or glass in a manner that would create noise between
15 the hours of 8:00 p.m. and 8:00 a.m. Trash will not be
16 scheduled to be picked up between the hours of 10:00 p.m. and
17 7:00 a.m. Public space in front of the property will be kept
18 tidy at all times.

19 And that the Applicant will maintain a
20 professional licensed cleaner to clean the property to ensure
21 obviously reduction in concerns about rodents. And that they
22 will also agree to have a professional, licensed rat
23 abatement pest control program.

24 We believe that with these conditions, that these
25 address and mitigate any possible concerns raised by the

1 opposition group. Next slide.

2 Office of Planning in their report also asked us
3 to agree to a condition, the following condition. And given
4 that we have no intent nor are we proposing to fry or deep
5 fry any foods, which I think really goes to the intent of the
6 regulation for the grease trap, we are very happy to agree
7 to that condition. And we are available for questions.

8 VICE CHAIR JOHN: Thank you, Ms. Moldenhauer. Ms.
9 Mehlert, could you take the slide down, please.

10 Mr. Persina, you have a question?

11 MR. PERSINA: I have a few questions, and if --

12 VICE CHAIR JOHN: So we're going to go the Board
13 now. I saw your hand up, so I thought you had a question of
14 procedure.

15 MR. PERSINA: Not a question of procedure,
16 questions for Ms. Moldenhauer.

17 VICE CHAIR JOHN: So we'll get to you, we'll get
18 to you.

19 MR. PERSINA: Okay.

20 VICE CHAIR JOHN: Okay, thank you. So does the
21 Board have any questions? Commissioner May?

22 ZONING COMMISSIONER MAY: Yeah, first question,
23 there are three doors in. I can from the plan that one is
24 just going to be sort of a service door. But there's a
25 corner door and then there's one that's next to the house

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 next door on Prospect.

2 Which are you -- is the plan to use both of those
3 doors for your customers, or just the corner door, or what?

4 MS. SPEIRS: Both doors will be available to be
5 used, but we expect people to be using the Prospect Street
6 door, the one on the left, the most.

7 ZONING COMMISSIONER MAY: The corner -- the corner
8 door?

9 MS. SPEIRS: The one that's -- yes, the one that's
10 not near the house.

11 ZONING COMMISSIONER MAY: Yeah. Okay. And Ms.
12 Moldenhauer, there were -- there was -- there were exhibits
13 in the record that say things about the operation of the rest
14 of this commercial property, the yoga studio, and I'm
15 wondering if you can answer some questions about that.

16 Because it does raise some questions about the
17 property owners's ability to manage this new venture properly
18 as of -- as the landlord. So what is the -- what's the deal
19 with the yoga studio trash that's supposedly permanently
20 outside? Is that correct?

21 MS. MOLDENHAUER: So I have seen the trash
22 outside. I could not enter it into the record because it
23 was after the 24 hours, but I did receive an email this
24 morning from Matthew Jemal, who emailed with the Downward Dog
25 Yoga Studio, who confirm that they will be moving their trash

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 inside.

2 And I can supplement the record with that, and
3 that was confirmed this morning via email, that the Downward
4 Dog Yoga Studio does acknowledge that they need to move it
5 inside, and that they will do so.

6 ZONING COMMISSIONER MAY: Okay. It's unfortunate
7 that they did not -- that Douglas Company did not take care
8 of that well in advance of this hearing, because it's
9 unfortunate things like that become an issue.

10 Can you tell us why the property has been vacant
11 for two years, and whether, you know, are there other options
12 for a less impactful use that have been explored or have
13 been, I don't know what you can do to explore them. But I
14 mean, why has it been vacant for so long?

15 MS. MOLDENHAUER: So it's I think if you're
16 question's going to has this been discontinued, the intent
17 has always been to maintain this as a commercial use.

18 ZONING COMMISSIONER MAY: No, that's not the
19 intent. My question is really why has it been -- why has it
20 been vacant for two years. Let's -- is it just market
21 conditions? I mean, are there -- what's the deal?

22 MS. MOLDENHAUER: So the -- you have two different
23 issues. Or you have the upholster store has been vacant for
24 more than two years, and that is unoccupied. And that had
25 to do with the inability for the Downward Dog to expand for

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 market conditions, and I think, you know, challenges there.

2 And then the other portion obviously was having
3 challenges financially with the dry cleaner, they were then,
4 you know, they discontinued that use.

5 Douglas was in the process of trying to find a new
6 tenant. They eventually did find Greeheart, Greenheart has
7 been under the lease and they have been moving forward with
8 this.

9 They did not understand, I think, the zoning or
10 the DC process, and so they have been having a lease on this
11 property for a period of time but were slower to process
12 their application.

13 ZONING COMMISSIONER MAY: Okay, and there's -- it
14 was in the record in somebody else's submission that Douglas
15 basically got rid of the dry cleaners so that they could sign
16 this lease with Greenheart, is that correct?

17 MS. MOLDENHAUER: That's not correct. The dry
18 cleaner had been having business challenges and had
19 communicated to the property owner that they were not able
20 to continue their lease.

21 ZONING COMMISSIONER MAY: Okay. And has Douglas
22 looked at other options for uses that were less impactful?

23 MS. MOLDENHAUER: They were obviously open to any
24 potential tenant. And obviously this was the tenant that
25 they were able to secure, and they believe that this is going

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to be, you know, a very low impact to the community.

2 ZONING COMMISSIONER MAY: Okay, thank you. That's
3 it for my question.

4 VICE CHAIR JOHN: Are there any other questions?
5 Ms. -- oh, go ahead, let's see -- one minute. Okay so before
6 I -- before I get to you, Ms. Andris, I'm going to go to the
7 Office of Planning.

8 ZONING COMMISSIONER MAY: I thought Mr. Persina
9 would get to answer his questions, then Ms. Andris.

10 VICE CHAIR JOHN: Okay, go ahead, Mr. Persina
11 first and Ms. Andris.

12 MR. PERSINA: Yes, thank you. I guess several
13 questions arise. I guess on slide 4, I'm not sure if it's
14 possible to pull that back up. This is just a factual
15 question.

16 ZONING COMMISSIONER MAY: We call all look at it.

17 MR. PERSINA: The slide shows that the dry cleaner
18 occupies 712 square feet, and the furniture upholsterer is
19 594 square feet, and that totals 1306 square. And then the
20 very next slide shows the proposed property would be -- would
21 occupy 1150 square feet.

22 And it shows the exact same footprint. One
23 obviously complies with the zoning requirements, one does
24 not. I'm not sure which is factually correct.

25 I would just note that the 712 and 594 are also

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 consistent with the application for the yoga studio back in
2 2013, so this -- those numbers have been entered into the
3 record twice for the BZA.

4 MS. MOLDENHAUER: First of all, I believe it would
5 have to do with the bay window --

6 MR. PERSINA: I think you're on mute.

7 MS. MOLDENHAUER: I believe it would have to do
8 with the bay window --

9 MR. PERSINA: Sorry, I think you're on mute.

10 MS. MOLDENHAUER: I think I unmuted myself. Is
11 it unmuted now, can everyone hear me? Can you hear me? Now
12 you can hear me, okay. I'm getting thumbs up, sorry, I
13 apologize.

14 I think the difference is, and I'll have to
15 confirm and just take a moment afterwards to look --

16 MR. PERSINA: Can you hear me?

17 MS. MOLDENHAUER: The difference is between the
18 bay windows, and so the zoning -- I'm seeing hands up, can
19 you not hear me now?

20 MR. PERSINA: I can hear you now.

21 MS. MOLDENHAUER: Okay, the difference has to do
22 with the bay windows, which are a projection beyond the
23 property line. And so one calculation in the zoning
24 regulations only addressed square footage within the property
25 line.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 And so if you wanted to go to slide 2, which is
2 the zoning map, you can see that the property line is at the
3 face of the bay windows. And that the bay windows along
4 Prospect project into public space.

5 MR. PERSINA: Okay. On slide 5, you show that the
6 trash, there will be a trash enclosure within the property.
7 What can be done about trash that will be taken away by
8 customers when, you know, they buy juices and outside eat
9 bowls that they want to consume immediately? What can be
10 done about that issue?

11 I know you say that the trash enclosure will
12 resolve any trash issues, but that really only is trash
13 generated during the preparation of the food.

14 MS. SPEIRS: Is that question in regards to
15 someone eating it on site at our location?

16 MR. PERSINA: Not on site. I understand that
17 there's limited seating and that you expect most of your
18 customers to take it away.

19 MS. SPEIRS: Well, we would assume that they would
20 eat it at either their home or at their job, and that they
21 would use the trash that is located within those locations.

22 MR. PERSINA: Okay.

23 MS. SPEIRS: We also, for people who would want
24 to eat it inside our location, we would have what we have at
25 our other locations. We have a compost trash and recycling

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 bin inside of our store as well.

2 MR. PERSINA: Okay, and is there any reason to
3 expect that they would necessarily take that to their home
4 and consume it at work and not necessarily consume it
5 elsewhere outside our properties?

6 MS. SPEIRS: I mean, I would say that that is
7 usually what we see is that people take them home or to their
8 jobs. We do have a lot of traffic during the lunch hours
9 that people would walk in, grab something for -- to eat at
10 their office.

11 MR. PERSINA: And that's based on your other
12 locations, which are in suburban Virginia which have ample
13 parking and most of the customers are drive-up, okay.

14 MS. SPEIRS: Yeah, and we believe that Georgetown
15 would have more walking traffic than our other locations,
16 given its close proximity to Georgetown University and other
17 businesses.

18 MR. PERSINA: Okay. And then on slide 12, this
19 was already raised, you said that you expect that the primary
20 entrance will be on the corner, rather than the entrance
21 that's a few inches away from Ms. Andris's house.

22 Is there any reason to expect that there won't be
23 a substantial uptick in the number of people who will be
24 coming in and out just inches away from her home?

25 MS. SPEIRS: It was always our primary objective

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 to have that be our main door. If it is something that ends
2 up being an issue, we would be happy to discuss other options
3 for that door.

4 MR. PERSINA: And how many customers do you expect
5 per day?

6 MS. SPEIRS: I personally cannot give that
7 information, just because of my position within the company.
8 I don't have the analytics for that answer. But I'd be happy
9 to get an answer.

10 MR. PERSINA: And do you have any basis to -- for
11 the expectation that only five percent will be through
12 delivery services?

13 MS. SPEIRS: That was based on our other
14 locations. Again, that's not something that I currently deal
15 with within the company. That would be have to be something
16 that comes from either the owners or the operation team.

17 MR. PERSINA: Okay. I guess just three more
18 questions. One, how long has the lease been in place? When
19 was the lease entered into?

20 MS. SPEIRS: I -- it happened before I was with
21 Greenheart. It's from my understanding that it was sometime
22 in either 2019 or early 2020. But I was not present at the
23 company when they started the lease with the property.

24 MR. PERSINA: Ms. Moldenauer, do you know when the
25 lease was entered into? We have it in the record that Ms.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Swanstrom applied for a demolition permit at 3343 in August
2 of 2019. Presumably the lease was in place at that time, if
3 not before.

4 MS. MOLDENHAUER: We do know it was in 2019.

5 MR. PERSINA: Do you know the month or the
6 specific date? That's particularly important here, given the
7 period of not, you know, discontinuation of the nonconforming
8 use.

9 MS. MOLDENHAUER: I do not. If the Board would
10 like, I can supplement the record.

11 MR. PERSINA: Yeah, I, you know, yeah, I would
12 like to know the specific date. Have -- did Douglas
13 Development try to find any retail tenants that would
14 continue the existed permitted nonconforming use before
15 signing the lease with Greenheart that would not require a
16 special exception or variance?

17 MS. MOLDENHAUER: The property -- they pursued
18 obviously any potential tenants. I do not have an
19 understanding of exactly what other tenants that they had,
20 you know, in the running.

21 MR. PERSINA: Okay, so you do not know whether
22 they sought any retail tenants that could continue the
23 existing permitted nonconforming use. The first tenant,
24 potential tenant, that approached them who requires a
25 variance and an exception from the zoning rules they

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 accepted.

2 MS. MOLDENHAUER: I think you're putting facts
3 that are not in the record right now, and --

4 MR. PERSINA: Well, I'm asking, subject to your
5 answer.

6 MS. MOLDENHAUER: I think provided that answer
7 that I can at this time.

8 MR. PERSINA: Okay. And I guess the last
9 question, Ms. Moldenauer, is what is unique to the property
10 that would prevent a continuation of the existing
11 nonconforming use of a retail?

12 MS. MOLDENHAUER: So that's not the legal
13 standard. And the property does have many unique factors,
14 and we do believe we satisfy the legal standards.

15 MR. PERSINA: And sorry, one last question. On
16 the furniture upholstery space, that was vacant since 2013,
17 is that right? It has not been subject to any nonconforming
18 use since 2013.

19 MS. MOLDENHAUER: My understanding is that the
20 property is an unoccupied, and that it's been continued.
21 Obviously pursue it as a nonconforming -- nonconforming use,
22 and so the intent has always been to maintain it as
23 nonconforming use.

24 And as indicated, it was pursued potentially as
25 an expansion for the Downward Dog Yoga Studio, but then that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 was not pursued because of business purposes. It was -- they
2 were not able to expand their business to that level.

3 MR. PERSINA: So just to summarize, though, that
4 since 2013, that 594 square foot portion of the property that
5 used to have a dividing wall has not been occupied and not
6 been subject to any use since 2013.

7 MS. MOLDENHAUER: It has been unoccupied, but it
8 has continually had the intent to be used, and so it has
9 never had the intent of being discontinued.

10 MR. PERSINA: Okay, so focusing on intent there,
11 okay. I think that's -- that's it for me.

12 VICE CHAIR JOHN: Ms. Andris, you had some
13 questions for the Applicant. Ms. Andris, I can't hear you,
14 are you muted?

15 MS. ANDRIS: What would be the hours of operation?

16 MS. SPEIRS: Our hours of operation at our
17 locations are between 8:00 a.m. and 6:00 p.m.

18 MS. ANDRIS: Is that your intent here?

19 MS. SPEIRS: As far as I'm aware, that is the
20 intent of our location in Georgetown as well.

21 MS. ANDRIS: Okay, are your other operations, any
22 of them, in a residential area? Do they abut to a residence
23 anywhere?

24 MS. SPEIRS: I do not know if they'd be considered
25 residential areas. Our Leesburg location is in the historic

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 district, which is close by to residential houses. And the
2 Vienna location is near their main street. The Aldie
3 location is off John Mosby Highway.

4 MS. ANDRIS: Okay, so Main Street is like M Street
5 and Wisconsin Street here. And I do want, for the record,
6 it is far more than two years that the upholsterer has been
7 gone. That was not accurate. So is the Down Dog Yoga
8 organization in any way affiliated with Greenheart?

9 MS. SPEIRS: No, they are not.

10 MS. ANDRIS: Okay. Okay, the rest I'll save for
11 my statement, thank you.

12 VICE CHAIR JOHN: Mr. Murphy, does the ANC have
13 any questions? I didn't hear you.

14 MR. MURPHY: Excuse me, Madam Chair John. I have
15 no questions for the witnesses.

16 VICE CHAIR JOHN: Thank you. Did you have your
17 hand up, Ms. Andris?

18 MS. ANDRIS: I'm sorry, I forgot one question.
19 Where would the food delivery truck and trash removal trucks
20 park?

21 MS. SPEIRS: That is something that I do not know,
22 but I'd be happy to discuss with the team.

23 MS. ANDRIS: Okay. There is no parking.

24 MS. MOLDENHAUER: Those are going to slightly pull
25 up on Prospect Street, similar to what other vehicles and

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 other trash trucks do.

2 There's an apartment building across the street
3 on Prospect that has a private trash delivery company that
4 comes, and they pull up this car still being able to go past
5 them and handle that apartment building's trash. And so we
6 would assume that it would be similar to that.

7 MS. ANDRIS: So they would pull up in front of
8 that? That's an organization there. They wouldn't pull up
9 in front of my house?

10 MS. MOLDENHAUER: Your house does not have any
11 parking --

12 MS. ANDRIS: Double park?

13 MS. MOLDENHAUER: Yeah, so on Prospect Street
14 there is no parking on the right-hand side, which is the side
15 that abuts this property. There's no parking at any time,
16 so that would not be conducive for any loading or trash
17 location. It would most likely occur on Prospect.

18 As I said, you know, similar, there is a two-hour
19 parking area. And there's also areas that are -- have
20 openings, not on the other side of the street, but on the
21 side closer to Prospect, to the property. And it's similar
22 to what apartment buildings do that are across the street
23 from that.

24 MS. ANDRIS: Okay, so they would not double park
25 where there is no parking, as others try to do. And --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 because people do this right in front of my house. So I'll
2 assume that they're going to park on the other side, where
3 there is parking spaces. Okay.

4 VICE CHAIR JOHN: Okay, Mr. Persina, I saw your
5 hand up?

6 MR. PERSINA: I'd like to make a factual
7 correction there. There is no parking --

8 VICE CHAIR JOHN: Mr. Persina, so we're asking
9 questions now. You'll have time to present your testimony
10 later.

11 MR. PERSINA: Okay.

12 VICE CHAIR JOHN: Okay, did you have any more
13 questions? So turning to the Board before I go to the Office
14 of Planning, do the Board members have any questions at this
15 time?

16 So Ms. Moldenhauer, I have one nagging question.
17 Well, a few, but this one which I also asked the Office of
18 Planning.

19 I'm not sure why we're requesting a special
20 exception for a change in a nonconforming use based on what
21 the current corner store requirements are, particularly
22 starting with I believe it's Z202, let me get the correct
23 provision. I'm sorry, not Z, U202. And U203 provides the
24 uses permitted by special exception.

25 And then U203.2 says that the corner store will

1 be permitted as a special exception, subject to the
2 conditions of U254.

3 In other words, as I read the regulations, the
4 corner store for an eating-and-drinking establishment could
5 be approved under the current regulations, based on the
6 criteria in 254, without having to go to the issue of
7 changing from a conforming use to a nonconforming use.

8 And so I'm a little confused about that part of
9 it. And you can think about it some more while I go to the
10 Office of Planning. So, and I'll ask the Office of Planning
11 to present as well.

12 But I read the corner store regulations, and they
13 seem to allow the type of establishment that's being proposed
14 with a special exception, provided that the requirements of
15 that section are satisfied.

16 So I really am not sure why we are looking, well,
17 we're discussing a change from a conforming use to a
18 nonconforming use when the new regulations would allow a
19 corner store for a eating-and-drinking establishment, subject
20 to certain conditions.

21 So you're up, Mr. Mordfin.

22 MR. MORDFIN: I'm Stephen Mordfin with the Office
23 of Planning. And I believe the answer to your question is
24 the last time this went through and uses were permitted in
25 this building was prior to the corner store regulation.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So this building has never been subjected to those
2 regulations before. But I will have to double check all of
3 that and look to make sure that the answer that I'm giving
4 you is correct.

5 VICE CHAIR JOHN: Okay, so please go ahead and
6 give your presentation and we will look into that further.
7 I think we're still having to analyze the project under 254.
8 So if you could -- regardless of how we go, I just think that
9 as I read the new corner store regulations, I don't
10 understand why we're looking at a nonconforming use.

11 Okay, so if you could --

12 MR. MORDFIN: Okay.

13 VICE CHAIR JOHN: If you could in your report
14 discuss the variance requirement, particularly the limitation
15 on the location of the eating-and-drinking establishment in
16 relation to the MU4 -- MU zone.

17 MR. MORDFIN: Okay, I can do that. So first off,
18 I just want to start off, this is not quite what you asked,
19 but there was some confusion with what the adjoining uses are
20 in my report. And it is listed properly on page 1 of the OP
21 report.

22 Further down, later in the report, it is
23 inadvertently referenced incorrectly, but the Office of
24 Planning was aware that the existing permitted uses of the
25 two spaces where the proposed uses to go were the upholsterer

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 shop and the dry cleaner. So I just wanted to make that
2 clear.

3 So you wanted to focus on the two variances?

4 VICE CHAIR JOHN: Yes.

5 MR. MORDFIN: Okay, so both of those are area
6 store -- sorry, area variances. And so one of them has to
7 do with, like you said, the corner store requirement that it
8 be 750 feet from an MU zone. And the subject property is
9 approximately 170, give or take, from the nearest MU zone
10 properties.

11 Now, I think the extraordinary or exceptional --
12 extraordinary situation in this case is this is an existing
13 commercial building that was constructed commercially and has
14 been used as such ever since.

15 It has never been used residentially. It has
16 never been converted or -- and it also is not an existing
17 residential building that is proposed for conversion to a
18 corner store.

19 So I think that creates a different type of
20 situation. This is not a conversion of a residential space.
21 It's an existing commercial building, developed as one, and
22 you know, with architectural features that are good for a
23 commercial use, such as large windows on the street, which
24 are not conducive to residential uses.

25 If this building had been used residentially in

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 its previous use, I think that would change the entire
2 situation, but that's not what's before us today.

3 So therefore, we found that there is an
4 extraordinary or an exceptional situation in that you also
5 can't change this building because of the historic nature of
6 the building and it's located in an historic district.

7 We didn't find that there would be a substantial
8 detriment the public good. It's still, you know, we can --
9 the Applicant still can go to the uses permitted in Use Group
10 C.

11 These uses are permitted there, but we are going
12 through the corner store regulations, because previously when
13 these uses went through, when the previous commercial uses
14 went through, was before there were corner store regulations.

15 And as for a substantial impairment to the intent,
16 purpose and integrity of the zoning regulations, OP finds
17 that this would permit the continued use of a commercial
18 property in a purpose-built commercial structure to continue
19 being used commercially.

20 And it does not involve the conversion, as I had
21 said before, from a residence to a commercial. It's
22 commercial to commercial. So therefore this variance should
23 not result in a substantial impairment to the intent of the
24 zoning regulations.

25 The second variance request is the grease trap.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 You -- should I go through those, or is the first variance
2 what you were interested in only?

3 VICE CHAIR JOHN: Well, I am more interested in
4 the first variance. But my question to you is is the intent
5 of that provision to protect eating-and-drinking
6 establishments in the MU zone?

7 MR. MORDFIN: I think the intent of it is to
8 protect commercial zones because you don't want to expand
9 commercial uses just outside of a commercial area.

10 And so the 750 feet, what that does is it gets it
11 -- it moves it away from the commercial area so it's not
12 competing with those commercial areas.

13 What I think is unique about this situation is
14 that you have an existing commercial building as opposed to
15 perhaps maybe an end unit row house that might be at the
16 corner of two streets that somebody wants to open a corner
17 store use in.

18 And that is not the case in this case, and that's
19 what I think makes this case different. And so that's what
20 I think is unique about this location and the proposal that
21 it should be continued to be used as a corner store.

22 VICE CHAIR JOHN: So you would not take into
23 consideration the more intense use and the fact that there
24 are eating-and-drinking establishments in the MU zone a block
25 away?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. MORDFIN: No, I did not, no. Because what
2 we're looking, if we're focusing on what's about this piece
3 of property and what's unique about it and the exceptional
4 situation about it.

5 Yes, it's less than 750 feet, but I think with the
6 focus on this piece of property and how this piece of
7 property does or does not conform to the area variance
8 requirements.

9 VICE CHAIR JOHN: Okay, thank you. I see you, Mr.
10 Murphy, but we're going to go in the order. So next I will
11 go to -- go back to the Board to see if there are any follow-
12 up questions, and I don't see any hands raised. If your hand
13 up, Mr. Blake?

14 MEMBER BLAKE: Question for Mr. Mordfin. Can you
15 again, you said that the intent was to protect the commercial
16 zones. Did you see the interpretation also as to protect the
17 residential zones, or is it just on the commercial side?

18 MR. MORDFIN: Well, no, it's also to protect the
19 residential zones, but it does allow these uses in
20 residential zones, subject to the list of criteria. I think
21 the 100-and -- I'm sorry, the 750 feet from the residential
22 -- from the commercial zone, that's in there, that protects
23 the commercial zone.

24 These other criteria, you know, there are other
25 criteria to protect the residential zone. But I think that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 the corner store requirement to be 750 feet from an MU serves
2 to protect the commercial uses.

3 MEMBER BLAKE: Would you -- would you see, though,
4 that 170 feet is an encroachment into the residential zone
5 and just a simple expansion of the commercial zone?

6 MR. MORDFIN: Well, it is an encroachment into the
7 residential zone. However, it's an existing building.
8 Nobody's proposing to build this building, nobody's
9 converting a residential building to a commercial use. It's
10 an existing commercial building designed to commercial
11 standards.

12 So I think that creates something different in
13 that this property is unique in that it's not designed to
14 residential standards. It's -- and it was built legally from
15 1923. So that predates the zoning regulations. So it's in
16 a -- it's a, was a legally constructed building that does not
17 conform to today's regulations.

18 VICE CHAIR JOHN: Okay, thank you. So I'm going
19 to go to the Applicant now. Ms. Mordfin, did you have -- Ms.
20 Moldenhauer, did you have any questions for the Office of
21 Planning?

22 MS. MOLDENHAUER: Nothing, thank you.

23 VICE CHAIR JOHN: Thank you. Mr. Persina, did you
24 have any questions for the Office of Planning?

25 MR. PERSINA: Yeah, just one. I guess based on

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 that reasoning and that rationale, would there ever be a
2 situation where there is a property that has historically
3 been used for commercial purposes within 750 feet of an MU
4 zone that would not be -- that should not be granted a
5 variance from this rule?

6 It seems like your answer to that would be no, but
7 just wanted to see if that's the case.

8 MR. MORDFIN: I don't know. The only case that's
9 before me now is this one, and I can't -- I can't answer
10 something that is not before me, another use before me.

11 MR. PERSINA: Yeah, understood. I guess it's
12 just sort of a question of how would your reasoning behind
13 granting this variance extend to other cases, which I think,
14 you know, should be taken into account. If all cases a
15 commercial property should be granted a variance, that seems
16 to just sort of negate the rule altogether.

17 VICE CHAIR JOHN: Did you have another question,
18 Mr. Persina?

19 MR. PERSINA: No, that -- that was it.

20 VICE CHAIR JOHN: Ms. Andris, did you have a
21 question for the Office of Planning? Okay, thank you. Mr.
22 Murphy.

23 MR. MURPHY: I do have a question for Mr. Mordfin.
24 Mr. Mordfin, I understood your testimony to be that the 750-
25 foot rule in the corner store regulations was intended to

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 protect properties in the commercial zones. The record shows
2 that we've got the MU zone 170 feet from the front door of
3 this property.

4 Do you know what the property 170 feet away from
5 this property is being used for down in the commercial zone?

6 MR. MORDFIN: No, I do not.

7 MR. MURPHY: Well, I can testify, since I'm a
8 witness. It's a Starbucks, it's a food and beverage retailer
9 that clearly will be in competition with this property is
10 this proposed use is allowed. So given that -- that
11 information, would you change your opinion?

12 MR. MORDFIN: Well, for what properties are in
13 competition with what, that's not what we're evaluating this
14 against. We're evaluating against whether or not it's
15 appropriate to use this for commercial purposes, and I think
16 in this case it is appropriate to use it for commercial
17 purposes just for the reasons that I had stated.

18 We don't testify, you know, we don't evaluate it
19 against what competition any one business should have or not
20 have that's outside the realm of what we review the
21 applications against.

22 VICE CHAIR JOHN: Thank you, Mr. Mordfin, I'm
23 going to -- Ms. Andris, I'm going to ask the opposition to
24 present their statement now. And I believe you're working
25 together with Mr. Persina?

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MS. ANDRIS: I'm not working with him, I'm ceding
2 to him, though.

3 VICE CHAIR JOHN: Okay, Mr. Murphy --

4 MR. MURPHY: I was just -- I'm sorry.

5 MS. ANDRIS: Oh, go ahead, I'm sorry.

6 VICE CHAIR JOHN: Just a minute, I have to get
7 hold of this hearing. So we just finished with questions,
8 and now we're going to move on to the statement of the
9 parties in opposition, beginning with Mr. Persina.

10 Mr. Persina, do you have a presentation to make?

11 MR. PERSINA: It was -- Mr. Murphy as the ANC
12 member, was he meant to go before me at this statement?

13 VICE CHAIR JOHN: The question to you is are you
14 relying on Mr. Murphy's presentation, or are you making one
15 individually?

16 MR. PERSINA: No, I'm making one individually.
17 Sorry, it was a question of procedure, but I'm happy to go
18 ahead if that's what's being asked.

19 VICE CHAIR JOHN: Okay, so the procedure I'm using
20 is to go to you right now.

21 MR. PERSINA: Okay. We submitted a slide
22 presentation that I'll be referring to.

23 VICE CHAIR JOHN: Would you like us to pull up a
24 presentation for you?

25 MR. PERSINA: Yes, please do, thank you.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 VICE CHAIR JOHN: Ms. Mehlert, could you please
2 pull up that presentation.

3 MR. PERSINA: So just beginning with slide 2, you
4 know, as our fellow neighbors will testify to, we feel
5 strongly that the arguments in my statement, along with the
6 over 30 exhibits filed in support of that showing evidence
7 of our position, when applied to the legal standard, clearly
8 show that denial of the request of relief, just as it was in
9 1983, when this board unanimously denied a similar request.

10 Our argument can be summarized quite simply that
11 Applicant has failed to satisfy its burden of proof and
12 offered no evidence or facts in support of its claims.

13 Moving to slide 3, the general special exception
14 standard, the relief is not harmonious with the general
15 purpose and intent of design regulations and maps, as we've
16 discussed.

17 The Applicant has already conceded in its
18 statement that the property is located in an otherwise
19 residential neighborhood. And permitting this more intensive
20 preparation and commercial sale of food and drink, including
21 three delivery services, so close to our doorsteps would
22 result in the negative effects that I've outlined in my
23 statement, again with substantial supporting evidence, which
24 is exactly what zoning regulations like R20 are designed to
25 prevent.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Moreover, as we were just discussing, the property
2 is located one block north of storefronts on N Street, their
3 zone MU4.

4 The fundamental purpose, as I understand it, and
5 I think we've just established the 750-foot rule, is to
6 protect businesses operating in commercially zoned properties
7 from businesses that would otherwise gain an unfair advantage
8 by operating nearby for less cost through lower rents, which
9 is what's happening here.

10 On Wisconsin -- sorry, on N Street directly south
11 of us, there are, as Commissioner Murphy already pointed out,
12 competing businesses, but there are also empty storefronts
13 that, you know, would be, you know, would benefit from
14 tenants such as Applicant's tenant.

15 Moving to slide 4, the second general special
16 exception standard, as I point out in Tabs A1-L attached to
17 my statement, the commercial preparation, sale of food and
18 drink will adversely affect the use of neighboring the
19 property. The proposed use will substantially worsen traffic
20 and congestion.

21 The BZA acknowledged this in its 1983 decision,
22 and things have only gotten worse. The addition of
23 deliveries to the property and deliveries from the property
24 will exacerbate the traffic conditions on 34th Street. And
25 I could just ask you to flip to Slide 5.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 The picture on the left shows bumper-to-bumper
2 traffic at a view, and this is a typical situation on 34th
3 Street throughout most of the day, and it doesn't even depict
4 the worst of it. And as I've submitted in supporting
5 evidence in my statement, this happens all the time.

6 We've made complaints to DDOT and have not
7 received any responses. But the traffic is, you know,
8 unmanageable on 34th Street, and there is no room for any
9 standing or parking. The two-hour limited spots on 34th
10 Street directly outside the property are occupied at all
11 times of the day.

12 The proposed use will also substantially
13 exacerbate the litter problem and improper disposal of trash.
14 The very nature of taking -- having a business that is
15 primarily based on takeaway of freshly prepared food and
16 drink will necessarily increase the amount of trash and
17 litter that is just discarded on the street and will
18 overwhelm the public trashcans.

19 The picture on the right of Slide 5 is a picture
20 I took this past Sunday morning outside the new corner store
21 at 35th and O. As you can see, the trash has already
22 overwhelmed the receptacle here, and the primary reason for
23 that can be seen on the label of the trash pack that is
24 teetering on the top of that.

25 That trash is primarily generated from the corner

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 store across the street at 35th and O. And if you look above
2 the trashcan, there is trash strewn throughout the entire
3 block, all the way down to N Street and in the gutter.

4 Again, this is just, we don't have to speculate
5 on the litter and trash situation. We have a direct
6 precedent two blocks away from us. And we -- I hope that we
7 can learn the lessons from the negative effects of that
8 corner store and avoid that situation repeating itself on our
9 block.

10 And necessarily, with more trash, especially trash
11 this is food and drink related, we have an especially bad
12 rodent problem in Georgetown, as again I have supported with
13 evidence attached to my statement.

14 And it is a localized problem. They will
15 concentrate in spots where there is available food and that
16 will -- the litter situation will just compound itself with
17 more rodents concentrating around the litter and trash.

18 Next go to Slide 6. Again, Applicant is providing
19 no evidence to support its claim that external impacts of the
20 proposed use will be no greater than the existing use.

21 The existing use before the property was vacated
22 between over two years ago and eight years ago was a dry
23 cleaner and upholster shop, which causes none of these
24 problems. These problems are inherent in a food and delivery
25 preparation store.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 That the property was previously used for certain
2 limited commercial activities does not justify more intensive
3 commercial activities that would be far more disruptive to
4 neighboring residents. Not all commercial activity is the
5 same, and not all commercial activity has the same negative
6 externalities on neighboring residents.

7 Moving to Slide 7, Applicant has provided no
8 evidence to support its claims that the proposed use would
9 not adversely protect -- affect the present character and
10 future development of the surrounding area or create
11 deleterious external effects, which we've already discussed.

12 The neighborhood is not mixed use. It is
13 residential, it is not a part of M Street or the commercial
14 corridor. Location matters, and our one-block separation
15 from M Street makes a world of difference to our quality of
16 life and you know, our ability to enjoy our residential
17 neighborhood.

18 So again, there's been a complete lack of evidence
19 on the part of Applicant's statement.

20 Getting in the area variance, the 750-foot rule
21 specifically, moving to Slide 8. The property is not
22 affected by an exceptional situation or condition that would
23 justify a variance.

24 The property's history of commercial use and
25 location in a residential neighborhood is not an exceptional

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 situation or condition in Georgetown or in the neighborhood
2 itself.

3 There are, as I point out in my statement, there
4 are three businesses that are operating two blocks away on
5 35th between N and O. This is not a unique condition.

6 Again, using Applicant's reasoning, any commercial
7 property in the R20 zone would be exempt from the 750-foot
8 rule just by virtual of a historical commercial use. That
9 completely negates the purpose of the 750-foot rule, and it
10 would never be applied.

11 I would just direct also the Board to the case
12 before the District of Columbia Court of Appeals. It's the
13 same case that they cite in their statement. This is Capitol
14 Hill Restoration Society versus the DC Zoning Adjustment
15 Board. It's, the citation is 534 A.2d 939.

16 There, the Court noted that the property owner
17 must present proof that the circumstances which create the
18 hardship uniquely affect the petitioner's property, or the
19 circumstances create a hardship difficulty affect the entire
20 neighborhood rather than a merely -- merely a specific piece
21 of property. The problem is properly addressed by seeking
22 an amendment to the regulations from the Zoning Commission.

23 If the BZA were to grant variances where the
24 hardship or difficulty is not peculiar to a particular piece
25 of property, similar requests would follow from property

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 owners similarly situated, which as a matter of due process
2 would have to be granted.

3 The effect of such decisions by the BZA would be
4 an amendment to the zoning regulations, by that body in an
5 action which the BZA is not empowered to take.

6 And they go -- the Court goes on to say the
7 extraordinary exceptional conditions must uniquely affect a
8 single piece of property. The Applicant has provided no
9 evidence that this property is uniquely affected compared to
10 other properties within the 750-foot zone from the MU4
11 district.

12 Applicant, again, has provided no evidence that
13 there's any practical difficulty in continuing the existing
14 nonconforming use a conforming use. As Ms. Moldenhauer
15 indicated, Douglas Development did not seek any tenants that
16 would continue an existing nonconforming, low intensity
17 retail use. They just took the first lessee that they could
18 find, and that just happened to be --

19 MS. MOLDENHAUER: Those statements that are not
20 in the record.

21 MR. PERSINA: I'm sorry.

22 VICE CHAIR JOHN: That's fair -- that's fair. We
23 typically don't, you know, follow-up with objections, Ms.
24 Moldenhauer, but let's not characterize the response unless
25 there's information in the record.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 MR. PERSINA: Okay. There's no evidence provided
2 by applicant who has the burden of proof here that they went
3 -- that they saw any retail tenants that would continue in
4 non-conforming use. And again, the burden is on the
5 applicant to prove to the contrary. Again, the property is
6 vacant. Moving to the practical difficulty question again,
7 applicant stated in their statement before the Board that the
8 vacancy of the property is proof that there's been a
9 practical difficulty in finding any tenants. But in fact,
10 the lease has been in place for, as Ms. Moldenhauer said,
11 since sometime in 2019. So the property is vacant right now
12 and not being used precisely because they have a tenant.

13 The substantial detriment is explained and
14 supported with evidence. At length, we've already sort of
15 covered that. Again, slide 9 just showing that this is
16 supporting evidence that the lease has been in place when
17 Greenheart's found applied for the demolition permit back in
18 August of 2019.

19 Moving to slide 10, the area variance for the
20 grease trap condition, again, the property, not the proposed
21 use, must be affected by an exceptional condition which would
22 merit a variance from the requirement. Here they note just
23 that the proposed use can't comply with existing rules is not
24 an exceptional situation or condition and is not a practical
25 difficulty justifying a variance. Again, applying

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 applicant's reasoning more broadly would result in variances
2 any time a proposed use does not comply with the rules.
3 Again, we've explained at length there is substantial
4 detriment. Again, the concentration of oils and butters that
5 would be disposed of from the grease trap would attract
6 vermin that otherwise would not be attracted to the property.

7 Moving to slide 11, the proper conditions we find
8 inadequate to address our concerns. Again, we think that the
9 proper conditions constitute the bare minimum of hygienic and
10 operating standards at a food and drink establishment should
11 abide by. We already addressed the history of not abiding
12 by such requirements. As one of the Board members said, it's
13 unfortunate that Douglas Development has waited until BZA
14 hearing for a request for an additional variance to comply
15 with their premise statements that were offered up eight
16 years ago in a 2013 hearing. You know, I guess the Board
17 members can draw their own conclusions from the set of facts,
18 but it is not a promising prospect from the neighbors'
19 perspective that Douglas Development or any of their tenants
20 will abide by the conditions going forward.

21 Also, the entire burden of enforcing these rules
22 will fall on us, the neighbors so, you know, proffering all
23 the conditions we like will maybe address some of our
24 concerns, but maybe they won't. But in all cases we would
25 now become an enforcement body and that's a burden that we

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 are just not equipped to handle.

2 And lastly and most importantly, the proffered
3 conditions do nothing to address the increased traffic
4 congestion, the litter in front of our residences, not in
5 store or directly outside the store, litter overflowing from
6 public trash cans, and the resulting increase in rodent
7 activity outside of our properties.

8 And on slide 12, I would again not that applicant
9 has not only failed to satisfy its burden for the requested
10 nonconforming use, but they failed to demonstrate that the
11 current nonconforming use has continued within the past three
12 years in either of the previously subdivided portions of the
13 property. I think it's already well-established that the
14 portion of the property that was previously used as
15 upholstery shop has been vacant and has not continued the
16 current nonconforming use of the past eight years, and it's
17 -- the applicant's provided no proof that a nonconforming use
18 has continued in the dry cleaner in the last three years.

19 Moving to slide 13, again, Government and
20 community input. As Commissioner Murphy will note when he's
21 given an opportunity to speak, he's -- the ANC was strongly
22 opposed. As the witnesses and the letters in opposition have
23 indicated, both directly adjoining neighbors, both Ms. Andris
24 who was adjoining on Prospect Street, and the neighbors
25 directly adjoining on 34th Street are strongly opposed. We

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have also had significant letters from neighbors who are also
2 opposed. DDOT, I would note, that the cited increase -- DDOT
3 acknowledged that there would be increases in traffic and
4 demand on parking, but they provided no factual basis for
5 their assessment as to a limited magnitude of the problems.
6 It was a five-line report with no evidence in support of
7 their conclusions about the magnitude. When compared with
8 our first-hand knowledge and documentary evidence of the
9 intense traffic problem on 34th and Prospect, they provided
10 nothing to the contrary.

11 I was going to go to slide 14. Again, you know,
12 there was a claim that this is a neighborhood-serving
13 business. We, the neighbors, do not find that to be the
14 case. We would prefer that these types of establishments
15 would be properly located in the commercial corridors on M
16 Street and Wisconsin Avenue. They're both conveniently
17 located in that they're within walking distance, but they are
18 not located right outside our doorsteps.

19 On slide 15, just to -- again, a few unsupported
20 claims, 95 percent of customers expected to be walk-up.
21 There's no factual support for this claim, and there's no
22 reason to believe that historical performance at other
23 locations in suburban Virginia that have no correlation or,
24 you know, no similarities to this location would continue in
25 the future. And we would have every reason to believe that

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Greenheart would, like any rational business owner, try to
2 sell as much product as possible through as many means as
3 possible, and there's no -- there can be no reassurances for
4 us that that won't be the case in the future. The limited
5 seating, most customers will take away. Again, that will
6 just exacerbate the traffic problem which we've already
7 discussed. We have direct precedent at 35th and O.

8 I would go to slide 16. In conclusion, you know,
9 as my fellow neighbors will attest to, we live here. We know
10 exactly how the proposed use would affect our properties and
11 our quality of life. We see the traffic every day. We see
12 the litter problems. We've seen the litter problems at the
13 neighboring corner store. We know exactly what will happen
14 outside of properties, and we would ask that the Board
15 respectfully give great weight to the decision of the ANC and
16 deny the variance. I'd also, under subtitle Y 103.13-G, I've
17 received several additional letters in opposition since the
18 24-hour deadline, one from John Carmichael at 3334 N Street,
19 one from Shannon Sullivan at 3340 N Street, and one from
20 Darcy McGee at 3338 N Street that I would like to submit to
21 the record with the Board's approval.

22 VICE CHAIR JOHN: Thank you, Mr. Persina. I think
23 the Board would like to see the letters, so I will them in.
24 Ms. Andris, you also have the same amount of time to present
25 your statements --

1 MS. ANDRIS: I won't --

2 VICE CHAIR JOHN: -- that you will --

3 MS. ANDRIS: -- I won't take much.

4 VICE CHAIR JOHN: Thank you.

5 MS. ANDRIS: Okay. So I just want to say just to
6 kind of cut to the chase, I understand that this is a
7 commercially-zoned property, but there is a huge difference
8 between a juice bar and a dry cleaner. It's just very
9 obvious. So I will read you now my statement. I'm Vanessa
10 Andris, owner and resident at 3341 Prospect Street NW,
11 Washington, DC. My home abuts to the 3343 Prospect Street
12 property where the juice bar is proposed. There is one brick
13 wall between us and one brick wall between me and the
14 residents on the other side. The walls are so thin here that
15 when they play music even at a reasonable volume, I hear it.
16 When they smoke, I smell it. My front door and only entrance
17 is 48 inches from the door at 3343. That did not show on the
18 plan they showed, but these doors are right next to each
19 other. As such, I am the most impacted resident. The other
20 resident that Mr. Persina referenced, their door is separated
21 by Down Dog Yoga, so I'm right next to it.

22 When I moved here 16 years ago, there was an
23 upholstery shop next to me in this property. In addition to
24 the owner, there were maybe four people per day entering and
25 leaving between 9:00 and 6:00 p.m., none of which were

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 students. There was a dry cleaners to the left of the
2 upholstery shop with a door on the diagonal of 34th and
3 Prospect. Foot traffic in and out of that door was also
4 minimal. Years after the upholsterer vacated, Down Dog Yoga
5 started using the upholstery space for storage with the --
6 with only the owner entering just a few times a week, and we
7 chatted there many times, and he told me about the juice bar
8 coming. That storage use ended when the dry cleaners closed
9 and Douglas Construction took down the wall between the dry
10 cleaners and storage unit to begin renovation. I now know
11 that is because of the lease up for Greenheart.

12 The brick buildings on Prospect Street create an
13 amphitheater such that everything is incredibly amplified.
14 I hear every conversation on the street in front of my house.
15 The level of noise from Prospect Street that can be heard
16 within my house, the trash accumulating on Prospect Street,
17 and the increase in crime and instability in this vicinity
18 is profound. Just across the street, someone wandered into
19 the kitchen of the house and stole the wallet of -- from a
20 woman's purse on the counter. I am really pretty flexible
21 and I love the young people in this area but just this year,
22 I have already had to call the police at least eight times
23 due to the noise and trash resulting from people
24 disrespecting the law and the residents. Traffic at the
25 corner of 34th and Prospect where this property sits is

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 already dangerous and disruptive. The backup on 34th Street
2 and the cross street of Prospect is all the way up to at
3 least our street on 34th. This is one of the busiest most
4 congested intersections in Georgetown.

5 Commercial use from the upholstery shop to a juice
6 bar with a door right next to my door used by customers is
7 a drastic change. The pattern in Georgetown around these
8 places like a juice bar is that students in particular go
9 there and hang out in and outside the door. We see this at
10 numerous beverage and bowl sandwiches shops on Wisconsin Ave
11 which is where these stores belong.

12 If approved, there will be more trash next to and
13 in front of my house. There will be more human traffic, more
14 people congregating, truck delivering supplies parked in
15 front of my house before 9:00 a.m., trash trucks once a day,
16 Door Dash and Uber Eats picking up pick up for delivery.
17 There will be more noise from people and the operation
18 getting supplies making their product and other facets of
19 operating.

20 A commercial food and beverage outlet
21 significantly diminishes the value of my home, my ability to
22 live in it securely and peacefully, and to enjoy the aspects
23 of residential Georgetown that made me by this home and
24 invest significantly to improve and maintain it. Looking at
25 this more broadly, allowing this commercial property --

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 commercial entity here will contribute to the continuing
2 decline of Georgetown. There are so many empty commercial
3 property spaces for rent in this area already zoned for
4 commercial. That is where a new commercial entity belongs
5 for its own success and for Georgetown's social, economic,
6 and environmental well-being.

7 So please forgive me that I didn't read that very
8 well but --

9 VICE CHAIR JOHN: That's find, Ms. Andris.

10 MS. ANDRIS: -- there's -- this is a very intense
11 little corner to live on, and I feel very strongly about
12 this. And I just want to say I love all the kids here. I
13 love the creativity in Georgetown that people want to do
14 great things. But the fact of the matter is people will
15 congregate. There will be trash and there will be a lot more
16 noise, not only in the beginning of the day but from before
17 the opening until after the opening. Thank you for hearing
18 me out.

19 VICE CHAIR JOHN: Thank you. So does the Board
20 have any questions for either Mr. Persina or Ms. Andris?

21 (No audible response.)

22 VICE CHAIR JOHN: Does the applicant have any
23 questions? Ms. Moldenhauer?

24 MS. MOLDENHAUER: No questions. Thank you.

25 VICE CHAIR JOHN: Mr. Murphy, do you have any

1 questions?

2 MR. MURPHY: I do not. Thank you, Vice Chair
3 John.

4 VICE CHAIR JOHN: Okay. So Mr. Murphy, would you
5 like to provide your presentation now?

6 MR. MURPHY: I would very much, and I apologize
7 for earlier. I misunderstood the procedure. I thought the
8 ANC was supposed to put on its testimony --

9 VICE CHAIR JOHN: That's fine.

10 MR. MURPHY: -- after the Office of Planning. I'm
11 mistaken.

12 VICE CHAIR JOHN: Thank you.

13 MR. MURPHY: To remind members of the Board, Vice
14 Chair John, members of the Board, I am Rick Murphy. I'm a
15 resident of Georgetown. I live at 3136 P Street NW, and I
16 am the representative of the single member district on the
17 ANC that covers this district, and I am also the Chair of ANC
18 2E. Thirty-eight years ago, in Application Number 14041,
19 this Board denied an application for a special exception to
20 permit the sale of food and drink, a more intense
21 nonconforming use at this exact location. ANC 2E submits
22 that in order for the Board to approve the application being
23 considered today, the applicant must show either first, that
24 the standard for the issuance of a special exception has
25 changed since 1983, or that the facts established by the

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 application -- applicant rather in this case are material
2 different and materially more deserving of relief than the
3 facts presented in 1983.

4 With respect to the standard for approval of the
5 special exception that has been requested by the applicant,
6 that hasn't changed at all. In order to qualify for the
7 special exception, the applicant must show that the proposed
8 use will not create any deleterious external effects
9 including but not limited to noise, traffic, parking, and
10 loading considerations. That is exactly the standard applied
11 in the 1983 case.

12 Now what about the facts? Have they changed in
13 a way that would be more favorable to this application?
14 Well, let's see. In 1983, the applicant proposed to open a
15 small 400-square-foot tea room in the building. The current
16 applicant's proposal contemplates an establishment that would
17 be three times as large, almost 1,200 feet. Next, in 1983,
18 the applicant proposed a tea room with 20 seats with no take
19 out. Today the applicant proposes an all takeout operation,
20 a use with significant implications for the surrounding
21 neighborhood in terms of pedestrian and vehicular traffic,
22 litter, and noise as you have heard from both Mr. Persina and
23 Vanessa who's -- excuse me.

24 In 1983, the applicant proffered a traffic study
25 which did not persuade the Board back then. In this case,

1 the applicant has placed nothing in the record concerning the
2 impact the project would have on traffic and parking. The
3 record does, however, contain a report from DDOT. As Mr.
4 Persina noted, it's only five lines long but in that report,
5 which refers only to the application materials, DDOT
6 acknowledged that the project would result in an increase in
7 vehicle, transit, pedestrian and bicycle traffic and an
8 increase in pick-up and drop-off activity as well as the
9 reduced availability of on street parking. DDOT went on to
10 describe the impacts as minor, and I put that in quotes, and
11 slight but provided no definition of those terms and no
12 explanation of how it reached that conclusion that the
13 impacts would be minor or slight.

14 Now ANC 23 submits that the -- that to the extent
15 the DDOT report has any probative value in this proceeding,
16 it actually supports the opponents because I acknowledges
17 that there will be an impact on traffic. And I'm here as
18 your witness that the traffic at the corner of Prospect and
19 34th, even with this location vacant, is the worst traffic,
20 the worst intersection in the entirety of ANC 2E. As Mr.
21 Persina pointed out and showed you a picture, at all hours
22 of the day, traffic backs up from the stop sign in front of
23 this location all the way up the hill almost to Wisconsin
24 Avenue, four or five blocks, and it almost never ends.

25 MS. ANDRIS: That's right.

1 MR. MURPHY: Now in 1983, the Office of Planning
2 recommended approval of the special exception. The Office
3 of Planning also supports the pending application, but it
4 appears that the Office of Planning performed what was, at
5 most, a cursory review of the project. Indeed as Mr. Mordfin
6 admitted, when it did its report, it reported that this
7 property, this operation would be replacing Down Dog Yoga,
8 which is very much not the case. Down Dog Yoga is not going
9 way.

10 In summary, the applicant in the 1983 case,
11 presented facts that were much more compelling than those
12 presented by the applicant in this case. The grant of a
13 special exception in this case would be against the weight
14 of evidence. Indeed there is very little evidence in favor
15 it, and a direct reversal of the Board's decision in the
16 earlier case. Now the special exception, as Vice Chair John
17 has pointed out, the special exception is not the end of the
18 story however. Applicant also seeks an area variance to
19 permit operation of a corner store selling food and drink at
20 the location notwithstanding the fact that the proposed
21 corner store would be only 170 feet from an establishment in
22 the MU4 Zone that also sells food and drink. Notwithstanding
23 the applicant's suggestions to the contrary, the 3300 block
24 of M Street is thoroughly and actively commercial, and
25 introducing a corner store selling food and drink within 170

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 feet of the operations on that street would obviously be
2 contrary to the intent, purpose and integrity of the zoning
3 regulations.

4 Moreover, the applicant has failed to demonstrate
5 any exceptional practical difficulties with continuing the
6 existing nonconforming use at this location. Indeed it's
7 clear from what we've heard today that the owner of this
8 property made no effort whatsoever to find a continuing
9 nonconforming use. They entered into a lease with Greenheart
10 almost as soon as the dry cleaner left and took the property
11 off the market. There's no evidence in the record of an
12 effort by this owner to find a less intrusive, less impactful
13 use for this property as a commercial property. Put simply,
14 the applicant has offered no credible evidence that it would
15 be faced with a significant practical difficulty if it were
16 to continue the longstanding nonconforming use of the
17 property.

18 In summary, ANC 2E opposes the application because
19 granting of the relief requested would have a sign negative
20 impact on the surrounding neighborhood and could
21 impermissibly and negatively affect M Street, Georgetown's
22 principal commercial corridor. And I'd like to point out one
23 factual thing here. Traffic is terrible on 34th Street and
24 it's almost as bad on Prospect Street. And one of the issues
25 here is what's going to happen with third-party delivery

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 services. Ms. Speirs testified, as was presented by the
2 applicant, that their expectation is that no more than 5
3 percent of the sales would be picked up and delivered by
4 third-party units. Ms. Speirs testified that that was based
5 on what they understood -- what she understands happens with
6 the existing locations out in Northern Virginia but beyond
7 that, note there's no evidence in the record on which the
8 Board can conclude that that 5 percent figure is correct.
9 If it's even 10 percent where you have third-party delivery
10 services pulling over to pick up foods to be delivered
11 elsewhere on 34th Street or on Prospect Street, we will have
12 absolute gridlock throughout West Georgetown.

13 This is simply not an appropriate use for this
14 location, and we ask you on behalf of the residents of ANC
15 2E that you deny the application. Thank you.

16 VICE CHAIR JOHN: Thank you, Mr. Murphy. Does the
17 Board have any questions?

18 (No audible response.)

19 VICE CHAIR JOHN: Okay. Does the applicant have
20 any questions?

21 MS. MOLDENHAUER: Just one question. Mr. Murphy,
22 the vote that was taken by the ANC was no unanimous, is that
23 correct?

24 MR. MURPHY: That is correct.

25 MS. MOLDENHAUER: And there were members of the

1 ANC that were -- both indicated that their opposition was
2 because they were supportive of the use?

3 MR. MURPHY: No. Actually, the two that voted
4 against the resolution were concerned that their vote might
5 be seen -- if they voted in favor of the resolution opposing
6 this application that their vote might be seen as
7 inconsistent with the votes they cast in relation to the Call
8 Your Mother case a couple of years ago.

9 MS. MOLDENHAUER: Which was in support of Call
10 Your Mother?

11 MR. MURPHY: That's correct.

12 MS. MOLDENHAUER: Thank you. No other questions.

13 VICE CHAIR JOHN: Okay. Comments? Go ahead, Ms.
14 Andris. You have a question for --

15 MS. ANDRIS: Call Your Mother --

16 VICE CHAIR JOHN: Ms. Andris, do you have --

17 MS. ANDRIS: What time does Call You Mother close?

18 VICE CHAIR JOHN: Ms. Andris, do you have a
19 question for Mr. Murphy?

20 MR. MURPHY: I can answer Ms. Andris's question.
21 Call Your Mother closes at 3:00 in the afternoon.

22 MS. ANDRIS: Two -- I was there today, 2:00 p.m.

23 MR. MURPHY: Okay.

24 VICE CHAIR JOHN: Okay. All right. Thank you.
25 Are there any other questions? Mr. Persina, do you have a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 question?

2 MR. PERSINA: Thank you.

3 VICE CHAIR JOHN: Okay. All right. Thank you.
4 Ms. Mehlert, are there any persons wishing to testify?

5 MS. MEHLERT: Yes. We have two witnesses who
6 signed up to testify. Actually --

7 VICE CHAIR JOHN: I really cannot hear you. Would
8 you mind turning up the volume?

9 MS. MEHLERT: Yes. I'll just try and speak
10 louder. So there's two witnesses that are on that were
11 actually listed as witnesses with the party in opposition,
12 Mr. Persina. So I can allow them in as panelists now.

13 VICE CHAIR JOHN: Thank you very much. Is that
14 Mr. or Ms. Zeballos?

15 MR. ZEBALLOS: Yes.

16 VICE CHAIR JOHN: Okay. Could you state your name
17 and address for the record, please?

18 MR. ZEBALLOS: Yes. My name is Oscar Zeballos and
19 I live at 1237 34th Street NW, Washington, DC 20007.

20 VICE CHAIR JOHN: Thank you. And are you able to
21 turn on your video?

22 MR. ZEBALLOS: I am. I'm not -- I don't -- oh,
23 here we go. It said the option was ungrade. Okay. My
24 apologies. I'm on route to DCA but I've been on the call all
25 day so thank you for your hard work everyone and you're truly

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 doing the Lord's work. This is my first time in a meeting
2 like this so thank you for your service.

3 VICE CHAIR JOHN: Okay. Thank you. Would you
4 please give your testimony and -- I'm sorry, Ms. Moldenhauer,
5 you had a question?

6 MS. MOLDENHAUER: I'm happy to allow it but I
7 believe this gentleman is part of the party status
8 application and obviously, part of that group and part of
9 that presentation we just listened to. So I'm just noting
10 that for the Board. The Board can obviously allow it but I
11 just identify that.

12 VICE CHAIR JOHN: Thank you. We switched up the
13 order and the party in opposition, they -- you know, there
14 are two of them so they're entitled to some leeway in terms
15 of the amount of time that they're allowed to testify. The
16 important thing is that Mr. Zeballos -- your name disappeared
17 -- you --

18 MR. ZEBALLOS: Yes.

19 VICE CHAIR JOHN: -- you were signed up to
20 testify, right?

21 MR. ZEBALLOS: Yes.

22 VICE CHAIR JOHN: Okay. All right. Please go
23 ahead and give your testimony. You'll have three minutes.

24 MR. ZEBALLOS: Okay. I will be brief. I want to
25 echo our concern from the neighborhood where as a small

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 business owner myself who operates in the District of
2 Columbia, and I am proud of that, and a resident of the
3 neighborhood and the block, I do believe that a lot of the
4 questions we have and concerns we have are warranted. And
5 as it's been stated earlier and in prior on multiple
6 occasions, that if the current leaseholders are not moving
7 forward with, in good faith, on a regular basis to make sure
8 that they're taking care of their trash and the issues that
9 we have just with the general building, then how can we
10 expect another business with multiple variables that come
11 into their operation, much more so than a yoga studio, to do
12 so as well. And if the building owner is not policing what
13 the ownership currently is doing, then it's hard to expect
14 that we'll actually see that on the other side of this
15 operation.

16 And I appreciate everyone's time today and thank
17 you so much for the work you've done. I just want to make
18 sure that we voice our concerns. And on the other side is
19 the traffic side of the business, the feasibility of a
20 business that may operate some sort of delivery, even if it's
21 5 or 10 percent, and then the lack of parking that there
22 already is in the area, it would just add undue hardship.
23 And that is my statement. Thank you for your time.

24 VICE CHAIR JOHN: Thank you. Does the Board have
25 any questions for the witness?

1 (No audible response.)

2 VICE CHAIR JOHN: Does the applicant have any
3 questions for the witness?

4 (No audible response.)

5 VICE CHAIR JOHN: Do the parties in opposition
6 have any questions for the witness?

7 (No audible response.)

8 VICE CHAIR JOHN: Does the ANC have any questions
9 for the witness?

10 (No audible response.)

11 VICE CHAIR JOHN: Okay. Thank you. Could you
12 please let in the next witness?

13 MR. ZEBALLOS: Thank you.

14 VICE CHAIR JOHN: Oh, I'm sorry. Thank you for
15 your testimony --

16 MR. ZEBALLOS: Thank you.

17 VICE CHAIR JOHN: -- and you're excused.

18 MS. ALDEN: Hello.

19 VICE CHAIR JOHN: Yes. Can you state your name --

20 MS. ALDEN: Hi.

21 VICE CHAIR JOHN: Yes. Can you state your name
22 and address for the record?

23 MS. ALDEN: Yes. I apologize I cannot be on
24 video. We're actually traveling as well but yes, my name is
25 Alyssa Alden. I reside at 1235 34th Street NW with my

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 husband and three children. We've lived at that property for
2 about 13 years. I -- you know, I just want to -- and I will
3 be brief. Again, I so appreciate all of your service on
4 this, you know, very close to the holiday day.

5 Everything that Ben has described and that
6 Commissioner Murphy described, I just would strongly echo all
7 of the concerns related to traffic, related to the use.

8 I just want to say that, you know, we've lived in
9 this property for many years. We've seen the commercial
10 property evolve in that time. You know, when we first came
11 in, it was a barber shop. It was a -- you know, the dry
12 cleaners, the upholsterers. Those were the businesses that
13 occupied those spaces and they occupied those spaces for
14 decades and, you know, frankly, they were neighborhood
15 businesses. And one of the things -- one of the criteria
16 that you're supposed to look at is whether it's a
17 neighborhood facility. They were neighborhood facilities
18 because my kids got their hair cut by the barber. You know,
19 Ben Well cut their hair for several years when they were
20 young. And the dry cleaner, they used to get lollipops from
21 the dry cleaner when they would drop off our clothes. I
22 think that was what it meant to be a neighborhood facility.

23 This is not a neighborhood facility and those
24 businesses -- those businesses were small businesses, several
25 of them are minority-owned businesses. They were basically

1 kicked out of the property over years in order to bring in
2 these other uses. And frankly, I think -- you know, I will
3 say, you know, I left the house this morning when this
4 hearing began at 9:30. The trash receptacles from Down Dog
5 Yoga were sitting in public space when this hearing began.
6 And I think that just tells you something about the applicant
7 and their willingness to enforce the commitments that they
8 themselves made to this Board seven years ago. I mean it
9 just kind of -- I will say I'm struck by the fact that even
10 as of this morning, they had not corrected that situation.
11 I just am very concerned that with this new use, even as
12 well-meaning as this business may be, that we are going to
13 face extraordinary burdens in our neighborhood because of the
14 traffic, because of the delivery service in a street that has
15 no extra parking at this time where, you know, the retail
16 business that is there now fully occupies the three
17 commercial spaces that are available for commercial use
18 already. Yoga studio customers are already parking all over
19 the neighborhood to go to classes. It's just very hard to
20 see how a use such as this will not substantially increase
21 the traffic and congestion problem in this neighborhood.

22 And I just really hope that you will consider
23 carefully the implications of this extraordinary remedy that
24 you're offering them, because it will carry -- it will be
25 with us forever. You know, the ability to have a grease trap

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in this space will be with this space forever. The ability
2 to have a heavy use like this will be with us forever. And
3 I just -- I really hope that you'll consider that and the
4 impacts it will have on the community as you make your
5 decision.

6 Anyway, I really thank you taking your time this
7 evening. That's all I have to say.

8 VICE CHAIR JOHN: Thank you. Does the Board have
9 any questions for the witness?

10 (No audible response.)

11 VICE CHAIR JOHN: Does the applicant have any
12 questions?

13 MS. MOLDENHAUER: No questions.

14 VICE CHAIR JOHN: Thank you. Do the parties in
15 opposition have any questions Ms. Andris?

16 MS. ANDRIS: Thank you for coming to testify. Do
17 you remember the Govinda Gallery that was in that location
18 for 35 years; did you move into the neighborhood at that
19 time? Do you remember them? That was a historic commercial
20 site that was a joy to have and a huge contribution. Were
21 you here then?

22 MS. ALDEN: I'm sorry. Yes. I'm sorry, my
23 husband put on another. I couldn't hear the question. Could
24 you repeat it for me?

25 MS. ANDRIS: When you moved in, was Govinda

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Galleries still --

2 MS. ALDEN: Oh, yes.

3 MS. ANDRIS: -- at the location that Down -- yes.

4 MS. ALDEN: Yes.

5 MS. ANDRIS: And they had been there 35 years.

6 They were a tremendous contribution to our community,

7 commercial --

8 MS. ALDEN: Yes.

9 MS. ANDRIS: -- great commercial.

10 MS. ALDEN: Yes. And I was just looking at the

11 upholsterer. They had been -- they say they've been in

12 business for 75 years. They moved --

13 MS. ANDRIS: Seventy-five years.

14 MS. ALDEN: -- they only moved -- 75 years and

15 they had to leave Georgetown because of this -- the

16 applicant. And they've been in that space for, you know, 70

17 -- over 70 years, and we use them. We used them to have a,

18 you know, a cushion made for our children's room.

19 VICE CHAIR JOHN: Okay. Thank you very much. So

20 I'm going to ask Ms. Mehlert to excuse the witness. Do we

21 have any other witness, Ms. Mehlert?

22 MS. MEHLERT: No. I don't think we do.

23 VICE CHAIR JOHN: Mr. Moy, I understand there's

24 someone who tried to call in?

25 MR. MOY: Vice Chair, and because of the length

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 of time, right now I'm -- and perhaps maybe some difficulty,
2 I'm guessing, with the technology, would wish of the Board
3 to at least keep the record open so that he can submit his
4 written testimony into the case record.

5 VICE CHAIR JOHN: Okay. Thank you. So we'll go
6 ahead and do that. So Ms. Moldenhauer, do you have any
7 closing comments?

8 MS. MOLDENHAUER: No questions but I'd like to ask
9 Jennifer Speirs, if that's okay, and I just -- I wanted to
10 make sure -- I don't know, Chair John, if you understood.
11 I just want to make sure it's clear on the record, but the
12 two individuals that just spoke as individuals are actually
13 part of the party status application. They are individuals
14 that are part of Mr. Persina's party status group. So I just
15 -- that was -- so I would like to Ms. Speirs if you can one,
16 there were some comments about how local businesses or small
17 business, can you describe exactly a little bit more about
18 Greenheart and then also potentially addressing the question
19 as well regarding whether you think that the customer base
20 would have -- be competitive to a company like Starbucks.

21 MS. SPEIRS: Sure. So Greenheart is a small
22 family-owned business. We own three locations and in regards
23 to whether a company like Starbucks would be a competitor,
24 like I just mentioned, we're a very small business. We only
25 have three locations in comparison to however many Starbucks

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 has. We also don't have any coffee so, you know, Starbucks
2 obviously primarily is a coffee shop. We are a juice bar.
3 We also more of a health conscious clientele with, you know,
4 our fresh pressed juice and smoothies and bowls. So we do
5 not identify as being a competitor of Starbucks.

6 MS. MOLDENHAUER: And how many deliveries would
7 be coming to, obviously, to the location?

8 MS. SPEIRS: Are you referring deliveries from our
9 Sterling location?

10 MS. MOLDENHAUER: Yes.

11 MS. SPEIRS: One a day.

12 MS. MOLDENHAUER: And then can you also describe
13 -- and if the Board wants, we can pull up the image, but I
14 think if you describe kind of where the back of the house is
15 in regards to Ms. Andris's house?

16 MS. SPEIRS: Yes. So the back of house entrance
17 is the entrance that is located next to Down Dog Yoga. The
18 entrances that are on Prospect Street are seen in the image,
19 are both entrances for customers. So all employees would --
20 in back of house would be going through the Down Dog Yoga --
21 or the door next to Down Dog Yoga.

22 MS. MOLDENHAUER: and that's the farthest location
23 away from Ms. Andris's property; is that correct?

24 MS. SPEIRS: Correct.

25 MS. MOLDENHAUER: Sorry. I'm double-checking.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 Those are all my follow-up questions for you at this time.
2 Thank you. And Ms. John, if you'd like, I can start with the
3 closing remark. I believe actually that is the last, so I
4 don't know if opposition wants to provide their closing
5 remarks.

6 VICE CHAIR JOHN: Very well. Mr. Persina, do you
7 have closing remarks?

8 MR. PERSINA: I'm sorry if there is any background
9 noise. I'm looking after my infant right now. But again,
10 just wanted to echo all the sentiments of my neighbors and,
11 you know, really emphasize that all of our statements are
12 based on first-hand knowledge of how the -- of the traffic
13 and trash situation in our neighborhood and also the decline
14 and sort of increase in vacancies in primary commercial
15 corridors in our neighborhood. You know, this type of
16 commercial activity property belongs in the MU4, you know,
17 along M Street and Wisconsin Avenue and not steps away from
18 Ms. Andris's front door.

19 VICE CHAIR JOHN: Okay. Thank you. Ms. Andris?

20 MS. ANDRIS: I'd like to say that I'm actually
21 very discouraged by this last question that was asked about
22 what door employees would use. So what is the ratio of
23 employees -- I'm asking this rhetorically -- to the number
24 of customers. So if you have, I don't know, eight employees
25 a day going through the door that's on 34th Street, but you

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 have how many customers going through the door that's 48
2 inches from my front door, hopefully you have a lot more
3 customers than you do employees. And so just asking this
4 question and, you know, the implication just -- it really
5 saddens me and lessens my trust that, you know, we could be
6 good neighbors and that this is being done in good faith and
7 with honesty about the impact on the neighborhood and
8 fairness to the neighbors, not only in the quality of our
9 life but the value of our properties here, too.

10 And like I said, I love your creativity. I'm sure
11 you have a great product. There are so many empty
12 storefronts on Wisconsin and M that desperately need people
13 like you. Please reconsider and open up somewhere there.
14 There'll be a lot more people. You'll have a lot more
15 visibility, and I wish you all the best there. I hope it
16 works out for you in another location. Thank you.

17 VICE CHAIR JOHN: Thank you, Ms. Andris. Mr.
18 Murphy -- oh, does the Board have any questions? Oh, this
19 is closing. You won't have any questions. Sorry. Mr.
20 Murphy. It's late.

21 MR. MURPHY: Very quickly. It's been a very long
22 day and like other witnesses, I very much appreciate the
23 Board's devotion to this, heaven knows, thankless task so
24 I'll be quick. You've heard all of the things I've had to
25 say. I do think it's important that substantial changes a

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 use of a building in the middle of the R20 zone not be made
2 unless there's really been a change in regulation or a change
3 in facts that support the change. That's not happened here.

4 There's been a suggestion that perhaps the fairly
5 recent arrival of the corner store regulations make a
6 difference, but the corner store regulations came equipped
7 with the 750-foot rule. And this application is intended to
8 skirt completely around that and drag the MU4 zone up 34th
9 Street and into the middle of the R20 zone. It cannot have
10 been the intent of the Zoning Commission when it adopted the
11 corner store regulations, and it just would not apply in this
12 case.

13 This is not an easy intersection as it is right
14 now with no change even with the space empty. If we
15 introduce this use into this corner, it is going to have a
16 severe deleterious impact on the entire neighborhood. And
17 I encourage you as strongly as I can to deny this
18 application.

19 VICE CHAIR JOHN: Thank you. Ms. Moldenhauer?

20 MS. MOLDENHAUER: Yes. I'll start off by first
21 answering your question, Board Member John, you asked earlier
22 and I don't think I got a chance to kind of address it. So
23 there are a couple of different factors. One, I think as
24 Steve Mordfin from Office of Planning did indicate, this
25 property has been a long-term nonconforming use and even

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 though it was built prior to the zoning regulations, it had
2 been evaluated under that standard in the past. So out of
3 an abundance of caution when looking at the zoning
4 regulations, there is a special exception standard that
5 allows for a change from existing nonconforming to another
6 nonconforming use under that requirement. So that was
7 requested.

8 I do, however, agree with you that there is an
9 opportunity here if the Board were to say, you know, this can
10 be applied for solely under the corner store requirements
11 given the fact that the corner store does permit the use here
12 by right except for the two reliefs that are being requested.
13 And so -- and because of the history here, out of an
14 abundance of caution, because of the nonconforming use under
15 the section of the zoning regulation, there is a section that
16 says that a change be applied or from a special exception
17 under that section. We felt as an abundance of caution to
18 ask for that area of relief as well. I'll pause. Do you
19 have any follow-up questions on that since that was a
20 question from you? I see you saying yes so --

21 VICE CHAIR JOHN: I think you addressed the
22 special exception criteria and the waiver, which is where I
23 think the real issue is. So if you'd like to address those
24 issues in your closing argument.

25 MS. MOLDENHAUER: Absolutely. So I think the

1 issue here is that, you know, this is not looking at case law
2 from, you know, 40 years ago. We're looking at kind of
3 what's happening in this case today, and we're looking at the
4 fact that this is an existing, unique property. It is one
5 of the only one-story properties that exists. It's located
6 on a corner with large bay windows. Opposition party even
7 put into the record images where you can look straight
8 through and, you know, see this property. It doesn't have
9 the ability to obviously be, you know, converted with an
10 upper level for residential and a lower level. The situation
11 is that because of those unique factors, the ability to
12 maintain it as a nonconforming -- or as a non-residential use
13 is what creates the practical difficulty here and what gives
14 rise to the application and to -- we believe we do satisfy
15 that requirement. In addition, I think as OP indicated, you
16 know, there is -- this is not a conversion or a new corner
17 store. This is a pre-existing that has existed for 98 years
18 and was purpose built in that way. And so that creates a
19 unique condition which creates practical difficulty for the
20 750 feet requirement.

21 In addition to that, I think that this is not a
22 situation in which you are going to create competition for
23 commercial use for other commercial uses along the MU zone,
24 again, because of the fact that this had been used previously
25 for commercial uses in the past.

1 I think that the comments that are being raised
2 regarding the level of, you know, intensity here, you know,
3 there obviously was previous, you know, use where people
4 would walk up and drop off, you know, their dry cleaning.
5 There was obviously individuals that would be carrying chairs
6 and upholstery requirements that would most likely require --
7 people don't -- people can carry their juice and walk down
8 the street and not have parking requirements, but people
9 typically can't carry a chair and upholster and drop that
10 off. I mean they most likely have to have a vehicle. And
11 so I think, you know, from an impression of, you know, impact
12 and, you know, is this potential use or this requested use
13 an increase in intensity, we don't believe so. We believe
14 this is going to be a unique juice shop that has a unique
15 business of a subscription-based model which would not
16 encourage or create a lot of customers but rather encouraging
17 their subscription base services and provide that type of
18 business model.

19 We also believe that the de minimis amount of
20 relief regarding the grease trap should be taken into
21 consideration from the Board. And given the fact that this
22 is not a request to completely put in a grease trap to the
23 level of the original intent of that section, which is to not
24 allow frying or high level of cooking but rather for just
25 simply cleaning out small amounts of oil that would be left

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 in a blender and, you know, not cooking. And so we think
2 that those are additional factors for satisfying the
3 standard.

4 We have proffered a number of conditions that we
5 think do mitigate the concerns, and I think that, you know,
6 there are opportunities and ways in which the applicant and
7 the potential user of the space are willing to continue to
8 work with the Board and work with the neighbors. We did
9 actually, you know, have a meeting with the neighbors as
10 referenced and had a conversation. We're willing to discuss
11 potentially closing the one door and not having that one use
12 that is closer to Ms. Andris's property as well as, you know,
13 discussing potential term conditions that would allow for
14 kind of follow-up on some of these conditions as well.

15 But we, you know, we believe that we satisfied the
16 special exception condition and the variances as those
17 outlined in our submission as well as in the Office of
18 Planning's submission. So we're also -- in our follow-up
19 questions, we're able to supplement those. I know there's
20 a couple of questions that Jennifer was not able to answer
21 potentially. Obviously, definitely that the founder, Alicia,
22 would have been able to answer if she was present today. And
23 if there -- those need to be any follow-up questions, we're
24 happy for Alicia to supplement the record on those questions.
25 Thank you.

1 VICE CHAIR JOHN: Thank you very much. Does the
2 Board need any information from the applicant? Okay. I
3 don't see any hands, so Mr. Moy and I don't need anything.
4 So I'm going to go ahead and close the hearing and the
5 record. And I really want to thank everyone for their
6 presentation today and for, you know, being here for the last
7 two hours I believe. So I think I'm going to ask everyone --
8 and wish you a happy holiday. I don't know what we're going
9 to do, so I'm going to talk with the Board and see where we
10 are. Okay. Thank you all very much and have a good holiday.

11 Bye. Thank you. Okay. So I wanted to find out
12 if the Board is interested in deliberating and deciding today
13 or if we should do this when our minds are clearer and
14 fresher? I'm open --

15 ZONING COMMISSIONER MAY: I'm happy to defer if
16 others want to.

17 VICE CHAIR JOHN: Okay. Would others want to?
18 I'm fine. I'm happy to do whatever the majority wants to do.
19 Mr. Smith, Mr. Blake?

20 MEMBER BLAKE: Well, I certainly would like to
21 have some time to think through these issues that we
22 discussed today. I think that there were a number of very
23 interesting points brought up on both sides. We could
24 certainly make a decision today, but it would be, I think,
25 a thoughtful -- more thoughtful if I had some time to go

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 through a few of the issues a little more.

2 VICE CHAIR JOHN: Okay. Thank you. Mr. Smith,
3 how about you?

4 MEMBER SMITH: I do want to take some time to
5 digest some of the information that we heard today, so I
6 would welcome, you know, at a future hearing -- I guess at
7 this point would be the new year -- for us to put this on
8 for, you know, public meeting for us to just, you know, talk
9 about our thoughts and make a decision.

10 VICE CHAIR JOHN: Okay. Fair enough. So I'm
11 going to, as I said, close the hearing and the record, and
12 set this down for a decision, Mr. Moy. Mr. May, you are --

13 ZONING COMMISSIONER MAY: Madam Chair --

14 VICE CHAIR JOHN: -- left to persuade us
15 otherwise.

16 ZONING COMMISSIONER MAY: No -- no, I'm not going
17 to try to persuade you otherwise, but I -- y k as I think
18 about it, if we are going to defer the decision-making, I
19 think I would like to know a little bit more from the
20 applicant about the, you know, the history of the property
21 and why we are where we are. I mean I think one of the most
22 interesting aspects of the testimony in opposition is that
23 there have been neighborhood-serving retail there for decades
24 prior to this including after the 1983 case where the BZA did
25 not agree to the tea house. And now there's -- you know,

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 what they're coming back with is something that clearly
2 hardship impacts that are unacceptable to the neighbors at
3 the very least. So I am interested in understanding more
4 about what their history is in the leasing of the property
5 and what attempts it has made to lease it or whether that
6 they just, you know, went down this route because they
7 thought that they could get it approved or get more rent out
8 of it or what, just understanding a little bit more about
9 that because to me, it contributes to the need associated
10 with this change in use. I have to say some of the testimony
11 you heard about the impacts of this change in use were
12 compelling, so I feel like I need to give the applicant a
13 little bit more time to explain why this is really necessary

14 VICE CHAIR JOHN: Okay. And so would you like to
15 phrase that request, Commissioner May?

16 ZONING COMMISSIONER MAY: Okay. So I would like
17 to see a submission from the applicant explaining more about
18 the recent leasing history and attempts to lease the property
19 and why we are facing this particular proposal as opposed to
20 any other alternatives that might have been suggested by the
21 opponents.

22 VICE CHAIR JOHN: Okay. All right. Thank you.
23 So we will leave the record open for that one thing, because
24 I don't really have any other questions, and I don't believe
25 the other Board members do.

1 ZONING COMMISSIONER MAY: I think we do need to
2 have the ANC and the parties in opposition respond to that
3 submission though.

4 VICE CHAIR JOHN: So you would like to have a
5 continued hearing, Mr. --

6 ZONING COMMISSIONER MAY: No -- no -- no -- no --
7 no -- no -- no. If there's a submission from the applicant,
8 I believe that the ANC and the parties in opposition get to
9 submit something in response to that. Is that correct, Mr.
10 Moy?

11 MR. MOY: Absolutely.

12 ZONING COMMISSIONER MAY: Yes. But we don't need
13 to have a continued hearing. I don't want to discuss it
14 further. I just want to see --

15 VICE CHAIR JOHN: Can you give us some dates for
16 a decision, cause this was a very long day, and we heard a
17 lot of information, and it's a very full record. So let's
18 set this down for decision with the dates for filings and
19 responses.

20 MR. MOY: Yes, because of the need for
21 supplemental information and then of course because we have
22 parties in this record case, to allow them time to respond,
23 I think to allow the time and, of course, we're going through
24 the mix with the holidays so to allow that extra time. So
25 let me put this on the table and then we'll work with this.

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS
1323 RHODE ISLAND AVE., N.W.
WASHINGTON, D.C. 20005-3701

1 So if we set this for decision-making on January 26th, then
2 we could have responses from the parties and the ANC, let's
3 say, by Wednesday, January 19th? And the applicant to make
4 their filing by, let's say, by -- I was going to say January
5 5th but let's give them till that Wednesday, January 7th.
6 How's that? In other words, applicant would make their
7 filing by Friday, January the 7th, responses from the parties
8 and the ANC by January the 19th. Then we'll have two weeks
9 to respond with the Board making its decision on January
10 26th.

11 VICE CHAIR JOHN: Okay. Sounds good.

12 MR. MOY: Okay.

13 VICE CHAIR JOHN: All right. So it is 6:13. I
14 believe the only thing left is the meeting decisions, Mr.
15 Moy.

16 MR. MOY: That's correct.

17 VICE CHAIR JOHN: Okay. And we have two
18 decisions, so let's take a seven-minute break to stretch and
19 have our evening coffee. And hopefully, we'll be finished
20 by 7:00 unless people want to stay longer.

21 ZONING COMMISSIONER MAY: It's only 5:13 where I
22 am.

23 VICE CHAIR JOHN: Lucky you. Oh, that's right.
24 It's 5:13. Oh, great. Thank you.

25 MR. MOY: It's dark outside.

1 VICE CHAIR JOHN: I just need new glasses and the
2 print on this laptop is very small. So it is 5:14 but it
3 feels like 8:00 actually. So we can afford a 10-minute
4 break, so we'll be back at 5:25.

5 (Whereupon, the above-entitled matter went off the
6 record at 5:14 p.m.)

7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 12-22-21

Place: teleconference

was duly recorded and accurately transcribed under
my direction; further, that said transcript is a
true and accurate record of the proceedings.



Court Reporter

NEAL R. GROSS

COURT REPORTERS AND TRANSCRIBERS

1323 RHODE ISLAND AVE., N.W.

WASHINGTON, D.C. 20005-3701

(202) 234-4433

www.nealrgross.com