

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 4, 2023

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

ZONING COMMISSION MEMBERS PRESENT:

FREDERICK D. HILL, Chairperson
CHRISHAUN SMITH, Member
JOSEPH IMAMURA, Zoning Commissioner
ROBERT MILLER, Zoning Commissioner

OFFICE OF ZONING ADJUSTMENT STAFF PRESENT:

CLIFFORD MOY, Secretary
PAUL YOUNG, Data Specialist

OFFICE OF ZONING ADJUSTMENT LEGAL COUNSEL:

SARA BAJAJ, Esquire
COMETRIA COOPER, Esquire

The transcript constitutes the minutes from the Regular Public Hearing held on October 4, 2023.

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(9:30 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen to the Board of Zoning Adjustment. Today's date is 10/4/2023. My name is Fred Hill, Chairperson of the District of Columbia Board of Zoning Adjustment. Joining me today is Board Member Chrishaun Smith and Zoning Commissioners Rob Miller and Dr. Joe Imamura.

Today's meeting and hearing agenda are available on the Office of Zoning's website. Please be advised this proceeding is being recorded by a court reporter and is also webcast live via Webex and YouTube Live. The video of the webcast will be available on the Office of Zoning's website after today's hearing. Accordingly, everyone who is listening on Webex or by telephone will be muted during the hearing. Also, please be advised we do not take public testimony at our decision meeting sessions. if you're experiencing difficulty accessing Webex or with your telephone call-in then please call our OZ hotline number 202-727-5471, once again 202-727-5471 to receive Webex call-in instructions or if there's an issue with your calling in.

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 issued. A full order is required when the decision it contains is adverse to a party, including an affected ANC. A full order may also be needed if the Board's

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

5 In today's hearing session everyone who is listening
6 on Webex or by telephone will be muted during the hearing, and
7 only persons who have signed up to participate or testify will
8 be unmuted at the appropriate time. Please state your name and
9 home address before providing oral testimony or your
10 presentation. Oral presentation should be limited to a summary
11 of your most important points. When you're finished speaking,
12 please mute your audio so that your microphone is no longer
13 picking up sound or background noise. Once again, if you're
14 experiencing difficulty accessing Webex or with your telephone
15 call-in or if you've forgotten to sign up 24 hours prior to this
16 hearing, then please call our OZ hotline at 202-727-5471.

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

22 Requests to enter evidence at the time of an online
23 virtual hearing, such as written testimony or additional
24 supporting documents other than live video, which may not be
25 presented as part of the testimony, may be allowed pursuant to

1 Subtitle Y, § 103.13, provided that the person making the request
2 to enter an exhibit and explain, a) how the proposed exhibit is
3 relevant, b) if the good cause justifies allowing the exhibit
4 into the record, including an explanation of why the requester
5 did not file the exhibit prior to the hearing pursuant to Y, §
6 206, and, c) how the proposed exhibit would not unreasonably
7 prejudice any parties. The order of procedures for special
8 exceptions and variances are Y, § 409. The appeal order is at
9 Subtitle Y, § 507.

10 At the conclusion of each case, any individual who was
11 unable to testify because of technical issues may file a request
12 for leave to file a written version of the planned testimony to
13 the record within 24 hours following the conclusion of public
14 testimony in the hearing. If additional written testimony is
15 accepted, then parties will be allowed a reasonable time to
16 respond as determined by the Board. The Board will then make
17 its decision at its next meeting session, but no earlier than 48
18 hours after the hearing. Moreover, the Board may request
19 additional specific information to complete the record. The
20 Board and the staff will specify at the end of the hearing exactly
21 what is expected and the date when persons must submit the
22 evidence to the Office of Zoning. No other information shall be
23 accepted by the Board.

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

1 held in the open before the public. However, pursuant to Sections
2 405(b) and 406 of that Act, the Board may, consistent with its
3 rules of procedures and the Act, enter into a closed meeting on
4 a case for purposes of seeking legal counsel on a case pursuant
5 to D.C. Official Code § 2-575(b)(4) and/or deliberate on a case
6 pursuant to D.C. Official Code § 2-575(b)(13), but only after
7 providing the necessary public notice and in the case of an
8 emergency closed meeting after taking a roll call vote.

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

10 MR. MOY: Good morning, Mr. Chairman, and members of
11 the Board. I do have a brief announcement for the record and
12 for our viewers today related to today's docket.

13 First, case Application No. 17429-A of St. Patrick's
14 Episcopal Church and Day School was withdrawn by the Applicant
15 and case Application No. 20772 of District Properties.com was
16 postponed and rescheduled to January 31st, 2024. Other
17 preliminary matters, Mr. Chairman, I'll bring to your attention
18 when I call the case, and finally this is a reminder to you that
19 you wanted me to bring to your attention BZA case No. 17944-C
20 The Lab School of Washington, and as we all know that was
21 adjudicated on September 20th of this year.

22 CHAIRPERSON HILL: Thank you. So for the record and
23 the transcript, I would like to speak about 17944-C which is the
24 order of The Lab School of Washington, D.C. So Dr. Imamura and
25 Mr. Smith was on this hearing with me and I am interested in

1 discussing a term deadline that I think we might wish to change.

2 So I guess the summary order was issued on October 3rd
3 stating a 15 year term which was to end August 1st, 2038 and
4 again the participating members were myself, Mr. Smith and Dr.
5 Imamura. The Applicant it seemed had requested a term ending
6 August 31st, 2038 and I believe the term or the order is to match
7 up with something that the Applicant was trying to coincide with
8 the new extension of The Lab School's lease and I believe that
9 that was the intent of the Board, as I recall, and I, I mean I'm
10 sure that's the intent of the Board and so I don't think that
11 this being -- changing the term from August 1st, 2038 to August
12 31st, 2038 is a large issue and so I would recommend that we
13 reconsider this term limit change and we're also able to, there's
14 under Y 103.5 in terms of the notice requirements, I would waive
15 those because I do believe that this is a de minimis issue that
16 has very little to do with the case. It's just trying to tie
17 together the extension with that of The Lab School's lease which
18 is something that we had also discussed prior. So on that I was
19 going to make a motion to change the deadline, I'm sorry, term
20 limit and everything else being equal.

21 Mr. Smith, do you have anything else to add?

22 COMMISSIONER SMITH: No. I agree with your assessment,
23 Chairman Hill, on this particular case given, you know, questions
24 and/or the concerns raised by the Applicant, The Lab School, and
25 I will support your position on amending the order, or amending

1 our decision.

2 CHAIRPERSON HILL: Thank you. Dr. Imamura?

3 ZC COMMISSIONER IMAMURA: I'm in agreement, Mr.
4 Chairman. It's de minimis.

5 CHAIRPERSON HILL: Thank you. And I will go ahead and
6 make a motion to change the term limit from August 1st, 2038 to
7 August 31st, 2038 on case No. 17944-C as in Charlie. All other
8 items discussed being the same as the previous hearing and ask
9 for a second, Mr. Smith?

10 COMMISSIONER SMITH: Second.

11 CHAIRPERSON HILL: The motion was made and second. Mr.
12 Moy, could you take a roll call?

13 MR. MOY: When I call your name if you'll respond to
14 the motion made by Chairman Hill to change the term limit to
15 August 31st, 2038. This motion was second by Mr. Smith.

16 Zoning Commissioner Dr. Joe Imamura?

17 ZC COMMISSIONER IMAMURA: Yes.

18 MR. MOY: Mr. Smith?

19 COMMISSIONER SMITH: Yes.

20 MR. MOY: Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: Staff would record the vote as three to zero
23 to two. The two is no other members participating and this is
24 on the motion made by Chairman Hill. The motion was second by
25 Mr. Smith. Also voting to support the motion to change the term

1 limit to August 31st, 2038 is Dr. Imamura, Mr. Smith, Chairman
2 Hill. Motion carries, sir, three to zero to two.

3 CHAIRPERSON HILL: Thank you, and thank you, Dr.
4 Imamura, for joining us for that this morning. I hope you have
5 a pleasant day.

6 ZC COMMISSIONER IMAMURA: Thank you, Mr. Chairman.
7 (Indiscernible) have a great day.

8 CHAIRPERSON HILL: All right. That's a nice lead in
9 to Vice Chair Miller joining us now from the Zoning Commission.
10 Good morning, Vice Chair Miller.

11 ZC VICE CHAIR MILLER: Good morning, Chairman Hill, and
12 Board member Smith and others.

13 COMMISSIONER SMITH: Good morning.

14 CHAIRPERSON HILL: Mr. Moy, you may call the next item
15 before the Board.

16 MR. MOY: The first case in the Board's meeting session,
17 and this happens to be an expedited review case, is Application
18 No. 20998 of Minna Williams as amended, self-certified
19 application pursuant to Subtitle X, § 901.2. This is for special
20 exception under Subtitle D, § 5201.1 from the requirements for
21 the location of an accessory structure of Subtitle D, § 5004.1.
22 Property located in the R-1-B zone at 1352 Locust Road, N.W.,
23 Square 2771, Lot 21.

24 If you recall, the Board heard this at its hearing on
25 September 27th, deliberated and scheduled a continue meeting

1 session to today which is October the 4th, and that's all I have
2 for you for the moment, sir. Thank you, sir.

3 CHAIRPERSON HILL: Thank you, Mr. Moy.

4 So as the Board will recall this is an expedited review.
5 We discussed it last week. We in agreement with the Office of
6 Planning did not think that D 207.1 was necessary. It being the
7 expedited review we did not have the Applicant before us. The
8 Applicant has since that time revised their self-cert to remove
9 207.1. I do -- I will repeat what I had said was that I do think
10 that the ANC 4A had a very detailed and helpful report and I do
11 appreciate that. I would also agree with the analysis of the
12 Applicant and the Board as to how they're meeting the criteria
13 for us to grant the relief requested in D 5004.1.

14 I also think that I appreciate that the Office of
15 Planning's report to how the solar would not be impacted and
16 after again reviewing the plans for the burden of proof, I would
17 vote to approve this application.

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

19 COMMISSIONER SMITH: No, I don't have anything to add.
20 I agree with your assessment of this particular case and will
21 also support the application.

22 CHAIRPERSON HILL: Thank you. Vice Chair Miller?

23 ZC VICE CHAIR MILLER: I concur with both your comments.

24 CHAIRPERSON HILL: All right. I'm going to make a
25 motion to approve Application NO. 20998 as captioned and read by

1 the Secretary and ask for a second, Mr. Smith?

2 COMMISSIONER SMITH: Second.

3 CHAIRPERSON HILL: The motion is made and seconded.
4 Mr. Moy, could you take a roll call, please?

5 MR. MOY: When I call your name if you'll please respond
6 to the motion made by Chairman Hill to approve the application
7 for the relief of, the current relief that's requested. This
8 motion was second by Mr. Smith voting and in support of the motion
9 made by Chairman Hill.

10 Zoning Commissioner Rob Miller?

11 ZC VICE CHAIR MILLER: Yes.

12 MR. MOY: Mr. Smith?

13 COMMISSIONER SMITH: Yes.

14 MR. MOY: Chairman Hill?

15 CHAIRPERSON HILL: Yes.

16 MR. MOY: With two members not participating, staff
17 would record the vote as three to zero to two and this is on the
18 motion made by Chairman Hill to approve. The motion to approve
19 was second by Mr. Smith. In support of the motion to approve
20 Zoning Commissioner Rob Miller, Mr. Smith, Chairman Hill. The
21 motion carries three to zero to two.

22 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr. Moy, you
23 can call our next one when you have an opportunity.

24 MR. MOY: The next case before the Board is Application
25 No. 20734-A of 1009 Bryant NE DC, LLC. This is a request for

1 the Applicant pursuant to Subtitle Y, § 703 for a modification
2 of consequence of the plans approved in case No. 20734. This
3 order was issued April 18th, 2023. The property is located in
4 the RA-1 zone at 1009 Bryant Street, N.E., Square 3869, Lot 29.
5 That's all I have for you, sir.

6 Chairperson hill: Okay. I know you guys have reviewed
7 the record but this is a request pursuant to Y § 703 for a
8 modification of consequence for the plans approved in 20734. The
9 order was issued on April 18th, 2023 to increase the improved
10 height of 33 feet six inches to 36 feet 11 and 13/16th inch.

11 I, again, have reviewed the record and I'm going to
12 actually just quote right from the Office of Planning's report
13 of this because it was helpful. The development is for a ten
14 unit building so it's subject to inclusionary zoning. The
15 building plans were approved with a height 33 feet six inches.
16 The Applicant is now requesting a height increase to 36 feet
17 13/16th inches which remains within the permitted height in the
18 zone. The Applicant's new architectural firm discovered that the
19 previous firm calculated the depth of the floor structure
20 incorrectly, so the floor height is too shallow. To correct this
21 error, more internal height is needed on each floor which would
22 raise its own building height by around, again, the three and a
23 half feet and this is again so that, you know, the floors are I
24 guess, you know, code compliant for the structure.

25 So I didn't have any issues with this modification and

1 I would be voting to approve. Mr. Smith, do you have anything
2 you'd like to add?

3 MR. MOY: Mr. Chairman, could I intervene for a second?

4 CHAIRPERSON HILL: Of course.

5 MR. MOY: I neglected to mention that ANC 5C submitted
6 a late filing, a letter in support within that 24 hour block. So
7 if you could make a ruling whether to allow that then we can
8 proceed with your discussion.

9 CHAIRPERSON HILL: Oh, that's wonderful. I had - I was
10 disappointed that we had not heard from the ANC and now I'm going
11 to -- if you could submit that into the record, Mr. Moy, and for
12 the record you're saying that the ANC was in approval?

13 MR. MOY: Yes, I believe so. But you'll take a look
14 at it. That should be coming up on your screen in a couple of
15 seconds.

16 CHAIRPERSON HILL: Okay. It's popped up. So it seems
17 like it's really just a letter in support from the Commissioner,
18 Commissioner Kapur of 5C 07, the SMD 5C 07. Hold on one second.

19 All right. So he was very kind to detail what had
20 happened I guess with the previous case. They voted not to
21 support but also did vote not to oppose. So they didn't take a
22 stance on it and he still speaks again of the concerns about
23 parking. Okay. But he is in support of this modification of
24 consequence.

25 I appreciate the time that the Commissioner took to add

1 a letter into the record and it doesn't change my analysis or
2 discussion, it just helps to provide some ease that the ANC, or
3 at least this SMD, has taken a look at it and I will still vote
4 to approve.

5 Mr. Smith?

6 COMMISSIONER SMITH: I don't have anything, Chairman
7 Hill. I agree with your assessment of this particular case given
8 the constraints that would be accounted for construction for code
9 purposes and will support the modification of consequence.

10 CHAIRPERSON HILL: Great. Thank you. Vice Chair
11 Miller?

12 ZC VICE CAHIR MILLER: Thank you, Mr. Chairman. I
13 concur again with both of your comments and do appreciate the
14 Single Member District Commissioner filing that letter of
15 support. I'm ready to support it. Thank you.

16 CHAIRPERSON HILL: Thank you. I'll make a motion to
17 approve Application No. 20734-A as in apple and ask for a second,
18 Mr. Smith?

19 COMMISSIONER SMITH: Second.

20 CHAIRPERSON HILL: The motion and second. Mr. Moy, if
21 you can take a roll call?

22 MR. MOY: When I call your name if you'll please respond
23 to the motion made by Chairman Hill to approve the application
24 for the relief requested and the motion was second by Mr. Smith.

25 Zoning Commissioner Rob Miller?

1 ZC VICE CHAIR MILLER: Yes.

2 MR. MOY: Mr. Smith?

3 COMMISSIONER SMITH: Yes.

4 MR. MOY: Chairman Hill?

5 CHAIRPERSON HILL: Yes.

6 MR. MOY: With no other members participating, staff
7 would record the vote as three to zero to two and this is on the
8 motion made by Chairman Hill to approve. The motion to approve
9 second by Mr. Smith. In favor in support of the motion to approve
10 Zoning Commissioner Rob Miller, Mr. Smith and of course Chairman
11 Hill. The motion carries, sir, on a vote of three to zero to
12 two.

13 CHAIRPERSON HILL: Thank you, Mr. Moy. You may again
14 call our next case when you have an opportunity.

15 MR. MOY: Okay. The next and final case in the Board's
16 meeting session is Application No. 20308-A of 4865 MacArthur
17 Landlord, LLC. This is the Applicant's request pursuant to
18 Subtitle Y, § 703 for a modification of consequence to change a
19 condition adopted in 20308, the order which was issued June 4th,
20 2021. The property is located in the R-1-B zone at 4865 MacArthur
21 Boulevard, N.W., Square 1389, Lot 25, and that's all I have for
22 you, sir.

23 CHAIRPERSON HILL: Thank you, Mr. Moy. Okay. So this
24 is again a modification of consequence where the Applicant has
25 asked us to look at some language that was in some of the

1 conditions that we put forward when we heard this case. I think
2 that this is something that I would like to actually talk to the
3 Applicant about and it's not something that I feel comfortable
4 doing in a meeting session. It seems as though the discussion
5 is, seems to be pertaining to who is going to pay for what and
6 the BZA again, in the past, we're not really in the, we don't
7 really have the purview of making applicants pay for things in
8 public space. These are things that at the time, and I'm going
9 to review this case again, prior to whenever we schedule a hearing
10 for this. But often times when there is a discussion with the
11 community and the developer perhaps has agreed to improvements,
12 that tends to be with the developer and the ANC.

13 However, what sometimes gets -- happens to be confusing
14 is that the Board of Zoning Adjustment is not the Zoning
15 Commission, so it's not a PUD. It's not where we actually are
16 negotiating items for the community, it's things that the ANC
17 that might be speaking to the developer about and hopes to see
18 within their SMD before they meet, you know, the ANC. Even then
19 however, the ANC doesn't really have the authority to or the
20 purview I guess to force developers to pay for things. It's a
21 little bit of a discussion point that we have at each different
22 application. In this particular case, you know, I'd like to
23 speak with the applicant to understand why they want to modify
24 this condition.

25 So what I would request, and if my fellow Board members

1 would agree, we'd put this on a hearing at an opportune moment
2 and see what Mr. Smith has to say about this.

3 COMMISSIONER SMITH: Chairman Hill, I completely agree
4 with you given the request, what we're being requested to do. I
5 do think that this needs to be not heard in here in the public
6 hearing, but have a discussion with the Applicant and also if the
7 ANC is present, a discussion with the ANC regarding some of these
8 conditions. If I do remember, many of these were within the
9 inner lay (phonetic) -- what they requested was hidden in the
10 memorandum of understanding and they're requesting us to add it
11 in as conditions and you're right, based off of what I'm seeing
12 is the question about who's paying for what and also, you know,
13 it's an open question about maybe these relate to DOT versus
14 Zoning.

15 So I would like to hear from the Applicant in a little
16 bit more detail on this. So I do welcome moving this to a public
17 hearing.

18 CHAIRPERSON HILL: Thank you. Vice Chair Miler?

19 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. Yes,
20 I agree. I agree that there's enough concerns raised about this
21 modification of consequence that we should have a public hearing
22 which means it's a modification of significance. I mean, one
23 member I think under our rules can take it off of a consent
24 meeting agenda and ask that it be a modification of significance
25 that's set before a public hearing instead.

1 So, yes, I want -- I wasn't on the original case but
2 I've reviewed the record. But I do want to hear about this
3 revision to the condition from the Applicant and the ANC and
4 perhaps a DDOT representative since what the condition it's
5 dealing with off-site public space improvements so this might up
6 for the -- to have a DOT, DDOT representative available. We have
7 their exhibit in the record where they worked out something with
8 the Applicant and the Applicant has apparently agreed to a revised
9 condition.

10 So I just think we need to thrash it out at a public
11 hearing and talk about it there. So, thank you.

12 CHAIRPERSON HILL: Okay. Thank you, Vice Chair Miller.

13 Mr. Moy, when is it convenient for the Board to have
14 this in a hearing and also perhaps when it's convenient for Vice
15 Chair Miller?

16 MR. MOY: Okay. The first thing first, for a
17 modification of significance would go through our public referral
18 procedures that we normally do for a record (phonetic)
19 application. So that refers to a 40 day public notice of, the
20 earliest we could schedule is, would be November the 29th. So
21 that's a possible date. If that you think is too soon, the Board
22 could schedule this for its hearing on December the 6th.

23 CHAIRPERSON HILL: Do we have a hearing on November
24 29th?

25 MR.. MOY: Yes, we do.

1 CHAIRPERSON HILL: When's Thanksgiving?

2 MR. MOY: November 23rd.

3 CHAIRPERSON HILL: Oh, okay. How many cases do we have
4 on the 29th?

5 MR. MOY: We have seven cases and one mod. Of
6 consequence.

7 CHAIRPERSON HILL: Okay. All right. Vice Chair Miller,
8 would the 29th work for you?

9 ZC VICE CHAIR MILLER: Yes.

10 CHAIRPERSON HILL: Okay. Let's put it on for 11/29
11 then.

12 MR. MOY: Okay. (Indiscernible) Mr. Miller's
13 agreement. I assume Mr. Miller's going to sit in on this case?

14 CHAIRPERSON HILL: Yes. Vice Chair Miller?

15 ZC VICE CHAIR MILLER: I'll be there.

16 CHAIRPERSON HILL: There's an appeal, Vice Chair
17 Miller, that this ties all on to it. So you -- would you mind
18 signing up for all of it?

19 ZC VICE CHAIR MILLER: I don't know about that, but I
20 guess so. I guess so.

21 CHAIRPERSON HILL: If you've done all the homework, I
22 mean, you know, you can decide later I guess.

23 ZC VICE CHAIR MILLER: Okay. Has that been scheduled?

24 CHAIRPERSON HILL: I don't think it's been scheduled
25 yet.

1 ZC VICE CHAIR MILLER: Okay.

2 CHAIRPERSON HILL: All right. All right, Mr. Moy.
3 Let's do 11/29/2023.

4 MR. MOY: Okay. Very good.

5 CHAIRPERSON HILL: And if the Board will indulge me in
6 a quick five minute break I will be right back.

7 (Break.)

8 CHAIRPERSON HILL: Okay, Mr. Moy. You may call our
9 first hearing case when you have a moment.

10 MR. MOY: Okay. This is the first case in the Board's
11 public hearing session and this is Application No. 20591 of Round
12 Trip Properties, LLC. This is an amended self-certified
13 application pursuant to Subtitle X, § 901.2 for the following
14 special exceptions. Subtitle U, § 320.2 to allow the conversion
15 of an existing residential building into an apartment house.
16 Subtitle U, § 301.1(e) to allow use of an accessory building as
17 a dwelling unit, Subtitle E, § 204.4 from the rooftop
18 architectural feature requirements of Subtitle E, § 204.1 and
19 under Subtitle E, § 5201, the accessory building area
20 requirements of Subtitle E, § 5003.1, the rear yard requirements
21 of Subtitle E, § 5004.1 would allow the location of an accessory
22 structure in a required rear lot. Property located in the R-F-
23 1 zone at 3646 13th Street, N.W., Square 2828, Lot 820 and as
24 you'll recall this was last heard by the Board at its hearing on
25 September 27th, 2023 and continued to today October 4th for

1 supplemental information from the Applicant, and that's all I
2 have for the moment. Thank you, sir.

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

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

6 MR. TERAN: Good morning, Chairman Hill. My name is
7 Eric Teran. I'm the architect for the owners.

8 CHAIRPERSON HILL: Good morning, Mr. Teran. Let's see.
9 So, Mr. Teran, before you get started I just want to point out
10 to the Board we did get some information from ANC 1A. I think
11 this might have been in the record again before but it's there
12 now again and it seems to me that there was -- the ANC says that
13 they were in support if there was a written agreement put in
14 place, but I don't necessarily see that if there was a written
15 agreement in place they're necessarily not in support.

16 I know that there is some discussions going on with the
17 neighbor concerning the solar which is something that I would
18 like the Applicant to clarify since the last hearing what has
19 gone on and, Mr. Teran, if you could just explain to the Board
20 what has happened since the last hearing and what you guys have
21 put in the record, and I'll turn it over to you.

22 MR. TERAN: Thank you. Yes. We have been speaking to
23 the adjacent owner. They did reach an agreement last night. I
24 did email Mr. Moy and Ms. Thomas. Since it was around midnight,
25 so I don't know if that will still be part of the record.

1 But regardless of that, you know, we don't think it's
2 - I put a letter on Monday into, you know, I logged it in. We
3 don't think it's really a BZA issue because we're not asking for
4 relief to cover more than five percent. So we believe it's more
5 of a Building Department issue where we're going to adhere to
6 that with the neighbor or else they're not going to give us a
7 permit or they're going to tell us to come back to you and seek
8 that relief.

9 So we're not seeking any type of relief from that where
10 we could cover more than five percent. So that's how we feel
11 about that topic but regardless, the owner did reach an agreement
12 with the owner last night and I did email that, and so that was
13 --

14 CHAIRPERSON HILL: (Indiscernible).

15 MR. TERAN: -- that was the solar issue.

16 CHAIRPERSON HILL: Let me just, before you move on, if
17 you could go ahead and add that to the record and we will keep
18 the record open for that information. Go ahead and speak to the
19 other issues that the Board had put forward for you.

20 MR. TERAN: Oh, sure. The other issue was the removing
21 the rooftop element, the mansard roof, and we prepared some
22 graphics so I don't know, if it's Mr. Young, if you could bring
23 that up, please. It was like the last thing that we submitted
24 on Monday.

25 CHAIRPERSON HILL: It might be Exhibit 50. Yes, Exhibit

1 50.

2 MR. MOY: Is that the correct exhibit number, 50, Mr.
3 Chairman?

4 CHAIRPERSON HILL: Yes. Yes. Exhibit 50.

5 MR. MOY: Okay. So that is in the record then.

6 CHAIRPERSON HILL: Yes. But if you can put the
7 information that the Applicant had just spoke about the agreement
8 with the neighbor concerning the solar. Mr. Teran, did you
9 already submit that?

10 MR. TERAN: No, I just emailed it to Mr. Moy and Ms.
11 Thomas. I can --

12 MR. MOY: Okay.

13 MR. TERAN: -- (indiscernible) after we're done.

14 MR. MOY: Okay. I'm going to mention that because we
15 didn't have it, so if you do that then staff will upload it into
16 the case record now as soon as they receive it.

17 CHAIRPERSON HILL: Okay. That would be good. Thank
18 you.

19 MR. TERAN: If we can go to the next page, please, Mr.
20 Young? So this is the whole block of 13th Street. You can see
21 on the top photo the different types of characters of the facades.
22 Our property is the very --- to the very far to the right in red
23 where it says subject property. You know, as you can see the
24 only two houses on that side of the block that have a mansard
25 roof are the last two which is ours and the immediate neighbor

1 to the right. All the other ones are different characters and I
2 would agree with the neighbor that went on last week to be more
3 in style of the other with 12 to 15 homes to the left of us
4 because that is a defining characteristic of the block. However,
5 I believe the mansard roof that we have and the house right next
6 door is not really a defining characteristic on this block. It's
7 only these two homes.

8 If you look down on the other photo it's what's across
9 the street and, once again, it is there's various different types
10 of facades and there is some similarities between three or four
11 or five, six homes with some modern mixed in in the middle. I
12 mean, it is eclectic. It's not just one, you know, strong feature
13 of the whole street. So that's one of the reasons why we feel
14 it's not, that we're not removing a rooftop element that defines
15 a characteristic of this block or a row of homes.

16 Next slide, please. And here once again, that's the
17 subject property, the second house there on the left with the
18 mansard roof and we're just kind of putting out some of the
19 elements that are to the left of us with the mansard roof, or I
20 mean, the cornices, the bays, large front windows and that's kind
21 of what we're trying to emulate and we'll see that in I think
22 the last slide.

23 But if we go to the next slide, please. And once again,
24 just showing what's directly across the street from the subject
25 property. Just showing some cornices, the little bit bigger

1 window, the porches as well.

2 Next slide, please. This is what we're proposing where
3 we've changed. You'll probably be able to see it better in the
4 next slide but we have added cornices to the top and to the porch
5 roof and we have that porch, we have a large front window, then
6 we have the bay. We would also change some of the brickwork that
7 you see under the window to kind of match with what's adjacent
8 and given that brickwork but at the headers (phonetic) as well.

9 Next slide, please. I mean, and this was just to get
10 to that question last week just about the height difference from
11 the top of the turret and the top of the neighboring structure.

12 Next slide. And so this is what we would be proposing.
13 It's a modern take obviously on the block and we can see the sill
14 underneath the windows. It kind of matches up with the sill of
15 the neighbors. It would have the headers as well and the cornices
16 and the bays, you know, complimenting what's there in a modern
17 take and, once again, as I mentioned at the beginning it's only
18 one of two houses that has the mansard roof on the entire block
19 on both sides and we feel it's not an architectural element or
20 defining characteristic of the block, and with that I'll be happy
21 to answer any questions.

22 CHAIRPERSON HILL: Thank you, Mr. Teran. Do my fellow
23 Board members have any questions of the Applicant? Mr. Smith?

24 COMMISSIONER SMITH: I have one. Thank you, Mr. Teran,
25 for providing that narrative that the Board asked for last week.

1 I do have one question and you kind of brought it up about the
2 height. What is the height of the building between the turret
3 to the rest and the roofline? I'm not talking about the bay but
4 the primary roofline of the building. I did see in the graphic
5 that you have some dimensions but it doesn't show the
6 differential, what's the height differential? You're on mute.
7 Sorry.

8 MR. TERAN: Mr. Young, can we go back to the second
9 last or third last slide, please? (Indiscernible) the top of the
10 roof of that kind of turret of the house to the south and then
11 the top of ours I want to say is about eight feet, nine feet,
12 which is basically, you know, a new third floor addition.

13 COMMISSIONER SMITH: Okay. You don't have to pull it
14 up, you don't have to pull it up.

15 The last question I have is what is the materials used
16 for the bay?

17 MR. TERAN: It's going to be a wood-like finish. The
18 one I've been using lately is a fiber cement board which actually
19 -- give me one second. Looks like that.

20 COMMISSIONER SMITH: Ah, okay.

21 MR. TERAN: (Indiscernible) wood with some grooves, but
22 it's made out of fiber cement for, you know, easier to maintain,
23 lasts longer.

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

25 MR. TERAN: Thank you.

1 CHAIRPERSON HILL: Commissioner Miller, do you have
2 anything?

3 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman and
4 thank you, Mr. Teran, for providing the additional information
5 on the solar issue and for providing these renderings showing the
6 context of the site in the block, both just on the side of the
7 block that it's on and across the street and I appreciate you
8 have made a -- the OP had recommended a stronger cornice element
9 and I was in support of that, as I think others on the Board
10 were, and I appreciate you did make a change to have a stronger
11 cornice element both at the roof and at the porch. Is that
12 correct?

13 MR. TERAN: Correct.

14 ZC VICE CHAIR MILLER: And I would have preferred if
15 you had also included a setback up there just to, and I think it
16 would have helped strengthen the meeting the criteria concerning
17 the character of the block and the neighborhood. But I think
18 the change to the cornice and the cornices, the addition of the
19 cornices and the change to the material under the windows is
20 helpful and I think I am comfortable enough to support it, noting
21 I think in this case we do have, as the Chairman has noted, the
22 ANC support.

23 Thank you.

24 CHAIRPERSON HILL: Thank you, Commissioner Miller. Ms.
25 Thomas, are you there?

1 MS. THOMAS: Yes. Good morning, Mr. Chair. Karen
2 Thomas for the Office of Planning.

3 CHAIRPERSON HILL: Thanks, Ms. Thomas. I just wanted
4 to go through the motions of what the hearing is. Is there
5 anything you would like to add or is there anything you need to
6 say?

7 MS. THOMAS: No. I think at the end that we have set
8 aside that the Applicant that has put in place some sort of
9 agreement with respect to the solar and we believe that the
10 cornice provides more texture to the building which is supportive
11 of the character of the row elements. So we would still be in
12 support of that.

13 CHAIRPERSON HILL: Okay. Great. Thank you. Mr. Young,
14 is there anyone here wishing to speak?

15 MR. YOUNG: Yes, we have one witness signed up.

16 CHAIRPERSON HILL: Oh, great. Want to go ahead and let
17 me know who that is.

18 MR. YOUNG: That is Benjamin Levy.

19 CHAIRPERSON HILL: Okay. Mr. Levy, can you hear me?

20 MR. LEVY: Good morning, yes.

21 CHAIRPERSON HILL: Could you introduce yourself for the
22 record, Mr. Levy?

23 MR. LEVY: Yes, there I am. Benjamin Levy. I'm a n
24 officer of Roundtrip Properties, LLC which is the owner of the
25 property at 3646 13th Street, N.W.

1 CHAIRPERSON HILL: Oh, you're the owner?

2 MR. LEVY: I'm the owner of Roundtrip Properties, LLC
3 which is the owner of the property, yes.

4 CHAIRPERSON HILL: Okay. So you're not a witness?

5 MR. LEVY: No, I'm not a witness that's part of the
6 Applicant's team, no.

7 CHAIRPERSON HILL: Okay. So, Mr. Young, is there anyone
8 here else wishing to speak?

9 MR. YOUNG: No, we do not.

10 CHAIRPERSON HILL: Okay. Great. All right. Okay.
11 Mr. Teran, do you have anything to add at the end?

12 MR. TERAN: No, sir.

13 CHAIRPERSON HILL: Okay. I'm going to go ahead and
14 close the hearing and the record. Thank you, gentlemen. I hope
15 you guys have a nice day.

16 MR. TERAN: Thank you.

17 CHAIRPERSON HILL: I appreciate my fellow Board
18 members' questions from the last time. I think that the design
19 is better and I would agree with the suggestions that my
20 colleagues have put forward last time.

21 I was satisfied with the previous design and also the
22 analysis that the Office of Planning have provided as well as
23 that of the ANC concerning the project. I do think they meet
24 the criteria for us to grant the requested relief and I also note
25 that the solar issue, I appreciate the clarity now that has been

1 provided about the solar which under D 208.1(c) it seems as though
2 the zoning administrator is someone who would determine if the
3 solar relief is triggered and that would be something that would
4 be coming before the Board. So I did learn that during this
5 hearing. Other than that I am satisfied with the application and
6 I'll be voting to approve.

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

8 COMMISSIONER SMITH: I'd like to thank the Applicant
9 for providing the plans and really listening to us as well as,
10 you know, some of the concerns that was raised during the public
11 hearing regarding the design, questions about it showing that the
12 proposed design is in keeping with the special exception
13 standards that we have to use (indiscernible) and particularly
14 5201.4.

15 I do believe given the changes that were made as well
16 as the architectural, the front façade and graphics that were
17 provided by the Applicant that they have successfully told a
18 story on how this particular design does relate to the existing
19 character that's seen along that street. This is one of two
20 properties along that block on both sides of the street that has
21 mansard roofs. Everything else has a flat roof, either flat roof
22 with bays or has a turret and they decided to (indiscernible) the
23 design of the buildings that have flat roofs and protruding bays
24 but with the modern design. The modern design (indiscernible),
25 I just wanted a more robust explanation on how they meet the

1 special exception standards that essentially I described and I
2 do believe that they meet the, while there is a substantial --
3 where there's an eight foot difference between the turret and the
4 primary roof, not saying anything about the bay, the proposed
5 building is within the maximum height limits that's allowed for
6 that zone and I do not believe that based on the design, because
7 they are bringing in the existing design elements along that
8 block that it would not overwhelm or substantially change the
9 character along that street.

10 So I do believe that have met the standards for us to
11 grant the special exception and will support the application.

12 CHAIRPERSON HILL: Thank you. Vice Chair Miller.

13 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. I
14 concur with both of your comments and just would reiterate my
15 previous comment that the stronger cornice elements help
16 strengthen the meeting that criteria regarding the keeping in
17 character with the block. As I said I would have preferred also
18 if the setback were added.

19 I also appreciate, I'm not sure we mentioned it today,
20 we might have mentioned it at the hearing, but the retention of
21 the front porch is important as part of the character of that
22 block as well. So I'm prepared to support it.

23 Thank you.

24 CHAIRPERSON HILL: Thank you. I'm going to go ahead
25 and make a motion then to approve Application No. 20951 as

1 captioned and read by the Secretary and point out that these are
2 approval of the revised plans as put forward in Exhibit 50, and
3 as for a second. Mr. Smith?

4 COMMISSIONER SMITH: Second.

5 CHAIRPERSON HILL: The motion is made and second. Mr.
6 Moy, if you could take a roll call?

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

11 Zoning Commissioner Vice Chair Rob Miller?

12 ZC VICE CHAIR MILLER: Yes.

13 MR. MOY: Mr. Smith?

14 COMMISSIONER SMITH: Yes.

15 MR. MOY: Chairman Hill?

16 CHAIRPERSON HILL: Yes.

17 MR. MOY: With no other Board members, staff would
18 record the vote as three to zero to two and this is on the motion
19 made by Chairman Hill to approve. The motion to approve was
20 second by Mr. Smith. In favor of the motion to approve Zoning
21 Commissioner Rob Miller, Mr. Smith, Chairman Hill, the motion
22 carries, sir. Three to zero to two.

23 CHAIRPERSON HILL: Thank you, Mr. Moy. Mr. Moy, you
24 may call our next case when you have an opportunity.

25 MR. MOY: The next case before the Board is Application

1 No. 20936 of Ivone Gopaul, I'm sorry if I'm mispronouncing the
2 name but I'll spell it, I-V-O-N-E G-O-P-A-U-L. This s a self-
3 certified application pursuant to Subtitle X, § 901.2, special
4 exception under Subtitle E, § 5201 from the lot occupancy
5 requirements of Subtitle E, § 210.1. Property is located in the
6 RF-1 zone at 147 U Street, N.W., Square 3115, Lot 29.

7 The other fact for you, Mr. Chairman, is that there are
8 four documents that were filed within the 24 hour block. One
9 is, and they're all from the Applicant, one was the Motion to
10 Waive the Filing Deadline and there's a submission of sun studies
11 and the Affidavit of Posting and Affidavit of Maintenance. So
12 that's before you.

13 CHAIRPERSON HILL: Okay. Unless the Board has any
14 issues, Mr. Moy, if you could please add all those items into
15 the record so the Board can take a look and while that is
16 happening if the Applicant can hear me, if they could introduce
17 themselves for the record?

18 MR. STARR: Yes. My name is Matt Starr. I'm the
19 architect for Applicant Ivone Gopaul of 147 U Street, N.W., BZA
20 case 20936.

21 CHAIRPERSON HILL: Great. Thank you, Mr. Starr, and
22 welcome. Let's see. Mr. Starr, if you want to walk us through
23 your client's application and why you believe they're meeting the
24 criteria to grant the relief requested. I'm going to put 15
25 minutes on the clock so I know where we are, and you can begin

1 whenever you like.

2 MR. STARR: Absolutely. Is it in my position to share
3 the presentation?

4 CHAIRPERSON HILL: No. Mr. Young, could you pull up the
5 PowerPoint presentation that I believe is in Exhibit 33?

6 MR. STARR: Yes. Next page. We're seeking special
7 exception for the relief of lot occupancy from 60 to 70 percent
8 in order to build an addition not to exceed ten feet from the
9 adjacent property's rear walls within RF-1 zoning. All of the
10 conditions of the zoning code are proposed to be met and I'll be
11 happy to share the presentation.

12 The location of the site is in the Bloomingdale
13 neighborhood. We have support from both the Bloomingdale Civic
14 Association as well as the local ANC. The site is 1st and U
15 roughly, between 1st and 2nd and U in, as I mentioned, the RF-1
16 zone.

17 Next slide. This is the existing exterior of the home,
18 front view, front elevation. No proposed changes other than
19 cosmetic at this location.

20 Next slide. This is the rear of the home. The
21 Applicant has lived in the home for about 40 years. Her entire
22 family was raised there and she intends to continue living there.
23 You can see that currently the rear of the home as well as much
24 of the inside is in need of significant repair. The renovations
25 to include the entirety of the home inside of the home as well

1 as the aforementioned ten foot addition.

2 You can see that to the west, this is a north facing
3 elevation by the way, to the west of the home the fully attached
4 rowhome is flush and to the east of the home you can see that
5 there's a three foot court as well as an adjacent three foot
6 court and then a similar flush condition of the east neighbor.
7 So about six feet of separation between the two homes at that
8 location.

9 Next slide. This zoning study here illustrates the
10 property line. The existing home does have a covered porch that
11 is non-contributing. We intend to remove that and add, if you
12 include that into the initial study, we intend to add on the 65
13 square feet but roughly it is about 100 square feet of the new
14 addition. So therefore that increases our covered total
15 occupancy to 70 percent covered but we still maintain our minimum
16 20 foot setback and we still maintain our ten foot max permitted
17 addition from the adjacent neighbors and the court remains at
18 three feet.

19 Any questions? Next slide.

20 CHAIRPERSON HILL: Yes, and Mr. Starr, go ahead and run
21 through your whole presentation, then I'll see if the Board has
22 any questions of you.

23 MR. STARR: Okay. As you can see here, this is
24 illustrating a three floor plans basement, first floor and second
25 floor. At the basement level we intend to add an additional

1 bedroom. Basically the intent of the addition is to provide a
2 contemporary setting of the interior setting basically so that
3 we can provide two separate bathrooms at the top floor and an
4 additional bathroom at the basement level, as well as improve the
5 kitchen area. So at the basement level we're including that
6 aforementioned bedroom. At the first floor level we're including
7 a new kitchen and dining area as well as stairs down to the rear
8 yard and at the second floor level we are including the additional
9 or not the additional bedroom, it is a replacement of a bedroom
10 but in doing so in adding the addition it permits us to add that
11 second bathroom to the top floor.

12 Next slide. These are the rear elevations. To the
13 left of the blue line in the east side elevation is a masonry
14 structure. To the right side is the new addition. We intend to
15 use a simple Hardie siding whether it's a vertical or horizontal
16 siding we haven't determined yet, but generally speaking the trim
17 and the siding are of a very typical fashion, not particularly
18 anything materialistically unique.

19 To the north elevation you can see some additional
20 windows and doors, the doors to the kitchen as well as to the
21 basement level and on the west side you can see that the property
22 line wall without any punched openings due to proximity to the
23 adjacent neighbor.

24 Next slide. Here we're seeing in axon the additional
25 itself relative to the existing condition. As I mentioned, there

1 is a six foot deck and stair added on the rear that will remove
2 to the addition.

3 Next slide. This is the same circumstance just taken
4 from the northwest.

5 Next slide. And this is a perspective of the rear
6 elevation taken from the neighbor's yard just for clarity, and
7 that is the end of the initial presentation.

8 CHAIRPERSON HILL: Mr. Starr?

9 MR. STARR: Yes.

10 CHAIRPERSON HILL: You have some testimony into the
11 recorded from neighbors and were both adjacent neighbors in
12 support?

13 MR. STARR: No.

14 CHAIRPERSON HILL: Okay.

15 MR. STARR: We only learned yesterday, well as of
16 September 30th we received notification that the neighbor at 145
17 U Street, which is the neighbor to the east, has -- and one that
18 is separated by a court, has since reneged on her initial, the,
19 you know --

20 CHAIRPERSON HILL: So basically I'm just looking at
21 your solar study. I'm trying to understand which neighbor's
22 which.

23 MR. STARR: Right. As you're facing the north elevation
24 it would be the one that's separated by the courts to the east,
25 to your left side.

1 CHAIRPERSON HILL: Got you. Is that 145?

2 MR. STARR: That's 145, yes.

3 CHAIRPERSON HILL: Okay. So 1:45 isn't in support and
4 you got support from 149?

5 MR. STARR: We have basic indifference. We have -- she
6 only communicated through -- she would only communicate through
7 text message and her final statement was, and I summarized here
8 and I have it in writing as an affidavit from the Applicant if
9 you'd like me to, because just to back track. We have been
10 pursuing these letters of support from them with diligence since
11 May, as best as I understand. The neighbor at 145 to the east
12 recently purchased the house in June. The BZA posting was listed
13 then. As I mentioned, we were diligently pursuing their letters
14 of support and it was only on September 30th, four days ago, five
15 days ago where we got any feedback that was to the negative for
16 145 and then for 149 which is the one that you were just asking
17 about, Mr. Chairman, we only received text messages and her
18 support in summary was -- forgive me, I have it pulled up, I will
19 read it verbatim. It says,

20 "As I said before, as long as it is someone who is
21 experienced with historical houses and doesn't cause any damage
22 to my property I don't have a problem."

23 CHAIRPERSON HILL: I see that one, I see that one in
24 the record. I think that's in -- I think it's, yes, is that
25 Gopaul?

1 MR. STARR: That was -- is it under the letterhead of
2 Gopaul, yes.

3 CHAIRPERSON HILL: Yes. That's Gopaul. Okay. I see
4 that person. And then about, is it 210 that backs up against.
5 Have you heard from them?

6 MR. STARR: 210?

7 CHAIRPERSON HILL: Eden Place.

8 MR. STARR: She has heard from them. They did not
9 submit a letter. Their complaint was largely associated with
10 construction noise.

11 CHAIRPERSON HILL: Okay.

12 MR. STARR: Which we felt was a -- which we felt was a
13 DOB issue.

14 CHAIRPERSON HILL: Okay. And then who, is that 210
15 property, does that go all the way through behind 149?

16 MR. STARR: It goes behind 145, yes it does go behind
17 149. The residential structure though goes behind 145 and partly
18 behind 147 before it sets back to a court.

19 CHAIRPERSON HILL: Right. But then there is another
20 portion of 210 that that goes behind 149?

21 MR. STARR: Yes.

22 CHAIRPERSON HILL: Okay. And then how did, I mean you
23 got ANC support, how did the ANC meeting go?

24 MR. TARR: Well. I mean, you know their comments were,
25 we had support from, tried to obtain support from the neighbors

1 and at the time we were understanding that we had support from
2 the neighbors. The other neighbors, you know, immediately not
3 adjacent --

4 CHAIRPERSON HILL: The only solar study you have is in
5 Exhibit 34?

6 MR. STARR: That's correct. We prepared that when we
7 found on September 30th that the neighbor to the east, 145, her
8 major concern is light and air. She supports the project in
9 principle up to the top of the first floor, so eliminating a
10 second floor. However eliminating the second floor is what is
11 practically the most important to us because of Ivone's family
12 and the need for two bathrooms on the second floor.

13 CHAIRPERSON HILL: Sure. I understand and actually I
14 appreciate the fact that this person lived there for 40 years
15 which is a long time to be in the city. Let's see.

16 Do my fellow Board members have any questions of the
17 Applicant? Fine. I'm going to turn to the Office of Planning.
18 Maybe they will later. Can I hear from the Office of Planning,
19 please?

20 MR. LAWSON: Good morning, member of the Board and
21 Chair. Joel Lawson representing the office of Planning for this
22 case.

23 The Office of Planning submitted a report in support
24 of this application. We stand by that report and note that the
25 proposed addition would be well under the permitted height in

1 | this zone. It provides the -- it's within the amount of rear
2 | addition that's permitted by-right and it would provide the
3 | required rear yard. The relief of course is for lot occupancy.

4 | So with that, we're happy to stand on the record and
5 | I'm available for questions. Thank you.

6 | CHAIRPERSON HILL: Okay. Does anybody have any
7 | questions for Mr. Lawson? Okay. Mr. Young, is there anyone here
8 | wishing to speak?

9 | MR. YOUNG: We do not.

10 | CHAIRPERSON HILL: Okay. Let's see. All right. Then
11 | I guess Mr. Miller and/or Mr. Smith, is there any questions that
12 | you have for anyone? Okay. Mr. Starr, then I will ask you if
13 | you have anything you'd like to add at the end?

14 | MR. STARR: No. I appreciate your time and review of
15 | this matter.

16 | CHAIRPERSON HILL: Okay. I'm going to close the hearing
17 | and the record. May I ask one of my other fellow Board members
18 | to begin? I'd be interested in hearing you all's thoughts.

19 | MR. SMITH: All right. Yes, I'll go. So I feel like
20 | the Applicant has met the burden of proof for us to grant this
21 | particular special exception. The proposed addition would extend
22 | ten feet beyond the rear wall of the abutting building. While
23 | it's located within the buildings in the historic district, I do
24 | believe that the proposed design and character, the proposed
25 | design is in keeping with the character of the surrounding

1 properties.

2 I did take a look at the sun study. I do believe that
3 the Applicant, based on the sun study, the proposed impacts would
4 not have an undue impact on the adjacent properties. The property
5 owner to the east as stated by the Applicant did have some
6 concerns about light and air but they are to the east so they
7 would not be as heavily impacted by light given the direction at
8 sunset. So I do believe that she would not have a substantial
9 undue, it wouldn't have a major impact on her property.

10 I will note that the ANC is in support of the
11 application and I do believe they've met the burden of proof for
12 us to grant the special exceptions under Subtitle E, § 5201 and
13 will support the application.

14 CHAIRPERSON HILL: Thank you. Vice Chair Miller?

15 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman and
16 thank you Board Member Smith for articulating that the --
17 elaborating on how the application meets the criteria for the
18 relief for lot occupancy that's being requested and as the Office
19 of Planning noted in their letter of, in their memo supporting
20 the testimony today the project proposal otherwise meets all the
21 development standards including well within the height no change
22 of 22 feet where 35 feet's allowed and doesn't extend beyond the
23 adjacent properties more than ten feet. So that's matter-of-
24 right, and as Board Member Smith pointed out we have the ANC's
25 document of support at Exhibit No. 32 and where they note that

1 the Applicant had presented to Bloomingdale Civic Association as
2 well and the ANC is representing that no objection was received
3 by that Civic Association to this project.

4 So I'm ready to move forward, Mr. Chairman. Thank you.

5 CHAIRPERSON HILL: Thank you. All right. I don't have
6 anything to add. I appreciate you all taking the lead on this
7 one. I'm going to go ahead and make a motion to approve
8 Application No. 20936 as captioned and read by the Secretary and
9 ask for a second. Mr. Smith?

10 COMMISSIOENR SMITH: Second.

11 CHAIRPESRON HIL: Motion made and seconded. Mr. Moy,
12 could you take roll call, please?

13 MR. MOY: If you'll please respond to the motion made
14 by Chairman Hill to approve the application. The motion to
15 approve was second by Mr. Smith.

16 Zoning Commission Vice Chair Rob Miller?

17 ZC VICE CHAIR MILLER: Yes.

18 MR. MOY: Mr. Smith?

19 COMMISSIONER SMITH: Yes.

20 MR. MOY: Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: With no other members, staff would record the
23 vote as three to zero to two and this is on the motion made by
24 Chairman Hill to approve. The motion to approve was second by
25 Mr. Smith. Those in support to approve the application is Zoning

1 Commission Vice Chair Rob Miller, Mr. Smith and Chairman Hill.
2 Motion carries, sir, on a vote of three to zero to two.

3 CHAIRPERSON HILL: Thank you, Mr. Moy. All right, Mr.
4 Moy, you can call the next one when you get an opportunity.

5 MR. MOY: The next case before the Board is Application
6 No. 20952 of Peter K. Akinsanya A-K-I-N-S-A-N-Y-A and Julianah
7 Akinsanya. This is an amended application pursuant to Subtitle
8 X, § 901.2 for a special exceptions under Subtitle E, § 207.5 to
9 allow a rear wall to extend further than ten feet and Subtitle
10 E, § 204.4 from the rooftop architectural elements, provisions
11 of Subtitle E, § 204.1 are relocated in the RF-1 zone at 727
12 Irving Street, N.W., Square 2891, Lot 78 and the one other note
13 I have for you, Mr. Chairman, is that the Applicant filed revised
14 architectural plans within the 24 hour block so I haven't looked
15 at it so I don't know exactly what was changed.

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

17 All right. Unless the Board has any issues I would
18 like to see what it is that the Applicant is putting forward and
19 so if the staff could please drop those into the record, that
20 would be helpful. Thank you.

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

23 MR. GUYIT: Good morning members of the Board. My name
24 is Longben Guyit. I'm a representative for Peter and Julianah
25 Akinsanya, owners of 727 Irving Street, N.W., D.C.

1 CHAIRPERSON HILL: Okay. Mr. Guyit --

2 MR. GUYIT: Uh-huh.

3 CHAIRPERSON HILL: -- are you the architect?

4 MR. GUYIT: Yes, I am, sir.

5 CHAIRPERSON HILL: Okay. Just give me one minute, Mr.
6 Guyit. Mr. Guyit, I'm just waiting for these planning things to
7 get dropped into the record here.

8 MR. MOY: They should be there now, sir.

9 CHAIRPERSON HILL: ;Okay. Great. I see them. Thank
10 you.

11 Okay, Mr. Guyit. A couple of things before you begin.
12 First of all, what I'd like you to do is go ahead and walk us
13 through your client's application and why you believe they're
14 meeting the criteria for us to grant the relief that you're
15 requesting. One item of note is that you're asking for a rooftop
16 architectural element provision that you're replacing the rooftop
17 architectural element and I don't see in your previous plans nor
18 the revised plans that you're removing that mansard roof round,
19 I don't know if it's a mansard, but the architectural rooftop
20 element and that you're providing the required three foot
21 setback.

22 So the Board doesn't believe t hat you, or at least I
23 don't believe, that you need this particular relief and so rather
24 than, if you would agree with that my analysis of this, then I
25 would ask that you remove that requested relief because it doesn't

1 seem like you need it. Would you agree with me or what are your
2 thoughts?

3 MR. GUYIT: No, I agree with you. That has been a
4 point of confusion since the beginning.

5 CHAIRPERSON HILL: Okay. All right. So then we're
6 going to go ahead and remove the requested relief under 204.4 to
7 replace the rooftop architectural element and in that case you
8 can go ahead and continue with your presentation, and you can
9 begin whenever you like. I'm putting 15 minutes on the clock so
10 I know where we are.

11 MR. GUYIT: All right. Than you, Mr. Chairman. So
12 as it stands right now we're seeking relief for one item.

13 So to begin I'd like to point out that the Akinsanya
14 family have been at this residence for the last 30 years or more.
15 Long term members of the community and as a family of six, they
16 have four kids ranging from the age of 17 to 28 and it goes
17 without saying that, you know, over time the needs of the family
18 has far exceeded the current residence. It's in desperate need
19 of severe renovations and upgrades if they intend to continue
20 living there.

21 So in order to do this they have proposed to do an
22 addition in the rear of the property which would extend 40 feet
23 into the rear yard which brings us to the item which we seek
24 special exception for which is the ten foot rule, a construction
25 for vertical addition that, sorry, a rear wall of a row building

1 constructed extending 40 feet beyond the furthest rear wall of
2 any adjoining principle resident building on any adjacent
3 property, any adjacent property.

4 I'd like to point out here that, you know, the reference
5 codes in our burden of proof statement has since changed since
6 this application was put in. It has recently been updated as of
7 a month ago and in the zoning code, just so to point that out.
8 But the rule is still the same.

9 So in order to satisfy the requirements for this
10 improvement, we provided some floor plans. If I could request
11 that the survey plat be brought up which would be Exhibit 11.

12 CHAIRPESRON HILL: Mr. Young, could you pull up Exhibit
13 11?

14 MR. GUYIT: And while he does that I'll continue. So
15 further, yes. So here you can see the survey plat. So what you
16 see in grey is the proposed mass of the building and it also ahs
17 a third floor roof deck. The current property has only two
18 floors. It has no basement. It is a brick construction. The
19 proposed addition in the rear would be a wood frame construction
20 with cementitious (phonetic) siding and so the concern of this
21 particular rule which we seek relief from is the light and air
22 availability, the privacy and use of adjoining neighbors and, you
23 know, the substantial visual intrusion of the character of the
24 building or the neighborhood.

25 So I'll begin with the first item with regards to light

1 and air available, you know. The building is a rowhouse meaning,
2 you know, all the windows are on the front and rear façade of
3 the building. There are no windows on the side at all. So the
4 addition actually would not be blocking any direct sunlight which
5 comes from the south sky to any windows for the neighbors and
6 with regards to ambient light from the north, the impact is
7 minimal as can be seen in the shadow studies when we get to it.
8 So we don't believe that, you know, it would be affecting the
9 light source for any of these buildings nor are we impeding any
10 direct access to air.

11 With regards to privacy, the same kind of applies.
12 There is no window or view that looks directly into any adjoining
13 neighbors just because we have wall aligned. So nobody has any
14 side windows, so everyone looks directly into their front yard
15 and to the back yard and we don't look directly into the neighbors
16 and we, you know, and we see that as just, you know, it's just
17 typical with every other structure in the neighborhood.

18 With regards to the character, obviously it's a very
19 imposing structure that extends into the rear yard. We have had
20 extensive meetings with our neighbors and we've had three
21 meetings with the ANC. We've shown them plans of what we -- it
22 would look like, if I can ask you to bring up Exhibit No. 24
23 which are the architectural plans for it, actually the most
24 recently updated plans.

25 CHAIRPERSON HOOD: You know, Mr. -- can you pronounce

1 our name again for me?

2 MR. GUYIT: It's Longben Guyit.

3 CHAIRPERSON HILL: Mr. Guyit? Mr. Guyit, let me do t
4 his. I have the architectural plans and your burden of proof.
5 Let me walk through this and see what my fellow Board members
6 would like to do in terms of questions.

7 Can I turn to the Office of Planning, please?

8 MR. KIRSCHENBAUM: Good morning, Chair Hill, and
9 members of the Board of Zoning Adjustment. I'm Jonathan
10 Kirschenbaum with the Office of Planning and we recommend
11 approval of the special exception relief for the rear wall
12 extension. Please let me know if you have any questions. Thank
13 you.

14 CHAIRPERSON HILL: Thank you. Mr. Young, is there
15 anyone here wishing to speak?

16 MR. YOUNG: We do not.

17 CHAIRPERSON HILL: Okay. Mr. Miller and Mr. Smith, I
18 know that Mr. Guyit, I'm sorry, is that how you pronounce it?

19 MR. GUYIT: Yes, you're right. Guyit.

20 CHAIRPERSON HILL: Okay. Mr. Guyit does not often come
21 before us and I know that the record is full and available for
22 us for review. Do you, Mr. Miller or Mr. Smith, have any
23 questions of Mr. Guyit?

24 ZC VICE CHAIR MILLER: No, I do not. Thank you.

25 CHAIRPERSON HILL: Mr. Smith?

1 COMMISSIONER SMITH: No, I don't.

2 CHAIRPERSON HILL: Okay. Mr. Guyit, I appreciate your
3 time. Is there anything you'd like to add at the end?

4 MR. GUYIT: No, thank you. We thank you for your time.

5 CHAIRPERSON HILL: Thank you, Mr. Guyit. I'm going to
6 close the hearing and the record.

7 Okay. I didn't particularly have an issue with this.
8 I was confused, or not confused, I didn't understand why they
9 were asking for the rooftop architectural element since they
10 weren't removing anything. I think that the fact that they are
11 setting back from the roof and they're keeping their
12 architectural elements eased my concerns about this and I didn't
13 really have any. I think they're meeting the criteria for us to
14 grant the relief requested.

15 I also am comfortable that the ANC has -- didn't have
16 any issues or concerns of their own. I do think that the
17 Applicant has gone through and done their due diligence with the
18 community and due to their burden of proof I would be able to
19 grant the relief requested.

20 May I ask for any comments you may have, Mr. Smith?

21 COMMISSIONER SMITH: I don't have any comments. I
22 agree with your assessment of this case especially given the
23 removal of one of the special exceptions for the rooftop
24 architectural elements. I do believe that the Applicant has met
25 the burden of proof and I'm inclined to support the application,

1 so I concur with your comments.

2 CHAIRPERSON HILL: Thank you, Mr. Smith. Mr. Miller?

3 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. I
4 concur with both of your comments and would just also note, if
5 it hasn't been noted before, I might have missed it, that I think
6 we have a form from ANC 1E at Exhibit No. 41 in which the ANC
7 states that, "The ANC recommends approval of the listed relief
8 including the rear addition. The application will not have an
9 undue adverse effect on the neighboring properties as
10 demonstrated by the shadow studies. The use of a courtyard
11 between the structures will allow for additional light and air
12 for neighboring back yards and properties," and so I, with the
13 Office of Planning's support as well noting that with the addition
14 it would still be within the maximum permitted height and yard
15 setback requirements established for the zone, I'm prepared to,
16 as the Office of Planning noted, I am prepared to support this
17 application.

18 CHAIRPERSON HILL: Thank you, Vice Chair Miller.

19 All right. I'm going to make ka motion to approve
20 Application No. 20952 as captioned and read by the Secretary and
21 ask for a second. Mr. Smith?

22 COMMISSIONER SMITH: Second.

23 CHAIRPERSON HILL: The motion is made and seconded.
24 Mr. Moy, if you could take a roll call, please?

25 MR. MOY: Before I do the roll call vote, Mr. Chairman,

1 I neglected to mention can we ask the Applicant to submit into
2 the record a revised self-certification where he removed that
3 relief 204.4 so I can have a complete record?

4 CHAIRPERSON HILL: Thank you. Could you reach out to
5 the Applicant and ask for that, Mr. Moy, or would you like me to
6 bring the Applicant back in?

7 MR. MOY: No, I can reach out to the Applicant, sir.

8 CHAIRPERSON HILL: Okay. If the Applicant could submit
9 a revised self-cert, that would be helpful.

10 MR. MOY: All right. Thank you, sir. So when I call
11 your name, if you'll please respond to the motion made by Chairman
12 Hill to approve the application for the relief requested. The
13 motion to approve was second by Mr. Smith.

14 Zoning Commission Vice Chair Rob Miller?

15 ZC VICE CHAIR MILLER: Yes.

16 MR. MOY: Mr. Smith?

17 COMMISSIONER SMITH: Yes.

18 MR. MOY: Chairman Hill?

19 CHAIRPERSON IHLL: Yes.

20 MR. MOY: We have no other Board members. Staff would
21 record the vote as three to zero to two and this is on the motion
22 made by Chairman Hill to approve. The motion to approve was
23 second by Mr. Smith. Voting to approve the application Zoning
24 Commissioner Rob Miller, Mr. Smith, and Chairman Hill. Motion
25 carries, sir, three to zero to two.

1 CHAIRPERSON HILL: Thank you, Mr. Moy. You can call
2 our next case when you get a chance.

3 MR. MOY: The next case before the Board is Application
4 No. 20954 of Gregory and Christine Hein H-E-I-N. This is a self-
5 certified application pursuant to Subtitle X, § 901.2, special
6 exception under Subtitle E, § 5201 from the lot occupancy
7 requirement of Subtitle E, § 210.1. Property is located in the
8 RF-1 zone at 202 10th Street, N.E., Square 969, Lot 22 and that's
9 all I have for you, sir.

10 CHAIRPERSON HILL: Thank you. If the Applicant can
11 hear me, if they could introduce themselves for the record.

12 MS. HEIN: This is Christine Hein.

13 MR. HEIN: Yes, and I'm Gregory Hein. We're both here.

14 MS. BOYETTE: And this is Melissa Boyette, the
15 architect and I'm going to be doing a presentation today.

16 CHAIRPERSON HILL: Okay. Ms. Boyette, if you want to
17 go ahead and walk us through your client's application and why
18 you believe they're meeting the criteria to grant the relief
19 requested. I'm going to put 15 minutes on the clock so I know
20 where we are and you can begin whenever you like.

21 MS. BOYETTE: Great. Thank you very much. Would it
22 be possible to pull the slide show up?

23 CHAIRPERSON HILL: Yes.

24 MS. BOYETTE: Great. Thank you very much. As you
25 know, this is an application for a rear addition at 202 10th

1 Street, S.E.

2 If you can advance the slide, please. The property is
3 located on the southeast of the intersection of Independence and
4 10th Street, S.E., two houses off of Independence. The house
5 address is actually on 10th Street so that's the property that
6 you see there, the little red dot. So the property just to the
7 north at 200 is and then the property just to the south is 202
8 and then 204, or sorry, and, you know, from that. I'm sorry, my
9 property is 202.

10 Next slide. So the project proposes to remove the
11 existing rear porches and to build a three story addition that
12 is six foot nine deep and includes a three foot deep projecting
13 balcony off of the main level. We're requesting special exception
14 to go from the existing lot occupancy of 64.4 percent to a
15 proposed lot occupancy of 69.6 percent.

16 Next slide, please. So this is a diagram that shows
17 the existing site plan. What you're seeing here is the roofline
18 of 202, 204 and actually 200 although 200 has had an addition,
19 they share a roofline and I'll show you that again especially in
20 the photos that will be a little bit more visible.

21 If you can go to the next slide, please. This is the
22 proposed site plan. So this is, north is to the left on this
23 diagram so the house at 200 10th Street is on the left and 204
24 10th Street is on the right, so their property is the one in the
25 middle with all the notes on it. So we are maintaining a 20 foot

1 rear yard setback. The dash line that you see that is just under
2 the text that says proposed balcony, that is the existing roofline
3 of what would have been existing porches some of which the
4 neighbors have both, or the neighbor to the north has enclosed
5 their porches and put on an addition but that's an existing
6 roofline that we are going to maintain but we will be extending,
7 the reason why we're asking for the additional lot occupancy is
8 we're going to extend the back wall of the house to that 20 foot
9 proposed rear yard setback and then add an additional small
10 balcony off to the back of the main level of the house. We are
11 also proposing a roof deck which is shown in this plan as well.

12 If you can go to the next slide, please. That roof
13 deck is held up three feet off of the side walls as well as three
14 feet off of what is the existing rear masonry wall at our
15 property.

16 Next slide. So these are photos. The photo on the
17 left shows the front of the house, again like I said 200, 204,
18 206 kind of the adjacent neighbors. There's a property at 1009
19 Independence which is behind the subject properties. We have
20 received letters of support from 1009 Independence as well as 206
21 10th Street. We have provided information to 200 and 204 but
22 have not received specific letters of support. 204 does not have
23 any concerns that they've mentioned. 200 does seem to have a
24 bit of concern about a bit of construction noise and that's an
25 issue that we will definitely address once we get to that point.

1 The sign on the right shows the rear of the property,
2 the subject property at 202. So, again, as you can see there's
3 a roofline that extends to the south and the north to encompass
4 both neighbors and we are going to retain that roofline but our
5 proposed rear will sit out slightly from that.

6 Next slide. These are the views from Independent
7 Avenue. Just some of the views. You can see at 208 10th Street,
8 S.E., has an addition that's actually quite similar to what we
9 are proposing but we are not going to sort of eliminate the
10 roofline, we are just going to add on to that.

11 Next slide, please. I'll quickly go through the plans
12 just so you can see. This is the existing plan and at the
13 basement there's a area where it goes to the basement level.

14 Next slide. On the main level there's a porch that
15 sits under that roof line that provides access to the rear yard.

16 Next slide. And on the second level there's also a
17 porch that's in quite a bit of disrepair that again sits under
18 the consistent roofline between the neighbors.

19 Next slide. This is the existing rear which the photo's
20 probably a little bit better but I provided a drawing of the rear
21 elevation.

22 Next slide. So the proposal is again a 20 foot rear
23 yard setback. At the basement level we're just going to extend
24 the areaway to enlarge it slightly to provide a little bit more
25 light and access to the basement level.

1 Next slide. At the first floor level the proposed six
2 foot nine rear addition which is the dimensions (indiscernible)
3 to the left of what is kind of you see the dining table there.
4 We are extending the rear portion of the house to provide a dining
5 room space. We will also be providing a three foot projecting
6 balcony at this level of three foot by eleven foot.

7 Next slide. And at the second level we are extending
8 the addition to that same planned six foot nine proposed rear
9 addition to maintain the 20 foot rear yard setback to extend the
10 bedroom space.

11 Next slide. This is just what we showed before, the
12 roof deck.

13 Next slide. This is the proposed rear elevation
14 showing the basement level, the doors to the areaway, the main
15 level with the projecting balcony and there will e some sort of
16 metal canopy over the projecting balcony but the metal canopy
17 will just be over the footprint of the balcony and then three
18 large windows at the bedroom level, the roof deck at the top
19 we're proposing to use the combination of snap board and Hardie
20 siding on the exterior façade.

21 Next slide. The next three slides show some diagrams
22 that we prepared for the ANC to show that the roof deck would
23 not be visible from 10th Street. So this is a site line across
24 from 10th Street and as you can see the roof deck drawn there on
25 top of the section of the house.

1 Next slide. This is the 3D model that we prepared
2 showing the roof deck and then the next slide you can see that
3 the deck is not visible from 10th, or sorry, Independence Avenue
4 as well.

5 So we are happy to answer any questions. We've received
6 approval from the ANC and Capitol Hill Restoration Society
7 provided information to the neighbors as required and the letters
8 of support I've included to the file.

9 Thanks for your time.

10 CHAIRPERSON HILL: Thank you. If I might first turn
11 to the Office of Planning and then I'll turn to my colleagues.

12 MS. THOMAS: Yes. Good morning, Mr. Chair, members of
13 the Board, Karen Thomas for the Office of Planning.

14 We are in support of the application. We have nothing
15 further to add beyond what's in our report and I would be happy
16 to take any questions.

17 Thank you.

18 CHAIRPERSON HILL: Thank you, Ms. Thomas. Does the
19 Board have any questions of the Applicant or the Office of
20 planning? Mr. Young, is there anyone here wishing to speak?

21 MR. YOUNG: We do not.

22 CHAIRPERSON HILL: Okay. All right. Ms. Boyette, do
23 you have anything you'd like to add at the end?

24 MS. BOYETTE: I do not. Thank you.

25 CHAIRPERSON HILL: Okay. Thank you. I'm going to

1 close the hearing and the record. Mr. Young, if you could please
2 excuse everyone.

3 Okay. I didn't have any issues with this application.
4 I thought it was actually pretty straightforward. I will note
5 the Office of Planning's recommendation and their analysis as
6 well as that of the ANC. I thought that the Applicant in their
7 burden of proof is meeting the argument for the relief requested
8 and I will be voting in favor of the application.

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

10 COMMISSIONER SMITH: I agree with your assessment. I
11 feel like the Applicant has met the burden of proof for us to
12 grant the special exceptions. I will note that the Capitol Hill
13 Restoration Society is also in support of this application and I
14 will leave it at that, Mr. Chairman, (indiscernible) in support.

15 CHAIRPERSON HILL: Thank you. Vice Chair Miller?

16 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. I
17 agree with both of your comments on this case and would just add
18 that we have the two letters of support from I believe 204 and
19 206 10th Street, S.E., and I guess we may also have something
20 from the adjacent property in the back on Independence Avenue.
21 We didn't have anything, I don't think, in the record from the
22 other abutting property owner at 200 but the Applicant stated
23 that they just wanted basically for the Applicant to be a good
24 neighbor during the construction and that's what we always expect
25 of Applicants and neighbors in our city.

1 So I'm prepared to move forward. Thank you, Mr.
2 Chairman.

3 CHAIRPERSON HILL: Thank you. All right. I'm going
4 to make a motion to approve Application No. 20954 as captioned
5 and read by the Secretary and ask for a second, Mr. Smith?

6 MR. SMITH: Second.

7 CHAIRPERSON HILL: The motion made and second. Mr.
8 Moy, could you take a roll call, please?

9 MR. MOY: When I call your name if you'll please respond
10 to the motion made by Chairman Hill to approve the application
11 for the relief requested. The motion to approve was second by
12 Mr. Smith.

13 Zoning Commission Vice Chair Rob Miller?

14 ZC VICE CHAIR MILLER: Yes.

15 MR. MOY: Mr. Smith?

16 COMMISSIONER SMITH: Yes.

17 MR. MOY: Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MR. MOY: With no other Board members, staff would
20 record the vote as three to zero to two and this is on the motion
21 made by Chairman Hill to approve. The motion to approve second
22 by Mr. Smith. In favor of the motion to approve Zoning
23 Commissioner Rob Miller, Mr. Smith, Chairman Hill. The motion
24 carries, sir. The vote I three to zero to two.

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

1 next case, Mr. Moy, when you get a chance and then you guys we'll
2 take one more quick break before we do the appeal, if that's all
3 right.

4 MR. MOY: The case before the Board is Application No.
5 20935 of Jeremy Emmert. This is advertised as amended, a self-
6 certified application pursuant to Subtitle X, § 901.2 for special
7 exceptions, Subtitle E, § 5201 lot occupancy requirements,
8 Subtitle E, § 210.1, rear yard requirements Subtitle E, § 210.1,
9 rear yard requirements Subtitle E, § 207.1 and Subtitle E, §
10 207.5 which would allow a rear wall of row building to extend
11 further than ten feet. Property located in the RF-1 zone at 16
12 Quincy Place, N.W., Square 3100, Lot 29 and that's all I have
13 for you, Mr. Chairman.

14 CHAIRPERSON HILL: Thank you. If the Applicant can
15 hear me, if they could introduce themselves for the record,
16 please.

17 MR. WEAVER: Yes. This is Robert Weaver. I'm the
18 architect for Jeremy Emmert, KGRW & Associates. Jeremy is on as
19 well. Jeremy, I don't know if you want to introduce yourself as
20 well.

21 MR. EMMERT: Hello. My name's Jeremy Emmert and I am
22 the Applicant so I'm here to answer any questions that you may
23 have.'

24 MR. WEAVER; Thank you.

25 CHAIRPEROSN HILL: Okay. Thank you, Mr. Emmert.

1 MR. MOY: Mr. Chairman?

2 CHAIRPERSON HILL: Yes. Go ahead, Mr. Moy.

3 MR. MOY: If I may, there was a last minute filing this
4 morning. I believe it was the Applicant's revised plans and
5 maybe if the Applicant can address that.

6 CHAIRPERSON HILL: Mr. Weaver, is that correct?

7 MR. WEAVER: Yes. It essentially was (indiscernible)
8 of drawings, photos and plat (indiscernible).

9 CHAIRPERSON HILL: Okay. So it wasn't any changes to
10 the plans necessarily?

11 MR. WEAVER: No.

12 CHAIRPERSON HILL: Okay. Mr. Weaver, you're kind of
13 cutting in and out but we'll see how it goes. I might ask you
14 to turn off your camera but we'll see, and I don't know if that's
15 going to do it or not. But, Mr. Weaver, if you want to walk us
16 through your client's application and why you believe they're
17 meeting the criteria for us to grant the relief requested. I'm
18 going to put 15 minutes on the clock so I know where we are and
19 you can begin whenever you like.

20 MR. WEAVER: Okay. If you can pull up the PDF
21 presentation.

22 A little bit of history briefly as to why we're here.
23 Actually --

24 CHAIRPERSON HILL: Mr. Weaver? Mr. Weaver?

25 MR. WEAVER: Yes.

1 CHAIRPERSON HILL: Is that presentation in the record
2 somewhere?

3 MR. WEAVER: Yes. I believe, and these are the three
4 exhibits combined. They were uploaded but they were after the
5 24 hours.

6 CHAIRPERSON HILL: Right. So that's what we're waiting
7 on.

8 MR. WEAVER: Okay.

9 CHAIRPERSON HILL: No, no, I'm asking you that's what
10 you recently submitted?

11 MR. WEAVER: Yes, correct.

12 CHAIRPERSON HILL: Okay. Okay. You can go ahead and
13 move forward.

14 MR. WEAVER: Okay. Thank you. Thank you guys for your
15 time this morning.

16 This application was actually approved two years ago,
17 case 20511. Same design, everything's the same. What happened
18 was a survey (indiscernible) incorrectly showed the size of the
19 rear yard --

20 CHAIRPERSON HILL: Mr. Weaver, you sounded really good
21 and then you didn't sound really good. Did you just do something?

22 MR. WEAVER: I didn't. Can you hear me now?

23 CHAIRPERSON HILL: I can hear you but you were really
24 loud a minute ago and now you're, maybe just talk closer to the
25 computer I guess.

1 MR. WEAVER: (Indiscernible) a lot closer. Sorry, can
2 you hear me?

3 CHAIRPERSON HILL: Yes.

4 MR. WEAVER: Okay. So the, what I was saying was case
5 20511 was previously approved two years ago, it's the same case.
6 What brings it today is a couple of logistical things. One is
7 that the survey, the base survey that was provided turned out to
8 be incorrect about the rear yard and what happened was the rear
9 yard included an abandoned seven and a half foot alley that the
10 entire block 50 years ago, whatever, they all assumed that into
11 their backyards.

12 So visually everything is the same as it was before but
13 we discovered that the rear yard was smaller and therefore we
14 needed to ask for more relief relative to the property line and
15 then secondly, the -- because of the rear yard being left, was
16 actually happened was that the existing building footprint was
17 greater which put it over the lot occupancy. So we're asking
18 for relief from lot occupancy to 70 percent as well, and then
19 the third item is one that we were going to be an expedited
20 hearing in July. That got postponed for, one reason was that
21 there was a logistical thing with the Department of Zoning in
22 terms of notification and so that had to delay it and then the
23 other thing was that the third portion, the ten foot setback of
24 the rear wall relative to other, you know, adjacent properties,
25 that was deemed that we should put that on the application. It's

1 been a grey area. I've tried to get clarity, I can't in writing
2 and so we've tagged that on this time around needing relief
3 although it's a covered porch and our understanding previously
4 was that it would not be required because it wasn't condition
5 space.

6 The Office of Planning also in their report indicated
7 they didn't think we needed relief for it but I reached out
8 multiple times, if I can get it in writing I don't want the
9 Applicant who's gone through it the second time here because of
10 a glitch on a survey, I don't want them to go through and get
11 approval again and then find out that the ten foot rule is being
12 enforced relative to a covered porch. So that's why that third
13 piece, and then the logistics of that runs that that forced it
14 to no longer be an expedited hearing but now has to be a public
15 hearing because that particular provision requires it to be a
16 public hearing.

17 So you can see the site plan to the right there. You
18 can see there's a line that's the property line that kind of
19 bisects the rear yard and so that's why we're asking for the
20 relief to (indiscernible), that's an eight foot setback instead.

21 The existing house is further than ten feet. It's 20
22 feet further than the property to the right. The covered porch
23 would extend it another four feet. We have, the ANC approved it
24 again. The Office of Planning also approved it and the
25 Bloomingdale Association, they emailed and said that they had

1 previously approved it. They didn't specifically
2 (indiscernible).

3 So next slide, please.

4 CHAIRPERSON HILL: Mr. Weaver, what's that last thing
5 that you said about the Bloomingdale Association?

6 MR. WEAVER: Scott Roberts just emailed and said that
7 they didn't take it up on their agenda because they had previously
8 approved it and that it was the same design.

9 CHAIRPERSON HILL: Okay. Thank you.

10 MR. WEAVER: So you'll see in the pink is where the
11 covered porch is. There's also an open deck and trellis area
12 that, with a spiral stair leading down to the garden. The owner
13 would like to have some outdoor space. There's currently a very
14 small back end stairs down and having some privacy with a covered
15 porch gives some protection from, you know, sun and the elements
16 --

17 CHAIRPERSON HILL: All right. Mr. Weaver, you can go
18 ahead and move through to that next slide if you like.

19 MR. WEAVER: Okay. Yes, please.

20 CHAIRPERSON HILL: (Indiscernible).

21 MR. WEAVER: And actually let's go to the next slide.
22 That's just showing the redone survey.

23 So, yes. There's an image of, he's looking for some
24 privacy. There is a PUD to the south and so some privacy there
25 and also the neighbor to the west in particular appreciated the

1 privacy screen at the trellis area to the left there. So it's a
2 combination of outdoor deck space, covered porch space with some
3 privacy and some shading. We've used slat walls to allow for,
4 you know, flow of air and we do have the neighbor to the left
5 and right in support of it. The neighbor to the right is aware,
6 has not responded but it's the same as, again, as it was, same
7 parties involved as two years ago.

8 Next slide. That's the site plan, lower and the upper
9 level.

10 Next slide. Elevations.

11 Next slide. In terms of existing photos, no changes
12 to the front which is the upper left photo. The two other upper
13 photos are the existing deck and stair down and existing rear
14 yard photos of, the bottom photographs and if you can go to the
15 next slide.

16 And views out the upper left of the view out to his
17 backyard. You can see it's nicely landscaped. It just happens
18 to be the property line (indiscernible) the back yard like it
19 does all the other neighbors from whatever, it's a dead end
20 abandoned alley that just never got changed on paper so everyone's
21 back yard includes this area. There's a neighboring back yard
22 there on the right and a couple more photos just showing kind of
23 looking sideways to either direction.

24 I'm happy to take questions of course. I don't want
25 to spend too much time going over unless you have questions

1 because it is the same design that we, you know, had been before
2 the Board before. It's really procedural on several different
3 levels that has brought us back here.

4 CHAIRPERSON HILL: Okay. Thanks, Mr. Weaver. Does the
5 Board have any questions of the Applicant? Okay. Can I turn to
6 the Office of Planning, please?

7 MR. JESICK: Thank you, Mr. Chairman and members of the
8 Board. My name is Matt Jesick and I can mostly rest on the record
9 of the written report.

10 I just wanted to say that we agree with Mr. Weaver
11 regarding the ten foot rule. Certainly in the past a project
12 like this would not have triggered the ten foot rule. Apparently
13 Mr. Weaver got different feedback from the Department of
14 Buildings and we did not want the Applicant to get stuck in limbo
15 again. So the Board could consider granting that relief just in
16 case they would need it at the time of permit. But the review
17 criteria are the same. It's § 5201 and therefore we can recommend
18 approval of that area of relief as well as lot occupancy and rear
19 yard.

20 I'll be happy to take any questions. Thank you.

21 CHAIRPERSON HILL: Thank you, Mr. Jesick. Does the
22 Board have any questions of the Office of Planning? Vice Chair
23 Miller.

24 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman, and
25 thank you to the Applicant for their presentation and to Mr.

1 Jesick for the Office of Planning report.

2 It's not really a question but maybe just a comment,
3 Mr. Jesick. To the extent that you, if the Office of Planning
4 could just look at the ten foot rule language and see if there
5 needs to be any clarification in the text to clarify that it would
6 not apply in this type of situation since he has gotten some
7 feedback as you said, as in he said, that may have been different
8 on that point. So if OP could just look at that and to the extent
9 there it needs to be clarified or if it is a grey area, the Zoning
10 Commission could take that up at some point when it's appropriate.

11 I don't think I have any other questions or comments
12 at this time. I think I was on this case two years ago when the
13 Board approved this five to zero but now that's not going for as
14 much relief and there have been these technical changes basically
15 or design changes rather that require a new application. So I
16 have no other questions, Mr. Chairman.

17 CHAIRPERSON HILL: Thank you, Vice Chair Miller. Mr.
18 Young, is there anyone here wishing to speak?

19 MR. YOUNG: Yes. You do have the Commissioner on.

20 CHAIRPERSON HILL: Oh, great. Would you please,
21 Commissioner, could you introduce yourself for the record,
22 please?

23 ANC COMMISSIONER LEWIS: Hi, how are you?

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

1 ANC COMMISSIONER LEWIS: Yes. My name is Karla Lewis.
2 I'm the Advisory Neighborhood Commissioner and Chair for ANC 5E
3 and this property is also within my Single Member District 5E 02.

4 CHAIRPERSON HILL: Okay, Commissioner Lewis. Would you
5 like to give us your testimony?

6 ANC COMMISSIOENR LEWIS: Yes. Basically the testimony
7 is what's written on the form 129. This is a neighbor of mine
8 and all of the neighbors are in agreement with these changes.
9 This application and the presentation has been presented several
10 times before the ANC. Last year it even was presented before
11 the Bloomingdale Civic Association as well as our Zoning
12 Committee and our Zoning Committee spoke with neighbors and
13 reviewed the case, and I guess the main reviewer there was Kirby
14 Vining who they approved, or they recommended approval of this
15 application and basically that there was nothing that, you know,
16 that, for the consideration of the special exception or variance
17 that they saw that was abnormal or needed any attention.

18 So the ANC voted again on this application to approve,
19 to approve it.

20 CHAIRPERSON HILL: Thank you, Commissioner Lewis. And
21 Commissioner Lewis, nice to see you.

22 ANC COMMISSIONER LEWIS: Thank you. Good to see you
23 too.

24 CHAIRPERSON HILL: We haven't seen you in a while.

25 ANC COMMISSIONER LEWIS: Yes.

1 CHAIRPERSON HILL: All right. Let's see. Does anybody
2 have any questions for the Commissioner? All right. Mr. Weaver,
3 do you have anything you'd like to add at the end?

4 MR. WEAVER: No. I appreciate your guys' time.

5 CHAIRPERSON HILL: Okay. I'm going to go ahead and
6 close the hearing and the record. Mr. Young, if you could excuse
7 everyone. Everyone please have a nice afternoon.

8 Okay. I thought that the Applicant did a good job of
9 explaining what had happened previously and where they are now.
10 I also thought the Applicant did a good job explaining their
11 burden of proof and I also don't have an issue regarding the rear
12 wall relief, just in case something comes up with it later. I
13 mean, I think that again it's, you know, whether it's a deck or
14 whatever with those slats and kind of enclosing it I guess might
15 make it a little bit vague and so I don't have any issues with
16 that as well.

17 I would agree with the analysis that the Office of
18 Planning had provided as well as it was kind of the Commissioner
19 to join us to provide the testimony. It's always nice to hear
20 directly from the Commissioners whether they're in favor or in
21 opposition and I appreciate that time that she took. I will be
22 voting in favor of this application. Mr. Smith, do you have
23 anything that you'd like to add?

24 COMMISSIONER SMITH: No. I agree with your assessment
25 of this case. I do agree that we should also grant them the

1 relief for the rear wall, well essentially the ten foot rule
2 because of questions that may come up. It doesn't look like that
3 the roofing element is -- can be opened so that it's a solid roof
4 that would be over the top of that and it is semi-enclosed or
5 could be fairly easily enclosed at some point in time, either by
6 the Applicant or if this property is sold.

7 So I am in favor of granting or including all three of
8 the conditions, not conditions, all three of the requested
9 special exceptions and will support the application because I do
10 believe that in OP's staff report and what was presented by the
11 Applicant, we can grant them the special exceptions. I do believe
12 they've met the burden of proof so I'll support the application.

13 CHAIRPERSON HILL: Okay. Mr. Smith, you do have a,
14 bring up a question that I'd like to ask. I don't know if legal
15 knows or if even the Office of Planning if they're still around.
16 Like, if they were to enclose that porch would they have to come
17 back to us again? MS. Bajaj, do you know?

18 COMMISSIONER SMITH: I think this is Ms. Cooper's case.

19 CHAIRPERSON HILL: Oh. Ms. Cooper, do you know?

20 MS. COOPER: I'm happy to look into that just to be
21 certain.

22 CHAIRPERSON HILL: Okay. I'm going to pull up, Mr.
23 Young, is the Office of Planning person still there? Was it Mr.
24 Jesick? Yes.

25 I'm just quickly, for the record, reopening the hearing

1 and the record. I have a question of Mr. Jesick. Mr. Jesick,
2 if they enclose that, we're granting this relief, would they come
3 back to the Board again? Do you know?

4 MR. JESICK: My sense of it is if you grant the relief,
5 if no new relief is triggered by enclosing the deck then they
6 would not need to come back to you. So it would just depend on
7 whether an act of enclosing it would create some new sort of
8 relief that we're not anticipating now.

9 CHAIRPERSON HILL: Okay. All right. I'm going to,
10 does anybody have any questions of the Office of Planning,
11 otherwise I'm going to close the hearing and the record again.

12 MS. COOPER: I can add something here too. This is
13 Cometria. Hi. If it's going to require a change and that's in
14 in the design that's approved, then they would have to come back
15 to us for a lot change and have to come back to the Board.

16 CHAIRPERSON HILL: Great. That's what I kind of
17 thought. Okay. All right. Mr. Young, is the Applicant still
18 there? The architect? I think it was -- oh, great. Mr. Weaver,
19 can you hear me?

20 MR. WEAVER: Yes.

21 CHAIRPERSON HILL: I mean, it seems as though the Board
22 may be granting this relief that's being requested and all I'm
23 just pointing out is if you guys did, if the owner did decide to
24 enclose that deck we are, or enclosing it in some way, we are
25 approving the relief the way it is being proposed to us meaning

1 the design but they would have to come back for a modification
2 if they were to, at least this is what I understand, they would
3 have to come back for a modification if they decide to actually
4 enclose that Okay? So just to kind of let your client know.
5 Okay?

6 MR. WEAVER: Yes.

7 CHAIRPERSON HILL: Okay. I'm going to -- does anybody
8 have any questions from the Board? All right. I'm going to once
9 again close the hearing and the record. Mr. Young, if you could
10 please excuse everyone.

11 Okay. I'm going back there just because I didn't even
12 think about that but I mean we are granting this relief and so I
13 think that if they did enclose it, it would be something that
14 would be just possibly a modification for us that could be done
15 in an expedited review fashion if we had any issues that we could
16 bring it into a hearing. But anyway, it doesn't change my
17 analysis.

18 Vice Chair Miller, do you have anything you'd like to
19 add?

20 ZC COMMISSIONER MILLER: No, Mr. Chairman. I share the
21 -- I concur with my colleagues' comments.

22 CHAIRPERSON HILL: Thank you. All right. I'll go
23 ahead and make a motion to approve Application No. 20935 s
24 captioned and read by the Secretary and ask for a second. Mr.
25 Smith?

1 COMMISSIONER SMITH: Second.

2 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,
3 could you take a roll call?

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

8 Zoning Commission Vice Chair Rob Miller?

9 ZC VICE CHAIR MILLER: Yes.

10 MR. MOY: Mr. Smith?

11 COMMISSIONER SMITH: Yes.

12 MR. MOY: Chairman Hill?

13 CHAIRPERSON HILL: Yes.

14 MR. MOY: With no other members, staff would record the
15 vote as three to zero to two and this is on the motion made by
16 Chairman Hill to approve. The motion to approve was second by
17 Mr. Smith. In favor in support to the motion approve, Zoning
18 Commissioner Rob Miller, Mr. Smith, Chairman Hill. The motion
19 carries, sir, on a vote of three to zero to two.

20 CHAIRPERSON HILL: Thank you, Mr. Moy. Okay, you guys.
21 We have the appeal to go next and I want to just take like, is
22 it okay we'll take five minutes? Five, ten minutes and come
23 back? Okay. See you guys in a little bit.

24 (Break)

25 MR. MOY: The next case before the Board is Appeal No.

1 20944 of the Advisory Neighborhood Commission 3D and Rohit Kumar,
2 that's R-O-H-I-T K-U-M-A-R. This is an appeal pursuant to
3 Subtitle X, § 1100 from the decision made on March 1st, 2023 by
4 the Zoning Administrator, Department of Buildings to issue
5 building permit No. B2303238. Property located in the R-1-B zone
6 at 5122 Cathedral Avenue, N.W., Square 1439, Lot 60.

7 The preliminary matters here, Mr. Chairman, is that
8 there is a motion, there is a Department of Buildings Motion to
9 Dismiss. The appeal is moot on their Exhibit 15. In response,
10 there's the Appellant's opposition under Exhibit 18, and that's
11 all I have for you, Mr. Chairman.

12 CHAIRPERSON HILL: Okay. Great. Thank you. All right.
13 Welcome everybody. Let's see. Could the Commissioner introduce
14 herself for the record, please?

15 ANC COMMISSIONER DUNCAN: My name is Tricia Duncan.
16 I'm Chairman of ANC 3D.

17 CHAIRPERSON HILL: Hello, Commissioner. Let's see. Is
18 the Applicant here with us as well, I mean, I'm sorry, the
19 property owner?

20 MR. KUMAR: Yes. That is myself. I'm Rohit Kumar. I
21 live at 5401 Hawthorne Place, Northwest.

22 CHAIRPERSON HILL: Okay, Mr. Kumar. Welcome. Let's
23 see. Is your architect here? Is that who's with us or who's -
24 okay. Who wants to introduce themselves next? Just raise your
25 hand. Okay. Ms. Themak. You're on mute.

1 MS. THEMAK: I am counsel for the Appellants here. I
2 don't believe the property owner is here.

3 CHAIRPERSON HILL: The property owner I think is Mr.
4 Kumar.

5 MS. THEMAK: He is the adjoining neighbor and the
6 (indiscernible) --

7 MR. KUMAR: Sorry. I'm the adjoining neighbor. I'm
8 part of the Applicant, the Appellant's team.

9 CHAIRPERSON HILL: Oh, got you. I'm sorry. Okay.

10 MR. KUMAR: Sorry. My confusion too.

11 CHAIRPERSON HILL: That's all right. Okay, Ms. Themak.
12 You're the counsel. Mr. Mayo, are you there and could you
13 introduce yourself for the record?

14 MR. MAYO: Yes. Hugh Mayo, assistant general counsel
15 for the Department of Buildings.

16 CHAIRPERSON HILL: Got you. And Mr. Cox, could you
17 introduce yourself?

18 MR. COX: Erik Cox, deputy general counsel, D.C.
19 Department of Buildings.

20 CHAIRPERSON HILL: Okay. All right. Let's see then.
21 Ms. Themak, I see you there. Mr. Mayo, you put in a Motion to
22 Dismiss; correct?

23 MR. MAYO: Yes, that's correct.

24 CHAIRPERSON HILL: Could you explain that again, Mr.
25 Mayo, your motion?

1 MR. MAYO: Yes, and as a part of that there is one
2 preliminary update. So last Wednesday we put in a Motion to
3 Dismiss this case as moot as the underlying permits which are the
4 legal basis for the appeal. DOB has made, had at the time put
5 in a notice to revoke those permits. Late yesterday afternoon
6 the developer of 5122 Cathedral Avenue, Northwest, submitted
7 their permit cancellation form.

8 So at this time DOB is processing the cancellation of
9 the underlying permits in this case.

10 CHAIRPERSON HILL: Go tit, and that's the whole thing
11 about the 60 days before the permits expire. Is that correct?

12 MR. MAYO: Yes. So under the zoning regs the developer
13 would have had 60 days to appeal the permit revocation to BZA
14 but that no longer applies now that the developer has voluntarily
15 surrendered their permits.

16 CHAIRPERSON HILL: Okay. Let's see. Ms. Themak, you
17 had opposition to that motion; correct?

18 MS. THEMAK: Yes, we did because as of the time we
19 filed both the response in opposition and the amended response
20 in opposition, we hadn't seen the notice of revocation, we hadn't
21 -- the on-line systems, e-records and stat (phonetic) were both
22 reflecting the permits were still there. There was some, I think
23 there were two of the stop work orders that were still in place
24 but four had been revoked.

25 So from our perspective, the permit had not been

1 | revoked effectively and there was the additional development that
2 | the developer, Silverstone, had submitted a new permit
3 | application and that is reflected on the on-line system, again,
4 | as an addition, alteration or repair, not for the raze which is
5 | the relief that we are seeking.

6 | So the issue is not moot. There's a pending permit
7 | that would allow the existing structure to remain, not be
8 | demolished and take advantage of the non-conforming features
9 | again. So the issue still remains. We haven't gotten the relief
10 | we're seeking and we're still in the same situation that we were
11 | when we filed.

12 | CHAIRPERSON HILL: I got you. Okay. Thanks, Ms.
13 | Themak.

14 | Just for the record, again, the property owner is not
15 | here. Correct, Mr. Moy or Mr. Young? Okay. I don't see anybody
16 | saying yes or no. I know, Mr. Mayo, what I think -- I'm going
17 | to express my opinion on this and then we'll go ahead and see
18 | what my fellow Board members have to say. I mean, I think that
19 | this, you know, being an appeal for this particular property and
20 | the concerns or the issues about whether or not it was a raze or
21 | not and what the building might become is still in limbo and so
22 | I don't think that I'm going to be comfortable dismissing this
23 | for those reasons.

24 | I would go ahead and talk to my fellow Board members
25 | and kind of, I don't want this to kind of kick back to the

1 beginning of the line or anything in terms of a different permit,
2 whatever might be built. I mean, I think that if there is
3 something that is built that is taking benefit of the non-
4 conformity and something that we would be discussing terms of the
5 raze permit and how that might apply to whatever is actually
6 being built, I would rather then have this appeal with whatever
7 is actually being built.

8 So what I would propose is that we reschedule this for
9 another time, wait until we find out what actually is the items
10 that are being built and whether or not the Appellant would be
11 then altering this appeal to those plans and I don't know how
12 much time that may or may not take, whether it's a month, six
13 weeks. Mr. Mayo, you said there are new plans that were
14 submitted?

15 MR. MAYO: At this time our systems reflect that a new
16 permit application has been submitted. So I don't know the exact
17 contents of the permit application but a new application has been
18 uploaded.

19 CHAIRPERSON HILL: And Ms. Themak, you don't know that
20 either; right?

21 MS. THEMAK: No. We have not seen the new plans. I
22 think our biggest concern at this point is that this developer
23 doesn't play by the rules. They have avoided inspections.
24 They've had --

25 CHAIRPERSON HILL: Ms. Themak, give me one second.

1 Give me one second. I appreciate it what your -- the argument
2 you're making, but I'd rather not get into what has or hasn't
3 happened at this point. I mean, I think that it, you know, once
4 you see the plans you'll have an opportunity to determine whether
5 or not you are going to continue the appeal and then just change
6 it to whatever those plans reflect.

7 MS. THEMAK: Can I ask a question, though? If the new
8 plans and the new permit application have already been designated
9 as an addition, alteration or repair, by that very categorization
10 it's not the raze and he is going to be still taking advantage
11 of the non-conformities and as that happens, we've got neighbors
12 that were prepared to be witnesses today that have ongoing damage
13 going on to their properties.

14 So we know right now how this has been categorized by
15 DOB as an alteration, addition or repair, that it's not a raze
16 and then all of our complaints are still completely effective.
17 So we almost don't even need to see the plans to see if they've
18 corrected anything because it's not the correct type of
19 application.

20 CHAIRPERSON HILL: Okay. That's a valid point.

21 MR. COX: Can I jump in and address one quick point?

22 CHAIRPERSON HILL: Yes. Let me (indiscernible).

23 MR. COX: Whether it's a demo or a raze there's a zoning
24 administrative interpretation on point where you are increasing
25 the footprint of the prior building, whether it's demo or raze

1 depends on what percentage of wall area the former enclosing
2 outside walls are left. To my knowledge, there's not been a
3 measurement yet to make that determination.

4 DOB will, in the normal course of reviewing the permit
5 application, have to make the determination itself how much of
6 the walls are left. We will do the right thing. We will measure
7 the walls. If there's not enough wall left so that it's a raze
8 and the new permits therefore have to fall under new rules, we
9 would deny any permit that does not comply with those rules.

10 MS. THEMAK: Can we respond to that?

11 MR. COX: This hearing is premature. We do not have a
12 determination of what percentage of the walls are left to
13 determine whether it is a raze or a demo and that is not before
14 this agency, my agency, at this point in time.

15 CHAIRPERSON HILL: Give me, give me, give me, give me
16 one second. I've been here for eight years. Just give me a
17 minute. Okay?

18 MR. COX: Certainly.

19 CHAIRPERSON HILL: So I still think that I'm back to
20 where I was but what I'm going to do, and I'm going to do and
21 I'm going to let Ms. Themak respond, and then I actually am going
22 to do the emergency meeting just so I can talk to legal for one
23 minute and then we'll come back. But I still think I am where I
24 was.

25 Ms. Themak, you had a comment?

1 MS. THEMAK: Yes. The zoning interpretation that I
2 believe Mr. Cox is referring to is something that we brought to
3 their attention. It's ZA 010 which asks that the existing walls
4 be maintained for 40 to 50 percent. I would point out that they
5 didn't check that for this first iteration and there is -- the
6 building has been removed and construction is ongoing.

7 So they didn't do that at the first iteration. We had
8 to bring it up that it needs to be done and we have no confidence
9 that they're going to before the structure is completely in place
10 and the neighbors' properties are damaged. So I know what
11 interpretation he's talking about. We submitted it as an exhibit
12 and we were the ones, the ANC and the adjoining property owners
13 that needed to bring that to DOB's attention.

14 So it falls on deaf ears that now they're going to do
15 this wall check when most of the walls are gone and new walls
16 are in place. I don't --

17 CHAIRPERSON HILL: Okay.

18 MS. THEMAK: -- how that (indiscernible).

19 CHAIRPERSON HILL: Okay. Okay. Well, first of all,
20 you guys are now here with us and so we're listening. So you're
21 here, right, and I've already said that we're probably not going
22 to dismiss this and so we're going to have an opportunity to
23 review what is in front of us. The problem or issue that I'm
24 having is I don't know what's in front of me necessarily yet and
25 so that's where I'm thinking that this might get pushed forward,

1 but I am going to talk to Legal.

2 Go ahead, Mr. Kumar.

3 MR. KUMAR: Chairman Hill, I'm not -- this is not my
4 purview, right, so I don't know exactly what the rules are here
5 in terms of what relief is allowed and not allowed. But one
6 thing that is clearly still there are the concrete walls for the
7 au pair/nanny suite that are now like eight, nine feet from the
8 back property line which under no circumstance that's not a non-
9 conforming element that can be extended and if I'm hearing this
10 correctly one of the things we were going to ask for in terms of
11 relief is that that non-conforming clearly violating the setback
12 feature be removed.

13 In fact it presents an ongoing safety threat because
14 they've backfilled dirt against a retaining wall on my property
15 that was not built for this additional backfilled dirt and we
16 have both neighbors who we've listed as witnesses who have damage
17 now to their property which it sounds like if this just gets
18 continued, that damage just kind of continues for 30, 60, 90, I
19 mean it's been eight months we've been pursuing this and so I
20 just as a citizen living with this it feels how long is the right
21 word or --

22 CHAIRPERSON HILL: I understand.

23 MR. KUMAR: -- that, you know, this damage is happening,
24 this risk to my property continues but if it continued to leave
25 that dirt and non-conforming structure up against my back

1 property line and we're just going kind of waive another eight
2 months or however long it takes, and not for nothing.

3 I mean, every time we do this, I love Ms. Themak, but,
4 you know, she's not doing this for free; right? So, like I mean
5 this is just running up a tab for the neighbors.

6 CHAIRPERSON HILL: Well, Mr. Kumar, if I could figure
7 out how to do this now I would do this now, right, and what I'm
8 trying to also say is we're not going to dismiss this so that it
9 just gets, you know, it disappears and gets taken away to where
10 you guys have to start again, right, and so what I'm going to do
11 is I'm going to talk to our Legal Department real quick and then
12 we'll come back and see what our next possible steps are, and I
13 do realize that Ms. Themak doesn't do this out of the kindness
14 of her heart because nobody does, except for apparently me,
15 because that's why I'm here, you know, and my fellow Board
16 members.

17 So do my fellow Board members have any questions before
18 we go to Legal?

19 ZC VICE CHAIR MILLER: I don't want to get into the
20 substance of the case but can I just ask Mr. Cox, you said you
21 were going to review, do this wall check review to see whether
22 the property is razed or demolition. Are you doing that now,
23 when are you going to be complete with that and that's one
24 question, and the second question is what's -- are there stop
25 work orders currently in effect right now? I don't know if these

1 are appropriate, Mr. Chairman, to ask right now but --

2 CHAIRPERSON HILL: Yes, that's fine.

3 ZC VICE CHAIR MILLER: -- before we go to Legal, but I
4 just, I just didn't -- I wanted to understand where if we --

5 CHAIRPERSON HILL: Where we are.

6 ZC VICE CHAIR MILLER: -- where we are and where, if
7 we put it up, if there's going to be further damage?

8 MR. COX: I'll take the second question first. There
9 are stop work orders as far as I know in place on the property
10 but without permits no work is allowed full stop period, so I do
11 not anticipate anything happening on this property until and
12 unless new permits are issued.

13 MR. KUMAR: I had some color though on the stop work
14 orders.

15 CHAIRPERSON HILL: Give him one moment, Mr. Kumar. Go
16 ahead and finish, Mr. Cox.

17 MR. COX: As to the first question, when do we go out
18 and measure the walls? That to my knowledge as I sit here in
19 this moment it has not been scheduled but it has been requested
20 within the agency to occur sooner rather than later by me.

21 CHAIRPERSON HILL: Okay. Mr. Cox, if you could, while
22 I go to Legal, if you have anybody you can call to find out if
23 there is a date or a time or what you know, that would be helpful
24 and I'm going to go to Legal, and then we'll come back. Okay?
25 And if you don't know you don't know, but if you could at least

1 call somebody.

2 COMMISSIONER SMITH: Hold on, Chairman Hill.

3 CHAIRPERSON HILL: Oh, I'm sorry, Mr. Smith. Go ahead.

4 COMMISSIONER SMITH: I just want clarification again.
5 This will help my thought process and this is for Ms. Themak.
6 Are you suggesting that there's other work that is occurring or
7 there's another permit that currently is active that your ANC is
8 concerned about, that would be --

9 MS. THEMAK: Sorry, go ahead.

10 COMMISSIONER SMITH: Sorry. Go ahead, go ahead.

11 MS. THEMAK: We have it on Mr. Mayo's word that they
12 cancelled or surrendered the two permits that were previously
13 issued. However, I believe also on the 27th of September they
14 submitted new permits. The new permits that the Applicant had
15 submitted are still for addition, alteration or repair, not for
16 the raze that we've shown through our faith is what is necessary
17 here. The problem we have now is that of the six stop work
18 orders, while this new permit is being reviewed, yes, ideally no
19 work should be being performed on this site. However, six stop
20 orders have been issued for the site. Two, last time I checked,
21 remain active and yet crews are daily visiting the site. Mr.
22 Kumar is next door and has seen it. I believe also Commissioner
23 Duncan has seen it.

24 So giving that the stop work order or them not having
25 a valid permit does nothing for these property owners. So they

1 don't have a permit, they have stop work orders in place and they
2 are continuing full steam ahead with the construction, the
3 backfilling and everything. So, and have been for eight months.

4 CHAIRPERSON HILL: Mr. Cox? Oh, sorry, Mr. Smith. Did
5 you have a further question?

6 COMMISSIONER SMITH: No. I think you're about to do
7 what I was about to do. I was about to say this to Mr. Cox. Is
8 there any, outside of these two building permits that were revoked
9 and because they were revoked they shouldn't be doing the work,
10 is there any other permits that are active on this property? The
11 grading permit, what is going -- it sounds like it's more of a,
12 you know, a situation, some type of grading permit or something
13 of that particular nature. What's going on?

14 MR. COX: As far as I know, I'll check real time, I
15 don't think there is anything else and for what it's worth, I've
16 seen it too. We got a notarized cancellation form yesterday so
17 the permits have been revoked and I'd be happy to forward that
18 to anyone who wants to see it. But in the meantime I will check
19 real time here.

20 CHAIRPERSON HILL: Mr. Cox, how again, I forget how
21 it's policed, like how stop work orders are --

22 MR. COX: Policed.

23 CHAIRPERSON HILL: -- policed there?

24 MR. COX: It's complaint-based. Someone sees it, they
25 drop it by and they call it, and we go out and try to catch them.

1 CHAIRPERSON HILL: Right. And hold tight, Mr. Kumar,
2 I see you. Who do they call? Do they call like 3-1-1?

3 MR. COX: They could do that. They can go to our
4 website, you know, dob.dc.gov and there's a 1, 2, 3 thing on the
5 loading page and you can request an illegal construction
6 (indiscernible).

7 CHAIRPERSON HILL: All right. Okay. Let do this. Let
8 me, does anybody have any further questions before I go to Legal?
9 Okay. We're coming back. Okay. Great. Thank you.

10 COMMISSIONER SMITH: Mr. Kumar, we'll get to you after
11 we talk with Legal.

12 MR. KUMAR: Thank you.

13 CHAIRPERSON HILL: All right. As Chairperson of the
14 Board of Zoning Adjustment of the District of Columbia in
15 accordance with § 407 of the District of Columbia Administrative
16 Procedures Act, I move that the Board of Zoning Adjustment hold
17 a closed emergency meeting on 10/4/2023 for the purpose of seeking
18 legal advice from counsel on case 20944, deliberate upon but not
19 vote on case 20944. Is there a second, Mr. Smith?

20 COMMISSIONER SMITH: Second.

21 CHAIRPERSON HILL: Motion made and seconded. Mr. Moy,
22 if you could take a roll call?

23 MR. MOY: When I call your name, will you please respond
24 to the motion made by Chairman Hill for the emergency meeting
25 with our Legal counsels.

1 Zoning Commission Vice Chair Miller?

2 ZC VICE CHAIR: Yes.

3 MR. MOY: Mr. Smith?

4 COMMISSIONER SMITH: Yes.

5 MR. MOY: Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MR. MOY: Staff would record the vote as three to zero
8 to two. Motion carries, sir.

9 CHAIRPERSON HILL: Thank you. All right, you guys.
10 We'll be right back. We're just going over to another room and
11 we'll see you all in a little bit. Thank you.

12 (Recess, for emergency closed meeting with legal
13 counsel.)

14 CHAIRPERSON HILL: Let's see, we are back here. Mr.
15 Moy, you want to just call us back in?

16 MR. MOY: Yes, sir. After the Board's emergency meeting
17 with legal counsel, the Board is back in its public hearing
18 session and the time is at or about 12:34 p.m.

19 CHAIRPERSON HILL: You guys, I apologize. My computer
20 is completely on the fritz. Let me log off and I'll log back
21 on.

22 (Pause.)

23 CHAIRPERSON HILL: Okay. So once again the Board has
24 returned to its public hearing session on Appeal No. 20944 and
25 the time is at or about 12:37 p.m.

1 CHAIRPERSON HILL: Okay. Great. Mr. Cox, can you
2 introduce yourself again to me?

3 MR. COX: Yes. Erik Cox, deputy general counsel, DOB.

4 CHAIRPERSON HILL: Okay. Great. Thanks, Mr. Cox. You
5 haven't been before us before, have you?

6 MR. COX: No. I usually let the attorneys who work for
7 me do it such as Hugh.

8 CHAIRPERSON HILL: Okay. Well, Mr. Cox, this is great.
9 So we're getting a level above is what you're saying. That's
10 wonderful.

11 MR. COX: Authority-wise, yes. Ability-wise Hugh is
12 fantastic.

13 CHAIRPERSON HILL: Okay. Well, very good. Mr. Mayo,
14 could you introduce yourself again for me?

15 MR. MAYO: Yes. This is general counsel, Hugh Mayo.

16 CHAIRPERSON HILL: Okay. Great. So there's a couple
17 of things that I'm going to ask from you, Mr. Cox, and you, Mr.
18 Mayo. What I think I'm going to do again is the Board of Zoning
19 Adjustment again has to review something that is actually before
20 us that is a decision made by the zoning administrator or if
21 there's an appeal. In this particular case we potentially don't
22 have anything in front of us.

23 However, I'm not going to, as I said before, since
24 there is a permit that hasn't necessarily been issued yet and Dob
25 is still going to have to take a look and see whether or not that

1 permit's going to be issued. Once that permit issued then I
2 believe the Appellant would be able to take a look and see if in
3 fact they still want to move forward with the appeal, meaning is
4 the issues still relevant that apply to the appeal so that we
5 would again still be here.

6 So it kind of brought me back to where I thought I was
7 leaving it when we left, and I'll let everybody speak before this
8 is all said and done. The one thing I do want to mention to Mr.
9 Cox, and Mr. Cox I do appreciate -- I know the Department of
10 Buildings is a new kind of system a little bit to a certain extent
11 bit but, you know, when we used to have an opportunity to do this
12 all in person we had a chance to kind of meet with more of the
13 colleagues on the different sides, I really would like, Mr. Cox,
14 to encourage you and if you learn anything new like really when
15 the wall check might take place. I don't want this again to just
16 linger on and get to the point where like the neighbors don't
17 know what's going on, there's an issue with, you know, it sounds
18 as though the developer still may or may not be, and I don't want
19 to get into with Ms. Themak what the developer is or isn't doing
20 but if there is a stop work order in place, you know, how that
21 enforcement takes place is something that Mr. Cox, since it's so
22 wonderful to have a level above perhaps even though and how
23 wonderful it is that the people you work with are so efficient,
24 you know, now we it seems to be again that as you know these
25 appeals take a long time, the neighbors have been going on for

1 quite some time with this process and I want something to happen
2 from this since we've all taken our time to be here including
3 the neighbors, the attorneys, et cetera, and so forth.

4 So I'd like to hear from you, Mr. Cox, as to anything
5 you might be able to offer or as to what DOB may or may not be
6 able to help with in terms of the wall check and enforcement and
7 then when you think maybe this new permit may or may not issued.
8 Mr. Cox.

9 MR. COX: (Indiscernible) when does the wall check
10 happen. When you were in your private session we checked with
11 the people who schedule that. It can't happen today. It might
12 be able to happen tomorrow and we don't know yet because we have
13 to see who's available and when but I can offer that it is more
14 likely not to occur until at least some time t his week.

15 CHAIRPERSON HILL: Okay. That's great. Then as far
16 as enforcement goes -- hold on, Ms. Themak -- and then as far as
17 enforcement goes?

18 MR. COX: There are two active stop work orders on the
19 property. Stop work orders are generally complaint-based
20 investigations. We don't have a guy just sitting out on the curb
21 watching, but if someone sees it and calls us we go out and check
22 and our job is to try to catch people in the act. That is part
23 of what we do and we would do that here.

24 CHAIRPERSON HILL: Got it. Give me a second, Mr. Kumar.
25 So it sounds like, Mr. Cox, I don't mean you to take pictures.

1 This part is obviously not BZA, I'm just trying to facilitate and
2 then I'm going to end and I'm going to stop doing it and then go
3 back to what I'm supposed to be doing.

4 But, again, they obviously are saying it's happening.
5 If they take pictures or whatever, is there something else they're
6 supposed to be doing, Mr. Cox, other than what you're telling
7 them to do?

8 MR. COX: No. That is -- that's, if they see it just
9 let us know. We'll send someone out. We have to catch them in
10 the act.

11 CHAIRPERSON HILL: You got to catch them in the act?

12 MR. COX: Yes.

13 CHAIRPERSON HILL: Okay. Is pictures or anything, does
14 that mean anything? Mr. Kumar's shaking his head no, so he's
15 giving me the answer I want. I love video. Okay. All right.
16 Mr. Cox, you've answered my questions.

17 Ms. Themak, you had your hand up and I think Mr. Kumar
18 had his hand up and I think the Commissioner has her hand up.
19 Let me start with Ms. Themak.

20 MS. THEMAK: I just wanted to make a request that on
21 the record before you, Chair Hill. We're concerned that we are
22 going to get back before you and we are going to have some sort
23 of a claim by this developer that now I've built so much, it's
24 so expensive and there is an exception for him to claim estoppel
25 here and we have notified him months ago. He was informed, or

1 we have planning staff's emails saying anything he builds at this
2 point is at risk in violation of the stop work order, and the
3 lack of a valid permit but we want to be on the record here saying
4 if we get three months down the line he's managed to evade the
5 inspection crews and avoid the stop work orders, that anything
6 he builds is at his risk and he can't then get up here and say
7 but I built this beautiful house, it's going to be too --

8 CHAIRPERSON HILL: Okay.

9 MS. THEMAK: -- expensive to take down.

10 CHAIRPERSON HILL: Okay. Ms. Themak, two questions and
11 then somebody tell me the, property owner's here so I'm going to
12 let them introduce themselves in a second. Two items, there's
13 no permit right now so he hasn't built anything technically;
14 right? So if, the whole part of an appeal is that you know,
15 we've had appeals where they've had to tear the whole thing down.
16 So, you know, it's up to, you know, if they want to risk building
17 something and they have to tear the whole thing down because it's
18 incorrect, then they tear the whole thing down. That's happened
19 before, it'll happen again.

20 MS. THEMAK: The only other thing I had was can we be
21 notified as soon as we know when the wall check is and could the
22 Commissioner be present?

23 CHAIRPERSON HILL: I don't know about those things.
24 I'll let Mr. Cox think about it for a second while I work through
25 the rest of this. Is the property owner here and if he or she

1 would like to introduce themselves.

2 MR. ARGARWAL: Yes. Hello, Mr. Chairperson. My name
3 is Karan Agarwal. I'm the owner of the property and I'd like
4 the opportunity to speak.

5 CHAIRPERSON HILL: Sure. Give me one second, Mr.
6 Agarwal. I want to be very clear here with everybody. This is
7 not going to be some open forum where we're like talking amongst
8 things. Okay? I'm jus trying to get through this portion of it
9 because we're coming back, okay, so there's no point in you all
10 spending more time with Ms. Themak. Okay?

11 So, Commissioner Duncan. You have something you'd like
12 to say?

13 ANC COMMISSIONER DUNCAN: Yes. So since there is
14 actually no building permit here, what is this wall check going
15 to be checking against, because I'm assuming you're trying to
16 find out how much original wall is there?

17 CHAIRPERSON HILL: Right. I'll let Mr. Cox answer that
18 if he know better than I do, because I understand it they're
19 making to make sure that the permit that they may or may not
20 approve is accurate. That's why they're going to check the wall
21 check.

22 MR. COX: That is correct. I will pontificate just a
23 little bit. If there's between 40 and 50 percent of the old
24 home's outside enclosing walls, the area of that wall, they're
25 more or less grandfathered in under the old zoning rules or regs

1 that are applicable so that the footprint of the house would be
2 allowed to be slightly bigger than it would have to comply with
3 the new ones and they'd have to comply with the new ones If it's
4 a raze.

5 So, yes, we, so.

6 ANC COMMISSIONER DUNCAN: If we could --

7 MR. COX: We would have to check the wall to make sure
8 that more or less the outside footprint of the house among other
9 things complies with the properly applicable zoning regs and the
10 essential question there is is it demo or raze and we would have
11 to go out and measure that and to the question of when will that
12 happen? Soon. Hopefully this week.

13 CHAIRPERSON HILL: Commissioner Duncan, you had a
14 question.

15 ANC COMMISSIONER DUNCAN: Yes, and this goes to, I
16 think that more than 40 percent of the walls are already down
17 but I will let you go out and do your wall check. Could you
18 please confirm that you're not going to allow some of the existing
19 structure to become interior of the home?

20 MR. COX: I have an oblique idea of what you're talking
21 about and I'm going to let our permit people do their job and
22 then see. I'm not going to find the agency (indiscernible) make
23 sure permits that are issued or if they're issued, what we issued
24 after a thorough review and be issued properly

25 CHAIRPERSON HILL: Okay. All right. Commissioner

1 Duncan, all right. Mr. Kumar, you had your hand up before we
2 went to break, or whatever we went to and, again, I would just
3 point out that it's better not to express any frustration at this
4 time other than us trying to figure out how we're going to get
5 to the next thing.

6 MR. KUMAR: Sure.

7 CHAIRPERSON HILL: Although I do understand that there
8 apparently has been some work going on and I am going to ask the
9 property owner about those questions. Mr. Kumar, please tell me
10 what you would like to say?

11 MR. KUMAR: So I just wanted to put some color on the
12 stop work orders. Those are because of damage to the adjacent
13 property. That the only inspection, so as Mr. Cox points out,
14 when you see illegal construction happening you call it in and
15 then an inspector is supposed to come and they have to catch them
16 in the act. Photos don't work. We know this because the
17 developer has evaded several inspections and on August 31st we
18 essentially found circumstantial evidence they were being tipped
19 off as to the inspections.

20 So the enforcement of the stop work orders, just for
21 awareness, is contingent upon no one giving notice that the
22 inspection is coming and clearly on the 31st -- and I documented
23 this, it's like Exhibit F -- notice was given and so it's like,
24 you know, we're just going not like enforce the stop work orders,
25 I'm going to tell you on the ground that only works, you know,

1 | if someone's not giving notice that the inspection is coming.
2 | But while we're waiting we still have damage to the adjacent
3 | properties and we still have, and this is the question, Chair
4 | Hill, that I think can be adjudicated today which is there is
5 | this rear already built concrete walls like within eight feet of
6 | their, ten feet of the rear property line, it's probably an au
7 | pair or nanny suite but raze or remodel or whatever, there's no
8 | reason why that -- the legality of that structure that exists
9 | today, I don't think there's any reason why that can't be
10 | adjudicated on the facts as they exist now because that's not
11 | really dependent upon the next permit, raze, remodel or whatever.

12 | CHAIRPERSON HILL: Mr. Kumar, I totally get that you're
13 | frustrated and I'm going to try to do my best to help as much as
14 | I can and within the purview of the Board to what we can do. We
15 | don't have anything to necessarily look at right now in terms of
16 | a decision made by the zoning administrator.

17 | So that's what Mr. Cox, he's going to go out and make
18 | a decision and then we're going to decide whether or not that
19 | decision is correct within the zoning regulations. But I'm going
20 | to address some of those stop work order issues and then we're
21 | going to try to set a date.

22 | Mr. Cox, you said, oh, you didn't know when you thought
23 | the permit may or may not be issued; right?

24 | MR. COX: No. I mean, we have a public dashboard that
25 | talks about permit processing times and we can probably make a

1 decent forecast. But this is going to go through a really close
2 look so it might be a little slower than the average. So it's
3 hard to say at this point.

4 CHAIRPERSON HILL: Okay. Can you give me a guess? I
5 mean, slower than the average means that you're really going to
6 take a look and that's helpful to Ms. Themak in that if they're
7 not adhering to the issues before zoning and if they've already
8 torn down the building they can't go back and build it up again;
9 right? So just to let you know, like they're not supposed to be
10 doing anything. If you want to go take pictures or whatever,
11 you know, that might help with the appeal later. Like, whatever's
12 happened has happened. So when Mr. Cox, do you think this may
13 be something we could actually look at again?

14 MR. COX: I'm checking so I don't give you just a guess
15 but I give you something rooted in some sort of --

16 CHAIRPERSON HILL: You take a look for a minute --

17 MR. COX: (Indiscernible).

18 CHAIRPERSON HILL: -- while I talk to the property
19 owner. Mr. Agarwal, can you hear me?

20 MR. AGARWAL: Here.

21 CHAIRPERSON HILL: Okay. So, Mr. Agarwal, were you
22 listening before you came on?

23 MR. AGARWAL: Yes, sir.

24 CHAIRPERSON HILL: Okay. So apparently, and I don't
25 want to get into whatever it is; right? Apparently there is a

1 stop work order on this property that you're working on. That
2 means nothing is supposed to be happening at that property. If
3 you do anything to that property you are in violation of that
4 stop work order and so we are coming back here again with this
5 appeal I'm sure if you have -- I mean, again, whatever ends up
6 happening with your future building permit, if you're taking
7 advantage of a raze that did or didn't happen, any of that stuff
8 that's what's going to go on with the appeal.

9 So I suggest you take a look at that with your current
10 building permits and plans and what has already happened to you,
11 but do you understand that nothing's supposed to be taking place
12 on that property; correct?

13 MR. AGARWAL: Yes, sir. I would like an opportunity
14 to speak without interruption and prejudice for a few moments to
15 just explain the matter at hand so I have an opportunity to be
16 heard.

17 CHAIRPERSON HILL: You can speak, Mr. Agarwal, as long
18 as you understand that if I want to interrupt you I'm going to
19 interrupt you.

20 MR. AGARWAL: Of course.

21 CHAIRPERSON HILL: Go ahead, Mr. Agarwal.

22 MR. AGARWAL: So the first matter at hand there is
23 actually no active stop work order on site. There was -- there
24 were two previously issued that were removed as of September
25 29th, last week and I'm sure Mr. Cox can check that in the system.

1 So to state that there is an active stop work order on the site
2 is incorrect. The site is free and clear of any stop work order
3 right now and it was put back into compliance by Inspector Tucker
4 (phonetic) last week. So that's the first matter at hand.

5 I'd like to go on to say that this project has been
6 approved by Zoning three times. Once as the result of an initial
7 PDRM and twice by permits that were issued. All the work that
8 has been conducted so far has been according to a (indiscernible)
9 --

10 CHAIRPERSON HILL: Mr. Agarwal, sorry I can't hear you.
11 You're going in and out.

12 MR. AGARWAL: Oh, I'm sorry. Can you hear me now?

13 CHAIRPERSON HILL: Can you repeat, I heard PDRM?

14 MR. AGARWAL: Yes. So Zoning has approved this project
15 three times in the last 12 months, once at a PDRM meeting and
16 twice with issued permits. So as of now Zoning has approved this
17 project three times and there is no stop work order on this
18 project currently.

19 So I just want to be clear for the record that that is
20 the case because there's been a lot of things that have been said
21 that are inaccurate and in order for you to make the correct
22 decision it's important you're aware of the truth.

23 COMMISSIONER SMITH: Okay. So, Mr. Agarwal, I'm going
24 to interrupt you, not Chairman Hill.

25 CHAIRPERSON HILL: No, no.

1 COMMISSIONER SMITH: What permit did you have on that
2 property to do any work?

3 MR. AGARWAL: We had an initial building permit that
4 allowed us to build (indiscernible) --

5 COMMISSIONER SMITH: Ni, no, no. I didn't say initial
6 building permit. I said what kind of current building permit
7 that is active now, other than these two revoked building permits,
8 do you have active on that property now?

9 MR. AGARWAL: A third (phonetic) sheeting and shoring
10 permit.

11 COMMISSIONER SMITH: Okay. All right. So that was the
12 one that I was thinking about, Mr. Cox, if there was any work
13 that was occurring around the grounds. Anything else?

14 MR. AGARWAL: No, sir, and the sheeting and shoring
15 scope has been completed.

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

17 MR. AGARWAL: If I may continue.

18 COMMISSIONER SMITH: Please continue. Sorry.

19 MR. AGARWAL: Thank you. Over the course of the project
20 the Appellants have lodged ridiculous accusations down to the
21 fact that DOB is corrupt and that they have alerted us to
22 inspections which is factually inaccurate. None of the times
23 the inspectors have come out have we been notified. We've done
24 all the work correctly, you know, complaining ten times and
25 getting inspectors to come out ten times doesn't mean that we

1 have done something wrong.

2 Now, regarding demolition versus raze. WE had
3 initially had an approved permit on --

4 CHAIRPERSON HILL: Mr. Agarwal? Mr. Agarwal? Mr.
5 Agarwal? Now I'm going to interrupt you --

6 MR. AGARWAL: Yes.

7 CHAIRPERSON HILL: -- because we're not actually
8 getting into the merits of any case right now. I don't know what
9 is in front of us and I don't know what decision the zoning
10 administrator may or may not have made yet, based upon the new
11 permit. You're saying, and this is where -- you're saying that
12 you had a shoring permit and that work has been completed.

13 MR. AGARWAL: Yes.

14 CHAIRPERSON HILL: Do you have any active permits right
15 now on that property?

16 MR. AGARWAL: As of yesterday when we surrendered, then
17 no. So as of yesterday close of business, there are no active
18 permits except for sheeting and shoring, but that work has been
19 completed.

20 CHAIRPERSON HILL: Right. So when you say except for
21 sheeting and shoring that you just said has been completed, that
22 means that you don't have any permits active on that property
23 right now; correct?

24 MR. AGARWAL: Sir, the work is done but the permit
25 remains active.

1 CHAIRPERSON HILL: I'm sorry. Let me clarify. You're
2 not going to be doing any more work on that property right now;
3 correct?

4 MR. AGARWAL: No.

5 CHAIRPERSON HILL: Okay. So then there shouldn't be
6 any work that's being done on that property until you get your
7 next permit; correct?

8 MR. AGARWAL: That's right.

9 CHAIRPERSON HILL: Okay. So then I'm just trying to
10 get us back here, like, again, we have nothing in front of us.
11 So I'm going to see when Mr. Cox thinks we might actually have a
12 building permit to even discuss again when that may happen. Mr.
13 Cox?

14 MR. COX: We have not yet received any plans to review
15 so we don't have the starting line to draw a timeframe from that.
16 So it's not entirely in DOB's control.

17 CHAIRPERSON HILL: Okay. Mr. Agarwal? Do you know
18 when you might be submitting plans in the hopes of getting another
19 permit?

20 MR. AGARWAL: Yes, sir. We're working on it right now.
21 We're making a few minor changes at the suggestion of the BZA
22 but, again, I do not have an answer for you.

23 CHAIRPERSON HILL: Okay. All right. Then, well, I
24 know Mr. Agarwal, you want to move your project forward as quickly
25 as possible. When --

1 MR. AGARWAL: Yes, sir.

2 CHAIRPERSON HIL: == do you think you might hope to be
3 working again on the project?

4 MR. AGARWAL: Yes.

5 CHAIRPERSON HILL: No. When do you think you might be
6 hoping again to work on the project?

7 MR. AGARWAL: Well, sir, we should be working on it
8 right now if it wasn't for all of this so I would like to get
9 back as soon as possible, but unfortunately the matters in my
10 control are fairly limited. So we are trying our best to get
11 the drawings edited. Again, I'm not the one doing it. You know,
12 it's an architecture firm that is, so me personally I have very
13 few items in my control but I can assure you I am trying my best.

14 CHAIRPERSON HILL: Okay. All right. I'll tell you
15 what? Mr. Moy?

16 MR. MOY: Yes, sir. I'm here.

17 CHAIRPERSON HILL: I know that my calendar, our
18 calendar is completely jammed up. However, since Mr. -- I mean,
19 Commissioner Miller doesn't have to sit on this one I guess if
20 he doesn't want to. We'll see what happens. He did, although
21 you have been around now, Commissioner Miller, for at least two
22 hours of this. When could we come back again with an appeal?

23 MR. MOY: Well, technically you can come back anytime.
24 But if you're allowing the process to move forward until you get
25 something in front of the Board, are we looking at one month or

1 are we looking at two months?

2 CHAIRPERSON HILL: Let's try a month. Let's see where
3 we are --

4 MR. COX: If I may. If I may.

5 CHAIRPERSON HILL: Go ahead, Mr. Cox.

6 MR. COX: The review from DOB's standpoint, once we
7 have plans that are complete assuming they don't need any hold
8 for comments or any other further input from the permit applicant,
9 probably between 15 and 30 days. This is going to prioritized
10 and a close look, but also a prioritization of that close look.

11 CHAIRPERSON HILL: Thank you, Mr. Cox. I appreciate
12 both of those words. Give me a second, Commissioner.

13 MR. MOY: So --

14 CHAIRPERSON HILL: Let's see. When do we go to
15 Thanksgiving -- all right. Go on. Sorry, Mr. Moy.

16 MR. MOY: No, no. I was going to suggest if we go,
17 let's say on the month, actually it would be a month and a week,
18 that takes me to November 15th, but my problem is we already have
19 another appeal on that day and it would have been nice because
20 Mr. Miller is on that day.

21 But beyond that if we go to the next date it would be
22 after the Thanksgiving holiday, so then we're looking at November
23 29th.

24 CHAIRPERSON HILL: How many cased do we have on the
25 15th? Is it just the appeal?

1 MR. MOY: We have the appeal and four cases, and one
2 expedited.

3 MR. COX: If I may. The appeal I think is one of ours
4 and my understanding is that the other party, Manor View
5 (phonetic), is going to solve things their own way and we filed
6 a motion to, I think, take it out for six months or something.
7 That could free up this case.

8 MR. MOY: Okay. Mr. Cox, that would be appeal No.
9 20984 of Jonathan Dupree, et al?

10 MR. COX: Yes. Uh-huh.

11 MR. MOY: Okay.

12 CHAIRPERSON HILL: Okay. Let's reschedule this for the
13 15th because Commissioner Miller is going to be back with us.
14 Okay, Mr. Miller?

15 ZC VICE CHAIR MILLER: Mr. Chairman, because we
16 continued a previous case also in 3D to the 29th today, that was
17 the MacArthur Boulevard continuing retirement care facility
18 issue, I will be here on the 29th as well. I just wanted to
19 point that out.

20 CHAIRPERSON HILL: I appreciate that, Commissioner
21 Miller, but it seems like we're freeing up a slot perhaps and
22 we'll see, this might not even be ready for us on that day. We'll
23 have to see. But so let's reschedule this for the 15th of
24 November and I'm going to let everybody, including the property
25 owner, but I'm going to go in reverse order, saying anything they

1 might like to say and it is the appeal of Ms. Themak and the ANC
2 so they'll have the last word.

3 But, Mr. Cox, again, anything you can do to help clarify
4 this situation including asking the zoning administrator to be
5 very clear as to what might be happening with this new building
6 permit so that there's no question as to whether or not there
7 could -- there shouldn't be questions as to what the zoning
8 administrator thinks with regard to this permit, that would be
9 helpful. Okay, Mr. Cox?

10 MR. COX: Yes, sir. Understood.

11 CHAIRPERSON HILL: Thank you. Do my fellow Board
12 members have any final questions before I go all the way around
13 with everybody? Okay. Mr. Agarwal, do you have any questions?

14 MR. AGARWAL: No, sir.

15 CHAIRPERSON HILL: Okay. All right. Then, Ms. Themak,
16 do you have anything you'd like to say at the end?

17 MS. THEMAK: I have a question. The sheeting and
18 shoring is complete, how can -- maybe Mr. Cox can tell us -- how
19 does the wall check, what is the process for that? How do you,
20 if they've already gone through and torn it down and done the
21 sheeting and shoring, what evidence that they violated their
22 plans will there be? How do you do that?

23 MR. COX: I don't think that's part of this appeal, so
24 I'm going to demur on that but also because I don't have the
25 facts in front of me to be able to answer intelligently given

1 (indiscernible) the appeal.

2 CHAIRPERSON HILL: Ms. Themak, and let's address that
3 when we come back again, meaning they're going to do their wall
4 check however they do their wall check and then I think what I
5 do hope some clarity from this comes is that Mr. Cox has
6 definitely been made aware of this case and so the zoning
7 administrator will take a close look at this because neither does
8 the, I'm sorry, the property owner want to be in non-compliance
9 and have to continue with this. They want to finish their project
10 one way or the other. They want to make sure that they're in
11 compliance.

12 So, Mr. Cox, is aware of this. It's been kicked to the
13 head of the line and so we will come back on November 15th and
14 hopefully have some more clarity.

15 MS. THEMAK: And then my only other question is, again,
16 we didn't get an answer from Mr. Cox on when we will be notified
17 that the wall check's happening? Can we be notified when that's
18 happening? You said probably today, tomorrow or this week?

19 MR. COX: No, I said not today. Maybe tomorrow,
20 hopefully probably this week. I'm happy to notify you. I can
21 let you know in the schedule. Whether you can be on the property
22 with them is something outside of my ability to control.

23 CHAIRPERSON HILL: Okay. So, Mr. Cox, if you can just
24 let Ms. Themak know when the wall check is to take place.

25 MR. COX: Yes.

1 CHAIRPERSON HILL: Okay. And, oh, I was going to say
2 something. Just give me a second. Yes, no, now I forget what I
3 was going to say. Okay.

4 All right. Then we will see you guys on, oh, now I
5 remember what I was going to say, that there's something within
6 the regulations and I don't know if this is pertinent or not,
7 and Legal's listening to me so I don't need a response from Legal,
8 but it's something about like an appeal can be brought if, you
9 know, before the Board if and when you knew about something;
10 right? Like, I think it's very clear that everyone is very aware
11 of this project and wants to make sure that this project is within
12 the regulations and if not, it was going to get appealed. So
13 I'm just kind of pointing that out. Okay. Because we've spent,
14 gosh, an hour and a half on this and we don't even have an appeal,
15 yet.

16 Okay. All right. Any last comments, questions from
17 my fellow Board members? Oh, Commissioner? Go ahead,
18 Commissioner.

19 ANC COMMISSIONER DUNCAN: Thank you. I appreciate this
20 because we did spend some time on the idea of this wall check
21 and I asked the specific question about are you going to be
22 comparing this to the new drawings, but we have just learned that
23 Department of Buildings doesn't have the new drawings. So part
24 of the wall check is finding out have they preserved 40 percent
25 of these walls. I'm confused on what the wall check is going to

1 | be checking in terms of the preservation of those walls?

2 | CHAIRPERSON HILL: Now, I don't know, Mr. Cox, if you
3 | know. I always forget how -- I shouldn't say I always forget
4 | -- I forget how a wall check works sometimes. They go out and
5 | check the walls; right?

6 | MR. COX: Yes. So my understanding is we measure the
7 | wall area and then we, if the new plans come in and there, as
8 | you may be thinking Commissioner, that the exterior wall could
9 | be interior, we would more or less subtract that out.

10 | CHAIRPERSON HILL: They're supposed to do their job and
11 | unfortunately, everyone has (indiscernible) they're supposed to
12 | do their job. You guys will take a look as to whether or not
13 | you think they did their job and then we'll determine whether or
14 | not we're back here again on the 15th, okay, and I know you guys
15 | also unfortunately don't want to pay Ms. Themak, but I don't know
16 | what to tell you. Okay?

17 | So, okay, go ahead, Mr. Kumar.

18 | MR. KUMAR: I've got one question and I don't know who
19 | this is best directed to but it feels like someone on this call
20 | can answer this question. So we have two neighbors, actually not
21 | my property but Mr. Gallagher and Mr. Fleming who are witness
22 | that I guess aren't going to testify who have active damage to
23 | their property right now. We've collapsing fences. We have a
24 | collapsing side yard. Is there any, like do they just have to
25 | live with that and hope no one falls into the pit that's opened

1 up on the Gallagher's yard?

2 Like, I don't know, we thought that some relief would
3 be a part of this exercise but it doesn't sound like that's going
4 to be the case and I just, is that something else to be litigated
5 in Court as a collateral matter or does DOB have any jurisdiction
6 here or like, and that's how the stop work order, despite what
7 Mr. Agarwal said, appears to still be in place, at least on-line.
8 But that was the origination of the stop work order, the most
9 recent stop work order and it just feels like we're walking out
10 of here with like still damage to property that has no clear path
11 or resolution.

12 CHAIRPERSON HILL: Mr. Cox, do you have any answers?

13 MR. COX: Sorry I'm a little blind here because I'm not
14 exactly sure, other than your description just now, what it is
15 and this answer might sound trite but I mean it in all sincerity.
16 If someone has a complaint literally our website has handled most
17 of our complaints intakes, in-took. You do it, you say what the
18 problem is and if it's within our purview, and this sounds maybe
19 like it might be, we send someone out to look and inspect. We
20 have the authority to do that and that is the easiest way to have
21 the Department of Buildings confirm whether something is
22 compliant or not with the regs and laws that we enforce.

23 CHAIRPERSON HILL: Give me a second, Mr. Kumar. Mr.
24 Mayo, were you about to say something?

25 MR. MAYO: So, Mr. Kumar, just very briefly. So this

1 would not be I believe a zoning issue, this is a, you know,
2 construction code issue, a construction reg issue. As Mr. Cox
3 indicated, you can put it in a request on DOB's website, or your
4 neighbors can put in a request. There are regs to protect
5 adjoining properties, at least during construction. Just stating
6 that in the abstract for you, but the proper process would be to
7 put in a request for inspection.

8 CHAIRPERSON HILL: Mr. Mayo, Mr. Cox, I love this. Can
9 you guys send somebody to go look?

10 MR. MAYO: Generally the, you know, adjacent -- for
11 this situation -- adjacent property owners would submit the
12 request. You know, we, in theory, could submit a request
13 ourselves through our system but it's effectively the same
14 process.

15 MR. KUMAR: That's already happened.

16 MR. COX: That's right. You know, we can't shortcut
17 it and like make a phone call.

18 MR. KUMAR: That's already happened. Somebody came out
19 and found damage and that was the genesis of the stop work order
20 on August 12th, and then nothing. So that's the question. Like,
21 so we've already gone through, not me, but the neighbors have
22 already gone through the process of saying, hey, damage. The
23 damage was identified, like we can just stipulate to that, it's
24 in the record and --

25 MR. MAYO: Mr. Kumar, as this would be kind of an

1 adjacent matter. If there was, I've dealt with cases like that
2 before, if there are cases in which there's damage to an adjoining
3 property usually a notice of infraction is issued which is
4 adjudicated before the Office of Administrative Hearings. So I
5 would suggest that your neighbors, you know, get in touch with
6 DOB if they have any questions about follow-up on previous
7 inspections.

8 MR. KUMAR: So a collateral process it sounds like.

9 CHAIRPERSON HILL: Yes. I'm sorry, Mr. Kumar. You're
10 at the BZA for the BZA stuff.

11 MR. KUMAR: I appreciate that.

12 CHAIRPERSON HILL: We're trying, everybody's trying,
13 and all I know is Mr. Cox has said that he's, when I'm going to
14 see Mr. Cox again, I don't know, I think I will on the 15th --

15 MR. COX: Yes.

16 CHAIRPERSON HILL: -- and so he knows, and so we're,
17 Mr. Cox and I are going to be friends at some point in time over
18 these next few years for however long I'm doing this job.

19 Okay. All right. I'm going to let us all go. Do my
20 fellow Board members have anything before I close this portion
21 of the hearing? Okay. All right, thank you all. We'll see
22 you on the 15th of November. Have a nice day. Closing this
23 portion of the hearing. Goodbye.

24 Okay. Mr. Moy, is there anything left before the Board
25 today?

1 MR. MOY: No. Nothing else from the staff. I'm
2 assuming from your last conversation that you're not -- you didn't
3 set any deadline for any submissions so that part of it is blank
4 and we'll just come back on November 15th; correct?

5 CHAIRPERSON HILL: Yes. Because we don't know when the
6 building permit's coming out at this point and we don't know
7 what's going to happen and if there even is an appeal. So, we'll
8 have to see.

9 MR. MOY: Understood.

10 CHAIRPERSON HILL: All right. Do my fellow Board
11 members have anything they'd like before we adjourn?

12 Okay. Then you all have a nice day. Goodbye. We're
13 adjourned.

14 ZC VICE CHAIR MILLER: Thank you. Goodbye.

15 (Whereupon, at 1:04 p.m., the above-entitled
16 hearing was adjourned.)

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C E R T I F I C A T I O N

This is to certify that the foregoing transcript

In the matter of: Public Meeting

Before: BZA

Date: 10-04-2023

Place: Teleconference

was duly recorded and accurately transcribed under my
direction; further, that said transcript is a true and accurate
record of the proceedings.

JULIE SOUZA