

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

NOVEMBER 29, 2023

+ + + + +

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

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA L. JOHN, Vice-Chairperson
CHRISHAUN S. SMITH, NCPC Designee

ZONING COMMISSION MEMBERS PRESENT:

ANTHONY J. HOOD, Chairperson
TAMMY STIDHAM, NPS Designee

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, A/V Production Specialist

OFFICE OF PLANNING STAFF PRESENT:

JOEL LAWSON
MATT JESICK
JONATHAN KIRSCHENBAUM
CRYSTAL MYERS
SHEPARD BEAMON

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OFFICE OF ZONING ATTORNEY ADVISORS PRESENT:

SARAH BAJAJ, ESQ.
COMETRIA COOPER, ESQ.
CARISSA DEMARE, ESQ.

The transcript constitutes the minutes from the
Regular Public Hearing held on November 29, 2023.

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

(9:40 a.m.)

BZA CHAIR HILL: Good morning, ladies and gentlemen of the Board of Zoning Adjustment. The date today is 11/29/2023. This public hearing will please come to order. My name is Fred Hill, Chairman of the District of Columbia Board of Zoning Adjustment. Joining me today is Vice-Chairman Lorna John, Board Member Chrishaun Smith, and Zoning Commissioner Tammy Stidham, and Zoning Chair Anthony Hood.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised this proceeding is being recorded by court reporter. It is also webcast live via WebEx and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who's listening on WebEx or by telephone will be muted during the hearing.

Also, please be advised that we do not take any public testimony in our decision meeting session. If you are experiencing difficulty accessing WebEx or with your telephone call in, please call our OZ hotline number at 202-727-5471 to receive WebEx login or call in instructions.

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

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

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

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

21 Requests to enter evidence at the time of an online
22 virtual hearing, such as written testimony or any additional
23 supporting documents, other than live video, which may not be
24 presented as prior testimony, may be allowed, pursuant Y
25 103.13, provided that the person making the request to enter

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

7 An order of procedures for special exceptions and
8 variances are at Y 409. At the conclusion of each case, an
9 individual who was unable to testify because of technical
10 issues may file a request for leave to file a written version
11 of the planned testimony to the record within 24 hours
12 following the conclusion of public testimony in the hearing.
13 If additional written testimony is accepted, then parties will
14 be allowed a reasonable time to respond, as determined by the
15 Board.

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

24 Finally, the District of Columbia Administrative
25 Procedures Act requires that the public hearing on each case

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1 be held in the open before the public. However, pursuant to
2 section 405(b) and 406 of that act, the Board may, consistent
3 with such rules and procedures and the act, enter into a closed
4 meeting on the case for purposes of receiving legal counsel
5 on the case, pursuant to D.C. Official Code, section
6 2-575(b)(4), and/or to deliberate on a case, pursuant to D.C.
7 Official Code, section 2-575(b)(13), but only after providing
8 necessary public notice in the case of an emergency closed
9 meeting after any roll call done. Mr. Secretary, do we have
10 any preliminary matters?

11 SECRETARY MOY: Good morning, Mr. Chairman and
12 members of the Board. I do have a quick announcement related
13 to today's docket. First, there are two cases scheduled today
14 that have been granted a continuance. And those two cases have
15 been rescheduled to March 13th, 2024. The two applications
16 are numbers 20920, Florence Olajide, O-L-A-J-I-D-E, and the
17 second case is 20837 of Howard University. Again, both are
18 rescheduled to March 13th, 2024.

19 In terms of other preliminary matters, the main
20 ones, as a reminder, Mr. Chairman, that two case number
21 20308-A, there's a request for party status, and I believe also
22 a response from the applicant to that request. Case number
23 20994, the applicant is offering expert witnesses. I think
24 -- I believe there's three of them, but I'll recount those when
25 I call the case.

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1 And finally, for our viewers, the Chairman has
2 reviewed and granted waivers to allow late filings into the
3 applicable case records, which is a letter of support under
4 20975 case application, and a letter in opposition in case
5 20994 application. So both of those filings are currently in
6 the record.

7 And the Board's -- and this is all pursuant to
8 subtitle Y, section 206.7, and subtitle Y, section 103.13.
9 Any other late filings today during the course of the -- of
10 today's live hearing should be presented before the Board by
11 the applicant or other parties. Other than that, that's all
12 I have, Mr. Chairman.

13 BZA CHAIR HILL: Okay, thank you. I'd like to very
14 much welcome Commissioner Stidham. And I apologize, is that
15 how you pronounce your last name?

16 MEMBER STIDHAM: It's Stidham. Just roll it
17 together.

18 BZA CHAIR HILL: Well commissioner, we're going to
19 be together a while, so I'm going to definitely get it right.
20 Stidham. Stidham is easy enough for me. But welcome --

21 MEMBER STIDHAM: Thank you.

22 BZA CHAIR HILL: -- and we hope you enjoy your time
23 here with us. Let's see. I know, Mr. Moy, I know we have
24 Chairman Hood with us for one case. Chairman Hood, are you
25 with us?

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1 ZC CHAIR HOOD: Yes, I am.

2 BZA CHAIR HILL: Okay. Why don't you -- Mr. Moy,
3 if you could read in one of the -- or the first items in our
4 meeting. And what we're going to do today is I have -- one
5 of my Board members is on a tight schedule. So we're going
6 to put the meeting hearing cases after our first hearing --
7 Mr. Moy, I can explain it all. Why don't you go ahead and call
8 that first item before us, which I believe is the remand?

9 (Whereupon, the above-entitled matter went off the
10 record at 9:48 a.m. and resumed at 9:57 a.m.)

11 BZA CHAIR HILL: All right. We welcome
12 Commissioner Stidham officially for our first case with the
13 Commissioner. Sorry that this is video and no longer live.
14 So the -- Commissioner Stidham, I'll meet you in a decade or
15 so, you know, in the next five years.

16 MEMBER STIDHAM: Okay. Sounds good.

17 BZA CHAIR HILL: We'll try. There seems to be a
18 delay, Commissioner Stidham. I don't know, or maybe do you
19 have two sound things open?

20 MEMBER STIDHAM: I don't think so, but let me check
21 and see if I can't straighten things out.

22 BZA CHAIR HILL: Okay.

23 MEMBER STIDHAM: Is that any better?

24 BZA CHAIR HILL: Let me see. I'm going to see if
25 I hear anything. Yeah, that's better. Thank you. Can you

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1 still hear us?

2 MEMBER STIDHAM: Yep, I can.

3 BZA CHAIR HILL: Okay, great. Wonderful. All
4 right, Mr. Moy, if you want to call -- now, I know we have a
5 couple of cases still for -- under our meeting session, but
6 I'd like to go ahead and do 20308-A as in apple if we can next,
7 because we might lose a Board member.

8 SECRETARY MOY: Sir, the Board is now in its public
9 hearing session, and the case before the Board is application
10 number 20308-A of 4865 MacArthur Landlord LLC. This is a
11 modification of significance, I believe as amended to subtitle
12 Y, section 704 for a modification of significance to change
13 the condition adopted in 20308. This is the order that was
14 issued June 4th, 2021.

15 The property is located in the R-1B zone at 4868
16 MacArthur Boulevard, Northwest, Square 1389, Lot 25. The
17 preliminary matter, sir, as you'll recall, there is a request
18 for party status in opposition from the Palisades Community
19 Association, I believe. The attorney representing is Ms.
20 Andrea Ferster. And I believe also on Exhibit 22, the
21 applicant is opposed to a request for party status.

22 And I think those are the major things I have for
23 you, other than just to state for the record for you, Mr.
24 Chairman, that a DDOT representative did reach out to me
25 yesterday to offer to the Board that if you needed DDOT to

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1 answer any questions from the Board, they would be very willing
2 to do that. Or if the Board had any requests for supplemental
3 information, DDOT would also be willing to do that as well.
4 So I wanted to state that for the record for you, Mr. Chairman.

5 BZA CHAIR HILL: Okay, great. Thank you, Mr. Moy.
6 All right let's see. If the applicant can hear me, if they
7 could introduce themselves first for the record.

8 MS. BROWN: Carolyn -- I'm Carolyn Brown of the
9 Brown Law Firm. I'm here on behalf of the applicant. I am
10 joined by Pete Evans of Holland and Knight, and Bill Brewer
11 of the Trammell Crow Company.

12 BZA CHAIR HILL: Okay. Let's see. If Ms. Ferster
13 with us, and if so, if she could introduce herself?

14 MS. DEBOW: Ms. Ferster is not attending today, but
15 I am attending and running point for the Palisades Community
16 Association. I'm Lisa DeBow.

17 BZA CHAIR HILL: Okay. And who are you, Ms. DeBow?

18 MS. DEBOW: I am a board member of the Palisades
19 Community Association that requested the party status.

20 BZA CHAIR HILL: Okay, great. Let's see. Mr. --
21 I mean we'll -- we're going to address the party status first
22 anyway, Ms. DeBow. But I don't know if, Mr. Moy, the -- anyone
23 can let me know if I need something from Ms. DeBow that makes
24 her the representative of the party status requestors, and
25 maybe you all can let me know. And then Commissioner Duncan,

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1 I can see you. Do you want to go ahead and introduce yourself
2 for the record, please?

3 MS. DUNCAN: I am Tricia Duncan. I am chairman of
4 ANC 3D. I am also joined today by a fellow commissioner, Mr.
5 Bernie Horn.

6 BZA CHAIR HILL: Okay, great. Commissioner Horn,
7 do you want to introduce yourself for the record? I'm sorry,
8 Commissioner Horn. We can't hear you.

9 MR. HORN: I'm Commissioner Bernie Horn. I'm the
10 commissioner for ANC 3D05, which encompasses this location.

11 BZA CHAIR HILL: Okay, great. So Commissioner
12 Duncan and Commissioner Horn, you guys; unless this is wrong,
13 somebody can let me know, because this is a modification; are
14 parties to the application. So that's something that, you
15 know, you, as the ANC, you're the party, and Commissioner
16 Duncan, I've seen you before. I hope, Commissioner Duncan,
17 I get to meet you in person one day, and hopefully not in a
18 situation where you don't want to meet me.

19 And so -- let's see. But you all are parties
20 already. So what is before us right now is the party status
21 application, or I should say request, by the Palisades
22 Community Association. And Ms. DeBow, can you summarize,
23 please, why you believe you all should get party status?

24 MS. DEBOW: Certainly. Thank you, Chairman Hill.
25 The Palisades Community Association has worked very closely

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1 with both Trammell Crow and the ANC 3D on every matter of this
2 issue, from the negotiation of the MOU or MOA, the construction
3 management agreement, as well as the day to day liaison between
4 the neighborhood and the construction. And our members are
5 very specifically affected by the ruling of this change in
6 significance -- modification of significance.

7 BZA CHAIR HILL: Let's see. And then I think Ms.
8 Brown, you all had objection to the party status, correct?

9 MS. BROWN: Yes. The --

10 BZA CHAIR HILL: And could you explain why, please?

11 MS. BROWN: The Palisades Community Association
12 originally, back in 2020, requested party status in
13 opposition, and as a result of the MOA, with the very specific
14 language in it on the conditions in paragraph 4E, changed its
15 position to one of support and withdrew its party status
16 request. So because what we're asking is strictly with what
17 they agreed to back in 2020 regarding the MOA, there's no need
18 for them to participate as a party at this point.

19 BZA CHAIR HILL: Okay. Commissioner Duncan, does
20 the ANC have any comment upon the party status request?

21 MS. DUNCAN: It's the PCA to be -- have a party
22 status, I could not state that more strongly. I was actually
23 president of the Palisades Community Association when this
24 first happened, and I'm still a board member of the PCA. And
25 the PCA is the one who is managing this -- the construction

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1 agreement.

2 But in particular, because we are talking about
3 modifying the part of the BZA order that came from the MOA,
4 of which the PCA was an integral part of negotiating that.
5 Since we're talking about modifying that order, it just makes
6 total sense to me that they are given party status here.

7 And just for the record, I'd like to state that the
8 Palisades Community Organization is very, very large. We have
9 hundreds upon hundreds of -- if not maybe a thousand individual
10 members. So it's not an insignificant group in the numbers.

11 BZA CHAIR HILL: Okay. All right. Commissioner,
12 yeah. I wouldn't -- so anyway -- so can we -- does anybody
13 have, from my Board, any questions of any of the people that
14 just spoke? Okay. So if you all will give me a minute here,
15 now, Commissioner and Ms. DeBow and Ms. Brown, let my Board
16 kind of talk this through, because we have read the record,
17 we have seen this.

18 And my real issue with the party status is that
19 under the regulations, as I understand them, one is supposed
20 to apply for and receive party status at the original hearing.
21 And anything that comes after that as a modification or what
22 have you, you don't have the opportunity to then now become
23 a party, and that's as I understand the regulations.

24 So the -- I would be in favor -- I'm looking at my
25 Board members. I would be in favor of denying the party status

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1 based upon the way the regulations, I understand, read. And
2 so that is not to say that the public will not get an opportunity
3 to testify at the public hearing portion of it, and it being
4 a community member organization, they would get five minutes
5 to speak, as opposed to the normal three to testify.

6 And that's also in addition to say that I'm sure
7 that there will be a lot of questions from the Board asking
8 of the party status requestor clarification as to what's going
9 on, what happened at the MOA, whatever. Whatever it is that
10 we have questions of, we will be able to ask questions and
11 extend that discussion to whatever level we needed.

12 But at this point, I don't think it's something that
13 I would be able to vote in favor of in terms of the party status.
14 And in addition to that, the ANC will be represented by -- I
15 mean, my goodness, by the Chairman and another representative
16 on the ANC. So we normally don't get anybody, and we're going
17 to get two people.

18 So -- but regardless, I just don't think it's within
19 -- I don't feel comfortable going against what the regulations,
20 I believe, read in this instance. I'm going to ask my fellow
21 Board members their thoughts. And actually, I'm going to
22 begin with Vice-Chairman John, if you don't mind.

23 VICE-CHAIRPERSON JOHN: So I'm in agreement with
24 the direction that you're proposing, Mr. Chairman. And
25 originally, the PCA was a party, and then withdrew its party

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1 status request, I believe when the MOA was executed. And so
2 based on the regulations, once the party -- you know, the party
3 status has been withdrawn, that party could not revive it. And
4 I'm looking at Y 404.16, upon the filing of such notice, the
5 person shall no longer be considered a party.

6 And I recognize that the regulations are silent
7 with respect to a modification of significance, as opposed to
8 a motion for reconsideration. But I think this is a reasonable
9 interpretation of what the regulations require. So I would
10 not be in support of party status at this point but agree that
11 the PCA should be allowed to testify as a community member,
12 with five minutes allocated for the testimony.

13 BZA CHAIR HILL: Okay. Thanks Vice-Chair John.
14 Mr. Smith.

15 MEMBER SMITH: -- Chair Hill and Vice-Chair John's
16 position and interpretation of granting them party status.
17 They did withdraw their party status in 2020 based on the
18 acceptance of the MOA. So I agree with the statement stated
19 by Ms. John on the reasons why, based on the interpretation
20 of that regulation, that I'm not inclined to grant them party
21 status again.

22 BZA CHAIR HILL: Thank you. Commissioner
23 Stidham.

24 MEMBER STIDHAM: Thank you, Chairman. I agree as
25 well with the interpretation of my fellow commissioners and

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1 yourself.

2 BZA CHAIR HILL: Okay. Thank you, Commissioner.
3 All right. Then I'm going to make a motion to deny the party
4 status application of Palisades Community Association as per
5 all of the discussion we have had and ask for a second.
6 Vice-Chair John?

7 VICE-CHAIRPERSON JOHN: Second.

8 BZA CHAIR HILL: The motion made and seconded, Mr.
9 Moy, can you do a roll call, please?

10 SECRETARY MOY: Yes. Thank you, sir. When I call
11 your name, if you would please respond to the motion made by
12 Chairman Hill to deny the request for party status from the
13 Palisades Association, and this motion was seconded by
14 Vice-Chair John. Zoning Commissioner Stidham. Mr. Smith.

15 MEMBER SMITH: Yes.

16 SECRETARY MOY: Vice-Chair John. Chairman Hill.

17 BZA CHAIR HILL: Yes.

18 SECRETARY MOY: With no other members
19 participating, staff would record the vote as 4-0-1, and this
20 is on the motion made by Chairman Hill to deny. The motion
21 to deny was seconded by Vice-Chair John, who's also supporting
22 the motion. Others in support of the motion to deny, Zoning
23 Commissioner Stidham, Vice-Chair John, Chairman Hill. Motion
24 carried, sir, on a vote of 4-0-1.

25 BZA CHAIR HILL: Okay. Thanks, Mr. Moy. All

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1 right, Ms. DeBow, we'll see you at the public hearing portion,
2 and we look forward to speaking to you. Thank you so much.
3 Mr. Young, if you could please excuse Ms. DeBow. Thank you.
4 All right. The other preliminary matter is there were some
5 expert witnesses who were proffered. Is that correct, Ms.
6 Brown?

7 MS. BROWN: -- originally had planned for a traffic
8 consultant to testify. We no longer have that person to
9 testify today. It will just be Mr. Brewer, who is a
10 representative of Trammell Crow.

11 BZA CHAIR HILL: Okay. All right. Then Ms.
12 Brown, I'm going to go ahead and put 15 minutes on the clock,
13 just so I know where we are, and you can go ahead and give your
14 explanation of why you believe your client is meeting their
15 requirements for us to grant this modification of
16 significance, and you can begin whenever you like.

17 MS. BROWN: Thank you. If Mr. Young could pull up
18 our slide deck. And Mr. Brewer was going to make some
19 introductory remarks, so if I can turn it over to him.

20 MR. BREWER: Yeah. Thank you, Carolyn. I'd like
21 to thank the Board for taking the time to hear our presentation
22 today and this -- hear some of these opening remarks. Over
23 the past several years, TCC has been working to bring a new
24 senior living development to Washington D.C., and as part of
25 that process, sought a BZA special exception to allow part of

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1 the CCRC, the senior living building, to be constructed in the
2 R-1B portion of our site. This would add approximately 30 more
3 units, which supplements the main wing of the building on the
4 MU-4 portion of the site.

5 While going through the BZA process, we worked
6 closely with the ANC and DCA to negotiate a proper package that
7 addressed a broad range of issues that were important to the
8 community; retail space, TDM measures, sidewalks, other public
9 space enhancements, and a construction management agreement,
10 to name a few. These community proffers are common in
11 community applications but are rarely used in the BZA process.
12 However, we were committed to making this project a real asset
13 to the neighborhood, and to help make the residents in the
14 senior living facility feel like they are part of the
15 community.

16 Over the course of the development, we've been
17 working to fulfill the terms of that agreement, and we believe
18 that aside for the one issue before us today, the community
19 would agree that we've been working well together, though there
20 are still more items to complete.

21 In regards to issue 2C of the BZA order, which is
22 the point in question today, when the order was issued, we
23 reviewed it in the context of our agreement with the ANC. At
24 that time, as we do now, we felt that the language was
25 unambiguous in both our ANC agreement and the BZA order, as

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1 in both instances, in the first two points, it specifically
2 called out who would pay for improvements and where they would
3 be installed.

4 As to the third point, while it obligated us to seek
5 DDOT's approval for certain safety improvements, nowhere in
6 the third point did we assume the expense of constructing such
7 improvements. When the order was issued instructing us to
8 construct the improvements, we were surprised. But as long
9 as we were not obligated to pay for them, we were willing to
10 work with DDOT on this construction obligation, as we often,
11 and as typical in the industry, do perform construction
12 management work for third parties at their expense.

13 BZA CHAIR HILL: Mr. Brewer, give me a second.

14 MR. BREWER: Mm-hmm.

15 BZA CHAIR HILL: Mr. Moy, can you hear me? Mr.
16 Moy? We lost Mr. Moy. He's going to be there in a second,
17 I'm sure. Mr. Young, can you hear me? Do you know who the
18 DDOT rep is, and are they in the waiting room?

19 MR. YOUNG: I did not have anyone signed up from
20 DDOT, but I can check.

21 BZA CHAIR HILL: Okay.

22 MS. BROWN: If it's helpful, I reached out to Aaron
23 Zimmerman at DDOT yesterday, and he said that he was not going
24 to participate today.

25 BZA CHAIR HILL: No, I appreciate that. Mr. Moy

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1 said that there's somebody, maybe, if you see Mr. Zimmerman
2 there, Mr. Young. All right.

3 MR. YOUNG: I do not --

4 BZA CHAIR HILL: Okay.

5 MR. YOUNG: -- see him on.

6 BZA CHAIR HILL: All right. We'll see what
7 happens. Okay, Mr. Brewer, please continue. Mr. Young, if
8 you'd pull back up that slide deck.

9 MR. BREWER: That was an excellent place to stop.
10 I can turn it over to Carolyn now, and thank you for the time,
11 Commissioner.

12 MS. BROWN: Next slide, please. The modification
13 we're requesting today is to restore condition 2C to reflect
14 the actual intent of the applicant in ANC 3D, as memorialized
15 in our memorandum of agreement. Next slide.

16 I wanted to briefly give you some background how
17 this issue came up. At the time we were going for permits back
18 in 2021, there was an issue raised by ANC 3D whether the
19 applicant had complied with condition 2C regarding actively
20 seeking, and if approved by DDOT, constructing those
21 particular improvements.

22 The ANC requested enforcement action from the
23 zoning administrator to prevent the issuance of the building
24 permits because they claimed the applicant was noncompliant
25 with that condition. The zoning administrator came back and

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1 said yeah, the applicant is in the process of asking for
2 approvals from DDOT, and until I hear back from DDOT, that means
3 that they are in compliance with all of the condition 2A, 2B,
4 and 2C.

5 So the ANC resurrected this complaint in the spring
6 after the permits were issued, and the ANC has consistently
7 asserted that condition 2C requires the applicant to pay for
8 the improvements, despite the absence of any specific language
9 to that effect in condition 2C. Because we -- the zoning
10 administrator issued its determination that the -- and this
11 is in July of 2023, that the BZA order is silent on who should
12 pay for the improvements.

13 So in order to get this clarified, we filed this
14 request for a modification of consequence, it was turned into
15 a modification of significance, and simultaneously we appealed
16 the decision of the zoning administrator. So that's where we
17 are today for the background. Next slide, please.

18 Again, just to reiterate what the site looks like
19 and what the case is about, we have the R-1B residential portion
20 of the site that has senior living facilities there. Mr.
21 Brewer said, there are approximately 30 units, ranging 27 to
22 35, so approximately 30, and the remainder of the site is in
23 the MU-4 district, where the CCRC use is a matter of right.

24 As you've heard, ANC and PCA supported the
25 application based on the memorandum of agreement and the

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1 language incorporated there. We had the hearing on November
2 4th in 2020, and the order was issued in June of 2021. Next
3 slide.

4 There has been significant outreach between the
5 applicant and the ANC, and the applicant willingly agreed to
6 many public amenities as a part of the project, even though
7 it is not a PUD, and the MU-4 portion is not subject to BZA
8 review. And as a reminder, it includes or course restoring
9 the MU-4 portion of the site, community kiosk, additional
10 parking where the V Street curb cut is that's part of the issue
11 today in condition 2C.

12 And that was to specifically accommodate the
13 MacArthur Boulevard businesses at the request of the ANC.
14 That was not part of our original application. There's also
15 parking monitoring. So these are all the things that the
16 applicant worked closely with the ANC and the Palisades
17 Community Association. Next slide.

18 So the -- I want to go quickly through the -- what
19 the ANC memorandum of agreement that formed the basis of
20 condition 2C said. There are -- it was in paragraph 4E, and
21 romanettes i, ii, and iii captioned it. And I've circled the
22 language. First was to construct sidewalks at developer's
23 expense on the south side of V Street from 48th Place to
24 MacArthur and from 48th Place to the curb cut on the proposed
25 V Street parking lot.

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1 So in this diagram, that is the light pink or purple
2 color that you see on the south side of V Street, And I can't
3 point it out with a cursor for you, but it's the street that
4 runs east/west, or from left to right on the screen. So it's
5 that pink color that comprises condition E1.

6 E2, it says construct at its expense at the
7 beginning of construction and extension of the sidewalk on the
8 west side of 48th Place up to V Street. And that's in a dark
9 purple color, across the street from the site. And then in
10 blue is where the applicant was required under the ANC MOA to
11 actively promote with DDOT, both orally and in writing, the
12 various sidewalk improvements, stop light, street signs. And
13 the blue is the extension of sidewalks in the neighborhood.

14 And as you heard from Mr. Brewer, one of the reasons
15 that that was -- and he can talk to it more if you have questions
16 for him -- construct at their expense for the items romanette
17 i and ii was very specifically negotiated. It was omitted from
18 the third item because of the extensive area covered, because
19 of the requirement to get DDOT involved, and as you'll hear
20 later, all of the challenges with the improvements that
21 adjacent property owners have made to that space. Next slide.

22 So then we have the BZA condition 2 for the traffic
23 and safety improvements, and here I've got a different
24 illustration for you so you can kind of see where the -- how
25 the houses are at the property lines, and where those sidewalk

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1 improvements would be. But the MOA conditions from paragraph
2 4E were translated into condition 2, and the first one matches
3 up, saying construct sidewalks at the applicant's expense at
4 the areas shown in pink on this diagram. Condition 2B,
5 construct, at the applicant's expense, the improvements on the
6 west side of 48th Place, and it's that north/south strip just
7 below V Street, across from the proposed development. And
8 then next slide.

9 And here's a comparison of the language if it makes
10 more sense for you. And so in the MOA, all of these items were
11 subject to DDOT approval. It was slightly reworded in
12 condition 2C in the BZA order, but everything married until
13 we get down to item 2C, where instead of actively promoting,
14 the language has changed to actively seek, and if approved by
15 DDOT, construct these improvements.

16 As Mr. Brewer said, when we saw this language, we
17 were surprised, because we thought it was supposed to be
18 exactly mirroring the MOA. But, you know, if they were
19 constructing it as a third party at DDOT's expense, we could
20 live with it, and that goes to the reason why we didn't raise
21 this earlier. We've only gotten to this point because the ANC
22 is asserting that in addition to the -- they want to have
23 written into the BZA order that it's going to be constructed
24 at the applicant expense, and that language is simply not
25 there. Next slide.

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1 There are two legal bases for saying that this
2 modification is justified. One, there's no evidence of
3 adverse impacts to support the fact that the applicant should
4 construct the improvements. There was never any discussion
5 on the record of the applicant constructing the 2C
6 improvements. And then as a legal matter, if there's nothing
7 in the record to support it, it can't become part of a
8 condition. And that's under the (audio interference) case
9 I've sited there.

10 Secondly, there's no opportunity for the applicant
11 to consent to this changed language. It was -- it basically
12 occurred during deliberations, where I think there was
13 conversation to, I believe it was even the PCA, saying if the
14 applicant -- if DDOT approves it, the applicant has to do them,
15 meaning the MOA conditions. And again, that MOA condition
16 didn't say anything about them -- the applicant paying or
17 constructing for them. Next slide.

18 So what we had in the record is the applicant's
19 expert transportation consultant, who said the project will
20 have negligible impacts on the transportation network
21 surrounding the area. There are fewer than 25 trips
22 anticipated for the site, which is the threshold for conducting
23 a full transportation study under DDOT guidelines. And that
24 goes for any project in the city, and you don't make exceptions
25 for spot projects because the -- someone requested the -- DDOT

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1 likes to maintain its standards.

2 The proposed project in total, both the MU-4
3 portion and the R-1B portion, produced far fewer auto trips
4 and pedestrian trips than the previous grocery store use. And
5 the TDM measures adequately address potential pedestrian
6 issues at the V Street curb cut. Next slide.

7 We also had testimony from DDOT and in its report
8 that additionally, there was no evidence of adverse impacts
9 to require the applicant to construct or pay for the 2C
10 improvements. DDOT said that the amount of traffic would not
11 result in impacts to the nearby roadway network, assuming that
12 the applicant's proposed TDM measures were in place.

13 And DDOT did not make any recommendation that the
14 applicant should construct 2C sidewalks other improvements --
15 or other improvements to mitigate possible commercial traffic
16 in residential neighborhoods, or to mitigate potential
17 conflicts -- conflict points between vehicles and pedestrians.
18 And that's important because if DDOT watches out for the
19 public, and they would have said so, this project, they
20 decided, did not meet their threshold and did not generate the
21 adverse impacts. And again, BZA was just to be focused on the
22 R-1B portion, as opposed to the totals of -- in theory, there
23 would be even fewer for just the R-1B portion. Next slide.

24 And finally, we have the DDOT report in this case,
25 where they say this condition 2C was not requested by DDOT as

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1 mitigation, but instead was requested by the community.
2 DDOT's 2020 report concluded that the project would have no
3 adverse impact on the surrounding transportation network due
4 to the continuing care retirement facility, and it would only
5 generate slightly more trips in the morning peak hour, and
6 likely result in a reduction of trips, as compared to the prior
7 grocery store use. So they've reaffirmed their original --

8 BZA CHAIR HILL: Ms. Brown?

9 MS. BROWN: Yes?

10 BZA CHAIR HILL: I'm trying to get through some
11 other questions I have, and I asked the staff, was the order
12 issued for this?

13 MS. BROWN: The order for BZA case 20308 was issued
14 in June of 2021.

15 BZA CHAIR HILL: I'm just having a hard time
16 finding it. Do you see it as an exhibit in the record?

17 MS. BROWN: It is in the record. It's an
18 attachment to our application, and it is -- let me see, Exhibit
19 4A. And that's in 20308 --

20 BZA CHAIR HILL: Okay. I'm in the -- okay, wait.
21 Okay. That's why I got it. Okay. All right. You can go
22 ahead and continue if you want. Thank you.

23 MS. BROWN: Yes, thank you. And the alternative
24 2C language suggested by DDOT likewise does not -- likewise
25 did not identify any necessary mitigation. Next slide.

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1 So now I'm moving on to the fact that the applicant
2 did not consent to the altered language. And this goes back
3 to the Georgetown University Case, where the University had
4 volunteered some controls on their operations for their campus
5 plan, and the zoning commissioner --

6 BZA CHAIR HILL: That's okay. All right, Ms.
7 Brown. We're going to -- I'm losing some of my people today.

8 MS. BROWN: Okay. I'll move on.

9 BZA CHAIR HILL: So try to, like, and I've got to
10 --

11 MS. BROWN: I'm sorry.

12 BZA CHAIR HILL: -- get -- it's okay. I'm just --
13 I'm trying to manage this docket. I've got to give the
14 testimony --

15 MS. BROWN: Absolutely.

16 BZA CHAIR HILL: -- a certain time at the end of
17 the day. If you want to cut to -- I see everything in your
18 PowerPoint --

19 MS. BROWN: Okay.

20 BZA CHAIR HILL: -- and I had a chance to see where
21 the -- I mean, and I was on the original, so I'm a little --

22 MS. BROWN: Yes.

23 BZA CHAIR HILL: -- I was on the original one. And
24 so if you go to that slide deck, the second to last slide, right,
25 I see that's the one that highlights -- Mr. Young, if you can

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1 go to that second to last slide, right, the blue is the 2C
2 improvements. Is that correct?

3 MS. BROWN: Correct.

4 BZA CHAIR HILL: All right.

5 MS. BROWN: And I'd like to note that there are the
6 arrows to the north, because in the MOA or in the BZA order,
7 there's no terminus. It doesn't give you an endpoint. So
8 it's very ambiguous --

9 BZA CHAIR HILL: I've got it.

10 MS. BROWN: -- as to the -- okay.

11 BZA CHAIR HILL: And 2B is --

12 MS. BROWN: It's a tiny brown strip, or dark
13 purple, on the west side of 48th Place. So if you go to the
14 site, and you go across 48th Place, and it's a short strip from
15 the angle of -- where you see the words 48th Place, and it goes
16 north to V Street.

17 BZA CHAIR HILL: Okay.

18 MS. BROWN: And I say that that 2B improvement has
19 been constructed, the one from V Street to MacArthur Boulevard.

20 BZA CHAIR HILL: Okay. All right.

21 MS. BROWN: But that's the --

22 BZA CHAIR HILL: So I've got to just interrupt you
23 here again.

24 MS. BROWN: Okay.

25 BZA CHAIR HILL: So go down to the next slide, the

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1 last slide.

2 VICE-CHAIRPERSON JOHN: Mr. Chairman, may I ask a
3 question?

4 BZA CHAIR HILL: Sure. Go ahead, Ms. John. Yep.

5 VICE-CHAIRPERSON JOHN: Can we go back to that
6 previous slide? Okay. So just to clarify, the section in
7 purple, that's already been constructed?

8 MS. BROWN: Only on the left portion of the slide,
9 on the left side of 48th Place. To the right, they're still
10 under construction. So the -- that sidewalk will be
11 constructed after they've completed the building.

12 VICE-CHAIRPERSON JOHN: Okay. And the dark
13 purple has been constructed?

14 MS. BROWN: Yes, it has.

15 VICE-CHAIRPERSON JOHN: And is the light purple to
16 -- close to -- let's see, what is that, MacArthur Boulevard?
17 Over on the -- my left.

18 MS. BROWN: Yes.

19 VICE-CHAIRPERSON JOHN: Is that -- have you agreed
20 to construct that portion?

21 MS. BROWN: That portion has been constructed. So
22 from -- you'll see MacArthur Boulevard on the far left of the
23 slide --

24 VICE-CHAIRPERSON JOHN: Mm-hm.

25 MS. BROWN: -- that runs at an angle, and then the

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1 east/west line, if you will, or left to right purple --

2 VICE-CHAIRPERSON JOHN: Mm-hm.

3 MS. BROWN: -- stretch from MacArthur to V Street
4 on the south side has been constructed.

5 VICE-CHAIRPERSON JOHN: MacArthur to V Street on
6 the south side has been constructed.

7 MS. BROWN: I'm sorry. Up to 48th Place. So it's
8 that triangular piece --

9 VICE-CHAIRPERSON JOHN: Yes.

10 MS. BROWN: -- that -- on that -- the light people
11 there has been constructed.

12 VICE-CHAIRPERSON JOHN: And so back to my original
13 question. So have all of the light purple areas been
14 constructed along -- is that V Street?

15 MS. BROWN: V Street from 48th Place to MacArthur
16 have been constructed.

17 VICE-CHAIRPERSON JOHN: And the other portion is
18 being constructed?

19 MS. BROWN: Will be constructed once they complete
20 the building. You can't -- because there are -- there's so
21 much equipment going across there that they don't want to build
22 a sidewalk and then have to tear it, you know, redo it.

23 VICE-CHAIRPERSON JOHN: Okay. And the purple --
24 dark purple has been constructed?

25 MS. BROWN: Correct.

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1 VICE-CHAIRPERSON JOHN: Okay. Thank you.

2 Sorry, Mr. Chairman. Please go ahead.

3 BZA CHAIR HILL: That's all right. So the stop
4 signs, were the stop signs put up?

5 MS. BROWN: No. Those are all part of 2C, which
6 are under consideration by DDOT. And in their most recent
7 report, they recommended a compromise where the applicant
8 would do the stop signs and the crosswalks but would not have
9 to do the blue sidewalks.

10 BZA CHAIR HILL: Right. And -- okay. All right.
11 Okay. Go ahead and go to the last one again.

12 MEMBER STIDHAM: I have another question, Mr.
13 Chairman.

14 BZA CHAIR HILL: Go ahead.

15 VICE-CHAIRPERSON JOHN: So let's go back to that
16 diagram again. Did the applicant ever evaluate the cost of
17 making those improvements in the green, assuming that you could
18 put a -- can we go back to that previous slide, Mr. Young?

19 MS. BROWN: The green --

20 VICE-CHAIRPERSON JOHN: Yes, the green --

21 MS. BROWN: -- shows --

22 VICE-CHAIRPERSON JOHN: -- is what is under -- is
23 being contested, right?

24 MS. BROWN: No, the green are the --

25 VICE-CHAIRPERSON JOHN: Okay.

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1 MS. BROWN: -- existing sidewalks.

2 VICE-CHAIRPERSON JOHN: Okay.

3 MS. BROWN: Yeah, it's the blue that are being
4 contested --

5 VICE-CHAIRPERSON JOHN: Okay.

6 MS. BROWN: -- which would have been sidewalks
7 throughout the neighborhood.

8 VICE-CHAIRPERSON JOHN: Okay. And that section
9 is not specific. There's no language that would state where
10 the construction would end to the north.

11 MS. BROWN: Correct.

12 VICE-CHAIRPERSON JOHN: Okay. And did you
13 estimate the cost of making those improvements, including the
14 ANC is correct?

15 MS. BROWN: I'll let Mr. Brewer answer that.

16 MR. BREWER: We did. It's a very significant
17 cost, and it's very variable, based off the amount of retaining
18 walls, replacement of private improvements, and then
19 relocation of utilities. So -- but it is -- it's a very
20 significant expense.

21 VICE-CHAIRPERSON JOHN: Okay. And by very
22 significant, I have no idea.

23 MR. BREWER: It could run well over a million
24 dollars.

25 VICE-CHAIRPERSON JOHN: Okay. Did you estimate

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1 the cost of the portions that you've committed to complete,
2 the light purple -- the dark purple?

3 MR. BREWER: Yes.

4 VICE-CHAIRPERSON JOHN: Relatively -- okay.

5 MR. BREWER: And I'd had to go back to get the
6 specific number, but I believe it was about \$200,000 to
7 \$300,000.

8 VICE-CHAIRPERSON JOHN: Okay, fair enough. Thank
9 you, Mr. Chairman.

10 BZA CHAIR HILL: Okay, thanks. So you guys -- I
11 don't like the sound of this. So the -- now I see the dark
12 purple. And by the way, Ms. Brown, this thing was helpful.
13 The dark purple is just hard to see.

14 MS. BROWN: Yes, it is.

15 BZA CHAIR HILL: But you guys are already doing,
16 or are going to do the dark purple and the light purple,
17 correct?

18 MS. BROWN: Correct. The --

19 MR. BREWER: That's correct.

20 MS. BROWN: -- elements that are closest to the
21 R-1B site.

22 BZA CHAIR HILL: Yep, yep. Okay. All right. Go
23 ahead and go to the last slide, please. And for my Board
24 members, if you go back and look at, you know slide 15, 16,
25 and 17, you can see all of the site improvements that would

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1 be necessary; the retaining walls, the different utilities
2 that would need to be moved. But I'm going to get to the chase
3 here in one second.

4 So the -- I see the changes that you're regarding
5 considering condition 2C. So that I understand. And is that
6 the end, Ms. Brown?

7 MS. BROWN: Yes. If you can read the slide, that's
8 the end of my presentation and I'm happy to answer any questions
9 you have, and as appropriate, we will make --

10 BZA CHAIR HILL: Okay. What you're asking for is
11 to strike seek and strike the R-1B buildings, and then strike,
12 if approved by DDOT -- construct these improvements, correct?

13 MS. BROWN: Correct. It's returning to the
14 language that was volunteered by the applicant, because
15 there's no other support for different language --

16 BZA CHAIR HILL: Okay.

17 MS. BROWN: -- in the record.

18 BZA CHAIR HILL: Ms. John, you heard -- you started
19 to speak up?

20 VICE-CHAIRPERSON JOHN: Yes. I had a question
21 about that, and it might be good to show it on the slide, the
22 previous slide, because there's a difference between the R-1B
23 building and the project.

24 MS. BROWN: Yes.

25 VICE-CHAIRPERSON JOHN: So can you explain that

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1 for us?

2 MS. BROWN: Sure. The R-1B portion of the site is
3 just on V Street.

4 VICE-CHAIRPERSON JOHN: Right.

5 MS. BROWN: Originally, there was no curb cut on
6 V Street.

7 VICE-CHAIRPERSON JOHN: Mm-hm.

8 MS. BROWN: At the request of the community, we
9 included a 15 space parking lot that would be accessed off of
10 V Street in order for MacArthur Boulevard businesses to have
11 a place to park, because they used to park at the former Safeway
12 parking lot. So at their request, we put in a curb cut.

13 DDOT and our traffic consultant said now you're
14 going to have potential pedestrian conflicts where there's a
15 vehicle entrance. So as a result, they said the sidewalk
16 improvements along that portion of V Street would address that
17 potential adverse impact, in addition to the TDM measures.

18 We also had our consultant say that the -- what are
19 now the conditions to improvements would also supplement those
20 pedestrian issues, and which was referring to the other
21 extension of the sidewalk to the left, in the light pink and
22 the --

23 VICE-CHAIRPERSON JOHN: Mm-hm.

24 MS. BROWN: -- dark pink. And then working with
25 DDOT to, you know, try to get the blue sidewalks approved, but

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1 without the applicant being required to construct or pay for
2 them.

3 VICE-CHAIRPERSON JOHN: So your condition was to
4 the project as a whole and not that little section where the
5 R-1B building would be?

6 MS. BROWN: Right. We --

7 VICE-CHAIRPERSON JOHN: You're agreeing to the
8 project, not just the R-1B portion building?

9 MS. BROWN: Correct. It extended to the -- yes.
10 I mean, we treated it as a whole. But the, you know, the --
11 before the zoning -- or the BZA was just the R-1B portion that
12 was under consideration.

13 VICE-CHAIRPERSON JOHN: I understand that --

14 MS. BROWN: Okay.

15 VICE-CHAIRPERSON JOHN: -- but you --

16 MS. BROWN: Yeah.

17 VICE-CHAIRPERSON JOHN: -- extended the --

18 MS. BROWN: Yes. We went beyond --

19 VICE-CHAIRPERSON JOHN: -- improvements to the --

20 MS. BROWN: -- what was --

21 VICE-CHAIRPERSON JOHN: -- project, and so --

22 MS. BROWN: Yeah.

23 VICE-CHAIRPERSON JOHN: -- I understand that a
24 little better. Thanks.

25 MS. BROWN: Yes, yes.

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1 VICE-CHAIRPERSON JOHN: Sorry, Mr. Chairman. Go
2 ahead.

3 BZA CHAIR HILL: That's okay. Does anybody have
4 any other questions for my Board members before I drop the --
5 just my Board members before I drop the slide deck. If, Mr.
6 Young, you could drop the slide deck. Okay. So I was probably
7 here when this happened. And I remember the case, actually,
8 because it's the Safeway site.

9 And unfortunately, and I -- and Commissioner, and
10 I still hope I meet you in person. But we -- I don't know what
11 happened this last time. Like, we in the Board can't force
12 the applicants to make public improvements. So, like, we
13 can't even force them to make sidewalks.

14 Like, so what has happened in the past, and
15 everybody's going to get their opportunity to give their
16 testimony. But what's happened in the past is I know that we
17 did say okay, if you guys had an agreement with the community
18 and we went through it, that, you know, we hope that they live
19 up to their, you know, thoughts or requirements, et cetera and
20 so forth. And to be quite honest, I don't remember going into
21 this much detail on the sidewalks, as to how much of the
22 sidewalk, supposedly, they were supposed to pay for.

23 But regardless, since then, we haven't been able
24 to force -- or not force. It's not within our purview to make
25 the applicant pay for any public sidewalks. So that's what's

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1 happened since whenever this case came before me. So I already
2 know where I am on this. But I'll let you all have your say.
3 Because I don't, you know, in the past, we haven't been able
4 to force people to do sidewalks because it's not within the
5 zoning regulations -- or I'm sorry, it's not within our
6 purview.

7 But so before I let -- and so the ANC is going to
8 have their opportunity to give their testimony. And I -- and
9 before I move on -- and I'm going to get a couple of other
10 places, but does my Board members have any questions for the
11 applicant?

12 Okay. All right. Commissioner Duncan, would you
13 like to go ahead and give us your testimony?

14 MS. DUNCAN: Can I just ask some questions about
15 the presentation or --

16 BZA CHAIR HILL: Oh yes, sure.

17 VICE-CHAIRPERSON JOHN: Oh yes, the ANC, yes.

18 MS. DUNCAN: Okay. So one of the -- on the first
19 slide that was shown there, the --

20 BZA CHAIR HILL: Mr. Young, if you'll pull up that
21 first slide.

22 MS. DUNCAN: The curb cut and the parking lot have
23 mysteriously disappeared, and I just wanted to make sure from
24 the applicant that -- so when she gets to the first slide,
25 you'll see the entrance to the facility off of V, and there's

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1 a big grassy area with a tree on it. That's where the parking
2 lot is supposed to be, with the curb cut, and it is not shown.
3 And I just want to ask and confirm from the applicant that that
4 is still going to be there, because it's conspicuously left
5 off of the slides. I guess Mr. Young, slide number --

6 MR. BREWER: This image --

7 MS. DUNCAN: -- slide number 1.

8 MR. BREWER: -- is the --

9 MS. DUNCAN: So you see the entrance into the
10 facility, the grassy area that is right there.

11 BZA CHAIR HILL: Yeah, we've got you,
12 commissioner.

13 MS. DUNCAN: Okay.

14 BZA CHAIR HILL: Go ahead. Go ahead. He was
15 starting to speak. Is this just an old slide or something?

16 MR. BREWER: Yes. That is an outdated rendering.
17 There is a curb cut. It's in the parking lot off of V Street.
18 And then the entrance is as shown.

19 BZA CHAIR HILL: Yeah. We have -- whatever
20 they've presented before, and I'm sorry, Commissioner, I don't
21 -- I have to pull everything up, you know. We approved
22 whatever plans they originally gave, and I'm going to go back
23 and see.

24 MS. DUNCAN: It was in the original plan. I was
25 just wondering why it wasn't shown there.

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1 BZA CHAIR HILL: No, that's a good point.

2 MS. DUNCAN: So that is one thing. The next thing,
3 Ms. Brown, in her testimony, had a quote. She mentioned from
4 the first hearing that she thought the PCA had said something
5 along the lines of if DDOT approves this, and we're going to
6 make them do this. Well, the PCA obviously wasn't a party to
7 those proceedings. And I own that, because I was the PCA and
8 I withdrew our opposition and didn't then become in support.
9 So that's my bad.

10 But I would like to ask Ms. Brown if she actually
11 remembers who said that quote, that you were going to make them
12 do this, because it wasn't the PCA. I listened to the hearing
13 yesterday again, and it was Chairman Hill, Mr. -- it was you.
14 And I'm going to get into my testimony about the history of
15 these sidewalks and why they are important. And you all
16 specifically deliberated on this. You made this amendment,
17 actually, to your order. And I'll get into the specifics, but
18 I just wanted to clarify that it was not the PCA who said that.

19 MS. BROWN: If you're still asking me a question,
20 it was Ms. DeBow, I believe.

21 MS. DUNCAN: I do believe that it's in the
22 transcript that that quote comes from Chairman Hill. And
23 incidentally, I listened to it -- the deliberations for this
24 at the November 4th, 2020, hearing starts at around seven hours
25 and 35 minutes.

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1 BZA CHAIR HILL: Seven hours?

2 MS. DUNCAN: Into the hearing -- into the day. It
3 was, like, the last hearing.

4 BZA CHAIR HILL: Oh.

5 MS. DUNCAN: It was a long day. The YouTube video
6 is the -- it's everything.

7 VICE-CHAIRPERSON JOHN: If I could ask Ms. Duncan
8 to focus on the portion of the hearing where the Board discusses
9 the MOA, since you've listened to the transcript -- there is
10 a transcript in the record, and I looked at that portion of
11 it. Was there something you wanted to point out in that
12 section?

13 MS. DUNCAN: I think Commissioner Horn might have
14 the exact quote.

15 VICE-CHAIRPERSON JOHN: Well, I'm interested in
16 the Board's deliberations on the MOA.

17 MS. DUNCAN: Okay. So --

18 MS. BROWN: Ms. John, I have a point of
19 clarification. Is this still cross of the applicant or are
20 we in the ANC's presentation?

21 VICE-CHAIRPERSON JOHN: This is the ANC's
22 presentation.

23 BZA CHAIR HILL: This is -- we're just trying to
24 get clarification --

25 VICE-CHAIRPERSON JOHN: Yeah.

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1 BZA CHAIR HILL: -- Ms. Brown. They're asking
2 questions -- or we're asking questions. It's not -- we haven't
3 gotten to the presentation of the ANC.

4 MS. DUNCAN: I could go ahead and start that --

5 BZA CHAIR HILL: It's okay, Ms. Duncan. I'm just
6 trying to move through.

7 MS. DUNCAN: Yeah.

8 BZA CHAIR HILL: So Ms. John, what did -- what was
9 your question?

10 VICE-CHAIRPERSON JOHN: As you said, I wanted to
11 cut to the chase. The issue is did the Board have a specific
12 discussion about changing the language of the MOA, that
13 particular paragraph?

14 MS. DUNCAN: Okay, so in the hearing, there was a
15 discussion about what you all were allowed to do under the
16 purview of the BZA. You commended Commissioner Sriqui at the
17 time, who was speaking for ANC 3D, in saying good for you all
18 for getting an MOA out of this. Because you had conceded at
19 the time that this was effectively, even though not
20 technically, legally, this was effectively a zoning change.

21 When you look to see what is here on this single
22 family home R-1B zoning, it is going to -- it's a building that
23 has 30 units that's never going back to R-1B if we're all
24 completely serious with ourselves. But technically, it fell
25 under the BZA. So you commended the -- Commissioner Sriqui

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1 at the time for essentially negotiating sort of, like, this
2 mini PUD.

3 And there was the discussion that the BZA -- there
4 was a number of things in the MOA that were technically
5 unenforceable. But you thought that Trammell Crow was going
6 to operate in good faith and do all these things. But I want
7 to say that it was the zoning commissioner representative,
8 Peter someone --

9 BZA CHAIR HILL: (Audio interference).

10 MS. DUNCAN: Yep. He talked about how this one
11 specific thing in the public space you all could put in the
12 BZA order, as long as you had the caveat in there, which you
13 all included, that if DDOT approves these things. Because --
14 and I would like to show my slides.

15 Because what has happened with this R-1B is that
16 the Safeway site had the major entrances on MacArthur
17 Boulevard. So all the traffic moving in and out, save maybe
18 20 percent, had a tiny --

19 VICE-CHAIRPERSON JOHN: Ms. Duncan, we're --

20 MS. DUNCAN: Yes?

21 VICE-CHAIRPERSON JOHN: -- on a time crunch today.

22 MS. DUNCAN: Okay.

23 VICE-CHAIRPERSON JOHN: The issue is did the
24 applicant agree to pay for those improvements, and did the
25 Board discuss having the applicant pay for those improvements?

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1 I did not see anything in the transcript. So can you point
2 me to something that says that?

3 MS. DUNCAN: Commissioner Horn, can you read the
4 quote from the amendment?

5 MR. HORN: Yes. Chairman Hill: we are
6 referencing paragraph 4E from the MOA. DDOT approves it, so
7 you know if DDOT approves paragraph 4E of the MOA, then they
8 have to do it, okay? That's the condition I'm making. That's
9 the motion that I'm making. I'm going to ask for a second.
10 Mrs. John? Ms. John says second, and then the motion was
11 approved.

12 VICE-CHAIRPERSON JOHN: Okay. And did it say and
13 pay for it?

14 MR. HORN: It did not, but he --

15 VICE-CHAIRPERSON JOHN: Okay. That's what I --

16 MR. HORN: -- the zoning administrator addressed
17 this very question.

18 VICE-CHAIRPERSON JOHN: Thank you. That's what
19 I'm trying to find out, if the Board discussed payment.

20 MEMBER STIDHAM: Mr. Horn, can you point me to a
21 page within the transcript, the page and line in the
22 transcript? I have the transcript open. I'm looking for
23 where you're reading from.

24 MS. DUNCAN: Perhaps while we're looking for that,
25 Ms. Brown says in her testimony that DDOT had recommended some

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1 kind of compromise. If there was some kind of compromise, it
2 means that the applicant was not actively seeking or actively
3 promoting these conditions. It means that they were resisting
4 them, because there had to have been some kind of compromise.

5 I mean, DDOT has conceded that there are sidewalks
6 needed here. Far West Livability Study, the memo that they
7 submitted to the BZA said that they're going to -- they think
8 sidewalks should go in here within three to five years.

9 BZA CHAIR HILL: Hang on for one second, Ms.
10 Duncan. So -- Commissioner, that is. Let's go ahead and have
11 your testimony for the ANC. And what I think I'm going to now
12 need to do anyway is go back and see what was in the transcript,
13 what was said, and then in specific, how much of this sidewalk
14 improvement I necessarily understood when we were having the
15 deliberations, right?

16 And then I'm going to talk with the Office of Design
17 legal division to just understand what actually is within our
18 purview that we're able to implement, and if it's something
19 that, in the original hearing, I misspoke, misunderstood, or
20 shouldn't have made an assumption that the applicant is going
21 to pay for things that they didn't actually have to pay for,
22 that's something I'm going to research a little bit more.

23 And then also we might have to ask the applicant
24 about whether or not that's even necessary, like, you know,
25 the cost to these type of improvements. Meaning that in the

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1 original hearing, I'm sure the Board -- and this is where again,
2 Commissioner Duncan, this is a good exercise for the Board to
3 understand what's going on with the conditions and things that
4 we ask the applicants to improve or do.

5 Like, I know we didn't go into dollar figures as
6 to how much it was going to cost for these sidewalks to get
7 installed. And so, you know, I don't know if the applicant
8 would have necessarily agreed to the shoring that needs to be
9 done for the curb cuts and -- I'm sorry, for the sidewalks.

10 So let's go ahead and have your testimony,
11 Commissioner, and then I know that we're going to have to see
12 what we are and aren't able to do. But I'll let the -- you
13 go ahead and give your presentation if you wouldn't mind.

14 MS. DUNCAN: Okay. I'm going to sort of make an
15 on the fly decision here. My testimony goes more with the why
16 of how you got to the decision because of the changes in the
17 traffic pattern pushing this all to the residential area. But
18 Commissioner Horn's testimony goes more to the legal issues.
19 Do we have, you know, 15 minutes to go over both testimony?

20 BZA CHAIR HILL: Sure. Go ahead.

21 MS. DUNCAN: All right. Let's do it. All right.
22 I'm just going to go ahead and if we could pull up my slides
23 that I submitted. As I said, at the time of the original BZA
24 hearing for this project, I was the president of the Palisades
25 Community Association. So I am extremely familiar with this

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1 project.

2 BZA CHAIR HILL: Do you know which exhibit your
3 slide deck is in? I think -- is it --

4 MS. DUNCAN: I do not.

5 BZA CHAIR HILL: I see 24A.

6 MS. DUNCAN: One of the things the Board did
7 recognize, that this was an enormously significant and
8 valuable special exception. It was therefore not out of
9 proportion that the BZA, recognizing the pedestrian hazards
10 that would be created by this project, determined that the
11 applicant should build a series of sidewalks, as agreed upon
12 in the MOA.

13 Exhibit A should be slide number two. It's what
14 the project looks like today. It's huge. It dominates our
15 commercial corridor. I'm not complaining about it. We knew
16 what we were getting. But the applicant also knew they were
17 seriously impacting the immediate neighborhood, especially
18 the traffic volume on the nearby residential streets, on which
19 portions have no sidewalks. Next slide, please.

20 We've seen this map. You see the MU-4 and the R-1B
21 portions. Go to the next slide. This shows the huge wing of
22 the project that is in the R-1B zone. The taller building on
23 the right is the MU-4 portion. Everything on the left is on
24 R-1B. This was a really big deal. So much so, at the original
25 hearing, on November 2020, this Board recognized the ANC's

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1 argument at the time that the special exception granted here
2 effectively amounted to a zoning change. Looking at this
3 building, you can see it's not just the --

4 BZA CHAIR HILL: Ms. Duncan.

5 MS. DUNCAN: Yeah?

6 BZA CHAIR HILL: Ms. Duncan, I've got to just --
7 you keep mentioning zoning change, and I just want to be clear,
8 like, I don't know -- it is kind of important what -- the words
9 you're using. And I have to go back and take a look at what
10 you're saying. I seriously doubt the Board said anything
11 about a zoning change.

12 MS. DUNCAN: So the --

13 BZA CHAIR HILL: We had before us -- I have to look
14 and see what it was. I'm sure it was a special exception of
15 some kind in the original case. So I just want to be clear,
16 we don't have the authority for any kind of --

17 MS. DUNCAN: No, no.

18 BZA CHAIR HILL: -- zoning change.

19 MS. DUNCAN: There was -- well, Commissioner
20 Srique's testimony, if you want to go back and refer to that,
21 talks about how technically, yes, this was a special exception
22 under the BZA, 100 percent in the zoning regulations. But --
23 in the, you know, under the BZA's purview. But it
24 significantly changed the project so much that he made -- Mr.
25 Srique made the point that it was such a --

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1 BZA CHAIR HILL: Okay. It's okay.

2 MS. DUNCAN: -- it was effectively --

3 BZA CHAIR HILL: Commissioner Duncan --

4 MS. DUNCAN: Okay. I'll --

5 BZA CHAIR HILL: -- I understand. We don't have
6 -- like, I don't have anything to do with the regulations. I
7 don't have anything to do with the statutes. You know, I'm
8 just saying you just said technically, it was a special
9 exception. I mean, that's the thing. That's what I'm just
10 trying to clarify.

11 MS. DUNCAN: Yeah, yeah. Technically --

12 BZA CHAIR HILL: It was a special exception.

13 MS. DUNCAN: -- it was a special exception.

14 BZA CHAIR HILL: It wasn't a zoning change.

15 MS. DUNCAN: No.

16 BZA CHAIR HILL: So go ahead, please, with your
17 presentation.

18 MS. DUNCAN: Okay. At the time, the BZA commended
19 the ANC for negotiating the MOA, and you spent a good deal of
20 time on the deliberations, and on how to add our conditions
21 into the BZA. You had consulted with the Attorney General's
22 Office, I believe. You mentioned that in the hearing. And
23 the BZA added these conditions, fully aware of what they were
24 asking the applicant to do with the sidewalks and other safety
25 improvements. And only out of the caveat that any public space

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1 improvements would be subject to DDOT's approval. And I --
2 like I said, I just relistened to the hearing.

3 The next point is important. The project very
4 significantly changes the traffic patterns to and from the
5 site, which creates a danger for drivers and pedestrians.
6 Exhibit D is -- the next slide, is the map of the old Safeway
7 entrance, 1, 2, and 3. Entrances 1 and 2 on the MU-4 side of
8 the site are going to be closed, and entrance 3 is moved down
9 a little bit. You can see that in Exhibit E on the next slide.

10 VICE-CHAIRPERSON JOHN: Ms. Duncan --

11 MS. DUNCAN: Sure.

12 VICE-CHAIRPERSON JOHN: -- can I interrupt you
13 again?

14 MS. DUNCAN: Mm-hm.

15 VICE-CHAIRPERSON JOHN: Are we relitigating
16 what's been already agreed to in the original plans? Because
17 you can't relitigate the original application.

18 MS. DUNCAN: I think that what -- my point I'm
19 trying to make here is that the BZA Board was aware of the
20 significant traffic changes. So when we talk about number of
21 traffic counts and all of those things not changing that much,
22 there was a big recognition that the new entrances were pushed
23 to the R-1B part or the site.

24 VICE-CHAIRPERSON JOHN: And how does that
25 recognition obligate the applicant to pay for the changes --

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1 MS. DUNCAN: It is my firm --

2 VICE-CHAIRPERSON JOHN: -- that we're all here
3 discussing today?

4 MS. DUNCAN: It is my firm belief that the -- I know
5 that the ANC and the PCA assumed that the applicant was going
6 to pay for these sidewalks. It is my belief that the applicant
7 also thought that they were going to pay for these sidewalks.
8 This order has been in place since, like, the 20 -- June 21st.
9 This has only come up after they have realized how much it's
10 going to cost them. But they were intending on paying for
11 these sidewalks. I believe it, I think the BZA believed it,
12 and I think the applicant believed it.

13 MR. BREWER: I can --

14 MS. DUNCAN: If we're going on intent.

15 VICE-CHAIRPERSON JOHN: Okay. Thank you.

16 MR. BREWER: -- if I might, we did not believe we
17 would have to pay for these sidewalks. That's why in the first
18 point and the second point, we specifically said we would pay,
19 and we specifically limited and provided exact --

20 BZA CHAIR HILL: Mr. Brewer.

21 MR. BREWER: -- amounts --

22 BZA CHAIR HILL: Mr. Brewer. Mr. Brewer, it's
23 okay. Like, I don't -- I'm -- whatever you all thought you
24 were going to pay for, or what the BZA thought we were going
25 to pay for, I'd have to go back and take a look at the testimony

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1 and try to understand the sidewalks.

2 The other part of this, as I've mentioned before,
3 is I don't know if we can make you pay for it, right? And so
4 that's what I'm going to have to try to figure out as we kind
5 of move through this. Commissioner Duncan, would you like to
6 please continue?

7 MS. DUNCAN: Yes, thank you. Okay. You can go
8 ahead and turn off the slides. I would like to address the
9 memo from DDOT, because it was very, very perplexing from us.
10 I think it's part of the record. On page 1 of this memo
11 authored by Anna Chamberlin, Associate Director, she states,
12 quote, DDOT has reviewed the application materials and has been
13 engaged in conversations with the applicant, community, and
14 zoning administrator over the last year regarding the origin
15 of and compliance with condition 2C, end quote.

16 We would like to state for the record that DDOT has
17 not engaged in any meaningful conversations with the community
18 or the ANC. This year, prior to this memo being written, I
19 find it conspicuous that no one from DDOT has elected to join
20 this hearing.

21 I would also like to state for the record that I
22 took part in conversations with DDOT along with Ms. DeBow.
23 Back before the BZA approved this project in 2019, we looked
24 at satellite maps of the area, pointed out all the missing
25 sidewalks, highlighted the change in traffic patterns that

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1 were to come. And the result of this conversation is what
2 prompted all the conditions we discussed today that was in the
3 MOA, and then in the BZA order. People walk in the middle of
4 the street here when cars are parked on all sides, which is
5 often, which is daily.

6 BZA CHAIR HILL: Okay. That -- Commissioner
7 Duncan, so okay. You said there's -- I've got to get to my
8 other hearings as well.

9 MS. DUNCAN: Yep, yep.

10 BZA CHAIR HILL: And so you said Commissioner Horn
11 had some testimony to give?

12 MS. DUNCAN: Yes. I'd like to hand it over to
13 Commissioner Horn.

14 BZA CHAIR HILL: Okay.

15 MR. HORN: Hello, Mr. Chairman. Look, if there
16 was a time to question the BZA's power to order these ridiculous
17 safety improvements, that time has passed. The BZA order of
18 2020 is a final order. If there was an issue in 2020, the
19 applicant could have sought reconsideration or could have
20 appealed to the courts, and obviously they did not.

21 I'm sure you have no doubt that a BZA order can
22 include conditions that an applicant voluntarily accepts, and
23 that order is binding. Let me suggest that in this case, it's
24 voluntary. A special exception with conditions is a package
25 deal. It's offered to the applicant.

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1 If that applicant doesn't like it, they can seek
2 reconsideration, they can appeal it in court, or most
3 importantly, they can walk away from the deal, saying it costs
4 too much or whatever the reason. That's capitalism. That's
5 the market system. It's their choice.

6 So after the BZA ruled, and before the applicant
7 started building, the BZA condition was voluntary, but they
8 accepted the deal. They knew what they were getting. This is
9 plain English. As the zoning administrator declares in her
10 letter, this was very plain. And it's enforceable.

11 Let me make two legal arguments that the applicant
12 has failed to meet its burden of proof. First, the applicant
13 did not provide evidence to support a modification, because
14 its arguments today are about the appeal, which is in February,
15 not the modification.

16 The application makes it clear that it seeks a
17 correction in the wording, and that it believes the language
18 of condition 2C was an error, and that the zoning
19 administrator's determination letter, which rules on what that
20 language meant, should be reversed. That's their argument.
21 That's the appeal that's scheduled for February.

22 It's irrelevant here today in a modification for
23 significance. A modification for significance is not a
24 correction. It is, by definition, a major change. A
25 modification of significance, by definition, accepts that the

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1 order says one thing and the applicant seeks to change it in
2 a significant way.

3 And because of this insistence that the order was
4 mistaken, the Board doesn't even know what crosswalks,
5 sidewalks, and signs you're being asked to modify today. Let
6 me explain. DDOT has been telling us, both the residents and
7 the ANC, for the last two years, that they have to wait until
8 the applicant sends them the plans in order to approve or
9 disapprove of specific safety features listed in condition 2C.
10 And the zoning administrator's letter agrees that the
11 applicant needs to send plans to DDOT, and they didn't.

12 When, on October 25th, I was walking on 48th and
13 V Street, and I saw people doing surveying. And I walked up
14 to the supervisor, and he explained to me that they were
15 surveying for plans to build these sidewalks on 48th, 49th,
16 and V Streets. He said their work would be done the next day.
17 I asked were they doing it for DDOT. He said no, it's for
18 Gilbane, which as you know, is the applicant's builder. And
19 he pointed at the Balfour Development.

20 And I thought great, they're finally going to
21 actively seek DDOT's approval. But they haven't. They still
22 haven't. To decide a modification of significance, the Board
23 needs to know what would change --

24 BZA CHAIR HILL: Okay.

25 MR. BREWER: -- are you stopping me? All right.

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1 BZA CHAIR HILL: Yeah. Thanks, Commissioner. So
2 you guys have an appeal in February?

3 MR. BREWER: Yes.

4 BZA CHAIR HILL: What's the appeal for?

5 MR. BREWER: It's an appeal of the determination
6 letter of the zoning administrator. That's what the applicant
7 is appealing.

8 MS. DUNCAN: The applicant's appealing, not the
9 ANC.

10 BZA CHAIR HILL: Oh, got you. Okay. So any kind
11 of letter to -- and Ms. Brown, what's the appeal for?

12 MS. BROWN: The appeal is from the decision of the
13 zoning administrator that says the applicant must construct
14 the improvements in condition 2C if DDOT approves them, and
15 that the requirement to pay that is asserted by the ANC is
16 immaterial to the BZA decision. We believe that this
17 modification of the condition is more appropriate and solves
18 the issue, as opposed to the appeal. But we covered all our
19 legal bases and did both.

20 BZA CHAIR HILL: Where's the zoning
21 administrator's letter? Is it in your appeal?

22 MS. BROWN: I believe it's in the appeal case, and
23 I don't have that case number --

24 BZA CHAIR HILL: Do you have the number?

25 MS. BROWN: -- off the top of my head.

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1 MR. HORN: 21007.

2 SECRETARY MOY: Chairman Hill, it's Exhibit 4.

3 BZA CHAIR HILL: Oh, thanks. Okay. Commissioner
4 Horn, go ahead and finish your testimony. Thank you.

5 MR. HORN: Thank you. So the applicant has the
6 burden of proving that the underlying facts for its request
7 for modification with significant evidence. And by
8 withholding the plans from DDOT, you don't know a crucial
9 underlying fact, that is what exactly would the current order
10 require, because DDOT hasn't ruled. They haven't decided to
11 approve or disapprove anything. We don't know what we're
12 changing from. That's the first way the applicant has failed
13 to meet its burden of proof.

14 The second is that for this modification, the
15 applicant must possess substantial evidence of changed
16 circumstances; something that can't be done because the facts
17 today are the same as they were three years ago.

18 Let me explain why the Board needs changed
19 circumstances. This case is unusual. In this particular
20 case, the Board already ruled on the same matter, in the same
21 case, with the same parties three years ago. It's a final
22 order without any attempt by the applicant to file a
23 reconsideration or appeal.

24 The applicant wants to argue the same facts but get
25 a different result. They want to make legal arguments that

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1 are barred by the applicant's failure to appear. They want
2 to relitigate the same case, and legally, that cannot be done.
3 Normally, when this Board finds a set of facts and comes to
4 a conclusion derived from the facts, that's all you need. I
5 --

6 BZA CHAIR HILL: Mr. -- give me one second,
7 Commissioner. Mr. Smith, where did you see it?

8 MEMBER SMITH: Four F.

9 BZA CHAIR HILL: Four what?

10 MEMBER SMITH: F.

11 BZA CHAIR HILL: Four F. Okay, thanks. Yeah,
12 okay. All right. Go ahead, Commissioner Horn. Anyway, I
13 think I'm cutting you off, Commissioner Horn. Go ahead. I
14 -- are you done?

15 MR. HORN: I'll just finish. Normally, a Board
16 has a set of facts, comes to a conclusion derived from those
17 facts, and that's all you need. But after drawing one
18 conclusion from a certain set of facts, if this Board
19 subsequently took the same set of facts and came to a different
20 conclusion, that would be arbitrary and capricious.

21 The Board can't do that. You need changed
22 circumstances to grant this modification, because it's the
23 same case, with the same facts, with the same parties. And
24 it's the applicant's burden to prove those circumstances, and
25 there aren't any.

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1 BZA CHAIR HILL: Okay. I'll --

2 MR. HORN: This could be done --

3 BZA CHAIR HILL: Mr. Horn --

4 MR. HORN: -- in the appeal, but --

5 BZA CHAIR HILL: Mr. Horn, I got you. So all
6 right. I'm going to ask Ms. Brown if she has any questions.
7 Ms. Brown's also going to get -- have rebuttal, and then you
8 guys will have questions on rebuttal. This is turning into
9 a whole other thing. And so what I'm trying to figure out is
10 -- when I say a whole other thing, I didn't realize there was
11 an appeal that's tied to this. And so I'm not sure,
12 Commissioner, if you're arguing issues of the appeal or if
13 you're arguing issues of this modification of significance.

14 I know -- I understand what you're saying. I
15 should clarify that. I know the arguments that you're making
16 about this modification of significance. I didn't know there
17 was an appeal. And so I'm trying to understand the
18 differences.

19 MR. HORN: If I may say, the -- what Commissioner
20 Duncan was trying to say was that three years ago, what you
21 did, mandating these changes, these safety improvements, made
22 sense. They were a good idea, and they were supported by the
23 evidence. But at --

24 BZA CHAIR HILL: And so --

25 MR. HORN: -- the same time, this is really an

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1 appeal question that should be decided in February.

2 BZA CHAIR HILL: I'm not clear on that, but you've
3 brought up a good point.

4 VICE-CHAIRPERSON JOHN: Yeah.

5 BZA CHAIR HILL: And what the Board may or may --
6 and this is where it's going to get -- this day is going to
7 -- hopefully, I'm going to have enough time to finish, because
8 I have to leave at 3:00. So -- and there's eight more cases
9 after you guys. So what I'm not clear on is a lot of things
10 that have been said in -- about the previous case. I think
11 we would all agree that if this ended up costing \$100,000, the
12 applicant would just go ahead and do it. Meaning whatever
13 they're paying for the attorney's fees right now is not worth
14 the time to fix the sidewalk if they could fix the sidewalk.

15 What I'm still not clear of is what is within the
16 Board's jurisdiction based on what the regulations say and what
17 we're supposed to look at for the special exception. I'm
18 saying all of that because there's been a lot of testimony as
19 to what we did and meant many years ago, or several years ago,
20 I suppose.

21 And you, the ANC, and Commissioner Duncan, who was
22 -- I guess was the PCA -- what I meant by saying that it's --
23 I'm glad that you all had an opportunity to negotiate something
24 with the developer, whether or not I looked that hard into how
25 far the sidewalks went up the street, and how much they were

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1 going to cost, I'm learning something new now today, which is
2 that I won't -- I will want very specific information about
3 the costs of things and what we are and aren't able to authorize
4 as part of our conditions.

5 So this is being helpful to the BZA. I just don't
6 know where we are. However, there is an appeal now in
7 February, which I also didn't realize was part of this. I
8 don't know if there's a statement or a question in there or
9 what have you. Commissioner Horn, do you have a conclusion?

10 MR. HORN: My conclusion is that for a modification
11 of significance, the applicant has failed to meet its burden
12 of proof. This argument is about an appeal.

13 BZA CHAIR HILL: Okay. All right. Ms. Brown, do
14 you have any questions, or would you like to give a rebuttal?

15 MS. BROWN: No questions at this time. I believe
16 we have -- we did rebuttal.

17 BZA CHAIR HILL: Oh, yeah. I forgot. Okay.
18 Vice-Chair John, if you need to leave, please do so if you need
19 to leave, and you can watch this on video, because I don't think
20 we're making a decision today.

21 VICE-CHAIRPERSON JOHN: Okay. I just want to say
22 something in case I have to leave. The Board has no authority
23 to make somebody pay for public space improvements. And we
24 have been consistent in saying that for the past several years.
25 And I believe my statement and the portion of the transcript

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1 that I read reinforce that position.

2 I am deeply against including these provisions in
3 the Board's order because we get into this situation. And that
4 was a consensus between the applicant and the developer as to
5 benefits, community benefits that the applicant wanted to
6 provide. This is not a PUD, as everyone agrees. And so I just
7 want to put that in the record.

8 And I might have to leave. I apologize. But I
9 will review the record before we make a decision, and hopefully
10 ruling that the Board doesn't have jurisdiction to force a
11 developer to spend money for public space improvements, but
12 some accommodation can be made before the Board makes a
13 decision. Because I will not be voting to force an applicant
14 to pay for public space improvements. And I just wanted to
15 put that out there.

16 BZA CHAIR HILL: Okay. Thank you, Vice-Chair
17 John.

18 VICE-CHAIRPERSON JOHN: All right. I have to
19 leave.

20 BZA CHAIR HILL: Okay. Thank you, Vice-Chair
21 John. Is the Office of Planning here?

22 MR. LAWSON: Good morning, Mr. Chair. Here we
23 are. The OP, the Office of Planning, did submit a short report
24 on this. The condition that you are talking about was not a
25 condition of the Office of Planning. We essentially have no

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1 opinion one way or another, and we would defer to DDOT on this
2 issue, and of course to the Board. With that, thank you.

3 BZA CHAIR HILL: Okay, thank you. Mr. Moy.

4 SECRETARY MOY: I'm here.

5 BZA CHAIR HILL: Yeah. I don't think -- you said
6 DDOT's not with us today, right?

7 SECRETARY MOY: No, as I said earlier with my
8 preliminary, he had reached out he would be available, and
9 then, well, he had other meetings, so he's not here.

10 BZA CHAIR HILL: Okay.

11 SECRETARY MOY: But yeah.

12 BZA CHAIR HILL: And for the record, you did ask
13 me ahead of time if we wanted DDOT, and I didn't think we needed
14 DDOT. I made a mistake. We should have probably had DDOT here
15 with us. However, I can get reports from them -- I can get
16 a report from them. And so that will be helpful. And we are
17 going to have something -- we will want something from DDOT
18 on this issue.

19 Okay. Let's see. Mr. Young, could you -- who do
20 we have as the witness? Do we just have the one person from
21 the association?

22 MR. YOUNG: She did have a witness as a part of her
23 team. I'm not sure if she wants him to testify separately or
24 not.

25 BZA CHAIR HILL: Okay. Why don't you bring in the

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1 member of the association, please? Ms. DeBow, can you hear
2 me?

3 MS. DEBOW: I can hear you.

4 BZA CHAIR HILL: Great. Thank you. Ms. DeBow, as
5 I mentioned before, you'll have five minutes to give your
6 testimony as a member of a community organization, and you can
7 begin whenever you like.

8 MS. DEBOW: Okay, great. So thank you so much for
9 the time today. I actually think that I can fill in some
10 missing links. Three years ago, I testified in front of this
11 committee, and it was my testimony that spurred the
12 conversation of the Board of safety pedestrian improvements.
13 I was not a member of the PCA Board. I live across the street
14 from the development site, and I was a concerned neighbor.

15 The PCA and the ANC negotiated the memorandum of
16 agreement and construction management agreement to protect the
17 neighborhood from insensible development and adverse impacts
18 to the community. After months of negotiation, and in the 11th
19 hour, Trammell Crow added a parking lot due to the anticipated
20 growth of demand.

21 Perhaps also at the community request, because
22 there was a dispute with parking. But in the 11th hour, weeks
23 before the BZA approval, and at the time when the MOA and the
24 CMA were about to be executed by the PCA and the ANC, this curb
25 cut on the residential part of the site came to fruition.

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1 Surrounding neighbors, including myself,
2 | adamantly opposed to the -- to this addition to the residential
3 | portion of the site, but we were basically left with no
4 | negotiating power. As the neighbor who lives across the
5 | street from this development, I decided to bring my concerns
6 | to the hearing that day. My testimony led to the adoption of
7 | stronger obligations of the developer to provide additional
8 | pedestrian safety relief to the community, which ended up being
9 | condition 2C of the order, just as they indicated today.

10 The community expects and deserves that that full
11 | order, which also included the MOA and COA -- CMA, be fully
12 | implemented as a matter of public protection from
13 | irresponsible development that will create an objectionable
14 | traffic condition in a residential portion of the site where
15 | the developer was granted zoning relief.

16 As such, I adamantly object to the developer's
17 | request for a modification of significance of section 2C based
18 | on the following grounds. As commissioner Horn mentioned,
19 | there have been no material changes to the condition of the
20 | site since the BZA hearing held in November of 2020.

21 I do also find it -- the applicant, in all of their
22 | maps, did not show the curb cut in any of their maps to the
23 | Board today. That curb cut is about halfway through, if
24 | everyone can remember where those pink lines were, it's about
25 | halfway through the pink line. It is very much on the

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1 residential portion of the site.

2 DDOT actually agreed with the fact that there would
3 be an additional traffic concern due to that curb cut. And
4 I quote, the location of the curb cut on V Street could attract
5 additional commercial traffic into the residential
6 neighborhood and create a new conflict point between vehicles
7 and pedestrians.

8 These are all of the points that I made during
9 testimony. These were the points that were deliberated by the
10 Board and put in to condition 2C to strengthen the MOU. The
11 applicant today argued that the MOU -- or the MOA language --
12 that we should revert back to the MOA language. But the fact
13 is that the MOA language was the starting point of the
14 discussions.

15 The BZA, my testimony, and the Board agreed to
16 strengthen those conditions based on the testimony that I gave.
17 That testimony has not changed. The traffic conditions exist.
18 And we -- the new site effectively shifts all of the commercial
19 traffic to the residential portion of the site. None of those
20 conditions have changed.

21 I also object to this modification of significance
22 because it has been two years since Trammell Crow has broken
23 ground on this project. Their time to object for -- or request
24 for a modification of significance was two years ago. They
25 broke ground. They knowingly knew that there was a dispute.

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1 And I can testify against that firsthand. I am the person who
2 has the day to day responsibility and to steward the agreement
3 that has been brokered between all parties.

4 I am now a member of the PCA board. I work directly
5 with Bill Brewer. I work with Trisha Duncan. I work with the
6 construction management person across the street. For two
7 years, I have been following up on condition 2C. For two
8 years, we, as the PCA entity, myself, and ANC, have been
9 requesting that Trammell Crow actively seek in writing and
10 orally the safety improvements with DDOT. For two years,
11 Trammell Crow ignored this mandate and refused to meet with
12 DDOT, despite multiple requests.

13 And I'm happy to -- I'm not going to go through it.
14 I know everyone's time crunched. I will be happy to submit
15 my facts to the Board. But in no less than five different
16 occasions, the applicant was notified that they needed to speak
17 with DDOT and negotiate. They did not.

18 My third reason, for over the past 30 months,
19 Trammell Crow has actively obstructed every attempt to enforce
20 condition 2C and has blatantly disregarded the authority of
21 both the ANC and PCA representatives who enforced the order.
22 They also attempted to avoid their obligations of the expense
23 of condition 2C, and used their considerable influence across
24 multiple levels of D.C. Government.

25 Instead of sitting down with DDOT, they started

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1 lobbying with Mary Cheh's office. Instead of lobbying with
2 DDOT, they were actively seeking funds across the city. Only
3 until the zoning commission finally filed a decision on this
4 matter in July did the applicant file this and their appeal.
5 There have been multiple occasions for the applicant to
6 actually do what was right, and --

7 BZA CHAIR HILL: Ms. DeBow --

8 MS. DEBOW: -- for two years, we have been chasing
9 this.

10 BZA CHAIR HILL: Ms. DeBow, I'm --

11 MS. DEBOW: In conclusion --

12 BZA CHAIR HILL: -- I --

13 MS. DEBOW: Oh, go ahead.

14 BZA CHAIR HILL: Yeah, go ahead.

15 MS. DEBOW: One more moment.

16 BZA CHAIR HILL: I like in conclusion.

17 MS. DEBOW: In conclusion, for over 30 months, the
18 PCA and ANC have endeavored to seek Trammell Crow's compliance
19 with section 2C of the order. In good faith, we have sought
20 compliance directly with Trammell Crow, and we have actively
21 sought advice from multiple offices of the District of
22 Columbia, the Zoning Board, and DDOT, multiple phone calls,
23 multiple letters.

24 Along the way, every time we attempted to seek
25 compliance, Trammell Crow's legal team argued their

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1 counterpoints. This has been a typical David and Goliath
2 experience. Volunteers who care about the safety of our
3 neighborhood have dedicated hundreds of hours to this matter.
4 The PCA and its members have spent thousands of dollars in legal
5 fees, which pale in comparison to the legal fees from notable
6 D.C. law firms on Trammell Crow's side.

7 We are eager, very eager to resolve this matter
8 satisfactorily, but not at the expense of pedestrian safety.
9 Thank you for allowing me for my testimony today.

10 BZA CHAIR HILL: Thank you. Does anybody in the
11 Board have questions for the witness? Okay. Does the
12 commissioners have any questions for the witness?

13 MS. DUNCAN: No, no questions.

14 BZA CHAIR HILL: Okay. Does the applicant have
15 any questions of the witness?

16 Okay. All right. Ms. DeBow, you had another
17 witness or something. Is that correct?

18 MS. DEBOW: I did. I think I'm now on -- in the
19 interest of time, we did have a traffic consultant that we have
20 been working with that did have facts to support pedestrian
21 safety. But I feel like if the Board would like to hear more
22 on that subject, we are happy to provide that testimony. But
23 I do feel like the issue at hand is a little bit broader than
24 that. So I will allow the Board to have their opinion on that.

25 BZA CHAIR HILL: Okay. Thanks, Ms. DeBow. All

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1 right, Ms. DeBow. Thank you so much for your testimony. I'm
2 sure you'll be watching, so have a nice day. Mr. Young, if
3 you could excuse the witness. All right. Ms. Brown, I'm
4 going to have a couple questions. You have rebuttal?

5 MS. BROWN: Just -- I'll make a really quick
6 summary.

7 BZA CHAIR HILL: All right. Before you give me
8 your summary and/or -- well, let's have rebuttal. If you have
9 any rebuttal, let's have rebuttal, because then if the ANC has
10 any questions on rebuttal -- if you have a conclusion, that's
11 a different thing. But my questions to you, so did you guys
12 ask DDOT whether or not the curb cuts were necessary -- I mean,
13 sorry, whether the sidewalks were necessary?

14 MS. BROWN: We have worked with DDOT over the years
15 trying to get an answer on this very issue, and it's not for
16 lack of trying. And Mr. Brewer might be able to fill you in
17 on that a little bit more.

18 BZA CHAIR HILL: That's okay.

19 MS. BROWN: But I do have a recitation of the facts.

20 BZA CHAIR HILL: So you -- I'm just trying to ask
21 a very simple question. Have you asked DDOT about the need
22 for those sidewalks? Mr. Brewer, you seem --

23 MR. BREWER: Yes, yeah.

24 BZA CHAIR HILL: -- to be nodding yes.

25 MR. BREWER: Yes. We have submitted --

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1 BZA CHAIR HILL: Okay. Because --

2 MR. BREWER: -- the sidewalks to DDOT.

3 BZA CHAIR HILL: -- in the zoning administrator's
4 letter, it says that you again are supposed to be asking for
5 --

6 MR. BREWER: Yeah. So the issue here is that we
7 have asked, we have spoken with them. What we're being asked
8 to do is a complete set of construction drawings and submit
9 a public space application. What we've been trying to do is
10 understand if these things are even necessary, and we finally
11 got that answer from DDOT in the report they submitted to this
12 -- for this matter of significance.

13 But we have been speaking with them. We've also
14 spoken with the -- Mary Cheh's office, Mike Brennan's office
15 in an effort to advance this issue. And I believe we've been
16 complying with the -- for the reason that -- to seek their input
17 and approval.

18 MS. BROWN: And Mr. -- Chairman Hill, it started
19 in June of 2021, where the applicant started speaking with the
20 -- with DDOT. They requested via email that these conditions
21 be approved through the 311 queue. DDOT advised the applicant
22 on June 9, 2021, that -- exactly these requests should be
23 pursued through 311.

24 And sorry, I've got my chronology mixed up. In
25 March of 2022, the applicant submitted the 311 request. And

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1 the -- DDOT responded by saying the request is expected to be
2 completed by April of 2023. That request had not been
3 completed by that date. And then the applicant had discussed
4 condition 2C improvements with DDOT and the Office of the
5 Zoning Administrator on June 22nd.

6 So there has been dialogue with DDOT since at least
7 June of 2021 on this matter. And that was shortly after the
8 BZA order was issued in June of 2021. So there has been the
9 efforts. It's just that is such an ambiguous sort of big
10 condition of 2C, of how to manage it and what is required. And
11 as Mr. Brewer just said, only recently have we gotten a
12 definitive answer that those public sidewalk improvements
13 aren't necessarily something that the applicant should pursue
14 because of all the challenges it presents.

15 BZA CHAIR HILL: Okay. So you -- so I have to go
16 back. So the answer is yes. So did -- let's see. That was
17 one. All right. Does the Board have any other questions of
18 the applicant?

19 Okay. Ms. Brown, do you have any rebuttal?

20 MS. BROWN: Yes. I just have some quick points.
21 Number one, in response to Mr. Horn's contention that this is
22 not allowed to be pursued as a modification, it absolutely can.
23 The regulations specifically allow an applicant to request a
24 modification of a condition, end of story.

25 Second, the sole issue is whether or not there was

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1 discussion to support the condition that the applicant
2 construct the improvements and the implication that they
3 should pay for them, as asserted by the ANC. That's it. The
4 discussion that Ms. DeBow had on the record with you, Chairman,
5 and your response to it, by saying that if the -- if DDOT
6 approves the 4E conditions of the MOA, then they have to do
7 it, why would the applicant be concerned about condition 4E3,
8 which didn't require them to construct or pay? We agreed to
9 do that. We would actively pursue, but we would not pay or
10 instruct them.

11 So the seven -- the reference is on transcript pages
12 212 to 215, and that's what was read into the record about if
13 the -- so you know, if DDOT approves paragraph 4E of the MOU,
14 then they have to do it. That's the condition I'm just making.
15 That was during deliberations. The applicant didn't have an
16 opportunity to speak up. It was after the hearing portion had
17 closed.

18 And again, we had no objection to you including the
19 4E conditions of the MOU -- of the MOA into the order. And
20 that's why we were surprised to see the wording they have to
21 do it changed to construction. That's the objection here.
22 Because I don't think that that was the intent of the BZA,
23 because both Ms. DeBow in her testimony before the Board in
24 2020 --

25 BZA CHAIR HILL: Hang on one second. So Ms. Brown,

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1 I'm just trying to -- so -- all right. You're going to come
2 back to a conclusion. I don't know what's going to happen.
3 I'm trying to wrap this up. I know what we're going to have
4 to do now, okay? So Commissioner, do you have any questions
5 about the rebuttal? Questions; no statements, no restating
6 things. Do you have any questions?

7 MR. HORN: Yeah. So you're saying that the -- that
8 DDOT has given you instruction on the need for these sidewalks.
9 But that's not true, is it? The zoning administrator said you
10 did not and you have not.

11 BZA CHAIR HILL: What's the -- Mr. Commissioner,
12 I'm just trying to understand, because I have to understand.
13 What's the question on rebuttal? What's the question again?

14 MR. HORN: The question is whether DDOT has given
15 the applicant a response on whether these sidewalks are needed.
16 Because --

17 BZA CHAIR HILL: Okay. That's the question.

18 MR. HORN: -- the order -- in the order, they were
19 required to ask this of DDOT, and the zoning administrator
20 specifically said they did not do it. And I'm asking, so
21 you're saying you did it when the zoning administrator said
22 you didn't?

23 BZA CHAIR HILL: Your question is -- state your
24 question again.

25 MR. HORN: Did you -- did the -- did DDOT tell you

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1 that these sidewalks were needed or not needed --

2 BZA CHAIR HILL: Okay.

3 MR. HORN: -- as required by the order?

4 MR. BREWER: The reference --

5 MS. BROWN: The part -- Bill, if I could jump in
6 and respond --

7 MR. BREWER: Yeah.

8 MS. BROWN: -- to this. The issue is not -- the
9 question is not whether they're needed or not, generally,
10 because I think the real question is are they needed as part
11 of this application and required under the BZA order for the
12 applicant to construct and pay for it.

13 BZA CHAIR HILL: Ms. Brown, did -- you guys, I've
14 got to move on with the day. Did -- we're coming back here.

15 MS. BROWN: Okay.

16 BZA CHAIR HILL: Did DDOT say that the sidewalks
17 were required? Well, I'm sorry. Did DDOT recommend the
18 sidewalks being installed, or that they were necessary?

19 MS. BROWN: Not for the applicant to construct or
20 improve them, and that's in Exhibit 9 of this --

21 BZA CHAIR HILL: Okay. That's fine. Mr.
22 Commissioner, do you have another question? You guys are
23 asking questions again about previous testimony. I'm just
24 asking about the rebuttal. Do you have any questions about
25 the rebuttal? Then I'm going to give you, Commissioner

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1 Duncan, an opportunity to give a conclusion, then we're going
2 to give the applicant an opportunity to give a conclusion.

3 And as I said, we're going to have a lot of questions
4 anyway, and we might even need something -- we might have a
5 continued hearing on this. I'm not really sure, okay? So do
6 you have any questions, Commissioner Duncan, on rebuttal?

7 Okay. Do you -- would you like to give a
8 conclusion, Commissioner Duncan?

9 MS. DUNCAN: Very briefly, I would say that most
10 of the arguments that we have here should be addressed on
11 appeal, and the modification of significance should be denied.

12 BZA CHAIR HILL: Okay. Ms. Brown, do you have any
13 conclusion?

14 MS. BROWN: Yes.

15 BZA CHAIR HILL: Okay. Please go ahead.

16 MS. BROWN: The sole issue is whether there's any
17 evidence in the record to suggest that condition 2C should have
18 been changed to require the applicant to construct the 2C
19 improvements. There has not. There is also no implication
20 that the applicant should have to pay for them. There's ample
21 evidence in the record that the applicant did pursue these
22 improvements in 2C with DDOT, which ultimately resulted in
23 their Exhibit 9 report saying that the applicant should not
24 pursue them, for the sidewalk improvements in 2C.

25 There is a big gap between what the -- Ms. DeBow

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1 testified to and Ms. Duncan and Mr. Horn testified to do about
2 how -- the genesis of the change in the condition. There's
3 nothing in the record to support their contention that it was
4 additional requirements that they were even advocating for.
5 They were not. They all agreed to the conditions in the MOA,
6 and the MOA was limited to actively pursue, and if approved
7 -- actively pursue these improvements. It said nothing about
8 constructing them or -- and nothing about paying them. And
9 they withdrew their opposition because of that specific
10 language.

11 Everybody was on board, and now they're trying to
12 bootstrap, you know, a mistake, if you will, in the order, to
13 construct them as some edict from the BZA. It is not. So we
14 simply request that you either restore the language to the
15 original MOA -- as an alternative, we would consider what the
16 -- what DDOT has suggested in its report.

17 BZA CHAIR HILL: Okay. All right. If you -- so
18 as I understand it, DDOT is asking for what they want to survey
19 or whatever -- they want actual plans or whatever they wanted
20 in order to -- and I'm asking you Ms. Brown, and also, then,
21 Mr. Brewer can answer. They asked for a full application. Is
22 that kind of what you're saying they asked for?

23 MS. BROWN: No.

24 BZA CHAIR HILL: Okay. Then Mr. Brewer, you
25 started telling me something that DDOT was asking for things.

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1 MR. BREWER: Yeah. I was speaking to the
2 difference in opinion between the development team and the
3 community about actively seeking, where we have -- we've
4 submitted things to DDOT and we've spoken to them. I think
5 the community has been looking for us to do a full set of
6 construction drawings.

7 We're in the process of preparing that, because if
8 we don't resolve this, we can't open the building. So we're
9 spending money to --

10 BZA CHAIR HILL: Yeah. All right. Ms. Brown, if
11 you could -- I mean, I don't want you guys to spend a lot of
12 money doing it, but I'd like to know how much the sidewalks
13 might cost, okay? Like, give us some kind of indication as
14 to how much the sidewalks might cost, okay?

15 It doesn't matter. I don't -- I already know that
16 you -- I will -- okay, before I give my little statements or
17 comments, Mr. Smith, do you have anything you'd like to add
18 before this ends?

19 MEMBER SMITH: At this time, I don't have anything
20 to add. I'm more or less in -- I understand what they have
21 -- been stated in 2020, but we do have to abide by the BZA's
22 regulatory power to condition things that are not necessarily
23 within the purview of the BZA. So just I think the right of
24 way, or this -- some type of public community that is offsite,
25 I'm hesitant to say that we can condition that.

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1 In terms of what Ms. John stated, we've been fairly
2 consistent with that for the past couple of years. I can't
3 say more like 2020, but I believe it was the intent of writing
4 this order in this particular way where it was understood that
5 the BZA could not condition offsite improvements within the
6 public right of way. And I believe that the way that this was
7 worded was to again, recognition that the applicant may be
8 willing to make these improvements, but in a manner that didn't
9 necessarily tie the BZA's hands in a fashion that I believe
10 the ANC is attempting to do.

11 So in this particular case, I would like to read
12 the transcript a little bit more, the previous transcript in
13 2020. But I am of the same mindset as Vice-Chair on this
14 particular matter. So that's all I --

15 BZA CHAIR HILL: Thanks, Mr. Smith. Commissioner
16 Stidham, do you have comments or anything you want or any --

17 MEMBER STIDHAM: Just I also would like to read the
18 transcript a bit more. But what -- from what I have read so
19 far, it feels as though the -- well, as Commissioner John
20 stated, you know, it does not appear that the intent was to
21 require something. It's -- it feels as though the intent was
22 to memorialize the agreement in the order. But I need to
23 finish reading the rest of the transcript to be sure that was
24 what the outcome was.

25 BZA CHAIR HILL: Okay. All right. Let's see. I

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1 mean, Ms. Brown, if it -- do you know how -- like, I mean --
2 or I'm sorry. I can ask Mr. Brewer. Mr. Brewer, like,
3 estimating costs, is there -- I mean, I know you can't -- you
4 know, how easy is it to actually just kind of give me a back
5 of the envelope cost on sidewalks?

6 MR. BREWER: We can get you something later today.

7 BZA CHAIR HILL: Okay.

8 MR. BREWER: We've --

9 BZA CHAIR HILL: All right.

10 MR. HORN: -- done some work on this, so --

11 BZA CHAIR HILL: Okay. So I'd be curious, right?

12 So that's the only thing I'm interested in adding to the record.

13 So Mr. -- I'm sorry. Mr. Moy, if -- what is our remaining
14 hearing dates looking like before the end of the year? We've
15 got the 6th, the 13th, the 20th, right?

16 SECRETARY MOY: Well, as we all know, any date is
17 possible.

18 BZA CHAIR HILL: What's the 13th looking like?

19 SECRETARY MOY: August -- September 13th, we -- the
20 Board --

21 BZA CHAIR HILL: No, December 13th.

22 SECRETARY MOY: Yes. That's what -- I'm sorry. I
23 don't know why I'm thinking about the fall. December 13th,
24 we have on the Board's docket approximately seven cases and
25 one expedited.

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1 BZA CHAIR HILL: And what about the 6th of
2 December?

3 SECRETARY MOY: The 6th, we have nine cases, one
4 expedited, one decision making, and one mod of consequence.

5 BZA CHAIR HILL: Okay. All right. So if you guys
6 get me your numbers by Friday the 1st, okay, then that would
7 give -- we'll give the ANC, who's a party, any comments they
8 want to make on those numbers, just on the numbers, by the 8th,
9 okay? And then we'll come back here on the 13th for a decision.
10 Okay, Mr. Moy?

11 SECRETARY MOY: Okay. So that I get this right,
12 so you're going to ask the applicant to submit cost estimates
13 or cost numbers by Friday, December the 8th?

14 BZA CHAIR HILL: No, December the 1st.

15 SECRETARY MOY: December the 1st, okay. That's
16 right. I'm sorry. So December 1st, and then the parties, and
17 I'm presuming the ANC to respond to the applicant's filing by
18 December 8th?

19 BZA CHAIR HILL: Yeah.

20 SECRETARY MOY: And in terms of filing a response,
21 do you need anything from DDOT or Office of Planning?

22 BZA CHAIR HILL: If DDOT wants to give us anything
23 new to their explanation as to if those -- if they believe the
24 sidewalks are a safety issue and are necessary -- or not even
25 necessary. I guess if they want to give us anything they want,

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1 they can -- we'll leave the record open until the 1st again,
2 December 1st, and then everybody can give us any thoughts they
3 have by December 8th.

4 SECRETARY MOY: Okay. And then this will be set
5 for decision making --

6 BZA CHAIR HILL: Yep.

7 SECRETARY MOY: -- on December 13th, correct?

8 BZA CHAIR HILL: Yep.

9 SECRETARY MOY: All right.

10 MS. BROWN: Point of clarification, Mr. -- or
11 Chairman Hill.

12 BZA CHAIR HILL: Sure.

13 MS. BROWN: DDOT files something and they need to
14 demonstrate -- they make an assertion that the sidewalks are
15 necessary or unnecessary, are you asking that -- whether or
16 not it'd generated by the R1D building in this case, the need?

17 BZA CHAIR HILL: I guess I was just --

18 MS. BROWN: Or just generally?

19 BZA CHAIR HILL: I guess, you know -- well, let me
20 put it this way. Mr. Smith, do you need anything from DDOT?

21 No. So Commissioner Stidham, I don't need
22 anything from DDOT. Do you need anything from DDOT? Okay,
23 she's shaking --

24 MEMBER STIDHAM: No.

25 BZA CHAIR HILL: -- her head, for the record, no.

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1 Mr. Moy, we don't need anything from DDOT, okay?

2 SECRETARY MOY: The Office of Planning, nothing?

3 BZA CHAIR HILL: No, we don't need anything from
4 the Office of Planning.

5 SECRETARY MOY: Okay.

6 BZA CHAIR HILL: All I need is those numbers by the
7 1st, and then thoughts. Now, so let me share with my Board
8 where I am going to also look back on the record. Three years
9 ago, I can't recall what I might have been thinking in terms
10 of the issues concerning the sidewalk. I would imagine that
11 I would have thought that if the sidewalks were not of an
12 expense that is going to be a hindrance to the project, then
13 the applicant would have been happy to have done the sidewalks
14 and would have done the sidewalks.

15 What is going to end up happening is whether or not,
16 again, this is something that it is in the Board's purview and
17 is enforceable. There is a -- well, it seems already that the
18 votes -- I probably am outvoted if I were to not want to change
19 this condition and leave it the way it was. There is a chance
20 that we could also hold this decision in abeyance until after
21 the appeal if that's something that the Board may or may not
22 want to do.

23 I don't want to hold up the project, because I don't
24 think that's something that the Board had -- this special
25 exception did not turn on the issue of this sidewalk. This

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1 special exception did not turn on the issue as to whether or
2 not a MOA was -- I'm sorry, was accepted and agreed upon by
3 the community. This is not a PUD. This is not something that
4 would enforce or have a PUD. I'm trying to clarify again,
5 there are regulations that the Board needs to look at as to
6 whether or not a special exception was or wasn't to be approved
7 in the original order.

8 And this issue is not something that is within those
9 regulations, as to whether or not this sidewalk is necessary.
10 What is within the regulations is if there is any adverse
11 impacts and things to that effect that would preclude someone
12 from achieving their -- the standards within the regulation.
13 So that all being said, we'll see what happens on the 13th of
14 December. Okay. Mr. Moy, do you have any questions of me?

15 SECRETARY MOY: No, sir. Everything's clear to
16 me. Thank you.

17 BZA CHAIR HILL: Mr. -- Ms. Brown, do you have any
18 questions?

19 MS. BROWN: No questions.

20 BZA CHAIR HILL: Commissioner, do you have any
21 questions?

22 MS. DUNCAN: To clarify, our rebuttal -- our
23 response will be due December 8th, and then we're scheduled
24 for the other hearing -- you'll have the other hearing on the
25 11th. Is that what I heard?

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1 BZA CHAIR HILL: No. So on the 8th -- and
2 Commissioner Duncan, the only thing we're going to be -- like,
3 anything else, you --

4 MS. DUNCAN: We're just going to be listening.
5 Right, right.

6 BZA CHAIR HILL: No, that's okay. I just want to
7 clarify. We're asking for some numbers --

8 MS. DUNCAN: Yes.

9 BZA CHAIR HILL: -- I'm asking for some numbers
10 about the sidewalk, right?

11 MS. DUNCAN: Yes.

12 BZA CHAIR HILL: And the only thing that you need
13 to respond to are those numbers about the sidewalk.

14 MS. DUNCAN: Exactly.

15 BZA CHAIR HILL: Okay? Like, everything --

16 MS. DUNCAN: No, that's --

17 BZA CHAIR HILL: -- else will be ignored. I'm just
18 letting you know, all right? Like, we're --

19 MS. DUNCAN: -- Okay.

20 BZA CHAIR HILL: -- only talking about the numbers
21 for the sidewalk.

22 MS. DUNCAN: Correct.

23 BZA CHAIR HILL: You wrote everything else about
24 what you thought should happen and all that. We're only going
25 to be looking at the numbers about the sidewalk, okay?

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1 MS. DUNCAN: Okay.

2 BZA CHAIR HILL: And then we will be back here for
3 a decision on the 13th. Now, that decision might be to hold
4 this decision in abeyance until after the appeal, but I might
5 also get outvoted on that, meaning I'm only one vote, right?
6 There's five of -- or there's four of us on this one.

7 So, you know, and I think that it's been pretty
8 clear that my other colleagues don't think that this is within
9 our purview. So okay.

10 MS. DUNCAN: I'm crystal clear. Thank you.

11 BZA CHAIR HILL: Okay. All right. Anybody else
12 have any other questions? I'm going to close the hearing.
13 All right. We'll see you guys on the 13th. Thank you.
14 Bye-bye. Okay. Mr. Moy, we have one, two, three -- oh my
15 gosh, there's ten issues still before the Board, right?

16 SECRETARY MOY: There are mods of consequence.

17 BZA CHAIR HILL: I understand. I understand.

18 SECRETARY MOY: Okay. All right.

19 SECRETARY MOY: Can you all -- do you all want to
20 go another five minutes, ten minutes, or do you want to take
21 a break? Okay.

22 MEMBER SMITH: I can go another five, ten minutes.

23 BZA CHAIR HILL: We've all got --

24 MEMBER STIDHAM: Yeah, same. Same.

25 BZA CHAIR HILL: Let's do the modifications real

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1 quick, okay? They're not real quick. Let's see if we have
2 any issues with them. So all right. Go ahead and call our
3 first modification, Mr. Moy.

4 (Whereupon, the above-entitled matter went off the
5 record at 11:56 a.m. and resumed at 12:21 p.m.)

6 BZA CHAIR HILL: Okay, Mr. Moy, you can call our
7 next case, please.

8 SECRETARY MOY: Thank you, sir. The Board has
9 returned to its public hearing session after a quick recess,
10 and the time is now at or about 12:22 p.m. The next application
11 before the Board is number 20975 of Jill Gerber. This is a
12 self-certified application pursuant to subtitle X, section
13 901.2 for the following special exceptions under subtitle E,
14 section 5201: the lot occupancy requirements of subtitle E,
15 section 210.1, the rear yard requirements, subtitle E, section
16 207.1. The property is located in the RF-1 zone at 1602 D
17 Street, Northeast, Square 4545, Lot 125.

18 And I think that's all I have for you sir. This
19 is the case where the waiver was granted, and there is a letter
20 in support. So that's probably the last exhibit in the case
21 record now.

22 BZA CHAIR HILL: Thank you. If the applicant can
23 hear me, could they please introduce themselves for the record?

24 MR. FREEMAN: Hi, my name is Mark Freeman. I'm
25 with Aggregate Architecture. Can you hear me?

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1 BZA CHAIR HILL: Yes. Mr. Freeman, if you -- are
2 you choosing not to use your camera, or does it work?

3 MR. FREEMAN: There we go.

4 BZA CHAIR HILL: Great. Mr. Freeman, if you could
5 walk us through your application and why you believe you're
6 meeting the criteria for us to grant you the relief you're
7 requesting, I'm going to put 15 minutes on the clock so I know
8 where we are, and you can begin whenever you like.

9 MR. FREEMAN: Thank you, Board. Thank you,
10 Chairman Hill. My name is Mark Freeman. I'm with Aggregate
11 Architecture. I am the firm representing Ms. Jill Gerber, who
12 is the resident of 1602 D Street, Northeast. She is requesting
13 approval from the Board of Zoning Adjustment to construct a
14 15 by 17 deck at the rear of her property. In order to do so,
15 we are requesting relief from the rear yard setback, as well
16 as lot occupancy.

17 Per our burden of proof statement, we are noting
18 that we are under the 70 percent lot occupancy special request
19 that is allowed within the R-F1 zone. And we are noting that
20 we are beyond the 20 foot rear yard setback, but also will be
21 held off 11 feet from the rear.

22 As the deck is off of the first level, which is
23 elevated at the rear, and I'm going to share -- let's see. It
24 is noting that I cannot share. Is that possible for me?

25 BZA CHAIR HILL: That's all right, Mr. Freeman.

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1 Just -- I think the record is relatively full with this.

2 MR. FREEMAN: Okay. So -- go ahead.

3 BZA CHAIR HILL: I'm sorry, Mr. Freeman.

4 MR. FREEMAN: No, go ahead, sir.

5 BZA CHAIR HILL: Okay. I'm going to turn to the
6 Office of Planning when I get him.

7 MR. YOUNG: Mr. Lawson, who was on for Office of
8 Planning, but I don't see him anymore, so I am working with
9 the other OP staff to see who will fill in.

10 BZA CHAIR HILL: Okay. I see the Office of
11 Planning's report here. We'll give a minute. Mr. Young, is
12 there anyone here wishing to testify?

13 MR. YOUNG: We do not.

14 BZA CHAIR HILL: Okay. Is -- did someone just pop
15 on from the Office of Planning?

16 Okay. I'm going to actually rest on the record of
17 the Office of Planning's recommendation here in terms of what
18 the Office of Planning would have provided testimony upon.
19 Mr. Smith, do you have any questions of anybody?

20 MEMBER SMITH: No questions.

21 BZA CHAIR HILL: Commissioner Stidham, do you have
22 any questions? Stidham. Stidham?

23 MEMBER STIDHAM: Stidham, you got it. Yeah, you
24 got it.

25 BZA CHAIR HILL: Stidham. All right,

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1 Commissioner Stidham. All right. Mr. Freeman, I think we're
2 pretty straightforward with this. Do you have anything you'd
3 like to add at the end?

4 MR. FREEMAN: No, Commissioner Hill.

5 BZA CHAIR HILL: Okay, thank you. All right.
6 I've got to close the hearing of the record. In this
7 particular case, I believe that it is straightforward, and I
8 will rest on the record and the statements from the applicant,
9 as well as the Office of Planning and the ANC, all being in
10 support, and will agree with their recommendations and vote
11 to approve. I'm going to make a motion to approve application
12 number 20975, as captioned and read by the Secretary, and ask
13 for a second. Mr. Smith?

14 MEMBER SMITH: Second.

15 BZA CHAIR HILL: Motion made and seconded. Mr.
16 Moy, if you'd take a roll call, please.

17 SECRETARY MOY: When I call your name, if you'll
18 please respond to the motion made by Chairman Hill to approve
19 the application for the relief requested. The motion to
20 approve was seconded by Mr. Smith. Voting to approve the
21 application, Zoning Commissioner Stidham, Mr. Smith, Chairman
22 Hill. The motion carries, sir, 3-0-2.

23 BZA CHAIR HILL: Thank you, Mr. Moy. If you can
24 please call the next case, Mr. Moy.

25 SECRETARY MOY: The next case before the Board is

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1 application number 21018 of 786 Lamont Street, LLC. This is
2 a self-certified application pursuant to subtitle X, section
3 901.2 for special exceptions, under subtitle E, section 205
4 -- rather 207.5, to allow a rear wall to exceed further than
5 10 feet, and under subtitle E, section 5201, from the lot
6 occupancy requirements of subtitle E, section 210.1. The
7 property is located in the RF-1 zone at 786 Lamont Street,
8 Northwest, Square 2892, Lot 69.

9 And as a reminder, Mr. Chairman, this application
10 was originally on the expert review calendar, and it was
11 removed from that calendar and placed on today's hearing
12 session.

13 BZA CHAIR HILL: Thank you. If the applicant can
14 hear me, if they could please introduce themselves for the
15 record.

16 MR. SULLIVAN: Members of the Board, my name is
17 Martin Sullivan, on behalf of the applicant. And the
18 applicant, who is also the architect, is also with me as well,
19 Brian Ortiz, should be in the room.

20 BZA CHAIR HILL: Thank you. Mr. Sullivan, we'll
21 see what we need from the applicant. If you would please just
22 -- I see your PowerPoint. If you could please walk us through
23 your client's application and why you believe they're meeting
24 the criteria for us to grant the relief requested, I'm going
25 to put 15 minutes of the clock so I know where we are, and you

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1 can believe whenever you like.

2 MR. SULLIVAN: Sure. Thank you, Mr. Chair. If
3 Mr. Young could please load the presentation. Next slide,
4 please. So this is 786 Lamont Street, Northwest. The
5 property is in the RF-1 zone. It's improved with a two story
6 single family road dwelling.

7 Applicant's proposing to essentially fill in a
8 court in the rear of the property at two stories. And filling
9 in that court would invoke the ten foot rule because the
10 existing building is already more than ten feet past the
11 furthest rear wall of the adjoining building. And so the ten
12 foot rule needs relief, and also, we're going to 62 percent
13 lot occupancy, so asking for relief for that as well. Next
14 slide, please.

15 We have the unanimous support of ANC 1E and we have
16 the written support of both adjacent neighbors. Next slide,
17 please. This is an aerial. You can see where the court will
18 be filled in there, in the red building. It's in the back on
19 the left side. Next slide, please. There's a rear view. You
20 can see the court there with the two windows, and the -- just
21 filling in the side with the one window there. Next slide,
22 please.

23 This is a floor plan, and you see the existing
24 corridor in the top right there. Next slide, please. This
25 is just a section. Next slide, please. This is a

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1 re-elevation on the left of the top drawing there, you see the
2 addition on the left side of the building there. Next slide,
3 please. The proposed addition is in harmony with the general
4 purpose and intent of the zoning regs. The addition's still
5 within the rear yard requirements of RF-1 zone, and well under
6 the height limitations. And again, we have the support of both
7 adjacent neighbors. Next slide, please.

8 The applicant's provided a solar study
9 demonstrating the limited impact on existing solar panels on
10 the other side of the building opposite the addition, and
11 limited shade on the neighboring property on the other side.
12 Privacy is actually increased because there will be no windows
13 now on the building, as it's on the property line.

14 And it's fairly obvious that the addition does not
15 substantially visually intrude upon character and scale in the
16 plans, it can't be seen from the street, and it's just a minimal
17 of impact in the back, going only two feet past the existing
18 rear wall, and still meeting the rear yard requirement, and
19 only at two stories. Next slide, please. And I think that's
20 it. Yeah. So if the Board has any questions for myself or
21 Mr. Ortiz, thank you.

22 BZA CHAIR HILL: All right. Before I turn to my
23 Board, may I turn to the Office of Planning?

24 MR. BEAMON: Good morning. Mr. Shepard Beamon
25 with the Office of Planning. OP recommends approval of the

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1 special exception request for relief for the rear extension
2 and lot occupancy. OP stands on the record of the report, as
3 shown in Exhibit 26, and we're available for any questions.

4 BZA CHAIR HILL: Thank you, Mr. Beamon. Mr.
5 Young, is there anyone here wishing to testify?

6 MR. YOUNG: I do have the ANC commissioner on.

7 BZA CHAIR HILL: Oh, where's the -- which one?
8 Commissioner, could you introduce yourself for the record?
9 Oh, Commissioner Wray.

10 MR. WRAY: Good morning. I hesitated before if
11 you called on me before, but this is Michael Wray here for ANC
12 1E.

13 BZA CHAIR HILL: Hi, Commissioner Wray. How are
14 you doing?

15 MR. WRAY: I am well. It's been a little while,
16 so glad to be here.

17 BZA CHAIR HILL: It has. Nice to see you as well.
18 All right. Does the Board have any questions for either the
19 applicant or the commissioner?

20 Commissioner, would you just give us a little bit
21 of testimony on what your ANC had to say?

22 MR. WRAY: Sure. ANC 1E uses the committee
23 system. So the applicant came to our committee and presented
24 what it was going to do. It's a very minor and modest addition
25 filling in that dog leg in the rear of the property. We could

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1 identify no impacts that would seemingly happen with that small
2 addition, either of the neighbors on either side. We reviewed
3 letters of support and one letter in opposition, but therefore
4 -- but still didn't come up with any impacts to the
5 neighborhood, so we recommended approval, and I'm here to
6 answer any questions.

7 BZA CHAIR HILL: Thank you, Commissioner. All
8 right. Once again, does the Board have any questions for
9 anyone? All right, I'm seeing no one raising their hand. I'm
10 going to -- Mr. Sullivan, do you have anything you'd like to
11 add at the end?

12 Okay, thank you. And Commissioner Wray, always
13 lovely to see you. Thank you again for all of your help with
14 your ANC and the city. I am going to close the hearing of the
15 record. Please excuse everyone, Mr. Young.

16 Okay. I didn't have any issues with this. I
17 thought that they were meeting the criteria for us to grant
18 the relief requested. I thought that it is always nice to see
19 from the ANC their participation, and I do appreciate their
20 report and their thorough evaluation of this. I also am glad
21 to see that the neighboring neighbors, the adjacent
22 properties, didn't have any issues with this.

23 But I would also agree with the Office of Planning's
24 recommendation, as well as the burden of proof provided by the
25 applicant, and vote in favor of this application. Mr. Smith,

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1 do you have anything you'd like to add?

2 MEMBER SMITH: No. I think you have sufficiently
3 surmised the issues of this case. I do believe it's a fairly
4 straightforward application, and I'll --

5 BZA CHAIR HILL: Okay, Mr. Smith froze on me. But
6 I do believe I got the gist of his analysis. Commissioner
7 Stidham, do you have anything you'd like to add?

8 MEMBER STIDHAM: No, sir. I think it's a fairly
9 simple case.

10 BZA CHAIR HILL: Thank you. All right. I'm going
11 to vote -- I'm sorry. I'm going to make a motion to approve
12 the application number 21018 as captioned and read by the
13 secretary and ask for a second. Commissioner Stidham?

14 MEMBER STIDHAM: Second.

15 BZA CHAIR HILL: Mr. Moy, the motion having been
16 made and seconded, if you could please take a roll call. All
17 right, there seems to be a technical issue. Commissioner
18 Stidham, if you could --am I -- Stidham?

19 MEMBER STIDHAM: Stidham. You know it, yeah.

20 BZA CHAIR HILL: Ms. --

21 MEMBER SMITH: Did my -- did I cut out when I was
22 giving testimony?

23 BZA CHAIR HILL: No, we heard your testimony.

24 MEMBER SMITH: Okay, perfect.

25 BZA CHAIR HILL: And so I made a motion,

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1 Commissioner Stidham seconded, and now Mr. Moy is going to take
2 a vote.

3 MEMBER SMITH: Okay.

4 SECRETARY MOY: Does the commissioner second?

5 BZA CHAIR HILL: Yeah, Mr. Moy, can you repeat what
6 you just said?

7 SECRETARY MOY: This may have been when I cut out.
8 So concerning Commissioner Stidham, second?

9 MEMBER STIDHAM: Yes.

10 SECRETARY MOY: Okay, okay. That's all I need to
11 know. So when I call your name, if you'll please respond to
12 the motion made by Chairman Hill to approve. The motion to
13 approve was seconded by Zoning Commissioner Stidham. Mr.
14 Smith.

15 MEMBER SMITH: Yes.

16 SECRETARY MOY: Zoning Commissioner Stidham.

17 MEMBER STIDHAM: Yes.

18 SECRETARY MOY: Chairman Hill.

19 BZA CHAIR HILL: Yes.

20 SECRETARY MOY: No other Board members. Staff
21 would record the vote as 3-0-2. And this is on the motion made
22 by Chairman Hill to approve. Motion to approve was second by
23 Zoning Commissioner Stidham. Voting to approve the motion,
24 Mr. Smith, Zoning Commissioner Stidham, Chairman Hill. No
25 other Board members. The motion carries on a vote of 3-0-2.

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1 BZA CHAIR HILL: Okay. Thanks, Mr. Moy. If you
2 could call our next case, Mr. Moy.

3 SECRETARY MOY: I am going to bypass 20990 Rock
4 Creek for now, Mr. Chairman, because the ANC member, Ms. Kwan,
5 won't be available until 1:00 p.m. She wanted to testify. So
6 if it's okay with you and the Board, if I can move on to the
7 next case?

8 BZA CHAIR HILL: That's fine. Thank you, Mr. Moy.

9 SECRETARY MOY: So this would be case application
10 number 20992 of National Presbyterian Church, Inc. This is
11 a self-certified application pursuant to subtitle X, section
12 901.2 for a special exception under subtitle U, section
13 203.1(h) to allow an expansion of an existing child development
14 center. Property located in the R-1B zone at 4101 Nebraska
15 Avenue, Northwest, Square 1725, Lot 805.

16 And I think that's all I have, other than to say
17 that the application has signed up to testify Ms. Johnson from
18 the National Park Service, and of course the applicant's team.
19 Thank you, sir.

20 BZA CHAIR HILL: Okay, thank you. If the
21 applicant can hear me, if they can please introduce themselves
22 for the record.

23 MS. PRINCE: -- of Goulston & Storrs, here on
24 behalf of National Presbyterian.

25 BZA CHAIR HILL: Good morning, Ms. Prince.

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1 MS. PRINCE: Good morning.

2 BZA CHAIR HILL: If you want to go ahead and please
3 -- oh my gosh, it's after noon already. If you could please
4 go ahead and walk us through your client's application and why
5 you believe they're meeting the criteria for us to grant the
6 relief requested, I'm going to put 15 minutes on the clock so
7 I know where we are, and you can begin whenever you like.

8 MS. PRINCE: Great. Allison Prince, as I said,
9 Goulston & Storrs. I'm here on behalf of the applicant. This
10 is a very simple case involving receiving permission to use
11 one floor of an existing building on the campus of National
12 Presbyterian Church for an expansion of the existing child
13 development center. It's 1,300 feet of space in a building
14 known as the Agency's Building. It's across from another
15 building known as the Multipurpose Building that contains an
16 existing child development center.

17 The total capacity of the center would go from 16
18 children to 32. The staff would go from 5 to 9. We meet the
19 general special exception criteria. The need for daycare is
20 well-established. This is consistent with the zone plan.
21 There are no adverse impacts on the community. This is an 11
22 acre site. It's well buffered from neighboring properties.
23 There's a daycare center within 1,000 feet of the site.
24 They've been in conversation with that center. They're happy
25 to have more opportunities for older children, because these

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1 new -- this new expansion space will allow for some older
2 children.

3 In terms of traffic impacts, because it's such a
4 large site, there's no queuing issue. We submitted
5 information to DDOT on the access point for the site, which
6 is from Van Ness. There's a play area that will be between
7 the two buildings. It's there already. It's well-screened.
8 No additional screening is required.

9 I've got the director of the center here if you'd
10 like to hear from her. Her name's Crystal Johnson. She's not
11 with the National Park Service. She's with National
12 Presbyterian Church, to so -- to eliminate any confusion.

13 And I would add, we've been in conversation with
14 DDOT. DDOT filed a report wanting to make sure that we would
15 continue to abide by the conditions that govern the school on
16 the campus, the TDM conditions. We will absolutely abide by
17 those conditions, and we're happy to have them reinforced in
18 this order. They're already in the order that governs the
19 school. We've retained grossly to make sure that the annual
20 monitoring occurs. There's a very aggressive traffic
21 management plan in place at the school. So that condition is
22 just fine with us.

23 And I note that we went to the ANC twice. They
24 voted to support. They got the report in yesterday. Office
25 of Planning supports, DDOT supports as long as we agree with

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1 the condition. So if you want to hear from Crystal, she's
2 here. But otherwise, that completes my comments today.

3 BZA CHAIR HILL: Okay. All right. I'm going to
4 turn to the Office of Planning first.

5 MR. KIRSCHENBAUM: Hold on one second. I'm sorry
6 about that. Good afternoon, Chair Hill and members of the
7 Board of Zoning Adjustment. I am Jonathan Kirschenbaum with
8 the Office of Planning. We recommend approval of this request
9 to expanding an existing child development center.

10 And we do recommend that the existing conditions
11 under order 17602-A be revised to apply to both the existing
12 and proposed extended child development center, such that the
13 maximum number of children shall not exceed 32 children ages
14 infant to 4 years old, that the hours and days of operation
15 shall be 7:00 a.m. to 6:00 p.m. Monday through Friday, and that
16 the total number of staff shall not exceed nine staff members.
17 And we rest on the record of our stance report. Please let
18 me know if you have any questions. Thank you.

19 BZA CHAIR HILL: Mr. Kirschenbaum, was it 7:30 a.m.
20 to 6:00 or 7:00 a.m. to 6:00?

21 MR. KIRSCHENBAUM: 7:30 a.m. to 6:00 p.m., and that
22 is consistent with the prior approval by the Board.

23 BZA CHAIR HILL: Okay. All right. Ms. Prince, is
24 the applicant amenable to all -- everything that has been said
25 by the Office of Planning?

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1 MS. PRINCE: Yes, they are.

2 BZA CHAIR HILL: Okay. Mr. Young, is there anyone
3 here wishing to speak?

4 Okay. Do my fellow Board members have any
5 questions of the applicant or the Office of Planning? Mr.
6 Smith is shaking his head no. Commissioner Stidham is shaking
7 her head no. All right. Ms. Prince, do you have anything
8 you'd like to add at the end?

9 MS. PRINCE: Nothing to add. Thank you for your
10 time.

11 BZA CHAIR HILL: Thank you. All right. I'm going
12 to close the hearing of the record. Okay. In this particular
13 case, I will agree with the applicant that the expansion seems
14 to be a relatively straightforward expansion, and also the
15 amount of testimony that has been provided into the record also
16 makes me feel comfortable with any types of possible adverse
17 impact in terms of expanding the number from 16 to 32 and the
18 staff from five to nine.

19 In previous cases where there's been something like
20 this, there possibly has been concern from the Board. In this
21 particular case, I don't have any, and I would agree with the
22 applicant and the Office of Planning. I would also agree with
23 what has been put forward by the Office of Planning and DDOT
24 concerning the previous conditions, as well as -- meaning the
25 TDM plan, as well as expanding the previous -- adhering to the

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1 other previous conditions but expanding those as pertaining
2 to what DDOT had put forward, which I will mention in my motion.

3 Mr. Smith, do you have anything you'd like to add?

4 MEMBER SMITH: For me, for my clarification,
5 you're comfortable with the condition that's being requested
6 by DDOT to expand to TDM to (audio interference).

7 BZA CHAIR HILL: Yes. The TDM plan that was there,
8 and this is where I know there was some discussion about it
9 in our review with the Office of Zoning's legal department,
10 the TDM plan, I still think I'm comfortable with the TDM plan.
11 It's something that the applicant has agreed to. And as I
12 understand, the TDM plan would still stay in the order. It's
13 just that now it would be there to reflect the increased number
14 of students and staff.

15 MEMBER SMITH: Okay.

16 BZA CHAIR HILL: Well now you're -- I'm going to
17 look here again, back into this one thing.

18 MEMBER SMITH: So my -- you know, my uneasiness
19 with that is the TDM for the part of the school, but not
20 necessarily the child development center. And DDOT didn't
21 necessarily make that distinction in how the expansion of the
22 child development center would have an adverse impact to the
23 point they want to expand it to the child development center.
24 Absent that explanation by DDOT, I wouldn't want to expand it.
25 So I would remove that condition.

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1 BZA CHAIR HILL: So you would remove the TDM plan
2 condition?

3 MEMBER SMITH: Because it never requires that it's
4 a child development center.

5 BZA CHAIR HILL: Okay. Commissioner Stidham, do
6 you have anything to add?

7 MEMBER STIDHAM: No, but I do agree with
8 Commissioner Smith.

9 BZA CHAIR HILL: Okay. All right. I'll agree
10 with you guys. So I'll go ahead and make a motion to approve
11 application number 20992, changing the conditions that are in
12 the order to include now the maximum number of children shall
13 not exceed 32, ages infant to 4 years old, and the hours and
14 days of operation shall be 7:30 a.m. to 6:00 p.m. Monday through
15 Friday, and the total number of staff shall not exceed nine.
16 And we will not include the TDM plan as part of the condition,
17 and ask for a second, Mr. Smith.

18 The motion made and seconded, Mr. Moy, let's take
19 a roll call, please.

20 SECRETARY MOY: Thank you, sir. When I call your
21 name, if you'll please respond to the motion made by Chairman
22 Hill to approve the application for the relief requested, along
23 with the four justifications or conditions to that motion.
24 I'll restate that if you want me to, Mr. Chairman. And that
25 motion to approve was seconded by Mr. Smith.

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1 MS. DEMARE: Hi, sorry.

2 BZA CHAIR HILL: Sure, go ahead, Ms. DeMare.

3 MS. DEMARE: I just want to clarify to make sure.
4 So the OP has -- the OP requested three conditions, DDOT
5 requested two conditions. So I just want to be clear, are the
6 two conditions from the DDOT report being rejected?

7 BZA CHAIR HILL: Just for clarification, I also got
8 a little -- but -- so DDOT's recommending, prior to approval
9 of this application, the applicant demonstrate to the BZA how
10 the TDM plan in condition 6 of the summary order is currently
11 and has been met since it went into effect, and I believe that
12 they have indicated as such. And then they're asking to carry
13 forward the TDM plan in condition 6 into the order for this
14 case, or otherwise that the condition remains in effect. And
15 what Board Member Smith has stated, I think, is that the TDM
16 plan is not necessary in this case. Is that correct --

17 MEMBER SMITH: Correct.

18 BZA CHAIR HILL: -- Mr. Smith?

19 MEMBER SMITH: Both of them. There was a -- the
20 condition -- what DDOT is attempting to understand is -- for
21 the first condition, is whether they have been in compliance
22 with their condition since 2012. But the condition doesn't
23 apply to this particular use that we're approving now, thus
24 -- since the prior school year. So it seems to be a reach that
25 they're attempting to regulate or enforce this -- it wants

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1 compliance for a TDM that never applied to this use. So both
2 conditions --

3 MEMBER STIDHAM: And if I could add, the number of
4 people are significantly different at the childcare facility
5 versus the school. So I couldn't even see how the items in
6 6 could be achieved by the daycare, frankly.

7 MEMBER SMITH: Right. Yeah, I completely agree.
8 So both of the conditions, strike.

9 BZA CHAIR HILL: Okay. Ms. DeMare, is that clear
10 now?

11 MS. DEMARE: Yes, thank you.

12 BZA CHAIR HILL: Okay. So Mr. Moy, again, it's
13 been made and seconded. You can take a roll call.

14 SECRETARY MOY: Okay. For me to follow this -- so
15 I'm going to start from the top. So the condition is for the
16 hours of operation, 7:30 a.m. to 6:00 p.m., staff increased
17 from five to nine, number of children from 16 to 32. And the
18 conditions that are stated in the DDOT report, and you are
19 removing the condition that originally had TDM plan -- so
20 you're removing that, right?

21 BZA CHAIR HILL: We're not applying the conditions
22 from DDOT to this application.

23 SECRETARY MOY: Okay. All right. Okay. So with
24 that, then, if I -- if you would respond to the motion made
25 by Chairman Hill to approve, the motion to approve seconded

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1 by Mr. Smith. Zoning Commissioner Stidham.

2 MEMBER STIDHAM: Yes.

3 SECRETARY MOY: Mr. Smith.

4 MEMBER SMITH: Yes.

5 SECRETARY MOY: Chairman Hill.

6 BZA CHAIR HILL: Yes.

7 SECRETARY MOY: Staff would record the vote as
8 3-0-2, and this is on the motion made by Chairman Hill to
9 approve, the motion to approve seconded by Mr. Smith. Voting
10 to approve the application, Zoning Commissioner Stidham, Mr.
11 Smith, Chairman Hill. Motion carries on a vote of 3-0-2.

12 BZA CHAIR HILL: Okay. Thank you, Mr. Moy. You
13 may call our next case, Mr. Moy.

14 SECRETARY MOY: Okay. The Zoning Commissioner is
15 in the panel, so I'm going to go back to this application number
16 20990 of Rock Creek - 650 H, LLC. This is a self-certified
17 application pursuant to subtitle X, section 901.2, special
18 exception under subtitle H, section 5200.2 from the designated
19 use of restrictions, of subtitle H, section 0 -- rather
20 6001.3(a). The property is located in the NMU-5A/H-H zone at
21 650 H Street, Northeast, Square 858, Lots 867, 860 -- once
22 again, 867, 868, and 871.

23 And I believe that's it. I -- and of course, the
24 ANC 6C commissioner is in the panel, and that's all I have,
25 sir.

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1 BZA CHAIR HILL: Okay, great. Thank you. If the
2 applicant can hear me, if they could introduce themselves for
3 the record, please.

4 MR. FERRIS: Lawrence Ferris with the Law Firm of
5 Goulston & Storrs here with the applicant team.

6 BZA CHAIR HILL: Thank you. If the commissioner
7 could hear me, if she could introduce herself for the record.

8 MS. KWAN: Hi, my name is Kristy Kwan, ANC
9 Commissioner for 6C01.

10 BZA CHAIR HILL: Hi Commissioner, welcome.
11 Please wish Commissioner Eckenwiler my best.

12 MS. KWAN: Will do.

13 BZA CHAIR HILL: All right. Let's see. Okay.
14 Mr. Ferris, if you want to go ahead and walk us through your
15 application and why you believe your client is meeting the
16 criteria for us to grant the relief requested, I'm going to
17 put 15 minutes on the clock so I know where we are, and you
18 can begin whenever you like.

19 MR. FERRIS: Excellent, all right. And Mr. Young,
20 if you can pull up our presentation when you have a moment.
21 Again, Lawrence Ferris with the Law Firm of Goulston & Storrs,
22 counsel for this project. Also with me is Jon Lastuvka of Rock
23 Creek Property Group, which is the owner and applicant.

24 We're here today for the property located at 650
25 H Street, Northeast. This site is located centrally along the

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1 H Street Corridor at the northwest corner of H and 7th Street,
2 and that's on the same block, if you're familiar, on the other
3 end from the Apollo development with the whole street.

4 Rock Creek developed the site with a six story mixed
5 use project that the Board previously reviewed in case number
6 18890 back in 2015, and then a minor modification to the plans
7 was also approved the following year. The prior BZA case
8 granted relief from packing and loading requirements and
9 special exception approval that's required for any project at
10 this location that increases gross floored area by 50 percent
11 on a site that's 6,000 square feet or more. So that was the
12 prior package of relief from the 2015 case.

13 The project was completed in February of 2020, and
14 Rock Creek retains ownership of the three levels of retail in
15 the building; the first two floors, and then also a lower level.
16 The remaining upper stories, as you can see on the slide there,
17 are condos. There are 23 units of condos. The site is located
18 in the H Street neighborhood mixed use zones under the recently
19 adopted amendment. Specifically, it's NMU-5A/H-H.

20 The H Street Corridor obviously includes a wide
21 variety of retail and service uses. And this particular
22 stretch along the 600 block is representative of that.
23 There's the Whole Foods grocery store mentioned. Also a
24 pharmacy, café, bike repair, book store, apparel and pet
25 supplies stores, a gym, and several restaurants. So quite an

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1 assortment of ground floor uses in the immediate vicinity.

2 Our application is requesting special exception
3 relief pursuant to subtitle H, section 5200.2 to allow a
4 financial services use to occupy more than 20 percent of the
5 ground floor. In this case, the ground floor is only about
6 5,700 square feet all in, so the 20 percent limit would only
7 allow a little over 1,100 square feet. So really, in effect,
8 would preclude much less financial services use on the ground
9 floor here.

10 As Mr. Lastuvka will discuss in more detail
11 shortly, Rock Creek has devoted significant efforts to leasing
12 this space to a nonbanking tenant, and worked very patiently,
13 really, over the last four years, since before the building
14 was completed in 2020. But unfortunately, they have been
15 unable to secure another tenant up to date.

16 So Mr. Lastuvka will touch on that more in a moment.
17 But before I hand it over to him to discuss that background
18 in a little more detail, I would just note that we have a report
19 in support from the Office of Planning. That's at Exhibit 29.
20 OP's report also included a note that DDOT had reviewed the
21 application and had no objection.

22 We also have reports in support from both ANC 6C,
23 which is the ANC for the property, and their report is at
24 Exhibit 30; and a report from ANC 6A, which is located directly
25 across the street, across 7th Street to the east of the site,

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1 and their report is at Exhibit 27.

2 We met with both of the ANC's twice each; once with
3 their respective zoning committees, and then again at a regular
4 monthly meeting with the full ANC, and both ANC's voted
5 unanimously to support our application. I did want to note that
6 ANC 6C proposed that any approval include a condition requiring
7 strict compliance with the design requirements of the H Street
8 mixed use zone in section H, 906.1 is where those design
9 requirements are located. And just for the record, we have
10 no issue with ANC's condition, and are fine with that being
11 incorporated into any order, should the Board approve.

12 We're also pleased to have letters of support from
13 the 7H condominium, which are the residents that live on the
14 upper floors of the building upstairs from the space, and
15 that's at Exhibit 23. And we also met with the Capitol Hill
16 Restoration Society, and they submitted a letter of support
17 at Exhibit 25.

18 So with that introduction, I'll go ahead and pass
19 it over to Mr. Lastuvka to provide a little more background
20 on the project, Rock Creek's efforts to lease the space over
21 the last several years, and the need for the relief we're
22 requesting.

23 MR. LASTUVKA: Good afternoon, Mr. Chairman and
24 members of the Board. Thank you so much for your time and
25 consideration. I'm Jon Lastuvka with Rock Creek Property

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1 Group. Obviously, Lawrence did a great job in describing the
2 project itself. Perhaps we could move to the next slide.
3 Thank you.

4 So Lawrence did touch on all of these points
5 already, and I'm not going to bore the Board with these details,
6 unless you want more information. Could we move to the next
7 slide, please? I think the main issue that we've -- that we
8 personally -- and not only us, but other developers as well
9 -- we delivered the project, unfortunately, at February 2020,
10 right before, you know, obviously COVID shut down.

11 H Street, at that particular time, was -- there was
12 a different dynamic back in that time. We started our leasing
13 program well in advance, but obviously need to deliver the
14 project before we can really start to sign leases. Subsequent
15 to that, the -- just H Street Corridor in and of itself has
16 had -- experienced a little decline in sort of vibrancy, if
17 you will.

18 This particular corner, you know, we've set it up
19 in such a way that we believe it's, you know, a very good,
20 vibrant corner for retail. It has been -- it's just been very,
21 you know, almost like a zombie corner if you will, and thus
22 has created situations where unfortunate homeless folks have
23 taken up residence and what have you.

24 The 23 condo folks that own on floors 3 through 6,
25 they certainly have been, you know, pushing us, and, you know,

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1 we would certainly -- would like to comply to get a tenant in
2 there to sort of activate that corner.

3 We have, you know, we have a professional leasing
4 brokerage group that has a nationwide presence. These are
5 only some of the groups that we have entertained, and you can
6 see many of them in this particular list are nonbanking
7 institutions. We have been in negotiations since April with
8 a financial services group, a bank, a large bank.

9 And, you know, certainly one of the things that's
10 -- you know, we have to go through the BZA process in order
11 to make -- what they want, what they would like to see is the
12 entire ground floor devoted to financial services. And as Mr.
13 Ferris did allude to the H Street guidelines, we are -- you
14 know, the 20 percent rule creates an untenable situation, I
15 guess, for these financial services group. Perhaps we could
16 go to the next slide, please.

17 And what we did was we created this diagram, which
18 shows one -- a 20 percent calculation on the ground floor, and
19 you'll see that the, you know, 1,139 gross square foot space,
20 it's just not something that is attractive to these financial
21 services groups, hence the reason we're coming to you for --
22 seeking for a relief.

23 BZA CHAIR HILL: Okay.

24 MR. FERRIS: That concludes our presentation, and
25 we're happy to answer any questions the Board may have.

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1 BZA CHAIR HILL: Okay. Thanks, Mr. Ferris.
2 Commissioner, can you hear me? Can you give us your testimony,
3 and also can you go over again what conditions the ANC was
4 speaking to?

5 MS. KWAN: Yeah. So I'll go over my testimony.
6 Good -- members of the Board, my name is Christy Kwan, ANC
7 Commissioner for single member district 6C01 where this
8 application is located. This case came before ANC 6C at our
9 October monthly meeting, where commissioners voted
10 unanimously to support the application and to authorize myself
11 to testify before the Board for this case.

12 The property's retail space has been vacant for
13 three years despite diligent efforts by the applicant to locate
14 a ground floor tenant. In the absence of a ground floor
15 tenant, the property has been adversely affected by graffiti
16 and other undesirable activity despite the applicant's intents
17 to maintain the location.

18 Because the third floor and above is residential,
19 there are also practical issues limiting the kinds of food
20 service businesses with their associated grease and exhaust
21 issues to be able to occupy the site. Owing to the concerns
22 about keeping a lively streetscape the same considerations
23 that we believe motivated the regulation's restrictions on
24 ground floor financial services exceeding 20 percent of the
25 floor area, ANC 6C conditions its support on the applicant's

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1 strict compliance with the H Street missed use's zone design
2 requirements set forth in that section 906.1.

3 Those requirements include, among other things, a
4 minimum for clear or low emissivity window glass, minimum
5 transparency for security grills, an individual entrance
6 directly from H Street sidewalk, and the rules governing
7 placement of a facade panel signs. This rationale was to make
8 sure that the corner remains to be a lively streetscape, and
9 to -- unlike other banks along the corridor, to not have those
10 windows blocked in terms of people who are walking along the
11 corridor.

12 In its appearances for ANC 6C's zoning committee,
13 as well as in its prehearing statement in Exhibit 26, the
14 applicant signaled that this -- that it does not object to such
15 a condition. Therefore, ANC 6C accordingly recommends the
16 application be granted.

17 BZA CHAIR HILL: Okay, thank you. So Mr. Ferris
18 again, it's that your client is going to adhere to the design
19 requirements of H 906.1. Is that correct?

20 MR. FERRIS: Correct.

21 BZA CHAIR HILL: Okay. All right. Okay. All
22 right. Let me turn to the Office of Planning, then I'll turn
23 to my Board members. Thank you, Commissioner.

24 MR. BEAMON: Good afternoon again. Shepard
25 Beamon with the Office of Planning. OP recommends approval

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1 of the request for a special exception to permit financial
2 services use within 71 percent of the ground floor area retail
3 space. OP stands on the record of the report, as shown at
4 Exhibit 29, and then we're open to any questions from the Board.

5 BZA CHAIR HILL: Okay. Does anybody have any
6 questions? Does anyone have any questions of the applicant
7 or the Office of Planning or the Commissioner? Okay, I'm
8 seeing no one raising their hand. Mr. Young, is there anyone
9 here who would like to testify?

10 Okay. Mr. Ferris, is there anything you'd like to
11 add at the end?

12 MR. FERRIS: No. Thank you for your time.

13 BZA CHAIR HILL: Okay. All right, Commissioner.
14 Thank you for being with us. I hope you have a nice day. All
15 right, I'm to close the hearing of the record. Mr. Smith, I've
16 been talking a lot. Would you like to talk for a little bit?

17 MEMBER SMITH: So I didn't have any issues with the
18 requested relief of the applicant. I do -- I agree with the
19 Office of Planning statement to the Board, the statement that
20 was made (audio interference) staff report, and I do agree with
21 their position on how the proposed expansion -- or the proposal
22 by the applicant to bring a financial services institution
23 within, you know, 70 percent of the ground floor retail would
24 still meet the standards of the NMU -- well now HH -- NMU-5A/H-H
25 zone.

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1 And I do believe that the applicant has
2 sufficiently demonstrated that they have actively been
3 attempting to lease this to use -- land use, as they do meet
4 the land use requirements of that particular zone. And they
5 have, you know, hit a hard wall, especially given the economic
6 conditions within the district post-COVID.

7 So I believe that the applicant has met the burden
8 of proof for us to grant the special exception. I do note that
9 the ANC is also in support of this, and CHRS. It seems to be
10 a little outside of their area, but none the less, I'm happy
11 to see that they also are in support, as well as ANC 6A is in
12 support of this request to activate that corner there with
13 active retail. So with that, I will support the application.

14 BZA CHAIR HILL: Thank you. Commissioner
15 Stidham, do you have anything you'd like to add?

16 MEMBER STIDHAM: No. I agree and also support.

17 BZA CHAIR HILL: Thank you. All right. Thank you
18 for your help in analysis. I'm going to make a motion to
19 approve application number 20990 as captioned and read by the
20 secretary, including a condition that the applicant adhere to
21 the design requirements of H 906.1 and ask for a second. Mr.
22 Smith.

23 MEMBER SMITH: Second.

24 BZA CHAIR HILL: Motion made and seconded. Mr.
25 Moy, if you'll take a roll call, please.

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1 SECRETARY MOY: If you'll please respond to the
2 motion made by Chairman Hill to approve the application for
3 the relief requested, as well as the addition of the condition
4 with -- as well as adding the condition regarding the H Street
5 design criteria. The motion to approve was seconded by Mr.
6 Smith. Zoning Commissioner Stidham.

7 MEMBER STIDHAM: Yes.

8 SECRETARY MOY: Mr. Smith.

9 MEMBER SMITH: Yes.

10 SECRETARY MOY: Chairman Hill.

11 BZA CHAIR HILL: Yes.

12 SECRETARY MOY: There's no other Board members.
13 Staff would record the vote as 3-0-2, and this is on the motion
14 made by Chairman Hill to approve. The motion to approve was
15 seconded by Mr. Smith. Voting to approve the application is
16 Zoning Commissioner Stidham, Mr. Smith, and Chairman Hill.
17 Motion carries on a vote of 3-0-2.

18 BZA CHAIR HILL: Thank you. All right.

19 MEMBER SMITH: Chairman Hill.

20 BZA CHAIR HILL: Sure.

21 MEMBER SMITH: Before we move on from this, that
22 particular condition, was that a -- that's the condition that
23 was requested by 6C?

24 BZA CHAIR HILL: Yes, by the ANC.

25 MEMBER SMITH: Okay. I'll just note, and I don't

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1 think there's any harm to adding that particular condition,
2 but I don't think that the special exception would have
3 precluded them from being required to meet that -- those design
4 standards of H 906.1 anyway. But they might have to do that
5 by right. But, you know, just a precaution, I'm sure that's
6 the reason why you added it.

7 BZA CHAIR HILL: No, I appreciate it. And had some
8 of my other Board members been with me at the time, we might
9 not have added that as a condition, because it's something
10 that's already a requirement. So therefore, it really doesn't
11 need to be a condition.

12 However, considering the ANC had shown up and it
13 seems out of an abundance of caution, it's possible to include
14 it, that is why it's being included. However, you are correct.
15 It probably did not need to be included because it is something
16 that is necessary to already meet the criteria. But I
17 appreciate your flexibility in this motion. And so -- but I
18 appreciate it.

19 What I'd like to do, if I could, is there is a time
20 constraint that I'm trying to work with, and if we could maybe
21 do one more case, and then take a quick lunch, and then come
22 back. And maybe, Mr. Moy, if you could do our next case,
23 please.

24 SECRETARY MOY: Yes, thank you, sir. So the next
25 case before the Board is application number 20994 of CDW WDC,

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1 LLC. This is a self-certified application pursuant to
2 subtitle X, section 901.2 for a special exception under
3 subtitle U, section 513.1(f), which would allow the expansion
4 of an existing gasoline service station. Property located in
5 the MU-5A zone at 2431 Market Street, Northeast, Square 4327,
6 Lot 5.

7 The preliminary here, Mr. Chairman, is that the
8 applicant has proffered three expert witnesses, Mr. Moller,
9 Mr. Harter, and Mr. Torres. And I think other than that, we
10 have, I believe, an ANC 5C rep signed up to testify. So that's
11 all I have, sir.

12 BZA CHAIR HILL: Thank you. If the applicant can
13 hear me, if they can please introduce themselves for the
14 record.

15 MR. FREEMAN: Chairman Hill, this is Kyrus Freeman
16 with the Law Firm of Holland & Knight on behalf of the
17 applicant.

18 BZA CHAIR HILL: Hello, Mr. Freeman. Nice to see
19 you.

20 MR. FREEMAN: You as well.

21 BZA CHAIR HILL: Let's see. Commissioner, if you
22 could hear me, if you could introduce yourself for the record.

23 MS. HICKS DELGADO: Hello. My name is Tequia
24 Hicks Delgado. I am the ANC rep for 5C03, and the authorized
25 representative for 5C.

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1 BZA CHAIR HILL: All right, Commissioner Hicks
2 Delgado, thank you for joining us. Mr. Freeman, if you could
3 walk us through your client's application and why you believe
4 they're meeting the criteria for us to grant the relief
5 requested, I'm going to put 15 minutes on the clock so I know
6 where we are, and you can begin whenever you like.

7 MR. FREEMAN: Sure. Mr. Young, if you could pull
8 up our slide deck that would be great. My name is Kyrus
9 Freeman, here on behalf of the applicant. I'm joined by John
10 Oliver, also of Holland & Knight, John Alvarado, the owner's
11 rep, John Harter, our traffic consultant, Richard Moller, our
12 expert in engineering. Richard's resume is at Exhibit 26D,
13 John's resume is at Exhibit 14. Next slide, please.

14 So we're here to seek an -- a special exception to
15 extend the gas station. This gas station is located within
16 the larger shops at Dakota -- Dakota Crossing Shopping Center,
17 but the application, next slide, is for a much more specific
18 purpose. The application is for the installation of four
19 additional fuel dispensers and eight fuel pumps, and an
20 extension of a canopy above the existing facility. This
21 application is requested essentially to improve the gasoline
22 service station's Q&R. Next slide, please.

23 I should say this application is not a referendum
24 on -- there are a lot of other things happening at the shops
25 at Dakota Crossing, but this application is simply an

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1 incremental improvement to the existing gas station
2 facilities.

3 BZA CHAIR HILL: Mr. Freeman, you said it was to
4 improve the flow. Is that what you said?

5 MR. FREEMAN: Yes, sir. Flow and queuing.

6 BZA CHAIR HILL: Okay, queuing. Okay, great.
7 Okay, thank you. Please continue.

8 MR. FREEMAN: We're happy to have the support of
9 the ANC with the commissioner who's here. She's been great
10 to work with and we appreciate her effort and the ANC's support.
11 OP recommends approval of the application, and DDOT has no
12 objections to the application, as indicated in their report
13 at Exhibit 29. Next slide, please. So I'll turn it over to
14 Richard Moller to kind of walk through exactly what we're
15 doing. Richard.

16 MR. MOLLER: Hi everyone. For the record, Richard
17 Moller with Kimley-Horn. We're the civil engineer on the
18 project. So the improvements are located on the south side
19 of Lot 5 on Market Street, just north of New York Avenue,
20 Northeast, as you can see on here. Next slide.

21 The proposed improvements consist, as Mr. Freeman
22 said, of four new fuel pumps with eight fueling positions, the
23 expansion of the existing canopy, the installation of the fuel
24 position signals on the canopy structure that you will see
25 momentarily in the next slide.

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1 There's some utility -- sorry, back to the original
2 -- the previous slide. There's some utility and drainage
3 improvements to support the additional fuel pumps and the
4 canopy. There's some improvements associated with the
5 emergency shutoff to the fuel station to make it ADA
6 accessible.

7 And then there's some improvements that we're
8 making in response to some feedback we received from the ANC.
9 One of those improvements is the widening of the exit driveway
10 to 25 feet in order to accommodate two exit lanes from the fuel
11 station.

12 There's some striping improvements on that parking
13 lot drive out just to the north -- page north, here. And the
14 intent of that is just to better direct traffic in and out and
15 around this fuel station. And then there's some additional
16 wayfinding signage that'll also help direct traffic. Next
17 slide.

18 BZA CHAIR HILL: Mr. Moller, can I interrupt you
19 just one second?

20 MR. MOLLER: Sure.

21 BZA CHAIR HILL: Because as a preliminary matter,
22 I didn't realize that I don't think you're in our witness book.
23 And so just let me take a look here real quick. Okay. And
24 you're being proposed as an expert in transportation?

25 MR. MOLLER: No.

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1 BZA CHAIR HILL: As an expert in engineering.

2 MR. MOLLER: Civil engineer.

3 BZA CHAIR HILL: Civil engineer. Okay, great.
4 So okay. I don't have any issues with you being proposed as
5 an expert in civil engineering, you being a civil engineer.
6 And so if my fellow Board members have any issues with that,
7 please speak up. Not hearing them, we're going to allow your
8 testimony as an expert in civil engineering.

9 Then we have Mr. John Harter. Let's see. And he
10 is an expert in traffic circulation and transportation, and
11 he is at Exhibit 14. Okay. I don't have any issues with Mr.
12 Harter being an expert in transportation, also he was at Gorove
13 Slade. Does anyone --

14 MR. HARTER: Many, many years ago.

15 BZA CHAIR HILL: Yes. Many, many years ago.
16 Right. I don't know -- Gorove Slade, at least I'm familiar
17 with them. But okay. And so Mr. Harter, maybe we'll see more
18 of you now as well. And so I don't have any issues with
19 including Mr. Harter. Do any of my Board members have any
20 issues with that?

21 All right. So we'll go ahead and put you in our
22 witness book now as an expert in traffic and transportation.
23 And then also, Mr. Torres is here as an expert in civil
24 engineering. I don't know if we're going to hear from Mr.
25 Torres or not, but I'm going to go ahead and --

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1 MR. FREEMAN: We are not. Yeah, he's not.

2 BZA CHAIR HILL: Okay. All right. Then we're not
3 going to bother with that today. All right. Mr. Moller, you
4 can go ahead and continue.

5 MR. MOLLER: Yeah. So this is just elevation of
6 the extended canopy that shows the fuel position signals that
7 I was talking about a little bit earlier. These will just
8 indicate when the fuel positions are occupied or available,
9 and the intent to that is to improve, you know, processing the
10 vehicles through the queue as well. And then I will pass it
11 over to Mr. Harter to talk about some of the traffic
12 improvements.

13 MR. HARTER: Thank you, Richard. So yes, John
14 Harter, Atlantic Traffic.

15 MR. YOUNG: Next slide?

16 MR. HARTER: Go to the next slide, yes. I'm
17 currently working from John Alvarado from Costco who's on as
18 well. We're working on many fuel expansions along the east
19 coast. And the current facility in Washington D.C. has 16 fuel
20 positions, and we're looking to expand that to 24. And that
21 -- the 16 is really an outdated prototype. Whenever Costco
22 builds new facilities, they will use the 24 fuel position. So
23 that's very standard.

24 So in this case, we did a scoping report and review
25 with DDOT and confirmed the scope of our project, and we ended

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1 up studying three peak hours, as you can see in the second
2 bullet; a weekday morning, weekday evening, and then
3 ultimately a Saturday, mid-day peak hour as well. And we then,
4 in addition to doing traffic counts, we also looked at the
5 vehicle queuing at the facility, and we did see that it commonly
6 extends outside of the storage of the facility, which is
7 approximately 50 cars. And we were seeing up to about 60 cars
8 on the Saturday at the peak time in the afternoon.

9 With the expansion, we can process vehicles 50
10 percent, you know, more efficiently than we do today, and we
11 had put together a stochastic queuing model that looked at
12 minor increases in traffic that would be expected with the
13 project. And looking at the expanded facility, it will be much
14 more efficient. And we would typically expect to see about
15 40 vehicles queued during a peak time, and holidays that could
16 go higher. And we have the capability of stacking for 50 cars.
17 So a much improved situation over today.

18 The increases in traffic, so when we do expand these
19 facilities, what we see is that customers that are onsite that
20 just go to the warehouse and are, you know, concerned with
21 waiting in queue at the fuel facility, after a fuel facility
22 is upgraded with more efficiency, we tend to see the vehicles
23 -- or customers coming in just for the warehouse will now also
24 get fuel on the same trip. So we're seeing very limited
25 additional new trips to a site, as you can see in that second

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1 last bullet. So on a Saturday, worst case, we see about 16
2 projected new vehicles to the site based on our studies.

3 And the last bullet just relates to a prior
4 application. We did receive approval to add another access
5 at the back of the site that will also further help reduce
6 traffic volumes and queuing on Market Street. And we --

7 MR. YOUNG: Next slide?

8 MR. HARTER: -- can go to the next slide. And in
9 our back and forth with DDOT, we did have one round of comments.
10 We had provided them with three examples of Costco fuel
11 expansions recently completed that were in the southeast, one
12 in Georgia, North Carolina, and South Carolina, and we provided
13 before and after examples. Those were actual examples in this
14 case where we were able to count the queuing at those expanded
15 facilities.

16 And we did see something similar to what you see
17 on the right side of this exhibit. So that's what we project
18 during a typical peak time in the post expansion condition.
19 And then on the left, you can see an existing aerial snapshot
20 of a time where there was excessive queuing out of the fuel
21 facility.

22 So in summary on the traffic, we think this is a
23 great step toward improving traffic efficiency, limiting
24 queueing, and helping Market Street, which we know has, you
25 know, challenges with traffic.

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1 MR. FREEMAN: Thanks John. Mr. Young, if you
2 could go to the next slide. So just to kind of wrap this all
3 together into the context of the special exception criteria,
4 all of this is detailed in our application materials and the
5 OP report, but we meet all of the special exception standards.
6 We're over -- well over 25 feet from a residential zone.

7 This expansion is not likely to generate dangerous
8 or other objectionable traffic conditions. As described, the
9 additional dispensers and pumps are intended to improve the
10 time it takes the average patient -- patron to clear the
11 station's queue in. We're making improvements such as
12 widening the exit lane from a little over 16 feet to 25 feet.
13 Clearly, there's sufficient parking on this site. Next slide,
14 please.

15 And just to be clear, the site is the gas station
16 site, which is owned by CWC WDC, LLC. It's not owned by Costco.
17 This isn't a Costco application. It's a separate ownership
18 and a separate applicant for the gas station.

19 As you know, the BZA may grant special exception
20 relief if three conditions are met. One, it's generally
21 consistent with the purpose of the regulations. There's a
22 fuel station there now. We're just intending to expand it
23 slightly to improve access and accessibility and queuing.

24 It will not adversely affect the use of neighboring
25 property. The most immediately neighboring properties are

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1 within the shopping center. Certainly there are homes outside
2 of the shopping center, and this goes to trying to help make
3 it easier for folks to get in and out of the site.

4 And as you know, the Board previously approved this
5 gas station to be constructed pursuant to BZA order number
6 18395. So we're just here seeking a minor extension of that
7 gas station. Next slide, please. That concludes our
8 presentation. We are happy to answer any questions that the
9 Board has.

10 BZA CHAIR HILL: Okay. Commissioner Hicks
11 Delgado, can you hear me?

12 Could you give me your testimony as to what happened
13 at your ANC meeting, please?

14 MS. HICKS DELGADO: Okay. I have a prepared
15 written statement that kind of includes that. Is that -- can
16 I just read the statement?

17 BZA CHAIR HILL: Sure, you can read it. Sure.

18 MS. HICKS DELGADO: Okay. So again, I'm Tequia
19 Hicks Delgado. I represent 5C03 and I'm the representative
20 of ANC 5C. 5C's Fort Lincoln residents have been encumbered
21 with issues affecting our living space, including crime
22 uptick, illegal dumping, and significantly to this request,
23 traffic coming to and from the shopping center, invading our
24 residential space, locking many of us into our homes during
25 peak hours, and outrageously, in emergencies.

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1 No doubt, we are angry, and we are impatient with
2 the traffic standstill at the shops. But most importantly,
3 we are supportive of even a limited project to alleviate a dire
4 problem substantially aggravated by poor service and movement
5 on Market Street. And this project promises to organize and
6 move the stall there.

7 Agents of Costco, or CWC WDC, to be exact, began
8 conversations with the standing SMD, myself, on this BZA
9 proposal in June. Costco then engaged ANC 5C in July and
10 immediately after the filing of the application, they
11 presented at the October regulatory meeting, the 5C, where
12 questions and concerns regarding traffic queuing and volume
13 increases were raised and answered.

14 Meanwhile, Commissioners of the Fort Lincoln
15 neighborhood discussed the proposal at resident meetings,
16 events, and civic association meetings throughout the summer
17 into the fall, and leading up to the -- to a joint Fort Lincoln
18 SMD meeting in early November.

19 Fort Lincoln residents have been involved
20 throughout the process, they've asked questions, and they
21 ultimately resolved that this was a positive endeavor with
22 negligible change at first. Thus ANC 5C voted to support the
23 special expansion to expand the existing gasoline service
24 station by a vote of five in favor, two opposed, and zero who
25 abstained. That's it.

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1 BZA CHAIR HILL: Okay. Thank you, Commissioner.
2 Let me go with the Office of Planning, then I'll turn to my
3 fellow Board members if they have any questions. May I hear
4 from the Office of Planning, please?

5 MS. MYERS: Good afternoon. Crystal Myers with
6 the Office of Planning. The Office of Planning reviewed this
7 case and determined that it meets the criteria of the special
8 exception and the general special exception. So we recommend
9 support, and I will stand on the record of the stance report,
10 but of course I'm here for questions. Thank you.

11 BZA CHAIR HILL: Thank you, Ms. Myers. All right.
12 Does the Board have any questions of the applicant, the ANC
13 commissioner, or the Office of Planning?

14 All right. Mr. Young, is there anyone here wishing
15 to speak?

16 MR. YOUNG: We do not.

17 BZA CHAIR HILL: Okay. All right. Commissioner
18 Delgado, can you hear me?

19 Commissioner Hicks Delgado? Yeah. So I mean I
20 appreciate your testimony and all of the -- that's in the
21 record. You guys are in support, correct?

22 MS. HICKS DELGADO: That is correct.

23 BZA CHAIR HILL: Okay. Well I'm sorry that this
24 has been a big problem, I guess, for you guys over there.

25 MS. HICKS DELGADO: Yes. We have significant

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1 traffic issues coming from the shops. So it's a hot button
2 issue anytime something's being built around it. We're all
3 hopeful that there's consistent coming of opportunities to
4 better the traffic, and it seems like this is one of those
5 opportunities.

6 BZA CHAIR HILL: Okay. All right, great. All
7 right, thank you. All right, Mr. Freeman, do you have anything
8 you'd like to add at the end? You're on mute, Mr. Freeman.

9 MR. FREEMAN: Is this my closing?

10 BZA CHAIR HILL: Yes, this is your closing, Mr.
11 Freeman.

12 MR. FREEMAN: Okay. Well just want to thank the
13 Board members for their time and attention to this matter.
14 Appreciate OP's effort and recommendations. Since DDOT's not
15 here, I don't pretend to be DDOT, but just want to highlight
16 that on page -- they obviously recommend approval on page 2.
17 They say the expanded facility will have queueing space for
18 up to 50 vehicles, so that's more. The fuel expansion, in
19 combination with the existing contingency plans for spillover
20 queueing are expected to prevent queueing in the private Market
21 Street or further back into any public streets.

22 On page 4, and this is just in response to -- there
23 were three letters in opposition that identify traffic. So
24 this is just in response to those short letters/emails. On
25 page 4, DDOT says the roadway capacity analysis provided in

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1 the TIA demonstrated that no intersections exhibit queues
2 exceed service or have approaches that degrade or decrease
3 existing levels of service. Therefore, no mitigation for
4 traffic impacts is requested by DDOT.

5 And then finally, DDOT says -- well, the final thing
6 I'm going to read, these queues can be accommodated within the
7 site. Therefore, no mitigation for queueing impacts is
8 requested by DDOT. So DDOT's not asking for any additional
9 mitigations because they think the proposed expansion actually
10 helps solve existing conditions at the site, which is the
11 purpose of the application.

12 We believe we meet the standards for relief, and
13 therefore ask the Board to approve our application. Thank
14 you.

15 BZA CHAIR HILL: Thanks, Mr. Freeman. Mr.
16 Freeman, just for my sake, in the PowerPoint presentation, in
17 slide 9, that's the existing condition right now with the
18 pre-fueling and the vehicle queueing?

19 MR. FREEMAN: That's the existing peak situation.

20 BZA CHAIR HILL: Right. That's existing now?

21 MR. FREEMAN: Correct, during peak times.

22 BZA CHAIR HILL: Right. Are you giving away the
23 gas at that point? Okay. All right. Let's see. All right.
24 Anybody got anything else?

25 Okay. All right. Thank you, Mr. Freeman. I

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1 appreciate your time, and I hope --

2 MR. FREEMAN: Thank you.

3 BZA CHAIR HILL: -- you all have a good day. Okay.
4 I would agree with the applicant's argument as to why they're
5 meeting the criteria for us to grant the leave requested in
6 the different conditions that we're -- I'm sorry, in the
7 different areas that we're supposed to look at concerning this
8 expansion.

9 I would also agree with the analysis that has been
10 put forward by the Office of Planning, and also the thorough
11 analysis and the testimony from the commissioner with the ANC.
12 I was making a humorous comment that in slide 9 of the
13 presentation, it seems as though there is a tremendous amount
14 of cars trying to fuel at that location, and I'm sure this could
15 only help alleviate any kind of concerns that the community
16 in the area are experiencing.

17 So with that, I will also rest on the analysis that
18 DDOT has provided and be able to comfortably vote in favor of
19 this application. Mr. Smith, do you have anything that you'd
20 like to add?

21 MEMBER SMITH: I agree with everything that you
22 stated regarding this particular case. I'm very familiar with
23 this area, and I understand the concerns raised about it, and
24 yes, there is a lot of traffic in this particular area of the
25 city. And it was more of a functioning project with the larger

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1 site design, because there's really only one way in and out
2 -- only one way if you're going west on Route 50, if they're
3 coming out to -- everyone has to come out to that main light
4 behind Lowes.

5 But there isn't anything easy that can be done to
6 fix that issue. It would be a fairly expensive infrastructure
7 project that we need to occur to fix -- to, you know, completely
8 fix those issues. But I do believe that the applicant is
9 attempting to address some of this issues -- this issue, and
10 a lot of it is due to queueing at this gas station.

11 Effectively doubling the capacity of this gas
12 station will reduced that amount of queueing there. I don't
13 think it will generate any more traffic. It's the same amount
14 of traffic that would frequent this Costco to refuel, but at
15 least doubling the pumps will reduce the amount of queueing
16 that will occur on, I believe that's Market Street near the
17 Chick-fil-A.

18 So with that, I would rest on OP's stance report,
19 note that the ANC is in report of the application, and will
20 support the application as well.

21 BZA CHAIR HILL: Okay. Commissioner Stidham.

22 MEMBER STIDHAM: I am supportive of the case as
23 well, and I do agree that the applicant is trying to address
24 the problem of stuffed up cars trying to get to pumps. I don't
25 believe that the -- they -- what they're doing will increase

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1 traffic. I do believe that it will help with any backups, so
2 I am in support of this as well.

3 BZA CHAIR HILL: Thank you, Commissioner. All
4 right. I'm going to make a motion to approve application
5 number 20994 as captioned and read by the secretary and ask
6 for a second. Mr. Smith.

7 MEMBER SMITH: Second.

8 BZA CHAIR HILL: The motion being made and
9 seconded, Mr. Moy, can you take a roll call, please?

10 SECRETARY MOY: Thank you, sir. When I call your
11 name, if you'll please respond to the motion made by Chairman
12 Hill to approve the application for the relief request. The
13 motion to approve was seconded by Mr. Smith. Zoning
14 Commissioner Stidham.

15 MEMBER STIDHAM: Yes.

16 SECRETARY MOY: Mr. Smith.

17 MEMBER SMITH: Yes.

18 SECRETARY MOY: Chairman Hill.

19 BZA CHAIR HILL: Yes.

20 SECRETARY MOY: No other Board members. Staff
21 would record the vote as 3-0-2, and this is on the motion made
22 by Chairman Hill to approve. The motion to approve was
23 seconded by Mr. Smith. Voting to approve the application,
24 Zoning Commissioner Stidham, Mr. Smith, Chairman Hill. The
25 motion carries, sir, 3-0-2.

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1 BZA CHAIR HILL: Okay, thank you. There seems to
2 be a delay -- I'm sorry, the voice again repeating. I don't
3 know if everybody wants to check their microphones, and if it's
4 one of us, I don't know. And then lets' go ahead and take
5 lunch, and let's try to come back -- I mean, you know, let's
6 try to come back in 20 minutes or so if that's okay. Just take
7 as quick as lunch as possible. But if you all take as long
8 as you take, take as long as you take, and I'll just get back
9 in -- try to get back in in 20 or so minutes. Thank you so
10 much.

11 (Whereupon, the above-entitled matter went off the
12 record at 1:43 p.m. and resumed at 2:11 p.m.)

13 BZA CHAIR HILL: Mr. Moy, can you hear us?

14 SECRETARY MOY: Yes, I'm here.

15 BZA CHAIR HILL: Thank you. If you can call our
16 next case, please.

17 SECRETARY MOY: The Board has returned to its
18 public hearing session after a quick lunch recess, and the time
19 now is at or about 2:11 p.m. in the afternoon. The next and
20 last case before the Board is application number 20991 of
21 Jessica and Barrett McVary, M-C-V-A-R-Y.

22 This is an amended and self-certified application
23 pursuant to subtitle X, section 901.2 for the following special
24 exceptions: non-conforming structure requirements, subtitle
25 C, section 202; rear yard requirements, subtitle D, section

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1 207.1. Property located in the R-2 zone at 1016 Taussig,
2 T-A-U-S-S-I-G, Place, Northeast, Square 3890, Lot 108.

3 And I believe that's all that I have. I just want
4 to check one other thing if I may. So the only one here in
5 the hearing room is the applicant's team.

6 BZA CHAIR HILL: Okay. If the applicant can hear
7 me, if they could please introduce themselves for the record.

8 MS. RAO: Yes. Heather Rao, I'm the architect for
9 the project with Old City Design Studio.

10 BZA CHAIR HILL: Okay, Ms. Rao. If you want to go
11 ahead and walk us through your client's application and why
12 you believe they're meeting the criteria for us to grant the
13 relief requested, I'm going to go ahead and put 15 minutes on
14 the clock, and you can begin whenever you like.

15 MS. RAO: Sure. I also noted that my clients
16 Jessica and Barrett McVary just got admitted to the hearing
17 as well, so they're also on screen now for you.

18 BZA CHAIR HILL: Wonderful. Great. Thank you.

19 MS. RAO: Mr. Young, could we have the
20 presentation, please? Thank you. As I mentioned, I am an
21 architect with Old City Design Studio. I represent Barrett
22 and Jessica McVary, who live at 1016 Taussig Place, Northeast.
23 We're here to request a special exception under subtitle D
24 5201, from the rear yard requirements of subtitle D 207.1.
25 Next slide, please.

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1 BZA CHAIR HILL: So just to be clear, you're no
2 longer asking for the non-conforming structure requirements
3 under C 202. Is that correct?

4 MS. RAO: That is not correct. I apologize. I
5 omitted that from what I was actually saying. But I think we
6 still have to request that.

7 BZA CHAIR HILL: Okay. There might be some
8 difference of opinion as to what you guys need or not, but go
9 ahead and continue to walk us through your application and we
10 will see where we go.

11 MS. RAO: There is a difference to opinion of that.
12 I believe I was told that we might not need that request also.
13 So here on slide number 2, you can see at the proposed project
14 site it is a two story rear addition on an existing two story
15 semidetached home. You can see it here in the center of the
16 upper map, and then also in the aerial view. Both the subject
17 property and the adjacent neighbor have existing bump out
18 additions, which are both non-conforming with regard to the
19 zoning regulations. Next slide, please.

20 This property is on a shallow block in northeast
21 Washington. It is 57 and a half feet deep by 48 feet wide.
22 The proposed addition will extend an existing non-conforming
23 addition, and you can see that outlined, the smaller version
24 at the back, and then the slightly larger version in your
25 package. The existing addition is 9 foot 1 wide by 5.3 feet

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1 deep. The proposed addition will be 11 and a half feet wide
2 by 7 and a half feet deep. So we're adding about 2 and a little
3 bit of change feet on each direction from the existing
4 addition. Next slide, please.

5 Here you can see the existing subject property with
6 the non-conforming addition on the back, as well as the
7 immediate neighbor. They're connected. You can see the two
8 bump outs there together. Next slide, please.

9 Jessica and Barrett live in the home with their two
10 young children. They have a lower level with one full bath.
11 The existing addition does not extend to the lower level. Next
12 slide, please. On the main level, the existing addition
13 provides a rear entrance to the home, as well as extending the
14 existing kitchen. The rear entrance is accessed by steps and
15 a small landing to the side of the addition. Next, please.

16 The existing upper level has three bedrooms and one
17 full bath. The existing addition does not extend to this
18 level. The goal of this addition at this level is to improve
19 the home in a way that makes it more feasible for my clients
20 to remain in the house for a longer period of time with their
21 children. Next slide, please. This is the proposed lower
22 level plan. It will include a crawl space at grade, no
23 excavation needed, just for pure foundations, likely with a
24 concrete pad for outdoor storage. Next slide, please.

25 The proposed new two story addition will still

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1 include a rear entry to the home, as well as a half bath at
2 this level and an extension of the useable kitchen area. The
3 new rear entrance will be accessed by steps and a small landing
4 to the rear of the addition. The existing steps that go from
5 the driveway to the grade of the back yard will remain in place.
6 Next slide, please.

7 At the upper level, the proposed addition sets back
8 from the footprint of the lower level. It is 9 and a half feet
9 wide by 6 and a half feet deep so that it does not impact the
10 existing windows in the main rear wall. This addition will
11 be an extension of the existing bathroom. Since it's on the
12 north side of the two story home, it will not cast any
13 additional shadows on any neighboring properties. We did
14 include sun studies in the record to demonstrate this also.
15 Next, please.

16 The materials for the addition are anticipated to
17 be fiber cement, horizontal siding with PVC trim, clad wood
18 windows, and metal and membrane roofing. You can see in both
19 this and the following slide, you'll see the upper level of
20 the new addition is set back from the ground floor, reducing
21 the mass of the upper level addition also. Next, please.

22 This is the rear addition of the home, and you can
23 see how we're allowing the existing windows both at the upper
24 and lower levels to remain in place with the size of the
25 addition. This addition will not impact the light and air

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1 available to neighboring properties. It will not encroach on
2 the existing 15 foot side yard to the west, nor will it project
3 any further into the rear yard than other homes on the block.

4 As you can imagine, on this block there are several
5 homes that have extensions of the same type, and I'll show you
6 some of those in just a minute. It will not affect the privacy
7 of those neighbors or of those to the north across the alley.
8 The existing addition has one north facing window and one west
9 facing door. The new addition will have two west facing
10 windows, one north facing window, and one north facing door.
11 Next slide, please.

12 This is the view looking up and down along the
13 alley. Subject property is on the right in the top image and
14 on the left in the lower image, and you can see that there are
15 two story additions across the alley all the way up and down
16 the block as well. So this is very consistent with the
17 remainder of the block. This massing of the proposed addition
18 is not excessive, nor will it unduly impact the light, air,
19 or privacy of neighbors. It is in keeping with other
20 structures on the block.

21 We presented the project to the ANC 5B. A letter
22 of support from that ANC has been added to the record. The
23 owners have also done an extensive amount of reaching out to
24 their neighbors and have had no expressions of concern or
25 opposition to the project. In fact, they have about 11 letters

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1 of support from neighbors that are in the record as well.

2 The Office of Planning has provided their report
3 to the record, which recommends approval of the application.
4 And we are available to respond to any questions. Thank you.

5 BZA CHAIR HILL: Okay. Is the Office of Planning
6 here, and if so, could we hear from them?

7 MR. JESICK: Thank you, Mr. Chairman and members
8 of the Board. My name is Matt Jesick, and the Office of
9 Planning is happy to rest on the record in support of this case.
10 The applicant has met the criteria of 5201 for approval of a
11 rear yard special exception. I'm happy to take any questions
12 that the Board may have. Thank you.

13 BZA CHAIR HILL: So they're requesting relief from
14 C 202. Does the Office of Planning not think that that is
15 necessary?

16 MR. JESICK: That's correct, Mr. Chairman. We
17 felt that relief from C 202 is not needed because the applicant
18 has requested the relevant relief from the rear yard provision.
19 C 202 is not, perhaps, worded very clearly, but it states that
20 extensions to a non-conforming condition are not permitted,
21 except when the applicant seeks the appropriate form of relief.
22 So in this case, they've -- they have requested that rear yard
23 relief, so we don't feel that separate relief from C 202 is
24 necessary.

25 BZA CHAIR HILL: Okay. I'm kind of unclear as to

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1 what I think of that. Mr. Smith, do you have any thoughts on
2 this? Take your time.

3 I mean in the past, out of an abundance of caution,
4 and also when it is a self-certified application, we have
5 looked at this type of relief and/or granted it. I guess there
6 seems to be a difference of opinion at times as to what the
7 Board should do in this area, at least for me. And Mr. Jesick,
8 is the Office of Planning opposed to the applicant receiving
9 relief from C 202?

10 MR. JESICK: No, I don't think there would be any
11 harm if the Board were to grant that relief.

12 BZA CHAIR HILL: Okay. So Mr. Smith, I'll let you
13 chew on that for a minute, as well as Commissioner Stidham.
14 Mr. Young, is there anyone here wishing to speak?

15 MR. YOUNG: We do not.

16 BZA CHAIR HILL: Okay. I'm leaning towards
17 granting the relief requested as applied for because it's
18 self-certified, and I, you know, in the past, I think we've
19 done that. I guess I will wait to see what Board Member Smith
20 has to say, and then I'll turn to Commissioner Stidham if she,
21 in this -- in her first day here, if she has an opinion on this
22 or not. But I'll get -- let Mr. Smith take a look.

23 MS. RAO: May I speak for a minute?

24 BZA CHAIR HILL: Sure, go ahead, Ms. Rao.

25 MS. RAO: I would just advise you that about three

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1 years ago now, we went through this process for one of the
2 neighbors at 1012 Taussig Place, and this was the same relief
3 that we requested and were granted from the Board at that point,
4 too. So we did use both parts of the zoning code at that point
5 for relief.

6 BZA CHAIR HILL: Okay.

7 MEMBER SMITH: I think that that given that this
8 is a self-certified application, coupled with moving forward,
9 you know, if the zoning administrator has a different
10 interpretation, then, you know, this is at the risk of the
11 applicant that they would have to be back here with a variance.

12 BZA CHAIR HILL: So what are you saying, Mr. Smith?
13 I'm sorry.

14 MEMBER SMITH: To proceed.

15 BZA CHAIR HILL: Okay. All right. It's
16 something that I think we can address with the Office of
17 Zoning's legal division the next time around, because I think
18 this is something that I need further clarification on. I'm
19 going to move forward in the way that we've done in the past,
20 which is under this situation, when it's a special -- I'm sorry,
21 when it's self-certified, and that we were doing things that
22 possibly were to be done in an abundance of caution rather than
23 how I might be able to handle it differently the next time we
24 have this situation. Okay, I forgot. Mr. Young, did I ask
25 if anybody had --

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1 MS. BAJAJ: Attorney Bajaj. Could I interject
2 real quick?

3 BZA CHAIR HILL: Sure, go ahead.

4 MS. BAJAJ: So I just wanted to note that if we do
5 move forward with the C 202, we would need to -- the Board should
6 ask the applicant to identify specifically what provision
7 would authorize the Board to grant a special exception. So
8 I just want to note that piece.

9 BZA CHAIR HILL: Okay, Ms. Rao. Do you have an
10 answer for Ms. Bajaj?

11 MS. RAO: I'm looking for my copy of our burden of
12 proof. So we have always requested this relief when we have
13 done this type of addition with the understanding that we are
14 extending an existing non-conformity. The rear wall of the
15 existing one story addition is within the required 20 foot
16 setback, and we are extending the non-conformity by an
17 additional 2.2 feet.

18 BZA CHAIR HILL: Okay. All right. I'm going to
19 go ahead and move forward. I have a little bit of time. I
20 could -- I have a little bit of time, if my fellow Board members
21 believe that we would like to speak with the Office of Zoning's
22 legal division now to further clarify this. Otherwise, I'm
23 going to move forward in the way that I -- would you like to
24 -- further clarification with the Office of Zoning's --

25 MEMBER SMITH: Yeah.

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1 BZA CHAIR HILL: -- legal division? Fine.

2 MEMBER STIDHAM: Yes, please.

3 BZA CHAIR HILL: Okay. I will go ahead and I'll
4 -- Ms. -- Commissioner Stidham, I think you're on -- somebody,
5 I'm repeating. Okay, great. Oh, maybe not. It's still --
6 I'm still getting the feedback.

7 MEMBER SMITH: Commissioner Stidham, I think it's
8 coming from you.

9 BZA CHAIR HILL: It's coming from you, Mr. Smith?

10 MEMBER STIDHAM: From me or Mr. Smith?

11 BZA CHAIR HILL: Is it coming from me?

12 MEMBER STIDHAM: No.

13 BZA CHAIR HILL: It's coming from you, Mr. Smith.

14 MEMBER SMITH: No, I just had mine muted.

15 BZA CHAIR HILL: Well I didn't do anything
16 different.

17 MEMBER STIDHAM: Let me put mine on mute and see
18 if it's coming from --

19 BZA CHAIR HILL: I think maybe it's coming from
20 Commissioner Stidham. Yeah, I think you fixed it before.
21 Okay.

22 MEMBER STIDHAM: Let me know if it comes back.
23 Maybe I fixed it.

24 BZA CHAIR HILL: Okay. No problem. Let me look
25 for what I was supposed to read. I don't have that in front

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1 of me.

2 SECRETARY MOY: I can resend it for you if you need
3 it, sir.

4 BZA CHAIR HILL: Sure. That'd be great, Mr. Moy.

5 SECRETARY MOY: Okay. Give me a couple of
6 seconds. They should be in your inbox now, Mr. Chairman.

7 BZA CHAIR HILL: Okay, great. Let's see. Right.
8 As Chairperson of the Board of Zoning Adjustment for the
9 District of Columbia, in accordance with 407 of the District
10 of Columbia Administrative Procedures Act, I move that the
11 Board of Zoning Adjustment hold a closed meeting on -- I'm
12 sorry, on 11/29/2023, for the purposes of seeking legal advice
13 for a counsel on case number 20991, deliberate upon but not
14 vote on case 20991. Is there a second, Mr. Smith?

15 MEMBER SMITH: Second.

16 BZA CHAIR HILL: Motion was made and seconded.
17 Mr. Moy, if you'll take a roll call.

18 SECRETARY MOY: When I call your name, if you'll
19 please respond to the motion made by Chairman Hill to convene
20 an emergency closed meeting. Zoning Commissioner Stidham.

21 MEMBER STIDHAM: Yes.

22 SECRETARY MOY: Mr. Smith.

23 MEMBER SMITH: Yes.

24 SECRETARY MOY: Chairman Hill.

25 BZA CHAIR HILL: Yes.

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1 SECRETARY MOY: The motion carries, sir.

2 BZA CHAIR HILL: Okay, great. You guys, we will
3 see you in a little bit. We're going to jump onto another
4 meeting and we'll be right back.

5 (Whereupon, the above-entitled matter went off the
6 record at 2:32 p.m. and resumed at 2:53 p.m.)

7 BZA CHAIR HILL: Ms. Rao, are you there?

8 MS. RAO: I'm here, sir.

9 BZA CHAIR HILL: Did I lose your clients?

10 MS. RAO: I believe they were here. They're still
11 here.

12 MS. McVary: We're here, yep.

13 BZA CHAIR HILL: Ms. McVary, would you like to say
14 anything since you spent all this time waiting and I have to
15 go to an appointment very soon?

16 MS. McVary: Just thank you, Chairman and
17 Commission members. We appreciate your willingness to hear
18 our case today as well as the work of the staff to prepare this.
19 So thanks for your time and I look forward to your confirmation
20 of next steps.

21 BZA CHAIR HILL: Well said, Ms. McVary. Well
22 said. All right, let's see. Ms. Rao, so what seems to be some
23 of the discussion is again whether or not C 202 is necessary.
24 If you want to continue -- not continue. If you believe that
25 C 202 is necessary, then either way, I'm going to -- this is

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1 going to go to a decision next week. If you want to argue that
2 C 202 is necessary, then if you would like to provide what
3 provision allows a special exception from C 202, okay? So
4 that's one thing, right?

5 If you don't think C 202 is necessary, and you would
6 like to withdraw C 202, please provide in writing for your
7 self-certified application that you no longer are requesting
8 subtitle C 202. And if that gets pulled in writing, we can
9 vote on this on Wednesday.

10 MS. RAO: Okay. Do you -- I need to -- because
11 we're going to go with the second option, sir, I have, in the
12 intermittent time as you were doing your research, I was also
13 doing my research again, and item C is pretty clear that we
14 should not need this.

15 Do I need to revise all of the documentation where
16 it's referenced in the exhibits or just provide a statement
17 saying that we're willing to withdraw that? Okay.

18 BZA CHAIR HILL: Yes.

19 MS. RAO: Perfect.

20 BZA CHAIR HILL: Yes.

21 MS. RAO: We'll do that.

22 BZA CHAIR HILL: Okay, great. And if you can drop
23 that in by Friday or something, then that would be great. And
24 then we'll come back here for a decision on Wednesday, December
25 6th.

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1 MS. RAO: Okay.

2 SECRETARY MOY: Mr. Chairman, if I may?

3 BZA CHAIR HILL: Yep, go ahead.

4 SECRETARY MOY: Assuming the applicant's going to
5 follow through on what she has said, I think we would also need
6 a revised self-serve in the record.

7 BZA CHAIR HILL: Okay. Ms. Rao, did you hear that?

8 MS. RAO: Yes, sir. Is that the only piece that
9 you need revised, Mr. Moy?

10 SECRETARY MOY: Yeah, I think so, other than --

11 MS. RAO: Okay.

12 SECRETARY MOY: -- it's also -- when -- it would
13 be helpful also to have a separate cover letter, too, stating
14 what you just said now and anything else you want to add to
15 your cover letter.

16 MS. RAO: Okay. I will try to get these uploaded
17 tomorrow so that if there's anything that you see that is
18 missing, you can let me know and I can provide that as well.
19 Thank you.

20 BZA CHAIR HILL: Okay. Is that it, Mr. Moy and Ms.
21 Rao? All right. Is it Mr. McVary?

22 MS. McVary: It's on mute.

23 MR. McVary: It is.

24 BZA CHAIR HILL: Okay. Your wife said everything
25 really nicely and well. Whenever that question comes up

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1 again, go with her answer.

2 MR. McVary: All right, sir.

3 BZA CHAIR HILL: All right. Okay. I'm going to
4 close this portion -- Ms. Rao, do you have anything else you
5 would like to add?

6 MS. RAO: No. Thank you very much for your time
7 and your diligence today.

8 BZA CHAIR HILL: Thank you. All right. I'm going
9 to close this portion of the hearing of the record. Actually,
10 I'm going to close the hearing, except for the record, leaving
11 it open for the items that Mr. Moy and Ms. Rao spoke about,
12 and we'll see you all for a decision on Wednesday, December
13 6th. Thank you.

14 MS. RAO: Okay, thanks.

15 BZA CHAIR HILL: All right. So we are done. And
16 Commissioner Stidham, it was a pleasure being with you today.
17 Unfortunately, I have been under a tight timeline to get out
18 of here quicker, and so otherwise, we would have had more
19 opportunity to be at a leisurely pace. But thank you so much
20 for your time today.

21 MEMBER STIDHAM: I appreciate it. I'm still on a
22 learning curve, so --

23 BZA CHAIR HILL: Oh, I think you did great.
24 Whatever you learned so -- I mean, you're way more advanced
25 than I am, I'm sure. So welcome.

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1 MEMBER STIDHAM: Thank you. Thank you.

2 BZA CHAIR HILL: Okay.

3 MEMBER STIDHAM: Are these --

4 BZA CHAIR HILL: All right, Mr. Moy. Is that it
5 from the Board?

6 Okay. Okay, bye-bye. See you all later. We're
7 adjourned.

8 (Whereupon, the above-entitled matter went off the
9 record at 2:58 p.m.)

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In the matter of: Public Hearing

Before: DC ZC

Date: 11-29-23

Place: teleconference

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