

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 21, 2022

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK HILL, Chairperson
LORNA JOHN, Vice Chairperson
CARL H. BLAKE, Commissioner
PETER MAY, Zoning Commissioner
JOSEPH IMAMURA, Zoning Commissioner

BOARD OF ZONING ADJUSTMENT STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Data Specialist

BOARD OF ZONING ADJUSTMENT LEGAL COUNSEL:

RYAN NICHOLAS, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on December 21, 2022.

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

(9:30 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen. The Board of Zoning Adjustment hearing will please come to order. Today's date is 12/21/2022. This is the last hearing of the year. My name is Fred Hill, I'm the Chairperson of the District of Columbia Board of Zoning Adjustment. Joining me today is Vice Chair Lorna John, Board members Carl Blake, Chrishaun Smith, and Zoning Commissioners Peter May and Dr. Imamura. 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 via live Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also be advised that we do not take any public testimony in our decision meeting sessions. If you're experiencing difficulty accessing Webex or your telephone call-in, then please call our OZ hotline number at 202-727-5471 to receive Webex log-in or call-in instructions.

At the conclusion of a 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, including an affected ANC. A full order may also be needed if

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1 the Board's decision differs from the Office of Planning's
2 recommendation. Although the Board favors the use of summary
3 orders whenever possible, an applicant may not request the Board
4 to issue such an order.

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

14 Once again, if you're experiencing difficulty accessing
15 Webex or with your telephone call-in, please call our OZ hotline
16 at 202-727-5471. All persons planning to testify either in favor
17 or in opposition should have signed up in advance. They'll be
18 called by name to testify. If it is an appeal, only parties are
19 allowed to testify. By signing up to testify all participants
20 completed the oath or affirmation as required in Subtitle Y 408.
21 Requests to enter evidence at the time in online virtual hearings
22 such as written testimony or additional supporting documents,
23 other than live video which may not be presented as part of the
24 testimony, may be allowed pursuant to Y 103.13 provided that the
25 person making the request to enter an exhibit explain, A, how the

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1 proposed exhibit is relevant, B, the good cause that justifies
2 allowing the exhibit into the record, including an explanation
3 of why the requester did not file the exhibit prior to the hearing
4 pursuant to Y 206, and, C, how the proposed exhibit would not
5 unreasonably prejudice any parties.

6 The order of procedures for special exceptions and
7 variances are pursuant to Y 409. At the conclusion of each case,
8 an individual who was unable to testify because of technical
9 issues may file a request for a leave to file a written version
10 of the planned testimony to the record within 24 hours following
11 the conclusion of public testimony in the hearing. If additional
12 written testimony is accepted, then parties will be allowed a
13 reasonable time to respond as determined by the Board. The Board
14 will then make its decision at its next meeting session, but no
15 earlier than 48 hours after the hearing.

16 Moreover, the Board may request additional specific
17 information to complete the record. The Board and staff will
18 specify at the end of the hearing exactly what is expected, and
19 the date when persons must submit the evidence to the Office of
20 Zoning. No other information shall be accepted by the Board.

21 Finally, the District of Columbia Administrative
22 Procedures Act requires that the public hearing on each case be
23 held in the open before the public; however, pursuant to Section
24 405(b) and 406 of that Act, the Board may, consistent with its
25 rules of procedures and the Act, enter into a closed meeting on

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1 a case for purposes of seeking legal counsel on a case pursuant
2 to D.C. official code Section 2-575(b)(4) and or deliberate on a
3 case pursuant to D.C. official code Section 2-575(b)(13), but
4 only after filing necessary public notice. In the case of an
5 emergency closed meeting, (indiscernible) roll call vote.

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

7 MR. MOY: Good morning, Mr. Chairman, members of the
8 Board. Thank you. I do have a couple of quick announcements
9 regarding today's docket. First Case Application No. 2083 --
10 20837 of Howard University has been postponed and rescheduled to
11 a hearing date of May 3rd, 2023. Number two, Case Application
12 No. 20840 of Gwendolyn Jackson, a preliminary there, Mr.
13 Chairman, is that there is a request for a party status. And
14 other than that, any other preliminary matters I'll address for
15 the Board when I call the case. And as well, in final or in
16 conclusion, we do have a continued application from last week's
17 public hearing where Zoning Commissioner Peter May is
18 participating. That's it for me, Mr. Chairman.

19 CHAIRPERSON HILL: Okay. Unfortunately, I was unable
20 to meet with you guys on Monday, so I don't know if you decided
21 to do the party status as a preliminary matter. If I would, I'd
22 go ahead and request that we go ahead and do Mr. May's continued
23 hearing first, and then perhaps come back and determine the party
24 status. And then, as has been the norm, put that at the end of
25 the day, unless that is different from what you all had thought

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1 about. I saw Ms. John nod her head a minute ago, so maybe that
2 is meaning that's okay. Is that correct more or less, Vice Chair
3 John?

4 VICE CHAIR JOHN: That's correct, Mr. Chairman.

5 CHAIRPERSON HILL: Okay.

6 Then, Mr. Moy, if you want to go ahead and call our
7 continued hearing case.

8 MR. MOY: Thank you, Mr. Chairman. So in that case,
9 this application as captioned would be number -- Application No.
10 20832 of 501 K Street Property Owners, LLC. This application
11 since the last hearing, Mr. Chairman, has been amended. It's
12 still a self-certified application, but now for a special
13 exception pursuant to Subtitle X, Section 901.2 under Subtitle
14 I, Section 203.3 from the front build to line requirements,
15 Subtitle I, Section 203.1. Property in the J5-R zone at 1001
16 6th Street, N.W., Square 483, Lot 9. And I think other than that
17 I've already we mentioned everything else. Thank you, sir.

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

19 If the Applicant could hear me, if they could introduce
20 themselves for the record please?

21 MR. AVITABILE: Yes. David Avitabile with Goulston &
22 Storrs on behalf of the Applicant. And we also have our
23 architect, Devon Patterson, in the room.

24 CHAIRPERSON HILL: Great. Thanks, Mr. Avitabile.
25 Thank you for rejoining us. Could you explain what has happened

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1 since the last time please, Mr. Avitabile?

2 MR. AVITABILE: Certainly. And thank you, members of
3 the Board, good morning and thank you, especially to Commissioner
4 May for returning. We have significantly narrowed the scale and
5 scope of the request of the Board. We've removed the hotel
6 option, as we explained last week. That's no longer viable. We
7 revised the penthouse design to comply with the regulations, and
8 we are demurring on the request for phasing. So all that's before
9 the Board today is a relatively simple ask for the project, which
10 is special exception relief from the ground floor build-to
11 requirements to accommodate the design of a residential lobby on
12 5th Street. And then we are asking for design flexibility to
13 modify the upper story bay window and bridge elements which will
14 not impact the requested relief or compliance with the zoning
15 regulations in any other way. That's all we're here for, one
16 area of relief and one area of flexibility.

17 CHAIRPERSON HILL: Okay. Thanks, Mr. Avitabile. Well,
18 I mean, I know that the Applicant made the argument for the
19 special exceptional relief for the front build-to requirements
20 under Subtitle I 203 the last week. And so I don't think it's
21 necessary to reargue that unless the Board wants to hear that
22 part of the presentation. However, there might be -- and I'm
23 going to turn to the Office of Planning also to see what their
24 thoughts are on the change. But does the Board have any questions
25 of the Applicant and/or would they like to hear something from

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1 the Applicant? And if so, please raise your hand.

2 Vice Chair John first?

3 VICE CHAIR JOHN: Yes, thank you. If the Applicant
4 could point out exactly where the flexibility is required, is it
5 only on level 14?

6 MR. AVITABILE: No, it would be -- if you go to -- I
7 don't know if we can bring up the presentation we submitted, but
8 if not, it is not only on level 14 for that bridge element that
9 would connect --

10 CHAIRPERSON HILL: Mr. Avitabile, I think maybe you
11 could -- let me -- either point us to an exhibit and a slide on
12 the exhibit or your presentation.

13 MR. AVITABILE: Sure, we'll do that.

14 CHAIRPERSON HILL: I mean, I see like Exhibit 30A, as
15 in apple. I don't know if that --

16 MR. AVITABILE: Yeah, 30A is our updated set of plans
17 and if you go to page --

18 CHAIRPERSON HILL: Here Mr. Young's pulling it up.

19 MR. AVITABILE: Okay.

20 CHAIRPERSON HILL: And if you go to which page, Mr.
21 Avitabile?

22 MR. AVITABILE: Page 9. So you can see here we have
23 -- the current building form shows some bay windows on the inside
24 of the building. And those bay windows may or may not be in the
25 final design as we continue to evaluate exactly what the unit

1 layouts might be and the design might be. So it's those bay
2 window elements. And then if we go to the next page?

3 It is this connecting bridge element at the roof, which
4 may or may not be in the final design, depending upon the
5 structural feasibility of that element to connect the two
6 penthouses. So those are the two specific areas of flexibility,
7 Ms. John.

8 VICE CHAIR JOHN: So to be clear, there are no exterior
9 bay windows or any kind of exterior windows impacted by any
10 proposed design changes?

11 MR. AVIATABILE: Nothing on the street-facing sides.
12 It would only be on the interior -- inside-facing sides.

13 VICE CHAIR JOHN: Okay. Thank you.

14 CHAIRPERSON HILL: Anyone else? I saw your hand, Mr.
15 Blake. Do you want the slide deck up?

16 COMMISSIONER BLAKE: Yeah, it was actually very -- the
17 question that Vice Chair John asked, but I do want to follow-up.
18 The ques- -- the relief that we requested doesn't seem to be tied
19 specifically to the I 203 relief you requested to build to line
20 requirement. So are you looking for this under Y 604? What is
21 your objective for having this particular flexibility?

22 MR. AVITABILE: So my understanding and my experience
23 has been when the Board approves a project, even if you're only
24 approving, say, relief for the ground floor of the building,
25 we're bound to an entire set of approved plans, which would

1 include the upper story portions of the building. And so in
2 order to ensure that, as those other elements of the building
3 evolve, we just wanted to be absolutely clear that those
4 particular elements, which are the only elements still in flux,
5 could change. That's why.

6 COMMISSIONER BLAKE: Okay. And so you suggest then
7 that there's nothing else in the building that could potentially
8 change? It would seem that it could, for example, we had that
9 prior discussion about the upper floors. I mean, there are other
10 elements that could change. Would that -- that would not
11 necessarily necessitate you coming back for relief, however.

12 MR. AVITABILE: No, no, it would not.

13 COMMISSIONER BLAKE: But you don't think anything else
14 would change other than these two elements?

15 MR. AVITABILE: I don't think anything would change in
16 sort of the material way where it impacts the approved plans.
17 You know, there's always the potential for sort of minor tweaks
18 to, you know, this is not a PUD level review where we're locked
19 into sort of the specific color of the brick. So that sort of
20 element might evolve. But the form of the building, as you as
21 you see it on these plans, would remain the same.

22 COMMISSIONER BLAKE: Thank you.

23 CHAIRPERSON HILL: Okay. Thanks.

24 Mr. Kirschenbaum, if you could hear me, could -- or the
25 Office of Planning, could you introduce yourself for the record

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1 please?

2 MR. KIRSCHENBAUM: Good morning, Chair Hill and members
3 of the Board of Zoning Adjustment. I am Jonathan Kirschenbaum
4 with the Office of Planning. And we continue to recommend
5 approval of this application. (Indiscernible) any questions,
6 thank you.

7 CHAIRPERSON HILL: Thank you, Mr. Kirschenbaum.

8 Does anybody have any questions for the Office of
9 Planning? Okay.

10 Let's see. Mr. Young, is there anyone here wishing to
11 speak?

12 MR. YOUNG: We do not.

13 CHAIRPERSON HILL: Okay. All right. Is there anything
14 else? Anyone like -- anyone -- is there anything else anyone
15 would like to add at the end?

16 Okay. Mr. Avitabile, if your client is listening, you
17 have earned your money because otherwise this is going to get
18 kicked back to maybe March. So there you go. Mr. Avitabile, do
19 you have anything you'd like to add at the end?

20 MR. AVITABILE: No. Just to, again, thank the Board
21 for hearing us so quickly.

22 CHAIRPERSON HILL: Okay.

23 All right. Going to go ahead and close the hearing on
24 the record. You can please excuse everyone, Mr. Young.

25 Commissioner May, since this is all you'll be doing

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1 today in terms of us, would you like to speak first or go on the
2 record and tell us what you think?

3 ZC COMMISSIONER MAY: Sure. As you said at the
4 beginning, the Applicant has already made the case for relief
5 having to do with the front setback requirements or variations
6 to allow a greater setback, so, and all of the other relief that
7 was questionable that I had concern about has been removed. The
8 flexibility that they're asking for has nothing to do with any
9 of the relief that's been requested. So you know, they can have
10 bays on the inside, the outside, anywhere they want, I don't
11 think it makes a difference in terms of any action that the Board
12 would take. So I'm in favor of approving this case today.

13 CHAIRPERSON HILL: Okay. Great. Thank you.

14 Mr. Smith?

15 COMMISSIONER SMITH: Mr. May, can I ask you a question
16 about your recommendation? Would that be a recommendation with
17 the condition for flexibility or no?

18 COMMISSIONER MAY: Yes. Yeah, sure.

19 COMMISSIONER SMITH: Okay. Because, you know, just a
20 open question about some of the things that they're asking for.
21 I wonder if, based on what they're asking for it seems fairly
22 minor, that it can be very -- by the zoning administrator under
23 his own hand and his own authority. So you know, that's my only
24 hesitation with including design flexibility. Granted that we
25 haven't really done or -- done that type of condition before

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1 here. But you know, outside of that, I do agree with Mr. May's
2 assessment on this case being that they have removed the massive
3 amount of variability by removing the request for the scheme for
4 the hotel, also some of the special exceptions related to
5 penthouses, I do think that this is less of a heavier -- less of
6 a heavy lift. And I do believe they've met the standard for us
7 to approve what they're requesting, these special exceptions.
8 Yeah, I guess it couldn't harm by putting in that condition about
9 design flexibility, just as long as we're tying it specifically
10 to what they're asking for. So I will be in support of the
11 application with the condition -- with a very narrowly tailored
12 condition.

13 CHAIRPERSON HILL: Okay. So Mr. Smith, I'm sorry, did
14 that -- well, let me get through first, and I'll come back to
15 your thoughts on the wording. And if I could refer you, Mr.
16 Smith, to Exhibit 30 in terms of the -- yeah, the design
17 flexibility as to how that condition might be put forth or at
18 least how I was going to go along with it.

19 COMMISSIONER SMITH: Their statement?

20 CHAIRPERSON HILL: Yeah, yeah, yeah.

21 COMMISSIONER SMITH: Okay. I'll take a look at it.

22 CHAIRPERSON HILL: Yeah.

23 Mr. Blake?

24 COMMISSIONER BLAKE: Yeah, I agree with the comments
25 by Commissioner May and Mr. Smith with regard to the Applicant.

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1 I do think the Applicant has met the burden of proof to be granted
2 relief for the front build-to requirement. The recessed area is
3 minimal, only two feet more than required, and located towards
4 the middle of the block, and it doesn't interrupt any -- the
5 visual integrity of 5th Street, the street wall, when viewed from
6 either New York Ave or K Street. The space will feel open to
7 the public not only during the daylight hours, but also in the
8 evening. I don't believe that the granting relief will be out
9 of harmony with the zoning regulations and it won't affect
10 anything in neighboring properties or anything like that. I give
11 great weight to the Office of Planning's recommendation. No --
12 DDOT has no objection. I'd also give great weight to the ANC 6E
13 report, which is in support of relief and state no issues or
14 concerns. As with regard to the flexibility required, I don't
15 believe it's necessary. However, given its limited scope, I will
16 support the request for flexibility.

17 CHAIRPERSON HILL: Vice Chair John?

18 VICE CHAIR JOHN: So I'm in substantial agreement with
19 everything that's been said. I believe that the request for
20 flexibility as to the bay windows on the inside of the buildings
21 and not on any street-facing location is important for our
22 analysis under X 901. So I would support the requirement for
23 flexibility for changes on the inside of the building. And I
24 would want to condition that support on the fact that there would
25 be no -- that those changes would not generate any more need for

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1 BZA approval or any more zoning relief, which is fairly standard
2 when we approve flexibility for certain design changes. And I
3 think the same is true for the flexibility to move the bridge
4 from one end of the building to the other. So I'm in support of
5 the application. I thank the Applicant for making the changes
6 based on the Board's previous discussion, which makes it a much
7 easier lift. I'm in support.

8 CHAIRPERSON HILL: Okay. Thanks, Vice Chair John.

9 I don't have anything additional to add. I guess Vice
10 Chair John added the item about additional zoning relief
11 concerning the flexibility, and I'm comfortable with that. And
12 then, Mr. Smith, are you comfortable with what it is written down
13 or how the condition might be read from the letter that was from
14 the Applicant?

15 COMMISSIONER SMITH: I would just go on the record and
16 say that I'm kind of uncomfortable with putting in a condition
17 about design flexibility because -- and as far as I know, at
18 least as long as I've been on the Board, I can't think of a time
19 where we've passed such a condition. And I would hate to, you
20 know, open a can of worms with this. Granted I know that this
21 is one application, but commonly we see in the future people use
22 or remember some of these cases and use some of these conditions.
23 So I'll be honest with you I think if it was just -- if they were
24 asking for design flexibility for bay window, I wouldn't be grant
25 -- I wouldn't want to grant this design flexibility condition.

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1 But I think that's fairly minor enough where the zoning
2 administrator can vary that one on its own. The sticking point
3 for me is that bridge element because that's a little bit more
4 -- that's a bigger design change. So if -- you know, I'll go
5 along with it. That's what -- it's the pleasure of the Board,
6 majority of the Board. But the way that it's written now, it is
7 very narrowly tailored to those two specific elements. So we
8 could incorporate a condition that reads exactly that. I'll just
9 be on the record and say that I'm not in favor of including it.
10 And I would welcome asking the Applicant additional question
11 about could they get a modification without this flexibility,
12 what does this look like for them, being that they're requesting
13 that, but, you know, we closed the hearing so I'll leave it alone.
14 We can incorporate this particular condition if that's the
15 pleasure of the Board.

16 CHAIRPERSON HILL: I'll -- we can go around the table
17 again. I mean, what is it, I think that we have -- I mean, Mr.
18 Smith, we have done -- I mean, we have done design flexibility.
19 And I agree this is a bigger piece in terms of it is a bridge as
20 opposed to like framing for windows or something, whatever that
21 we might have done in the past. I mean, in this particular case,
22 I guess, you know, it is on a case-by-case basis. And being that
23 it's the end of the year and that this ANC has now changed and
24 so there are a lot of complications, I guess maybe that's another
25 reason, like, you know, this ANC is now going to be in a new ANC.

1 It has voted on this particular design with this particular design
2 flexibility. So I do feel as though the public has been given
3 notice and I would be comfortable with it again in this particular
4 case. And that's not to say that in another particular case,
5 the Board can decide that they don't want to give any design
6 flexibility. But I appreciate what you said, and I just will
7 see if anybody wants to add anything by raising their hand.

8 Sure. Commissioner May first.

9 ZC COMMISSIONER MAY: I'll be very quick. The key
10 question here is whether the flexibility that's being required
11 has anything to do with the requested relief, and it does not.
12 And so I am completely flexible. I'm not worried about any sort
13 of precedent. Maybe it's belt and suspenders and they don't
14 really need it because the ZA could do something like this anyway.
15 But it's -- I mean, there's nothing -- there's no connection
16 between the design of the upper portion of the building with any
17 of the relief that's requested. And our concern really is about
18 the relief. If it were somehow, you know, a mitigation for some
19 other, you know, impact that comes with the relief that's
20 requested, I would feel very differently about it. But I -- you
21 know, from a strict zoning perspective, it does not matter what
22 the building looks like above the area where the relief is
23 requested, in my view.

24 COMMISSIONER SMITH: That's a good point.

25 CHAIRPERSON HILL: Mr. Blake?

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1 COMMISSIONER BLAKE: I think my comments are the same
2 as Commissioner May. The way I looked at it was much simpler.
3 I said if you remove the bridge, would it change my opinion on
4 anything? And it would not, because it has nothing to do with
5 the relief granted. If they put bay windows in, it would not
6 change my opinion because it has nothing to do with the opinion
7 that we're rendering on this issue. So I'm, again, indifferent
8 as to whether they have it or not, and I do not think it's
9 necessarily relevant to this. But as I understand the fact that
10 it was or is on the plans, it could be referenced or something,
11 but I just don't think it's relevant to our decision. So I'm
12 indifferent and -- so in fact, I don't think we need it.

13 CHAIRPERSON HILL: Okay. What was I going to say?

14 Oh, sure, again, Vice Chair John, sorry.

15 VICE CHAIR JOHN: So I think that I agreed that the
16 design flexibility is not directly related to the relief
17 requested. However, it is related to our evaluation under X 901,
18 so I don't think we can ignore it. And I think that -- and I
19 agree that the zoning administrator could probably grant the
20 relief at the permitting phase. And I also agree that we don't
21 -- we're not very generous in granting design flexibility because
22 the rule is that the project must be built to the plans that are
23 in the record, even if the request is not related to other --
24 the request for relief is unrelated to the area of the design
25 flexibility. In other words, what the Board reviews is what has

1 to be built, even if there was no relief requested for certain
2 parts of that building. I am always mindful that in addition to
3 the specific criteria for relief, there's a general criteria that
4 we cannot ignore. So I do support the condition. I think that
5 if there is further zoning relief the Applicant needed, the
6 Applicant would have to return to the Board. And so I'm prepared
7 to go ahead and approve the application, again with a very
8 specific condition, and I believe the attorneys can draft an
9 airtight condition in writing the order.

10 CHAIRPERSON HILL: Okay. Great. Thank you.

11 All right. I'm going to go ahead and make the motion
12 to approve Application No. 20832 for special exemption relief
13 from the front build-to requirements under Subtitle I 203 and
14 design flexibility to modify the bay windows and bridge elements
15 shown on page nine and ten of the revised plans, given that they
16 do not require further zoning relief, and ask the attorneys to
17 draft something in the order that specifies what has been
18 discussed here at this hearing, and ask for a second, Ms. John?

19 VICE CHAIR JOHN: Second.

20 CHAIRPERSON HILL: The motion's been made and second,
21 Mr. Moy, if you'd take the roll call?

22 MR. MOY: Yes. Thank you, Mr. Chairman. When I call
23 your name, if you'll please respond to the motion made by Chairman
24 Hill to approve the application for the relief being requested,
25 along with the request for design flexibility as stated in his

1 motion. This motion was second by Vice Chair John.

2 Zoning Commissioner Peter May?

3 ZC COMMISSIONER MAY: Yes.

4 MR. MOY: Mr. Smith?

5 COMMISSIONER SMITH: Yes.

6 MR. MOY: Mr. Blake?

7 COMMISSIONER BLAKE: Yes.

8 MR. MOY: Vice Chair John?

9 VICE CHAIR JOHN: Yes.

10 MR. MOY: Chairman Hill?

11 CHAIRPERSON HILL: Yes.

12 MR. MOY: Then staff would record the vote as five to
13 zero to zero. And this is on the motion made by Chairman Hill
14 to approve the application once again for the relief -- the
15 amended relief that's requested along with the language for
16 design flexibility. And this motion was second by Vice Chair
17 John also in support. Others in support of the motion is Zoning
18 Commissioner Peter May, Mr. Smith, Mr. Blake, of course, Vice
19 Chair John and Chairman Hill. Once again, the motion carries on
20 a vote of five to zero to zero.

21 CHAIRPERSON HILL: Okay. Thanks, Commissioner May, for
22 your time.

23 ZC COMMISSIONER MAY: Thank you.

24 CHAIRPERSON HILL: Have a good day.

25 ZC COMMISSIONER MAY: You too. Bye-bye. Have a great

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1 holiday.

2 CHAIRPERSON HILL: You too. Bye-bye. Have a nice
3 happy New Year.

4 VICE CHAIR JOHN: Have a good holiday. Bye.

5 CHAIRPERSON HILL: All right. Mr. Moy, I guess we're
6 going -- hello, Dr. Imamura. I like your tree in the background.
7 That makes me feel I got to get a tree.

8 And then, Mr. Moy, if you can call the party status
9 preliminary matter I believe?

10 MR. MOY: Yes, sir, with pleasure. This would be for
11 the record Case Application No. 20840 of Gwendolyn Jackson. And
12 this is a self-certified application pursuant to Subtitle X,
13 Section 901.2 for a special exception under Subtitle D, Section
14 306.4 to allow a rear wall extending further than ten feet beyond
15 the farthest rear wall of an adjoining residential building.
16 Property's located in the R-2 zone at 5008 12th Street, N.E.,
17 Square 3900, Lot 53. And the requester for party status is a
18 Ms. Wanda Gabriel. And I think that's all I have. And I believe
19 there they are in the panel.

20 CHAIRPERSON HILL: Okay. Great. Could I first have
21 the Applicant introduce themselves please?

22 MS. WORSLEY: Sure. I'm Gayll Worsley, I am the
23 architect for the project.

24 CHAIRPERSON HILL: Okay. Hi, Ms. Mosley. How are you?

25 MS. WORSLEY: Good, thanks.

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1 CHAIRPERSON HILL: Good.

2 And Ms. Gabriel, I think it is, could you introduce
3 yourself for the record?

4 MS. GABRIEL: Hi. Yes, I'm Wanda Gabriel. I am the
5 owner at the property, 5014 12th Street, N.E.

6 CHAIRPERSON HILL: Okay. Ms. Gabriel, I think I've
7 seen your request for party status. And I guess could you please
8 explain why you believe that your interest is more significantly,
9 distinctly, or uniquely affected in character by the proposed
10 action than any other person in the general public?

11 MS. GABRIEL: Well, one of the things is that the
12 adjoining -- the adjoining and the adjacent neighbors, they're
13 deceased. But I've already had precedents where I have had --
14 my house had approximately 30 years ago, I've had a water seepage
15 in my basement. I do not have a back -- a basement back door,
16 nor do I have an area-way drain. I do not have that. So I've
17 already had issues with water sitting on my property as well as
18 that -- I have no drain -- no back door nor no back drain. Sorry.

19 CHAIRPERSON HILL: Okay. Thanks, Ms. Gabriel. No,
20 that's all right. We're all just -- what we're trying to
21 determine right now is party status. I don't know if anybody
22 has explained that to you or not yet. It's just --

23 MS. GABRIEL: No, I'm not -- I'm told -- okay. I'm
24 sorry. I'm not totally clear about party status. I just wanted
25 to make -- well, yes, I have been explained, but the full breadth,

1 explain that to me.

2 CHAIRPERSON HILL: Sure, sure. So party status means
3 that you are affected more significantly or differently from
4 other people about this project. Right? And usually if you are
5 the adjacent property, like you share a property line with it,
6 that might be something that would give you party status. If
7 you don't get party status, that doesn't mean that you can't
8 testify or participate in the hearing. It just means that you
9 won't be a party. And meaning if you're a party like, you know,
10 again, you would be treated more or less as the applicant, at
11 the same level, you know. And so the Board is trying to determine
12 whether or not we think you meet the criteria for party status.

13 Does the Board have any questions of the applicant who
14 is applying for party status?

15 Okay. So Ms. Gabriel, this is what I'm going to do.
16 We're going to excuse you and Ms. Worsley from the hearing in a
17 minute, and then you can go ahead and watch, Ms. Gabriel -- and
18 I saw Mr. Blake's hand. I'll let you get one second, Mr. Blake.

19 Ms. Gabriel, again, what would happen here now, if you
20 were awarded party status, then you would give a presentation,
21 you would ask questions of the witness, you would ask questions
22 of the Office of Planning, you would get questions asked of you
23 from the witness, from the Office of Planning. If you're not
24 given party status, then when the public hearing portion of the
25 testimony takes place, you would be given time to speak. You'd

1 be given three minutes as a member of the public to give your
2 concerns about the project, and then the Board would be able to
3 ask you questions as well. Do you have Ms. Worsley's contact
4 information by any chance?

5 MS. GABRIEL: No.

6 CHAIRPERSON HILL: Ms. Worsley, have you been in
7 contact with Ms. Gabriel?

8 MS. WORSLEY: No, I've -- the owner has been in contact,
9 sent out letters. I have not been in contact with neighbors
10 directly.

11 CHAIRPERSON HILL: Okay. I just wondered whether or
12 not you've talked to Ms. Gabriel about her her concerns yet.
13 Maybe you can reach out, Ms. Worsley, to the Office of Planning
14 during --

15 MS. WORSLEY: Sure.

16 CHAIRPERSON HILL: We're going to -- what happens we're
17 going to put your case at the end of the day.

18 Mr. Blake, I saw you, I'm sorry.

19 And we're going to put your case at the end of the day
20 and so maybe you can speak with Ms. Gabriel and see if there are
21 any questions that you might be able to answer concerning the
22 project.

23 Mr. Blake, you had your hand up?

24 COMMISSIONER BLAKE: Yeah, a quick question for the
25 requester. Did you attend the ANC meeting?

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1 MS. GABRIEL: The ANC for this? No, I did not. I have
2 reached out to the ANC and the ANC never responded. I sent them
3 a note, a email. I have -- I think I've sent one or two emails
4 to them. I've also -- I spoke to Ms. Jackson after I received
5 the notice from you all in October. Prior to that -- I had no
6 knowledge of this. I spoke to Ms. Jackson only once concerning
7 this. And that was -- I think I provided the exact date I spoke
8 to Ms. Jackson. But prior to that, I had not heard from Ms.
9 Jackson, Kevin Fisher, Incorporated, nor have I heard from the
10 ANC. So the first time I heard it was via a letter from the
11 Board of Zoning. So I had not talked to anyone prior to this
12 except for one time I spoke to Ms. Jackson.

13 COMMISSIONER BLAKE: Okay. Thank you very much.

14 CHAIRPERSON HILL: Okay.

15 All right. Anybody else have any questions?

16 All right. I'm going to excuse Ms. Gabriel and Ms.
17 Worsley.

18 Mr. Young, if you could please remove them from the
19 hearing room.

20 Bye.

21 MS. WORSLEY: Bye.

22 CHAIRPERSON HILL: Okay. I appreciate that Ms. Gabriel
23 filled out the form applying for party status, but I think I know
24 the criteria. I don't think that I would be comfortable awarding
25 her party status. I mean, the issues that she is concerned with

1 seems to be other issues that would be affecting other properties
2 perhaps, or questions, in that vicinity. But she will have an
3 opportunity -- and we'll see what you guys think. She'll have
4 an opportunity to give her testimony during the public hearing
5 portion of the hearing.

6 Does anybody else have any thoughts or questions or
7 differences of opinion that they'd like to express?

8 Mr. Blake?

9 COMMISSIONER BLAKE: I just have one point. She did
10 indicate the fact that the two adjacent property owners were not
11 -- or deceased and that would make her the nearest property member
12 capable of speaking. However, there are record -- there's
13 documentation in the file suggesting that there is approval or
14 support from those two adjacent neighbors, either their heirs or
15 whatever. So there is something in the record suggesting that.
16 So I would be comfortable supporting your position for not
17 granting party status.

18 CHAIRPERSON HILL: Okay. Great.

19 And so if -- what I would go ahead then and deny --
20 make a motion to deny Ms. Gabriel's application for party status,
21 however, again, point out that she is encouraged to participate
22 at the end of the day during the hearing to give her testimony
23 and ask for a second, Ms. John?

24 VICE CHAIR JOHN: Second.

25 CHAIRPERSON HILL: Mr. Moy, if you could take a roll

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1 call please on the motion?

2 MR. MOY: Thank you, sir. When I call your name, if
3 you'll please respond to the motion made by Chairman Hill to deny
4 the request for party status of Wanda Gabriel. The motion to
5 deny was second by Vice Chair John. Zoning Commissioner Dr.
6 Imamura?

7 ZC COMMISSIONER IMAMURA: Yes to deny.

8 MR. MOY: Mr. Smith?

9 COMMISSIONER SMITH: Yes.

10 MR. MOY: Mr. Blake?

11 COMMISSIONER BLAKE: Yes to deny.

12 MR. MOY: Vice Chair John?

13 VICE CHAIR JOHN: Yes to deny.

14 MR. MOY: Chairman Hill?

15 CHAIRPERSON HILL: Yes to deny.

16 MR. MOY: The staff would record the vote as five to
17 zero to zero. And this is on the motion made by Chairman Hill
18 to deny party status request. The motion to deny was second by
19 Vice Chair John. Also in support of the motion to deny is Zoning
20 Commissioner Dr. Imamura, Mr. Smith, Mr. Blake, Vice Chair John,
21 and Chairman Hill. The motion is unanimous, Mr. Chairman, five
22 to zero to zero.

23 CHAIRPERSON HILL: You know what? I mean, I wasn't in
24 this -- I didn't have an opportunity to meet with you guys on
25 Monday. I mean, since Ms. Gabriel is right here with us, I mean,

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1 did you, Ms. John, put you on the spot, do you think that we can
2 just go ahead and hear this right now or do you still think that
3 this is something that requires an end of the day situation.

4 VICE CHAIR JOHN: Well, I think it depends on whether
5 you wanted to get to the -- 20821 early in the day. And perhaps
6 we can move 20821 -- I'm sorry, 20821 is the one that requires a
7 lot of zoning relief, so I would prefer that we hear that case
8 now.

9 CHAIRPERSON HILL: Okay.

10 VICE CHAIR JOHN: And maybe revisit whether to hear
11 20840 now.

12 CHAIRPERSON HILL: Okay.

13 So Mr. Moy, can you hear me?

14 I'm sorry to interrupt you, Ms. John.

15 MR. MOY: Yes, sir.

16 CHAIRPERSON HILL: Why don't we do this, Vice Chair
17 John, if this is all right with you, we'll go ahead and hear
18 20821, then we'll probably end up taking a break.

19 And so Mr. Moy, we'll go ahead and hear 20840 since the
20 parties are all available now rather than put them at the end of
21 the day.

22 MR. MOY: All right. Very good.

23 CHAIRPERSON HILL: Okay. And then the Office of Zoning
24 can reach out to Ms. Grabriel if she is no longer watching, as
25 well as the Applicant, Ms. Worsley, and let them know they'll

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1 come after our next case.

2 MR. MOY: Yeah, we will do that, sir.

3 CHAIRPERSON HILL: Okay. Great. And there'll probably
4 be a break. So then in that case, because I know Ms. John we're
5 going to lose at some point in time and -- we'll go ahead and
6 take the next case now, Mr. Moy, if possible.

7 MR. MOY: All right. I'm sorry, I was just pulling my
8 resources together here.

9 Okay. So the next case before the Board, we have
10 parties come to the virtual table I suppose, so this would be
11 Case Application No. 20821 of 1717 E Street, N.E., LLC. This is
12 a self-certified and amended application pursuant to Subtitle X,
13 Section 901.2 for the following special exceptions: Subtitle C,
14 Section 305 to allow a theoretical lot subdivision, Subtitle E,
15 Section 205.5 to permit rear wall to extend further than ten feet
16 beyond the furthest rear wall of an adjoining residential
17 building, and area variances pursuant to Subtitle X, Section 1002
18 from the following: building height requirements, Subtitle E,
19 Section 303.1, front setback requirements, Subtitle E, Section
20 305.1, rear yard requirements, Subtitle E, Section 306.1, the
21 rules of measurement for front setbacks for residential house and
22 residential flat zones, so Subtitle B, Section 315.1(c), and a
23 use variance pursuant to Subtitle X, Section 1002 from Subtitle
24 U, Section 301 to allow two new apartment houses. And the
25 property is located in RF-1 zone at 1717 E Street, N.E., Square

1 4546, Lots 165, 166, and 167. Two other things, Mr. Chairman, I
2 would -- because of the number of relief that's being requested,
3 I would ask the Applicant to confirm if I misread the relief
4 that's being requested. And number two, Mr. Chairman, for your
5 purposes for your convenience, we have public witness testimony
6 from two individuals, a Mr. Cotten and an Ahmet Kilic, and as
7 well as the parties and the Applicant's entourage as well. So
8 that's all I have, Mr. Chairman.

9 CHAIRPERSON HILL: Okay. Great, thanks.

10 If the Applicant could please introduce themselves for
11 the record?

12 MR. SULLIVAN: All right. Mr. Chair, Marty Sullivan
13 with Sullivan & Barros on behalf of the Applicant. Alex Wilson
14 is planning on presenting today, but she hasn't been let in.

15 MS. WILSON: They let me in.

16 MR. SULLIVAN: Oh, is she in now. Okay.

17 MS. WILSON: Hi. Alex Wilson from Sullivan & Barros,
18 on behalf of the Applicant in this case.

19 CHAIRPERSON HILL: Okay. Ms. Wilson, thank you. So
20 Ms. Wilson, as you know, there's a variety of --

21 MR. MOY: Mr. Chairman?

22 CHAIRPERSON HILL: Yeah? Go ahead.

23 MR. MOY: Sorry to interrupt. One final thing and
24 preliminary matter, the Applicant did make a motion to waive the
25 21-day filing deadline to allow into the record new plans.

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1 CHAIRPERSON HILL: Okay. Unless the Board has any
2 issues, I would like to see the new plans, so they could please
3 go ahead and allow them into the record.

4 Ms. Wilson, if you could go ahead and walk us through
5 -- there's a lot of different relief that's being requested. And
6 so I just wanted to make sure that the Board understands
7 everything that's being asked for and is able to keep track of
8 it as best as possible. If you could confirm, as Mr. Moy had
9 asked, that all of the relief was in fact listed properly when
10 he announced the case, is that correct, Ms. Wilson?

11 MS. WILSON: Correct. We're asking for two special
12 exceptions, three area variances, and a use variance. And it is
13 a relatively complex case with a long history. So we do have a
14 presentation and we're going to try to walk you through all of
15 the moving parts here because there's a lot going on.

16 CHAIRPERSON HILL: Yep, okay.

17 MR. MOY: Mr. Chairman?

18 CHAIRPERSON HILL: Go ahead, Mr. Moy.

19 MR. MOY: I'm sorry to nickel and dime you, but there
20 was a submission of further comments from one of the witnesses
21 who wants to speak today from Kilic that came in within the 24-
22 hour block. So you may want to address whether or not you wanted
23 to allow that into the record.

24 CHAIRPERSON HILL: Yeah. Unless the Board has any
25 issues, I want to go ahead and allow that in its record as well.

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1 And if staff could go ahead and please put that in there and
2 we'll just keep refreshing as we go through this hearing.

3 Ms. Wilson -- I mean, I'm going to put 15 minutes on
4 a clock just so I know where we are, but I -- obviously we'll
5 probably go over that. But you can begin whenever you like.

6 MS. WILSON: Great. Thank you so much. I'm also here
7 with Rich Markus who's the project architect and Mr. Damani, who
8 is the owner of the property. So they're going to jump into in
9 our presentation if Mr. Young could please pull that up. We'll
10 give a little bit of an overview before turning it over to Mr.
11 Damani. Could you please go to the next side?

12 So before we even get into the case, I wanted to present
13 this sheet, which is an alternative design to the one we have in
14 the record. We've been working with the ANC continuously, even
15 after they voted unanimously to support the current design
16 because the feedback generally had been that it could be more
17 consistent with the materials and design of this particular
18 block. In this case, the massing's the same, the internal
19 layout's the same, so none of that is changing. It's just the
20 brick material and pattern of the building that we wanted to
21 update. The design on record is consistent with the condo project
22 on the west side of the square on 17th. But a lot of the feedback
23 from the neighbors and the ANC was we could make the current
24 design more consistent with this block and not the one over.
25 We've shared this design with the ANC, specifically the SMD who

1 is here today, and possibly the committee chair, Mr. Greenfield
2 is joining us, and they can also go on record to confirm that
3 this is the preferred design. So if there's an opportunity at
4 some point to just provide the updated design into the record,
5 if we got to that point, we would appreciate that opportunity.
6 And apologies, I didn't want to complicate this further, but we
7 do want the ANC to be happy with the final product if this does
8 get approved and we've been working with them and this was
9 preferred over the design we have in the record. Next slide
10 please?

11 So moving back to the actual project and relief. This
12 project has a complex history. It is located in the RF-1 zone
13 and it has been unimproved and vacant for decades. The primary
14 difficulty associated with developing this lot is the existence
15 of a water and sewer pipe and related easement running diagonally
16 across the lot. It prevents development on 60 percent of this
17 lot. The current owner purchased the lot in 2013, and at that
18 time the owner, but for this easement, would have been able to
19 subdivide this property into four lots and do eight units, four
20 flats because the subdivision and lot with measurement
21 requirements were different in 2013 than they are in 2016. So
22 the owner was aware of the pipe. It worked with WASA to create
23 a WASA-approved plan that would allow for pipe protection. And
24 that plan included four levels. It included three floors plus
25 the cellar level. It was an eight-unit building. That plan was

1 submitted to the BZA. Case No. 18692. And it was approved by
2 the BZA. So eight units, a cellar level, and three floors were
3 approved by the BZA at the time -- or in 2013. It's approximately
4 the same density and number of levels that we are requesting now,
5 except WASA will not permit a cellar level. After that 2013 BZA
6 approval, WASA retracted its approval because it no longer wished
7 to allow the Applicant to do a cellar. The Applicant continued
8 to work with WASA, but by the time they came to a consensus, this
9 BZA approval had lapsed. There had been a delay due to litigation
10 with WASA, not with this owner, but with another property owner.
11 And so that litigation had to be resolved before WASA could even
12 make a decision on this property because the outcome would have
13 impacted WASA's authority on this property and this property
14 owner and development. So both WASA and the Applicant were stuck
15 until the issue is resolved. Eventually, in 2021 they came to a
16 consensus. We submitted a letter from WASA, specifically Brian
17 McDermott, in the record which outlined all of the requirements
18 that the building needs to comply with in order for WASA to
19 eventually approve this during permitting. And that is why we're
20 in front of the Board today. We are here for almost a reapproval
21 of the project, except of course, the zoning regulations have
22 changed quite a bit, and so we are asking for additional areas
23 of relief, including a height and story variance. With that, I
24 will turn it over to Mr. Damani to provide more insight into the
25 history of the project, as he has been working on this project

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1 since 2013.

2 MR. DAMANI: Good morning. Thank you so much, Alex.
3 I guess everybody can hear me.

4 CHAIRPERSON HILL: Yeah, could you introduce yourself
5 for the record, Mr. Damani?

6 MR. DAMANI: Yes. Yes, absolutely. My name is Mr.
7 Reza Damani. I'm the owner at 1717 E Street, N.E. And you know,
8 I would like to go over with regards to some of the history part
9 of it, which Alex did -- touched on. But first off, I would like
10 to share how unique and one of a kind 1717 E Street project has
11 been and is. I would like to say it's been an extremely
12 difficult, long and excruciating project. I just want to go a
13 little bit into history. We acquired this project almost ten
14 years ago. Back then, before the acquisition of this property
15 we did -- I personally went to see D.C. Water. At the time they
16 were WASA. Now they call them D.C. Water, I believe. Met the
17 permit director and spoke to them at length with regards to their
18 pipe which was underneath the land. Long story short on that,
19 they then said yes, you are allowed to build as long as it doesn't
20 impede or put any adverse effect on our pipe. And so we acquired
21 the property. The reason why I wanted to bring that up is to
22 clarify that we did do our due diligence. So that was a point I
23 wanted to make. And so after that, we did a design. We had a
24 design which we took into BZA in 2014 and -- almost nine years
25 ago, right. On April 15, 2014 BZA approved our project on this

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1 property with eight units. That was application 18692. However,
2 D.C. Water did not allow us to build our project. The approved
3 design, which originally was not an issue to D.C. Water since it
4 was not being built on top of their pipe became an issue as they
5 further expanded their concern to more strict and tedious
6 criteria. The new criteria, I believe, is an overreach as it
7 expands its guideline beyond their 50 feet of easement. We cannot
8 build a cellar, like Alex mentioned, or a basement, and even away
9 from their pipe and easement. And we also have to build on a
10 pile foundation system, which actually is quite expensive.
11 However, the good thing of a pile foundation system is that it
12 eliminates transfer of any horizontal load towards their easement
13 and it will also make our building self-supporting should
14 anything happens to D.C. Water pipe ever, because they are --
15 their pipe is almost 100 years old.

16 And so after multiple meetings with D.C. Water's
17 engineers and our team of over virtual and even in person, they
18 -- we finally agreed to their criteria to make this -- to move
19 this project forward. It's just been so long and we just wanted
20 to, you know, agree to that. And so based on their criteria we
21 designed our property -- our project. This design, which requires
22 these reliefs, will help accommodate D.C. Water and will also
23 make this project viable.

24 I want to share a little bit about our -- my community
25 outreach, our community outreach and support. I have been very

1 mindful with respect to the concern and wishes of this Rosedale
2 community. I, since fall until recently, have walked almost a
3 half a dozen times or so in order to knock on doors within the
4 block to meet with residents, to share the progress of this
5 project with D.C. Water, and also to share with them the design,
6 the project details, the parkings which we are providing, et
7 cetera. I want to tell you all that most of them, after listening
8 to us, were supportive of the project. They were pleased that
9 something is finally being done here. Few told me how this land
10 has been an eyesore and has attracted illegal dumping, trash, et
11 cetera. And so I would say that overwhelming majority of
12 residents within the block support our project.

13 We have 11 residents and/or owners within the block and
14 adjacent, and also adjacent property who have in writing provided
15 a positive support towards the project. And I'm very thankful
16 for their support and for them listening to me when I was there
17 outside their home unannounced.

18 That said, I would also want to share that, you know,
19 we believe in this location. I believed in this location. Hence,
20 I hold on to the property for this long. Typically, this size
21 lot should be able to get approximately 19,000 square feet of
22 total unit, square foot, anywhere else in the same zone. However,
23 due to the easement here, the total square foot we are trying
24 -- or we are -- we are we have in our plans is approximately
25 10,600. We are providing six parking spaces within the property

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1 and we will also gain two more, I believe one to two more, space
2 once we lose the curb cut, which is right in front of the lot.
3 And so if you add that, then we are almost providing one-to-one
4 ratio on the unit to our parking. That was one of the points
5 which many residents appreciated as it would not impact the
6 parking situation for other residences within the blocks. So I
7 wanted to share that.

8 You know, the hardship here has been truly
9 unprecedented due to the fact that over the years, the different
10 architectural team, the engineering, the counsel, of course, the
11 property tax interest have all added up substantially. And I
12 don't believe, you know, when it comes to feasibility of finances,
13 we would be able to recoup all of that. But I wanted to share
14 that, that it's -- at this point, we want to make it whole, make
15 it viable for us. And I do understand that we are asking these
16 many reliefs, but that is part of, you know, the reason why the
17 way WASA has been with us. At one point, WASA director and I
18 would want to record him that he said I feel sorry for you, but
19 you know, you're trying to do the right thing. And so I want to
20 end my final thought on that, that I humbly request all the
21 members to really look into this and to support our project.
22 Thank you so much.

23 MS. WILSON: Thank you so much, Mr. Damani.

24 Mr. Young, could you please go to the next slide? Thank
25 you.

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1 So this outlines all of the areas of relief. I think
2 this will be more clear when Mr. Markus walks through the plans.
3 So we're essentially asking for the same project approved in 2013
4 to be approved again, except that due to the new WASA
5 restrictions, nothing can be built below grade. So that is
6 impacting the request for the height and story variant. There
7 are other new regulations such as the ten-foot rule and front
8 setback restrictions that have been put in place since the
9 original approval, and that adds to the need for additional relief
10 for variances beyond what was included in the original approval.
11 We'll walk through these requested areas of relief in more detail
12 in the presentation. Next slide please?

13 Mr. Damani already talked about this. I want to
14 reiterate that he is actively engaged in the community. We've
15 had many letters of support. The SMD is here, and I believe we
16 have a couple of people signed up in support to testify. And we
17 really appreciate, Mr. Damani's outreach. In reviewing the
18 letters of opposition I want to clarify that we are not building
19 on top of the WASA pipe in any way. The project will be
20 constructed outside of the easement area. As Mr. Damani
21 mentioned, they're using special foundation so that the buildings
22 will have no impact on that pipe and the pipe will be protected.
23 So I just wanted to clarify because I think some of the letters
24 may have -- they thought that we were building on top of the pipe
25 for some reason. Next slide please?

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1 In terms of the Office of Planning report, they're
2 approving everything or recommending approval for all of the
3 areas of relief except for the height and stories relief, and as
4 a result, tied into that, the variance for eight units. They're
5 just supporting the variance for six units, noting the matter of
6 right option here would be six units. And that's also what they
7 supported at the last BZA hearing. To reiterate the matter of
8 right option available when the site was purchased was eight
9 units and the Board previously approved the eight units finding
10 that the market analysis supported eight units. Of course, the
11 market isn't quite the same, but the six units still hold too
12 great of a risk to be feasible. And if anything, the project
13 has become more complex and expensive given the delays and
14 increased cost of construction in recent years. The 900 square
15 foot rule, which generally governs and guides available density
16 in the RF-1 zone, would technically permit nine units by right,
17 and the matter of right option again at the time of purchase was
18 eight units. The item that appears to be the most controversial
19 for the Office of Planning is the height and stories relief.
20 However, it is directly related to the WASA restrictions imposed
21 after the last hearing. And if there was ever an exceptional
22 condition here, I think this would be the case because of the
23 pipe and needed clearance. I do understand OP has a general
24 policy of not supporting height relief, and we'll talk more about
25 why we cannot adjust the height in that particular section. Next

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1 slide please?

2 Mr. Damani already covered the cost of protecting the
3 WASA pipe. Next slide please?

4 Thank you. With that, I'll turn it over to Mr. Rich
5 Markus, the project architect, to walk through the plans and
6 highlight the areas of relief for the building footprint and why
7 those areas of relief are necessary to develop this project.

8 MR. MARKUS: Thank you, Alex. This is Rich Markus, I'm
9 the architect.

10 CHAIRPERSON HILL: Hey, Mr. Markus, before you go on,
11 just -- I can't see everybody on my Board, and it's okay, but if
12 anybody has any -- and I'm just going to ask if there's anything
13 specifically that the Board would like the Applicant to kind of
14 focus in on as we're kind of going through some of this, is there
15 anything anyone -- I mean, has -- does anyone have anything at
16 top of mind that they'd like the Applicant to focus in on?
17 Otherwise, we'll just keep chugging along here.

18 VICE CHAIR JOHN: Mr. Chairman?

19 CHAIRPERSON HILL: Sure. Go ahead, Vice Chair John.

20 VICE CHAIR JOHN: I'd like the Applicant to focus on
21 the height and the number of stories and also explain why -- how
22 the 13-foot requirement for the first floor affects the project.
23 So if -- well, address what a normal -- what the the height of a
24 normal floor would be. Is it ten feet, is it nine feet, is it
25 eight feet? So could you build two additional floors with that

1 13-foot first floor and still be within 40 feet? That's one
2 question I have.

3 CHAIRPERSON HILL: Okay.

4 So -- and Ms. Wilson, you don't -- just think about
5 these things, I just want to see if there's other people.

6 Anyone else from the Board?

7 COMMISSIONER SMITH: I also agree with Ms. John's
8 questions about project and also in light of the request for
9 special session to reduce the rear yard setbacks. And will you
10 also elaborate -- and I don't know if you are the person that
11 will be discussing this, the shadow study. Could you go into,
12 you know, a discussion about that, given that there may be some
13 impacts, but the shadow study itself isn't exactly clear on what
14 is the new shadowing and what's the level of the impact.

15 CHAIRPERSON HILL: Okay.

16 VICE CHAIR JOHN: And I'm not interested in hearing
17 about the history of the project with WASA. I'm interested in
18 what can be done today as a matter of right, and what, using
19 three lots or the theoretical lot proposal, and -- yeah, that's
20 it for now.

21 CHAIRPERSON HILL: Okay. No, that's great, Vice Chair
22 John.

23 VICE CHAIR JOHN: Thank you.

24 CHAIRPERSON HILL: Anyone else?

25 COMMISSIONER BLAKE: Just a very quick addition on

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1 that. At some point, I'd like to just address some of those cost
2 issues which you alluded to, Ms. Wilson, specifically with regard
3 to the parts derived from the WASA delay. I think that's an
4 exhibit where you go through specific line items. Just very
5 briefly go through that. It tells about \$400,000. I want to
6 make sure I better understand that because it contributes to your
7 break-even analysis. That would be very helpful for me. Thank
8 you.

9 CHAIRPERSON HILL: Anyone else?

10 ZC COMMISSIONER IMAMURA: Since everybody's gone, Mr.
11 Chairman, I might as well go too. So I'm just --

12 CHAIRPERSON HILL: Yeah.

13 ZC COMMISSIONER IMAMURA: So I'd just like to see the
14 Applicant proceed forward with their presentation.

15 CHAIRPERSON HILL: Oh, okay. Good. All right.

16 All right. Ms. Wilson, you can think about all that.

17 And, Mr. Markus, you can continue.

18 MR. MARKUS: Thank you. Hopefully some of those get
19 cleared up as we go through. This is the cover page, just
20 overview. Next slide please?

21 Here's the existing lot. So right now on the left,
22 there are three existing lots. And you can see the pipe is the
23 diagonal lines running from the top left down to the bottom right.
24 That's the pipe, that D.C. Water pipe. And this is a large pipe;
25 it's 22 feet wide. But the easement is actually bigger. So it's

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1 a 50-foot easement. So from the center of that pipe, it goes 25
2 feet on either side. But what you see in this drawing is the 22
3 feet of the pipe itself. So the proposal is on the right. You
4 see a lot one and lot two. So the idea is to split, with a
5 theoretical lot division line, the lot into two. Next slide
6 please?

7 Can you go to the next slide first and then I'll jump
8 back to this?

9 CHAIRPERSON HILL: Actually, Mr. Markus?

10 MR. MARKUS: Yeah?

11 CHAIRPERSON HILL: Can you -- I just was told that the
12 commissioners or one of the ANC commissioners might have to leave.
13 So I just want to take their testimony first.

14 Mr. Young, could you drop the presentation.

15 And Mr. Markus, could you remember where you were
16 please?

17 MR. MARKUS: No problem.

18 CHAIRPERSON HILL: Mr. Young, could you please -- who
19 are the -- if the commissioner could hear me, I believe there's
20 two commissioners, could they please introduce themselves?

21 ANC COMMISSIONER GREENFIELD: Hi, this is Brad
22 Greenfield with -- I'm representing ANC 6A, I'm the chairman of
23 the Economic Development and Zoning Committee.

24 CHAIRPERSON HILL: Okay. That's one commissioner.

25 Is there another commissioner? No?

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1 ANC COMMISSIONER GILBERT: Hi.

2 CHAIRPERSON HILL: Oh.

3 ANC COMMISSIONER PHILLIPS-GILBERT: Good morning. This
4 is Sondra Phillips-Gilbert, 6A07 in the Rosedale community.

5 CHAIRPERSON HILL: Commissioner Greenfeld, do you want
6 to go ahead and give us your testimony?

7 ANC COMMISSIONER GREENFIELD: Sure. My committee and
8 the ANC reviewed this project. Certainly -- well, it was on the
9 agenda in October, but we actually -- it got delayed and we heard
10 it in November. The full ANC considered it in December and gave
11 unanimous support. The face that was presented, particularly
12 with the easement, we felt easily met the standard for exceptional
13 hardship cause that warranted variances. The -- at the both the
14 committee and the ANC level we did get several members of the
15 community that testified the developer's an active member of the
16 community and that they supported the project. Many people spoke
17 to how the existing lot is an eyesore and it has been a
18 longstanding problem. And our feeling was that given the
19 extraordinary situation with the easement, if this plan didn't
20 move forward, it was likely to end up an empty lot in perpetuity.
21 And while the amount of relief was substantial, that the -- it
22 was warranted given the situation, and that the alternative,
23 denying and opposing the request, would leave the community in
24 much worse shape because it would end up being just an empty lot,
25 that there was no other viable economic use for that land.

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1 Additionally, the design of the building, particularly
2 the newer design, in my opinion, fits in pretty well with the
3 existing community. There is a mix of more traditional
4 architecture and modern, and I think the revised plans fit in
5 quite nicely in terms of the aesthetic of the neighborhood. We
6 looked at shading impact and did not believe that there was any
7 significant shading, particularly -- well, except on one neighbor
8 that they did get a letter of support from. And all other
9 standards were met with as far as the community was felt.

10 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

11 Does anybody have any questions for Commissioner
12 Greenfield?

13 COMMISSIONER BLAKE: I just -- one quick question, sir.
14 With regard to the issues and concerns, were there any other
15 issues or concerns that were raised in the discussion in this
16 group? And you said you did have a meeting and it was presented
17 to the ANC, full ANC, and comments from the community. Could
18 you just give me a sense of any other issues or concern that may
19 have come up?

20 ANC COMMISSIONER GREENFIELD: Mr. Cotten, who I believe
21 is also available, did contact me before we even heard the case
22 and voiced his opposition. He was not able to attend the November
23 committee meeting, but he did speak at the December ANC meeting.
24 His concerns were that he thought the project was too large and
25 would not fit in the neighborhood and he preferred it to either

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1 remain an empty lot or have some kind of parking use. But the
2 -- and -- you know, we -- well, at the full ANC he did express
3 his concerns. The ANC itself reaffirmed the support for the
4 project as is.

5 COMMISSIONER BLAKE: Thank you.

6 CHAIRPERSON HILL: Vice Chair John, you had your hand
7 up?

8 VICE CHAIR JOHN: Thank you, Mr. Chairman. I think Mr.
9 Blake's question covered it. So the testimony is that Mr. Cotten
10 was particularly concerned with the design and the --

11 ANC COMMISSIONER GREENFIELD: No.

12 VICE CHAIR JOHN: Go ahead.

13 ANC COMMISSIONER GREENFIELD: I apologize. Since the
14 -- our committee -- since our ANC voted to support the other
15 neighbor, I cannot remember their name off the top of my head,
16 they did reach -- I saw that they also reached out and voiced
17 their opposition. They did not attend the meetings, but I did
18 see -- their opposition and what they were concerned about seemed
19 to be similar to what Mr. Cotten expressed.

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

21 CHAIRPERSON HILL: All right. Thank you.

22 Commissioner Gilbert, can you hear me?

23 ANC COMMISSIONER PHILLIPS-GILBERT: Yes, sir.

24 CHAIRPERSON HILL: Since we're taking testimony from
25 commissioners now, would you like to go ahead and give us your

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1 testimony?

2 ANC COMMISSIONER PHILLIPS-GILBERT: Yes, I want to say
3 that I am the representative in the community, and I'm also a
4 neighbor that lives on that street. I have been there over 30
5 years. I've seen this lot deteriorate, drug activity, it was
6 used as an illegal car repair. It is a known dumping site and
7 it just brings down the property value. It invites folks in the
8 community that, you know, we're having problems with, with drugs,
9 gangs, shootings, and all of that. The community is extremely
10 happy. I've went out -- Mr. Damani came to the community six
11 times and I went out three times with him. We knocked on doors,
12 apartments, I've introduced him to the community, I let them ask
13 the questions. We even spoke with one of the individuals in
14 opposition, Mr. Hines, he had an opportunity to address his
15 concerns. Mr. Cotten also was given an opportunity to attend the
16 November meeting. I made sure that I sent notification of the
17 meeting to many of the neighbors. And we even knocked on his
18 door and made his Ring recorded that we -- that the developer
19 made the effort and also spoke with him. It's just many neighbors
20 on that street want to see a change. We know that there's going
21 to be opposition, but my concern was a lot of the malicious
22 intent, the (indiscernible) letters, accusing threats of bribery,
23 and being tainted and all of that. I was really appalled by that
24 because I work extremely hard for my community. I just wanted
25 to say (indiscernible) that I am in support of the redevelopment

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1 of this area so that we keeping up the property value and give
2 the people on that street a sense that their property will go
3 up, that we could (indiscernible) because right now that area
4 doesn't support that.

5 CHAIRPERSON HILL: Okay. Thank you, Commissioner.

6 Does anybody have any questions for that commissioner
7 or -- I'm sorry, Commissioner Greenfield, are you trying to say
8 something? No?

9 COMMISSIONER SMITH: Oh, that was me, Chairman Hill.

10 CHAIRPERSON HILL: Oh, sorry, Mr. Smith.

11 COMMISSIONER SMITH: For Ms. Gilbert.

12 And Ms. Gilbert, your voice is kind of muffled or just

13 --

14 ANC COMMISSIONER PHILLIPS-GILBERT: Can you hear me?

15 COMMISSIONER SMITH: It's really muffled.

16 ANC COMMISSIONER PHILLIPS-GILBERT: Okay, let me see.

17 I'm out of town in Las Vegas so I'm don't know the area. Is --

18 can you hear me better?

19 COMMISSIONER SMITH: A little bit. I'll ask my
20 question. I can probably hear you.

21 ANC COMMISSIONER PHILLIPS-GILBERT: Let me see if I go
22 outside. Let me go into the other room and see if that helps.
23 Can you hear me better here?

24 COMMISSIONER SMITH: I can hear you.

25 ANC COMMISSIONER PHILLIPS-GILBERT: Okay, good.

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1 COMMISSIONER SMITH: My question is fairly recently we
2 had a question come up from this particular ANC or concerns coming
3 from this particular ANC about things, you know, trash, and a
4 property being an eyesore. So you know, my question to you and
5 I hear that many of the neighbors, the residents, and you
6 included, believe that this redevelopment of the property could
7 alleviate or remedy the issue of an eyesore. But development in
8 and of itself doesn't have to remedy an eyesore. The property
9 owner -- the property owner has owned this for a decade. Was
10 there some conversations with the property owner about they can
11 put up a fence, they can put up lighting, was there anything that
12 came up from you, especially from you, as the SMD for this area,
13 and from the ANC about the property owner doing something of that
14 nature to alleviate some of the concern?

15 ANC COMMISSIONER PHILLIPS-GILBERT: Yes. Matter of
16 fact, the developer has hired one of my constituents and neighbors
17 that live on that street to do -- to pick up like the dumping,
18 the illegal dumping, that's there, that he's cleaned up the site,
19 the front, the back, and that he would be working with the
20 developer throughout the construction period just to keep the
21 site free from debris.

22 COMMISSIONER SMITH: Okay.

23 I think Mr. Blake has a --

24 CHAIRPERSON HOOD: Okay. Did I see somebody -- Mr.
25 Blake?

1 COMMISSIONER BLAKE: Yeah, just a follow-up on that,
2 Ms. Gilbert. So over the last nine years though, you said this
3 has been a persistent problem. I guess the question is now
4 there's a commitment recently to have someone clean up the area
5 and to maintain it during a construction period. But I guess
6 -- and I think this is speaking to Mr. Smith's question, are you
7 saying over the last nine years it was just -- been blighted,
8 but it was kind of acceptable or you didn't like it, but you
9 didn't really address the issue over those -- that period?

10 ANC COMMISSIONER PHILLIPS-GILBERT: Yeah, the interior
11 -- the dumping happened outside and around the site, the illegal
12 dumping. And that area where we live is a main dumping site for
13 companies and folks that do construction. And so when you call
14 the city, it takes so long to get them out to clean up around
15 the area. And so with a resident that's coming from the community
16 to be there to work with Damani, he met him, they've talked,
17 they've worked together, we feel very confident that the area
18 will continue to, you know, remain clean before and during, after,
19 hopefully after too, the construction. I don't know what the
20 terms will be afterwards, but definitely before and during the
21 construction, the neighbor will be cleaning the area.

22 COMMISSIONER BLAKE: Ms. Phillips-Gilbert, last
23 question, but I apologize to everyone for harping on this, in the
24 event that relief was not granted with this, would you anticipate
25 that area would remain clean or how would -- would you be able

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1 to address that issue to keep it clean?

2 ANC COMMISSIONER PHILLIPS-GILBERT: You know, like I
3 said, if -- we have watched the dumping, illegal dumping, over
4 the years. I have -- I don't know what to -- I just -- I don't
5 know what else to expect, other than that will continue because
6 it is an area that has been singled out by folks who continuously
7 dump. And if the changes aren't made, we're going to have --
8 we're going to continue to have that same problem. With the
9 redevelopment, it will definitely make -- I think it will make a
10 big change.

11 COMMISSIONER BLAKE: Thank you.

12 ANC COMMISSIONER PHILLIPS-GILBERT: You're welcome.

13 CHAIRPERSON HILL: Anyone else from the Board?

14 All right. Okay. Commissioners, you may stick around
15 or you may go. You can do what you want to do, insofar as I know
16 that Commissioner Greenfield had to leave. Thank you all for
17 your testimony, but you're still going to be there.

18 Commissioner Gilbert, are you staying with us?

19 And Commissioner Greenfield, are you leaving?

20 ANC COMMISSIONER PHILLIPS-GILBERT: I'll be staying.

21 CHAIRPERSON HILL: Okay.

22 Commissioner Greenfield, you're going?

23 Or Commissioner Greenfield might have gone.

24 Let's see. All right. We were with the architect, I
25 believe, Mr. Markus?

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1 MR. MARKUS: Yes, I can pick it back up. Can we bring
2 the --

3 CHAIRPERSON HILL: So the Board knows, after this
4 presentation, I plan on taking a break before questions.

5 Go ahead, Mr. Markus.

6 MR. MARKUS: Okay. Thank you.

7 So on the screen you can see the width of the full
8 easement. So it's a huge swath of the land is just not buildable.
9 So you can see the two triangles at the top is northeast and the
10 bottom is the southwest. Those are the buildable areas. So if
11 you go back one slide please?

12 Yeah. So this would be -- if the easement wasn't there,
13 this would be the matter of right. So there's three lots now.
14 So on the right, there's three lots. And if you were able to
15 build it out to the maximum because of the ten-foot rule, the
16 two on the outside are ten feet longer than the adjacent building.
17 And then the one lot on the inside is ten feet longer maximum.
18 So you can see what could be built as a matter of right if the
19 easement was not there. The one on the left back in 2013, there
20 was a letter, a determination letter, by the zoning administrator
21 that we could do -- that the lot -- the lots could be broken up
22 into four lots at that time. So this was the option that would
23 -- could have been done back then as a matter of right, if the
24 easement was not in place. So you could just see what the
25 potential matter of right could be without the easement. Go back

1 to the next slide?

2 VICE CHAIR JOHN: Mr. Markus, can you please focus on
3 what can be done now? Because the regulations have changed, we
4 can't put the clock back. So if you can just tell us what could
5 be done now as a matter of right and what is impacted by the
6 easement, that would be helpful.

7 MR. MARKUS: Sure. If you go back to the previous
8 slide one more time? Sorry. Thank you.

9 So on the right, there's three lots now. And that's
10 what you could do as a matter of right if the easement was not
11 there.

12 VICE CHAIR JOHN: Okay. That is helpful.

13 MR. MARKUS: Okay.

14 VICE CHAIR JOHN: So if the easement -- can you just
15 walk through what those three options would entail? Could you
16 do, for example, a flat and an accessory structure if the easement
17 wasn't there?

18 MR. MARKUS: Those would be three flats. So there'd
19 be two units each and it would be six units.

20 VICE CHAIR JOHN: Right. But a question came up when
21 I was reading this last night as to whether or not there could
22 be an accessory structure if the easement wasn't there. We can
23 get back to that.

24 MR. MARKUS: Yeah, that -- I think that might be a
25 question back to Alex.

1 VICE CHAIR JOHN: Yeah.

2 MR. MARKUS: I can't be certain, but.

3 VICE CHAIR JOHN: Okay. Thank you. That's helpful.

4 MR. MARKUS: Okay. And next slide?

5 So this is just showing the two triangular areas that
6 could be built from the easement. The shaded area in the middle
7 is the full easement. Next slide?

8 So this is showing just schematically what our plan is.
9 So there's a building on the top northeast, a triangular building
10 there, and a triangular building on the bottom, southwest. And
11 then the area in between is just -- be landscaped and parking.
12 So there are six parking spaces with access from the rear alley
13 and that would be some permeable paving and some landscaped areas
14 in between. And you can see to make the triangles a buildable,
15 a good buildable, area that's viable, the top triangle is pushing
16 past the front of the adjacent building to the property line, and
17 then the bottom triangle is pushing past the rear setback. So
18 the setback shown there is only five feet, which is more than
19 the allowable rear yard setback.

20 COMMISSIONER SMITH: Mr. Markus, I have a question.

21 MR. MARKUS: Sure.

22 COMMISSIONER SMITH: So what you're showing here is the
23 buildable area is with if we were to grant the special exceptions?

24 MR. MARKUS: Correct.

25 COMMISSIONER SMITH: With the area variances? Also,

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1 do you have or is the dotted line showing on this image what is
2 the buildable area without those area variances?

3 MS. WILSON: I can -- I have a slide showing that on
4 Slide 33, the available area if we were not to get any relief.
5 I'm sorry, I should have jumped in a little earlier. It's 7
6 percent of the lot is buildable. So I don't know if we want to
7 jump to that now. I think Mr. Markus can probably finish. But
8 just for reference, since everyone has seemed to ask this
9 question, I put that in Slide 33.

10 COMMISSIONER SMITH: Okay. So -- I'm sorry go ahead.

11 VICE CHAIR JOHN: So that's the -- that 33 percent is
12 buildable, not 7 percent?

13 MR. MARKUS: No. The percentage that you see on this
14 slide is what we're proposing. So if you did a full just complete
15 matter of right which is buildable now, that's what Alex was
16 saying was seven percent. We could just go to that slide right
17 now if that's helpful.

18 COMMISSIONER SMITH: Yeah, let's go to that because I
19 think that'll be helpful for your presentation with this --

20 COMMISSIONER BLAKE: But before you leave this slide,
21 could you just explain to me what the overhang is, that -- just
22 the term overhang? I just want to make sure I'm clear what that
23 means.

24 MR. MARKUS: Yeah. So what you see here is the full
25 50-foot easement. We're not building on it, so. And then once

1 we go up one story, we do have an overhang on both of the
2 buildings. So it does overhang the easement, but it is not
3 putting a structure into the ground. So you'll see it in a
4 section, I can show it to, but the whole discussion -- and this
5 has to do -- this is an important point because it has to do with
6 the height of the first floor. In discussions with the D.C.
7 Water, what they wanted to make sure if they ever needed to work
8 on the pipe and they had to bring in trucks and go from the top,
9 they wanted to make sure that the first floor and anything that
10 overhangs that has a certain height just for clearance for their
11 trucks to be able to use the site. That's why the first-floor
12 -- pardon?

13 COMMISSIONER BLAKE: What was that height?

14 MR. MARKUS: It's about a 12-and-a-half-foot clearance.
15 So that's what actually -- it's an important point because that
16 pushes up the building and that's why we're going up above 40
17 feet. Our building, it's shown at 45 feet to get the four stories
18 in. And it's because that first floor is -- has to be a higher
19 floor. So if for a typical building, if we didn't have this
20 higher first floor, we would most likely do like ten-foot heights.
21 And with four 10-foot floors, floor to floor, we would be at a
22 40-foot height maximum with a four-story building. But because
23 we had to raise that first floor, our total height is higher of
24 the building.

25 ZC COMMISSIONER IMAMURA: Mr. Markus?

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1 COMMISSIONER BLAKE: I'm sorry.

2 ZC COMMISSIONER IMAMURA: Go -- no, go ahead, Board
3 Member Blake.

4 COMMISSIONER BLAKE: I'm just going to finish the
5 question. And I'm -- and actually I prefer you to do this, Dr.
6 Imamura, but the question here is could you not have constructed
7 something, an overhang or a bridge structure, across between
8 those two properties that would have given you a fair amount of
9 room if you only have to be at 13 feet to then create those next
10 stories, what would be (indiscernible) there?

11 MR. MARKUS: We did. We had -- we started with a
12 version that had a bridge in between the buildings. There was
13 -- there's multiple issues with that. So it's a 50-foot wide
14 span. So the structure that you have to build in order to put a
15 full bridge across with habitable space was outrageous, the cost.
16 It would have been a cool building, but it was just not
17 economically feasible.

18 ZC COMMISSIONER IMAMURA: MR. Markus, you haven't had
19 an opportunity to get through your presentation here, but as you
20 move forward, could you remember to address in subsequent slides
21 why the overhang had to be on the second floor and why it couldn't
22 be on the third floor?

23 MR. MARKUS: Sure.

24 ZC COMMISSIONER IMAMURA: All right. Thank you.

25 MR. MARKUS: Any other questions right now?

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1 I think we were going to go to the slide -- sorry,
2 Alex, I forgot what number that was.

3 COMMISSIONER SMITH: Slide 33 I think.

4 MR. MARKUS: 33.

5 MS. WILSON: Yeah, Slide 33. And no worries, thank
6 you, I'm glad we went into the height issue. That was also a
7 question that the Board had. There we are.

8 So this is in the record just to demonstrate what could
9 be done by right. And it's a very small footprint. And so you
10 could do a single-family or a flat here, but that's it. It's
11 about 7 percent of the lot that's buildable because of the
12 easement. So this is a by right project. And I'm sure Mr. Damani
13 would confirm this, but if this would work, we wouldn't be here.
14 But unfortunately, just because of the history of the project and
15 due to the easement, that this does not work, this by right
16 option.

17 VICE CHAIR JOHN: Okay. So I have a question, Mr.
18 Chairman.

19 CHAIRPERSON HILL: Yeah, go ahead please.

20 VICE CHAIR JOHN: So nothing could be built in that
21 lower triangle?

22 MS. WILSON: Correct because of the area variance, the
23 need for rear yard relief, and front setback relief, so that that
24 can only be allowed, yeah, (indiscernible).

25 VICE CHAIR JOHN: Okay. So you could do -- okay. Let

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1 me go back to the list of all of the variances. I thought I had
2 a sheet here. But the area variance for the rear yard setback
3 and the ten-foot rule --

4 MS. WILSON: And the front yard.

5 VICE CHAIR JOHN: -- and the front yard, okay, and
6 those are directly impacted by the easement?

7 MS. WILSON: Correct, yes.

8 VICE CHAIR JOHN: Okay. So I would like to explore
9 what could be built if you had -- if you got approval for those
10 three area variances. The issue that you have here, let me just
11 put out what I think, is the use variance and the height. And
12 so I'm not primarily concerned about those three ease- -- area
13 variances there because they're directly driven by the 50-foot
14 wide building restriction there. So if you could focus on what
15 could be built, but with -- if you were to be approved for those
16 three area variances, that would be helpful to me.

17 MS. WILSON: So if we were to be approved for those
18 area variances, we could do the buildings as proposed, but we
19 would not have that fourth story, and we -- I don't think we
20 would have -- we certainly wouldn't have to ask for height
21 variance relief. We might still have to ask for special exception
22 because of the first-floor clearance, but a matter of right
23 building would have three stories, meet the height requirement,
24 and if approved for the area variances, we could build two
25 buildings in that. However, the cost to build these buildings

1 is such that six units -- or -- I guess six units is still a use
2 variance. So the matter of right option would be two units in
3 each building. So it would be four units total instead of the
4 proposed eight units total. And that's not feasible given the
5 extreme cost to develop this, and the history which has added now
6 to the cost. And I can continue through my presentation. I
7 didn't even put the four-unit total option on this. It's simply
8 not feasible to do a project with only two units in each building.
9 And I know that the last BZA hearing some letters from a broker
10 submitted and from a bank regarding financing. We are happy to
11 put more information into the record if that's an issue in terms
12 of making the finances work, but the Board did understand at the
13 last hearing that in given the options between six units and
14 eight units, and that was what OP was suggesting and that they're
15 suggesting now is the six-unit option, the six units was not
16 feasible in 2014. It's still currently not feasible. The
17 projects become even more complex. And again, we're happy to
18 supplement the record with stronger financial information if
19 that's where the issue is. But that simply just does not work
20 for this project.

21 VICE CHAIR JOHN: Okay. Thank you.

22 CHAIRPERSON HILL: All right. Thank you, Vice Chair
23 John.

24 Ms. Wilson, you can continue wherever you think you
25 were.

1 MS. WILSON: Okay. Let me see where I think I am.
2 Could you go to the next slide please? Next slide please? That's
3 just showing the subject property and the area. There are some
4 taller buildings in the area. Next slide please? This is at
5 the end of the block. Next slide please?

6 Mr. Markus did a great job of walking us through this.
7 But since this appears to be the main issue, I'll go through it
8 again. The original building was approved for a cellar and three
9 floors above. I know we don't want to go into too much the
10 history, but we cannot do a cellar level anymore. And we also
11 have to have a clearance for that first floor which directly
12 impacts the height. Even if we tried to do this within a special
13 exception for the height, which is 40 feet, we would still lose
14 a story because the ceiling height of the floors above would be
15 less than eight feet. So we would have to eliminate a story even
16 if we tried to get it within the special exception for height.
17 So the WASA restriction directly impact the height. And we did
18 have an approved project with the same amount of density and
19 level of -- I think it's relevant. It's not the primary
20 difficulty, but it was contemplated with four floors or four
21 levels of this density. And of course, if we lose a story, we
22 would have to find a way to fit eight units if approved within
23 three floors, and that would also be a difficulty. And again,
24 we can submit more information from a broker to that effect
25 explaining why eight units within three stories at a certain size

1 would be extremely difficult to sell or just an overall riskier
2 project. Next slide please?

3 So we discussed this a bit. The justification for this
4 project is generally the same as the previous case, which was
5 approved for eight units. Six units is too risky to pursue given
6 the cost of the project. This is further bolstered by the
7 extensive history and WASA delays. The Applicant relied on a
8 determination from WASA before purchasing the property. It
9 obtained BZA relief for eight units, so the plan that had been
10 approved by WASA. A significant amount of money was spent after
11 the initial BZA case in trying to redevelop the project because
12 of the WASA issues and delays. This brings us back to the
13 question that Commissioner Blake had, which was Exhibit 34H
14 detailing the cost added due to those WASA delays. Mr. Damani
15 gave me a sheet that looks a bit nicer than Exhibit 34A, and we
16 can update that. The sheet included all of the costs to date in
17 terms of developing the project and consulting fees and all of
18 that. I picked only the costs after the initial BZA approval to
19 be included in in this particular exhibit, because I thought the
20 costs associated with the initial approval shouldn't be factored
21 in to the subsequent costs because this -- the additional cost
22 is due to the WASA delays. So the original WASA negotiation and
23 approval is a separate act, in my opinion, and doesn't relate to
24 the exceptional condition and situation that the Applicant finds
25 itself in with the current WASA issues. So that's where those

1 costs come from and includes attempts to redesign the project,
2 engineering costs to work with WASA to develop the project or to
3 come to a point where WASA was comfortable approving the project.
4 And then, of course, hearing costs, taxes, penalties, and
5 interest added from the delays, which have been significant. And
6 that's again related to the WASA delay, which was impacted by
7 litigation for another property on this block. So it's been
8 quite the journey for the owner. So in addition to the original
9 justification, there's an exceptional situation that has recurred
10 with respect to this almost ten-year attempt to develop the
11 property. Next slide please?

12 I'll also note that with respect to other properties
13 in the area, this property is unique and other properties to the
14 south on the alley appear to have reached their maximum
15 development potential or close to it. Some of them are subject
16 to a portion of the easement, but this property is the most
17 impacted by the easement, being that 60 percent of its lot is
18 occupied by the easement, and due to the zoning restrictions only
19 7 percent of the lot is buildable by right. Beyond that is the
20 history of the property in the background with WASA and previous
21 Board approval do factor in the exceptional nature of this case.
22 Next slide please?

23 We've already touched on all of this. If you could
24 just go to the next side? This is all in the record too. This
25 is just showing the various building arrangements and this is the

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1 current proposed scenario. Next slide please?

2 So this break-even price is quite a bit higher than the
3 eight-unit scenario. And that just demonstrates the hardship in
4 selling six units if we didn't get the height variance or the
5 use variance. Although note again the use variance would be
6 required for the six units as well. I just use this to compare
7 because the Office of Planning previous (indiscernible) four to
8 six units and appears to be supportive of possibly six nits
9 without the height variance. I think that's the Office of
10 Planning's primary concern of the project is the height. Next
11 slide please? Thank you.

12 So this again shows what could have been done in 2013
13 by right had the pipe not existed. It would have been a really
14 straightforward project. The goal of the proposed project now
15 is to mitigate the risk associated with the project. And eight
16 units provides the minimum number of units needed to have a
17 reasonable expectation of the project being feasible to even
18 obtain financing, given this project. These statements were
19 provided in the last hearing and the Board agreed with the
20 findings. If anything, the project has only become more expensive
21 and complex. Again, we are happy to provide updated broker
22 letters or a letter from the bank if the Board would find that
23 helpful to support this conclusion again. Next slide?

24 MR. MARKUS: I did want to point out one thing, Alex
25 --

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1 MS. WILSON: Yes.

2 MR. MARKUS: -- on the matter of right, I don't think
3 I was clear before, but as a matter of right project that you
4 just saw, that would be four levels, so you would have had a
5 cellar plus three levels above grade. That was it.

6 MS. WILSON: Thank you, Rich. That's a great point.
7 Yes, of course. Any -- if the pipe didn't exist, we could do a
8 cellar level like any other project on this block, could do a
9 cellar level and dig down and add units, the project next door
10 could do that. However, we can't because of the easement. And
11 it's a newer restriction as the original approval from the Board
12 and from WASA allowed a cellar level. So in terms of no
13 substantial detriment to the public good or zone plan, the
14 Applicant is requesting relief to create two four-unit apartment
15 buildings in an area with four-unit apartment buildings. Each
16 of the directly adjacent properties are improved with a four-
17 unit apartment building. So this would not be an unusual type
18 of building or use in this area. It's a block, at least our side
19 of the block is constructed with apartment buildings. It's not
20 a rowhouse block on our side. I think that's relevant to this
21 case. And the impacted, the most impacted, neighbors are
22 supportive. The proposal would provide new housing on property
23 that has always been vacant. With respect to the zone plan,
24 eight units on this lot was permitted when the Applicant purchased
25 the property. Typically the number of units in an RF-1

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1 development is governed by the 900-square-foot rule, and in this
2 case that would allow for nine units. Of course, the easement
3 has prevented all development on this property and it's been
4 vacant for decades. There's no opportunity to convert anything
5 to three units or nine units. So further, the height and stories
6 relief is directly related to the additional WASA restrictions
7 preventing the cellar level, requiring the Applicant to provide
8 clearance for that first floor. The lot is absolutely unique in
9 the District, and even without the significant history from WASA,
10 the situation with the pipe and easement occupying 60 percent of
11 a lot is clearly exceptional and has made development on this lot
12 impossible given the risk of any project without relief. And
13 with that, that generally concludes our presentation. We're
14 happy to answer any questions. I realize I didn't get into the
15 other areas of relief, so please let me know if you have any
16 questions about the ten-foot rule, front setback, rear yard
17 setback, or theoretical lot.

18 CHAIRPERSON HILL: Okay. All right. You guys, let's
19 just take a quick 10-minute break, 10, 15 minutes, and then we'll
20 come back our questions and then also the Office of Planning.
21 Okay? Thank you.

22 MS. WILSON: Thank you.

23 (Whereupon, there was a brief recess.)

24 MR. MOY: The Board has returned to its public hearing
25 session after a quick break. And the time is at about 11:41 a.m.

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1 CHAIRPERSON HILL: Okay. Since there was a lot of
2 testimony, rather than -- what I'd like to do is hear from the
3 Office of Planning first and then let's kind of get to questions.
4 Going to turn to the Office of Planning.

5 MS. THOMAS: Yes. Good morning, Mr. Chair, members of
6 the Board. Karen Thomas with the Office of Planning. And I'd
7 like to start off by saying that the Office of Planning is
8 supportive of developing this longstanding vacant lot, which has
9 become an eyesore in the community, as we heard the ANC express
10 here today. Based on the encumbrances of this site, we certainly
11 acknowledge this has created both a hardship and a practical
12 difficulty and we are supportive of the area variances and special
13 exception proposed, but to permit up to six units as part of the
14 development of this property, and express denial of the stories
15 and height.

16 And I'd just like to say it is not a policy which --
17 for OP with respect to height, but it is a variance and we feel
18 that the case wasn't made to support it. Although the Applicant
19 has demonstrated a unique condition resulting in a hardship in
20 providing the zoning's anticipated level of development, we don't
21 feel they've demonstrated the same for an additional story and
22 related height and would propose number of units. And the
23 Applicant has stated that the prior approval for an eight-unit
24 development demonstrated financial hardship of developing the
25 site and that it remains not financially feasible to do six units

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1 due to the construction and foundation required to build near the
2 easement. But as discussed in our analysis, although we don't
3 typically propose alternative relief or extent of relief as part
4 of the BZA application, in this case our recommendation is
5 consistent with past OP positions for development of this site,
6 and in OP's opinion it can be better justified under the relative
7 criteria for review. We believe the additional height and story
8 would impair the intent of the regulations, which is to control
9 the height and density of buildings consistent with the zone
10 plan. The proposal providing fewer units would not appear to
11 require the additional height or stories. So we remain supportive
12 of six units and the number of bedrooms proposed for the units,
13 including some as three-bedroom units, which we support. So with
14 that, we would recommend denial of the use variance for eight
15 units as proposed, where we think six units could be permitted
16 and at the maximum height permitted a number of stories. And
17 with that, I'd be happy to take any questions. Thank you.

18 CHAIRPERSON HILL: Okay. Thanks, Ms. Thomas.

19 All right. Does the Board have questions for anybody?
20 Who -- how would they like to start?

21 I see Mr. Blake's hand up first.

22 COMMISSIONER BLAKE: Yeah, I'd like to start with the
23 Office of Planning. As I read this -- review this case, the
24 issue comes to me with the final prong of the test, which is a
25 substantial impairment to the intent and purposes, et cetera.

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1 What I'd be curious to note is for you to just kind of talk to
2 us a little bit about the purpose and intent of the RF-1 zone as
3 it relates to this height requirement. And I think you did a
4 little bit of that already, but just go a little deeper in that.
5 And also with regard to the intensity, I believe the RF-1 doesn't
6 actually expect new construction of apartment buildings. So
7 could you go a little bit into that and just kind of give me a
8 better sense of that and how it impacts or how it works or doesn't
9 work for the third prong?

10 MS. THOMAS: Okay. So. The purpose and intent of the
11 zone regulations is to protect the density and existing pattern
12 of development within the RF. The RF-1 zone does not permit the
13 development, new build of apartments. It is not an apartment
14 district and so, but it does allow for conversions. So where
15 the Applicant has pointed out that the size, the area of the lot
16 would allow for nine units, that is not correct because there is
17 no existing development on the lot to allow for conversions. So
18 six units is not inconsistent with what the zone anticipates for
19 new development in this zone. And anything beyond that would
20 impair the intent of the zone plan as the RF-1 is predicated
21 right now in this time and space. So until something else changes
22 in the future, it is what it is right now with respect to density
23 and height at 40 feet maximum and the density as predicated per
24 lot at 60 percent lot occupancy and so forth. But it is primarily
25 a rowhouse district and it is not intended as an apartment

1 district. But where it can be built, it will be built -- it
2 should be built to satisfy that density that is predicated for
3 the RF-1. Is that okay?

4 COMMISSIONER BLAKE: Now in the height again, the issue
5 with the height though is the fact that it's beyond the
6 requirement. But that to me is -- does that fit the criteria or
7 is that more from a substantial detriment standpoint? Seems like
8 it may or may not. Not totally clear.

9 MS. THOMAS: Could you say that again?

10 COMMISSIONER BLAKE: You talked about the height. You
11 did a little bit here --

12 MS. THOMAS: Yes. Okay.

13 COMMISSIONER BLAKE: I want to make sure it's the same
14 type analysis for the height.

15 MS. THOMAS: So the building -- building in the RF-1,
16 the height is 35 feet and three stories. So any new build should
17 respect that height because it is related to the density that is
18 anticipated within this zone, height and number of stories. So
19 unless there is some extenuating circumstance that can be proven
20 to exceed that, and a new build would not anticipated to exceed
21 the height beyond what is intended in the zone because then it
22 puts it into another zone category altogether.

23 COMMISSIONER BLAKE: Okay. And my last --

24 MS. THOMAS: Is that okay?

25 COMMISSIONER BLAKE: Yes, that's fine. And the last

1 question I have for you with regard to the WASA as an exceptional
2 condition, I understand that the easement itself is an
3 exceptional condition on the land, but the approvals granted by
4 WASA, which I think were conceptual approvals, is that something
5 that is a reliance issue that we would -- that you consider in
6 your analysis as an exceptional element and an exceptional
7 condition?

8 MS. THOMAS: No, I don't because whatever D.C, Water,
9 you know, approval/not approve is based on what exists under the
10 ground. It's based on the easement. It's based on the tunnel
11 itself. So if they came up and said oh, we found this or we,
12 you know, something else is unusual, well, that is still a
13 condition of the lot. So whatever happens there, it is still a
14 condition of the lot. And all of that has to be taken into
15 consideration. It doesn't matter when they did it or when they
16 found it or -- you know, they can go and build right now and find
17 something else, and you still wouldn't be able to probably do
18 what you intended to do with the plans. So it doesn't really
19 matter. It is what it is with that easement or with that tunnel.
20 Doesn't matter when they find it or when they, you know. So the
21 situation exists as it is. They're here now, as Ms. John says,
22 it doesn't matter what happened before. I mean, it's unfortunate
23 and we are sympathetic today to this situation, but we are here
24 on the zoning of this -- of the lot and how do you build it under
25 the RF. And like we said, we are supportive of developing this

1 lot.

2 COMMISSIONER BLAKE: Thank you, Ms. Thomas.

3 CHAIRPERSON HILL: Give me a second, Mr. Damani, you
4 can comment back in a minute.

5 Okay. Who else had questions of my Board of the Office
6 of Planning?

7 COMMISSIONER SMITH: I have one.

8 CHAIRPERSON HILL: Yeah, go ahead, Mr. Smith.

9 COMMISSIONER SMITH: Thank you, Mr. Blake, for those
10 very thorough questions. I think, you know, some of those that
11 you raised were also my questions.

12 One question that I did want to ask the Office of
13 Planning, and it is in relation to what is one of the problems
14 of the area variance as it relates to front and rear yard setback
15 requirement, because we must show that there will be no public
16 detriment, and also as it relates to the special exceptions,
17 impacts to light and air. And you know, just returning back to
18 the question that I had previously, in your evaluation of the
19 shadow study, what -- could you see what was new shadows and what
20 was older shadows, and how much shadowing was on the neighboring
21 property. Granted, you know, the Applicant is proposing to go
22 up this number of stories here. Did you notice any substantial
23 amount of shadowing on adjacent properties?

24 MS. THOMAS: Yeah --

25 COMMISSIONER SMITH: Because I can't tell by the plans.

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1 MS. THOMAS: We didn't rely heavily -- I didn't rely
2 heavily on the on the shadowing issue with (indiscernible) to
3 light and air because shadows exist only for short periods of
4 time during the day. I more looked at how was it blocking light
5 and air to the adjacent property? And I didn't see it would have
6 that impact, apart from the fact that the shadowing, if you wanted
7 to refer to it, would be on areas on that lot where they would
8 have parking. I didn't think shadowing was a detrimental --
9 substantial detriment to the neighbors. And in fact, the
10 neighbors did support the development of this lot with the setback
11 as proposed, the front and the rear. There is no windows being
12 proposed to affect privacy. But I don't see shadows to be of
13 great detriment to the neighbors.

14 COMMISSIONER SMITH: So shadowing would be light. Did
15 you see -- did they submit any plans that show the existing
16 character now of what -- was the shadowing or how much light is
17 reaching some of the rear yards of some of these houses on this
18 block?

19 MS. THOMAS: Well, one would assume that without any
20 building on the lot, there would be no shadows unless trees,
21 there are trees. But I don't have anything different beyond what
22 exists in the plans --

23 COMMISSIONER SMITH: Okay.

24 MS. THOMAS: -- on submission, yeah.

25 COMMISSIONER SMITH: I mean, I just think my concern

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1 for the Applicant, you know, on the rear yard, that means if the
2 semi-detached structure that would be furthest into the rear
3 yard, if you're looking at the shadow -- your shadow studies, all
4 of that building would be shadowing all of, you know, a fair
5 amount of these -- the rear yards and the rear walls of many of
6 those apartment buildings or some of those buildings that are to
7 the west. So I just wanted to see if there was some level of an
8 in-depth violation done by the Office of Planning on this
9 shadowing or the lack of light to the rear of these properties,
10 because that is one of the special exception criteria for the
11 creation of a theoretical lot and also some of the criteria for
12 the area variances.

13 MS. THOMAS: One thing I looked at was -- one thing I
14 looked at was the fact that there were no decks in that -- the
15 adjacent property, there were no decks and sitting areas. It was
16 just straight staircase coming out to their backyards for ingress
17 or egress. And so I did not -- and they had no, you know,
18 existing structures outside in the rear yard. I would assume
19 there were only parking. And, you know, shadowing doesn't mean
20 the lack of light as most would think it is. And shadowing occurs
21 for brief periods of time during the day. It might be longer
22 during different seasons, but it's not persistent. Like all day
23 you wouldn't have shadows for the entire day, unless you enclose
24 -- you're totally enclosed on both sides of your property and you
25 are in a sort of a tunnel situation. But that that's different.

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1 And I don't think that's the case here. So I didn't see it was
2 a significant impact. Again, there are no decks and no passive
3 recreation spaces outside of the neighboring property,
4 particularly that property to the -- that has the five-foot rear
5 yard. It's just a parking area.

6 COMMISSIONER SMITH: Okay. All right. Thank you.

7 CHAIRPERSON HILL: Okay. Anyone else for the Office
8 of Planning or the Applicant? Did somebody just have their hand
9 up?

10 COMMISSIONER BLAKE: I had a question for the Applicant
11 with regard to the conceptual improvement approval you've gotten
12 from WASA. This is conceptual. So there are several stages left
13 as we -- you discovered in the previous iteration of this, from
14 where we are today. What makes you think that -- well, is this
15 the last iteration or what makes you think that this one is more
16 firm than the last one? And what other additional steps might
17 be taken before you determine what the final iteration might be?

18 MR. DAMANI: So that question is for me, correct, sir?

19 COMMISSIONER BLAKE: Whoever.

20 CHAIRPERSON HILL: Sure, you can take it. I don't
21 know, Ms. Wilson nodded yes, so I guess it's for you, Mr. Damani.

22 MS. WILSON: Yes, yeah, that would be for you and for
23 the rest of the --

24 MR. DAMANI: Okay. So thank you, yeah, it's a very
25 good question, Mr. Blake. D.C. Water, as I see it, has not been

1 consistent on this. And so I do agree with you that, you know,
2 in the past when they have agreed to a design and then they would
3 not allow us to move forward, that's absolutely true. However,
4 this time around, they have -- I believe that we have -- they
5 have done a very thorough meetings with us and they have also
6 realized this time around that we want to give them something in
7 writing which we stand by and not just an email, you know, from
8 D.C. Water, WASA back then, that yes, you can build, don't worry
9 about it as long as there is no load on our pipe. So I think
10 they have over the years, and they have taken it more seriously.
11 That's what my belief is. And also like I said in the past, they
12 almost feel sorry for this project also and they have crossed the
13 Ts and Is more this time around, to give you an example that they
14 have -- like I said earlier when I was sharing my thoughts that
15 they have expanded in their (indiscernible) beyond their
16 easement, as you can see that they are allowing us not -- they're
17 not allowing us to build a basement in the area where they don't
18 have an easement actually. So where the easement is and where
19 the pipe is we are absolutely not allowed to do anything
20 whatsoever. They are actually telling us not to do anything
21 beyond their easement. So in another words, as a layman you
22 would think that what say do they really have beyond their
23 easement if they don't own it, for example, right? However, they
24 are saying our pipe is really old, we do not want anything --
25 any type of (indiscernible) or any type of issue with it, and so

1 if you want to move forward, forget about anything in the easement
2 even beyond the easement you are to build on a pile foundation
3 system which will actually take the load directly vertical down
4 rather than horizontal inside, number one. And number two, do
5 not disturb the soil at all because that one of the engineers
6 said if you disturb the soil near our pipe, it will hurt the
7 integrity of our pipe or our structure. And so to sum up all of
8 this, I believe, we believe, that they have done a very thorough
9 determination this time around. And having said that, we will
10 still have to submit a formal submission of approval. And as
11 long as we abide by the criteria, by this criteria, we should be
12 good. But excellent question, sir.

13 MR. MARKUS: Just to back that up too, so we went as
14 far as we could with D.C. Water without going to permit. So once
15 you go to permit is when you apply for a D.C. Water to get a
16 final approval. So we went as far as we could and we had multiple
17 meetings and it was very thorough. They had their engineers look
18 at it, our structural engineers, we actually even gave them a
19 physical model that showed the structure and the pipe underneath
20 so just to make it as completely clear as possible. So we went
21 as far as we could with D.C. Water before going to permit. Thank
22 you.

23 COMMISSIONER BLAKE: Okay, thank you.

24 MR. DAMANI: Thank you, Rich. Yes, actually, the model
25 was created to show them, so yes. Because -- good question again,

1 because originally we had the BZA approval and we were going to
2 build, but they said we will not sign off on anything, you will
3 never get your building permit, so good luck. Right? So hence
4 we realized that D.C. Water was the first stop and then coming
5 back to BZA. So if that answer your question.

6 CHAIRPERSON HILL: Okay. All right. Go ahead, Ms.
7 John.

8 VICE CHAIR JOHN: So I'm not sure who should answer
9 this, if it's Mr. Markus or Mr. Damani. So in today's market,
10 what is the cost for building, say, a three-level apartment house
11 in today's market per square foot, because I'm trying to
12 understand the assumptions that were made in your calculation of
13 costs?

14 MR. DAMANI: Absolutely. Thank you, Ms. John. So one
15 three-apartment building, like a three-level, typically, as the
16 question about the prices, it's a very evolving and fluid
17 situation with regards to the materials and inflation. But I
18 would still -- having said that, I would say that the cost would
19 be around \$200 or \$220 a square foot typically. However, in this
20 case, we have a unique situation with regards to pile foundation
21 system, as I was mentioning earlier. Those piles work -- has to
22 do with concrete work, foundation work, and hence the foundation
23 work of this job would be at least three times more than a typical
24 foundation for a three-story or three-story and a cellar, because
25 those piles have to go past their pipe, past D.C. Water pipe. So

1 I would imagine 40 to 50 feet down. And I am a Class A builder
2 myself and I have gotten pricing from a specialty contracting
3 company, those who only work in concrete, the concrete company,
4 and right now the prices, what they are providing me because it's
5 a specialty item, it will cost at least three times. And I'm
6 being conservative by saying three times. It could cost as much
7 as four times. And we can -- I can provide that -- those bids
8 if desired. And hence that will take the cost close to another
9 30 percent more than what it would typically cost, which is --
10 which I laid out earlier. So if that answers your question.

11 MR. MARKUS: And -- well, in addition to that, the --
12 obviously the foundations are very complicated, but the building
13 itself is not a typical building, so it's the shape of a triangle.
14 So it's not a typical rectangle. So just the shape of the
15 building and the way we have to do it adds complexity and cost.

16 VICE CHAIR JOHN: Okay. That's helpful. Thank you.

17 COMMISSIONER BLAKE: As you're discussing the cost
18 element, if you look at Exhibit 34G, we looked at the cost to
19 develop the property, and you have various scenarios in here from
20 the proposed project to the matter of right options, four units,
21 and then a project proposal without the height relief for six
22 units. When I look at that analysis, the thing that strikes me
23 the most is the \$403,715 for the deferred expense associated with
24 the timing on WASA. If I remove that cost from this, the all-in
25 number's not so bad, and actually compares favorably with the

1 current market value. So you know, I can then say that, you
2 know, nine years of waiting for WASA made this -- makes it --
3 that cost is something that -- in fact it's not necessarily our
4 responsibility to have you -- help you recover a cost, but that
5 particularly nine years of waiting is not necessarily something
6 that seems as right. So when I remove that number from it, that
7 option has an economic viability to it. Can you can you talk to
8 me a little bit about that?

9 MS. WILSON: I can jump in just in terms of what can
10 go to an exceptional condition. So it is part of the history of
11 this project. It adds to it and it can be considered as part of
12 the exceptional condition related. So I do think it's relevant.
13 And you know, this is a high-level overview. We're happy to
14 submit something more formal from, say, a broker or a bank just
15 talking about how the financing would be impacted in general for,
16 say, a four-unit, six-unit, or a eight-unit project as well. You
17 know, its zoning history, its history of permitting, it's part
18 of what D.C. Water's associated with. And I believe I've included
19 a D.C. Court of Appeals case that said the zoning history of the
20 property could be relevant.

21 CHAIRPERSON HILL: You guys, let me --

22 MR. WILSON: Again, we can -- I'm sorry. My AirPods
23 are dying if you can't hear me.

24 CHAIRPERSON HILL: That's all right. We can hear you,
25 Ms. Wilson.

1 Let me just do -- let me -- you guys keep your
2 questions. I mean, I think this is going to take a little while.
3 I mean, I don't think anybody is here yet. And so I will ask a
4 question of the Office of Planning to Ms. Thomas. And again, I
5 would be curious of your -- I mean, the economic reasons always
6 tend to be difficult to argue, and so -- but I would like to hear
7 from the Office of Planning as their opinion on the economic
8 issues with regard to this project and with regard to the nine
9 years working with WASA.

10 Mr. Young, who is here to speak?

11 MR. YOUNG: You have four people.

12 CHAIRPERSON HILL: Okay. Are they in favor,
13 opposition, you don't know?

14 MR. YOUNG: I'm not sure.

15 CHAIRPERSON HILL: Okay. Why don't you bring all four
16 in and just give me their names please?

17 MR. YOUNG: There's Willie Smith, Thomas Hines
18 (phonetic).

19 MR. SMITH: Yeah, I'm on.

20 CHAIRPERSON HILL: One second, Mr. Smith.

21 MR. SMITH: Okay. Thank you.

22 CHAIRPERSON HILL: Thank you.

23 MR. YOUNG: There is Ahmet Kilic.

24 CHAIRPERSON HILL: Okay.

25 MR. YOUNG: And there's one more that -- he doesn't

1 seem to be on, so I'll have staff reach out to him.

2 CHAIRPERSON HILL: Okay, great.

3 Mr. Smith, can you hear me?

4 MR. SMITH: Yes, I can.

5 CHAIRPERSON HILL: Mr. Smith, you'll have three minutes
6 to give your testimony, and you can begin whenever you like.

7 MR. SMITH: Yes. I'm Willie Smith, I'm from the
8 Community (Indiscernible) Rosedale Committee, and I support the
9 building that is (indiscernible). And he doing everything that's
10 right. He's not on the, you know, on the pipe, on the WASA pipe,
11 he's building away from the pipe. And, you know, you got two
12 other new buildings that was built, you know, in the community
13 that's on top of the WASA pipe, but he's doing the right thing.
14 He went back and redone his whole blueprints and his architect
15 part. So I'm on board with this building getting built in the
16 community because it'll be a great asset to the community.

17 CHAIRPERSON HILL: Okay. Great. Thanks, Mr. Smith.

18 I'm going to -- just so the Board knows, I'm going to
19 go through all the testimony and then we can have any questions,
20 if you have any.

21 The next person is Mr. Hines. Can you hear me, Mr.
22 Hines?

23 MR. HINES: Yes, I can.

24 CHAIRPERSON HILL: Okay. Could you introduce yourself
25 for the record please?

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1 MR. HINES: Sure. My name is Thomas Hines, I live at
2 1716 E Street, across the street directly from the property.

3 CHAIRPERSON HILL: All right. Mr. Hines, could you
4 give us your testimony please?

5 MR. HINES: Sure. I just -- I oppose the scope of this
6 project and the height and the amount of units that are being
7 built. I did talk to Mr. Damani a couple of times. Both times
8 that we spoke I had asked him to show me a facade or something
9 that they're going to build to show me that this is going to fit
10 into the neighborhood. He said he would. He never came back
11 with anything to me. It's my understanding that D.C. Water is
12 concerned that this pipe might collapse in the middle of it. And
13 I just wanted to ask if like that pile system, is that going to
14 hold up the buildings or are they going to collapse if the pipe
15 collapses in the middle? I also don't think that adding, you
16 know, that multiple people have broken the rules and built it on
17 this pipe in the past is an excuse to allow this project. I do
18 think the shadow is an issue as far as it being on my house for
19 a very tall building across the street. My concern is that this
20 just doesn't fit in the neighborhood and it's going to look like,
21 you know, like two futuristic rocket ships being built across the
22 street. I'm also -- my concern is with you guys and why has
23 there been nothing done with this property for the last ten years,
24 and now all of a sudden he's starting to clean it up? You know,
25 had you had you done something with this property, could it have

1 been a smaller financial hardship for you? And overall to me it
2 sort of feels like this is an ultimatum where it's like either
3 let me build this or this property will be vacant forever. And
4 I feel like that's not a fair stance as far as trying to get
5 something approved with massive exceptions. I'm also a little
6 bit concerned, I didn't know about the overhangs, I don't know
7 if that goes over the sidewalk or like where that overhang would
8 be, but it looks awfully close to the street for me. So I'm just
9 concerned about, you know, how tall something would be across the
10 street and how it doesn't fit into this neighborhood.

11 CHAIRPERSON HILL: Okay. Thank you, Mr. Hines. Thank
12 you.

13 The next person is Mr. Kilic.

14 MR. KILIC: Yes.

15 CHAIRPERSON HILL: Hi. Could you introduce yourself
16 for the record please?

17 MR. KILIC: Ahmet Kilic, I'm the owner of 1729 E Street,
18 the adjacent property -- the next property -- the adjacent
19 property to the east. So I agree with everybody in regards to
20 the fact that the property is currently an eyesore for the
21 community and would like any development (indiscernible) on the
22 vacant condition; however, we want this development to be a
23 catalyst for the block rather than a worse eyesore for decades.
24 So typical development potential for the properties on this block
25 is third-floor expansion and (indiscernible) rear addition while

1 preserving four existing residential units. So I just want to
2 give important information here. This block is not a typical
3 (indiscernible) residential flat zone. Although it is zoned like
4 that, practically this is -- there are eight adjacent four unique
5 properties along from 18 to 17th Street, and this is in the middle
6 of it. So effectively, this row is working as an apartment
7 zoning, if you will. And what's going to happen is each of these
8 properties are owned by a single landlord. All of them are like
9 tenants, so that's why you don't see any objection here because
10 everybody's like tenants. Tenants don't show up for the ANC's or
11 these meetings. So I would like Board to consider what's kind
12 of -- what's the future development for this row. I think Office
13 of Planning are saying it's an RF zone, but it's an apartment
14 zone, so I don't know why, 1930s it was zoned like that, and they
15 are like 36 feet wide. Across the street Mr. Hines' side is like
16 typical RF, like small townhouse lots, like 16 foot wide. So
17 there's an existing 20 -- also another very atypical condition
18 for this row is 20-foot front setback. So it's not very typical
19 in RF zones either. So this is the binding element for the rest
20 of the lots. If there will be no change or relief on front yard
21 setback for the rest of the lots, then with this building we're
22 going to see a 20-foot leap and a 45 feet high, maybe some parts
23 like 35 feet high blind wall on the east end side of the property
24 forever. So that's my actually main concern. If the property
25 is going to be developed as it is, I would like to see some

1 windows or other facades treatment on this side. And also to
2 create a triangular footprint is forcing the architectural design
3 a challenge and at the same time an opportunity. I hope this to
4 be an opportunity and would like the Board to evaluate the
5 building thoroughly from all perspectives because until now we
6 haven't seen the three perspectives of this like currently 22
7 feet high building setback 20 feet. So this needs to be a really
8 very good building both in and out to justify the height and then
9 the 20 feet (indiscernible) everything else. I think the
10 apartment use is perfectly fine. That's effectively what it is
11 in this lot as opposed to what Office of Planning is being -- I
12 think Office of Planning is not aware of the fact that there are
13 like eight --

14 CHAIRPERSON HILL: Mr. Kilic, I'm just letting you know
15 you've run over your time if you want to sum up.

16 MR. KILIC: Okay. Yeah, thank -- and also just one
17 more information. At the back -- I'm just trying to give some
18 information to the Board -- there are two alley lots that are
19 being -- that are under construction. There are like eight new
20 townhouses built and again like just on the southeast side this
21 fight continues and the -- I just spoke to the land developer to
22 drill five piles and each of these piles are \$18,000. So he had
23 to spend like \$90,000 to make that lot buildable. Maybe, I don't
24 know, it might be a little bit more or less, but \$100 or \$150,000
25 additional infrastructure costs (indiscernible) for this. I have

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1 a question for the Board. Like what is the -- I think we --
2 there --

3 CHAIRPERSON HILL: Okay, Mr. Kilic, you've got to wrap
4 it up.

5 MR. KILIC: Yeah, I understand. Okay. I think that's
6 it then. Like I was going to ask like what's likely -- who --
7 like D.C. Parks and Recreation purchasing the property and making
8 a park. And I'll end, thank you.

9 CHAIRPERSON HILL: Again, that -- okay. All right.
10 Thanks, Mr. Kilic. Yeah, that one, unfortunately is completely
11 not anywhere near where we are.

12 Let's see. Okay. Does the Board have any questions
13 of the witnesses? All right. Oh --

14 VICE CHAIR JOHN: Mr. Chairman, I had a quick question
15 for Mr. Kilic -- did I say that correctly -- so the last witness
16 that testified -- can you describe those apartment -- [Kill-ick]
17 I think -- can you describe those apartments on the irregular
18 numbered side of the block, your side, 1729, did you say there
19 are a bunch of apartment buildings --

20 MR. KILIC: Yes.

21 VICE CHAIR JOHN: -- on that side?

22 MR. MOY: Yeah. These are four-unit apartments. Each
23 of them are like composed of 800 square feet, one-bedroom
24 apartments. So they are all same. And I think the future
25 development is going to be like four three-bedroom apartments

1 like with third-floor addition and ten-foot rear yard condition.
2 So that's it.

3 VICE CHAIR JOHN: So --

4 MR. KILIC: And the tenants are -- like some of them
5 are low income tenants, some of them are market rate.

6 VICE CHAIR JOHN: Okay. And what's the market rate to
7 your knowledge of those -- did you say they were two level or
8 three level?

9 MR. KILIC: Two level.

10 VICE CHAIR JOHN: Okay. And do you know what the market
11 rate is?

12 MR. KILIC: For the rent or?

13 VICE CHAIR JOHN: For rent or sale?

14 MR. KILIC: Rent, like a one-bedroom's closer to like
15 \$1,800 per month.

16 VICE CHAIR JOHN: Uh-huh.

17 MR. KILIC: But if you do like Section 8 housing,
18 obviously the rents are different, but market rate is \$1,800 per
19 month for 800 square feet, one-bedroom.

20 VICE CHAIR JOHN: Okay. Thank you.

21 CHAIRPERSON HILL: Okay. Thank you.

22 All right. Let's see, I think it was Mr. Hines. Mr.
23 Hines, there are plans now in Exhibit 38 that can show you a
24 little bit more of the building, if you had any questions there
25 in the exhibit.

1 COMMISSIONER SMITH: Can I just make one statement?

2 CHAIRPERSON HILL: Yeah, sure, go ahead, Mr. Smith.

3 COMMISSIONER SMITH: Just to Mr. Kilic's point when he
4 was talking about the apartment buildings that this is an unusual
5 block. Yes, this is an unusual block along E Street to the east
6 of this and a block over to the west, it's all apartments. But
7 the RF-1 zone does allow existing apartments to exist. They are
8 considered conforming per the RF-1 regulations. So those
9 apartments that you're referencing, they are, in the zoning
10 parlance, conforming, they're legal because they existed prior
11 to 1958. So the existing ones can exist. The issue here is that
12 the RF-1 zone does not allow the creation of new apartment
13 buildings within the zone. So just to, you know, add some
14 clarification to that, the existing apartments -- I mean, the RF-
15 1 one does contemplate the continued existence of apartment
16 buildings, but the concern is the creation of new.

17 CHAIRPERSON HILL: Okay. All right. Thank you, Mr.
18 --

19 MR. COTTON: Excuse me.

20 CHAIRPERSON HILL: Who spoke?

21 MR. COTTON: This is John Cotton. I was listed as a
22 witness.

23 CHAIRPERSON HILL: Oh, okay. Hi, Mr. Cotton, we didn't
24 see you come in. Mr. Cotton, could you introduce yourself for
25 the record please?

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1 MR. COTTEN: Yes. My name is John F. Cotten and I live
2 at 1720 E Street, which is directly across from where the
3 development that's being asked, 1717 E Street. I think I will
4 be the most affected homeowner. I actually signed up to be a
5 party to this. But I thought when I submitted my testimony and
6 everything it asked did I want to be a party, but I wasn't granted
7 party status, because I have been a homeowner over here since
8 1993, and I've been following this project from its inception,
9 and of course been very heavily tracking this thing before it
10 even got here, and I do have a lot of opposition to even what's
11 spoken by the developer as well as the community people as well
12 that's representing this case.

13 CHAIRPERSON HILL: Mr. Cotton, Mr. Cotton? No, that's
14 great, I'm glad you've been there as long as you've been there.
15 I just wanted to let you know you'll have three minutes to give
16 your testimony and we might have some questions for you, and you
17 can begin whenever you like.

18 MR. COTTEN: Okay. And just in these three minutes
19 I'll go fast (indiscernible) just to come over here. As opposed
20 to what they said, the developer was really non-responsive to
21 anybody that was in opposition of him building exactly what he
22 wanted to build. I live right across the street, I tried to
23 reach out to him several times. He just said he only wanted to
24 talk in person because I said I was out of town working, but I
25 will be willing to meet with him on Zoom to discuss any issues

1 and my concerns. The ANC got the approval and they did -- really
2 didn't do a good job. I came to the October meeting when it was
3 officially scheduled. He pulled back and didn't show up, the
4 developer didn't show up at the October meeting. He decided to
5 show up at the November meeting. I asked them to delay the
6 meeting again so I could be available to talk to the developer.
7 They kept moving forward. Talked to D.C. Water. D.C. Water
8 really is not in approval of this plan as saying. They are
9 waiting for final plans to do that. They really wasn't in favor
10 of the 1704 and 1700 property. That just slipped through the
11 cracks and got built. So if it was on them, they wouldn't have
12 approved that building -- of those buildings as well.

13 All his visits was unannounced. So if you was home,
14 he was able to talk to you. If you wasn't home, then he wasn't
15 able to be able to reach you out. And most of the time people
16 signed on this just signed a form that was saying that they showed
17 -- that they seen plans for the property, which only was a
18 schematic thing that showed where the pipe was at. And I spoke
19 to other neighbors in regards to that.

20 The shading impact is very high. I live right across
21 the street. The height of that building would take away all the
22 shade from my property during the day and its height in the hours.
23 And everybody knows in that community I do sit on my front patio
24 and work during this type of day. On our break, I walked outside
25 the building just to stand on the property to imagine where that

1 building was at its height and it's (indiscernible) and it will
2 be shading my property through the entire day. So it is a light
3 issue and there's an air issue as it regards to my property. And
4 I think I'm adjacent -- the fact that he's trying to build all
5 the way to the sidewalk, that mean I'm less than 100 feet from
6 where that structure would be. So everything he does have a
7 direct impact on what I'm doing.

8 The -- like you said, any time the ANC, they would just
9 release that the meeting would start in an hour and they would
10 give you a link to th3e ANC meeting. It was really too much not
11 advance notice, and if there was, not one in advancely where you
12 could have a plan and thing. And everybody knows that I been in
13 opposed of this building since its inception, and even since he
14 got the approval from the ANC, he told them at the meeting he
15 will be in touch with me, the developer, Mr. Damani. Once he
16 got the approval from the ANC, I haven't heard from him since
17 the ANC to this meeting because we was talking about some of the
18 things that I heard which is the height restriction and the
19 (indiscernible) restriction --

20 CHAIRPERSON HILL: Mr. Damani, don't worry about it,
21 Mr. Damani, I see your hand.

22 Go ahead, Mr. Cotton.

23 MR. COTTEN: Right. And then even building out to
24 those things where he will block the both the units right next
25 to him is a safety issue because they can't even see down the

1 street 'til they get to the edge of the property. So if somebody
2 was coming up on the side of the building or anything of that
3 nature, it's a safety issue that's created from that. As far as
4 the eyesore, Mr. Damani created the eyesore. He bought the
5 property ten years ago and didn't build on it, didn't try to
6 clean it up. He didn't do anything 'til just this Monday where
7 he knowing -- after I was complaining even to that, I asked him
8 first question, why haven't you responded to our request to clean
9 this property for nine years. He just sent somebody out there
10 last Monday to try to do something. And the weeds and everything
11 growing on that property so big that he got to get a permit from
12 the city even to cut the trees, cut the weeds down because they
13 grown so height that he couldn't -- they can't be feasible.

14 CHAIRPERSON HILL: Okay, Mr. Cotton --

15 MR. COTTON: And as far as this -- and I'll let it --
16 and we can go -- as far as the investment thing, he bought this
17 property, he signed the paper knowing that that property was a
18 risk for development. So if he -- if you signed that letter
19 saying that you know it's a risk for development, then anything
20 you're doing you're doing based on the fact that you might lose
21 money. So he alleviated everybody of their -- he accepted that
22 he might take a loss on this property. And with that being said,
23 he can't come in here now and throw the money in there to ask
24 everybody to feel sorry for him and invest in the property that
25 they told him was a high-risk property when he purchased it.

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1 CHAIRPERSON HILL: Okay.

2 MR. COTTON: I mean, on that standpoint, I don't think
3 there was the community outreach that he's talking about. He's
4 not involved in the community no more than trying to get this
5 property built.

6 CHAIRPERSON HILL: Okay. All right, Mr. Cotton. I'm
7 just saying you've gone way over your time, that's all I'm going
8 to say.

9 Does the Board have any questions for any of the
10 witnesses?

11 Okay. All right. Okay. I'm going to excuse the
12 witnesses and have them, just if they want to stay in the
13 background there, and if we need you, we can pull you back
14 forward.

15 Let's see. I'm looking at my fellow Board members.

16 Okay. Yeah, Mr. Blake?

17 COMMISSIONER BLAKE: I was hoping to hear back from the
18 Office of Planning on that question you asked.

19 CHAIRPERSON HILL: Okay.

20 So Ms. Thomas, can you hear me?

21 MS. THOMAS: Yes. Yes.

22 CHAIRPERSON HILL: So Ms. Thomas, I'm just trying to
23 -- I mean, I'm -- and this is -- like I don't know -- I know
24 we're not deciding anything today probably. And so there's a lot
25 of stuff we're going to have to try to figure out what we may or

1 may not want to hear about and try to understand a little bit
2 more about what's being asked. But I mean, you know, I am a
3 little bit curious of your thoughts on the economics with regard
4 to this property. You know, I think that, you know, this -- the
5 pilings that need to be done in order to accommodate WASA and
6 the pipe are something that is at least to be considered. Now,
7 whether or not again that is something that the Board eventually
8 -- anyway, you understand my question, Ms. Thomas. What do you
9 think, Ms. Thomas?

10 MS. THOMAS: Well, I think that we would need to see
11 more details and a financial statement. We can't make that
12 judgment here. And we would certainly need to do a separate
13 analysis on that. That would take some more time.

14 CHAIRPERSON HILL: Okay. All right. So there we go.
15 Mr. Blake, did you get enough out of that answer?

16 COMMISSIONER BLAKE: I did. I'd like to do one quick
17 question to the Applicant again, just on that number. And this
18 is more of a -- I just want to get your gut feel on it.

19 And Ms. Wilson, you're fine, if you'd like to provide
20 some additional information, if the Board leaves it open to do
21 that on -- from real estate agents and all that stuff. But if
22 you could tell me -- if I said if you removed that \$403,000 from
23 that development of the six unit proposed, what does the break-
24 even look like relative to that option?

25 MS. WILSON: I haven't done that and I can't do that

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1 math off the top of my head.

2 COMMISSIONER BLAKE: I was asking Mr. -- the Applicant.

3 MS. WILSON: Oh, okay.

4 MR. DAMANI: Okay. So I'm trying to understand the
5 question. So what you are saying, and please correct me if I'm
6 wrong, that if we were to take out the cost, which is the pile
7 foundation work cost?

8 COMMISSIONER BLAKE: No, no. There are two different
9 costs here. I mean, I think we just talked about the pile
10 foundation costs, which are significantly higher.

11 MR. DAMANI: Yes.

12 COMMISSIONER BLAKE: The other cost in here is the
13 \$403,000 associated with the WASA-related delays.

14 MR. DAMANI: Okay.

15 COMMISSIONER BLAKE: If we were to remove that
16 \$400,000, how does that play? And just relative to that, you
17 calculated \$708,266.56 as the break-even number under that
18 scenario. I said if you remove that element, how does that break-
19 even compare to the current market value and profitability? And
20 I know you can't really remove it, because you paid it, but just
21 -- I'm just trying to get a sense of how would that --

22 MR. DAMANI: Right. No, I agree. So yeah, it would
23 -- if I remove that, it would bring in a better category with
24 respect to the liability. I agree, even though, as you're
25 suggesting, that yes, I have spent, but let's say I cannot recoup

1 that money, for example, then it would become, how should I say
2 this, a lesser project would also work if that answers your
3 question, but I'll have to do the math. Will that increase in
4 cost in something? Probably not. It will decrease, as you are
5 alluding to. And that would -- even a little -- a lesser project
6 would make sense; I agree.

7 COMMISSIONER BLAKE: Thank you very much.

8 MR. DAMANI: Yes.

9 CHAIRPERSON HILL: Sure, go ahead, Dr. Imamura.

10 ZC COMMISSIONER IMAMURA: Thank you, Mr. Chairman.
11 I've had friends tell me that I'm not -- I don't have a very good
12 poker face. So I've been listening and watching everybody else's
13 facial expression and body language here. And so I'm sure others
14 watch mine. But building off of Board Member Blake's question,
15 Mr. Damani, and I think what one of the witnesses had alluded to
16 that it's an all or nothing proposition, but it doesn't sound
17 like that's the case here. Is that right?

18 MR. DAMANI: So, yeah, so it's not all or nothing.
19 That's not how I have presented. However, some of them have
20 taken it that way that it's all or nothing because of -- see,
21 most of them do not know the struggle with respect to what I'm
22 going through as a property owner and I tried my best to explain
23 each and every person as much as I could. You know, when you
24 knock on someone's doors, show up unannounced, they are in the
25 middle of something or doing something. And that said, you know,

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1 I tried my best to explain to everybody with regards to what I've
2 been through. However, and most of them understood and were very
3 supportive besides that it's been an eyesore or so on. I think
4 any property which is not developed around all developed homes,
5 how should I say this, it becomes a place where people like to
6 dump or throw things or, you know, park their cars or so on and
7 so forth. So it just -- and I don't I don't live there, right?
8 It's the land I own and I care. Over the years, I have done as
9 much as I could, but I hundred percent agree that for ten years
10 I was not there every week cutting grass. I don't disagree with
11 that. However, I have been --

12 CHAIRPERSON HILL: Mr. Damani, it's okay, it's all
13 right. I don't even know if you're getting the answer.

14 MR. DAMANI: So --

15 CHAIRPERSON HILL: I got you, Mr. Damani.

16 Dr. Imamura, what was your question again? Oh, yeah,
17 all or nothing, all or nothing, right.

18 ZC COMMISSIONER IMAMURA: Right. I got my answer, Mr.
19 Damani, and I think others do too on the record.

20 And just to follow-up, I guess I just have maybe one
21 or two more questions here, Mr. Chairman.

22 CHAIRPERSON HILL: Yep, sure, go on.

23 ZC COMMISSIONER IMAMURA: So very clear, Mr. Damani,
24 that people, you know, may or may not have fully understood the
25 things that you've gone through over the past decade with this

1 property. And as Vice Chair John mentioned, we are here today
2 in 2022, ten days from 2023, a decade ago since when you purchased
3 that property. So what's before us here are the zoning regs that
4 we have to apply. That said, you know, this is a Rubik's Cube
5 of sorts for sure. And as Ms. Wilson has probably already
6 surmised in the first probably 20 minutes of this hearing that
7 there's a general theme, tone, and tenor to this project. And I
8 think, she heard me mention this Monday on the Zoning Commission,
9 crime prevention through environmental design. I think a lot of
10 people in general support the development here, but become a
11 little prickly with the height and density of the project here.
12 What I can say is that -- and my next question here is for Mr.
13 Markus, but certainly I appreciated his original design as
14 contemporary as it was probably not fitting in the context of the
15 neighborhood, Mr. Damani, you certainly have a capable architect
16 here on your team.

17 So, Mr. Markus, what I have not heard yet and I think
18 it's just because of a series of interruptions, but I haven't
19 heard why the first floor is set at 12'10" -- you did describe
20 why you've set that overhang, so but what I haven't heard is why
21 isn't that overhang set on the third floor instead of the second
22 floor?

23 MR. MARKUS: All right.

24 ZC COMMISSIONER IMAMURA: That would lower the height
25 of the first floor of course to the 10'6" I think it's in the

1 exhibit.

2 MR. MARKUS: Right. I think the -- because of the
3 restrictions in the lot and the restricted footprint, we were
4 trying to get the larger footprint to get these larger units so
5 we could have some three-bedroom units. So that -- it seems like
6 a little bit of overhang, but because of that triangular shape,
7 giving that overhang to multiple floors helps get you to those
8 larger units, which is helpful in this community.

9 ZC COMMISSIONER IMAMURA: Certainly understand that,
10 but that's exacerbating the problem with the height, right? So
11 by, you know, pushing it out, you're extending the height of the
12 building itself, right? So now that's what's causing this sort
13 of prickly issue, one of the reasons. So perhaps it's pulling
14 that back in.

15 Certainly appreciate the pile issues here, Mr. Damani.
16 And I think you probably would agree that while that's an
17 additional expense here, it is probably to your benefit. I can
18 only imagine what would happen if those tunnels in such disrepair
19 did collapse and now this, you know, parcel remains undeveloped
20 for another year or two or more because of that, so.

21 I think that -- those are my general comments, Mr.
22 Chairman. I think there is some room here to make some
23 adjustments and get to a design solution that works, that
24 satisfies both OP's recommendation -- and that just also exempts
25 -- you know, it demonstrates the fact that OP rarely, if ever,

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1 offers an alternate path. And so that just tells you sort of
2 the complexity of what we're dealing with here. So in general,
3 at least from my sense, I don't -- again, Mr. Damani, it's this
4 height and density issue that a lot of people have some concerns
5 about. It's certainly something that I have some heartburn about.
6 And as I said, I'm sure Ms. Wilson already summed that up in the
7 first 20 minutes.

8 So that's all I have, Mr. Chairman. I'll yield back.

9 CHAIRPERSON HILL: Okay. Thanks.

10 Okay. Let me just -- let me -- I know I'm going to
11 lose a Board member, and I might want to try to get one more case
12 in here before I lose my Board member.

13 The -- I guess, Ms. Wilson, we're going to probably
14 have a limited scope hearing on this I guess, and I would suggest,
15 and I'm going to let the Board members go around the table as to
16 what they may or may not want, I would be -- I'd be interested
17 in you going back and talking to your client and figuring out
18 how they may or may not be able to work within the parameters
19 that they heard discussed today with regard to also the different
20 Board members' comments and the Office of Planning's
21 recommendation, as it is something that the Office of Planning
22 doesn't normally do. We are all in agreement that it is a vacant
23 lot that needs to be -- and that it's, at least what I've heard
24 from my fellow Board members, it's a vacant lot that would use
25 some development. It's been there for ten years. And now this

1 -- there's the WASA issue that is what it is, and that, you know,
2 the zoning regulations have changed. And so I would go back and
3 talk to your client and see whether they want to continue with
4 this argument. And if so, then we would need probably a lot more
5 financial justification as to why you need the two additional
6 units. Right? Why you can't make the six units work rather than
7 the eight. And also, you know, with the design that might work
8 -- anyway. So that's my little thing.

9 All right. Does anybody else -- so I'm just going to
10 go around the table and see what things people might or might
11 not want.

12 Mr. Smith, would you like anything?

13 COMMISSIONER SMITH: I'm going to keep harping on the
14 shadowing. I want a better explanation that I don't buy the
15 Office of Planning's argument that -- yes, it's an inadequate
16 tool to measure the impact of light and air, but it's a tool that
17 we have. So I would like to see a shadow study that shows the
18 existing conditions as they are now, that way we can better
19 compare, and the community can better compare because that was
20 one of the concerns of Mr. Cotten that he's not -- you know, he's
21 even concerned about, you know, issues of light and air on his
22 property. So I want to see a better study on that. And you
23 know, everything else that Mr. Hill stated, some additional
24 financial information.

25 Also I have a question. What is the -- and this is

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1 probably to the architect, Mr. Markus, what is the ceiling heights
2 again between these floors? Are these high ceilings that you put
3 in?

4 MR. MARKUS: The first floor like we talked about is
5 very high, but the other floors were shown at ten feet floor to
6 floor. And you typically have about a, say, 18 inches of
7 structure there, so eight and a half feet. So we were trying to
8 get eight and a half to nine feet ceiling heights in the upper
9 floors.

10 COMMISSIONER SMITH: I was about to say I don't believe
11 that's the minimum ceiling height per D.C. building code. You
12 could probably go shorter than that. I get from a design
13 standpoint in 2022 that higher ceiling heights a more marketable.
14 But you're asking us for variances and you know there is some
15 concern about height and I will go on the record and say I'm very
16 concerned about the height and density of that use variance. And
17 it seems like you can work within the existing regulations to
18 attempt to make that work a little better than what you're doing
19 now. So just putting that out.

20 CHAIRPERSON HILL: Okay. All right. That was Mr.
21 Smith.

22 All right. Let's see. Mr. Blake?

23 COMMISSIONER BLAKE: I just want to say, first of all,
24 I do think it's really important in a successful, and it could
25 be a very attractive development that needs to take place in this

1 place, in this area. It's important though that this design
2 matches, you know, what WASA's trying to accomplish and what the
3 zoning regulations require. It reminds me a lot about our HPRB,
4 our historical discussions, where we go back with, you know,
5 historical wants this but the zoning requirement is this. And
6 we go back and forth. It's not quite the same thing, but it's
7 similarities. And I think you've come up with a pretty good
8 attractive situation that fits WASA, but you haven't quite gotten
9 the button right for zoning. So I think there's some interaction
10 that needs to take place to hone those plans so they kind of fit
11 better with what the zoning requirements are. The issue to me
12 is substantially, let's see, impairing the intent, purpose of the
13 zone. So I think lessening some of these issues, real issues,
14 that takes away substantially, and it's impairing but not
15 substantially. So I think it's important to kind of make sure
16 we kind of balance that because this is something that's actually
17 I think attractive and would benefit the community. So the thing
18 I was concerned is that as we went through your slides and your
19 presentation, I see that it's been a dynamic process and you have
20 altered the design of the building a couple times and a few things
21 here and there. We are at a point where we're focusing on making
22 sure we have a picture of what we are approving. So we're
23 probably -- we're going to need to have that kind of a clear
24 picture of this -- if these are the plans and this is what we're
25 proposing without, you know, last -- but, you know, gyration to

1 say we'll put it back in later. So that would be one thing I'd
2 really like to see is a very clear this is the one plan that
3 we've come up with that kind of balances out the two issues.

4 And that -- and as far as the economics part is
5 concerned, I think we had -- I've heard from the designer that
6 it is clear that, you know, there are some costs in here that a
7 developer would typically bear as part of the development thing.
8 It's unfortunate to get caught in a situation where the game
9 changes as you play it, but there are certain development costs
10 and so forth that you get, you know, out of the way, you make a
11 decision during your feasibility, but this was a real long
12 feasibility. And so I think at the end of the day, you know, as
13 you pointed out, a lesser project may be possible. I think we
14 should concentrate on trying to get this over the finish line at
15 some point.

16 So those are my comments, and the things I'd want are
17 just some very complete plans that jibe with balance between WASA
18 and OP. And it may require some discussions with OP or the Office
19 of Planning prior to our next meeting as well, I think now, with
20 the ANC.

21 CHAIRPERSON HILL: Okay. Thanks, Mr. Blake.

22 Dr. Imamura?

23 ZC COMMISSIONER IMAMURA: I echo Board Member Blake and
24 Board Member Smith. What I would like to see, and I realize,
25 Mr. Damani, that you're hearing all these requests and that means

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1 time with Mr. Markus is spent refining the set of design it's
2 going to add costs here, but I think it can be done in a way
3 that's, what I would recommend at least, instead of a polished
4 product to be published here, I recommend that you and Mr. Markus
5 work out something in quick sketch of what that massing might
6 look like. It looks as if, Mr. Markus, you might have used
7 SketchUp for your perspectives, I don't know, but it should be
8 pretty quick to provide what that might look like for the
9 neighbors that are concerned, to show a perspective at the street,
10 at the pedestrian level, a pedestrian scale. I think that's
11 important. That would also go to Board Member Smith's comment
12 about just shadow studies and light and air, that kind of thing.

13 To me, there's two parts here you can either move
14 forward with, you know, what your argument is that we've requested
15 some additional financials, which is a much higher bar versus
16 what, you know, what can we do within the regulations that we
17 have, right, which is kind of a lower bar here and it may be a
18 quicker solution. So I think Mr. Markus could probably whip
19 something up relatively quickly.

20 My concern, Mr. Markus, is the limit of construction
21 all the way out to the sidewalk there, right, and that kind of
22 is this interruption along the streetscape. I realize that it
23 may impact the size of the unit, but I would at least try to look
24 at pulling that back and then maybe at least on that front -- on
25 the street side, maybe that's where your overhang could be on the

1 second floor, but then on that third floor. We either just --
2 you'll work that out. And it may not work. But you'll figure
3 that out. But that's where I see this kind of heading. And I
4 think it's -- would make it a little more palatable. So then at
5 least you have this continuous green strip that's running
6 through. Does that make sense, Mr. Markus, what I'm talking
7 about, what I'm describing?

8 MR. MARKUS: I follow what you're saying, yes.

9 ZC COMMISSIONER IMAMURA: Okay. All right. Good. All
10 right.

11 And that's it, Mr. Chairman. I'll leave it to Vice
12 Chair John.

13 CHAIRPERSON HILL: Okay. Thank you.

14 Vice Chair John?

15 VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree
16 substantially with the comments so far. I am having a very heavy
17 lift with the area variance for height and the use variance for
18 the number of stories and density. So to the extent that the
19 design can be modified to address those concerns, I would be in
20 a better place. I don't believe that the actions of WASA
21 contribute to the zoning history because it is the Board's
22 decision or it's -- I'm not -- I don't know of any Court of
23 Appeals decision that would say that a determination by WASA
24 would be an exceptional condition that would cause some unjust
25 reliance. I am not -- or detrimental reliance or what the

1 specific legal theory is. But the Board has been willing in the
2 past to say that the zoning history of a project or a building
3 creates an exceptional condition. I don't see it in this case.
4 However, the easement is clearly an exceptional condition. And
5 the fact that it's more than the width of the pipe and it's 50
6 feet is really quite strong. So I would say then that we need
7 to look at the undue burden in the case of the area variance and
8 the practical difficulty in the case of the zoning -- I'm sorry
9 it's late and I'm hungry -- in the case of the use variance and
10 the practical difficulty in terms of the area variance for height.
11 And that's sort of where I am.

12 I am very appreciative of the Applicant's efforts to
13 develop this piece of property, and I hope that he's successful.
14 I agree with Mr. Blake that those expenditures that were part of
15 that long zoning history under different regulations, I want to
16 stress that we're under the current regulations, we can't go back
17 and re -- what's the word -- reaffirm a zoning order that has
18 expired for many years. So we have to look at the current
19 regulations and what they allow us to do. And so I think that's
20 where we are. And I'm not prepared -- in a nutshell I'm not
21 prepared to defer to WASA and to outsource the Board's
22 jurisdiction to WASA. So that's kind of where I am and what I'd
23 like to see. Thank you, Mr. Chairman.

24 CHAIRPERSON HILL: Okay. No, thanks, Vice Chair John.
25 Okay. Let's see, Mr. Damani, I'm looking at you in

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1 that this has gone on -- let's see, we're coming up on 1:00, we
2 started at 10:30, 11:30, 12, I don't know. It's gone on a long
3 time for this hearing. And I know you got a long time to where
4 you got -- you don't need to comment on this, because I'm going
5 to turn to your attorney after this. What I'm trying to say,
6 Mr. Damani, is I think -- I know that Mr. Wilson has been before
7 us a lot and she's able to really read, I would imagine, what is
8 it that the Board kind of is curious about with their questions
9 and what may or may not be worth your time, Mr. Damani. So if I
10 were you, I would get as fast as I could get to whatever you
11 think you can get to and cut your losses or do whatever you need
12 to do.

13 So that being said, Ms. Wilson, right, you can either,
14 as I understand it, come back and argue, I guess you're going to
15 do both things, I don't know, either come back and argue
16 everything that you're trying to get with us again including kind
17 of like the economic data, and/or come back with whatever you may
18 be arguing now after this hearing. How much time do you need?
19 And I think you need a lot of time, by the way.

20 MS. WILSON: I do too. And I think I'll probably defer
21 to the architect just because we are probably going to redesign
22 some of the facades and have to provide different options. So
23 it'll depend on --

24 CHAIRPERSON HILL: Mr. Moy, Mr. Moy?

25 I mean, if you don't have -- Ms. Wilson, if you don't

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1 have to go back to the ANC, that's, you know, whatever you all
2 --

3 MS. WILSON: I don't think we will just because they
4 are supportive of the project in general.

5 CHAIRPERSON HILL: They're supportive, I understand,
6 the bigger project.

7 MS. WILSON: Right.

8 CHAIRPERSON HILL: And is it -- Mr. Moy, was this ANC
9 one of the ones that were changing? It is?

10 MR. MOY: Sir, yeah, as the Board's aware, this
11 particular case is because of the redistricting of the
12 properties.

13 CHAIRPERSON HILL: Yep.

14 MR. MOY: Or rather the boundaries of the ANC. This
15 one's affected because starting on January 2nd there will be a
16 new --

17 CHAIRPERSON HILL: So when can we come back -- I think,
18 Ms. Wilson, you're going to have to go before the new ANC again.
19 Okay? Because it's a new ANC. And so, you know -- sorry, Mr.
20 Damani, there's nothing I can do about that. The ANC changed
21 and there's not -- go ahead, Mr. Damani, (indiscernible).

22 MR. DAMANI: I was just going to say that the ANC, yes,
23 is changing, it's been supportive. And because of all the efforts
24 and -- and I want to again say that overwhelming majority of the
25 residents within the block support and we have --

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1 CHAIRPERSON HILL: Let me just do this.

2 Ms. Wilson, you can --

3 MS. WILSON: Okay, yes?

4 CHAIRPERSON HILL: You can decide what you want to do,
5 right?

6 MR. DAMANI: Right.

7 CHAIRPERSON HILL: You can come back, Ms. Wilson -- I'm
8 talking to, Ms. Wilson, Mr. Damani, sorry. Oh, no, Mr. Smith
9 has an opinion. And so I --

10 MS. WILSON: We'll reach out, absolutely. We'll reach
11 out to the ANC.

12 CHAIRPERSON HILL: Mr. Smith had his hand up.

13 COMMISSIONER SMITH: Yeah. So I would highly
14 recommend, regardless of whether the boundary lines were
15 changing, if the scope of this project changes -- and you know,
16 you've heard from a couple of us regarding the height variance
17 and the use variance, so there may be some substantial changes
18 in the design. And we -- you're on the record here, you know,
19 hearing some opposition from some of the other surrounding
20 property owners, so not to me -- it's not so much -- yes, you
21 need to take it back to the ANC, but it's also so that the rest
22 of the community can understand the full scope of your project.
23 So that's why I would also recommend going back to the ANC so
24 that you can have that public dialog, not necessarily to get
25 another what may be another recommendation of approval from the

1 ANC.

2 MR. DAMANI: I totally agree. That's what we are going
3 to do. I just wanted to share that, you know, there are more
4 than 11 people, those who provided us support after going -- they
5 just are not here sadly. The ones those were here and we have
6 accommodated the design which you see the elevation with that was
7 a recommendation of Mr. Hines.

8 CHAIRPERSON HILL: Hey, Mr. Damani. I'm going to
9 interrupt you. I don't think -- I mean, the Board wants to see
10 something happen, right? We're just like -- we unfortunately are
11 restricted also by the zoning regulations. That's why we are
12 here. Right? I also -- I always make this joke. I wish nobody
13 was ever here. I wish everybody just did matter of right. The
14 attorneys don't think so probably. But you know, I think like,
15 you know, I wish there was just -- do matter of right, okay?

16 And so, Mr. Moy, the schedule is what?

17 MR. MOY: So Mr. Chairman --

18 VICE CHAIR JOHN: Mr. Chairman, if I could --

19 CHAIRPERSON HILL: Oh, I'm sorry. I'm sorry, Vice
20 Chair John had -- Vice Chair John had her hand up --

21 VICE CHAIR JOHN: Mr. Chairman, if I could interrupt.
22 I think this case is different with the change in the ANC because
23 it's going -- if there are changes made to the application and
24 if there is more information to be submitted, then this current
25 ANC cannot speak to -- cannot approve, you know, what's in the

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1 record. It has to be the new ANC. That's a -- you know, that's
2 a ANC jurisdiction that I'm opining on. But I would think -- I
3 mean, if we were to decide today without any additional
4 information, my view is that we would not need to go back to the
5 ANC. But if we're going to change or add information to the
6 record, then we would need to go back to the ANC, which may or
7 may just rubberstamp what's there before. And if there is support
8 in the neighborhood, that could happen.

9 CHAIRPERSON HILL: My problem was that the whole thing
10 with Mr. Moy' time. But regardless, it may be what it is. I
11 think we're pretty jammed up anyway in the new year, so I don't
12 know when we could -- what I recall, Mr. Moy, is the new ANC
13 stuff is happening middle of March or end of March, right?

14 MR. MOY: Yes. Yes. I have a timeline for you, sir.

15 CHAIRPERSON HILL: Right.

16 MR. MOY: If you're ready, so 'cause the earliest to
17 meet the public notice requirements would be a hearing date of
18 March 22nd. That's at the earliest. All right. So if the Board
19 is comfortable with returning this application case to March
20 22nd, I can give you timelines for the Applicant's filing and the
21 deadline for responses.

22 CHAIRPERSON HILL: That's fine. So even if they didn't
23 go back to the ANC, which I'm not saying they will or wouldn't,
24 Mr. Moy, when is -- when do we even have a date that they might
25 be able to come back to us that's not overly burdensome to the

1 Board?

2 MR. MOY: Well, I don't have an answer when the new ANC
3 would have their first hearing. My hope is that they would have
4 their first hearing in January.

5 CHAIRPERSON HILL: Okay. That's all right. Okay.

6 Mr. MOY: Yeah.

7 CHAIRPERSON HILL: Okay. So Ms. Wilson, you -- it
8 looks like the end of March is when you have to come back with
9 the new ANC. Okay?

10 Mr. Damani, do you hear me?

11 MR. DAMANI: I do, sir.

12 CHAIRPERSON HILL: Sorry.

13 Okay. Then what's that date, Mr. Moy, and you want to
14 give us the dates?

15 MR. MOY: All right. So a continued hearing date on
16 March 22nd. Working backwards from there, responses from the
17 parties, March 8th. I don't know if that's going to be doable.
18 And then the Applicant to make their filings by February 22nd.
19 I'm assuming the ANC would have a hearing date certainly in
20 February, but I don't have that date in front of me.

21 CHAIRPERSON HILL: Okay.

22 All right. That's it, Ms. Wilson, you got anything
23 else for us?

24 MS. WILSON: No. Thank you all for your time. We've
25 been here a while.

1 CHAIRPERSON HILL: Okay. All right. Y'all have a nice
2 new year.

3 MR. DAMANI: Thank you, everyone. Thank you, everyone.

4 CHAIRPERSON HILL: All right. Okay. So what to do?
5 I guess we'll just go ahead and break. I don't think -- we can
6 try -- I mean, if y'all want to try -- and I'm looking at Ms.
7 John here, if you want to take a five-minute break and then come
8 back and see if you -- see if we can do this next one relatively
9 quickly and just knock that one out of the way. Maybe no waiting
10 -- you know, Ms. John, are you a hard stop?

11 VICE CHAIR JOHN: It's sort of a hard stop at 1:30.

12 CHAIRPERSON HILL: I believe that's right. You have a
13 hard stop. Don't worry about it. I'll tell you what, Ms. John,
14 when you have to leave, why don't we do this, let's just take
15 -- I mean, if my Board members are okay, I'd like to do this one
16 hearing, and if Ms. John has to leave, I still have enough people.
17 So let's just take it -- let's just take a quick five, ten-minute
18 break, whatever y'all need, and when you come back, you come
19 back, if it takes longer, it takes longer. And then we'll have
20 this one case, and then we'll take lunch. So we do 20840 and
21 then we'll take lunch. Okay? But we're taking a break now.

22 VICE CHAIR JOHN: Thank you.

23 CHAIRPERSON HILL: Thank you.

24 (Whereupon, there was a brief recess.)

25 CHAIRPERSON HILL: Why don't you go ahead and call our

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1 next case?

2 MR. MOY: Thank you, sir. The -- after a very brief
3 recess, the Board has returned to its public hearing session, and
4 the time is at or about 1:11 in the afternoon. So for the record,
5 Mr. Chairman, I'm going to reread the caption to this case. This
6 is Case Application No. 20840 of Gwendolyn Jackson. Self-
7 certified application pursuant to Subtitle X, Section 901.2 for
8 a special exception under Subtitle D, Section 306.4. And the
9 property is located in the R-2 zone at 5008 12th Street, N.E.,
10 Square 3900, Lot 53. And as you'll recall, the -- Ms. Wanda
11 Gabriel will be testifying with her oral arguments.

12 CHAIRPERSON HILL: No, no, Worsley, Worsley.

13 So could the applicant please introduce themselves for
14 the record?

15 MS. WORSLEY: Yes. I'm Gail Worsley. I'm the
16 architect. And I believe Ms. Gwendolyn Jackson is also -- she's
17 the owner of the property --

18 CHAIRPERSON HILL: Oh, okay.

19 MS. WORSLEY: -- she should be here as well.

20 CHAIRPERSON HILL: Okay. But Ms. Worsley, you're going
21 to be presenting to us, correct?

22 MS. WORSLEY: Yes, that's correct.

23 CHAIRPERSON HILL: Okay. Ms. Worsley, why don't you
24 go ahead and give us your argument as to why you believe your
25 client is meeting the criteria for us to grant the relief

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1 requested, 15 minutes on the clock just so I know where we are,
2 and you can begin whenever you like.

3 MS. WORSLEY: Sure. This is a pretty straightforward
4 project. The property is located in the 5000 block of 12th
5 Street. It is a single -- it's a duplex, a single-family house
6 at the moment, relatively small in its footprint, approximately
7 I think it's like 550 square feet. The owner would like -- she's
8 lived in the neighborhood for a really long time, most of her
9 life, I think since it was a teenager. And she'd like just a
10 little bit more room, she plans to age in place. She'd like to
11 do a 15-foot rear -- two story plus basement rear addition which
12 exceeds the 10-foot rule. But in the context of the site, Ms.
13 Jackson's house is pulled a bit forward from the other duplexes
14 and by about five, five and a half feet from some of her
15 neighbors. And so we feel that the impact of this addition would
16 be mitigated by the fact that her rowhouse is a bit more forward
17 than the other row houses and that in -- it would line up
18 essentially with some of the other ten-foot additions that are
19 existing. There aren't too many on this particular block. Most
20 of the houses are pretty much the same. I think there's one or
21 two on her side and then there's some others kind of on the lot
22 -- on the block behind her. There's another 15-foot addition, I
23 think, that also obtained a BZA approval on 11th Street.

24 And we feel that, you know, we're not trying to go --
25 we're not asking for any other varian- -- any other deviations

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1 from the regulations, we're within our lot occupancy, we're doing
2 -- we're keeping within the side yard, rear yard, all of those
3 items. The only item we're requesting a special exception for
4 is the ten foot. The 15 feet just makes the room much -- you
5 know, makes it better for her in terms of furnishing and just
6 navigating the space. Like I said, it's a small footprint of
7 the house and we just want to add a bit more room for her to be
8 able to be comfortable as she stays in the neighborhood for the
9 remainder of the time that she's able to.

10 CHAIRPERSON HILL: Ms. Worsley, I got you. I see
11 everything that's in the record, including the shadow studies.

12 MS. WORSLEY: Yes.

13 CHAIRPERSON HILL: Let me turn to the Office of Planning
14 first.

15 MS. WORSLEY: May I add one thing -- one other thing?

16 CHAIRPERSON HILL: Go ahead, Ms. Worsley.

17 MS. WORSLEY: In addition to -- in response to Ms.
18 Gabriel's request, she's a bit uphill from us. And so we feel
19 that the impact of the addition, it's about two lots down, will
20 not do anything detrimental to her yard. So water doesn't run
21 uphill. So that's my last item. Thank you.

22 CHAIRPERSON HILL: Okay. Great. Thank you.

23 All right. I'm going to turn to the Office of Planning
24 first and then I'll come back to the Board with questions.

25 See the Office of Planning?

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1 Mr. Young, do you see the Office of Planning?

2 MR. YOUNG: Yeah, Ms. Thomas is on.

3 CHAIRPERSON HILL: Ms. Thomas, can you hear me?

4 MS. THOMAS: Yes.

5 CHAIRPERSON HILL: Could you introduce your fr- --
6 could you introduce yourself for the record please?

7 MS. THOMAS: Yes. Good afternoon, Mr. Chair, members
8 of the Board, Karen Thomas with the Office of Planning.

9 CHAIRPERSON HILL: Okay. Ms. Thomas, can you tell us
10 about your report?

11 MS. THOMAS: Yeah, Mr. Chair, I prefer to rese on the
12 record of our report.

13 CHAIRPERSON HILL: Okay.

14 MS. THOMAS: Thank you.

15 CHAIRPERSON HILL: That's fine.

16 All right. Does the Board have any questions of the
17 Office of Planning and/or the Applicant?

18 Okay. Let's see. Mr. Young, is there anyone here
19 wishing to speak?

20 MR. YOUNG: Yes, we have one witness.

21 CHAIRPERSON HILL: Okay. Could you bring that person
22 forward please?

23 Ms. Gabriel, can you hear us?

24 MS. GABRIEL: Yes.

25 CHAIRPERSON HILL: Could you introduce yourself for the

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1 record please?

2 MS. GABRIEL: Okay. Hi, my name is Wanda Gabriel. I
3 own the property located at 5014 12th Street, N.E.

4 CHAIRPERSON HILL: Okay. Ms. Gabriel, you'll have
5 three minutes to give your testimony and you can begin whenever
6 you like.

7 MS. GABRIEL: Okay. Yes, my concern has primarily been
8 dealing with the water. We've had -- I've had issues with water
9 in my house seeping -- I purchased the house in 1991. I've lived
10 in -- my family have lived in the area since 1967, so I'm very
11 familiar with the area. So as my house is going approaching up
12 the hill, however, all of the houses starting from 5012 up to
13 about 5030, we do not have any rear drain. We also do not have
14 -- we also do not have basement back doors. So we do not have
15 those doors. My concern as the water come downhill, which I
16 recognize water does not flow uphill, but as the water go downhill
17 in a retaining wall that is being put into the new basement that
18 Ms. Jackson will be placing, that water could back up. I've
19 already had precedent where I've had to add a sump pump, my
20 adjoining neighbor and I, we've both had to add sump pumps because
21 water has set and because we do not have the rear drain. And my
22 concern is if that water is trapped and backed up from that
23 additional foundation dug down there, will it back up into our
24 properties and then we will then start having this massive amount
25 of water drain and swepage in our yards.

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1 Additionally, I was unaware of this and I saw that Ms.
2 Jackson has indicated she talked to the neighbors. I did not
3 receive any package nor my neighbors, which I talked to, most of
4 them on both sides of the street, on the even and the odd side
5 as well as on the 11th Street and asked them had they received
6 the drawings. I got the drawings from -- I actually got the
7 drawings from off th4e BZA website. So I'm looking at what is
8 there going to be done about drainage, is there a French drain
9 going to be placed because I've already had precedents of water,
10 standing water, in my yard and in my basement. Again, I recognize
11 water does not go -- it flows downhill. But if it's backed in a
12 retaining wall and given we do not have a rear drain, what happens
13 to our property? That's been my main concern. So I'm finished.

14 CHAIRPERSON HILL: Okay. Thanks, Ms. Gabriel.

15 MS. GABRIEL: You're welcome.

16 CHAIRPERSON HILL: I guess a lot of those -- some of
17 those issues, Ms. Gabriel, are going to be done with permitting.
18 And it's things that will happen when they're working on, if this
19 does get approved, working on work with the city. But let me
20 see if my Board has any questions for you.

21 Does the Board have any questions for the witness?

22 Okay. Ms. Worsley, have you been in touch with Ms.
23 Gabriel?

24 MS. WORSLEY: I left my number with the Office of
25 Planning per your request. I haven't spoken with her directly.

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1 CHAIRPERSON HILL: Okay.

2 Ms. Gabriel, why don't you reach out to -- you know how
3 to reach the Office of Planning?

4 MS. GABRIEL: I don't know -- I'm quite sure I can.

5 CHAIRPERSON HILL: Yep, if you call that number on the
6 screen, 202-727-5471 --

7 MS. GABRIEL: Yes.

8 CHAIRPERSON HILL: -- they'll give you Ms. Worsley's
9 information and you all can talk about your concerns about the
10 water.

11 MS. GABRIEL: Okay. Thank you very much.

12 CHAIRPERSON HILL: You're welcome.

13 All right. Okay. Thank you, Ms. Gabriel, you have a
14 nice day.

15 MS. GABRIEL: Okay, you too.

16 CHAIRPERSON HILL: Bye-bye.

17 Mr. Young, if you can excuse the witness please?

18 Okay. All right. Do we have any final questions of
19 the witness?

20 Okay. Ms. Worsley, you have anything you'd like to add
21 at the end?

22 MS. WORSLEY: No, I think it's -- just trying to be
23 succinct, this is pretty straightforward.

24 CHAIRPERSON HILL: Okay.

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

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1 on the record. Thank you, Ms. Worsley.

2 MS. WORSLEY: Thank you.

3 CHAIRPERSON HILL: Okay. Even though the Applicant
4 said it was pretty straightforward, I mean, any of these things
5 past the ten-foot rule, we tend to actually have a lot of concerns
6 about. In this particular case, again, they're going an
7 additional five feet. I'm comfortable by the recommendations of
8 the Office of Planning as well as the shadow studies that they
9 included. I thought the shadow studies were very helpful. It
10 was actually very helpful just to see the design in a way that
11 doesn't make me have to look through architectural plans. And
12 so I thought that was helpful. I also would agree with the --
13 or be thankful for the support of the ANC. The one person that
14 had some issues and concerns about water, I think again is
15 something that's really more of a construction issue that will
16 be handled at permitting. But I am glad that they now are in
17 touch with each other in terms of the Applicant and the concerned
18 homeowner. So I will be voting in favor of this application.

19 Let's see. Mr. Smith, you have anything you'd like to
20 add?

21 COMMISSIONER SMITH: No, I completely agree with your
22 analysis of this particular case and I also give great weight to
23 the OP staff report and the information that was presented within
24 the record, and I will support the application.

25 CHAIRPERSON HILL: Thank you.

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1 Mr. Blake?

2 COMMISSIONER BLAKE: Yeah. I too am in support of the
3 application. I think that the Applicant has met the burden of
4 proof to be granted the relief pursuant to the provisions of D
5 5201 and the general standards. You know, the shadow studies are
6 reflective, as you said, limited privacy intrusion, has limited
7 window views, and it's -- certainly the addition's in line with
8 the character of the alley. The construction concerns will be
9 addressed by the Department of Building and the permitting
10 process. I give great weight to the Office of Planning
11 recommendation for approval. DDOT has no objection, ANC 5A is
12 in -- recommends approval and it states no issues or concerns,
13 and there are persons in support. I'll be voting in favor of
14 the application.

15 CHAIRPERSON HILL: Thank you.

16 Vice Chair John?

17 Oh, I'm sorry, Dr. Imamura?

18 ZC COMMISSIONER IMAMURA: I agree with my colleagues.
19 Nothing further to add, Mr. Chair.

20 CHAIRPERSON HILL: Vice Chair John?

21 VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree
22 with all of the analysis so far, and I'm in support of the
23 application.

24 CHAIRPERSON HILL: Okay. I'm going to make a motion
25 -- thank you -- to approve Application No. 20840 as captioned and

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1 read by the secretary, and ask for a second, Ms. John?

2 VICE CHAIR JOHN: Second.

3 CHAIRPERSON HILL: The motion made and second, Mr. Moy,
4 if you'd take a roll call?

5 MR. MOY: Thank you, Mr. Chairman. When I call your
6 name, if you'll please respond to the motion made by Chairman
7 Hill to approve the application for the relief requested. The
8 motion to approve was second by Vice Chair.

9 Zoning Commissioner Joe -- Dr. Joe Imamura?

10 ZC COMMISSIONER IMAMURA: Yes.

11 MR. MOY: Mr. Smith?

12 COMMISSIONER SMITH: Yes.

13 MR. MOY: Mr. Blake?

14 COMMISSIONER BLAKE: Yes.

15 MR. MOY: Vice Chair John?

16 VICE CHAIR JOHN: Yes.

17 MR. MOY: Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MR. MOY: Staff would record the vote as five to zero
20 to zero. And this is on the motion made by Chairman Hill to
21 approve. The motion to approve was second by Vice Chair John,
22 also in support of the motion, Zoning Commissioner Dr. Imamura,
23 Mr. Smith, Mr. Blake, Vice Chair John, and Chairman Hill. Motion
24 carries, sir, five to zero to zero.

25 CHAIRPERSON HILL: Thank you.

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1 All right. I know that we're going to lose Vice Chair
2 John for a little while and we may get her back.

3 Vice Chair John, you're welcome to come back whenever
4 you like. If you are unable to, we will understand and wish you
5 a good -- and wish you a good day and happy holidays, if we don't
6 see you. If nothing else, you can come back --

7 VICE CHAIR JOHN: I hope to see you all, Mr. Chairman,
8 because you'll be here 'til maybe about 5:00.

9 CHAIRPERSON HILL: No, I don't know. No, I spoke too
10 soon with Dr. Imamura. He was wishing this might be his lucky
11 day I guess.

12 VICE CHAIR JOHN: I don't think so.

13 CHAIRPERSON HILL: We'll see. We'll see what -- we'll
14 see, Vice Chair John.

15 Everybody else, why don't we shoot for 2:00, you know,
16 and just see. I mean, I don't know. Okay? Coming back today.

17 MR. MOY: Mr. Chair, before I take off, just for the
18 rec- -- just for the public to say that the next application
19 before the Board after your lunch recess is Case No. 20825 (sic)
20 of Rashmi Sutton, correct?

21 CHAIRPERSON HILL: Honestly, whatever you say, Mr. Moy
22 'cause I --

23 COMMISSIONER BLAKE: It's 827.

24 CHAIRPERSON HILL: No, wait, wait. Give me the number
25 again? 20827.

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1 MR. MOY: Yes.

2 VICE CHAIR JOHN: Yes.

3 CHAIRPERSON HILL: Okay.

4 Were you about to say something, Mr. Blake?

5 COMMISSIONER BLAKE: I said 20827.

6 CHAIRPERSON HILL: Okay. Yeah, so we'll do 20827 after
7 lunch. We'll see if we see Vice Chair John again. If not, happy
8 New Year, and good day. See you all in a half an hour.

9 (Whereupon, there was a brief recess.)

10 CHAIRPERSON HILL: Okay. Let's go ahead and call our
11 next case please?

12 MR. MOY: The Board has returned to its public hearing
13 session after a lunch recess and the time is now at or about 2:11
14 p.m. The next case application for the Board is 20827 of Rashmi
15 Sutton. This is a self-certified application pursuant to
16 Subtitle X, Section 901.2 for special exception under Subtitle
17 E, Section 205.5. And the property is located in the RF-1 zone
18 at 223 8th Street, N.E., Square 917, Lot 801. And the only other
19 thing I have to add, Mr. Chairman, if the Applicant can confirm
20 the relief I have just read into the record. Thank you, sir.

21 CHAIRPERSON HILL: Thank you.

22 If the Applicant can hear me, could they please
23 introduce themselves for the record?

24 MS. BRITTINGHAM: Hello, my name is Lacy Brittingham
25 of Brittingham Architecture. I'm the architect for the project

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1 and agent for the homeowner.

2 CHAIRPERSON HILL: Hik Ms. Birmingham -- can you say
3 your last name again?

4 MS. BRITTINGHAM: Brittingham.

5 CHAIRPERSON HILL: Brittingham, Brittingham. I'm
6 sorry.

7 MS. BRITTINGHAM: That's all right.

8 CHAIRPERSON HILL: Ms. Brittingham, if you want to go
9 ahead -- did you hear the relief that the secretary had read?

10 MS. BRITTINGHAM: Yes. So a couple things. The case
11 summary that you guys put up was incorrect. It did say that
12 there's -- that we're proposing a two-story rear addition. We
13 have always been proposing a three-story rear addition in -- and
14 the section is E 205.4 I believe, to go more than 20 -- more than
15 10 feet beyond the attached rear neighbors on both sides.

16 CHAIRPERSON HILL: Mr. Moy, is it E 205.5 to allow the
17 rear wall past ten feet?

18 MR. MOY: At this point, Mr. Chairman, I would like to
19 defer and confirm that with our legal counsel.

20 CHAIRPERSON HILL: Okay. Can you guys -- I'll let
21 legal take a look while Ms. Brittingham is going through the
22 application.

23 And Ms. Brittingham, if you want to go ahead and walk
24 us through your client's application and why you believe they are
25 -- you are meeting the criteria for us to grant the relief

1 requested. I'm going to put 15 minutes on the clock just so I
2 know where we are, and you can begin whenever you like.

3 MS. BRITTINGHAM: Okay. Let's see. So if Mr. Young
4 can pull up the presentation please?

5 CHAIRPERSON HILL: Is it a presentation we have, Ms.
6 Brittingham?

7 MS. BRITTINGHAM: Yes, I mean, it's just the
8 compilation of three of the exhibits.

9 CHAIRPERSON HILL: Okay. So you're in Exhibit 27 now
10 I think.

11 MS. BRITTINGHAM: I don't know, I didn't check the
12 record to see if he uploaded the presentation --

13 CHAIRPERSON HILL: I'm sorry, 26, 26.

14 MS. BRITTINGHAM: -- or the numbered exhibit, but it
15 is --

16 CHAIRPERSON HILL: Okay.

17 MS. BRITTINGHAM: -- it's just the drawings that are
18 Exhibit 26, the sun study photographs that are Exhibit 21, and
19 the sun study exhibit that's -- sorry -- that's Exhibit 20 --

20 CHAIRPERSON HILL: Okay. Great. All right.

21 MS. BRITTINGHAM: -- is what I'm presenting.

22 CHAIRPERSON HILL: I'm going to start with Exhibit 26
23 anyway because I see it.

24 MS. BRITTINGHAM: Yep.

25 CHAIRPERSON HILL: And you can go ahead and begin.

1 MS. BRITTINGHAM: Okay. And just a question. Would
2 you like me to walk you through all of the drawings or -- and do
3 a full presentation or keep it brief?

4 CHAIRPERSON HILL: Go ahead -- go ahead and -- you
5 don't have to walk through all of the drawings. Just go ahead
6 and speak to the relief being requested.

7 MS. BRITTINGHAM: Okay.

8 CHAIRPERSON HILL: And if we need to talk through --
9 just tell us which slide you'd like us to look at when you talk
10 about the relief.

11 MS. BRITTINGHAM: Sure. Okay. All right. So as noted,
12 the -- our proposal is to construct a rear addition that is three
13 stories. It's proposed at 20 feet in length. This is a pretty
14 large lot at 117 feet in length. The existing house has an
15 existing rear yard of 69 feet. And so adding a 20-foot addition,
16 we still have more than double what is the required rear yard in
17 the RF zone. And also with the 20-foot addition, we are still
18 under the by right lot coverage limit of 60 percent. So there's
19 -- the structure is not small, but it is also, we feel, in keeping
20 with sort of the size of the lot. And certainly if you consider
21 sort of -- and you can kind of see it on this image that's on
22 the screen -- a number of the neighboring properties have added
23 rear additions and/or one- and two-story carriage house
24 structures at the back of the property. So let's see. We are
25 also proposing -- our proposal is for a structure that is within

1 the by right limit of height at 30 -- of 35 feet. The proposed
2 height is 33.2 feet. If you can skip to Slide 3 please, Mr.
3 Young?

4 Okay. So this is the existing cellar/basement removals
5 plan. This is just showing the original footprint. If you go
6 one more slide?

7 Here you can see that the 20-foot rear addition is on
8 piers. The basement is not proposed to be extended. We did go
9 -- this project went through the HPRB process earlier this year.
10 We had our hearing in September. They determined that we can
11 infill the dogleg up to the point of the existing rear wall of
12 the house at the basement and first floor, and then beyond that
13 point we have to retain the dogleg form. So that's why the
14 addition is narrower. It does not go property line to property
15 line, it does not go the full width. And the heavy dashed black
16 line, sort of the Z shape, indicates the outline of the original
17 footprint of the house. So you can see that we're complying with
18 HPRB requirements. And again, the basement will not be extended.
19 If you can go to the next slide please?

20 Existing/removals for the first floor. Next slide?

21 Okay. So just to orient you a little bit, there's that
22 same heavy dashed black line showing you where the existing
23 footprint is. We've extended the first floor in alignment with
24 the old rear wall of the house, which is in alignment with the
25 existing rear wall of the house to the north at 225 on the top

1 of your page. And you can see that the house to the to the south
2 at 221 extends further than the back of where we infilled the
3 dogleg too. And then our addition extends -- it goes 11.8 feet
4 beyond the end of that sort of shaded rear corner of their first
5 floor construction. I want to just point out this window that
6 is sort of here at the inside, the left edge of the dogleg, kind
7 of over this area -- window well that goes into the basement.
8 That window at the first level looks into the windowless sidewall
9 of that neighboring property at 221. So that window is not
10 looking into their property. In your photographs, which I believe
11 is Exhibit 10, you can see that photograph into that dogleg. So
12 you can see that that's a parched (phonetic) brick wall with no
13 windows. Let's see, what else? In a few slides, you'll see the
14 elevation drawing of the long wall of the addition. And I just
15 want to point out that that's actually a section cut through the
16 dogleg. So we cut through the window well, cut through the short
17 end of the dogleg, and we'll be looking at the windows that I'm
18 pointing out that look towards the 221 property. But like I
19 said, this one looks at the wall. And then -- so the relief that
20 we are seeking, as I mentioned, is to go 20 feet beyond the rear
21 neighbor to the north, at 225, and we'll be -- and to go 11.8
22 feet beyond the rear wall of the neighbor to the south at 221.
23 Okay. Next slide please?

24 Actually in the previous slide I forgot -- we can see
25 it here as well. But this -- the neighbor at 221, the rear wall

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1 of their house, it actually steps back a little bit at the second
2 floor. But they have this second-floor deck structure on the
3 back of their house, which you'll see in a couple of -- like
4 further into the presentation we have some photographs in the
5 back and you'll see that structure. Next slide please?

6 So here at the second floor, we have stepped the dogleg,
7 the short wall of the dogleg, further into the property. So it's
8 a longer dogleg at the second floor and just allowing us to get
9 a window into that bathroom. And then here this window that's
10 at this rear stair, that window again looks into the windowless
11 brick wall of 221. And then there are no windows proposed sort
12 of east of that along this whole length of the addition to look
13 towards 221 either yard or the second-floor deck. Next slide
14 please?

15 Proposed third-floor plan. These windows look over
16 rooftops and we don't have a -- we do not have a window that
17 overlooks sort of past the structure at 221 into their yard.
18 They're all sort of pushed forward a bit towards the rooftops.
19 Next slide please?

20 And I think we can keep going, couple more. Proposed
21 section here. This is the elevation I mentioned earlier. So
22 this -- what is labeled as the proposed side south elevation of
23 the addition is actually sort of the section is cut through the
24 dogleg portion of the site. Here's the window well, you can see
25 it at grade level, this window that I pointed out on the first

1 floor that looks at the brick wall, and then on the second floor,
2 the window that looks again at the brick wall that's in that
3 stair. Next slide please?

4 Proposed rear elevation. This went through some
5 evolution, mostly based on input from the HPRB process and then
6 also the staff -- at the HPRB hearing they delegated -- they gave
7 us concept approval and delegated final approval to the staff.
8 And the staff member wanted the rear of the house to be designed
9 more traditional than we had originally proposed. And she has
10 sort of given indication that this rear design is approvable from
11 HPRB standards. Next slide please? I think you can skip to
12 slide 18 actually.

13 Okay. So here is where you can see the structure --
14 the structure on the right is the existing subject property at
15 223, the one on the left is the existing structure at 221. And
16 that shows the second-level deck that extends beyond the rear of
17 their rear wall. Also want to point out this garden wall that
18 exists is actually the brick and the fence is on the neighbor's
19 property. So that whole structure will remain unless the neighbor
20 would like to work with us to replace the fence. It is their
21 fence. So that will all stay intact and it's at about seven feet
22 in height, providing, you know, certainly privacy and screening
23 between the two yards. Next slide please? One more?

24 Okay. So here we're standing on the existing deck of
25 223 looking sort of toward -- a little bit towards the north.

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1 You can see on the left there's a green rear two-story addition
2 that is at 229 8th Street, and then the two-story carriage house
3 that is also located at 229 8th Street. The large tree on the
4 left is a heritage tree that we have met with a private arborist
5 and the city arborists to design the project to respect that
6 tree. It's why the addition is on piers, and we will, you know,
7 do hand digging and work to preserve that tree and its health.
8 The tree on the left is an Ailanthus tree, it's a trash tree that
9 is in the -- it's an invasive species in the District. And we
10 have tried to contact the immediate neighbor at 225 to work with
11 us to remove that tree and have not gotten any response from the
12 various methods of outreach, phone, email, mailings, certified
13 mailings have not had any response from him. Next slide please?

14 And we're just a little bit more straight on -- this
15 you're sort of looking into the 225 yard. Next slide please?

16 This is a view from the alley, the two-story carriage
17 house that you see on the left of the screen is existing at 221.
18 The sort of lighter colored fence is the back of 223, our
19 property. The -- it really -- we really want to show just how
20 much vegetation and canopy there is surrounding 223, 225, 227,
21 and 229, which are of course -- the majority of those are north
22 of our project. The 227 has the single-story garage that you
23 see and then the two-story carriage house is the other side of
24 that carriage house, that's at 229. That was constructed pretty
25 recently. I don't know the exact dates, but certainly as we

1 think about sort of sun and shadows, the addition of that two-
2 story structure blocked what light could get in in the morning
3 from the east into the rear yards of 227, 229 by that structure
4 that was constructed. Next slide please? Next slide? Think
5 you can skip to Slide 26.

6 So I can just quickly address the criteria for the
7 special exemption. We -- what we're proposing complies, in our
8 opinion, with the purpose and intent of the zoning regulations
9 and maps. The Office of Planning in their report agreed with
10 that. This, you know, we did do the sun studies, and the light
11 and air available to neighboring properties will not be unduly
12 affected, first because the properties face west. The rear of
13 the houses in this row are in shade in the afternoon throughout
14 the year, as depicted in the sun shadow study that we submitted.
15 Second, from the time the leaves pop to when they fall in the
16 autumn, the rear of the houses to the north are in shade
17 throughout the day due to the dense existing tree canopy that you
18 saw in the photographs we just looked at. It's worth noting that
19 in this -- in the sun and shadow study, we only modeled three
20 large trees. We didn't -- there's a lot of other sort of
21 understory trees that create quite a lot of density of just the
22 leaves, sort of east of the large trees. The large trees are
23 closer to the houses than some of the smaller trees that block
24 morning light. And also, you know, the shade, as I mentioned
25 before, created by the two-story carriage house that was

1 constructed at 229, affects the morning light of the neighbor at
2 229. And that's, you know, somewhere seven, eight months of the
3 year there's a lot of shade, not just in the general area because
4 of the tree leaves and that structure. And then there's no
5 significant difference, I think, as indicated by the shadow study
6 between the by right and the proposed construction for the morning
7 and noon depictions in the December and March, which again, those
8 are the two conditions that we modeled that were outside of the
9 time that the leaves would pretty much make everything in shade.
10 Second, the privacy of use and enjoyment of the neighbors will
11 not be unduly compromised. We are proposing to reduce the density
12 by converting the two-family flat to a single-family dwelling.
13 The proposed construction has no windows on the wall face online
14 to look into the 225 structure or rear yard. The existing privacy
15 fence will be rebuilt to maintain the existing privacy and
16 separation between 223 and 225. On the 221 side, we have windows
17 at the first and second floors looking only at the neighbor's
18 wall that I pointed out when we were looking at the plans, and
19 the third-floor windows would be looking across the rooftops.
20 The existing -- the neighbor's existing brick and wood garden
21 wall, about seven foot in height, will remain. And last, the
22 proposed addition will not visually intrude upon the character,
23 scale, and pattern of the houses in the alley, since the style
24 of the proposed addition is in keeping with other rear additions
25 in the neighborhood. As I mentioned, we've gained HPRB concept

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1 approval and have indicated that the current rear design, facade
2 design, is approvable by them.

3 And then I just want to speak for a moment about our
4 neighborhood contact and outreach efforts. Actually Rashmi and
5 Wade, the homeowners, used to live in this house starting in
6 2009. They created the listserv that is still in use for this
7 block and the neighboring property owners. And so our first
8 outreach was to go through that listserv. Rashmi and Wade know
9 a number of people, but some of the houses, of course, have
10 transitioned owners since they've -- they turned this house into
11 a rental and live elsewhere on the Hill for the last number of
12 years. But so we reached out to neighbors through that, through
13 email. We got some response and some conversations happened. We
14 also mailed letters as required for the HPRB process. And the
15 ANC actually required that we send them copies of email
16 correspondence with all of the addresses that they were
17 interested in making sure we had tried to communicate with. So
18 of course, 221, 225, 227, and then the two people directly across
19 the alley who would be looking at the back of this house. Those
20 efforts resulted in the one letter of support from the Fellatis
21 (phonetic) across the alley, and that was it, just one. 221 and
22 225 are both nonresident owners. They rent the houses to tenants.
23 And as I mentioned, we are particularly interested in speaking
24 with 225, the owner of that property, because of the tree that's
25 right on the property line. But he's not responded to any of

1 our efforts. So this is our sixth public forum for the project
2 and have not had any of the neighbors show up to participate in
3 discussions about any of about the project and what we're
4 proposing. So you know, but we're pleased to have the ANC support
5 for both our HPRB case and, of course, this BZA case, and the
6 Office of Planning's recommendation for approval. So with that,
7 that generally concludes my presentation, and I'd be happy to
8 answer any questions.

9 CHAIRPERSON HILL: Thank you, Ms. Brittingham.

10 Does the Board have any questions for the Applicant?

11 I'm going to turn to the Office of Planning.

12 MS. MYERS: Good afternoon, Crystal Myers with the
13 Office of Planning. We are in support of this state -- this case
14 and we can stand on the record of the staff report.

15 CHAIRPERSON HILL: All right.

16 Does the Board have any questions of the Office of
17 Planning?

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

19 MR. YOUNG: Do not.

20 CHAIRPERSON HILL: All right.

21 MR. MOY: Mr. Chairman?

22 CHAIRPERSON HILL: Yeah, go ahead, Mr. Moy.

23 MR. MOY: If I may at this point, just want to correct
24 the record. Ms. Brittingham's correct. We do have a typo in
25 our case record. It is, of course, when we refer to the ten-

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1 foot rule, it is E -- Subtitle E, Section 205.4. So I just wanted
2 to state that for the record.

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

4 Okay. All right. Ms. Brittingham, do you have anything
5 you'd like to add at the end? You're on mute, but I think you're
6 saying no.

7 MS. BRITTINGHAM: Sorry. I just wanted to see if you
8 needed to say anything about the fact that the case summary had
9 an incorrect description of what the project -- the size of the
10 project is.

11 CHAIRPERSON HILL: The case summary is -- right, it's
12 for a three-story, not a two-story.

13 MS. BRITTINGHAM: Correct. And we are converting the
14 two-family to a single, single unit. And there is a third story
15 that extends over the existing structure. So it's a partial
16 third-story in addition to the three-story rear addition.

17 CHAIRPERSON HILL: Okay.

18 Ms. Myers, can you hear me?

19 MS. MYERS: Yes.

20 CHAIRPERSON HILL: That's all in line with the Office
21 of Planning's review, correct?

22 MS. MYERS: Yes. Yes. We didn't know that it was a
23 three-story addition as well.

24 CHAIRPERSON HILL: Okay.

25 Thank you, Ms. Brittingham. We're noting all that and

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1 I'll ask the attorneys to note that for the record.

2 MS. BRITTINGHAM: Thanks.

3 CHAIRPERSON HILL: Thank you.

4 All right. I'm going to go ahead and close the hearing
5 on the record.

6 I didn't have really any issues with this application.
7 I think that after seeing all the shadow studies and arguments
8 that the Applicant has put forward, I would agree with their
9 argument as to how they're meeting the relief or meeting the
10 criteria for us to grant relief. I will also agree with the
11 analysis that the Office of Planning has provided, as well as
12 that of the ANC and vote in favor. There was some opposition to
13 this I think, if I'm not mistaken. No, I don't see any
14 opposition. Maybe I was incorrect. I was thinking maybe about
15 another case. But regardless, I think they're meeting the
16 criteria for us to grant the relief requested and I'm going to
17 be voting in favor.

18 Mr. Smith?

19 COMMISSIONER SMITH: I agree with your analysis,
20 Chairman Hill. I do believe that the Applicant's met the burden
21 of proof for us to grant the special exception from -- or in
22 accordance with Subtitle X 901.2 in accordance with Subtitle E
23 205.5. There was a -- I thought there was a letter of opposition
24 from the O'Donnells I believe. They were opposed to the third
25 floor. Yeah, they were opposed to the third floor. But based

1 on what the Applicant presented and what was in the record, I do
2 not believe that the shadowing that would occur would have an
3 undue impact on the -- undue adverse impact on the adjacent
4 properties, and I do believe that the design of the addition is
5 in character with the surrounding neighborhood. So with that, I
6 give OP staff report great weight and will support the
7 application.

8 CHAIRPERSON HILL: Thank you. And thank you, yes, it
9 was a letter from the O'Donnells in opposition, but I do think
10 that the Applicant has shown that the shadowing would be undue,
11 given also that there's a lot of trees there in that area I think,
12 considering -- for as -- as far as the impact of the addition.

13 Mr. Blake?

14 COMMISSIONER BLAKE: Yes. I agree with the analysis
15 you guys made. I do think it does meet the criteria for
16 approvment under E 5205.4. The light and air is clearly
17 supported by a heavily treed area. The sun study shows there's
18 no undue impact. There's a privacy fence and no direct views
19 onto neighboring properties supporting privacy. Individual
20 intrusion is mitigated by the setback of over 30 feet from the
21 front of the building so to not have some visibility from the
22 street. And there are a variety of styles along the alley and
23 there's significant tree coverage again, and also HPRB has
24 weighed in. I give great weight to the Office of Planning's
25 recommendation for approval. DDOT has no objections. ANC 6C/6A

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1 is in support, no issues or concerns stated. And we do have a
2 neighbor from across the alley in support. And I agree with
3 Board Member Smith in that the concerns raised by the O'Donnells,
4 which were with regard to impacts on light, neighborhood
5 character and privacy, and views have been, I think, addressed
6 substantially, not raising -- rising to the level of undue based
7 on the testimony we heard from the Applicant and the report of
8 the Office of Planning and the shadow Studies and the photographs
9 that were provided by the Applicant. I'll be voting in favor of
10 the application.

11 CHAIRPERSON HILL: Thank you, Mr. Blake.

12 Dr. Imamura?

13 ZC COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I
14 agree with my colleagues and your assessments, just noting two
15 things. One, I appreciate the thorough shadow study. Those are
16 a great example that they provided in the record. And I also
17 appreciate the Applicant's effort to protect the heritage tree.
18 So both were very important to me. I'm prepared to vote in favor.

19 CHAIRPERSON HILL: Thank you.

20 I will make a motion to approve Application No. 20827
21 as the Applicant had stated for the relief requested concerning
22 relief from E 205.4 for the three stories and ask for a second,
23 Mr. Blake?

24 COMMISSIONER BLAKE: Second.

25 CHAIRPERSON HILL: Motion been made and second, Mr.

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1 Moy, if you'd take a roll call?

2 MR. MOY: When I call your name, if you'll please
3 respond to the motion made by Chairman Hill to approve the
4 application for the relief requested. And this motion was second
5 by Mr. Blake.

6 Zoning Commissioner Dr. Imamura?

7 ZC COMMISSIONER IMAMURA: Yes.

8 MR. MOY: Mr. Smith?

9 COMMISSIONER SMITH: Yes.

10 MR. MOY: Mr. Blake?

11 COMMISSIONER BLAKE: Yes.

12 MR. MOY: Chairman Hill?

13 CHAIRPERSON HILL: Yes.

14 MR. MOY: We have the Board member not participating.
15 The vote count is four to zero to one. And this is on the motion
16 made by Chairman Hill to approve. The motion to approve was
17 second by Mr. Blake. Also in support of the motion, Dr. Imamura,
18 Mr. Smith, Mr. Blake, and of course Chairman Hill. Again, the
19 motion carries on a vote of four to zero to one.

20 CHAIRPERSON HILL: Thank you, Mr. Moy. You can call
21 our next case when you get an opportunity, Mr. Moy.

22 MR. MOY: Okay. So the next case is Application No.
23 20829 of JAG, J-A-G, Real Estate, LLC. This is a self-certified
24 application pursuant to Subtitle X, Section 901.2. This is for
25 a special exception under Subtitle U, Section 421. The property

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1 is located in the RA-1 zone at 945 52nd Street, N.E., Square
2 5199, Lot 803.

3 CHAIRPERSON HILL: Thank you, Mr. Moy.

4 If the Applicant can hear me, if they can introduce
5 themselves for the record?

6 MS. WILSON: Hi, Alex Wilson from Sullivan & Barros on
7 behalf of the Applicant in this case, and I'm joined with a
8 representative of the ownership team, Mr. Yaffe, as well as our
9 architect, Ms. Witt.

10 CHAIRPERSON HILL: Okay. Great. Ms. Wilson, I guess
11 if you could go ahead and walk us through your client's
12 application and why you believe they're meeting the criteria for
13 us to grant the relief requested. And I'm only going to put 15
14 minutes on the clock just so I know where we are, and you can
15 begin whenever you like.

16 MS. WILSON: Great. Thank you so much.

17 Mr. Young, could you please pull up the presentation?
18 I did see that the ANC submitted a report, I think either this
19 morning or last night, opposing, and I'll address that in the
20 foundation. Next slide please? Thank you.

21 The property is located in the RA-1 one zone district.
22 It's currently unimproved and vacant. The Applicant is proposing
23 to construct a new 12-unit residential apartment building. The
24 building envelope, including the parking, meets all zoning
25 development standards for this zone. The proposal is in front

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1 of the BZA because all new residential developments in the RA-1
2 zone are reviewed pursuant to U 421. The Office of Planning is
3 recommending approval and DDOT has no objection. In terms of
4 community outreach this particular ANC requires that we attend a
5 specific civic association meeting prior to attending the full
6 ANC. There are a couple in this area. So for this particular
7 property it was the Deanwood Civic Association, and we went to
8 two meetings, one with the executive committee, and then there
9 was a full committee meeting. And the Deanwood Civic Association
10 does support the project, as evidenced by the signed community
11 agreement, which is similar to a construction management
12 agreement. So given that we had the support of the Deanwood
13 Civic Association, we anticipated we would perhaps get support
14 from the ANC. But unfortunately the ANC reported general concerns
15 with parking in the area. We do have five parking spaces where
16 only three are required. We did look into doing a sixth parking
17 space, which would be double the amount of required parking, but
18 given the site restrictions and the ADA space, an additional
19 parking space was not required -- or sorry, was not possible.
20 Next slide please? Or required.

21 With respect to the general special exception
22 requirements, the RA-1 zone provides for areas predominantly
23 developed with low to moderate density development, including
24 multi-family residential buildings. It is a residential
25 apartment zone. The properties next door are both apartment

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1 buildings. The Applicant is proposing to construct a new
2 apartment building. And we -- again, we understand the ANC's
3 general concerns over parking and do have the support of the
4 Civic Association. As part of that agreement, we are going to
5 give special notice to the tenants next door and provide a number
6 to reach during construction. And while that may be outside of
7 the Board's purview, it does go to adversely affect the use of
8 neighboring properties, which was noted in the ANC's report where
9 it said additional density and parking would burden the
10 neighboring properties. But we have done some outreach and will
11 continue to do so. And again, we meet the parking requirement.
12 And further, this project will improve a vacant site with both
13 market rate and IZ housing with a number of parking spaces.

14 And next slide please?

15 The proposal also meets the specific requirements of
16 the infrastructure in the area, including area schools, public
17 streets and services, can accommodate the increase of the
18 additional residential units, and the requisite materials have
19 been provided to the Office of Planning to recommend approval of
20 the project. We do have a few land slides available as well as
21 Ms. Witt available if you have any questions about the project.
22 With that, I'll end my presentation though so we can move on to
23 questions. It's been a relatively long day due in part to my
24 first hearing.

25 CHAIRPERSON HILL: Thanks, Ms. Wilson. Yes, due in
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1 part to your first hearing.

2 Let's see. Does the Board have any questions of the
3 Applicant?

4 Okay. I'm going to turn to the Office of Planning.

5 ZC COMMISSIONER IMAMURA: Sorry, Mr. Chairman, I do.
6 I just have a quick question.

7 CHAIRPERSON HILL: Go ahead, Dr. Imamura.

8 ZC COMMISSIONER IMAMURA: I just wanted to ask -- I
9 notice the bike parking, does that also include an e-charging
10 station? This might be for Ms. Witt.

11 MS. WITT: We do not have a charging station currently
12 shown on our plans.

13 ZC COMMISSIONER IMAMURA: I would encourage you to add
14 at least one of those. I think that would be appropriate.

15 MS. WITT: Thank you.

16 CHAIRPERSON HILL: All right. Can I turn to the Office
17 of Planning please?

18 COMMISSIONER SMITH: You're on mute, Mr. Mordfin. Oh,
19 maybe it's just his sound.

20 CHAIRPERSON HILL: I can't hear you, Mr. Mordfin.

21 ZC COMMISSIONER IMAMURA: No. Same issues as the Zoning
22 Commission the other night.

23 No.

24 CHAIRPERSON HILL: Mr. Mordfin, that's okay. I'm going
25 to just again pull up your --

1 COMMISSIONER BLAKE: Mr. Chairman, I have a quick
2 question for the Applicant while we're trying to get Mr. Mordfin
3 in.

4 CHAIRPERSON HILL: Sure. Go ahead, Mr. Blake.

5 COMMISSIONER BLAKE: Sure.

6 With regard to this ANC 7C, is there any chance that
7 you might be able to come up with some type of -- I understand
8 you are providing the required -- more than the required spaces.
9 Is there some potential to come up with something that would be
10 comfortable -- that the ANC 7C would like or be supportive of at
11 this point or are we pretty much at an impasse?

12 MS. WILSON: So in terms of altering the project, I
13 would say this is the project. But the ANC commissioner is here
14 if there's something in particular that they would like. I mean,
15 again, the project meets the development standards, and we're
16 providing over the amount of required parking. And there wasn't
17 any discussion as to how it changed the project necessarily. It
18 was more of a general opposition to development and parking. But
19 again, the ANC chairperson's here. He sounds like he wants to
20 speak and disagrees with my recollection. So I apologize if I
21 really -- I don't mean any disrespect.

22 ANC COMMISSIONER GREEN: I am (indiscernible).

23 CHAIRPERSON HILL: One moment, please.

24 Commissioner, can -- can you hear me, Commissioner?

25 ANC COMMISSIONER GREEN: Yes. This is Commissioner

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1 Anthony Lorenzo Green. I am the commissioner for 7C04.

2 CHAIRPERSON HILL: Yeah, we can hear --

3 ANC COMMISSIONER GREEN: Can you hear me?

4 CHAIRPERSON HILL: -- you, Commissioner. Yeah. I
5 think the Office of Planning is trying to figure out their audio.
6 But go ahead, Commissioner, would you like to give us your
7 testimony?

8 Commissioner Mordin, we -- I mean, Mr. Mordfin, we can
9 hear you.

10 MR. MORDFIN: You can hear me?

11 CHAIRPERSON HILL: Yeah.

12 MR. MORDFIN: Okay.

13 CHAIRPERSON HILL: Commissioner Green, give me one
14 second, let me go ahead and try to hear from the Office of
15 Planning first.

16 Go ahead, Mr. Mordfin, could you introduce yourself for
17 the record please?

18 MR. MORDFIN: Yes, I'm Stephen Mordfin with the Office
19 of Planning. And the Office Planning is in support of this
20 application as it conforms to the regulations required, the
21 special exception for a multi-family building in this zone. And
22 pursuant to the comments from the ANC, the application by the
23 zoning regulations requires three parking spaces. Four -- I'm
24 sorry, five are provided. So that's in excess. The application's
25 also providing bicycle parking in excess of what is required,

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1 long-term bicycle parking. So based on that and the fact that
2 it conforms with all of the criteria for a special exception for
3 the multi-family building for new residential development, the
4 Office of Planning is in support. And I'm available for any
5 questions. Thank you.

6 CHAIRPERSON HILL: All right.

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

9 COMMISSIONER SMITH: I have one.

10 CHAIRPERSON HILL: Mr. Smith?

11 COMMISSIONER SMITH: Mr. Mordfin, just given the design
12 of the building, they're proposing decks on these -- balconies
13 on all of these units facing the side yards of the adjacent
14 properties. Was there any, you know, any thoughts or concerns
15 about that that were raised by the Office of Planning or what
16 are your thoughts about that as you represent -- in evaluating
17 this application?

18 MR. MORDFIN: Well, in evaluating it, the adjoining
19 properties are also multi-family buildings. And so it is a whole
20 row of multi-family buildings of approximately the same size.
21 Balconies on the side that -- you know, we're going to have --
22 they're going to have some kind of openings on the sides, windows
23 or balconies or something. I don't see that in an apartment
24 zone, that that would be -- would result in an adverse effect.
25 The property meets the minimum required side yards, so therefore

1 we found that that would not result in an adverse effect to the
2 neighborhood.

3 COMMISSIONER SMITH: Okay. All right. Thank you.
4 That was the only question I had.

5 CHAIRPERSON HILL: All right.

6 Commissioner Green, can you hear me again?

7 ANC COMMISSIONER GREEN: Yes.

8 CHAIRPERSON HILL: If you could please, Commissioner,
9 thank you for your patience, give us your testimony?

10 ANC COMMISSIONER GREEN: Sure. Well, first, I am the
11 commissioner for 7C04. I am a D.C. native, and a Deanwood native,
12 so I'm from this neighborhood. And I do want to start off by
13 stating that our opposition to this project wasn't general
14 opposition. I take offense to that. We actually have been
15 dealing with a number of development projects in 7C, particularly
16 in that part of the neighborhood. Our issue is parking and it
17 isn't just because we want to complain about parking, it's just
18 there are several apartment buildings around the same block,
19 going all around, where it feels like where are people going to
20 park. And I can run the addresses, which if you start on that
21 very block where they're building on, so to the left of them is
22 5201 Sherriff road, that's 12 units; to the right of them is 933
23 52nd Street, 6 units; 927 52nd, 8 to 9 units; 921 52nd, 6 units;
24 go around the block, 5210 Just Street, 8 units; 5216 Just Street,
25 12 to 13 units; 940 Division, 12 to 13 units. All of these

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1 buildings are attached to the same public alley. So they're just
2 going in a circle. Go across the street, there's 1100 Eastern
3 Avenue, that's 62 units. 5138 Sheriff, that's another 12. And
4 another building right next to it, another 12. 5128, that's 14
5 units. So we're at a situation wherein this one part of Deanwood,
6 just one section of the neighborhood is completely crowded.
7 There's nowhere to park, especially after the 1100 Eastern
8 building, which just opened earlier this year, came, it became a
9 parking nightmare. So we're essentially just saying how is this
10 effective community development. How are we planning these
11 projects out where people can actually park and live and not
12 simply having little parking wars with each other, which a lot
13 of the commissioners have been called to mediate over the years
14 because people for some reason can't find a place to park where
15 they live. Now, I do respect that they are adding just a few
16 more spaces to this building, but I do want to look at the overall
17 landscape of that part of the neighborhood, how all those
18 apartment buildings surrounding this one public alley, how is
19 this effective development? And then we have another project
20 that we've heard about that's coming down the pipeline across the
21 street on Division Ave, where the 7-Eleven used to be. That's
22 being turned into more housing. This is the gateway to the city,
23 and we understand that. But we do need this spaced out a little
24 better when it comes to the Deanwood community and not just trying
25 to build on every single sliver of land. And that's what's

1 happened here. I'm disappointed that an agreement has been signed
2 with the Deanwood Citizens Association. I can tell you that no
3 members of that association lives on that block. So I would like
4 to see a little more time spent on this as far as them
5 communicating with the community. The ANC was unanimous in
6 opposing this for a reason because we've been getting nonstop
7 complaints from that section of the community for the last two
8 to four years about the rate of development projects that are
9 coming up and the fact that there is not enough parking being
10 provided with these projects. And all we're trying to do is have
11 some common sense in how development is being done in this part
12 of Deanwood. We're not saying we're trying to block development
13 in Deanwood. Our record is clear. 7C's record with BZA is clear.
14 We do the work. All we're saying is when it comes to that side
15 of the neighborhood, where you're building up everything around
16 Division Ave, Eastern Ave, and Sheriff Road, there's a little
17 more thought in how we're dropping apartment buildings in one
18 part, in one pocket of the neighborhood.

19 CHAIRPERSON HILL: Okay. All right, Commissioner, I
20 guess, you know, in terms of your comments, you know, that might
21 be something that might be brought up more so with either the
22 council member or the Office of Zoning or even the Zoning
23 Commission. Like we -- this particular Applicant, they're
24 required to give three spots for this development and they're
25 giving five.

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1 ANC COMMISSIONER GREEN: Yeah.

2 CHAIRPERSON HILL: So you're getting more parking than
3 they're supposed to give. I mean, we --

4 ANC COMMISSIONER GREEN: They're bringing 12 units with
5 it. So it's like it's not still -- not balancing out. I respect
6 it --

7 CHAIRPERSON HILL: I understand. What I'm saying is
8 that I don't have the authority to change the regulations. But
9 I understand that you can still oppose it, and that's perfectly
10 acceptable for the community to oppose it. It's what's within
11 the regulations that we have to look at. And that's something
12 that I guess could be changed, but unfortunately not at the Board
13 of Zoning level.

14 Does anybody have any questions for the commissioner?

15 GO ahead, Mr. Smith -- I mean --

16 COMMISSIONER SMITH: Not necessarily for the
17 commissioner. I do understand your concerns and all,
18 Commissioner Green. And just to echo what Mr. Hill was saying,
19 where -- our hands are kind of tied with if they meet the minimum,
20 we can't deny them because they're not going above the minimum.
21 You know, our hands are tied with that, unfortunately. But to
22 your point about parking, I wanted to ask Ms. Wilson if there
23 was an opportunity -- well, just some questions because I'm
24 looking at the site plan.

25 You do have a strip there where you're putting some

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1 trash containers, is there a way to move that further away where
2 you can yield additional parking? And also, is there an
3 opportunity to do compact parking spaces that would yield some
4 level of additional parking?

5 MS. WILSON: So I know that the architects looked at
6 this and I'll defer to Ms. Witt to answer that. But I know that
7 the ADA space, the size of the ADA space, impacted that -- the
8 amount of parking that we could get back there.

9 COMMISSIONER SMITH: Or can you shrink the width of -
10 - and to the architect just as an additional question, can you
11 shrink the width of the sidewalk? I don't know if it's the
12 walkway from the ADA accessible space. That's probably not
13 possible. I just want it on the record just to see.

14 MS. WITT: Just to speak to that, that is a requirement
15 for that ADA parking spot to have that walking path next to it,
16 so we wouldn't be able to reclaim that. And there are -- we are
17 utilizing three of the compact spaces in the plan.

18 MS. WILSON: Right. We're looking to have as many
19 compact spaces as is possible -- as is required by the
20 regulations.

21 COMMISSIONER SMITH: Gotcha. The (indiscernible) the
22 of the compact space. Okay.

23 CHAIRPERSON HILL: Ms. Witt, could you introduce
24 yourself for the record? I don't know whether you did or not.
25 I'm sorry.

1 MS. WITT: I'm sorry, I don't believe I did. My name
2 is Joanna Witt with 3877, the architect for the project.

3 CHAIRPERSON HILL: Okay. Thank you.

4 ANC COMMISSIONER GREEN: Can I just throw one more
5 thing out there? And I understand that they're contained with
6 the plan that they have already designed, but I do want to state
7 that this property wasn't always vacant. It used to be a
8 townhouse. It could still be a townhouse if that was the
9 commitment they wanted to do to build more affordable housing in
10 our community. So it's not like something that we have to be a
11 slave to the design that's been presented. But you know, this
12 is what they're sticking with. This is what they committed to.
13 And I just wanted to make sure we voice the concern of how the
14 growth in that part of the community is really causing great
15 impact on the quality of life of people who live there.

16 CHAIRPERSON HILL: Yeah, I don't know, Commissioner.
17 I mean, I don't know -- you know, we can't tell somebody what
18 they should or shouldn't build on their property, right?

19 ANC COMMISSIONER GREEN: I'm not saying y'all should
20 tell them, I'm just saying that they should work with the
21 community to come up with a different plan if their plan isn't
22 in the best interests of the community.

23 CHAIRPERSON HILL: And I'm not I'm not disagreeing with
24 what --

25 ANC COMMISSIONER GREEN: (Indiscernible) asking for an
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1 exception.

2 CHAIRPERSON HILL: -- you're speaking to for your ANC,
3 I mean, I guess, you know, this is what they've come before us,
4 this is their property, this is what they're trying to do. And
5 you know, we look at the regulations as to whether or not we
6 think they're meeting the criteria to grant it. I don't know
7 what's going to happen now after we certainly talk about this,
8 but it sounds as though parking has been an issue and continues
9 to be an issue. Now, that'll be something, I guess, that would
10 need to be discussed again at a level above the BZA, because what
11 they're here for they're supposed to provide three spots, they're
12 providing five. Right? So they're already providing more than
13 they're supposed to provide. Right? And so I would have to
14 like, you know, I don't know what to say. Like I'd have to --

15 ANC COMMISSIONER GREEN: No, I'm just saying, yeah,
16 it's -- but it's 12 units and I know how --

17 CHAIRPERSON HILL: I mean, the regulation isn't like
18 one parking spot per unit.

19 ANC COMMISSIONER GREEN: I understand that. I'm just
20 saying that 12 units isn't 12 people. That's 12 families. So
21 it's --

22 CHAIRPERSON HILL: Well, it could be 24 cars, who knows.

23 ANC COMMISSIONER GREEN: Right. So that's our only
24 concern because we know how the growth can be in our neighborhood,
25 especially on that side with the buildup. So I fully understand

1 the limitations of BZA. I definitely wanted to make sure that
2 this was part of the record.

3 CHAIRPERSON HILL: I appreciate that, Commissioner.

4 All right. Okay. Does anybody have anymore questions
5 for the commissioner and/or the Applicant?

6 Go ahead, Dr. Imamura.

7 ZC COMMISSIONER IMAMURA: Sorry, Mr. Chairman, yeah,
8 just real quick. This is for the Applicant. Did I read in the
9 record that there is an IZ unit?

10 MS. WILSON: Yes, there is.

11 ZC COMMISSIONER IMAMURA: So that's wonderful.

12 Ms. Witt, can you tell me, I didn't see in the floor
13 plans where that IZ unit is located?

14 MS. WITT: So I'm not -- I'm sorry, I'm not exactly
15 sure where we located the unit specifically within the building.

16 MR. YAFFE: This is Joey Yaffe calling with Mid-City
17 Construction, representing the ownership team. The IZ unit will
18 be on the first floor. And we have not specifically -- we're
19 still in the schematic design phase on the drawings, so the exact
20 location of it has not been finalized. We'll have to do the
21 calculations and determine how many square feet we need to
22 deliver. But in fact, you know, there may be more than one..
23 The project is actually designed to be affordable, even though
24 it's market rate. So I mean, given what's there, I think that
25 it's going to provide some really nice housing options for the

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1 community.

2 ZC COMMISSIONER IMAMURA: All right. Well, thank you,
3 Mr. Yaffe. I certainly think at least one IZ unit is a benefit
4 to Commissioner Green's community and neighborhood. We all know
5 that there's a shortage of housing. There's also a shortage of
6 parking. But the city is doing its best to provide, you know,
7 more affordable housing everywhere, so. All right. Mr. Chairman,
8 that's all that I have. Thank you.

9 CHAIRPERSON HILL: Okay. Thank you. Let's see. All
10 right. Thank you.

11 Ms. Wilson, anything you'd like to add at the end?

12 Oh, I'm sorry, wait a minute, whoa. Mr. Young -- it's
13 been a long day for me. Mr. Young, is there anyone here wishing
14 to speak?

15 MR. YOUNG: Yes, we do.

16 CHAIRPERSON HILL: Okay. Can you bring them in please?

17 MR. YOUNG: Ms. Jenkins and I'm not sure if Garfield
18 Jenkins is with her or not, but they are signed up.

19 CHAIRPERSON HILL: Okay. Ms. Jenkins, can you hear me?

20 MS. JENKINS: I can hear you now.

21 CHAIRPERSON HILL: Great. Could you introduce yourself
22 for the record?

23 MS. JENKINS: Hi. My name is Alicia (phonetic) Jenkins.
24 I'm a homeowner and resident at 920 52nd Street, N.E..

25 CHAIRPERSON HILL: Okay. Thank you. Ms. Jenkins, as

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1 a member of the public, you'll have three minutes to give your
2 testimony, and you can begin whenever you like.

3 MS. JENKINS: Thank you. I am in favor of development
4 of that lot, but I am not in favor of the 12 unit -- the size of
5 the lot with the five additional parking or five parking spaces.
6 I understand now that that is above the minimum requirement, but
7 given the traffic concerns, with this being a gateway into and
8 out of the city and the parking concerns that we already have, I
9 feel that this would be an increased burden on our community, you
10 know, with the potential for 24 cars. And I understand now that
11 that's -- this meeting probably isn't the place for that, but
12 during the ANC meeting, it was not proposed to us in a way that
13 there was any type of compromise or any willingness to work with
14 us on, you know, perhaps changing or, yeah, working with the
15 community to build something that would be beneficial. It was
16 just this is what we're doing and accept it. That was the
17 attitude. And so I would just like to go on the record to say
18 that I and my husband, Garfield Jenkins, Jr, we do not approve
19 the creation or the building of this 12-unit structure.

20 CHAIRPERSON HILL: Okay. Thank you.

21 Does the Board have any questions for the witness?

22 Commissioner, do you have any questions for the
23 witness?

24 ANC COMMISSIONER GREEN: Me or the --

25 CHAIRPERSON HILL: Commissioner Green, yeah,

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1 Commissioner Green, I was asking you. You can if you wanted to.

2 COMMISSIONER BLAKE: Sure, I definitely want to ask the
3 witness, was she directly engaged by -- she or her husband --
4 directly engaged by the development at all?

5 MS. JENKINS: Not at all. I have never had anyone come
6 to my door and ask me any questions about that property. I went
7 through the files that they submitted, the letters of approval,
8 and all of those are from residents who do not even live on this
9 block. There is one from, I'm assuming -- what I can only assume
10 is the owner of the apartment building directly across from me.
11 But I was not, my neighbors were not contacted. On the night of
12 the ANC meeting, someone dropped off a letter at my door and that
13 was -- I'll say that was the only contact I had. They just
14 dropped off a letter and ran. But no, no one has stopped to ask
15 to talk to me, you know. And it was in the middle of the night.
16 So the ANC meetings are at 7:00, 8:00 at night. That's when they
17 dropped off a letter. No one has contacted my husband or myself
18 to talk about that lot.

19 CHAIRPERSON HILL: Okay.

20 ANC COMMISSIONER GREEN: Because I asked -- because I
21 noticed the letters of support didn't include anyone that lived
22 within 200 feet of the property. But thank you, Mr. Jenkins,
23 and thank you for -- you know, we carry the burden of housing
24 -- building housing in this city, more than most in this entire
25 city, so it's nice to hear that we need to build housing

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1 everywhere, but we need to recognize Deanwood has been doing
2 that. We do that. We've been building housing. We're at
3 capacity. That's all we're saying.

4 CHAIRPERSON HILL: Okay. Thanks, Commissioner.

5 Ms. Wilson, do you have anything you -- any questions?

6 MS. WILSON: No questions.

7 CHAIRPERSON HILL: Okay. Thank you.

8 All right. Okay. Ms. Jenkins, thank you for your
9 testimony.

10 Mr. Young, if you could excuse Ms. Jenkins.

11 All right. Let's see. Ms. Wilson, is there anything
12 you'd like to add at the end?

13 MS. WILSON: Just thank everyone for their time and
14 apologize to Mr. Green if I offended my characterization of the
15 ANC meeting.

16 CHAIRPERSON HILL: Okay. All right. Thanks, Ms.
17 Wilson.

18 All right. Thank you, Commissioner Green.

19 Thank you all for coming.

20 I'm going to close the hearing on the record.

21 MR. MOY: Mr. Chairman?

22 CHAIRPERSON HILL: Sure, go ahead, Mr. Moy.

23 MR. MOY: Just want to double check, did we cover all
24 the witnesses for testimony? I thought there might have been one
25 more, but I could be wrong.

1 CHAIRPERSON HILL: I don't think so.

2 Mr. Young, did we miss a witness?

3 MR. YOUNG: There's one additional person that was
4 signed up, but they are not logged onto the meeting.

5 CHAIRPERSON HILL: Okay. All right. Okay. All right.

6 Mr. Smith, does somebody -- or Mr. Blake, does anybody
7 want to go? Mr. Blake is raising his hand. All right.

8 COMMISSIONER BLAKE: I'm happy to do it. The Applicant
9 proposed to construct a 12-unit apartment house and a detached
10 -- new detached building with three stories and a cellar,
11 including one IZ in an RA-1 zone. The Applicant also needs
12 special exception relief from U 421 to allow a new residential
13 development, but no other relief for development standards for
14 the zone are being sought. So the project clearly meets all the
15 development standards of the zone. Its bulk and mass is
16 consistent with the other buildings in the neighborhood and in
17 the -- the project would be in harmony with the zoning regulations
18 and shouldn't affect the neighboring properties. As said -- that
19 said, I acknowledge the fact that the ANC 6C (sic) expressed some
20 concerns about parking. But the -- as we pointed out, the
21 Applicant has exceeded the parking requirement as well as the
22 long-term bike requirements. And of course, DDOT has no
23 objection. That said, I mean, this is a larger problem that's
24 unique to this -- somewhat unique to this area in the way that
25 people live and commute and how they use cars and so forth. And

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1 it's beyond the purview of our Board to actually make an
2 adjustment to the factual zoning regulations to address this
3 issue. It's really a greater question that needs to be addressed.
4 And I think Commissioner Green had spoke to that clearly, saying
5 look, I want it on the record, but the reality of it is, is this
6 is probably not the forum to actually get this larger question
7 addressed. I mean, the good news is we are getting some new
8 housing stock in an area and in part of the city where we need
9 it and it's just -- unfortunately, it's not quite tailored -- as
10 you know, this is a one size fits all type of rule and regulation
11 and it doesn't quite fit well in the way that people live, the
12 way that people live in this community. It's a little bit
13 different. So more car intensive and less, you know, public
14 transportation intensive than some other areas of the city where,
15 you know, that parking relief requirement is actually quite
16 tolerable. So that said, I do acknowledge the great weight --
17 and give great weight to the concern expressed by ANC 7C about
18 parking, and I will also give great weight to the recommendation
19 of the Office of Planning and how they -- and then credit the
20 Office of the Planning's analysis of the application of how it
21 met the criteria for U 421. I'd note that DDOT has no objection.
22 And I will be voting in favor of the application.

23 CHAIRPERSON HILL: Thank you.

24 Mr. Smith?

25 COMMISSIONER SMITH: I by and large agree with all the

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1 comments that were communicated by Mr. Blake and, you know, to
2 the ANC commissioner, which I'm sure is still on the phone or is
3 still on the line, and the lady that spoke also against this
4 request. You know, just to kind of elaborate a little bit more
5 and I think Mr. Blake kind of touched on this, and I just, you
6 know, to start this off, the property is zoned RA-1. Everything
7 around -- that block going up to across Sheriff Road and when
8 you go up Eastern Avenue, along Eastern Avenue, just those little
9 few blocks are zoned RA-1. RA-1's intent is for apartment units.
10 I do understand that this property before it used to be a
11 townhouse, but per the zoning, that was low density for the zone.
12 So this zone contemplates apartments. And the Applicant could
13 build townhouses, but very rarely would they -- you know, if they
14 could get additional density (indiscernible) we see in the
15 District, you can get additional density, they'll go for it,
16 especially being that everything that they're proposing with the
17 apartment building meets every development standard. They're
18 here in front of us because by within that zone, it says that
19 you have to get a special exception just to develop. So that's
20 why they had to communicate with y'all and they're here before
21 us now and presenting to us every development standard for an
22 apartment building. So we can't deny it. Our hands are tied,
23 we can't deny it because we don't like the use or because of
24 concerns about use because the zone allows the use. So for to
25 deny it, it could be seen as arbitrary and capricious and the

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1 court system will overturn it, you know, to be completely honest
2 with you, if we don't have a strong reason for why we essentially
3 deny an apartment building that meets every development standard
4 for an apartment building in the zone. So that's what -- that's
5 where we're at.

6 So it does meet every development standard, meets all
7 the setbacks. It meets the parking. Yes, this is going to have
8 12 units and maybe 24 cars here. But the zoning ordinance says
9 that the minimum is three, and at three it would have no impact.
10 That's the way that this unfortunately -- that minimum stan- --
11 if they're meeting that minimum standard, they're meeting the
12 minimum standard to reduce the impacts.

13 And to your point, we probably -- it probably should
14 be a larger conversation that should be handled by the city
15 council member and probably the Zoning Commission about many of
16 these apartments or these areas (indiscernible) within our zone
17 RA-1 or that are some other type of apartment zone. This has
18 been raised by I think Mr. Holmes previously when we've heard
19 other cases. So you know, I just recommend that you engage with
20 your council member and probably the Zoning Commission about the
21 development standards for apartments. But here at the BZA, we
22 have to enforce what's on the books or evaluate and enforce what's
23 on the books now. And it meets the development standards. So
24 with that, I give the Office of Planning's staff report great
25 weight and will support the application.

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1 CHAIRPERSON HILL: Thank you.

2 Dr. Imamura?

3 ZC COMMISSIONER IMAMURA: Nothing further to add, Mr.
4 Chairman. I'm in agreement with my colleagues.

5 CHAIRPERSON HILL: Thank you.

6 The only thing I'll add is I don't know -- I mean, it's
7 very -- the parking issue comes up a lot and it's very -- it's a
8 very passionate argument. And it's been so passionate that I've
9 -- it's been extremely colorful at times that we've had arguments
10 about it in a way that like makes sense. I mean, you don't want
11 to have to walk really, really far away from your house to park
12 your car. And -- but whether or not that is an issue that would
13 actually be -- I mean, the regulations, I think, changed this way
14 not too long ago after they've kind of like taken a hard look as
15 to what the neighborhoods would be able to handle, giving the
16 parking the way the parking is now. It's taken years to get to
17 this regulation. However, it's not to stop the ANC from having
18 an opportunity to speak with their council member and then also
19 to speak with whatever avenues they might see fit. But
20 unfortunately, this one is not one of them because we have --
21 our hands again are tied in terms of parking for this particular
22 application. So I do appreciate the time that the commissioner
23 has put forward, as well as the witnesses. And I will also be
24 voting in approval.

25 I'm going to make a motion to approve Application No.

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1 20829 as captioned and read by the secretary and ask for a second,
2 Mr. Blake?

3 COMMISSIONER BLAKE: Second.

4 CHAIRPERSON HILL: Motion having been made and second,
5 Mr. Moy, if you'll take a roll call?

6 MR. MOY: Yes. Thank you, sir. When I call your name,
7 if you'll please respond to the motion made by Chairman Hill to
8 approve the application for the relief requested. The motion to
9 approve was second by Mr. Blake.

10 Zoning Commissioner Dr. Imamura?

11 ZC COMMISSIONER IMAMURA: Yes.

12 MR. MOY: Mr. Smith?

13 COMMISSIONER SMITH: Yes.

14 MR. MOY: Mr. Blake?

15 COMMISSIONER BLAKE: Yes.

16 MR. MOY: Chairman Hill?

17 CHAIRPERSON HILL: Yes.

18 MR. MOY: We do not have another Board member
19 participating. Staff would record the vote as four to zero to
20 one. And this is on the motion made by Chairman Hill to approve.
21 The motion to approve was second by Mr. Blake. Also in support
22 of the motion to approve Zoning Commissioner Dr. Imamura, Mr.
23 Smith, Mr. Blake, of course Chairman Hill. The motion carries
24 on a vote of four to zero to one.

25 CHAIRPERSON HILL: Thank you, Mr. Moy. Okay. You can

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1 call our next case, Mr. Moy.

2 MR. MOY: The next case is Application No. 20833. This
3 is of the United Brotherhood of Carpenters and Joiners of America.
4 This is a self-certified application for special exceptions
5 pursuant to Subtitle X, Section 901.2 under Subtitle C, Section
6 1506.1 from the penthouse setback requirements Subtitle C,
7 Section 1504.1 and under Subtitle I, Sections 605.6 and 605.7 for
8 the substantial renovation of an existing structure within the
9 Capital Security Sub area. Property located in Zone D-3 at 101
10 Constitution Avenue, N.W., Square 574, Lot 25. And here there's
11 a preliminary matter in that the Applicant is asking to waive the
12 25 -- to waive the 21-day filing deadline to accept drawings, new
13 drawings, under Exhibits 25 -- 24, 25, and 25A.

14 CHAIRPERSON HILL: Okay. Great. I don't have any
15 issues waiving the deadline and accepting the drawings because I
16 would actually like to see whatever the drawings are, the updated
17 drawings, so unless my fellow Board members have an issue with
18 that, we're going to go ahead and allow them into the record.

19 I'm going to -- if you guys could give me one second,
20 we may -- give me one moment here, please don't go -- oh, never
21 mind. Okay. There we go. We got Vice Chair John has rejoined
22 us for the record. Welcome back, Vice Chair John.

23 Could the Applicant please, if they could hear me,
24 introduce themselves for the record?

25 MS. PRINCE: Allison Prince here on behalf of Goulston
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1 & Storrs. I'm here for the Applicant today, the Joiner -- the
2 Carpenters and Joiners Union.

3 CHAIRPERSON HILL: Okay. Great. Thank you, Ms. Prince.
4 Ms. Prince, if you can go ahead and walk us through your
5 application -- sorry, your application, your client's application
6 and why you believe they're meeting the criteria for us to grant
7 the relief requested? I'm sure most of us are familiar with the
8 building, but you can go ahead and start whenever you like, I'll
9 put 15 minutes on the clock so I know where we are.

10 MS. PRINCE: Great. Thank you, Chairman Hill and
11 members of the Board. Again, Allison Prince with Goulston &
12 Storrs here on behalf of the United Brotherhood of Carpenters and
13 Joiners of America, the owners of the building at 101
14 Constitution. The union has owned this 66,000 square foot site
15 for over five decades. They built the building that's there in
16 2001. They understand the importance of the building's location,
17 and they're very sensitive to the need to meet the highest design
18 standards. They're also sensitive to the security interest
19 surrounding the building given its proximity to the Capitol. I
20 should note that the property is under the jurisdiction of the
21 Commission of Fine Arts, so all aesthetic changes have been
22 reviewed by the Commission of Fine Arts. We're here today for
23 three areas of relief. The property's in the D-3 zone, as Cliff
24 mentioned, on a designated street segment. The existing
25 building's 110 feet tall and has a large roof deck, including a

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1 Commission of Fine Arts approved seasonal tent. Accordingly, the
2 construction of a habitable penthouse requires approval, special
3 exception approval, by this body. Also, there's a design driven
4 court along the western facade, a small portion of the building's
5 frontage on 2nd Street, and that is the only area where the
6 habitable penthouse will not be fully setback. And as the
7 architect will explain, we need relief from the setback
8 requirement. For that reason, he will explain the logic behind
9 the need for relief.

10 Finally, the glass guardrail for the existing roof deck
11 is mounted to the inside of the parapet. It's sort of a well-
12 designed parapet guardrail configuration that they simply want
13 to continue when they make other portions of the roof deck
14 habitable and need to extend the guardrail. The regulations
15 outline the standards very clearly, and the architect's testimony
16 will show compliance.

17 Just very briefly, the project has to be compatible
18 with present and proposed development in the neighborhood under
19 605.7, that's subtitle I. This is a very fully developed
20 neighborhood with hotels, commercial office buildings, and
21 immediately to the west the Department of Labor building. The
22 project needs to be consistent with the goals and mandates of the
23 master plan for the future development of the Capitol grounds.
24 And I think what is most responsive to our meeting that is the
25 letter in the record from the architect of the Capitol's office,

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1 Exhibit 19. But we will be prepared to discuss that in greater
2 detail.

3 And the project can't propose a security risk. And I
4 think you'll like what we have to say about the relationship
5 between the owners of this building and the U.S. Capitol Police.

6 And the project needs to be consistent with the general
7 purpose and intent of the regs and should not adversely impact
8 neighboring properties. I think our design will easily meet that
9 standard. For the setback relief for this very small portion of
10 the habitable penthouse and for the guardrail there's sort of a
11 complicated set of standards. You just need to meet one of them.
12 We meet three. We satisfy the standard that says the strict
13 application of the regulations would be unreasonable given the
14 existing conditions. We have an existing rooftop configuration
15 that we need to take into account. The relief will result in a
16 better design, and I believe that's easily shown because this
17 very sculptural CFA approved design I would say is far preferable
18 to the temporary tent condition, the seasonal tent that's been
19 up there since the building was built. But it's seasonal, it
20 comes down, it's not there continuously. And arguably the relief
21 will result in a penthouse structure that is less visually
22 intrusive than the current condition with the seasonal tent.

23 The Office of Planning wrote a very thorough report
24 supporting the application. DDOT has no opposition. We reached
25 out to the ANC multiple times and I secured in writing an email

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1 from Mark Eckenwiler explaining that the ANC just decided not to
2 take this up. I can submit that into the record if you'd like
3 me to, or you can take my word for it. And that's really all I
4 have. We have a brief statement from Lincoln Properties, Don
5 Bowers, on behalf of the owner, and then the architect can be as
6 detailed or as limited as you would like. I really want to be
7 respectful of your time. I know it's been a long day, so we'll
8 just take your lead on that. If we can proceed with Don, and
9 then we can go to the architect, Abram Goodrich.

10 CHAIRPERSON HILL: Go ahead, Ms. Prince. Just follow
11 the way you're thinking about it.

12 MS. PRINCE: Okay.

13 So Don, you can go ahead.

14 MR. SMALL: MR. Allison, Tom.

15 MS. PRINCE: Oh, Tom, sorry. I'm looking at Don.

16 MR. BOWERS: Yeah, let's let Tom go.

17 Ms. PRINCE: We have Tom Small from --

18 MR. SMALL: Good afternoon. Good afternoon, Chairman
19 Hill, members of the Board. My name is Tom Small. I'm the
20 assistant vice president with Lincoln Property Company and the
21 onsite property manager at 101 Constitution. I'm here today as
22 representative of the building owner, the United Brotherhood of
23 Carpenters and Joiners of America. The carpenters' union has
24 been located on this site since 1961. Lincoln Property Company
25 has managed the current building since it was constructed on the

1 site in 2001. And I've managed this building personally since
2 2010.

3 The building is an iconic building built with the
4 finest quality workmanship and timeless materials. The ownership
5 of the building (indiscernible) and maintains it with the highest
6 level of care. As the building enters its third decade of service
7 building ownership has decided to pursue replacing the existing
8 temporary tent structure with a permanent rooftop enclosure
9 commensurate with the quality of the building and the surrounding
10 area. During the time we have managed 101 Constitution, we have
11 prioritized our relationship with the United States Capitol
12 Police and various other federal and local law enforcement
13 agencies, including the United States Secret Service and the
14 Metropolitan Police Department. They are our partners.

15 We recognize the unique location of our property. We
16 provide daily facility access to the Capitol Police, standing
17 post adjacent to the building and support law enforcement
18 missions whenever needed. As a matter of fact, this evening,
19 with the Ukrainian president's visit to the Capital, we will
20 again be in support of the Capitol Police's mission. We enjoy a
21 high level of cooperation with the Department and will continue
22 to work closely with our partners to ensure their continued
23 success. As an example, each -- during each of the five
24 presidential inaugurations held since the building opened the
25 roof terrace at 101 Constitution has been made available to

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1 members of the Capitol Police and Secret Service tasked with
2 securing this momentous occasion. Our partnership with that
3 office will continue.

4 We've also worked closely with the architect of the
5 Capitol over the years. A number of years ago when the Capitol
6 dome was being refurbished we made our location available on the
7 roof terrace for the architect of the Capitol to set up a position
8 to make a time lapsed photographic record of the restoration
9 work. We look forward to continue our relationship with this
10 office as well.

11 As for the design being presented, when the ownership
12 decided to pursue this enclosure, we went through a careful
13 selection process to make sure that the design would be fully
14 consistent with the existing building and would earn the support
15 of the Commission for Fine Arts. We are pleased with the design
16 that Abram Goodrich with Gensler will now present to you. Thank
17 you.

18 MS. PRINCE: If there are no questions for Mr. Small
19 we can go ahead with the architect's presentation, Abram
20 Goodrich.

21 And Paul, if you could bring up the plans, that would
22 be great.

23 MR. GOODRICH: Great. Good afternoon, Chairman Hill
24 and members of the Board. Hopefully you can hear me all right.

25 CHAIRPERSON HILL: Yes.

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1 MR. GOODRICH: Great. So I am Abram Goodrich. I am
2 an architect at Gensler, and leading the design of this project
3 I will show you now. I'm going to give you a brief overview of
4 the site and the proposed design, and then focus on the specifics
5 of the relief that is being requested. So if you could advance
6 to the next slide please?

7 So as you know, 101 Constitution is a highly visible
8 multi-tenant office building in close proximity to the U.S.
9 Capitol. Because of the proximity, the building is subject to
10 design review and approval by the Commission of Fine Arts, as
11 you've heard. Could we go to the next please?

12 The lot is triangular in nature, and the massing of the
13 building creates the expression of a cylindrical tower at the
14 corner of Constitution and Louisiana. In this view, you can
15 clearly see the footprint of the white tent that our project
16 seeks to replace. Please notice two things. The tent comes
17 quite close to the parapet in a number of spots, and, number two,
18 the tent does not synchronize very well with the geometry of the
19 cylindrical tower below. If you could go to the next slide?

20 Here are a few pictures of the tent at roof level in
21 use. Seasonal tenting, as you heard, has been used since the
22 building was built. CFA staff have historically approved its
23 use, but also made clear in the process that they are not big
24 fans of its appearance. If you could go to the next?

25 So we've got a series of photos here of the building

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1 as seen from street level. And as we go through these, you keep
2 your eyes on the top of the building and the visibility of the
3 tent. So Mr. Young, if you don't mind kind of taking us to the
4 next?

5 Because of the nature of its placement and relationship
6 to the Capitol grounds, we always have very long sightlines to
7 the rooftop. So the tent is visible from any number of positions,
8 as is the penthouse itself. There's virtually no amount of
9 setback that can conceal what is constructed at roof level. And
10 this realization has really guided our design. Go to the next
11 please?

12 On the west side of the building, which you're seeing
13 here, notice how the massing is curving back with a court and
14 some terracing to articulate the cylindrical volume there at the
15 top of the building. In the lower right-hand photo you can see
16 the tent is visible on the (indiscernible) and right above the
17 parapet line there. This is the location where we are requesting
18 a setback relief for the habitable penthouse addition. If we
19 could go to the next?

20 The existing roof plan shows you how the upper floors
21 are pinching in to articulate the cylindrical tower. The area
22 that is hatched in gray is paved area that is accessible, and
23 the areas in orange are ballasted with, you know, with rocks that
24 are not intended to be occupied. The next slide please?

25 This shows you our proposed design, which makes the

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1 entire roof area accessible using a combination of paved and
2 planted areas. The areas shown here in blue are the new habitable
3 penthouse, some of which is addition to the existing penthouse,
4 and some of which is space that is captured within the current
5 penthouse enclosure. The centerpiece of the design is a
6 multipurpose room that replaces the existing tent. The
7 multipurpose room is actually a bit smaller than the current
8 tent. Unlike the tent, the footprint of the room responds in a
9 rational and sympathetic way to the geometries of the building.
10 This relationship respecting and celebrating the tower
11 composition was a key part of the proposal earning concept
12 approval from the Commission of Fine Arts. In the next few
13 slides, I will show you the design of the penthouse edition as
14 approved by CFA. It is a product of extensive back and forth
15 conversation with CFA staff. The design attitude is to be highly
16 respectful of the existing building, which is a highly regarded
17 work of architecture. Next please?

18 So here we are showing you the existing elevation if
19 you were to stand essentially on Constitution Avenue and look to
20 the north. If you go to the next?

21 We can see the addition placed at the rooftop level.
22 Next please?

23 Now I've got a series of views that will take us around
24 the building and show you how that rooftop addition feels as seen
25 from below. We'll start here on Louisiana Avenue, if you could

1 click to the next?

2 I think you'll appreciate that the lines of the
3 addition are intended to be respectful of the building
4 geometries. And go to the next please?

5 And come around one more time if you advance the slides
6 to the west side?

7 And this is that moment where we are requesting that
8 setback relief, where the building massing is highly indented
9 with that court and the terracing that occurs at floor nine. If
10 we could go to the next?

11 So when we began this process of design consultation
12 with CFA staff, we highlighted this area and the challenge of
13 dealing with this court indentation. We proposed that we could
14 infill this portion of the building below, so, you know, floor
15 nine, floor ten, and thereby effectively extending our roof so
16 that our -- we could build this addition and not be here asking
17 for relief today. But CFA really did not support that idea of
18 infilling that space. They felt that altering the existing
19 building was going to be aesthetically problematic and would
20 degrade your overall perception of the building. They believed
21 that the composition that you see here was a much better holistic
22 approach to adding to the building. And we were encouraged to
23 ask for this relief. Go to the next.

24 So we certainly believe that there are no adverse
25 effects to neighbors, since we could, without this relief, have

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1 infilled that portion of the plan and addressed the setback issue
2 in that way. So the other thing that is worth mentioning here
3 is that we are very well setback from the property line itself.
4 So in summation of our argument regarding the penthouse addition,
5 there are numerous similar penthouses in the area that have been
6 developed nearby and we are certainly compatible with that kind
7 of development occurring. The building owners have this great
8 relationship with the U.S. Capitol Police and we believe that if
9 anything we are improving the security situation relative to a
10 tent structure. And the plan is very respectful of the building's
11 relationship to the existing building and to the grounds of the
12 U.S. Capitol. And CFA's support with our proposal at concept
13 stage we think is evidence of that.

14 So we believe that the setback relief will allow us to
15 make a better building overall, which is a, you know, dignified
16 representation appropriate to the setting of the U.S. Capitol.
17 If we could go to the next slide please, we'll explain the
18 guardrail issue?

19 So as I mentioned, only a portion of the existing
20 rooftop is occupiable today. And all of those areas have
21 typically a parapet wall that is supplemented with a glass
22 guardrail behind it to achieve the necessary height to provide a
23 level of safety.

24 CHAIRPERSON HILL: Mr. Goodrich?

25 MR. GOODRICH: Yes?

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1 CHAIRPERSON HILL: Let me interrupt you actually,
2 because I think we're really all -- well, I mean -- I think we
3 understand the application pretty well.

4 MR. GOODRICH: Okay.

5 CHAIRPERSON HILL: So I just want to see -- I want to
6 kind of see if my fellow Board members have any questions for
7 you.

8 Do my fellow Board members have any questions of the
9 Applicant at this point?

10 Okay. And just because I'm curious, you guys are
11 actually gaining covered square footage, right, from that tent?

12 MR. GOODRICH: Is the -- you're asking are we -- do we
13 have more enclosed area relative to the tent with this new
14 element?

15 CHAIRPERSON HILL: Yes. Yes.

16 MR. GOODRICH: I believe that we probably do. You
17 know, if we look at the way --

18 CHAIRPERSON HILL: I was just curious. I was just
19 curious. I've been up there with the tent. I was just curious
20 if maybe now it's going to suck less.

21 MR. GOODRICH: We certainly hope so.

22 CHAIRPERSON HILL: Okay. All right. It looks really
23 nice.

24 Okay. Let's see. Can I turn to the Office of Planning
25 please?

1 MS. VITALE: Good afternoon, Mr. Chair, and members of
2 the Board. Elisa Vitale with the Office of Planning. The Office
3 of Planning recommends approval of the requested special
4 exception relief for the penthouse setbacks for both the
5 habitable penthouse and for the guardrail, as requested from
6 Subtitle C, Chapter 15, and for the special exception relief for
7 the proposed expansion of the building within the Capitol
8 security sub area. And we are happy to rest on the record of
9 the OP staff report and area available for any questions that you
10 might have. Thank you.

11 CHAIRPERSON HILL: Thank you, Ms. Vitale.

12 Does the Board have any questions for the Office of
13 Planning?

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

15 MR. YOUNG: Do not.

16 CHAIRPERSON HILL: Ms. Prince, do you have anything
17 you'd like to add at the end?

18 MS. PRINCE: I do not. Thank you for your time today.
19 And again, happy to answer any further questions.

20 CHAIRPERSON HILL: Okay. Great. Thank you.

21 All right. Unless the Board has any questions, I'm
22 going to close the hearing on the record.

23 Oh, wait, oh, never mind, don't go anywhere.

24 All right. I got Mr. Blake first.

25 COMMISSIONER BLAKE: Can you hear me?

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1 CHAIRPERSON HILL: Yeah, we can hear you now.

2 COMMISSIONER BLAKE: Yeah, one question. Do -- Ms.
3 Prince, you had that email from Commissioner Eckenwiler. Do you
4 -- would that -- is that timely for you to submit that or would
5 that take a while?

6 MS. PRINCE: We can we can upload it, if that would be
7 helpful. If you would like it in the record, we're happy to do
8 that.

9 COMMISSIONER BLAKE: I don't know if the other Board
10 members -- I'd like to, but if it would delay this, I would prefer
11 -- I'm comfortable not having it. That's it for me.

12 CHAIRPERSON HILL: Okay. We can leave the record open
13 for the email from the commissioner, Ms. Prince, if you would
14 please add that into the record?

15 MS. PRINCE: Sure.

16 CHAIRPERSON HILL: And then I think, Vice Chair John,
17 did you have your hand up? Or you did not? Okay.

18 VICE CHAIR JOHN: Mr. Chairman, I have no questions.

19 CHAIRPERSON HILL: Okay. All right.

20 I'm going to go ahead and -- oh, yeah --

21 ZC COMMISSIONER IMAMURA: Mr. Chairman?

22 CHAIRPERSON HILL: Maybe it was your hand, sorry.

23 ZC COMMISSIONER IMAMURA: It was. And I don't have any
24 questions, but I just want to give my compliments to the Gensler
25 team for a nice design solution. And I also want to thank Mr.

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1 Small and his team for their partnership and cooperation with
2 Capitol Police, and the architect of the Capitol. And we look
3 forward to continuing that relationship.

4 CHAIRPERSON HILL: Great. Thank you, Dr. Imamura, and
5 thank you for your letter actually also, which was helpful.

6 All right. I'm going to go ahead and close the hearing
7 on the record.

8 Okay. In this particular case, I didn't have any issues
9 with the penthouse setback requirements. I mean, as I'm kind of
10 making light of knowing that rooftop situation. The only thing
11 that was kind of interesting, I guess, is where they're asking
12 for that relief from the courtyard there, it kind of almost face
13 -- it doesn't face a lot of people. It's kind of like that narrow
14 road that's there off of Constitution or is it Pennsylvania. And
15 but I didn't have any issues with the application. I thought
16 that I would -- that the Applicant did a good job presenting and
17 outlining everything that was going on. I also would appreciate
18 their outreach to the ANC and the testimony that the Applicant
19 has given about their interaction with the ANC and also would
20 agree with the Office of Planning's analysis concerning this
21 application to be voting in favor.

22 Mr. Smith, may I turn to you if you have anything to
23 add?

24 COMMISSIONER SMITH: I don't have too much to add. I
25 agree with your assessment of this application. I do believe

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1 that the Applicant met the burden of proof for us to grant the
2 special exception based on the criteria of Subtitle C 1506. And
3 to your point, I have been on that roof and I have seen that
4 temporary structure from -- you can see it from Pennsylvania
5 Avenue. You can see it from the Capitol. And it is an architect
6 -- it is a very jarring structure, and I do believe that the
7 proposed additions on the penthouse would architecturally
8 integrate something that's been occurring up there for a while,
9 for years now, almost a decade, I think, if not more, this
10 functional outdoor space that's being used, where their
11 construction -- what they're constructing would integrate more
12 seamlessly with the with the existing architecture of that
13 building that faces the Capitol and the mall. So I do believe
14 they met the burden of proof. And I will give OP staff report
15 great weight and will support the application.

16 CHAIRPERSON HILL: Thank you.

17 Mr. Blake?

18 COMMISSIONER BLAKE: Mr. Chair, I've not been there or
19 seen it. However, I will be voting in favor of the application
20 as I do believe the Applicant has met the burden of proof to be
21 granted relief. I give great weight to the Office of Planning's
22 recommendation for approval. DDOT has no objection. And I
23 acknowledge the Office of -- the Applicant -- the architect with
24 the Capitol's report with no objections.

25 CHAIRPERSON HILL: Thank you.

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1 Dr. Imamura?

2 ZC COMMISSIONER IMAMURA: I agree with my colleagues
3 and would just note that they also have CFA approval too. So
4 I'm prepared to vote in favor. And I appreciate that letter from
5 the architect of the Capitol as well.

6 CHAIRPERSON HILL: Okay. All right. Great.

7 Vice Chair John?

8 VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree
9 with all of the comments of my colleagues so far. And I also
10 would like to thank the architect of the Capitol for the letter
11 in the record.

12 CHAIRPERSON HILL: Thank you, Vice Chair John.

13 ZC COMMISSIONER IMAMURA: I will let him know, Vice
14 Chair John.

15 CHAIRPERSON HILL: Let him know.

16 VICE CHAIR JOHN: Thank you. When you see him.

17 ZC COMMISSIONER IMAMURA: When I see him.

18 CHAIRPERSON HILL: All right. Okay.

19 I'm going to make a motion to approve Application No.
20 20833 as captioned and read by the secretary and ask for a second,
21 Ms. John.

22 VICE CHAIR JOHN: Second.

23 CHAIRPERSON HILL: Motion been made and second, Mr.
24 Moy, if you'd take a roll call please?

25 MR. MOY: Yes. Thank you, sir.

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1 When I call your name, if you'll please respond to the
2 motion made by Chairman Hill to approve the application for the
3 relief requested. The motion to approve was second by Vice Chair
4 John.

5 Zoning Commissioner Dr. Imamura?

6 ZC COMMISSIONER IMAMURA: Yes.

7 MR. MOY: Mr. Smith?

8 COMMISSIONER SMITH: Yes.

9 MR. MOY: Mr. Blake?

10 COMMISSIONER BLAKE: Yes.

11 MR. MOY: Vice Chair John?

12 VICE CHAIR JOHN: Yes.

13 MR. MOY: Chairman Hill?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: Staff then would -- staff would record the
16 vote as five to zero to zero. And this is on the motion made by
17 Chairman Hill to approve. The motion to approve was second by
18 Vice Chair John also in support of the motion, as well as from
19 Zoning Commissioner Dr. Imamura, Mr. Smith, Mr. Blake, Vice Chair
20 John, and Chairman Hill. Motion carries, sir, five to zero to
21 zero.

22 CHAIRPERSON HILL: Thank you, Mr. Moy. You may call
23 our next case when you have an opportunity.

24 MR. MOY: The next case is Application No. 20835 of
25 Lowe, L-O-W-E, Enterprises Real Estate Group. This application

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1 -- this is a self-certified application as amended pursuant to
2 Subtitle X, Section 901.2, special exception under Subtitle C,
3 Section 1506 from the penthouse enclosion (sic) wall requirements
4 of Subtitle C, Section 1053. Property located in the D-5 zone
5 at 1250 Maryland Avenue, S.W., Square 299, Lot 832. And a
6 preliminary matter, Mr. Chairman, the Applicant is asking for
7 expert witness who is currently not in the witness book to an
8 Anna Barbour for expertise in architecture.

9 CHAIRPERSON HILL: Okay. Thank you.

10 If the applicant could hear me, if they could please
11 introduce themselves for the record?

12 MR. AVITABILE: David Abiteboul of Goulston & Storrs,
13 ending the day as you started it.

14 CHAIRPERSON HILL: We got one more, Mr. Avitabile, but
15 we're close.

16 MR. AVITABILE: Okay. Good.

17 CHAIRPERSON HILL: But we're close. Mr. Avitabile,
18 sorry, I would have tried to stick you together had I realized
19 it. Let's see. Who is your expert status person again?

20 MR. AVITABILE: So it's Anna Barbour with Beyer Blinder
21 Belle. I believe her resume is in Exhibit 27C, as Mr. Moy noted.
22 Ms. Barbour is on.

23 CHAIRPERSON HILL: Okay. I'm just pulling up the
24 record.

25 MR. AVITABILE: She's a registered architect I think

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1 10 plus years of experience.

2 CHAIRPERSON HILL: Yep, yep. I don't have any problem
3 with Ms. Barbour being introduced as an expert in architecture.
4 Unless someone has a comment they'd like to make, please raise
5 their hand.

6 Seeing no one raised their hand, we're going to go
7 ahead and move along.

8 Mr. Avitabile, if you want to go ahead and walk us
9 through your client's application as to why you believe they're
10 meeting the criteria for us to grant the relief requested? I'm
11 going to put 15 minutes on the clock and you can begin whenever
12 you like.

13 MR. AVITABILE: Wonderful. Thank you.

14 And Mr. Young, if you can bring up Exhibit 33A, the
15 presentation we shared with you, though we will only go about
16 four pages into it?

17 So my name is David Avitabile with Goulston & Storrs.
18 Our team is joined today by Lex Lefebvre as a representative of
19 the Applicant and by our experts who were previously noted. And
20 if we could go two pages in, Mr. Young, please? And then the
21 next page please? Thank you.

22 So the subject property here is in the D-5 zone. This
23 is the downtown zone that permits high density development. The
24 property is currently improved with a commercial office building
25 that is located in the portal's development commonly known as

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1 Portals I. It is one block east of the former Mandarin Oriental
2 Hotel, which has been recently rebranded as the Salamander Hotel.
3 We're here today requesting special exception approval for
4 multiple roof structures, which will facilitate the conversion
5 and expansion of the existing office building into a new
6 residential building. If we can go to the next slide please?

7 Which shows the two proposed enclosures. As the Board
8 knows, Section 1506 of Subtitle C lays out four potential grounds
9 for relief from the roof structure requirements and requires the
10 applicant to demonstrate it has met at least one of them. Here
11 we believe we have demonstrated we meet multiple grounds. First,
12 strict application here results in construction that is
13 prohibitively costly and unreasonable. We're reusing an existing
14 building with a very large footprint that stretches across the
15 length of an equally large two and a half acre lot. As a result,
16 the existing building has multiple cores. Reconstructing the
17 existing building to have a single core with a single enclosure
18 would be prohibitively costly and unreasonable under (c)(1) of
19 Section 1506. Second, operating difficulties related to the
20 existing building also make full compliance unreasonable. To
21 serve a building of this size, we need multiple mechanical,
22 electrical, and plumbing zones to serve both ends of the building.
23 So these MEP zones are organized around the existing building
24 cores. Locating all equipment within a single enclosure would
25 restrict the use of existing shafts and require additional

1 extensive ductwork to run horizontally through the building as
2 well as at the roof level. Therefore, full compliance would
3 create MEP challenges that are unduly restrictive and
4 unreasonable given our efforts to reuse the existing building and
5 maintain a height that is as compliant -- consistent with the
6 surrounding buildings as possible. So that meets the standard
7 under (c)(4) of Section 1506. And then third, the requested
8 relief results in a better design. If we were to connect the
9 two enclosures into a single uniform enclosure, it would end up
10 occupying 3,000 to 4000 additional square feet of roof space that
11 would reduce the available area for green roof. And so therefore
12 the proposed design is a better design. And in addition to the
13 specific requirements of 1506.1(c), we have also demonstrated
14 satisfaction with the other requirements. The roof structures
15 comply fully with the setback requirements and we also meet the
16 general special exception requirements of Subtitle X, Chapter 9.
17 We're happy to report we're here today with full support from the
18 Office of Planning. DDOT has also no objection to the project.
19 And we've agreed to abide by the TDM plan that we proposed and
20 they have indicated is acceptable. ANC 6D is also in support.
21 Their resolution is conditioned on our voluntary commitment to
22 provide for affordable housing in association with the project,
23 and we've agreed to abide by our commitment to the ANC. Finally,
24 in what can only be described as either exceptionally good or
25 exceptionally bad timing, I am also asking for design flexibility

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1 for the project. As we explained in our submissions, this is a
2 project that has received initial concept approval from the
3 Commission of Fine Arts, so the plans before you reflect the
4 plans that the CFA has already approved. However, as we know,
5 CFA continues to review plans at the advanced design and at the
6 permitting stage, and sometimes that review can result in
7 material design changes to the overall project. We have distilled
8 our request here down to a simple and limited request, which is
9 set forth on Exhibit 33 of the record, and that is simply
10 flexibility to modify the design in response to CFA, provided the
11 modifications do not substantially alter the exterior design or
12 increase any area of zoning relief. We are certainly happy to
13 provide a more detailed overview of the program and the building
14 design. However, given the hour and what I think is a relatively
15 complete record, we're happy to rest on the rest of the record
16 and move quickly to questions. Thank you.

17 CHAIRPERSON HILL: All right. Mr. Avitabile, that's
18 great. And I still haven't visited since it's become a
19 Salamander, but I'm looking forward to seeing the new Salamander.

20 Let's see. Does the Board have any questions of the
21 Applicant?

22 Let's start with Mr. Blake first.

23 COMMISSIONER BLAKE: My question with regard to the
24 areas of flexibility. You said -- is there anything in particular
25 you think might require flexibility? I know it's potentially

1 there from the CFA, but is there any particular area where you
2 thinking there could be a requirement for flexibility? And --

3 MR. AVITABILE: Sure.

4 COMMISSIONER BLAKE: Okay.

5 MR. AVITABILE: Sorry, go ahead.

6 COMMISSIONER BLAKE: I can follow with my next question
7 afterwards.

8 MR. AVITABILE: Okay. So certainly. So when you go
9 to CFA and you get concept approval, sometimes they ask you to
10 come back for what they call sort of further concept review once
11 you're at the design development phase, and that -- we have to
12 go back, not only to staff but to the full commission. So this
13 is a little different than the project you just received, which
14 has already gotten its full concept review by the full commission
15 and final approval's been delegated to staff. So when we go back
16 for further design review, that's when we'll get more into some
17 of the materiality. You know, CFA, in its initial letter asks
18 us to spend a little more time looking at the base of the
19 building, refining some of the components of the portals forms.
20 So those could have, you know, dimensional effects that might
21 make those pieces of the building look a little different than
22 what we've shared with you today. They won't change the overall
23 form, mass program, zoning relief, any of those features, but
24 they could be different. And I mean, the extent to which -- I
25 listened to your deliberation on the -- my earlier case, and the

1 zoning administrator, their discretion really turns on the person
2 who's sitting in that chair, and it can vary and it can vary
3 based on project and context. And so here, given the fact that
4 we know that CFA will have strong feelings about design and we've
5 got to go through another round with them, we wanted to preserve
6 some flexibility there.

7 COMMISSIONER BLAKE: So just to follow up, if we didn't
8 -- if you were not granted the flexibility, how would you go
9 about making changes?

10 MR. AVITABILE: Well, I think, one, we would probably
11 try to work with CFA to limit the changes as much as we can, and
12 if they required a change that was what I would say is material,
13 we would then meet with the zoning administrator and he might say
14 or she might say it's okay or they might say well, this now needs
15 go back to the Board, but there's no clear standard as to what
16 goes back.

17 COMMISSIONER BLAKE: Okay. Thank you.

18 CHAIRPERSON HILL: Okay.

19 Dr. Imamura, you had your hand up, I believe?

20 ZC COMMISSIONER IMAMURA: Yes. Thank you, Mr.
21 Chairman. I'm comfortable with the flexibility, given that it's
22 going to go before CFA.

23 Mr. Avitabile, I think this could be a good example of
24 a conversion. I just wanted to ask if you could touch a little
25 bit on any affordable housing that's going to be included in

1 this?

2 MR. AVITABILE: Sure. So we had an extensive discussion
3 with ANC 6D about this. This is not a site that requires any.
4 And because CFA limited the height of the building, we weren't
5 able to construct the original penthouse level we had hoped to
6 construct, and that would have come -- what would have come with
7 that would have been an affordable housing requirement. So what
8 we said to ANC 6D is look, we'll give you the affordable housing
9 you would have gotten had we been able to do that penthouse. And
10 that's how we came up with the proffer, which was about 2,500
11 gross square feet, 2,200 net square feet of affordable housing.
12 They asked for it to be family-sized units. So that's why we
13 settled on a two- and a three-bedroom unit. These would be
14 voluntary units. They wouldn't be part of the IZ program, but
15 we have a clear set of standards as to what they would be that
16 came pretty close to the IZ program. Through further discussions
17 with the ANC, they -- we explained to them this is really
18 expensive way to do affordable housing within a building because
19 of the rent differential. And they are amenable to if we can
20 come up with an alternative program that takes the same investment
21 and can make it be more impactful in the community, they're open
22 to that. And so if we come up with something else, we'll go back
23 to them and we'll go with that approach. So it's sort of an
24 extension of our working relationship with them. This same
25 development team did the recently completed Randall School,

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1 Rubell Museum project, and so we have a good relationship with
2 the ANC and we sort of have built on it with this.

3 ZCCOMMISSIONER IMAMURA: Very good, I appreciate the
4 explanation, Mr. Avitabile.

5 Mr. Chairman, I'm satisfied and will yield back.

6 CHAIRPERSON HILL: Thank you.

7 Anyone else?

8 Going to turn to the Office of Planning.

9 COMMISSIONER SMITH: Hold on, I got another question.

10 CHAIRPERSON HILL: Oh, sorry, go ahead, Mr. Smith.

11 COMMISSIONER SMITH: It just popped into my head. I'm
12 just -- I'm looking through your -- in your narrative regarding
13 the flexibility. Are these -- one, two three -- these four points
14 are what you're looking for flexibility on?

15 MR. AVITAIBLE: We --

16 COMMISSIONER SMITH: (Indiscernible) the location and
17 design of all interior components?

18 MR. AVITABILE: So that was the original request.

19 COMMISSIONER SMITH: Uh-huh.

20 MR. AVITABILE: Then after our conversation last week
21 on the other matter, we refined that down to a much narrower --
22 so if you look at Exhibit 33 of the record, it's narrowed down
23 to a single ask, which is the indented bullet in the middle of
24 Exhibit 33 of the record. And it's simply request to modify in
25 response to Commission of Fine Arts.

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1 COMIMSSSIONER SMITH: No problem.

2 MR. AVITABILE: Does that make sense?

3 COMMISSIONER SMITH: So I have a question for you --
4 could this have -- because you're asking for penthouse relief,
5 could it have been as simple as you have submitted something that
6 wasn't quite as detailed with the exterior designs to us? Could
7 that have worked instead of you asking for this this condition
8 for flexibility?

9 MR. AVITABILE: Well, no, I think we submitted the most
10 -- it's a really good question and it gets to what I'm at least
11 struggling with at this point when it comes to this issue. We
12 submitted to you what we -- exact same drawings that were
13 submitted to the Commission of Fine Arts, same level of detail.
14 And we know the Board likes to see that. I mean, we could submit
15 to you a blank mass without any detail, but I don't think that's
16 what anyone wants to see. We just know that these designs do
17 evolve. There was a time not too long ago where it was understood
18 that the Board, when it approved plans, what they approved was
19 limited to whatever relief you requested and you had free rein
20 on the rest of the building. I think as the zoning regulations
21 evolved, particularly the transition from ZR-58 to ZR-16, it
22 became more clear that you really are bound by the approved plans
23 and the zoning administrator has some flexibility. But I think
24 the Board wants to know the use of the project you're reviewing
25 is what's approved. And so that puts us into this weird world

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1 where we're a lot closer to sort of a project the Zoning
2 Commission would review. And the Zoning Commission always has a
3 long list of flexibility, and we don't have that at the Board.
4 I think everyone understands the Board's approval of plans is a
5 different stage. But here I'm literally just trying to call out
6 with this one condition the one thing that might really materially
7 impact the design.

8 COMMISSIONER SMITH: I think Ms. John has said this a
9 couple times because to me this condition is we're outsourcing
10 some of our authority to CFA with this type of condition. Me
11 personal. And I understand where you're coming from when you say
12 that sometimes we want to see the use and I think in certain
13 situations that is applicable that we want to see that type of
14 use. For example, if you were just putting on some type of
15 habitable penthouse and we want to -- we condition it and say
16 you can't have a restaurant or something like that, the restrict
17 was going to occur there, but in this particular instance, I
18 don't think that we are doing that. This is based on the
19 enclosures themselves, less so the design and how they're
20 programmed. So I kind of -- I see your point in certain cases,
21 but I don't see your point for this particular request. To me
22 it's more outsourcing to the CFA. So I'll just leave it at that.

23 MR. AVITABILE: I appreciate that. And I don't
24 disagree, I'd like to see the world your way. I just know the
25 experience we sometimes can have depending upon who you get when

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1 you're in for permit review at Department of Buildings, they
2 sometimes (indiscernible) a lot closer to what they see as an
3 approved set of plans. But I appreciate the opportunity to at
4 least explain a little bit more what we're struggling with. Thank
5 you.

6 COMMISSIONER SMITH: Uh-huh. Thank you.

7 CHAIRPERSON HILL: All right.

8 Anyone else?

9 Okay. I'm going to turn to the Office of Planning
10 please?

11 MR. COCHRAN: Thanks, Mr. Chair. Steve Cochran for the
12 Office of Planning in BZA 20835. OP is recommending that you
13 approve the special exception from the penthouse enclosing
14 requirements of C 1503.1. This would be pursuant to C 1506.1
15 and of course Subtitle X, Chapter 9. This would permit the
16 Applicant to build two penthouse enclosures rather than a single
17 penthouse. OP also does not have any objections to the
18 flexibility that the Applicant has requested. Other than that,
19 I'm happy to stand on our report and answer any questions.

20 CHAIRPERSON HILL: Thank you.

21 Does anybody have any question for the Office of
22 Planning?

23 All right. Mr. Young, is there anyone here wishing to
24 speak?

25 MR. YOUNG: Do not.

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1 CHAIRPERSON HILL: Okay.

2 Mr. Avitabile, do you have anything you'd like to add
3 at the end?

4 MR. AVITABILE: No, just to thank the Board again for
5 your time today. Thank you.

6 CHAIRPERSON HILL: All right. Mr. Avitabile, you
7 actually are the last case. I didn't realize that. So you have
8 a lovely holiday, new year, and we'll see you in 2023.

9 MR. AVITABILE: Thank you so much.

10 CHAIRPERSON HILL: All right. I'm going to go ahead
11 and close the hearing on the record.

12 I didn't particularly have any issues with this. I
13 guess there seems to be some different discussions going on with
14 the ANCs concerning what they're trying to do with IZ or
15 affordable units. And I can understand and appreciate the
16 Applicant trying to work with the ANC in that capacity. In terms
17 of the flexibility, I again -- I mean, I know it's -- I don't
18 know, maybe just today it's kind of a slippery slope on this
19 discussion. I mean, I don't have an issue with it in this
20 particular case again. I mean, I think that, you know, it not
21 having to do with zoning relief in this particular case and that
22 it's the Commission of Fine Arts, you know, I can live with that
23 condition. And I don't think that that's taking what we have
24 done in the past away from us if we didn't want to grant the
25 flexibility. I don't think -- I think most people before us --

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1 or have come before us know that we oftentimes don't grant
2 flexibility. So it depends, I think, on a case-by-case basis.
3 I would be fine and comfortable with it in this particular case.
4 Again, in terms of the merits, I would agree with the analysis
5 that provided -- that was provided by the Office of Planning as
6 well as -- I don't even know whether I would say it was -- that
7 the -- just the input from the ANC. I mean, I don't again agree
8 with any of the ANC's discussions being conditions because I
9 think that that's something that's outside of the Board's
10 authority. And so I will not be in favor of those. I don't even
11 see that -- think that they're necessarily being conditions.
12 There's things that the ANC and the Applicant have worked out
13 amongst themselves. But as far as the criteria, I would agree
14 with the Applicant's argument and vote in favor.

15 Mr. Smith, may I ask for your opinion?

16 COMMISSIONER SMITH: I by and large agree with your
17 statements on this case. I believe that the Applicant's met the
18 burden of proof for us to grant special exception for them to do
19 -- have some additional flexibility with their mechanical
20 equipment on the roof being they're converting this from an office
21 building to predominantly residential. So they would need some
22 additional penthouses for the individual units. And I believe
23 they've met the burden of proof based on their -- based on their
24 presentation for us to support the special exception. I agree
25 with your assessment of the ANC letter. I do believe that it's,

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1 you know, not something that's before the Board, nor can we compel
2 the Applicant to do additional IZ units above and beyond what is
3 required or what they choose to offer in essence for these
4 projects. But by and large, I do believe that they've met the
5 regulations. I think, you know, ten minutes ago you heard my
6 position on the -- putting in this particular condition. But I
7 would go with the pleasure of where the Board lands on that --
8 including this type of condition. As you stated before, and
9 we've stated with a previous case, we've used them before. I
10 just would like to find a way where we put some type of line on
11 that, because I could see it becoming a slippery slope as these
12 bifurcated applications that we've seen from one particular
13 lawyer have become a slippery slope. So you know, I'll leave it
14 at that. If we want to include this condition, I don't think it
15 would cause too much harm, but I would prefer not to.

16 CHAIRPERSON HILL: Okay.

17 Let's go with Mr. Smith.

18 COMMISSIONER BLAKE: Mr. Blake. I'll go.

19 CHAIRPERSON HILL: I'm sorry, Mr. Blake.

20 COMMISSIONER BLAKE: I agree with the comments made by
21 Board Member Smith with regard to the merits of the case. With
22 regard to the issue of the flexibility, I do think I am
23 comfortable with providing -- allowing this level of flexibility.
24 We've done it in several cases before with regard to CFA's
25 analysis and approval, and as long as it doesn't require something

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1 -- some additional Board relief or conflict with the relief
2 granted, I would -- I don't have a problem allowing for that
3 flexibility. I would also add that DDOT had suggested -- or
4 subject -- had no objection, subject them to a TDM plan, which I
5 don't think would be appropriate for our --to incorporate it in
6 the BZA order because it's not related to relief that we are
7 granting. So I would be voting in favor of the application and
8 giving great weight to the Office of Planning's recommendation.
9 Obviously the CFA's input and ANC 6D's support of course would
10 not include that condition as well.

11 CHAIRPERSON HILL: Thank you, Mr. Blake, and thank you
12 for bringing up the DDOT report. I would also agree with you
13 that this is for penthouse relief, and I did not think that the
14 DDOT issue would be something that we would put forward in our
15 order.

16 Dr. Imamura?

17 ZC COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I
18 agree with you, Board Member Blake, and Board Member Smith that
19 this has just been about the penthouse relief. I'm comfortable
20 granting the flexibility as well. This is an instance where
21 there's multiple agencies that are weighing in and I think that
22 it's appropriate in this case to grant them the flexibility that
23 they need to receive the final approval from the CFA. And there's
24 a reason why we have multiple agencies here reviewing projects
25 like this to ensure design standards are met and regulations are

1 adhered to. So I'm prepared to vote.

2 CHAIRPERSON HILL: Thank you, Dr. Imamura.

3 Vice Chair John?

4 VICE CHAIR JOHN: Thank you, Mr. Chairman. I agree
5 that the application meets the criteria for relief as described
6 in the Office of Planning report and as has been discussed by
7 the other Board members. I am reluctant to grant the design
8 flexibility. As I've stated before, it's not my favorite thing
9 to do, especially since the need for design flexibility does not
10 arise out of the relief requested. So basically they're asking
11 for penthouse relief and at the same time saying well, we just
12 might make some changes to this building, so we need flexibility.
13 So it seems as if the Board is inclined to grant flexibility and
14 so I will I will not object.

15 CHAIRPERSON HILL: Thank you. I think it's 'cause it's
16 the last day of the year, okay. Let's see how it is on the first
17 day of the year, okay. And so -- because I also don't know, like
18 I mean, like when I say I don't know, I'll come back and circle
19 around speaking to my fellow Board members. You know, it would
20 be so much easier if they could show us exactly what is the
21 flexibility. You know? Like I mean, what is it that they --
22 'cause if it has nothing to do with us, why are we asked -- why
23 are we -- you know, people are just being -- which is great.
24 They're being, you know, careful and cautious and, you know, that
25 in case they need it. Right? But it's not something that has

1 anything to do with us really, you know. And so it's -- but in
2 this particular case, at the end of the year, maybe next year
3 we'll figure out how to do this a little bit tighter, but I will
4 go ahead and make a motion to approve Application No. 20835 as
5 captioned and read by the secretary allowing for flexibility to
6 modify the approved plans as required to secure final approval
7 from the U.S. Commission of Fine Arts or its staff, provided that
8 such modifications do not substantially alter the exterior design
9 shown on the approved plans and provided that zoning relief is
10 not increased or affected, and ask for a second, Ms. John.

11 VICE CHAIR JOHN: Second.

12 CHAIRPERSON HILL: The motion's been made and second,
13 Mr. Moy, if you could take a roll call please?

14 MR. MOY: When I call your name, if you'll please
15 respond to the motion made by Chairman Hill to approve the request
16 for zoning relief, as well as allowing for design flexibility as
17 stated in the Chairman's motion. This motion to approve was
18 second by Vice Chair John.

19 Zoning Commissioner Dr. Imamura?

20 ZC COMMISSIONER IMAMURA: Before I confirm what my vote
21 is, I just want to say that I believe Vice Chair John has found
22 her holiday spirit. Yes, Mr. Secretary.

23 MR. MOY: Nicely done, sir.

24 Mr. Smith?

25 COMMISSIONER SMITH: I missed something, but I'll

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1 support it. Yes.

2 VICE CHAIR JOHN: It's a carry on from yesterday, I
3 believe. No, Monday. Monday. So yes. Is it my turn?

4 MR. MOY: Well, it can be.

5 Vice Chair John?

6 VICE CHAIR JOHN: Okay. So yes, I'm voting, right?

7 MR. MOY: Yes.

8 VICE CHAIR JOHN: I was distracted for a moment. And
9 so I will say that I have finally found the holiday spirit.

10 MR. MOY: Mr. Blake.

11 COMMISSIONER BLAKE: Yes.

12 MR. MOY: That's it? Okay.

13 Mr. Chairman?

14 CHAIRPERSON HILL: Yes.

15 MR. MOY: All right. Staff will record the vote as
16 five to zero to zero. And this is on the motion made by Chairman
17 Hill to approve. Motion to approve, second by Vice Chair John
18 also in support, as well as support from Zoning Commissioner Dr.
19 Imamura, Mr. Smith, Mr. Blake, Vice Chair John, Chairman Hill.
20 Again, the motion carries on a vote of five to zero to zero.

21 CHAIRPERSON HILL: Mr. Smith, did you vote? Oh, okay.
22 All right.

23 All right. Okay. I would like to say, and anybody who
24 wants to say something afterwards is welcome to, I'd like to say
25 happy holidays, happy New Year to everybody. Don't get to see

1 everybody, I dislike the Zoom thing, but I guess that's the way
2 it is. Maybe one day we'll get to see each other in person to
3 share best wishes for the New Year, but it's always a pleasure
4 working with all of you, including the Office of Zoning, Mr. Moy,
5 and our legal staff. And I wanted to say thank you for that.
6 I'm going to go around the table and end with Ms. John, if I
7 could.

8 Mr. Smith as always, Mr. Smith, do you have anything
9 you'd like to add?

10 COMMISSIONER SMITH: I agree with everything that you
11 said, Chairman Hill. I second every single thing that you said.
12 You know, I say happy holidays, merry Christmas, happy Hanukkah,
13 happy Kwanzaa, happy New Year to everyone, whatever you
14 celebrate, happy -- enjoy the holidays. Thanks to the Office of
15 Planning, the Office of Zoning for everything that you do. And
16 we'll do it all again in the new year.

17 Chairman Hill, I'm glad that you're back from
18 Minnesota. I'm glad you're not caught in that snowstorm. So
19 thank you. Thank you, I'm glad that you're not stuck up there.

20 CHAIRPERSON HILL: Thank you.

21 Mr. Blake?

22 COMMISSIONER BLAKE: Well, I got to say merry Christmas
23 and all that stuff to everybody here. I appreciate all the stuff
24 that's taken place over the last couple years or so since I've
25 been on the Board. You guys have been great and very welcoming

1 and I feel like family. I want to thank the staff who's been
2 very, very supportive, and also legal especially all the time.
3 Just always right there and very supportive. So merry Christmas
4 to everybody and thank you all so much for the opportunity to be
5 here.

6 CHAIRPERSON HILL: Dr. Imamura?

7 ZC COMMISSIONER IMAMURA: Thank you, Mr. Chairman. I
8 will just add a friendly amendment tell everybody please be safe
9 this holiday season. And I want to thank my fellow Board members
10 as well as the staff for all the great work that you do on behalf
11 of the residents of this great city. Thank you, Mr. Chairman.
12 Happy holidays.

13 CHAIRPERSON HILL: Vice Chair John?

14 VICE CHAIR JOHN: Thank you, Mr. Chairman. I would
15 just like to wish everyone a happy holiday. I don't want to
16 repeat all of the fine sentiments that have been expressed so far
17 in case I just muck it up. But really the OZ stuff has been
18 exceptional. We owe a debt of gratitude to the Office of Planning
19 for their preparation and helping to get cases to us when they're
20 in a condition to be reviewed by the Board. And that takes a
21 lot of work. And to our dear secretary, Mr. Moy, how can we get
22 through a Board hearing without you? So thank you. And I think
23 I've covered everyone, so happy holidays however you celebrate
24 and stay safe and stay warm.

25 CHAIRPERSON HILL: Wonderful.

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1 Mr. Moy?

2 MR. MOY: Oh, thank you, sir. Well, on behalf of the
3 OZ staff, on behalf of the -- especially the BZA staff and our
4 attorneys, no words can express our appreciation for this Board.
5 It's been very wonderful. And as well as the rotating zoning
6 commissioners, we couldn't be where we are without the zoning
7 commissioners. And of course, today, with Dr. Imamura with his
8 wonderful Christmas tree in the background. Yes, I'll say that
9 very simply have a joyous holiday season. Stay well and safe.

10 CHAIRPERSON HILL: Wonderful. All right. On that
11 note, y'all have a nice day, evening.

12 VICE CHAIR JOHN: Thank you.

13 CHAIRPERSON HILL: We're adjourned.

14 (Whereupon, the above-entitled hearing was adjourned.)
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C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: BZA

Date: 12-21-2022

Place: Teleconference

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.

GARY EUELL

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