

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

NOVEMBER 9, 2022

+ + + + +

The Public Hearing of the District of Columbia Board of Zoning Adjustment convened via videoconference, pursuant to notice, at 9:30 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairman
JOSEPH S. IMAMURA, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Zoning Data Specialist

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OFFICE OF PLANNING STAFF PRESENT:

JONATHAN KIRSCHENBAUM, Development Review Specialist
ELISA VITALE, Development Review Specialist

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQUIRE

The transcript constitutes the minutes from the
Public Hearing held on November 9, 2022.

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

(9:40 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentleman. This is the public hearing of the Board of Zoning Adjustment. Today's date is 11/9/2022. This public hearing will please come to order. My name is Fred Hill, chairperson of the Board of Zoning Adjustment. Joining me today is Vice Chair Lorna John, Board Members Carl Blake and Chrishaun Smith, and Zoning Commissioners Dr. Joe Imamura and Chairman Anthony Hood.

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, everybody who's listening on Webex or by telephone, will be muted during the hearing.

Also, please be advised that we do not take any public testimony at our decision meeting session. If you're experiencing difficulty accessing Webex or with your telephone call-in, then please call our OZ hotline number at 202-727-5471. Once again, 202-727-5471.

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

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

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

15 All persons planning to testify either in favor or in
16 opposition should have signed up in advance. They'll be called
17 by name to testify. If this is an appeal, only parties are
18 allowed to testify. By signing up to testify, all participants
19 will complete the oath or affirmation as required by Subtitle Y,
20 408.7.

21 Requests to enter evidence at the time of an online
22 virtual hearing, such as written testimony, additional supporting
23 documents other than a live video which may not be presented as
24 prior testimony, may be allowed pursuant to Subtitle Y, 102.13,
25 provided that the person making the request to enter an exhibit

1 explain a) how the exhibit is relevant; (b) the good cause it
2 justifies allowing the exhibit into the record, including an
3 explanation of why the requester did not file the exhibit prior
4 to the hearing pursuant to Subtitle Y, 206 and how the proposed
5 exhibit would not unreasonably prejudice any parties. The order
6 of procedures for special exception and variances are pursuant
7 to Y, 409.

8 At the conclusion of each case, an individual who is
9 unable to testify because of technical issues may file a request
10 for leave to file a written version of planned testimony to the
11 record within 24 hours following the conclusion of public
12 testimony in the hearing. If additional written testimony is
13 accepted, then parties will be allowed a reasonable time to
14 respond as determined by the Board. The Board will then make a
15 decision at its next meeting session, but no earlier than 48
16 hours after the hearing. Moreover, the Board may request
17 additional specific information to complete the record.

18 The Board and staff will specify at the end of the
19 hearing exactly what is expected and the date when persons must
20 submit the evidence to the Office of Zoning. No other information
21 shall be accepted by the Board.

22 Finally, the District of Columbia Administrative
23 Procedures Act requires that a public hearing on each case be
24 held in the open before the public. However, pursuant to Section
25 405(b) and 406 of that Act, the Board may, consistent with its

1 rules and procedures and the Act enter into a closed meeting on
2 a case for purposes of seeking legal counsel on a case pursuant
3 to D.C. Official Code Section 2-575(b)(4) and/or deliberate on
4 case pursuant to D.C. Official Code Section
5 2-575(b)(13), but only after providing the necessary public
6 notice in the case of an emergency closed meeting after a roll
7 call vote.

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

9 MR. MOY: Good morning, Mr. Chairman and members of the
10 Board. It's Wednesday. Another Wednesday. Anyways, I do. I
11 do have a quick announcement. First, I want to announce
12 applications that are not on today's docket. Number one,
13 Application No. 20803 of Donald and Elizabeth Larson has been
14 removed from the expedited review consent calendar and scheduled
15 for a public hearing on November 9th, 2022. Application No.
16 20410 of Mamma Lucia of Chevy Chase, LLC has been postponed,
17 rescheduled to January 25th, 2023.

18 Finally, Application No. 20554 of Sasha Bruce
19 Youthwork, Inc. postponed and rescheduled to December 14th, 2022.

20 I have two other items, Mr. Chairman. First, there is
21 a preliminary matter to Case Application No. 20803 of Donald and
22 Elizabeth Larson. There was a request for party status in
23 opposition.

24 And finally, regarding Application No. 20801 of Paul
25 M. Backlund, earlier this morning, the attorney representing his

1 client had an unexpected scheduling issue this morning and is
2 asking if you could kindly move his application to the back of
3 the docket. So that's what I have for you, Mr. Chairman.

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

5 We're going to juggle around a little bit. I know that
6 we have Commissioner Imamura with us for one case, and we have
7 Chairman Hood with us for the rest of the day. What I'm going
8 to propose is, we're going to go ahead and do 20801 last, at the
9 end of the day. And then we're going to go ahead and first hear
10 the preliminary matter concerning the party status. And then
11 we'll do Dr. Imamura's case, which is 20374. So if Chairman Hood
12 would join us for the preliminary matter.

13 Good morning, Chairman Hood.

14 ZONING COMMISSION CHAIR HOOD: Okay. Good morning,
15 everyone.

16 CHAIRPERSON HILL: And Mr. Moy, if you could please go
17 ahead and call the preliminary matter concerning the party
18 status.

19 MR. MOY: Yes, sir. Thank you. Let me read the -- I
20 made the case caption for this application for the record. This
21 is Application No. 20803 of Donald and Elizabeth Larson. This
22 is -- this is a self-certified special exception -- this self-
23 certified for special exception is pursuant to Subtitle D,
24 Section 1210, Subtitle D, Section 5201 and Subtitle X, 901.2 from
25 the lot occupancy requirement of Subtitle D, Section 1204 and the

1 accessory building area requirement of Subtitle D, Section
2 1209.4, is located in the R-20 zone at 1609 35th Street,
3 Northwest, Square 1277, Lot 7.

4 CHAIRPERSON HILL: Okay. Great.

5 I don't know if Mr. Young, if you could bring in the
6 party and the -- the Applicant and the party status person?

7 Okay. Ms. Prince, if you can hear me, if you could
8 introduce yourself for the record, please? No, you're on mute,
9 or maybe an error. That's okay. You can kind of figure it out
10 for one second, if I can speak to you.

11 MS. PRINCE: I'll unmute myself.

12 CHAIRPERSON HILL: Oh, great. You want to go ahead and
13 introduce yourself for the record, please?

14 MS. PRINCE: I'm Allison Prince of Goulston and Storrs.
15 I'm here representing the property owners, the Larsons, and we
16 have no objection to the party status request.

17 CHAIRPERSON HILL: Thank you.

18 Ms. Eigen, can you hear me?

19 MS. VOM EIGEN: Good morning. This is Ann vom Eigen.
20 I'd be happy to start my video as well, but -- there we go.

21 CHAIRPERSON HILL: Oh, great.

22 MS. VOM EIGEN: I really --

23 CHAIRPERSON HILL: Yeah. Can you just introduce
24 yourself for the record, Ms. Eigen?

25 MS. VOM EIGEN: Sure. My name is Ann vom Eigen. I

1 reside at 1611 35th Street, Northwest. And I have submitted a
2 request for party status since I am the immediately adjacent
3 neighbor to the north.

4 CHAIRPERSON HILL: Yeah. Ms. vom Eigen, I just wanted
5 to bring you guys in first, because I wanted to kind of go over
6 how party status works.

7 MS. VOM EIGEN: Thank you.

8 CHAIRPERSON HILL: And so, I believe unless the Board
9 has any issues, we're going to go ahead and award you party
10 status. And what that means is we're going to have you probably
11 second to last in the day. We don't have a particularly long day,
12 actually. And so we're going to bring you back. But I just
13 wanted to kind of let you know what this means. So what you're
14 going to be able to do is the Applicant is going to give their
15 case. You will then have an opportunity to ask questions of the
16 Applicant. You will then have an opportunity to give your
17 concerns, your case, and then the Applicant will have an
18 opportunity to ask questions of you.

19 I would ask you to kind of try to keep them to zoning
20 issues. I know you're not a zoning attorney, but, you know,
21 we'll just -- the issues that pertain to the zoning case that's
22 before us. And obviously, I also kind of do this so that if
23 there's a chance that if there's any continued discussions which
24 you can have with the Applicant over the next, you know, hour or
25 two, that might be helpful so that we could, you know, possibly

1 -- you could possibly get to a resolution.

2 So I'm going to go ahead and award you party status.
3 Oh, and then also the Office of Planning will come forward, and
4 they'll give their report, and everyone will have an opportunity
5 to ask the Office of Planning. And basically, with party status,
6 you have an opportunity to present your case and be heard and
7 ask questions. And so that's all that is about. What I would
8 do is kind of see if you any questions, Mr. vom -- Ms. vom Eigen.

9 MS. VOM EIGEN: Thank you for your time and the
10 explanation. I appreciate it.

11 I have been communicating with my neighbor, and we are
12 continuing to discuss the issues, so, you know, well -- I'll be
13 available at the time that the Board calls the case back, and I
14 hope to have a resolution by that time. Yeah.

15 CHAIRPERSON HILL: Oh, great.

16 MS. VOM EIGEN: And you know, if we can get something
17 in a BZA order, that would be our ultimate goal -- my ultimate
18 goal.

19 CHAIRPERSON HILL: Okay, Ms. vom Eigen. Then we will
20 go ahead and see you back --

21 Ms. Prince, do you have any questions?

22 MS. PRINCE: No questions.

23 CHAIRPERSON HILL: Okay. All right. Then, Mr. Young,
24 if you can please excuse everyone for this portion of the hearing.

25 And then Chairman Hood, we'll go ahead and bring back

1 in Commissioner Imamura. Okay. And I appreciate -- I know that
2 some of my board members are a little bit under the weather today,
3 so we might be losing one later. But I would appreciate some
4 help on this next case, which is 20374.

5 Mr. Moy -- I'm sorry, Mr. Moy, if you want to go ahead
6 and call our first case.

7 MR. MOY: With pleasure. Thank you, sir. So the case
8 application before the Board is 20374 of Matthew and Alicia
9 Amling. Once again, this is an application as amended for self-
10 certified application for an area variance from the front setback
11 requirements, pursuant to Subtitle D, Section 1205.2 and Subtitle
12 X, Section 1000.1. Let me see. I think that's all I want to
13 say for that. The property is located in the R-20 zone at 3617
14 T Street, Northwest, Square 1296, Lot 338. And the Board last
15 heard this application for preliminary matters on September 28th,
16 2022. And the Board did not get into the merits of the
17 application at that time.

18 CHAIRPERSON HILL: Okay, thanks.

19 Mr. Blake, are you with us, or you don't know.

20 BOARD MEMBER BLAKE: Yes, I will be. If we have not
21 heard the merits of the case, I will be participating.

22 CHAIRPERSON HILL: Okay, great.

23 Mr. Amling, can you hear me?

24 MR. AMLING: Yes, I can hear you. Good morning.

25 CHAIRPERSON HILL: Good morning. Are you representing

1 yourself today?

2 MR. AMLING: Yes. We did submit one additional Exhibit
3 85 yesterday morning, and we have a short statement that we'd
4 like to read. It's basically what we submitted, but we wanted
5 to make sure that that became part of the record and was reviewed
6 as well. Chairman?

7 CHAIRPERSON HILL: Yeah, Mr. Amling, I'm just trying
8 to pull up your -- the item you're speaking about.

9 Mr. Amling, can you hear me?

10 MR. AMLING: I can hear you now, I think. I turned
11 off my video. I think I'm getting some latency on our Internet
12 connection.

13 CHAIRPERSON HILL: Okay.

14 MR. MOY: Mr. Chair, this may be Exhibit 75 in the
15 record that he's speaking of. It's 85.

16 MR. AMLING: Yeah.

17 MR. MOY: Exhibit 85.

18 MR. MOY: Our intended --

19 CHAIRPERSON HILL: We have it at 75, I think.

20 MR. MOY: Okay.

21 MR. AMLING: Yeah, it's just a five-page PDF document
22 that has a statement at the beginning and then a couple -- or a
23 few drawings from our original DCRA-issued permit plan, and we
24 just wanted to make sure it was reflected in the record. So I
25 can go ahead and read this if --

1 CHAIRPERSON HILL: Yeah, yeah. Mr. Amling, why don't
2 you go ahead? And so -- so you're not represented by Mr. Sullivan
3 anymore?

4 MR. AMLING: Not at this time.

5 CHAIRPERSON HILL: Okay. All right. Let's see.
6 Then, Mr. Young, could you pull up Exhibit 75?

7 And Mr. Amling, if you just want to go and read through
8 that for us?

9 MR. AMLING: Sure. Thank you for the time.

10 "In light of recent Exhibit submissions made by our ANC
11 and the Office of Planning, we wanted to again kindly urge the
12 BZA to approve our variance application.

13 Just as a reminder, we've attached the photographs of
14 the final stamped plans that we used to build our home. The
15 stamps on these plans clearly state in large red font DCRA /
16 Office of the Zoning Administrator complies with requirements of
17 DC Zoning Regulations.

18 Those stamps can be found on many pages of our final
19 permit plans and on the same pages that clearly show the vestibule
20 in question that extends two feet past the neighbors. While we
21 now know, of course, and appreciate that these plans were not
22 compliant due to the vestibule, to us, it seems completely
23 reasonable to have relied on the plans in good faith at the time
24 and to have trusted that the plans did meet zoning requirements
25 at the time, as the stamps explicitly indicate.

1 We truly believe that the detrimental reliance we
2 placed on these plans and the permit issued in error, which as
3 we understand, required the final review and approval of DCRA
4 officials to issue, and we also thought were the final BZA plans,
5 that this has created the first prong, which is the exceptional
6 condition affecting our property today, and then in turn also
7 created the second prong, the practical difficulties that we've
8 outlined in the burden of proof that we submitted a few weeks
9 back. That's Exhibit 68B.

10 Overall, we hope the Board can look past the mistakes
11 made leading up to this permit issuance and to move past the
12 opposition submitted on this case. Instead, we hope the Board
13 will weigh more heavily the unwavering support we have received
14 from our close neighbors, the Burleith Citizen Association
15 members, and most heavily from our local ANC, and will ultimately
16 vote to approve the variance application. Thanks for your time."

17 And then the next four pages here are just pictures of
18 the actual plan that we've kept in our home. You can clearly
19 see that red stamp there and the vestibule shown on the front
20 page. And if you go to the next page, you'll see the stamp there
21 again, and you'll see the vestibule on the bottom right, extending
22 two and a half feet past what's allowed. And then if you go to
23 the next page, you'll also see the stamp there again and our
24 vestibule on the top left, which protrudes out.

25 And then finally, we have one more page that has the

1 stamp that we relied upon. So that's really what I wanted to
2 share. I'm happy to share more detail from our burden of proof,
3 if you'd like, but would leave it at that for now.

4 CHAIRPERSON HILL: Okay. All right, Mr. Amling, I
5 guess, is your camera just kind of not working very well or?

6 MR. AMLING: I can try it again here.

7 CHAIRPERSON HILL: Let's try it, and if you would.

8 I'm going to let the Board ask some questions, but I'm
9 going to turn the Office of Planning first, and then we're going
10 to come back.

11 Could the Office of Planning weigh in, please?

12 MR. KIRSCHENBAUM: Good morning, Chairman Hill and
13 members of Board of Zoning Adjustment. I am Jonathan Kirschenbaum
14 of the Office the Planning.

15 For this case, we do unfortunately, recommend denial
16 of the area variance for the front vestibule. You know, based
17 on the Applicant's requirement to build to the Board-approved
18 plans under BZA Case 19936 and the failure to do so, OP cannot
19 find that the Applicant experienced detrimental reliance by
20 building a front vestibule based on an erroneously issued
21 building permit.

22 And unfortunately, therefore we do not think that there
23 is an exceptional situation affecting this specific property.
24 I'm happy to answer any other questions the Board may have. Thank
25 you.

1 CHAIRPERSON HILL: Okay.

2 All right. Does the Board have questions for the Office
3 of Planning or the Applicant?

4 BOARD MEMBER BLAKE: One question for the Applicant.
5 Did --

6 Mr. Young, if you could pull back up that slide or the
7 presentation we just saw?

8 In the penultimate slide, I saw something that I would
9 -- want to just get clarification on.

10 That slide right there.

11 Is -- on the lower slide, is that, too a picture of the
12 vestibule on the right side? The right?

13 MR. AMLING: It is, yes.

14 BOARD MEMBER BLAKE: So those are very different between
15 the one on the top and the one on the bottom. One appears to be
16 relatively narrow.

17 MR. AMLING: Yes.

18 BOARD MEMBER BLAKE: The other one seems to be very -
19 - so they're conflicting, even on this page, as to what is on
20 the drawings, from what I can see is the --

21 MR. AMLING: Well, that's a good observation. So the
22 property on our right, it sticks out further than the property
23 on the left by two feet. So there's a -- our property has an
24 overhang. Our neighbor to the left, it sticks out the two feet
25 to meet the overhang. Our neighbor on the right does not stick

1 out as far. So that's what you're seeing reflected there. Does
2 that make sense?

3 BOARD MEMBER BLAKE: Right. So is your vestibule two
4 feet past the immediate neighbor, or is it four feet past the
5 immediate neighbor?

6 MR. AMLING: It's two feet, six inches past the furthest
7 out neighbor.

8 BOARD MEMBER BLAKE: Okay. Got it.

9 MR. AMLING: That's four feet past the --

10 BOARD MEMBER BLAKE: Got it.

11 MR. AMLING: -- closest in neighbor. If you don't
12 count our overhang, right, because our overhang on the second
13 floor sticks out two feet to match the neighboring property.

14 BOARD MEMBER BLAKE: Okay.

15 MR. AMLING: So that's what see (audio interference)
16 in there. Does that help?

17 BOARD MEMBER BLAKE: Yes, it does. Thank you very much.

18 MR. AMLING: Good question.

19 CHAIRPERSON HILL: Sure. Go ahead, Dr. Imamura?

20 COMMISSIONER IMAMURA: -- Mr. Chairman.

21 Mr. Amling, I imagine your wife is also with you. Mr.
22 Amling?

23 MR. AMLING: I'm still here. I just am starting to
24 lose connection a little bit. I turned my video off.

25 COMMISSIONER IMAMURA: Okay. It looked like there was

1 somebody that was also with you there in the room.

2 MR. AMLING: Yes, that's my wife, Alicia. She's with
3 me here.

4 COMMISSIONER IMAMURA: Okay. I can imagine the amount
5 of stress and anxiety this particular case has been for both of
6 you. I'm certainly compassionate about that. You had -- I have
7 a couple questions and I may have a follow up.

8 You mentioned -- I think it -- the property to the east
9 of you, 3615, the second floor sort of bump out, where your
10 property aligns with their second floor drop back.

11 MR. AMLING: Correct.

12 COMMISSIONER IMAMURA: Right?

13 MR. AMLING: Yes.

14 COMMISSIONER IMAMURA: So it's in the same plane; is
15 that right?

16 MR. AMLING: Correct. And we kept that feature to be
17 consistent with the neighborhood and the original home. The
18 original houses, some of them in Burleith, had a gabled roof, and
19 we wanted to keep that element to try to be consistent with the
20 neighborhood. So that's why we are consistent with their property
21 as well.

22 COMMISSIONER IMAMURA: Okay. I'm a little perplexed,
23 I guess. This -- your case is unique in that it's really touched
24 a bar, a very high threshold, where I think it's -- in any other
25 case, we'd certainly want to have your attorney side by side with

1 you here so -- that or your architect. And so I think it's very
2 courageous for you and Ms. Amling to come before the Board by
3 yourselves.

4 Can you describe -- I'm kind of curious sort of the
5 circumstance, if you can explain that a little bit more.

6 I know you went into some detail at the last hearing,
7 in terms of Mr. Sullivan kind of coming on board and now where
8 that stands and where your architect is, perhaps.

9 MR. AMLING: I think so. I -- so is your question why
10 we don't -- why they're not here today?

11 COMMISSIONER IMAMURA: Yeah.

12 MR. AMLING: Frankly, I -- I'm not sure why our architect
13 is not here. Frankly, the -- just speaking candidly, the expense
14 of maintaining an attorney was -- for a variance hearing was
15 greater than we're able to support at this time, and we felt that
16 he did a nice job in our last hearing of explaining the merits
17 of -- and the three prongs supporting the variance. So we had
18 to make that decision unfortunately.

19 COMMISSIONER IMAMURA: All right. I appreciate your
20 honesty and forthrightness, Mr. Amling, about that. That's
21 exactly what I wanted to get at.

22 For now, Mr. Chairman, I don't think I have any other
23 questions for the Applicant, but I'm interested to hear what
24 other Board members might have to ask or share that might prompt
25 further questions. So for the moment, I'll yield back.

1 CHAIRPERSON HILL: Okay. Does anybody have any further
2 questions of anyone here?

3 BOARD MEMBER BLAKE: I have a question for the Office
4 of Planning. Could you give me a sense of -- in looking at the
5 argument, the estoppel argument or the detrimental reliance
6 argument, can you give us a sense of how the timing played a role
7 in your assessment?

8 MR. KIRSCHENBAUM: Could you be a little bit more
9 specific about what you'd like to hear about in terms of timing?

10 BOARD MEMBER BLAKE: Perhaps you can just kind of walk
11 through kind of, you know, how that -- okay, the timing of the
12 notification to the Applicant that the project had an issue and
13 how that played into meeting the prongs or the test for the undue
14 reliance.

15 MR. KIRSCHENBAUM: I don't think timing really was --
16 I mean the only thing that timing would have had to potentially
17 do with is whether or not this was brought to the Board as an
18 appeal or as a variance. The Office of -- this was originally
19 submitted as a special exception because DCRA had told the
20 Applicant that this should be special exception. So I believe
21 they decided to go the special exception route instead of the
22 appeal route.

23 In terms of timing, I, you know, there's -- I don't
24 think timing really has much to do with a detrimental reliance
25 argument. Timing has to do with the way this application was

1 originally filed and, you know, reviewed by the Board.

2 BOARD MEMBER BLAKE: I think my question was more so to
3 the original issue. I mean, part of it is saying that the
4 permitting took place and allowed the Applicant to proceed and
5 do the project with the permits in place. My question was, at
6 what point did the DCRA intervene to say this was no longer
7 a -- an acceptable project, and did that play a role in your
8 assessment as to blame or reliance?

9 MR. KIRSCHENBAUM: No, I -- timing did not play a role.
10 And I don't know what these updates were between the notice of
11 zoning violations going out and when this was filed as a special
12 exception originally. That would be for the Applicant.

13 CHAIRPERSON HILL: Mr. Amling?

14 MR. AMLING: Sure. So the vestibule had been basically
15 built and completed by the time we received notice of the error.
16 It was around July 10th of 2020, and --

17 BOARD MEMBER BLAKE: Was the vestibule completed and
18 --

19 MR. AMLING: Yes.

20 BOARD MEMBER BLAKE: -- you're seeing it for a while?
21 Well, how long had it been completed before you were noticed?

22 MR. AMLING: Probably a month and a half or so.

23 BOARD MEMBER BLAKE: A month and so -- and was that with
24 the final inspection, or was that randomly?

25 MR. AMLING: No, we had not had the final inspection

1 at that time. I think we had had our framing inspection, and
2 so.

3 BOARD MEMBER BLAKE: So when was the final inspection
4 scheduled? Have you not yet scheduled it?

5 MR. AMLING: We have not yet scheduled it due to the
6 fact we're waiting for this matter to be resolved.

7 BOARD MEMBER BLAKE: No, no. I'm talking about when you
8 -- at the time you got the notification, had you been made aware
9 -- had you had the final inspection, and did it take place at
10 that time? Did it take place in between your framing inspection
11 and your final inspection? I guess it would have to be before
12 your final inspection, because you haven't done it yet.

13 MR. AMLING: Correct. That is correct.

14 BOARD MEMBER BLAKE: So it took place roughly a month
15 after you completed construction, before you had your final
16 review.

17 MR. AMLING: Correct.

18 BOARD MEMBER BLAKE: Okay. Thank you.

19 MR. AMLING: And I believe in our burden of proof
20 statement, we have a photograph of the vestibule that was taken
21 a couple days after the notice of -- of -- we received the notice
22 of violation, which shows the substantial completed nature of the
23 vestibule at that time.

24 BOARD MEMBER BLAKE: Okay. Thank you very much.

25 MR. AMLING: You're welcome.

1 VICE CHAIR JOHN: Mr. Chairman?

2 MR. CHAIRMAN: Go ahead, Ms. John.

3 VICE CHAIR JOHN: Okay.

4 So Mr. Amling, when was the framing completed for the
5 vestibule? There are photographs -- just to help you there,
6 there are photographs, but I don't know when they were taken,
7 showing the cantilevered roof.

8 MR. AMLING: I'd have to look -- I'd want to say at
9 some point in May, mid-May of 2020.

10 VICE CHAIR JOHN: Okay. Thank you.

11 CHAIRPERSON HILL: Okay.

12 Mr. Amling, I mean, I'm going to just kind of run down
13 what I think I remember or understand and just give you an
14 opportunity to kind of --

15 And Ms. Amling, you want to introduce yourself also for
16 the record?

17 MS. AMLING: Yep, Alicia Amling.

18 And the photo -- the vestibule was fully bricked,
19 roofed, and decorated by April 30th of 2020. (Indiscernible) the
20 photos of the framing were from prior to that. I'm just looking
21 at when our masons were here and when that was standing in front
22 of the vestibule on April 30th.

23 CHAIRPERSON HILL: Ms. Amling, I'm sorry, we can't take
24 --

25 MS. AMLING: It's not in the record -- I know it's not

1 in the record, but I was just looking at those dates, so.

2 CHAIRPERSON HILL: Okay.

3 So Mr. Amling, Ms. Amling, I guess I just want to kind
4 of run through a little bit. I mean, I think you -- you've been
5 through this enough with us, and you've watched enough hearings
6 with us to know that we're trying to do our best with the
7 regulations, right? You know, there's no one here that doesn't
8 want you to have your vestibule. I shouldn't say that. I'm not,
9 at least. You know, I mean, we're here, unfortunately, looking
10 at the regulations and whether or not we think that there's
11 detrimental reliance, right, as to why the vestibule should be
12 there or whether or not -- you know, I'm not trying to throw your
13 architect under the bus or what have you.

14 Like, whether or not your architect should have found
15 this; whether or not there's anything now that they should fix;
16 I don't know, right. And I don't necessarily know if you're
17 going to -- if this is going to be the best avenue for your
18 resolution, meaning whether this is going to pass. I'll be
19 honest, right. We have a hard time with variances, because it
20 is such a higher bar for us that it basically changes the
21 regulation, right. It means you can't do it, right. And so
22 obviously, you're stuck with the detrimental reliance issue.

23 The thing that I think has been at play for me was that
24 there was kind of, I guess, two sets of plans: one that had the
25 vestibule and one that didn't, right. And so when you guys came

1 through the BZA at one point in time, you understood -- whether
2 or not it really resonated with you, you might have understood
3 that the vestibule was something that needed to be approved. And
4 I think that we didn't approve the vestibule, which is why those
5 sets of plans weren't the ones that should have been presented
6 to DCRA.

7 Do you know -- am I incorrect in what -- anything I
8 just said?

9 MR. AMLING: It just differs a little bit from what we
10 thought was happening, in that we thought the final plans that
11 we used to build were the plans that were reviewed by BZA, given
12 that they have the stamp on them that said they're zoning
13 compliant. That was our understanding, that the plans we used
14 were the plans that were approved by BZA.

15 CHAIRPERSON HILL: Right. So I'm -- and it's okay. I
16 mean, you can tell me yes or no. Like, did you think -- because
17 what I'm trying to remember was, you know, the plans that we
18 approved didn't have the vestibule. And then did you know that
19 the plans that we approved didn't have the vestibule? that's my
20 question to you.

21 MR. AMLING: No, we did not. We had thought that the
22 vestibule was a matter of right to build. And then when we saw
23 that approval from DCRA, we thought that that affirmed our belief
24 that it was a matter of right.

25 MS. AMLING: This is us as naive homeowners. The only

1 request we thought we were asking of BZA, what, three and a half
2 years ago, when we were first there with our plans, was the
3 additional 10 feet.

4 CHAIRPERSON HILL: Right.

5 MS. AMLING: That was the only thing we, the homeowners
6 thought we were asking of you. Everything else we know.

7 CHAIRPERSON HILL: Wait. Are you -- the rear. You
8 thought the vestibule was matter of right.

9 MS. AMLING: Yeah.

10 CHAIRPERSON HILL: And the rear was what you were --

11 MS. AMLING: The only thing we thought we were hoping
12 to be granted was the rear addition. We thought everything else
13 in our plans was a matter of right.

14 MR. AMLING: Right.

15 MS. AMLING: Which now we know we -- that was --

16 MR. AMLING: Yeah, we were sadly mistaken,
17 unfortunately, which is what brings us here trying to resolve
18 this.

19 CHAIRPERSON HILL: Okay.

20 MS. AMLING: But --

21 CHAIRPERSON HILL: Sorry. Just so you know again. So
22 like, the -- I don't know how much the argument that you guys
23 can't just knock down the bricks and turn that into a portico is
24 where we're having, like, some architectural questions, I guess,
25 right. I know what the architect put forward, right. And so

1 I'm just -- I'm trying to get all the questions out and in the
2 open right now so we don't have future issues --

3 MS. AMLING: I appreciate that.

4 CHAIRPERSON HILL: -- with this, right? And giving you
5 an opportunity for my Board members to, if they have any questions
6 about what the story perhaps is and the timeline perhaps is for
7 the detrimental reliance issues. So your testimony is that you
8 thought the vestibule was matter of right, and your only thought
9 was that the rear addition was the -- what you were before the
10 BZA for, which really then, I think, puts it on the architect.
11 It's his issue and his incorrectness, no offense to the
12 architects, that they should have known that the vestibule was
13 also something that was before us.

14 And so I'd have to go back now and take a look again
15 as to how that previous hearing went to clarify the vestibule
16 issue in my mind. But maybe some fellow Board members can also
17 help me at that point in time. But before I jump around, and I
18 am going to jump around. I'm sorry. I'll let my fellow Board
19 members ask a question if they want you now, or I can see it.

20 Is there anybody here wishing to testify, Mr. Young?
21 Mr. Young, I'm sorry. Is there anyone here wishing to testify?

22 MR. YOUNG: We do that.

23 CHAIRPERSON HILL: Okay.

24 All right. So then do my fellow Board members have any
25 questions?

1 And I'll start with Mr. Smith, because he has his hand
2 up.

3 BOARD MEMBER SMITH: I think I have one question and
4 maybe he answered it. What was the date of the issuance of the
5 permit by DCRA again?

6 MR. AMLING: It was in 2019. Sorry. I can tell you
7 in one second.

8 MS. AMLING: June 21, 2019.

9 MR. AMLING: June 21st, 2019.

10 BOARD MEMBER SMITH: June 21st, 2019. And you said the
11 vestibule was completed by when?

12 MR. AMLING: It was fully bricked by April 20th of
13 2020.

14 BOARD MEMBER SMITH: Okay. And that was after your
15 framing inspection; am I correct?

16 MR. AMLING: Correct, yes.

17 BOARD MEMBER SMITH: Okay. Was there another
18 inspection before the framing inspection? Was there, like, you
19 know, some type of footing inspection?

20 MR. AMLING: Yes, we did have a footing inspection.

21 BOARD MEMBER SMITH: Okay.

22 MR. AMLING: We had -- yes.

23 BOARD MEMBER SMITH: And that wasn't -- it wasn't caught
24 at that particular point?

25 MR. AMLING: It was not.

1 BOARD MEMBER SMITH: Okay. Well, it wouldn't be,
2 because it wasn't framed yet, so it could have been a portico.
3 Okay. That was my only question that I had.

4 CHAIRPERSON HILL: Ms. John?

5 VICE CHAIR JOHN: Thank you. So were either of you at
6 the BZA hearing in March of 2019?

7 MS. AMLING: Yes.

8 VICE CHAIR JOHN: And did you hear the discussion at
9 that hearing about the vestibule? Do you recall a discussion?

10 MR. AMLING: I don't.

11 VICE CHAIR JOHN: Okay.

12 MS. AMLING: I remember sitting with black boots on
13 being very hot when we all got to be together still. But I --

14 VICE CHAIR JOHN: Yeah, I understand. But did you not
15 know that the vestibule was removed from the plans?

16 MS. AMLING: I know it's hard to --

17 VICE CHAIR JOHN: Do you know --

18 MR. AMLING: Not -- Ms. John, but we -- not initially.

19 MS. AMLING: Plans went back and forth, and we
20 just -- we followed the process, and we -- I didn't pay rapt
21 attention. I -- my architect told me here's where we are in the
22 process, and I wasn't opening every PDF and double-checking my
23 architect and the office of -- I wasn't checking other people,
24 because we just trusted the process. And I -- so many years
25 later, obviously, it was a mistake to trust the process, so. So

1 I know that's hard to believe, because it is our home, and it's
2 a very expensive project, but --

3 VICE CHAIR JOHN: So when was the framing inspection
4 done?

5 MS. AMLING: We can look through our notes. My notes
6 have been a big (indiscernible).

7 MR. AMLING: It would have been at some point in
8 mid-2020 after the vestibule was completed. I have the -- I can
9 go get the inspection records.

10 VICE CHAIR JOHN: Okay. Okay. If it's -- so the
11 framing was done after the vestibule was completed. That's fine.
12 You don't have to give me a date.

13 MR. AMLING: Correct.

14 VICE CHAIR JOHN: And it was completed in April or May.

15 MR. AMLING: Correct.

16 VICE CHAIR JOHN: Okay. That's all. That's all I
17 have.

18 CHAIRPERSON HILL: Okay.

19 Mr. Amling and Ms. Amling, can you just -- can I see
20 you both for a second? I mean, I'm just trying to understand.
21 I mean, this is the argument detrimental reliance, right?

22 MR. AMLING: Right.

23 CHAIRPERSON HILL: And so, I don't know what's going
24 to happen now. I actually don't know. Right. I mean, I kind
25 of have a general idea, like, because you have a kind of tough

1 hill to climb, right? And so, but you guys are -- it's such a
2 weird thing that -- you guys are telling me that you didn't at
3 one point go, oh, wow, they missed the vestibule, and now we're
4 going to get it?

5 MR. AMLING: Oh, no. We definitely did. We saw that
6 and thought, okay, this is approved as a matter of right. That's
7 -- was our thinking.

8 MS. AMLING: It wasn't like we pulled one over on them.
9 It was like the vestibule's here because, just like our neighbors
10 four or five doors down have a vestibule. It's just a matter of
11 right. We were just like, that's -- there -- we walk around the
12 neighborhood, and there are vestibules, so we didn't think like,
13 yes, we pulled one over on them. It was great, we have the
14 vestibule.

15 CHAIRPERSON HILL: Okay. Okay. Okay. This is my last
16 question, and I know Mr. (indiscernible) and then I don't know.
17 I might go back and watch that hearing again. I don't. Is that
18 -- oh, yeah. If you had known that it was a risk, right, would
19 you have done the vestibule, or would you have just made it a
20 portico?

21 MS. AMLING: I think we would have intentionally
22 requested approval for the vestibule, because I feel very
23 strongly that the vestibule makes our home --

24 CHAIRPERSON HILL: All right. That's okay. That's
25 oaky. I'm sorry. You guys, I got to tell you --

1 MS. AMLING: It was the right way.

2 CHAIRPERSON HILL: Even if you would have argued for -
3 - now, this is where I got to go back and look. Even if you
4 would have argued for the vestibule, you still would have been
5 here arguing for an area variance. Okay. So it's a different
6 situation, right?

7 MR. AMLING: Right.

8 CHAIRPERSON HILL: So it's a different situation,
9 right? So --

10 MS. AMLING: Well, our architect probably would have
11 told us, don't argue that one, or would have wanted --

12 CHAIRPERSON HILL: Right. I don't know. This is where
13 I'm trying to figure out the detrimental reliance part. Okay.
14 So -- okay. So all right, I think I'm okay. Anybody else?

15 Dr. Imamura?

16 MS. AMLING: Can I ask a question?

17 CHAIRPERSON HILL: Sure. Give me a second.

18 Dr. Imamura?

19 COMMISSIONER IMAMURA: Let Ms. Amling ask her question,
20 and I'll follow up.

21 MS. AMLING: Okay. So the Office of Planning supported
22 the special exception. And I guess that the difference in this
23 is that they can't support the variance because of the different
24 level of -- okay. It -- that was just one of those, like, it's
25 hard to understand what exactly is happening; why it's okay in

1 one world and not okay in the other world.

2 CHAIRPERSON HOOD: Right. A special exception is a
3 lower bar and a lower standard for the Board. Again, the Board,
4 you know, we -- there's no personal reason why we wouldn't want
5 you to do what you're doing, right. It's just that the way the
6 regulations are written that throw us into this problem, okay.

7 So go ahead, Dr. Imamura.

8 COMMISSIONER IMAMURA: All right.

9 Ms. Amling, in short, what's happened here is that your
10 vestibule doesn't fall under the special exception, so it's in a
11 different category of a variance here. So there was perhaps
12 maybe a misunderstanding that oh, we'll put forth a special
13 exception. No, that's not quite right. It needs to be a
14 variance, an area variance. So that's why you all are where you
15 are today. And I think you made a comment to the effect that
16 you were trusting the process, and that might be hard. No, it's
17 not.

18 Your architect is an agent. That person was your agent;
19 "owner's rep" is what they call it. And so there's all of that
20 and (indiscernible). It's certainly understandable. And that's
21 why you hire architects to be your agent.

22 My question is, at the previous hearing, it was stated
23 that two separate plans, and that's why we are where we are, for
24 extracting, one at DCRA and one before the BZA. And I'm not
25 certain that -- I guess my question is, were you aware of the

1 two separate plans and the difference between the two?

2 MR. AMLING: Not until later. Not until after we
3 received our -- the permit set that had the vestibule on it.

4 MS. AMLING: Not until the notice of violation did we
5 know that there were two separate -- we were not aware there were
6 two separate sets of plans until well after the notice of
7 violation, actually until, frankly, we hired Mr. Sullivan, who
8 was, like, well there's going to be a harder threshold here
9 because of this issue. And we were like, what? And that's when
10 he was like, well, there is this discrepancy that's going to make
11 it a harder argument. And that that was when.

12 So you know, the notice of violation was in July of
13 2020. We hired Mr. Sullivan, I don't know, end of last year.

14 MR. AMLING: Right.

15 MS. AMLING: So it wasn't until then. And frankly,
16 another question as a homeowner is, like, is how should we have,
17 like, it -- it's a process question, and we're not here to fix
18 the process. I just -- I know that Ms. John's last hearing wanted
19 to -- it's hard to understand how we didn't, like, when should
20 we have known and gotten both sets of stamped plans? It's, like,
21 you rely on one to build, but apparently there's some other permit
22 and approval ruling you're waiting on. And so it's just a process
23 question that as a homeowner, I'm like, I don't know when we
24 should have gotten that second approval. And then hope --

25 COMMISSIONER IMAMURA: Sure.

1 MS. AMLING: -- and maybe even, oh, shoot, that's not
2 the same house? But no, Mr. Imamura, it wasn't until Mr. Sullivan
3 explained the two sets of plans to us that we knew about it.

4 COMMISSIONER IMAMURA: So -- all right. I appreciate
5 your explanation. Your architect or engineer, whoever is doing
6 plans for you, they have a responsibility. It's out -- spelled
7 out in the regulation of Subtitle Y, that they are to provide
8 DCRA -- now the Department of Buildings, with the approved set
9 by the BZA. So the onus is squarely on the Applicant and their
10 agent to provide the appropriate set of documents to receive a
11 permit.

12 I imagine the framing inspection isn't out there to
13 determine whether or not it meets zoning regulations. It's to
14 determine whether the frame is built according to the approved
15 set of plans. So that's that purpose. So regrettably, these
16 two sets of plans were ordered and obviously, that's what -- as
17 Chairman Hill had mentioned, we are just trying to apply the
18 letter of the law, but for reasons, you know, what avenues there
19 might be so to (indiscernible) leave us and while still adhering
20 to the regulations that we (audio interference), so.

21 All right. Mr. Chairman, I think I have all the
22 information I need.

23 CHAIRPERSON HILL: Okay.

24 COMMISSIONER IMAMURA: Yeah. So --

25 CHAIRPERSON HILL: Sorry, Dr. Imamura, I mean to cut

1 you off.

2 All right. Does anybody have anything else before we
3 adjourn from my Board members?

4 (No audible response.)

5 MR. AMLING: Okay, I just -- I got -- I have to say
6 one more thing. You know --

7 CHAIRPERSON HILL: Go ahead, Mr. Amling.

8 MR. AMLING: I just feel so strongly that we were issued
9 a document, an official DCRA document, a plan that has a stamp
10 that says it is zoning compliant. And that plan has the vestibule
11 on it. And I don't know what could be more detrimental reliance
12 than that, regardless of what led up to it. We have a document
13 that we thought we could rely on from D.C. that was stamped and
14 approved by an official entity. I really -- it's just very, very
15 hard for me to understand all this other stuff that's going into
16 this one. To me, it seems black and white. It's on a piece of
17 paper and many pieces of paper in a big red font that we --

18 CHAIRPERSON HILL: Okay.

19 MR. AMLING: -- so I just have --

20 CHAIRPERSON HILL: Well, Mr. Amling, we got you. I
21 know. We know. And, again, we've done this -- this is your
22 third one, right? This is your third time with this. I'm not --
23 -- this is your third time just on this.

24 MS. AMLING: It's not -- it -- right. This --

25 MR. AMLING: Right.

1 CHAIRPERSON HILL: Right. So you guys were -- when we
2 were live, right, before COVID, we understand. And you've watched
3 us before, and you understand, and we understand us. And we're,
4 you know, we'll see what happens.

5 MS. AMLING: And we appreciate Matt's emotions because
6 --

7 CHAIRPERSON HILL: Yeah.

8 MS. AMLING: -- I'm (indiscernible).

9 CHAIRPERSON HILL: I know. But I think you clearly
10 hear what we're saying, right --

11 MS. AMLING: Yes.

12 MR. AMLING: Right.

13 CHAIRPERSON HILL: -- that we don't think that you are
14 architects or engineers. That's not what we're talking about,
15 right. So -- and that's what this argument is about. And so we
16 understand.

17 Okay. And it -- they may present anything else.

18 Oh, go ahead, Ms. John.

19 VICE CHAIR JOHN: So I think I'll answer your question
20 for you. The difference is that you came to the BZA, right, for
21 approval of plans. And that's -- that changes the situation.
22 This is not a situation where you went to DCRA, you got approved
23 plans, you, you know, you're busy building, you finished. They
24 did all the inspections. And then, what, DCRA says, oh, we made
25 a mistake. We shouldn't have approved it. That's different.

1 The situation we have here is that the BZA interprets
2 the regulations. That's our job. Okay. And so you are at the
3 BZA. Now, sometimes -- and I'm probably, you know, going on a
4 bit, but allow me. Sometimes you could submit, you know, a plan
5 and start working. That's a risk, because if you're before the
6 BZA, the BZA has to issue an order, and that takes time. So when
7 people start building before the BZA has issued a decision and
8 after -- before the appeal, any resulting appeal is resolved,
9 that's a huge risk.

10 And so that's -- you asked the question, I thought I
11 would answer it for you so you understand where the Board is.
12 You came to the BZA, and you submitted plans that the BZA
13 approved. And everyone, not just you, everyone has to build to
14 those plans. So that's how your case is different.

15 CHAIRPERSON HILL: Okay. Ms. -- Dr. Imamura?

16 COMMISSIONER IMAMURA: Vice Chair John summarized it
17 perfectly. I do want to make one more comment. To be crystal
18 clear, the plans that were approved by the BZA clearly shows this
19 vestibule pulled back. I went back and took a look at the
20 original set of plans. And so it actually is in alignment with
21 the property to the west. So (audio interference). Right? And
22 it actually encroaches about two and a half feet into your living
23 room, right. So that's where the difference is, right. And I
24 did take a look at -- sort of the burden of proof that you
25 provided; the letter from the engineer and understand where your

1 attorney and your architect were leading you architecturally,
2 structurally. This is not something that cannot be (audio
3 interference).

4 So the conditions are very similar architecturally to
5 the property east of 3615. So it is a matter of whether wherever
6 the Board lands on that portico at the time (audio interference).
7 So we'll deal with it, certainly architecturally and structurally
8 can work that out with an architect. So that is certainly the
9 significant difference there. That's about two and a half feet
10 into your living room or two and a half feet (audio interference).
11 So I just want to be clear about that in terms of where that
12 stood.

13 CHAIRPERSON HILL: Okay. All right. Now, I heard you
14 guys. Let's go ahead, and let's just have a discussion. I mean
15 it's, obviously, you know, terribly stressful and upsetting and
16 all of this stuff, you know, as we know. And so let's just go
17 ahead.

18 I mean, Mr. Amling, is there anything else you have
19 about -- add in the conclusion?

20 MR. AMLING: No, I just really hope you guys can approve
21 this for us. And this -- it's just been really stressful, and
22 we just -- we want to be compliant with everything. We've sought
23 compliance throughout the whole process, dotting all i's,
24 crossing all t's. We never had any mal intent here. We really
25 feel like we've been taken for a ride. And you know, we just

1 are --

2 MS. AMLING: Not by the BZA, but by the -- apply for
3 this, apply for that. It's been a long two and a half years. I
4 know you guys appreciate it.

5 MR. AMLING: You know, the -- we never -- doing it
6 alone and to try to --

7 CHAIRPERSON HILL: And I'm sorry, guys. Like we --
8 I've been here for seven years, and so, you know, and each
9 Wednesday, there's ten cases. And so we do know, and we
10 understand. And sometimes -- I don't know what's going to happen.
11 So anyway, let me let you go ahead. Let me let you guys go,
12 okay? Right?

13 MR. AMLING: Okay.

14 CHAIRPERSON HOOD: Okay.

15 MR. AMLING: Okay. Thank you so much for your time and
16 considering this.

17 MS. AMLING: Thank you very much.

18 CHAIRPERSON HOOD: Thank you. You all have a good day.

19 MR. AMLING: Thank you.

20 CHAIRPERSON HOOD: All right. Closing the hearing and
21 the record.

22 Okay. I don't know what you guys -- like, so I guess
23 I don't know where you guys are. I kind of know where you guys
24 are, but I don't know whether or not it would help or not to take
25 a week and go back and look at the previous case, because that's

1 the one thing I kind of want to look at all is just how much that
2 vestibule was talked about. Because there were plans that the
3 BZA approved. And unfortunately, for the Amlings, and I think
4 they're in a tough spot, too. Like, I don't doubt them. I don't
5 think that, you know, they would take a risk to go ahead and
6 build this thing thinking it was illegal if they like -- I believe
7 that they thought, you know, that's the whole detrimental
8 reliance piece, right?

9 Like, I mean, they thought they were here for the rear
10 addition and I have to go back and take a look at whether or not
11 that vestibule is two feet forward. I mean, you know, someone
12 else made an error, right. And whether that error is -- I can't
13 even really necessarily say it's DCRA or Department of Buildings,
14 because, you know, they had different plans. And so I'm not
15 really sure whether an extra week would matter, right.

16 And so -- because I just don't want it lingering on,
17 right. I mean, it's gone on for a long time. And if they're
18 going to have to, like, you know, find out whoever is responsible
19 and fix it, then might as well go ahead and start doing that,
20 right. But I'll go around the table. Does anybody want to go
21 first?

22 (No audible response.)

23 CHAIRPERSON HOOD: Okay. Then does anybody want to
24 wait a week? Okay. Nobody wants to wait. Okay. Who wants to
25 wait a week? Okay. Well, you all seem to know then. Who wants

1 to tell me what they think?

2 VICE CHAIR JOHN: Okay. Only because I've been in your
3 situation, and I know what it feels like when you ask and nobody
4 answers.

5 CHAIRPERSON HOOD: Right.

6 VICE CHAIR JOHN: So -- okay.

7 CHAIRPERSON HOOD: I -- I'm -- yeah. Okay.

8 VICE CHAIR JOHN: Okay. So --

9 CHAIRPERSON HOOD: All right. But you all seem to
10 know.

11 VICE CHAIR JOHN: Okay. So this is difficult, as we
12 all know. And I, for one, think that the vestibule looks great.
13 And all things considered, I would like to see that vestibule
14 there. But we have to -- our responsibility is to interpret the
15 regulations according to the criteria that we have to look at.
16 In this case, we have a variance, and so the Applicant must show
17 that there is an exceptional condition that creates a practical
18 difficulty. And so sometimes when there is an error by DCRA and
19 now the Department of Buildings, the Board does take that into
20 consideration, and the zoning history then becomes the
21 exceptional condition. This zoning history is difficult for me
22 in this case because, as Dr. Imamura noted, the Applicant's
23 agents, or as -- I'll say the agents had the responsibility to
24 make sure that the plans that were approved by the BZA were
25 submitted to DCRA at the time, and clearly that didn't happen.

1 So I think the Applicants took a risk by proceeding at DCRA while
2 the BZA case was pending.

3 So I looked at the timeline in this case, because I was
4 trying to see if there was a detrimental reliance case that could
5 be made. And the facts are difficult.

6 So the -- let's see if I can get my -- so the vestibule
7 was shown on the plans in Exhibit 5 in the record, and the Amlings
8 said they were at the hearing. So I'm assuming that they heard
9 the discussion about whether or not the vestibule could be
10 allowed, because it was removed. But as Dr. Imamura says, it
11 wasn't completely removed, but it was made compliant. And that's
12 at Exhibit 34.

13 Then the summary order was issued in March 2019, and
14 after that, the permit was issued on the old plans, and it's
15 either June 19th or June 21, which was after the BZA approved
16 the revised plans without the vestibule that was non-compliant.
17 So because of that sequence of events, the BZA hearing changed
18 everything, because the BZA said the vestibule could not be built.
19 So that's how I'm looking at this. And this is not a good zoning
20 history in my mind to (indiscernible) test of, you know, to be
21 able to say that there's an exceptional condition based on the
22 error of DCRA in initially saying that the permit that -- that
23 the plans met the criteria. Because the permit was not issued
24 until after the BZA had already said that the vestibule had to
25 be removed. So those are just my thoughts, and I would love to

1 hear what other people think.

2 CHAIRPERSON HILL: Okay. I mean, I'm still -- I'm
3 sorry not to be -- I'm not disagreeing with Ms. John, I'm just
4 trying to see -- well, I think Ms. John said it very well. I
5 wonder, as I was listening to Ms. John, whether or not there is
6 a detrimental reliance argument on someone's agents, right. And
7 so that, you know, but I don't know if, yeah. I don't know if
8 it's even legal whether that, you know, is something that
9 Ms. Nagelhout can let me know, or if we --

10 BOARD MEMBER SMITH: That would probably be a civil
11 matter between the Applicant and the agent that they relied upon.
12 So it would be something that they would -- if they did have to
13 rectify it -- let's say that this is a situation where they would
14 have to, you know, fix this, then they'd probably have some kind
15 of legal civil case that they could, you know, take towards the
16 agent, because they relied on them in good faith. So I think
17 that's what Ms. Nagelhout would -- highly likely that is what she
18 would say. Just, you know, just my two cents on that.

19 CHAIRPERSON HILL: Yeah, no, that's great, Mr. Smith.
20 Thanks for speaking up.

21 Ms. Nagelhout, I imagine that that is a fair statement.

22 MS. NAGELHOUT: Yes, it is.

23 CHAIRPERSON HILL: Okay. All right. Does anybody want
24 to help out Ms. John?

25 BOARD MEMBER SMITH: I mean, I'll add to, you know, my

1 two cents in that I, by and large, agree with what Ms. John is
2 saying. And to the Amlings, it is a beautiful vestibule. Nobody
3 is doubting that. And you know, I do understand that you relied
4 on your agent. It sounds like the agent was the party that, you
5 know, presented the architectural plans to the BZ -- our
6 predecessors -- with some of our predecessors in 2019. And that
7 agent should have, by law, per Section Y, that Mr. Imamura stated,
8 should have submitted that to the DCRA as part of their review
9 and approval of this case, because you had a special exception.

10 You know, I take a different take on the framing
11 inspection. The framing inspection did -- you (indiscernible)
12 call it a framing inspection did exactly what was supposed to
13 happen. The framing inspections, footing inspections are
14 commonly used by the Department of Buildings, by zoning
15 administrators, to validate zoning, to validate those setbacks,
16 to validate that the project is in keeping with what you were
17 approved for if you got a special exemption or a variance.

18 It is unfortunate that it wasn't caught at the time of
19 the building permit, but I do believe that that is another point
20 of a framing inspection to -- for the government to do these
21 checks to validate that things are being approved in accordance
22 with how they should be built or how they were approved anyway.
23 So I share in Ms. John's point that I'm having trouble arriving
24 at the first two prongs, because the Applicant did receive a set
25 of plans via the approval for their special exception that showed

1 a vestibule that was in keeping with the zoning requirements.
2 Because we, you know, this Board did ask for revisions prior to
3 approving it in order to ensure that this addition was in keeping
4 with the zoning requirements.

5 So I am struggling with that, and I do not believe that
6 we had -- they have sufficiently demonstrated that they meet the
7 first two prongs of the test. So right now, I do believe that
8 they haven't met the burden of proof for us to grant the variance.

9 CHAIRPERSON HILL: Okay. And I just went back and took
10 a look at the Office of Planning's report. And again, the third
11 prong, I don't even think there's necessarily an argument with
12 that that might be a problem, right. And in order for the area
13 variance to be approved, all three prongs need to be taken into
14 account. And so even though we are struggling with the first
15 and second prong, which I think there is an argument for, I also
16 would think that the third prong is pretty straightforward in how
17 it's not being met, although I am not (indiscernible) with this
18 discussion, obviously.

19 Dr. Imamura, do you have anything to add?

20 COMMISSIONER IMAMURA: I'd like to hear Board Member
21 Blake -- I just want to make a comment about Board Member Smith
22 about the framing inspection. So they're going out there with
23 the approved set of plans to ensure that it's being built as
24 approved. So the inspector -- for any inspector that's out there
25 has the set of plans that were approved with the vestibule

1 extending out to (indiscernible). So that's, you know, and it
2 just -- it's a confluence of events and series of unfortunate
3 events which have snowballed.

4 Chairman Hill, I'm going to defer my comments, and I'm
5 interested to hear what Board Member Blake has to share with us
6 all.

7 CHAIRPERSON HILL: Board Member Blake.

8 BOARD MEMBER BLAKE: Okay. Well, I actually agree with
9 Vice Chair John's comments substantially. I don't think that
10 anyone in -- on the Board nor in the community or the Office of
11 Planning, based on the reading of the reports, believes that this
12 vestibule is (indiscernible) intrusive. The -- in fact, it's a
13 nice vestibule, similar to the ones on the block. The issue
14 though is the cold, hard regulation is what it is, and the
15 standards for approval, based on what the issue is, is an area
16 variance. And the mechanism to do that is based on what we see
17 in front of us, an argument made for a detrimental reliance. And
18 in this particular case, the -- even the bar for that or -- is
19 fairly high, because you have to determine that, in fact, there
20 was a fair amount of reliance on really DCRA, that -- in this
21 particular case, because they did, in fact, (indiscernible) the
22 permits.

23 The fact that the process is what it is, and the Board
24 does make the final decisions on this, does mean that the Board
25 makes the final decisions on this. I do believe that -- and I

1 can certainly appreciate how multiple sets of drawings go
2 concurrently. But I do think that the responsibility of the
3 agent and the Applicant to make sure that the appropriate
4 documents are in the appropriate place are important, and there's
5 a risk that takes place at any point if that -- if that doesn't
6 happen.

7 So this could have gone on forever, but it didn't. It
8 was caught -- and I looked -- I thought about the timeline,
9 because to me, it was important about, well, when did this come
10 up? I mean, if it had existed for five years, and we looked at
11 it, it might be an issue. And it never came up for several years,
12 but it came up somewhat timely. I think that the -- I think
13 there were a number of things that were going on. There are a
14 number of individuals and entities that were involved in this,
15 and I can see how this would happen. I can also see how we can
16 have some issues even to read the regulations. If you're -- if
17 an architect is familiar with a certain regulation, you could say
18 from, you know, they differ from zone to zone. So you have to
19 be very careful in reading the applications.

20 R-20 zone's regulations are different than R-3 in this
21 matter. So it's important to kind of make sure you look at those
22 things and make -- be clear. I do recall in that -- and I
23 reviewed -- I did review the initial case. That issue of the
24 vestibule did come up. And it came up not from the parties, but
25 it came up from a third-party or a nonrelated entity -- a person

1 who provided testimony. And there was a question as to whether
2 they needed relief for the variance or not.

3 And the architect did remove the vestibule from the
4 discussion -- from the plans in subsequent discussions, which to
5 me suggests that it was acknowledged that there was an issue with
6 the vestibule one way or the other. But removing it from the
7 plans, removed it from our discussion. So we did not have to
8 comment on it further because it was removed, or at least as Dr.
9 Imamura put it, was brought into compliance. So it was not even
10 an issue, but it was brought up at the hearing, and it was removed
11 from the table based on the fact that the plans were changed.

12 So I do have -- definitely do agree that in this case
13 I do not see a case that supports the detrimental reliance
14 argument. I do not believe the first prong of the test is met,
15 but I do believe that it is not visually intrusive. I think it's
16 a nice design. I think it's very attractive, but unfortunately,
17 I do not think it meets the test for the variance approval, so I
18 would not be voting in favor of this.

19 CHAIRPERSON HILL: Okay. Does anybody got anything
20 else to add before I make a motion?

21 (No audible response.)

22 Okay. I'm going to make a motion -- it's disappointing
23 to deny Application No. 20374 as captioned and read by the
24 secretary and ask for a second. Ms. John?

25 VICE CHAIR JOHN: Second.

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

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

4 MR. MOY: If you would, please respond to the motion
5 made by Chairman Hill to deny the request for variance relief.

6 Zoning Commissioner Dr. Imamura?

7 COMMISSIONER IMAMURA: Abstain.

8 MR. MOY: Mr. Smith?

9 BOARD MEMBER SMITH: To deny.

10 MR. MOY: Mr. Blake?

11 BOARD MEMBER BLAKE: Yes, to deny.

12 MR. MOY: Vice Chair John?

13 VICE CHAIR JOHN: (No audible response.)

14 MR. MOY: Chairman Hill?

15 CHAIRPERSON HILL: Yes, to deny.

16 MR. MOY: Okay. I'm trying to remember how to do this.
17 Okay. Correct me, Ms. Nagelhout, if I record the vote count
18 inaccurately. Staff would record the vote as -- for now I'm
19 going to say four to zero to one. And these are four votes to
20 deny, one vote to abstain. And this on the motion of Chairman
21 Hill to deny. This was second by Vice Chair John to deny. Also
22 voted to deny Mr. Smith, Mr. Blake. Voting to abstain, Zoning
23 Commissioner Dr. Imamura. The motion to deny is carried, Mr.
24 Chairman.

25 CHAIRPERSON HILL: Okay. Thanks, Mr. Moy. Okay, guys,

1 this went on a little longer than I thought, but I think it was
2 clear. And I will go ahead and let's take a break. It's 11.

3 Dr. Imamura, we will see you next time. And let's come
4 back like -- let's -- all right. And we're also going to lose
5 Mr. Blake. I'm sorry, Mr. Blake -- Mr. Smith. And so we'll come
6 back in another ten minutes, if possible. Ten, 15 minutes. Thank
7 you.

8 COMMISSIONER IMAMURA: Thank you.

9 (Recess.)

10 MR. MOY: Let's return to this public hearing session
11 after a very quick recess. And the time is now at or about 11:17
12 in the morning.

13 Mr. Chairman, are we at Case No. 20802?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: Okay. Very good.

16 All right. So before the Board today is Application
17 No. 20802 of 639A, LLC. This is a self-certified application
18 pursuant to Subtitle X, Section 901.2 for a special exception
19 under Subtitle E, Section 5201 from accessory building area
20 requirements of Subtitle E, Section 5003.1 and special exception
21 under Subtitle U, Section 301.1(e) that would permit a dwelling
22 unit and an accessory building located within a required setback
23 within five years of the approval of the building permit. The
24 project's located in the RF-1 zone at 639A Street, Southeast,
25 Square 870, Lot 113. And that's all I have for you, Mr. Chairman.

1 CHAIRPERSON HILL: Thank you. Ms. Fowler, if you can
2 hear me, if you could introduce yourself for the record, please?

3 MS. FOWLER: Good morning. I'm Jennifer Fowler with
4 Fowler Architects. I'm representing the property owners.

5 CHAIRPERSON HILL: Okay. Ms. Fowler, if you want to
6 go ahead and walk us through your application and why you believe
7 your client is meeting the criteria for us to grant the relief
8 requested. I'm going to put 15 minutes on the clock so I know
9 where we are, and you can begin whenever you like.

10 MS. FOWLER: Okay. Great. Thank you very much. So
11 this is a request for a two-story carriage house. This is at
12 639 A Street, Southeast. We are requesting to exceed the
13 450 square foot lot occupancy for the garage. We're asking for
14 575.9 square feet, which is 125.9 square feet over the 450 square
15 foot limit. And we're staying under -- beneath the 60 percent
16 threshold for the overall occupancy. So we're really just looking
17 for relief for the garage occupancy, as well as the ability to
18 create an accessory apartment there.

19 We meet all the other criteria in terms of the alley
20 setback. In fact, we're keeping the height of the garage at
21 20 feet, while we could go to 22 feet. So it's kind of staying
22 within all the other zoning regulations.

23 The property currently has -- is 48.3 percent. There's
24 an original wood frame house with a front porch that we are under
25 -- we're actually getting permits now for a rear addition. So

1 if you look at the site plan, you can see there's a rear addition
2 on the house. That addition takes us to 54.7 percent, and then
3 the current garage will be removed and replaced with this larger
4 garage.

5 And we did get historic approval for the whole project
6 back in May for the addition and the garage. The -- most
7 neighbors have garages. They are one-story garages, but I do
8 know that 637 has plans to do something very similar to this,
9 but we've got letters of support from both 637 and 641. In fact,
10 we had the old neighbors -- old owner of 641 sign and then the
11 house sold, and we got the new letter. So we have that well
12 covered.

13 We also have support from the ANC, the Office of
14 Planning, as I said the HPRB. So it has been very well received.
15 And with that, I will leave it open to questions.

16 CHAIRPERSON HILL: Great. Thank you.

17 Does the board have any questions of the Applicant?

18 (No audible response.)

19 CHAIRPERSON HILL: Okay. I'm going to turn to the
20 Office of Planning.

21 MS. VITALE: Good morning, Mr. Chair, and members of
22 the Board, Elisa Vitale with the Office of Planning.

23 The Office of Planning is recommending approval of the
24 requested special exception relief from the maximum building area
25 for the accessory building, as well as special exception from the

1 use permissions to permit the use of the accessory building as a
2 second dwelling unit within that five-year period. I'm happy to
3 run through the criteria, if the Board would find that helpful.
4 Otherwise, I'll rest on the record of the staff report. Thank
5 you very much.

6 CHAIRPERSON HILL: Thanks, Ms. Vitale.

7 Does anybody have any questions of the Office of
8 Planning?

9 (No audible response.)

10 CHAIRPERSON HILL: Does the Applicant have any
11 questions of the Office of Planning?

12 MS. FOWLER: No, thank you.

13 CHAIRPERSON HILL: Mr. Young, is there anyone here
14 withing to speak?

15 MR. YOUNG: (No audible response.)

16 CHAIRPERSON HILL: Ms. Fowler, you want anything to add
17 at the end?

18 MS. FOWLER: No. I just wanted to mention that it's -
19 - it is located on Brown's Court, which, there, you know, there's
20 a number of two-story carriages as well as other living spaces
21 that are on Brown's Court. So again, just kind of reinforcing
22 that it's a very appropriate addition to this alley in particular.
23 And with that, I'll thank you for your time.

24 CHAIRPERSON HILL: Thank you, Ms. Fowler.

25 Okay. I'm going to go ahead and close the hearing and

1 the record.

2 I didn't have any issues with this application. I
3 thought it was relatively straightforward. I would agree with
4 the argument that the Applicant has made, as well as the
5 explanation of why the Office of Planning is in support, as well
6 as the ANC 6B having no issues or concerns. And I'm going to be
7 voting in favor of the application.

8 Mr. Blake, do you have anything to add?

9 BOARD MEMBER BLAKE: Not substantially more. I would
10 argue that the Applicant has met the burden of proof to be granted
11 relief with regard, and I would give great weight to the Office
12 of Planning's Analysis -- credit the Office of Planning's
13 analysis as well as the presentation made and testimony from the
14 applicant. I also give weight to the ANC 6B's report which
15 recommends approval and issues -- no stated issues or concerns.
16 DDOT has no objections to the project, and I would also note the
17 support of the adjacent neighbors to the east and west. So I'll
18 be voting in favor of the application.

19 CHAIRPERSON HILL: Thank you. Chairman Hood?

20 ZONING COMMISSION CHAIR HOOD: Mr. Chairman, I'll be
21 voting to support this application?

22 CHAIRPERSON HILL: Thank you.

23 Vice Chair John?

24 VICE CHAIR JOHN: Thank you, Mr. Chairman. I have
25 nothing to add. I'm in support of the application.

1 CHAIRPERSON HILL: Okay.

2 I'm going to make a motion then to approve Application
3 No. 20802 as captioned and read by the secretary and ask for a
4 second.

5 Ms. John?

6 VICE CHAIR JOHN: Second.

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

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

10 MR. MOY: When I call your name, if you would please
11 respond to the motion made by Chairman Hill to approve the
12 application for the relief requested.

13 Zoning Commission Chair Anthony Hood?

14 ZONING COMMISSION CHAIR HOOD: Yes.

15 MR. MOY: Mr. Blake?

16 (No audible response.)

17 MR. MOY: Vice Chair John?

18 VICE CHAIR JOHN: Yes.

19 MR. MOY: Chairman Hill?

20 CHAIRPERSON HILL: Yes.

21 MR. MOY: Staff would the record the vote as four to
22 zero to one. And this is on the motion made by Chairman Hill to
23 approve the application for the request for a special exception
24 relief. The motion to approve was second by Vice Chair John,
25 who also agrees to approve, as well as Zoning Commission Chair

1 Anthony Hood and Mr. Blake. We have one board member who is not
2 participating in our voting, so the motion carries on a vote of
3 four to zero to one.

4 CHAIRPERSON HILL: Thank you, Mr. Moy.

5 Mr. Moy, you can call our next case when you get an
6 opportunity.

7 MR. MOY: Okay. Unless I'm told otherwise, the next
8 case Application is 20801 of Paul M. Backlund. This is an amended
9 self-certified application, pursuant to Subtitle X, Section 901.2
10 for a special exception under Subtitle U, Section 421 to allow a
11 new residential development. The property is located in the RA-
12 1 zone at 5131 Second Street, Northwest, Square 3399, Lot 29.

13 CHAIRPERSON HILL: Okay. I thought there was an issue
14 with the Applicant being available, but maybe that's not the
15 case.

16 Mr. Young, if you can find Mr. Williams. Okay.

17 Mr. Williams, if you can hear me, if you can introduce
18 yourself for the record.

19 MR. WILLIAMS: Zach Williams. I'm a land use attorney
20 at Venable representing the Applicant.

21 CHAIRPERSON HILL: Okay. Mr. Williams, you want to go
22 ahead and walk us through your client's application and why you
23 believe they're meeting the criteria for us to grant the relief
24 requested? I'm going to put 15 minutes on the clock so I know
25 where we are, and you can begin whenever you like.

1 MR. WILLIAMS: Thank you, Chairman Hill.

2 We have a PowerPoint presentation. Mr. Young, if you
3 could pull that up, please? Thank you.

4 As Mr. Moy mentioned, this is an application for the
5 property located at 5131 2nd Street, Northwest. And as I
6 mentioned, my name's Zach Williams. I'm representing the
7 Applicant in this matter.

8 Next slide.

9 This is just to orient everyone. This is a snippet
10 from the zoning map. This is a property, a corner lot located
11 at the intersection of the southeast corner of Hamilton Street
12 and 2nd Street Northwest. This is an RA-1 zoned property within
13 an RA-1 zoned block. And the houses on both sides of the street
14 on this block are similar apartment house style structures.

15 Next slide, please.

16 This is the existing survey of the property. The lot
17 is 3,450 square feet of land area. As I mentioned, it's zoned
18 RA-1. There's an existing two-story, semi-detached apartment
19 house on the property currently with four units.

20 Next slide, please.

21 Here are two photos showing existing conditions. The
22 photo on the left is the front of the house, the front of the
23 structure from the perspective of 2nd Street. The photo on the
24 right is the perspective of the side of the structure of that
25 corner lot from Hamilton Street and the rear of the structure as

1 well.

2 Next slide, please. The proposed project is to add two
3 units to this existing structure. We will not be adding an
4 addition. We will not be changing the footprint except as to
5 add some window wells and a stairwell to the basement units. The
6 rest of the structure will remain exactly as is.

7 Next slide, please.

8 As you all know, as interpreted by the BZA a few years
9 back, adding any units onto to an existing apartment house in an
10 RA zone now requires special exception relief. That is the only
11 relief that we need in this case. Everything else is a matter
12 of right. And so pursuant to Subtitle U, Section 421, we're
13 requesting relief to add two units to an existing four-unit
14 apartment house on the property.

15 Next slide.

16 I'm sure that the BZA members are familiar with these
17 as the special exception standards here that apply. First, the
18 relief -- the project must be in harmony with the general purpose
19 and intent of the zoning regulations. We know the RA-1 zone
20 allows for low-to-moderate density development, including
21 detached dwellings, row houses, and low-rise apartments. As I
22 mentioned, this block in this neighborhood has many of these
23 similar types of dwellings. Some are with four units; some have
24 quite a few more units. This is a typical structure and a typical
25 project in this particular area of the city.

1 As I mentioned, the project also meets all of the
2 development standards in the RA-1 zone, with the exception of lot
3 occupancy. That is -- I believe it's 44 percent. However, that's
4 existing, nonconforming, and will not be changing in this
5 project.

6 Next slide, please.

7 The next special exception standard is whether it will
8 adversely affect neighboring property. We typically look at
9 light, air, and privacy as important factors there. As I
10 mentioned, we don't believe this will have any adverse effect on
11 neighboring properties, again, mainly because the footprint is
12 not changing and remains the same. All of the changes are
13 interior, with the exception of adding a couple of light window
14 wells and a stairwell.

15 This is also a corner a lot, and so that further
16 mitigates impact since we only have one adjoining neighbor. And
17 that is -- that's helpful in mitigating what might otherwise be
18 impacts on joint adjacent properties. As I also mentioned, the
19 adjacent property itself is an apartment house.

20 Next slide, please. We've done our community outreach
21 and we met and presented to our ANC. ANC 4D unanimously voted
22 to support the application, and the letter's in the record. We've
23 spoken to our adjacent neighbor. The adjacent neighbor is
24 supportive. We have a letter of support from the adjacent
25 neighbor as well. And to conclude, OP is also in support of the

1 project. We're here and available to answer any questions. Thank
2 you.

3 CHAIRPERSON HILL: Thank you, Mr. Williams.

4 Does the Board have any questions for the Applicant?

5 BOARD MEMBER BLAKE: I have a quick question, please.
6 There were some recommendations that the Office of Planning made
7 with regard to a second set of stairs and also for a landscaping
8 plan. Has all that been addressed?

9 MR. WILLIAMS: The landscaping plan is in the revised
10 building plan set, because we're not making almost any changes
11 to the footprint. The landscaping plan, there's -- there are not
12 going to be a lot of changes to the site, but we do indicate on
13 that landscape plan, the grassed area, some trees, and other
14 things that will be maintained on the site.

15 BOARD MEMBER BLAKE: And with regard to the suggestion
16 they made about the second set of stairs to access the trash,
17 bike, and vehicle park?

18 MR. WILLIAMS: There was a suggestion that we consider
19 adding a rear door into the entrance in the back, and we did look
20 at that. Ultimately, we decided not to do it. In this particular
21 case, given the nature of the grade, we felt that, you know,
22 security issues might, you know, mitigate the convenience of
23 that, and so we ultimately decided to not add a rear door.

24 BOARD MEMBER BLAKE: Okay. Thank you.

25 CHAIRPERSON HILL: Okay. Anyone else?

1 Then turn to the Office of Planning.

2 MR. JESICK: Chairman and members of the Board, my name
3 is Matt Jesick. I'll present OP's testimony in this case. The
4 Office of Planning is happy to rest on the record in support of
5 the application.

6 CHAIRPERSON HILL: Okay. Does anybody have any
7 questions for the Office of Planning?

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

9 MR. YOUNG: Yes, we do.

10 CHAIRPERSON HILL: Okay. Could you please bring that
11 person forward?

12 MR. YOUNG: We have two witnesses.

13 CHAIRPERSON HILL: Can you give me their names, please,
14 Mr. Young?

15 MR. YOUNG: It is Lisa Kinnard and Moses Garuba. We
16 did have a third one signed up, but he is not on yet. I will
17 let you know if I see him.

18 CHAIRPERSON HOOD: Okay.

19 Ms. Kinnard, can you hear me? Would you introduce
20 yourself for the record, please?

21 MS. KINNARD: Lisa Kinnard.

22 CHAIRPERSON HILL: Okay. Ms. Kinnard, are you using
23 your camera or not? I just want to know.

24 MS. KINNARD: I'm starting it right now. Okay, yeah,
25 I'm on here with -- we're together. Moses Garuba and Lisa Kinnard.

1 We're -- we live in the same house -- households.

2 CHAIRPERSON HILL: Okay. Mr. Garuba, can you introduce
3 yourself for the record, please?

4 DR. GARUBA: Yes, certainly. Dr. Moses Garuba, 117
5 Hamilton Street, Northwest.

6 CHAIRPERSON HILL: All right. Okay. You'll each get
7 three minutes to present your testimony.

8 Ms. Kinnard, can I go ahead and begin with you first?
9 And the clock is on the TV screen and by the computer screen.

10 MS. KINNARD: Excuse me, sir. There's just one
11 presentation on behalf of the two of us, which Moses will make
12 so.

13 DR. GARUBA: Well, quickly, my presentation -- I
14 understand the different, I think, interests that have supported
15 the application. We, as residents, local residents, have
16 concerns regarding whether or not a traffic analysis has been
17 performed. It's a highly congested traffic area. We have a high
18 school next door. And has the Applicant submitted for the record
19 any kind of traffic analysis to how it will impact -- the adverse
20 impact on parking, for example? Is that on the record?

21 CHAIRPERSON HILL: Ms. Kinnard, why don't you go ahead
22 -- Dr. Kinnard, why don't you go ahead and give your testimony
23 and then we can ask questions of you and/or the Applicant based
24 on your testimony?

25 MS. KINNARD: Okay. So give your --

1 DR. GARUBA: Well, the testimony essentially is that
2 there isn't any anything for the record, it's mainly a series of
3 questions pertaining to the adverse impact on current residents.
4 We were unfortunate enough not to attend the, I think,
5 presentation to the local agencies, but we have consulted, and
6 we were unclear as to how this sort of degree of studies that
7 might have been performed to assure residents that this will not
8 impact parking, this will not impact traffic. And so there's no
9 presentation. These are not -- it's a series of questions that
10 I think (audio interference).

11 CHAIRPERSON HILL: I see. Okay. All right,
12 Mr. Kinnard. Okay. I'll just -- let me see what I'm going to
13 do here. Give me one moment. Does the Board have any questions
14 of the witness?

15 Okay. Mr. -- go ahead Vice -- I'm sorry, Chairman Hood.

16 ZONING COMMISSION CHAIR HOOD: Oh, yes, Dr. -- I think
17 it's Kinnard or --

18 MS. KINNARD: Dr. Garuba.

19 ZONING COMMISSION CHAIR HOOD: Dr. Garuba. I'm sorry.

20 MS. KINNARD: It's okay.

21 ZONING COMMISSION CHAIR HOOD: Dr. Garuba, you said you
22 didn't -- you weren't able to make, I guess, the ANC meeting,
23 but did you ever reach out to the -- two questions? Did you
24 reach out to the applicant? And also, did you look in the file
25 at the DDOT report? I think it was Exhibit 23, I think. Did

1 you read that as well, or you still have questions even after
2 the report?

3 DR. GARUBA: After the report, yes.

4 ZONING COMMISSION CHAIR HOOD: Okay. So did you reach
5 out to the Applicant?

6 DR. GARUBA: No, I haven't, no.

7 ZONING COMMISSION CHAIR HOOD: Okay. All right. That
8 would have probably answered some of your questions. But anyway,
9 thank you.

10 Thank you, Mr. Chairman.

11 CHAIRPERSON HILL: Okay. Thank you, Chairman Hood.

12 Okay. Mr. Williams, since you're here, I'm just going
13 to ask you a question, I guess. I mean, you're -- we're talking
14 about two additional units, and I saw the DDOT report. Was there
15 anything additional from your perspective or your client's
16 perspective concerning traffic?

17 MR. WILLIAMS: We are also adding two parking spaces
18 to the rear of the lot.

19 CHAIRPERSON HILL: Okay. Okay.

20 MR. WILLIAMS: So that would help mitigate some of
21 those concerns.

22 CHAIRPERSON HILL: Okay. Great. All right. Thank
23 you, Mr. Williams.

24 All right. Dr. Kinnard -- oh, I'm sorry. Dr. Garuba
25 and Ms. Kinnard, thank you very much for your testimony. Is

1 there anything else you would like to add?

2 MS. KINNARD: No, not at this time.

3 DR. GARUBA: No, thank you.

4 CHAIRPERSON HILL: Thank you.

5 MS. KINNARD: Thank you for the opportunity.

6 CHAIRPERSON HILL: Thank you.

7 Mr. Young, was there anyone else?

8 MR. YOUNG: No, that's it.

9 CHAIRPERSON HILL: Okay. All right.

10 Mr. Williams, is there anything else you would like to
11 add to the end?

12 MR. WILLIAM: Nothing from the Applicant.

13 CHAIRPERSON HILL: Oh, go ahead. I'm sorry, Mr. Blake.

14 BOARD MEMBER BLAKE: Could you explain this issue about
15 trash that the ANC had talked about and what happened there?

16 MR. WILLIAMS: I can, and I may defer over to
17 Mr. Medvine, who's been running the project as well. We resolved
18 that issue. The trash management company contract had lapsed,
19 and the ANC brought that to our attention. We got that back up
20 to speed, and that has now been addressed.

21 BOARD MEMBER BLAKE: Okay. Thank you.

22 MR. WILLIAMS: And that was a condition of our ANC
23 support and approval letter as well.

24 CHAIRPERSON HILL: Okay, anyone else?

25 (No audible response.)

1 CHAIRPERSON HILL: All right. I'm going to go ahead
2 and close the hearing and the record.

3 Thank you, Mr. Williams.

4 Okay. I didn't have any issues with this. I mean, I
5 understand the -- I hope that the witness got their questions
6 answered in terms of there's additional parking that's being
7 added. But I do think that it's, you know, two spots -- I'm
8 sorry, two additional units, which shouldn't have an issue really
9 on the traffic. And also that I'm not concerned about the
10 requirements that the Applicant needs to adhere to for this
11 particular relief. And I would also agree with the analysis that
12 the Office of Planning has provided, as well as that of the
13 Applicant. I'm sorry.

14 Is there anything else you'd like to add, Mr. Blake?

15 BOARD MEMBER BLAKE: Thank you, Mr. Chair. I'll be
16 voting in favor of the application. I believe the Applicant has
17 met the burden of proof to be granted the requested relief,
18 subject to the criteria of U, 421 pursuant to general standards
19 of X, 901.2. The Applicant has provided the evidence in the form
20 of testimony, plans, and elevations. The application was
21 referred to the appropriate District agencies and the plan has
22 been reviewed by the Office of Planning. And I would credit the
23 Office of Planning's analysis of how the Applicant has met their
24 criteria for U, 421.

25 This type of below grade development is fairly

1 unintrusive, and it allows you to max out FAR and meet the
2 developmental requirements of the zone. So as the -- you could
3 probably do more with the property, but more would require more
4 relief. So I think that this is a very nice use of the property.
5 As the density is permitted in the zone, the massing, the height,
6 and bulk (indiscernible) and density will not change. So the
7 granting of relief will be in harmony with the zoning regulations
8 and should not adversely affect the use of neighboring properties
9 as the Applicant discussed.

10 I give great weight to the Office of Planning's
11 recommendation for approval. I also give weight to the report
12 provided by ANC 4D, which was in support of the application. I'm
13 happy to see that they addressed the concerns with regard to
14 trash removal. I suspect the Applicant will continue to manage
15 that and work with the ANC and others going forward as part of
16 being a good neighbor. I'll be voting in favor of the
17 application.

18 CHAIRPERSON HILL: Thank you, Mr. Blake.

19 Chairman Hood?

20 ZONING COMMISSION CHAIR HOOD: Thank you, Mr. Chairman.
21 (Indiscernible) the application, I think that the relief
22 requested has been mitigated. It has been mitigated as needed
23 and as stated by the Applicant. And to Mr. -- Dr. Garuba's
24 question, I understand the concerns, but I think this is very -
25 - this request is very de minimus. But I will say that while

1 oftentimes I don't necessarily agree with the transportation
2 handbook, I believe everything is in compliance, especially
3 Exhibit 23 from DDOT. So I would encourage as always to -- Dr.
4 Garuba to give him a comfort level, look in the handbook at some
5 of the requirements which DDOT deals with when they deal with
6 cases. So I will be voting in favor. So I think, again, it's
7 very de minimis. Thank you, Mr. Chairman.

8 CHAIRPERSON HILL: Thank you.

9 Vice Chair John?

10 VICE CHAIR JOHN: Thank you. I have nothing more to
11 add. I agree with all of the comments so far, and I'm in support
12 of the application.

13 VICE CHAIR JOHN: Thank you.

14 And I'll go ahead and make a motion to approve
15 Application No. 20801, as captioned and read by the Secretary and
16 ask for a second.

17 Ms. John?

18 VICE CHAIR JOHN: Second.

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

21 Mr. Moy, if you can take a roll call?

22 MR. MOY: When I call your name, if you'll please
23 respond with your vote to the motion made by Chairman Hill to
24 approve the application.

25 Zoning Commission Chair Anthony Hood?

1 ZONING COMMISSION CHAIR HOOD: Yes.

2 MR. MOY: Mr. Blake?

3 BOARD MEMBER BLAKE: (No audible response.)

4 MR. MOY: Vice Chair John?

5 VICE CHAIR JOHN: Yes.

6 MR. MOY: Chairman Hill?

7 CHAIRPERSON HILL: Yes.

8 MR. MOY: Then staff record the vote as four to zero
9 to one. And this is on the motion made by Chairman Hill to
10 approve the application for the relief requested. The motion to
11 approve was second by Vice Chair John. Also in support of the
12 motion to approve, Zoning Commission Chair Anthony Hood and Mr.
13 Blake. And, of course, Vice Chair John and Chairman Hill. We
14 have a board member not present, not voting. The motion carries
15 on a vote of four to zero to one.

16 CHAIRPERSON HILL: Thank you, Mr. Moy.

17 MR. MOY: Do you guys want to just power through, or
18 do you want to take a break?

19 (No audible response.)

20 CHAIRPERSON HILL: Okay. I'm going to go with powering
21 through, I guess.

22 All right. Mr. Moy, if you want to go ahead and call
23 our last case?

24 MR. MOY: This would be case Application No. 20803 of
25 Donald and Elizabeth Larson. This is a self-certified special

1 exception application pursuant to Section D, Section 1210;
2 Subtitle D, Section 5201; and Subtitle X, Section 901.2. From
3 the lot occupancy requirement of Subtitle D, Section 1204;
4 Accessory Building Area Requirements of Subtitle D,
5 Section 1209.4. The property is located in the R-20 zone at 1609
6 35th Street, Northwest, Square 1277, Lot 7. And of course, the
7 board's aware that you granted party status to a
8 Ms. Ann vom Eigen. Eigen? Yes.

9 MS. VOM EIGEN: Yes. Thank you.

10 CHAIRPERSON HILL: Thank you.

11 Ms. Prince, if you could hear me, if you could give me
12 your -- I'm sorry. If you can introduce yourself for the record,
13 please?

14 MS. PRINCE: -- Goulston and Storrs, here on behalf of
15 the Applicants.

16 CHAIRPERSON HILL: Okay. Great. And then
17 Ms. vom Eigen, if you could introduce yourself for the record?

18 MS. VOM EIGEN: I'm Ann vom Eigen. I reside at
19 1611 35th Street, Northwest. I'm the property owner, and I'm the
20 adjoining property to the north of the Applicant.

21 CHAIRPERSON HILL: Okay. Ms. Prince --
22 Thank you, Ms. vom Eigen.

23 Ms. Prince, if you want to go ahead and give us the
24 testimony that you have in terms of how you believe your client
25 is meeting the criteria for us to grant the relief requested.

1 And then also if there is any movement concerning the party
2 status. And you can begin whenever you like.

3 MS. PRINCE: Sure. Thank you, Chairman Hill. I know
4 I'm standing between you and lunch, so I'll try to be brief.
5 Again, Allison Prince of Goulston and Storrs here on behalf of
6 the owners of 1609 35th Street, Don and Beth Larson.

7 They moved to this house three years ago from Virginia
8 and looked into making a very minor change to their carriage
9 house. They had Christian Zapatka to prepare their plans. He's
10 here today if you need him. The plans are in the record.

11 This is a very small addition, a four-foot bump out,
12 the house facing side of the carriage house, simply to make the
13 carriage house more functional. It's a stairway addition. It
14 very slightly exceeds the minimum or the maximum size of accessory
15 structure limitation of 450 square feet, and very slightly
16 exceeds the lot occupancy. We go from 60 to 62 percent. The
17 OGB has already approved it. The ANC supports it unanimously,
18 and the Office of Planning has no issues.

19 As you'll hear from Ms. vom Eigen, and I don't want to
20 speak for her, but I want to tell you the progress we've made,
21 and there is support from the other abutting neighbor and many
22 other neighbors. Some of the letters are in the record.

23 We understand Ms. vom Eigen's concerns and we're trying to
24 address them. I can't say that we have it tied up with a bow,
25 but let me tell you where we are.

1 Regarding a concern about a tree adjacent to the
2 property line on Ms. vom Eigen's property, we've agreed to replace
3 the tree if it dies as a result of construction. And we'll
4 replace it within 18 months of construction, if it does, in fact,
5 die with a 12- to 14-foot tree, a very sizable tree. That's one
6 commitment. Another commitment that the light is --that the
7 lighting plan, which involves a single light over the doorway of
8 the addition, will be as shown in the plans. We are proposing
9 no additional lighting. If the fence between the properties
10 becomes damaged during construction, we'll certainly replace the
11 affected part of the -- of fence to the satisfaction of Ms. vom
12 Eigen.

13 I think that we are, as you know, bound to constrain
14 our addition to within the confines of the property line --
15 property lines. Mr. vom Eigen would like that reiterated as a
16 condition. I know that's not the norm for you, but it would give
17 her comfort to know that we will keep our addition within the
18 property line.

19 And then the other item is sort of -- we're on both
20 land use lot, but I think it would give her comfort to know that
21 the conditions and the entitlement in general inure to the land.
22 They run with the land. They're not personal to the license,
23 nor are they personal to her. They would flow -- the benefit of
24 any conditions, would flow to any successor, purchaser of hers.

25 We're doing our very best. My client's been in dialogue

1 with Ms. vom Eigen for over a year. The burden of proof is very
2 straightforward. We can't have an undue impact on light and air
3 to her property. This is a four-foot bump out. We can't have
4 an undue effect on the enjoyment of her property. Again, a very
5 minor bump out, and the third part of the burden of proof has no
6 effect on the view from the street. This is simply not visible
7 from the street. So we can run through the plans if you'd like
8 to see them. There's not a lot to see, but we're happy to share
9 them.

10 And I do want to reiterate, we've really done our very
11 best, and Ms. vom Eigen has as well. We're trying to work this
12 out. We really are. But sometimes, you know, owners -- abutting
13 owners need comfort that the regs work the way we say they work.
14 And maybe it would be helpful for you all to reiterate what you
15 think you can put in conditions and cannot. But we -- but the
16 main issues are we want to honor her concerns about the main
17 issues and then she can obviously, speak for herself. So if
18 Christian -- if you'd like him to run through the plans, he can.
19 If you're just going to say, well, no, OGB's approved them, we
20 don't need to see them and that's fine, too. It's really your
21 call. They're in the record.

22 CHAIRPERSON HILL: I understand. I will ask my fellow
23 Board members in a moment if there's any conditions as to what
24 they want to look at with regard to the plans. Let's see.

25 Does the Board have any questions of the Applicant at

1 this time?

2 (No audible response.)

3 CHAIRPERSON HILL: Okay. Ms. vom Eigen, do you have
4 any questions of the Applicant at this time, or would you like
5 to give us your presentation?

6 MS. VOM EIGEN: I'd like to start with my presentation,
7 if that's acceptable to the Board.

8 CHAIRPERSON HILL: Sure, of course.

9 MS. VOM EIGEN: Okay. Thank you. First of all, I'm
10 going to reiterate again. I'm the neighbor immediately to the
11 north, and I've, obviously, been the most affected party. I've
12 lived in D.C. since 1976, and I am here because I've had some
13 unfortunate experiences with the neighbor to my north, where
14 they're applying for an exception for an artist's studio, which
15 I agreed to, and then of course ended up, as I indicated in my
16 filing, with an unfortunate experience where they built what is,
17 of course, a garage, as demonstrated by both photos I took of
18 the interior of the garage with the car in it. And I ended up
19 with a situation where I had to get an easement to attach my
20 35-year-old parking structure to their existing garage in order
21 to maintain it standing up.

22 So my approach to this proposed addition has been to
23 try to identify any concerns and impacts that the addition would
24 have on my property in advance so that these could be identified
25 and addressed and articulated so that there would be no further

1 confusion. So I have been discussing my concerns with the
2 Larsons, who, I'm sure are very nice people, but are obviously,
3 acting in their self-interest. So identified the concern about
4 the tree immediately because it's a, you know, it's a very big
5 35-year-old tree, which is 30 feet, which I'm not going to be
6 able to replace if anything happens to it.

7 You know, there's a fence. There is, you know, it's a
8 privacy fence. There's a retaining wall, because there's a height
9 difference since we're on a hill going up the hill and my property
10 is higher. And I wanted to make sure that, you know, the
11 retaining wall, the fence and the tree are not adversely affected
12 by the addition. I think that's reasonable. You know, I
13 recognize the points that Ms. Prince ran through in terms of the
14 impacts. But you know, there are going to be impacts.

15 Everybody has told me that the tree is going to go. So
16 I hired a consultant to give me an assessment of the likelihood
17 that the tree would go or not. They identified the fact that
18 there could be, you know, it could -- when construction is
19 undertaken root systems and other issues can be addressed, and
20 you know, that can be taken care of during construction. So that
21 would be great. And I'm sure the architect is expert in this
22 area and can manage that.

23 But I have found that, for example, the tree report say
24 the tree could die within six to eight years. So the licensee
25 has asked that that provision in the BZA order restrict that to

1 just 18 months, which doesn't seem to be reasonable just in terms
2 of the expert that, you know, I consulted. You know, I want to
3 emphasize that there's really no benefit to me of this proposed
4 addition. It's not only going to have an impact and construction
5 will have an impact.

6 So I had asked to get this nailed down as much as
7 possible before things progressed further. So I articulated some
8 of these concerns. We've been discussing language, and I have
9 been alarmed to find that, you know, as we proceeded that, for
10 example, the Larsons were uncomfortable signing off on, you know,
11 replacing the tree or, you know, agreeing to stay within their
12 property line because the retaining wall, we've had discussions
13 that they're not sure if the retaining wall was on their property
14 or my property. And it's just scared, because I can't feel
15 comfortable that this is not going to be a continuing concern and
16 controversy.

17 So I'd appreciate the Board's guidance on, you know,
18 property lines -- what they -- what you can act on in terms of
19 property lines if you can. Explaining that an 18-month limitation
20 on replacing a tree that is damaged during construction is
21 actually a limitation.

22 CHAIRPERSON HILL: Okay.

23 MS. VOM EIGEN: Do you have any questions?

24 CHAIRPERSON HILL: Yeah, yeah, yeah, yeah.

25 Ms. vom Eigen, I'm following everything you're asking about. Are

1 you -- is that -- are you done?

2 MS. VOM EIGEN: Yeah. Thanks.

3 CHAIRPERSON HILL: All right. So I'll let the Board
4 members ask any questions if they have any questions. I'll let
5 the Office of Planning also reply to some issues.

6 Ms. vom Eigen, I guess in some of the items that you
7 raise, like I don't know what exactly is or isn't within the
8 Board's purview in terms of trees. That's something that is not
9 something that's really a zoning issue necessarily. And that's
10 something that I guess would be something that you and the --
11 your neighbor, you know, and to quote Chairman Hood, who's here,
12 you know, the "good neighbor policy," like, you know, try to
13 being a good neighbor, which I think that both people, you know,
14 need to live together, they would respect whatever discussions
15 you all had.

16 In terms of the light that Ms. Prince has put forward,
17 like, the plans that are put forward at the BZA that are approved
18 are the plans that get built. So if there's a light there, that's
19 the light. There's not going to be anything different in terms
20 of the light.

21 The riding with the land, the application, if approved
22 by the BZA, does, in fact, run with the land. It doesn't go with
23 an individual. So if the property got sold, the ability to build
24 this would be sold.

25 The addition being within the property lines, that is

1 what would be handled over at DCRA, or Department of Buildings
2 now. And so that's something that, you know, is not -- definitely
3 is going to take place. Like it's not something that would be
4 something that we would take care of, but that's something that
5 will be handled at the Department of Buildings. But you can rest
6 assured that that again is something that is looked at during the
7 permitting process. So those are kind of some of, I guess, my
8 responses to that.

9 In terms of, you know, there being a -- and I think you
10 probably read the Office of Planning's report, I suppose, in the
11 Exhibit. And if not, and we'll get to the Office of Planning in
12 a moment. Their report is in Exhibit 29. And so that really
13 outlines, again, all of the regulations that the Board is supposed
14 to take a look at when determining whether a relief will be
15 approved. And it is done, you know, again, as I'm -- as you
16 probably read -- saw the first hearing, you know, it's something
17 the Board takes very seriously and is trying to always adhere to.
18 So that being all said, let me ask my fellow Board members, do
19 you have any questions of the witness? Oh, I'm sorry, of the
20 party status?

21 BOARD MEMBER BLAKE: So it's with regard to -- the
22 question I have is when you look at that tree itself, the areas
23 that we see and we are able to impact are issues of privacy and
24 things of that sort. Can you give me a sense how you feel this
25 impacts your privacy -- the addition would impact your privacy

1 and/or the, yeah, the tree? I would just -- I just want to
2 understand your privacy impact.

3 MS. VOM EIGEN: Okay. The tree is -- my understanding
4 of the plan is going to be immediately -- the tree has been there
5 for 35 years. So it's 20, 30 feet tall. It's about the height
6 of the current carriage house. It's part of a line of trees and
7 part of a line of arborvitae that are a privacy screen. In fact,
8 I believe Ms. Prince actually referenced that it was a privacy
9 screen in the initial application they put to the BZA. So that's
10 what it does, and that's what it serves as.

11 So if it goes, I'm going to have a row of five trees,
12 missing one at the very end next to the proposed addition. And
13 because it's 30 years old and because it's, you know, it's tall,
14 and I called two private, I called McLean Gardens, I called Meadow
15 Farms, I asked Merrifield Gardens, I asked them to give me a
16 price on replacing a tree. Everybody said we can only get you a
17 10-foot, 12-foot tree, and it's 4,400 bucks. So the effect on
18 me is going to be that I'm going to have a very discordant row
19 of trees where I'm going to have some tall trees, and then I'm
20 going to have one missing at the end.

21 BOARD MEMBER BLAKE: So just out of curiosity, how tall
22 are the other trees that are shade -- that are providing that
23 screen?

24 MS. VOM EIGEN: Well, like everything else, nature took
25 its course. So the trees that are closest to the addition are

1 shorter, so they're maybe 20 feet high. And then as you get
2 closer to my house, you know, it's a -- there's a fence, and then
3 the trees are taller, because they get more morning sun the closer
4 they get to my house. So they're easily 30-foot trees. They're
5 very mature trees. You know, and arborvitae grow fast. I don't
6 know much about gardening, but I know what I call them out and
7 what I priced, so.

8 BOARD MEMBER BLAKE: So in your view there is only one
9 tree in particular of this whole screening row that's really kind
10 of at risk and that concerns you?

11 MS. VOM EIGEN: Yes.

12 BOARD MEMBER BLAKE: And how tall is the fence again?
13 It's about, what, six feet or so?

14 MS. VOM EIGEN: Yeah, it's about six feet.

15 BOARD MEMBER BLAKE: Okay. Does that provide -- I see
16 a lot of trees in the pictures, so does that block -- does that
17 provide a sufficient screening? And does this one tree cause a
18 particularly line of sight view, change or something that you
19 have?

20 MS. VOM EIGEN: Well, the fence is shorter. And so
21 it's not -- it doesn't really provide, you know, it's five feet
22 tall, and it's crooked so it doesn't really provide a privacy
23 screen. And my concern was that, you know, if you use the
24 staircase, my privacy in my backyard is going to be affected. It
25 won't be as private for me. So -- and it, you know, I wouldn't

1 expect because -- well, I mean, I did go to the expense and
2 inconvenience, frankly, of hiring an expert and calling around
3 and trying to be reasonable about determining valid prices that,
4 you know, everybody says it's going to die, so I'm going to have
5 to replace it. And so I'm getting no -- I -- I'm getting no
6 benefit at all from this proposed addition, and a lot of
7 inconvenience and an expert recommendation that, you know, I'm
8 going to have to spend money. So I've put money in --

9 BOARD MEMBER BLAKE: There's one clarification to for
10 you, I'm sorry.

11 MS. VOM EIGEN: Thank you.

12 BOARD MEMBER BLAKE: The tree sits fully on your
13 property except for the root structure which likely goes onto the
14 neighbor's property. Is that what --

15 MS. VOM EIGEN: Correct? Yeah.

16 BOARD MEMBER BLAKE: Okay. Okay. Okay. All right.
17 Well, thank you very much.

18 I'm good for now, Mr. Chair. Thank you.

19 CHAIRPERSON HILL: Sure. Chairman Hood?

20 ZONING COMMISSION CHAIR HOOD: (Indiscernible) the tree
21 line, because I'm not an arborist and I'm not an expert, but I
22 do want to ask Ms. -- hopefully I pronounce it -- vom Eigen --
23 how do you?

24 MS. VOM EIGEN: That's fine.

25 ZONING COMMISSION CHAIR HOOD: Okay. Well, I don't

1 want to mess your name up.

2 MS. VOM EIGEN: Yes.

3 ZONING COMMISSION CHAIR HOOD: Okay. But let me --
4 your screening, is that -- is your screening seasonal? I looked
5 at some of the trees. I know some of them. Is that a seasonal
6 tree?

7 MS. VOM EIGEN: No, because arborvitae are, you know,
8 they're evergreens, so they're always green.

9 ZONING COMMISSION CHAIR HOOD: Right. Okay. So they're
10 evergreens. All right. All of them are evergreens.

11 MS. VOM EIGEN: Well, yes. I have a hull, but it's on
12 the other side of the yard. So they're all evergreens.

13 ZONING COMMISSION CHAIR HOOD: Yeah, I saw the
14 evergreens. I can make out the evergreens.

15 Have you also reached out to -- and I know you said
16 you've spent some money -- and have you also reached out to Casey
17 Trees? I think they do an excellent job in this city.

18 MS. VOM EIGEN: I have not. And I appreciate the
19 advice, but I thought they did public space.

20 ZONING COMMISSION CHAIR HOOD: I'm not sure. I just
21 know that they are -- they advocate to us about trees all over --
22 - down the street over here in Ward 5. I just know they do a
23 lot, and I think that would be a good place as well so you won't
24 have to spend a lot of money. Because I know they get nonprofit
25 money as well. I may be wrong, but at least that's a try so you

1 don't have to spend all this money. But also, I heard Ms. Prince,
2 who really rattled off, I think, some corporate level issues at
3 the very beginning. And I was under the assumption that what
4 Ms. Prince mentioned, that you all had kind of come to some type
5 of agreement. She felt good. You just need the comfort level.
6 Is that a true statement?

7 MS. VOM EIGEN: It was. But you know, I had asked if
8 they would replace the -- because -- I had requested that any
9 agreement that we reach, however (phonetic) replacing the tree
10 for a period of six years. Because the tree report from the
11 experts said it could go, you know, it could die within eight.
12 So I have suggested six, and they want to go to 18 months, because
13 I'm being unreasonable. And I'm not comfortable with, you now,
14 the concerns that, number one, that's a reasonable expectation.
15 Number two, that anything I don't list in the, you know, list of
16 things that would be in a BZA order are exclusive.

17 Just because it's construction, you know, things
18 happen, you know. You can start up, you know, this is an old
19 city in an old neighborhood, and you start on construction and
20 something else happens. You find something else.

21 ZONING COMMISSION CHAIR HOOD: Okay.

22 MS. VOM EIGEN: So I just am distraught, really, that
23 we're at this point where, you know, I'm just really just -- I
24 mean, I've made a good faith effort. I devoted more energy than
25 I have. I'm taking time away from my job to do things like

1 this. I appreciate the BZA being accessible and providing so
2 much information, but I think I'm damaged, and I have the
3 potential for more damage that is not in their concept of things
4 that need to be -- they need to be concerned about.

5 ZONING COMMISSION CHAIR HOOD: Well, thank you, Ms. vom
6 Eigen. I will tell you that I serve on the Zoning Commission
7 where we have a little more, and I -- what I heard Ms. Prince
8 offer sometimes is a lot more than what I hear on some other
9 cases, which I think require a lot more. So I'll just leave it
10 at that. And I hope things work out, and I'll see how the Board
11 is going to go as well.

12 Thank you, Mr. Chairman.

13 MS. VOM EIGEN: Well, thank you.

14 CHAIRPERSON HILL: Thank you, Chairman Hood.

15 All right, I'm going to turn to the Office of Planning.

16 MR. KIRSCHENBAUM: Chairman Hill and members of the
17 Board of Zoning Adjustment, I am Jonathan Kirschenbaum again for
18 the Office of Planning. We recommend approval for the two special
19 exceptions for lot occupancy and (indiscernible) building area
20 and rest on the record of our staff report. Please let me know
21 if you have any further questions. Thank you.

22 CHAIRPERSON HILL: Ms. Prince, do you have any
23 questions for the Office of Planning?

24 MS. PRINCE: I do not.

25 CHAIRPERSON HILL: Does the Board have any questions

1 for the Office of Planning?

2 BOARD MEMBER BLAKE: Mr. Kirschenbaum, could you discuss
3 a little bit in your analysis how you addressed the issue of
4 privacy towards the adjacent property?

5 MR. KIRSCHENBAUM: For sure. So when we look at
6 privacy, we usually look at it in terms of physical building. In
7 this case, there will not be an undue impact to the privacy of
8 the adjoining properties. The proposed addition would be set
9 back 37 feet from neighboring buildings to the north and the
10 south. And then the proposed windows on the addition would face
11 the rear of the property. Further, those windows would be along
12 a stairwell. And we're not, you know, there's no sort of livable
13 space in there. It's not like, you know, it would be an area
14 that would be used very often. It's just used to go up and down
15 the staircase.

16 BOARD MEMBER BLAKE: Okay. Thank you.

17 CHAIRPERSON HILL: Okay. Anyone else for the Board?

18 Ms. vom Eigen, do you have any questions of the Office
19 of Planning?

20 MS. VOM EIGEN: No, thank you. I obviously skipped any
21 filing I should have made with the Office of Planning. I didn't
22 realize I should have.

23 CHAIRPERSON HILL: No, that's all right, Ms. vom Eigen.
24 There's nothing that you would have filed with the Office of
25 Planning.

1 MS. VOM EIGEN: Okay.

2 CHAIRPERSON HILL: They have a report that they give
3 us --

4 MS. VOM EIGEN: Okay.

5 CHAIRPERSON HILL: -- that explains the regulations,
6 or at least how they view the regulations. And that, again, is
7 in Exhibit 29. 29.

8 All right. Mr. Young, is there anyone else here to
9 speak?

10 MR. YOUNG: We do not.

11 CHAIRPERSON HILL: Ms. vom Eigen, you had your hand up?

12 MS. VOM EIGEN: Yeah, I have a question. Since
13 Ms. Prince did outline several conditions that you could put in
14 an order, are we at the point where we can present something,
15 and you can include it in the order? Is there a time -- do we
16 have to do it right now? Is there a time limitation? Can we
17 submit it after this hearing? What's this process, please?

18 CHAIRPERSON HILL: I -- so -- Ms. vom Eigen, we the
19 Board, will determine what things we think are necessary for
20 conditions.

21 MS. VOM EIGEN: Okay.

22 CHAIRPERSON HILL: And so, you know, and also we, the
23 Board, will put in conditions that are only related to the
24 regulations as we see them. I don't know if we're going to be
25 able to put in -- I'll just be honest. I don't know if we're

1 going to be able to put in a condition concerning a tree that's
2 on your property. And so that will be something probably that
3 you would have worked out with the neighbor prior to this hearing.
4 And then -- and I guess that's something that, you know, you
5 still will be able to do once this hearing is concluded.

6 I know that, as I mentioned before, as I'm listening
7 to some of your concerns, a lot of those are already within either
8 the regulations or, I'm sorry, within permitting, right, in terms
9 of your concern about the property line. And then also, you
10 know, in terms of the light, that, again, is on the plans.

11 MS. VOM EIGEN: Okay.

12 CHAIRPERSON HILL: So you know, I think that if this
13 were something that, you know, you -- excuse me. You had wanted
14 to work out with the Applicant ahead of time before this hearing,
15 you know, that might have been something that you would have had
16 an opportunity to have done. And now the Board, depending upon
17 what Ms. Prince may or may not want to do now, or what you guys
18 want to do now, in terms of, you know, your participation as a
19 person of party status, you know, we would go ahead and have our
20 deliberations and administer the -- probably the deliberations
21 here on the Board. Does that answer your question, Ms. vom Eigen?

22 MS. VOM EIGEN: Yes. So is that acceptable to have Ms.
23 Prince summarize the conditions that she thinks could go in a
24 Board order basically?

25 CHAIRPERSON HILL: There is -- I guess that's what I'm

1 saying Ms. vom Eigen. We would determine the conditions.

2 MS. VOM EIGEN: Okay. All right.

3 CHAIRPERSON HILL: All right.

4 MS. VOM EIGEN: Thank you.

5 CHAIRPERSON HILL: So Ms. Prince, I think you
6 understand everything that's being said.

7 Do you have anything to add, Ms. Prince?

8 Ms. PRINCE: So on the face, I did summarize the
9 conditions. And this has been a dialogue that's happening today,
10 so I apologize. I summarized the conditions, the three conditions
11 and submitted them into the record. I copied you, Ms. vom Eigen.
12 So it covers the tree replacement, the lighting plan, and the
13 fence. And I understand it's your call about what you can put
14 in an order, but I'm just trying to establish an atmosphere of
15 good faith here, because the dialogue has been happening. And
16 you know, frankly, we were trying to eliminate Ms. vom Eigen's
17 concerns so we're not thrown into a, you know, a whole long
18 hearing and delay in getting an order for such a tiny addition.
19 That's (indiscernible).

20 CHAIRPERSON HILL: Ms. vom Eigen --

21 I mean, where is the document you're speaking of Ms.
22 Prince?

23 MS. PRINCE: I just filed it. It was the three
24 conditions that I read at the beginning. I can read them again.

25 CHAIRPERSON HILL: Yeah. I can --

1 MS. PRINCE: They're -- it's the repair of the fence,
2 the replacement of the tree within 18 months, and that we'll
3 stick to the lighting plan in the record.

4 CHAIRPERSON HILL: okay.

5 MS. PRINCE: So it's going to be those three items.

6 CHAIRPERSON HILL: Can you all give me one moment here?

7 MS. PRINCE: And because it's the day of the hearing,
8 we filed it, but it had to go to BZA submissions. It didn't go
9 straight into the system.

10 MR. MOY: Correct.

11 CHAIRPERSON HILL: If the Board doesn't mind, if they
12 could please add that to the record. If the staff, Mr. Moy, can
13 please add that to the record?

14 MS. PRINCE: Sorry, Cliff.

15 MR. MOY: No, that's okay. We're taking care of that
16 right now, Mr. Chairman, and Ms. Prince.

17 MS. PRINCE: Okay. Just really tried to work things
18 out before this hearing, Chairman Hill.

19 CHAIRPERSON HILL: Okay. Can you all give me just --
20 let me just take five minutes, okay? I'm just going to take a
21 quick five-minute break. Thank you.

22 MS. VOM EIGEN: Okay. Thank you.

23 (Pause.)

24 MR. MOY: It should be in the case record now,
25 Mr. Chairman.

1 CHIARPERSON HILL: Yeah, thanks, Mr. Moy. I'm looking.

2 MS. VOM EIGEN: Can I say one more thing about you're --

3 CHAIRPERSON HILL: One moment. One moment, please, Ms.
4 vom Eigen.

5 MS. VOM EIGEN: Okay.

6 CHAIRPERSON HILL: Okay. Ms. vom Eigen, what was your
7 question?

8 MS. VOM EIGEN: It's not a question. I just wanted
9 to take the moment as you're proceeding to say I want -- I
10 appreciated the opportunity to work with the BZA staff. Mr. Reid
11 and Ms. Rose were very helpful in terms of walking me through
12 the applicant party status and trying to be, you know, get the
13 opportunity to testify. So I really do appreciate it and I
14 commend, you know, the BZA for having a very professional staff
15 who were willing to work with me, even though I wasn't familiar
16 with the process and walk me through it so --

17 CHAIRPERSON HILL: Thank you.

18 MS. VOM EIGEN: -- kudos to them.

19 CHAIRPERSON HILL: No. Thanks. We have a lovely staff,
20 and they always seem to be helping people that are -- that this
21 isn't your job.

22 MS. VOM EIGEN: Yeah, I know, I can (indiscernible).

23 CHAIRPERSON HILL: Which is great.

24 All right. I see the item in the record. And so I'm
25 comfortable taking a look at that when we talk about

1 deliberations.

2 Does the Board have any final questions of anybody, and
3 then I'm going to ask if anyone have anything else to add?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay, Ms. vom Eigen, do you have
6 anything else you'd like to add at the end?

7 MS. VOM EIGEN: No, thank you. I'm kind of disappointed
8 in the length for the tree, but --

9 CHAIRPERSON HILL: Okay.

10 MS. VOM EIGEN: -- I appreciate your explanation and
11 your perspective.

12 CHAIRPERSON HILL: Thank you.

13 Ms. Prince?

14 MS. PRINCE: Thank you for your time today. Just in
15 closing, we more than meet the burden of proof here. As I said,
16 it's a tiny addition. We do -- we're very sensitive to privacy
17 and that we're talking about one tree that's got a holly behind
18 it, and it's part of a row, and we'll replace it with dies. We're
19 -- I mean it's -- and I realize that's not within your
20 jurisdiction to include a condition on that. But it was requested
21 and, you know, we just want to show our good faith. We've done
22 everything we can to try to settle this to keep the hearing short.
23 And I apologize. It's taken longer than a small piece like this
24 should, but we're trying to be sensitive to perceived impacts.
25 Okay. Thanks though, we appreciate your time today.

1 CHAIRPERSON HILL: Okay. Thank you, Ms. Prince.

2 All right. I'm going to close the hearing and the
3 record.

4 Mr. Young, if you could excuse everyone, please.

5 Okay. All right. I can start. I think that, again,
6 it was a relatively small addition, but I understand the
7 neighbor's concerns, because that's always a concern of the
8 neighbors in terms of how change might affect them. I think that
9 as I am reading, again, through the Office of Planning's report
10 and Exhibit 29, when they're talking about light and air impacts,
11 or privacy impacts, again, given the size of the addition, I did
12 not think that it would again be undue. I would also agree with
13 the Office of Planning's determination in terms of it being a
14 stairwell that would not really affect the privacy that much
15 because the stairwell, people will be kind of walking up and down
16 the stairs.

17 In terms of the conditions, I'm really kind of -- think
18 that what I would prefer to do is have in the order that would
19 be written, have these referred to, and then could also be put
20 in the order as findings of fact so that, you know, they could
21 then refer to them in the order. And it is in the record, and
22 I'm sure that the Applicant would adhere to them, because they
23 volunteered them. And I don't have -- I mean, I think they're
24 all very straightforward.

25 As I did say, the lighting plan that's on the BZA plan,

1 so that's already going to be in the plans. And so -- and then
2 the fence, it says the property image and in the tree, I think
3 that it's reasonable to replace the tree if due to construction
4 it dies within 18 months and that there are, as has been stated
5 in the testimony, other trees, therefore privacy. However, I do
6 appreciate Ms. vom Eigen and her testimony and her concerns, and
7 I think she's done a good job in bringing everything to the table
8 so that everyone is comfortable with us moving forward,
9 particularly, I guess, since she had had a bad experience with
10 something happening before in her immediate proximity that made
11 her concerned to make sure that she went through this process so
12 that she could feel more comfortable.

13 And I also would say thank you to the Applicant for
14 working with their neighbor as much as they had to try to make
15 them comfortable with what's moving forward, because sometimes
16 neighbors don't make the effort that I think this Applicant has
17 made. And so I would agree with the, again, the analysis of the
18 Office of Planning as well as the report that both DDOT and the
19 ANC has put forward, and I will be voting in favor of this
20 application.

21 Mr. Blake, can I get your opinion?

22 BOARD MEMBER BLAKE: Completely agree with your analysis
23 of the situation. I do believe the Applicant has met the burden
24 of proof to be granted relief. I do believe that I think it'd
25 be best to incorporate the issues by reference as opposed to

1 incorporating them in the order. I think that this -- I give
2 great weight to the Office of Planning's analysis, and I would
3 be voting in favor of the application.

4 CHAIRPERSON HILL: Thank you.

5 Chairman Hood.

6 ZONING COMMISSION CHAIR HOOD: I would agree with both
7 of my colleagues. I would also say I'm going to use the term
8 that legal folks have told me over the years to point to, which
9 is actually saying the same thing, I believe, that you all are
10 saying as far as referencing those conditions, but they always
11 told me to point to. But however it is, I think that's sufficient
12 not necessarily making it a condition if we're saying the same
13 thing. But I think this is pretty straightforward, and I
14 appreciate the effort as you have already mentioned,
15 Mr. Chairman, of the Applicant.

16 I've seen -- that was quite a bit for the Applicant to
17 do to try to give a comfort level to the party in opposition. So
18 I'll be voting in favor of accepting it. It merits our approval
19 under the relief and the standards requested. Thank you. Vice
20 Chair John.

21 CHAIRPERSON HILL: Thank you.

22 Vice Chair John?

23 VICE CHAIR JOHN: And I think the application meets the
24 criteria for relief. And with respect to the conditions --
25 proposed conditions, I would just refer to them, because they

1 essentially impact construction issues; that is replacement of
2 the tree and replacement of the fence. And I agree that the
3 lighting is already in the plan, so there's no need to include
4 that in the reference. But the replacement of the tree and the
5 fence, those are two construction issues that we don't normally
6 include in an order.

7 CHAIRPERSON HILL: Okay. Thank you.

8 And I'm going to go ahead and make a motion to approve
9 Application No. 20803, as captioned and read by the Secretary and
10 point to the conditions in Exhibit 37 in the record and ask for
11 a second.

12 Ms. John?

13 VICE CHAIR JOHN: Second.

14 CHAIRPERSON HILL: The motion has been made and
15 seconded.

16 Mr. Moy, if you'd take a roll call, please?

17 MR. MOY: Thank you, Mr. Chairman. When I call your
18 name, if you'll please respond to the motion made by Chairman Hill
19 to approve?

20 Zoning Commission Chair Anthony Hood.

21 ZONING COMMISSION CHAIR HOOD: Yes.

22 MR. MOY: Mr. Blake?

23 BOARD MEMBER BLAKE: (No audible response.)

24 MR. MOY: Vice Chair John?

25 VICE CHAIR JOHN: Yes.

1 MR. MOY: Chairman Hill.

2 CHAIRPERSON HILL: Yes.

3 MR. MOY: Then staff would record the vote as four to
4 zero to one. And this is on the motion made by Chairman Hill to
5 approve the application for the relief requested. The motion was
6 seconded by Vice Chair John to approve. Also in support to
7 approve the application is Zoning Commission Chair Anthony Hood,
8 Mr. Blake, and of course, Vice John and Chairman Hill. We have
9 a Board member not present, not voting. Motion carries on a vote
10 of four to zero to one.

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

12 Okay. If that's it for us, everybody, I'm going to go
13 ahead and adjourn the hearing, and we will see everyone next week
14 except for Chairman Hood. Thank you.

15 VICE CHAIR JOHN: Thank you.

16 MR. MOY: Bye-bye.

17 VICE CHAIR JOHN: Bye everyone.

18 ZONING COMMISSION CHAIR HOOD: Bye-bye.

19 (Whereupon, the above-entitled matter went off the
20 record at 12:26 p.m.)

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In the matter of: Public Hearing

Before: DCBZA

Date: 11-09-22

Place: Teleconference

was duly recorded and accurately transcribed under my
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