

1 GOVERNMENT OF
2 THE DISTRICT OF COLUMBIA

3 + + + + +

4 BOARD OF ZONING ADJUSTMENT

5 + + + + +

6 REGULAR PUBLIC HEARING

7 + + + + +

8 WEDNESDAY

9 OCTOBER 23, 2024

10 + + + + +

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

15 ZONING COMMISSION MEMBERS PRESENT:

16 FREDERICK D. HILL, Chairperson
17 LORNA JOHN, Vice Chairperson
18 CHRISHAUN SMITH, Board Member
19 ANTHONY HOOD, Chairperson, Zoning Commission
20 ROBERT MILLER, Vice Chairperson, Zoning Commission

21 BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

22 KEARA MEHLERT, Secretary
23 PAUL YOUNG, Data Specialist

24 OFFICE OF ZONING ADJUSTMENT LEGAL COUNSEL:

25 MARY NAGELHOUT, Esquire

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)

1 D.C. OFFICE OF PLANNING:

2 Shepard Beamon, Development Review Specialist
3 Michael Jurkovic, Development Review Specialist
4 Philip Bradford, Development Review Specialist
5 Karen Thomas, Development Review Specialist
6 Ron Barron, Development Review Specialist

7

8 The transcript constitutes the minutes from the
9 Regular Public Hearing held on October 23, 2024
10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

1	T-A-B-L-E O-F C-O-N-T-E-N-T-S	
2		
3	Case No. 21164 Christopher Mak	8
4	Case No. 21132	
5	Marwick Associates, LLC	35
6	Case No. 21157	
7	3428 O Street, LLC.	46
8	Case No. 21058	
9	Rupsha 2011, LLC	77
10	Case No. 21143	
11	Trustees for Harvard University	101
12	Case No. 21189	
13	Sidney Neely	99
14	Case No. 21171	
15	Ezekiel Reich	147
16	Case No. 21180	
17	Steven Kaplan and Kelly Voss	159
18		
19		
20		
21		
22		
23		
24		
25		

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

(9:30 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen, the Board of Zoning Adjustment. Today is October 23rd, 2024. This hearing please will come to order. My name is Fred Hill, Chairman of the District of Columbia Board of Zoning Adjustment. Joining me today are 'Board members, Lorna John, Karl Blake, Crishaun Smith, Zoning Commissioners, Anthony Hood, Rob Miller and Tammy Stidham.

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

At the conclusion of the decision meeting, I shall, in consultation with the Office of Zoning, determine whether a full or summary order may be issued. A full order is required when the decision it contains is adverse to a party, including an affected ANC. A full order may also be needed if the Board's

HUNT REPORTING COMPANY
Court Reporting and Litigation Support
Serving Maryland, Washington, and Virginia
410-766-HUNT (4868)
1-800-950-DEPO (3376)

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

17 All persons planning to testify either in favor or in
18 opposition, should have signed up in advance. They will be called
19 by name to testify. If this an appeal, only parties are allowed
20 to testify. By signing up to testify, all participants believe
21 the oath or affirmation as required by 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 law at 103.13, provided that the person has made the request to
2 enter and exhibit explain, a) how the post exhibit is relevant,
3 b) if good cause justifies allowing exhibit into the record,
4 including an explanation of why the requester did not file the
5 exhibit prior to the hearing pursuant to Y 206 and how the
6 proposed exhibit will not unreasonably prejudice any parties.
7 The order of procedures are for special exception and variances
8 are pursuant to Y 409. Let's see.

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

23 Finally, District of Columbia Administrative
24 Procedures Act requires that a public hearing on each case be
25 held in the open before the public. However, pursuant to § 405

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

8 Madam Secretary, do we have any preliminary matters?

9 MS. MEHLERT: Good morning, Mr. Chairman, members of
10 the Board. And again, thank you for your patience this morning
11 with the technical issues. In terms of the scheduling changes
12 for today, the Application No. 19689-B of MIC9 Owner, LLC, the
13 remand was withdrawn and then Application No. 21169 of Benjamin
14 J. Levy has been postponed to January 22nd, 2025. Also, the
15 Chairman has reviewed and granted waivers to allow late filings
16 into the applicable case records pursuant to Subtitle Y at §
17 206.7 and § 103.13. Any other late filings during the course of
18 today's live hearing should be presented before the Board by the
19 applicant parties or the witnesses after the case is called. Any
20 other preliminary matters will be noted when the case is called.

21 CHAIRPERSON HILL: Okay. Thank you. So what we're
22 going to do is kind of rearrange a couple of things. I think
23 the first two that were for Chairman Hood were 21157 and 21058,
24 correct, Madam Secretary? Okay. And so, if we could, and I'm
25 not sure who is with us on some of these, so I'll let them kind

1 of explain themselves as we move forward. I think, then 21164
2 is the first one, correct?

3 MS. MEHLERT: The first with Commissioner Miller.

4 CHAIRPERSON HILL: Yeah. Okay. You want to go ahead
5 and call that, please?

6 MS. MEHLERT: So this is in the Board's hearing session,
7 it's Application No. 21164 of Christopher Mak, as amended. This
8 is a self-certified application for an area variance pursuant to
9 Subtitle X § 1002 from the rear yard requirements of Subtitle F
10 § 207.1 and special exceptions pursuant to Subtitle X § 901.2
11 under Subtitle U § 421 to allow a new residential development
12 under Subtitle C § 305.1 to allow multiple primary buildings on
13 a single record lot, and under Subtitle F § 201.4 to allow an
14 increase in floor area ratio for voluntary inclusionary
15 development.

16 This is for a new six-unit apartment house with two
17 stories and a cellar, including one IZ unit on the same lot as
18 an existing apartment house with five units in a semi-detached
19 building. It's located in the RA-1 zone at 113 Wayne Place, SE,
20 Square 6117, Lot 52. This hearing began on July 31st and was
21 continued on October 2nd, and the Board requested at that time
22 additional submissions from the applicant. Participating are
23 Chairman Hill, Board Member Smith, and Commissioner Miller.

24 CHAIRPERSON HILL: Okay.

25 MR. HOOD: I believe the other Board members have read

1 in and you might want to confirm with them.

2 CHAIRPERSON HILL: Okay, great.

3 Mr. Blake, have you read into this case?

4 MR. BLAKE: I have, Mr. Chair.

5 CHAIRPERSON HILL: Thank you.

6 Vice Chair John, have you also read into this case?

7 VICE CHAIR JOHN: Mr. Chair.

8 CHAIRPERSON HILL: Now -- you're on mute now.

9 VICE CHAIR JOHN: Okay.

10 CHAIRPERSON HILL: Now, you're off mute.

11 VICE CHAIR JOHN: Yeah. I was on this case.

12 CHAIRPERSON HILL: Oh, okay.

13 VICE CHAIR JOHN: So I am prepared to sit in.

14 CHAIRPERSON HILL: Okay, great. All right. Can the
15 applicant hear me, and if so, could they introduce themselves for
16 the record?

17 MR. MAK: Oh, yes. This is Christopher Mak. I am the
18 owner of the property and the applicant. Can you see my video?

19 CHAIRPERSON HILL: Yeah, I can see you, Mr. Mak.

20 MR. MAK: Okay.

21 CHAIRPERSON HILL: Mr. Mak, what you -- was your
22 architect with us again today?

23 MR. MAK: He should be, yes.

24 CHAIRPERSON HILL: Who's your architect?

25 MR. MAK: Denver Terrance.

1 MR. TERRANCE: I'm here, Denver Terrance.

2 CHAIRPERSON HILL: All right, Mr. Terrance. Is your
3 video working?

4 MR. TERRANCE: I'm actually moving around, so if you
5 give me a minute I could be stationary to where I could be on --
6 on camera.

7 CHAIRPERSON HILL: Okay. Mr. Mak, is Mr. Terrance
8 going to present or you?

9 MR. MAK: I will primarily be presenting.

10 CHAIRPERSON HILL: Okay. So Mr. Mak, this has been a
11 little bit -- what's the word? We've asked for a bunch of stuff,
12 so you can tell us what you've done since last time you were
13 here. And I still don't know if you've met the expectations of
14 the Board and what they're trying to -- information they need.
15 So we'll see how this moves forward. I'll go ahead and let you
16 give your presentation. I'll put 15 minutes on the clock so I
17 know where we are, and you can begin whenever you like.

18 MR. MAK: Okay. All right. Yeah, I'll begin. So,
19 Ms. Mehlert presented the background pretty well already, so I
20 won't dwell on it too much. But we do have an existing five-unit,
21 multifamily apartment building in the front of the existing lot
22 and it's currently rented to families with young children. And
23 we are proposing to build an additional building on the rear of
24 the lot, which will be a six-unit building, two stories with one
25 cellar basement level. Similarly to the front, it will be

1 three-bedroom, one bath, multi-family apartment rental. So, we
2 are asking for variance relief for a few issues. Mainly it is
3 for the right to -- the ability to build this structure for it
4 to be like free-standing, detached from the existing building.
5 And primarily, we come here to ask about the placement of the
6 building, because we want it to be placed further away from the
7 existing building and want it to be towards the rear as much as
8 possible. So I don't know if you can see our PowerPoint
9 presentation or if it's up, but --

10 CHAIRPERSON HILL: Mr. Young -- Mr. Young, could you
11 pull up the PowerPoint? Mr. Mak, you can go ahead and proceed.

12 MR. MAK: Yes. So yeah, on the right here, you will
13 see our existing building, and on the left side is the proposed
14 building that will be towards the rear of the lot. And in -- if
15 you go to the next slide, we have Wayne Place, Southeast going
16 up and down, and we have a public alley to the east like southeast
17 of our building. So primarily in the rear yard of our building
18 is, like, trees, barren, unused space. And around this whole
19 area of the neighborhood is just trees and unused space. And
20 right now, it -- it's basically a forest, an overgrown forest and
21 not -- not used very well. And because there's a public alley
22 kind of going through it, there's a lot of illicit activity back
23 there, because it's out of sight and out of the way of the main
24 areas in the neighborhood. And so we want to put our building
25 here as far back as we can to develop the area to kind of mitigate

1 that unused area where illicit activity may occur. And if we
2 place the building as far back as we can towards there, it will
3 also be as far back from existing neighboring structures as well.

4 And if you can go to the next slide. Yes. And here
5 is a better site plan where you can see existing Wayne Place
6 going north and south on the right side of this drawing and then
7 the public alley is in the south here. And again, you can see
8 the right building, which is the existing five-unit apartment
9 building and then the new proposed structure to the left.

10 So since our last meeting, I believe you guys asked us
11 to take a look into § C-305 to make sure for our theoretical lots
12 we have applied all the development standards and included all
13 the necessary required drawings for the submission for C-305 for
14 our theoretical lot lines.

15 So since then, we have discussed with the Office of
16 Planning and reviewed those subsections in more detail. And as,
17 I guess, Office of Planning and us have both agreed that the --
18 that yes, we should be including a development standards table,
19 which we split by individual lots. So we have included that
20 table in our coversheet of our architectural plans and have split
21 it between Lot 1, which is the front, Lot 2, which is the rear
22 and then total for both the combined for the actual entire lot
23 itself.

24 But we have also included like our grading plan as well
25 and landscaping plan for both existing and proposed. And then

1 we, I guess, one topic that came up was whether lot occupancy
2 and FAR should be applied individually to each theoretical lot,
3 like theoretical Lot 1 and 2. But after OP and us reviewed §
4 305, we believe that lot occupancy and FAR should not be applied
5 individually to each theoretical lot, but as a whole, because §
6 C-305.3 lists the specific development standards that are to be
7 applied to each theoretical lot, which include the side yards,
8 rear yard requirements, vehicle ingress and egress, and building
9 height.

10 So for those minimum requirements for theoretical lots,
11 we had left them as not applicable, and it was only applied as a
12 whole. But just for the specific informational purposes for the
13 Board, because they did request to see the lot occupancy and FAR
14 individually per theoretical lot, we did include an exhibit of a
15 table of development standards broken down where you can see the
16 FAR and lot occupancy for the theoretical lots individually, just
17 for decision making purposes.

18 I guess, Denver, did you want to go and talk about the
19 next slides for the developments or the relief standards that
20 we're requesting?

21 MR. TERRANCE: Yeah, I can do that. And so -- and this
22 is the same that was presented before with the new residential
23 development. And then we have the three areas that we're looking
24 for some relief on, as mentioned earlier in the introduction and
25 by Mr. Mak. Those things are the FAR relief that we are looking

1 at .8 relief for that. He went over thoroughly the theoretical
2 subdivision relief, where -- what we're looking to do there, and
3 in the rear setbacks because of the size of the lot -- because
4 of the size of the -- and the location of the existing building,
5 we're not able to get the required floor, the zoning of the
6 20-foot rear yard setback. We're looking to get relief. We are
7 able to get 13 feet for rear yard setback there abutting the
8 wooded area.

9 MR. MAK: And if you can go to the next slide, I'll
10 show the theoretical lots in more detail. Yeah, so --

11 MR. TERRANCE: So this just -- this shows the -- how
12 we are able to get the 20-foot rear yard setback on the first
13 theoretical lot. However, on the rear, we are only able to get
14 13 for the rear yard setback for the new proposed building.

15 MR. MAK: And just to tag along onto what Denver's
16 saying, for the -- I guess for the four areas of relief that
17 we're asking for, we're asking for -- we are applying for
18 inclusionary zoning, which would give us additional FAR. And
19 with that additional FAR, we are under that amount of FAR
20 requesting. So it's not an additional amount over that amount
21 we're allocated with the IZ. And as far as the 13 -- the --
22 this -- the yard setback for the rear building, it would be
23 difficult for us, because of the size of our lot to apply to rear
24 yard setbacks and still utilize our allocated FAR and lot
25 occupancy. So we are within, like, the 40 percent lot occupancy

1 and within the FAR with IZ and to plate -- to build -- so to have
2 those two structures with that amount of allocated FAR and lot
3 occupancy, it's -- we're just trying to figure out the placement
4 of the two buildings on this lot. And when we apply the
5 theoretical lot or the theoretical lots, having two 20-yard
6 setbacks on a smaller lot like this is very difficult, because
7 our entire width of our lot is only about 100 feet. So applying
8 two rear yards, which is already 40 feet, that only -- that's 40
9 percent of our lot to have these -- this rear yard setbacks.

10 And since the rear lot of the rear building that we're
11 trying to build is just forests and barren land back there and
12 not encroaching on any neighbor -- nearby neighboring structures,
13 we thought it would be more beneficial to place that structure
14 more to the rear. And we wanted to have the 20 feet setback
15 between or 20 yards between the two buildings, between the
16 existing and the rear building just to have more green space for
17 all the residents who are living in these two buildings. It'll
18 be a good communal space for people to enjoy that's safe for the
19 children, like between the two buildings rather than people and
20 children playing like on the street sides or in the alley.

21 We do also have a neighbor at 111 Wayne Place up to the
22 north, and they have a building with a rear yard, and they have
23 also specifically requested us to keep these two buildings
24 separate and have as much space between the two buildings as
25 possible so their residents can, in their backyard, will have

1 access to the alley to the south by walking through our
2 buildings. And if we place the two structures closer together
3 or build a building connection between the two buildings, their
4 residents at the neighbors above would -- their access to the
5 public alley would be blocked off.

6 I guess, does the Board have any questions for us?

7 MR. SMITH: Yeah, I have a question.

8 CHAIRPERSON HILL: Mr. Mak, I mean -- yeah. There you
9 go. Go ahead, Mr. Smith.

10 MR. SMITH: My question is, are you -- you said that
11 you're applying for IZ. Is that IZ going to be in both buildings,
12 so the new and the old, since you're requesting us to waive this
13 based on IZ, FAR, and development standards?

14 MR. MAK: I believe for the IZ, the application is for
15 the new building itself only. But we do have a good mix of
16 affordable and market rate tenants already. There are already
17 multiple affordable rental assistant tenants living in the
18 existing building. So IZ is just something that would go with
19 our current strategy.

20 MR. SMITH: Okay. So my next question is, does the
21 existing building on that proposed theoretical lot meet the
22 development standards for a non-IZ building?

23 MR. MAK: Yes, it does. It meets all the requirements
24 currently.

25 MR. SMITH: Mr. Terrance, can you confirm that?

1 MR. TERRANCE: That's correct.

2 MR. SMITH: Okay. Office of Zoning, Mr. Beamon, could
3 you be prepared to address that question, just so we can confirm,
4 because we got this development table fairly late, and I don't
5 know if the Office of Planning evaluated it based on that
6 information. So, thank you. That was the only question I had
7 for them.

8 CHAIRPERSON HILL: Thanks, Mr. Smith. Anyone else
9 before I turn to the Office of Planning? Okay.

10 Can I hear from the Office of Planning first, Mr.
11 Beamon?

12 MR. BEAMON: Good morning, Board members. For the
13 record, Shepard Beamon with the D.C. Office of Planning. OP has
14 reviewed the application for special exception relief for new
15 residential development in the RA-1 zone on two theoretical lots
16 and relief for -- from the FAR and rear yard requirements to
17 allow a second detached six-unit apartment building with one
18 voluntary IZ unit. We find the requested relief meets the
19 criteria for Subtitles C, F, U and X, and the proposed apartment
20 building should not have adverse impacts on privacy, light or air
21 for the neighboring properties and should not be burdensome on
22 the assigned schools.

23 Since this case first came before the Board, the
24 applicant has revised the application to address the comments and
25 concerns brought up by the Board. OP has reviewed and -- we've

1 reviewed the revisions, and we recommend approval of the
2 requested relief, and we stand on the record.

3 And I believe your question was related to IZ and FAR.
4 Could you repeat that question?

5 MR. SMITH: The theoretical lot that would be created
6 for the existing building, being that it's not going to be an IZ
7 unit in it, does that theoretical lot and with that building on
8 it, meet the max FAR for a non-IZ building? Does it meet those
9 development standards for a non-IZ building in that zone?

10 MR. BEAMON: So the FAR is applied to the entire lot,
11 okay. And then the IZ unit is proposed for the new building
12 only. I don't think that the existing building is required to
13 have the IZ unit. Is that what you're asking?

14 MR. SMITH: No, I'm just trying to make sure that the
15 lot that would be created where the existing building is, does
16 that meet all of the development standards for a non-IZ building?

17 MR. BEAMON: Yes.

18 MR. SMITH: Non-IZ zone? Okay. You've evaluated it
19 based on that?

20 MR. BEAMON: Yeah, we've eval -- we looked at the new
21 submitted self-certification documents, and yeah, it meets that
22 requirement.

23 MR. SMITH: Okay. My next couple of questions is to
24 you, Mr. Beamon, again. And it's based on that rear yard area
25 variance request, the exceptional and extraordinary situation.

1 | You stated within your staff report that in order for them to
2 | achieve this without a rear yard variance, the interior of the
3 | existing building would have to be reconfigured to provide access
4 | for a new connection, resulting in further difficulties. Could
5 | you expound on how that would -- that difficulty, do you evaluate
6 | that existing building and found -- can -- yeah, can you expound
7 | on your reasoning on that?

8 | MR. BEAMON: Yes. I believe the existing building does
9 | not have any rear exit. So that means they would have to -- and
10 | the applicant can correct me if I'm wrong here. But I believe
11 | that the existing building does not have rear access, so they
12 | would have to, I guess, reconfigure that existing building to,
13 | thus, connect the new building to create one building. So that
14 | would create additional difficulty for the applicant.

15 | MR. SMITH: To the applicant. Can you -- again, can
16 | you expand on that? So, yeah, I understand there isn't a rear
17 | access, but what is going on in the interior of this building
18 | that would make it difficult?

19 | MR. MAK: Okay. So the -- in the existing building on
20 | the west side of that wall on that building, so the wall closest
21 | to the new building that we're building, is a hundred percent
22 | like apartment units. There's people's bedrooms located and
23 | living space in there. There's no common area access or hallway
24 | that abuts that west side of the building. So to build a
25 | connection between the two buildings, you would have to build a

1 common area inside or through someone's existing apartment unit.
2 So you would have to have those existing tenants vacate and then
3 make their apartment smaller or get rid of bedrooms just to build
4 this common area hallway, so you can build the building connection
5 between them. And then as far as the building connection goes
6 between the two buildings, as I mentioned, it would link the two
7 buildings, but it would block access from the neighbors to the
8 north to be able to access the public alley to the south, because
9 now you have the building connection and people -- the neighbors
10 can't get through it. So it would kind of be a potential hazard,
11 fire hazard even, for them if they were exiting their building
12 from the rear.

13 And it would -- the building connection would actually
14 also be very inconvenient and a nuisance to both existing tenants
15 in the existing building and the new tenants in the rear building,
16 because they -- you have like six families, additional families
17 just walking through the hallway of the existing building, making
18 a lot of noise, like, bringing the furniture in and everything,
19 just to go through kind of like a maze of corridors. It's --
20 there's like stairs and stuff as well, because the topography of
21 the lot is very hilly. So they'd have to walk up some stairs
22 and then back down and through and go through a bunch of people's
23 apartments in the existing building, just to go through a small
24 building connection and enter the lobby of their build -- their
25 building in the rear, and then walk up some other steps to get

1 to their apartment unit. It would be very inconvenient for
2 everyone. And I don't think it would even be used by the people
3 who live in the rear building. They would probably just want to
4 walk around to the lobby on -- like, go around the building.

5 MR. SMITH: Wouldn't a building connection create
6 additional access? You just stated earlier that there wasn't a
7 rear entry point to the existing building, but wouldn't some
8 form -- if this building was connected, you could build an
9 entrance that faces towards the alley to create some additional
10 access. And I don't buy the argument that it would be a fire
11 code violation.

12 MR. MAK: I -- but I guess currently there's no way to
13 build a rear exit without relocating current tenants and I guess,
14 building into their apartment units.

15 MR. SMITH: I guess I have another question about that,
16 because it -- you know, this undue hardship is more so tied to
17 the property owner and not necessarily to the tenants. Would
18 this result in the removal of units with that connection?

19 MR. MAK: Yeah. So it would make their units smaller.
20 We'd have to get rid of some bedrooms or some living space in
21 the existing units.

22 MR. SMITH: Was there an analysis done on this and
23 presented or you know or analyzed by you and presented to the
24 Office of Planning?

25 MR. MAK: I mean, we can put it in our --

1 MR. TERRANCE: I think -- could say --

2 MR. MAK: -- burden of proof. But there's not an
3 analysis as far as maybe like monetary impacts or anything like
4 that.

5 MR. SMITH: Mr. Terrance, you were about to say
6 something?

7 MR. TERRANCE: Yeah. I was just going to say in our
8 initial design discussion, we'd looked at what it would look like
9 to connect to the other building. And to do so, we would lose a
10 unit in the existing building to be able to create that corridor
11 or to connect -- to have a space to actually connect the new
12 building, too. And it would -- it wouldn't take up an entire
13 unit, but it would take enough of the unit to where that unit
14 wouldn't be functional in the existing building.

15 MR. SMITH: So you said that you've already created
16 some plans and spoke to that.

17 MR. TERRANCE: We didn't create drawings that spoke to
18 that, but we looked at it just from a -- just, you know, during
19 our initial design discussion of, okay, if these buildings are
20 connected, how -- what -- where does that connection point
21 happen? And like Mr. Mak mentioned, that entire back wall there,
22 there's units along the wall, so it would definitely come from --
23 that space has to come from one of the existing units.

24 MR. SMITH: I think those drawings that -- or this
25 hypothetical design that you looked at would help strengthen your

1 argument for this area of variance. So I think I would like to
2 see, you know, something that speaks to that.

3 Just turning back to Mr. Beamon again, and this is a
4 question about the practical difficulty question. You had stated
5 that them being required to meet the 20-foot rear yard setback
6 potentially results in the limited building area. Did you analyze
7 what the remaining building area was and in essence, would that
8 make the construction of any building unfeasible? Is a buildable
9 area just so small that you couldn't presumably build anything?

10 MR. BEAMON: So it would significantly reduce the
11 building size. Seven feet could be considered a significant
12 amount of space to lose in terms of the building depth. However,
13 I was not presented with an actual drawing or plan or site plan
14 or floor plans that would show what it would look like or what
15 it could look like, so I haven't analyzed an actual physical
16 drawing. But just looking at the buildable area that they would
17 be -- that would be that would be remaining did appear to be
18 smaller and would potentially result in the loss of a unit, or
19 maybe more, given that -- in that smaller building area.

20 MR. SMITH: Okay. And again, turning to the applicant.
21 Was there an analysis done that showed that it would be unfeasible
22 or impractical for you to construct a reasonably sized building
23 based on any type of financial analysis of the number of units
24 that you could yield from a building that did not request this
25 area variance, you know, keeping it at 20 feet? Or was there

1 | some type of analysis done on that how many units you could yield
2 | or whatnot?

3 | MR. MAK: There wasn't a financial analysis done, but
4 | we are at the maximum lot occupancy of about 40 percent right
5 | now with these current --

6 | MR. SMITH: I'm not talking about lot occupancy. I
7 | understand you can waive that. You can't waive rear yard. So
8 | you are also requesting an area variance -- setback with the area
9 | variance.

10 | MR. MAK: We're just requesting the side yard or the
11 | rear yard variance, which is our area variance, but we -- as far
12 | as like total lot occupancy and FAR, we are -- with our
13 | inclusionary zoning that we're applying for, we are under the
14 | requirement. So we're not --

15 | MR. SMITH: Again, I'm not asking about your FAR. I'm
16 | asking about this -- the rear yard setback.

17 | MR. MAK: Okay.

18 | CHAIRPERSON HILL: So I think what --

19 | MR. TERRANCE: Yeah, what I --

20 | CHAIRPERSON HILL: Mr. Terrance, Mr. Smith is trying
21 | to help you guys a little bit. Your variance argument is not
22 | particularly strong.

23 | MR. SMITH: It's weak. It's very weak.

24 | CHAIRPERSON HILL: Right.

25 | MR. SMTIH: And Office of Planning -- yeah, so.

1 CHAIRPERSON HILL: And so we're trying to understand
2 your argument and whether or not you've looked at everything to
3 help support your argument. So Mr. Smith, continue.

4 MR. TERRANCE: So I -- yeah. If I can attempt to
5 address Mr. Smith's question. So like reducing the footprint of
6 the building on each floor by seven feet, pretty much would lose
7 a unit per floor, which we talked about at some point during the
8 design process of shrinking the building to get it to a point
9 that we would be able to meet those setbacks. In doing so, you
10 know, the discussion was that the project becomes unfeasible from
11 the standpoint of construction cost and you know, the rental
12 rates for these units to where the project --

13 CHAIRPERSON HILL: Did Mr. Terrance just freeze or did
14 I?

15 MR. SMITH: Mr. Terrance, you froze up, so I missed the
16 last minute or so.

17 MR. TERRANCE: Okay.

18 CHAIRPERSON HILL: You were saying -- Mr. Terrance, you
19 were saying that it financially became infeasible if you lost
20 those units.

21 MR. TERRANCE: Correct. Correct. You would lose a
22 unit on each floor.

23 CHAIRPERSON HILL: So -- and so, Mr. Smith is asking
24 for some kind of evidence to support that. But I'll let Mr.
25 Smith continue with his questions.

1 MR. SMITH: That's all the questions that I have and I
2 mean, everything that Mr. Hill stated, I completely agree. So
3 it sounds like you've done some form of an analysis, but it seems
4 like it's been more so back up mapping. So I think for you to
5 have a stronger argument for your variance request and also some
6 of the theoretical lot waivers, I think you have a little -- in
7 my mind, a little bit more work that you have to do. So I would
8 recommend that you submit those additional plans that we just
9 spoke of for us to analyze your variance argument and also this
10 question about -- to me, can you connect those buildings? So it
11 would be great to see those plans that show how you could have
12 created that connection and how it created an undue hardship or
13 practical difficulty for you to create that connection. And tell
14 the story on the reason why you're requesting all of these --
15 this level of relief, because, honestly, what's within the
16 record, to me, you haven't shown a stronger case for the practical
17 difficulty and also the reasons why you necessarily need to create
18 a theoretical lot. Because you haven't proven that you can't
19 connect this building. So I think you have a little bit more
20 work that you have to do.

21 So I will request that information and also financial
22 information. You're saying that you've already gone through
23 these numbers, you've already seen the number of unit yield that
24 you can get out of this, and it makes the -- this construction
25 or this project unfeasible, so I think would be helpful to have

1 | those numbers.

2 | CHAIRPERSON HILL: Okay. And I agree with Mr. Smith's
3 | comments. I'm going to just go around my Board members also and
4 | see if there's any other things that they may or may not want.
5 | Mr. Blake?

6 | MR. BLAKE: Sure. Thank you, Mr. Chair. I agree with
7 | the comments stated by Board Member Smith. I do think that
8 | looking at the plan here, I see creatively, there may be some
9 | ways to create a connection between these two buildings that
10 | enhances the residential experience without suffering or losing
11 | space and without, you know, harming the overall size of the
12 | project. A meaningful connection could be not necessarily
13 | directly through the middle of the building. It could be to the
14 | side. I see a fair amount of space available on parts of the
15 | building on the side. They could -- you could do that. So it
16 | may not be -- it's very important to look at what the definition
17 | is of that and work with that to see a creative way to connect
18 | these properties.

19 | It sounds like, when I look at the discussions for the
20 | variance, as I -- as I agree with by Board Member Smith's
21 | assessment that it's a very weak argument. I struggle to
22 | understand exactly what the exceptional condition is that leads
23 | to the hardship or the practical difficulty. For example, you've
24 | told me about an occupied building, and if you were to do this,
25 | you'd have to lose a tenant. So that suggests if this building

1 | were vacant, this would be a very easy thing to accomplish. There
2 | are a lot of buildings that are not vacant. The topology of the
3 | land doesn't suggest that it's unique in some way that doesn't
4 | allow you to do something. So I'm looking for the uniqueness in
5 | this overall structure that points to that. To say that you can
6 | just -- you can't build this building is -- there a lot of reasons
7 | why we can't build buildings in the city as designed, because of
8 | the regulations to not let you do certain things.

9 | I do think that it was very helpful to show that
10 | background and show the amount of space that exists behind the
11 | property. But it would be helpful to get a better sense of that,
12 | because I do think that it would not necessarily be problematic
13 | if you, in fact, have a lot of space behind the 13 foot, if that
14 | would existed. But I suspect you could potentially combine these
15 | two buildings and avoid having to get the variance relief at all.
16 | And even with the occupied. So I think the variance relief, to
17 | me, is a very weak argument. I appreciate you sending additional
18 | information.

19 | I do -- I am -- I -- I'm not clear on the interpretation
20 | of the -- I think it's C-305.2. I'm not sure of your
21 | interpretation for it to apply the entire lot is actually
22 | consistent with what my understanding of it is. But I think we
23 | probably have to spend a minute just to kind of work through
24 | that. But I do believe, as we pointed out, there are certain
25 | elements that are waivable, and -- but certain development

1 standards are not. And I do think we could do that. But if you
2 look at the individual lots, you do have a fairly significant lot
3 occupancy and you do, like, in the second lot, the rear lot, and
4 you also have particularly high FAR, which could actually be
5 waived. Because if it's determined that it doesn't, you know,
6 adversely impact the intent of the regulations and maps, that it
7 actually is something that's doable. But I think it's a little --
8 but this could be waived. But it is a fairly intense use. And
9 I do think the combined building would meet all of the development
10 standards.

11 So I would like to have a much stronger variance
12 argument. And it would be helpful to think creatively of how
13 you could place that connection to create one building, which may
14 not necessarily disturb all your tenants.

15 That's all I have to say, Mr. Chairman.

16 CHAIRPERSON HILL: Thank you, Mr. Blake.

17 Vice Chair John, do you have anything you'd like to
18 add?

19 VICE CHAIR JOHN: I think I'm following the discussion.
20 Please remind me which lot needs the variance. That's the new
21 lot. So as I understand the comments, by combining the two
22 buildings with the meaningful connection, then the rear yard
23 would be satisfied by the existing building. Is that the
24 argument?

25 CHAIRPERSON HILL: I believe so, yes.

1 VICE CHAIR JOHN: Okay.

2 CHAIRPERSON HILL: So it would eliminate the variance
3 need.

4 VICE CHAIR JOHN: Right. And this could be done without
5 the applicant having to lose one unit?

6 CHAIRPERSON HILL: Well, that's still up for
7 discussion.

8 VICE CHAIR JOHN: I guess that's for the architect.

9 CHAIRPERSON HILL: Oh, sorry.

10 MR. TERRANCE: I think that's the analysis that we'll
11 look into to see how we could create a connection, a meaningful
12 connection between the existing and the proposed new building.
13 If that speaks to your question.

14 VICE CHAIR JOHN: Yeah. So that west wall, as the
15 applicant testified, has apartment buildings? I mean, I'm sorry,
16 apartment units --

17 MR. TERRANCE: Units.

18 VICE CHAIR JOHN: -- on that --

19 MR. TERRANCE: Yes, ma'am.

20 VICE CHAIR JOHN: -- entire wall?

21 MR. TERRANCE: That's correct.

22 VICE CHAIR JOHN: Okay. Thank you. I understand.
23 And -- oh, one more question. And did I understand that there
24 is no exit on that side? There's no existing exit on the west
25 wall?

1 MR. TERRANCE: No. No, ma'am.

2 VICE CHAIR JOHN: So in order to -- you'd have to create
3 a new exit or create the connection from the north or the south
4 wall. Do I get that?

5 MR. TERRANCE: If we're not disturbing a unit, yes.

6 VICE CHAIR JOHN: Yes. Okay. I think there's value
7 in having more units. So I see that as a plus, but as Board
8 Member Smith said, maybe you just need to supplement the record
9 so that there's something for the Board to base its opinion on.
10 And I'm not sure if I saw measurements in the diagrams. I haven't
11 had an opportunity to review them, because they were submitted
12 late. But I think I would like to see clearly on the diagram
13 the measurements for the rear yard relief, because that's really,
14 in my view, the most significant thing you're asking for, the
15 area variance. So that -- those are my two comments. Thank
16 you.

17 CHAIRPERSON HILL: Thank you, Vice Chair John.

18 Commissioner Miller, do you have anything to add?

19 COMMISSIONER MILLER: Mr. Chairman, I appreciate my
20 fellow 'Board members' questions and the applicants' and OP's
21 responses to those questions. I -- I'm generally supportive of
22 the application. I appreciate the applicant's responsiveness
23 also to previous requests of the Board and of the OP to make
24 changes and try to provide more information and more information
25 to justify the variance might be helpful in this case. I would

1 | be concerned about the loss of a unit in the existing and this
2 | disruption to existing tenants in the existing building. So to
3 | the extent that information can show that there would be
4 | disruption or displacement, which would be a terrible result,
5 | even if temporary, just for the purpose of creating a connection,
6 | which, although meaningful connection is the term, I don't know
7 | if it's actually the term used in the zoning regulations or not,
8 | but that's how we've interpreted it. I'm not sure how meaningful
9 | this meaningful connection would be, really, in terms of
10 | helping -- providing something of value to the existing -- to
11 | existing and the new tenants and to the overall layout of the
12 | lot and the access from that north lot -- I think the north lot.
13 | You have the adjacent neighbors' support for this application,
14 | and they'll be able to get through that space, that rear yard of
15 | the existing lot to the alley, as the -- according to the
16 | applicant's testimony.

17 | So I mean I think all and we have the support of the
18 | ANC, AD, and Office of Planning, as well, support it. So, in
19 | general, I'm supportive. I'm not -- but I think additional
20 | information to justify the variance, obviously, is something that
21 | my fellow Board members desire, so I'll look forward to seeing
22 | that as well.

23 | CHAIRPERSON HILL: Okay. Thank you. Then I guess I'll
24 | weigh and think it in -- oh, go ahead, Mr. Blake.

25 | MR. BLAKE: Christopher, do you have laundry facilities

1 and communal spaces in these properties currently?

2 MR. MAK: No. There's not currently any communal space
3 inside. Each apartment unit has an in-unit washer-dryer already.

4 MR. BLAKE: Okay. Thank you.

5 CHAIRPERSON HILL: So I guess, Mr. Mak and Mr. Terrance,
6 the way I'm kind of hearing my fellow Board members, there's a
7 couple of different options for you. Like, you can go ahead and
8 try and see if you can see how a meaningful connection wouldn't
9 necessarily work and supply that. You're trying to support this
10 variance argument, right? And so, you know, you can support --
11 you can provide some numbers that show that it's infeasible for
12 these units to get lost and how that would then not allow your
13 project to move forward, thus, supporting the argument. And I
14 think that's what -- Mr. Smith, am I missing anything of the
15 things you first asked for?

16 MR. SMITH: The nail on the head. So some additional
17 diagrams, floor plans that will supplement this argument.

18 CHAIRPERSON HILL: And I mean, and I prefer -- sorry,
19 Mr. Smith. Can you finish? I didn't hear that.

20 MR. SMTIH: And also if it would be helpful, and you've
21 already done the analysis, some financial data that would show,
22 you know, more strongly this argument of, you know, financial
23 hardship.

24 CHAIRPERSON HILL: And I will align myself with the
25 comments of Commissioner Miller, wherein I think that the access

1 that has been provided for the open area there from the people
2 to the north is something that is, I think, a plus. However,
3 you just need to somehow support this argument in a way that you
4 can convince some of the other fellow Board members that I have
5 that you're meeting this test, or somehow, I guess, make a
6 meaningful connection so that you can meet this variance. But I
7 think that all are here saying that losing a unit is not something
8 that we necessarily are trying to promote. So that being the
9 case, Mr. Terrance, and I'm going to go through the rest of the
10 process here.

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

12 MR. YOUNG: We do not.

13 CHAIRPERSON HILL: Okay. So then, Mr. Mak and Mr.
14 Terrance, do you understand everything that's being asked of you?

15 MR. MAK: Yes, thank you.

16 CHAIRPERSON HILL: Okay. Okay. Madam Secretary, can
17 you give us some dates for submissions and when we might be able
18 to come back for a continued hearing?

19 MS. MEHLERT: So if the Board wants to return for a
20 continued hearing on November 13th, which looks like a good day
21 to continue, then if the Applicant -- if submitting the requested
22 information by November 1st is feasible, then any responses by
23 November 8th, and then the continued hearing on the 13th.

24 CHAIRPERSON HILL: Mr. Terrance, would that work for
25 you?

1 MR. TERRANCE: I think we could get the data and the
2 requested information by the 8th to be prepared for the 13th.
3 Unfortunately, I won't be available. I'll be out of the country
4 on the 3rd -- the week of the 13th. But for the sake of the
5 project, I think we would like to be on the agenda.

6 CHAIRPERSON HILL: That's fine. If you submit
7 everything that the Board had asked for, then Mr. Mak, I'm sure,
8 will be able to answer questions on his own without you. And if
9 we somehow need you, we'll just keep pushing it back until we
10 figure this out.

11 MR. TERRANCE: Okay.

12 CHAIRPERSON HILL: Okay?

13 MR. MAK: Okay.

14 CHAIRPERSON HILL: Okay. Okay. Anything else before
15 I close the hearing and the record on this portion of the hearing?
16 Okay? All right. You all are excused. We'll see you on 11/13
17 with your submissions on the 8th.

18 MR. MAK: Okay.

19 CHAIRPERSON HILL: Thank you. Okay.

20 MS. MEHLERT: -- submissions from the Applicant on
21 November 1st and then responses by November 8th.

22 CHAIRPERSON HILL: Sorry. Yes, thank you. Okay, Madam
23 Secretary, whenever you like, the next one so that Commissioner
24 Miller can move on with his day.

25 MS. MEHLERT: Next is Application No. 21132 of Marwick

1 Associates, LLC. That's an application pursuant to Subtitle X §
2 901.2 for special exceptions under Subtitle G § 5200.1 and the
3 lot occupancy requirements of Subtitle G § 210.1 and pursuant to
4 Subtitle G § 207.14 for the rear yard requirements of Subtitle G
5 § 207.6. This is for rear addition to an existing semi-detached
6 four-story mixed-use building, located at MU-5A/DC zone at 1641
7 R Street, NW, Square 178, Lot 97. This hearing was originally
8 scheduled for June 12th and postponed at the Applicant's request.
9 The hearing began on July 31st and the Board requested additional
10 submissions from the Applicant and the party in opposition. And
11 participating are Chairman Hill, Vice Chair John, Mr. Blake and
12 Commissioner Miller.

13 CHAIRPERSON HILL: Okay, great. If the Applicant can
14 hear me, if they could please introduce themselves to the record?

15 MR. BROWN: Good morning, Chairman Hill. Patrick Brown
16 from Greenstein DeLorme & Luchs on behalf of the Applicant,
17 Warwick Associates and also recognize John Sisk, who is the
18 representative of Marwick Associates.

19 CHAIRPERSON HILL: Okay.

20 MR. BROWN: He's on as well.

21 CHAIRPERSON HILL: Okay, great. And the party in
22 opposition, can they introduce themselves for the record, please?

23 MS. WILSON: Alexandra Wilson from Sullivan and Barros
24 representing Mr. Poozesh, who was the former party in opposition,
25 and the owner of 1709 17th Street.

1 CHAIRPERSON HILL: Okay, great. Let's see. Mr. Brown,
2 could you please inform the Board what happened since the last
3 time you were with us?

4 MR. BROWN: Well, most importantly, we've reached a
5 settlement agreement with the neighboring property, Mr. Poozesh,
6 represented by Ms. Wilson. And that withdrawal of party in
7 opposition and settlement agreement got into the record this
8 morning. Also, we've -- we filed a detailed PowerPoint
9 presentation; one, to incorporate the terms of the settlement
10 agreement, but also responsive to the questions asked by the
11 Board last time we met. We're prepared to go through the critical
12 point, which is the demolition plan for the balconies and then
13 respond to any questions that may arise that we can point to the
14 detailed PowerPoint without going through it page by page. I
15 don't think, at this point, it's probably necessary.

16 CHAIRPERSON HILL: Great. Mr. Brown, you can ask Mr.
17 Young to pull up whatever you'd like to present to us.

18 MR. BROWN: Sure. Mr. Young, if you could on our
19 PowerPoint, if you could pull up page two. And I'll let Mr. Sisk
20 from Marwick walk us through the balcony demolition plan
21 presented there.

22 CHAIRPERSON HILL: Mr. Sick (sic), can you hear me?

23 MR. BROWN: Page 2, Mr. Young.

24 CHAIRPERSON HILL: Mr. Sisk, can you hear me? Can you
25 all hear me?

1 MR. BROWN: I can hear you, Chairman Hill.

2 CHAIRPERSON HILL: Okay. Thank you. We'll wait for
3 Mr. Sisk. Yes, we can hear you now, sir.

4 MR. SISK: Thank you. Appreciate it. What we've agreed
5 with our neighbor is to remove two of the balconies to give them
6 the privacy. That was their biggest concern. So as you can see
7 here, we would actually leave the balcony on the third floor, but
8 that would become the roof of the second floor. We removed all
9 the railings, the support posts. The doorway on the third floor
10 would be converted to a window to keep that space, and then the
11 fourth-floor balcony railings, posts, et cetera, would also be
12 eliminated. So then that gives the setback almost an additional
13 four feet, and it's what we had agreed with with the neighbors.

14 CHAIRPERSON HILL: Mr. Sisk, if you could just repeat,
15 perhaps I missed it. On the second floor where, as we proposed
16 earlier, the balconies and that whole area will be enclosed behind
17 a brick wall facing the addition that's scheduled for 1709.

18 MR. SISK: Correct. And we would maintain the roof on
19 that but make the third floor inaccessible.

20 MR. BROWN: If we could, Mr. -- I don't want to rush
21 the Board along.

22 CHAIRPERSON HILL: Why don't -- I mean, Mr. Brown, why
23 don't you go ahead and just walk us through whatever you think
24 is necessary for the Board to see. I mean, I'm flipping through
25 your PowerPoint here, and so you can go ahead and walk us through

1 | your PowerPoint if you'd like.

2 | MR. BROWN: Very well. If we could, Mr. Young, the
3 | next page. And at the last hearing, Vice Chairman John asked
4 | for a -- an updated building plat. This building plat has been
5 | updated to incorporate the demolition plan. And you'll see the
6 | various elements of it set forth for clarity purposes. But it's
7 | important to have that in the record for purposes of approval.

8 | If you could go to slide five? And these are the items
9 | the Board requested at the last hearing. If I could, maybe it's
10 | better to look at them as a comparison. If we could go to --
11 | apologies.

12 | MR. SISK: I think it's slide 25.

13 | MR. BROWN: Well, actually slide 18. And here in the
14 | previous slides, we've taken them separately showing the
15 | originally approved and the as-built condition. But what we've
16 | done here is put them side-by-side for comparison purposes. And
17 | the first floor, there were no changes between the BZA approved
18 | and the as-built. Next slide, Mr. Young. And here you have the
19 | second floor. On the left, the as-built. The yellow is the
20 | balcony area. The blue area is the wall -- facade wall being
21 | pulled down about 4 feet. And you'll see on the right, the BZA
22 | approved, the red area is showing the filling in the building to
23 | a flat front.

24 | Mr. SISK: I think it's important to note here that the
25 | area that we're looking at here is basically inaccessible from

1 most areas.

2 MR. BROWN: Next slide, Mr. Young. Again, the third-
3 floor comparison with the as-built versus the BZA approved. The
4 same circumstance. The blue area was pulled out about four feet
5 from what was approved originally and the balcony added. That
6 balcony will become the roof of the enclosed second floor, as we
7 discussed previously.

8 Next slide, Mr. Young. Fourth floor comparison and the
9 yellow balcony area will be removed under the demolition plan.
10 Next slide. And again, the comparison between the two. Under
11 the demolition plan, the roof and parapet wall will be retained.
12 And then if I -- if I could, one of the other issues -- if we
13 could go back to slide 15. As a result of the second floor being
14 enclosed behind a brick wall, it was necessary to one, reduce the
15 number of units by one, but maintain our commitment and
16 requirement for inclusionary zoning. And so you'll have a unit
17 303 shown here as the new IZ unit, which is -- Mr. Sisk, three --
18 two bedrooms, right?

19 MR. SISK: Correct. Yes.

20 MR. BROWN: And if we could skip ahead just for
21 historical reference, slide 24. This was 2018 when Marwick
22 acquired the property. Next slide, Mr. Young. This was the as-
23 built from September of 2024.

24 MR. SISK: And I think it's important to note here
25 the -- where it says second floor now, that will get -- the

1 neighbor's addition will be going up just about to that level.
2 So that will be getting filled in. This is a view from the alley
3 looking in. As you can see, our building is -- there's not a
4 lot of accessibility to it. We'd have to come across two
5 neighboring properties in order to get to it.

6 MR. BROWN: And if you go, Mr. Hill, I mean, sorry, Mr.
7 Young, if we could advance the slides. Just a side-by-side
8 comparison. Next slide, please. Again, showing from the alley
9 with the -- the four levels.

10 CHAIRPERSON HILL: Mr. Brown, can -- can I interrupt
11 you one second?

12 MR. BROWN: Yes, sir.

13 CHAIRPERSON HILL: I know we have -- I have some kind
14 of time commitments that I'm trying to work towards. I know that
15 we've all reviewed your PowerPoint, and I'm even flipping through
16 the other ones as well. What I'd like to do real quick is just
17 see what questions my Board members might have, and then they can
18 address them to any part of your presentation that is already in
19 the record.

20 Does the Board have any questions of the applicant at
21 this point? Okay. I'm going to turn to the Office of Planning
22 next, and I am going to hear from the party that was in opposition
23 that's withdrawn their opposition. But oh, Ms. Myers, could you
24 please introduce yourself for the record?

25 MS. MYERS: Crystal Myers with the Office of Planning.

1 The Office of Planning is in support of this application and can
2 stand on the record of the staff report.

3 CHAIRPERSON HILL: Okay. Thanks. Mr. Brown, can you
4 remind me again what happened to the ANC?

5 MR. BROWN: The ANC was in support way back when. When
6 you gave us our marching orders after July you made it not
7 necessary to go back to the ANC. We've continued to keep them
8 apprised as a party, and they've made no comment. So but their
9 support --

10 CHAIRPERSON HILL: Nothing -- okay. Thanks, Mr. Brown.
11 Let's see, Mr. Young, is there anyone here wishing to speak?

12 MR. YOUNG: We do not.

13 CHAIRPERSON HILL: Okay. Ms. Wilson, can you just kind
14 of give the Board a little bit of your testimony as to what
15 happened?

16 MS. WILSON: So our primary concerns were related to
17 privacy from having those balconies right on the shared lot line.
18 And having pretty direct views into the existing apartments on
19 the third and fourth floor. Now that the balconies have been
20 eliminated and we have some other terms in the settlement
21 agreement, but those balconies have been eliminated. And my
22 client is satisfied that the privacy concerns have been
23 addressed.

24 CHAIRPERSON HILL: Okay. Does the Board have any
25 questions of anyone? Okay. Mr. Brown, do you have anything

1 | you'd like to add at the end?

2 | MR. BROWN: No. Unless there are questions, we'll
3 | stand on the record as it's been developed.

4 | CHAIRPERSON HILL: Okay. Thank you. All right. I'm
5 | going to go ahead and close the hearing and the record and excuse
6 | everyone. Thank you all.

7 | Okay. As my fellow Board members will remember, we had
8 | a hearing on this, and I think all of our questions have been
9 | addressed. I'm comfortable with what has now been proposed. I
10 | will agree with their argument as to how they're meeting the
11 | criteria for us to grant the relief. I'm glad that they were
12 | able to work out some of the kinks with the neighbor, but again,
13 | I'm comfortable with this relief that's being requested. I'm
14 | going to be voting in favor.

15 | Mr. Blake, do you have anything you'd like to add?

16 | MR. BLAKE: Sure, Mr. Chair. I do appreciate the
17 | information that was provided by the applicant to clarify the
18 | scope of the addition and the property and the efforts of the
19 | applicant also, and the former person in opposition to reach an
20 | agreement. Those are very positive events. I'd also credit the
21 | Office -- I do believe that the applicant has met the burden of
22 | proof to be granted the rear yard and lot occupancy relief, and
23 | I credit the Office of Planning and Analysis and how the applicant
24 | has met that criteria for approval. I believe the applicant has
25 | demonstrated that the revised proposal should not adversely

1 impact the adjacent neighbor. And I give great weight to the
2 Office of Planning and Recommendation for approval. I also give
3 weight to the report of ANC to be, which has been in support of
4 the application from Exhibit 17, and I will be voting in favor
5 of the application.

6 CHAIRPERSON HILL: Thank you. Vice Chair John?

7 VICE CHAIR JOHN: I have nothing to add. I agree with
8 the comments so far.

9 CHAIRPERSON HILL: Thank you. Vice Chair Miller?

10 ZC VICE CHAIR MILLER: Thank you. I too agree with the
11 comments of my fellow Board members, and I'm appreciative that
12 the applicant and the former party in opposition were able to
13 reach their settlement agreement. And I'm prepared to move
14 forward.

15 CHAIRPERSON HILL: Thank you. All right. I'm going
16 to make a motion to approve application Number 21132, as captioned
17 right by the secretary and ask for a second. Ms. John?

18 VICE CHAIR JOHN: Second.

19 CHAIRPERSON HILL: The motion is made and seconded.
20 Madam Secretary, if you take a roll call, please.

21 MS. MEHLERT: Motion to approve the application.
22 Chairman Hill?

23 CHAIRPERSON HILL: Yes.

24 MS. MEHLERT: Vice Chair John?

25 VICE CHAIR JOHN: Yes.

1 MS. MEHLERT: Board Member Blake?

2 MR. BLAKE: Yes.

3 MS. MEHLERT: And Commissioner Miller?

4 ZC VICE CHAIR MILLER: Yes.

5 MS. MEHLERT: Staff would record the vote as four to
6 zero to one to approve Application No. 21132 on the motion made
7 by Chairman Hill and seconded by Vice Chair John, with Board
8 Member Smith not participating.

9 CHAIRPERSON HILL: Thank you. Commissioner Miller, I
10 really appreciate you coming in. I'm sorry that you had to come
11 in on this particular day, but I hope you have the rest of a nice
12 day.

13 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. Thank
14 you, fellow Board members, for accommodating my schedule. And
15 you all have a great day. Thank you.

16 CHAIRPERSON HILL: Thank you. Happy birthday.

17 ZC VICE CHAIR MILLER: Thank you.

18 CHAIRPERSON HILL: All right. Let's see. Let's take
19 a break, and then we'll come back with Chairman Hood and what
20 items we have to adjust with him. Let's go ahead and take 15
21 minutes, and we'll come back then. Thank you.

22 (Break)

23 CHAIRPERSON HILL: Okay. Great. Madam Secretary, if
24 you could call us back in and then call our next item of business,
25 please.

1 MS. MEHLERT: The Board is back from a quick break and
2 is returning to its meeting session. Next is Application No.
3 21157 of 3428 O Street, LLC. This is a self-certified application
4 pursuant to Subtitle X § 901.2 for a special exception under
5 Subtitle U § 254.14 to allow a corner store use and pursuant to
6 Subtitle X § 1002, for an area variance from the location
7 requirements of Subtitle U § 254.6(g). This is -- this is for a
8 corner store use, operated as a prepared food shop on the first
9 floor and basement levels of an existing two-story building with
10 residential use in the second floor. It's located in the R-3/GT
11 zone at 3428 O Street, NW, Square 1228, Lot 76. This hearing
12 began on June 12th and concluded on September 25th. On October
13 9th, the Board granted a request to reopen the record from Melinda
14 Roth (phonetic) to allow in the written testimony from Karen Cruz
15 (phonetic) and denied the request to reopen for a closing
16 statement. Participating are Chairman Hill, Vice chair John,
17 Board Member Blake, Board Member Smith, and Chairman Hood. And
18 as a preliminary matter, there are now two motions to strike in
19 the record submitted by the party in opposition, Melinda Roth,
20 before the Board.

21 CHAIRPERSON HILL: Okay. Thank you. First of all,
22 welcome, Chairman Hood. Secondly, I believe that both Vice Chair
23 John and Board Member Blake have read into the part of the record
24 that they have missed, correct, Vice Chair John?

25 VICE CHAIR JOHN: Yes, Mr. Chairman, I have read into

1 the record.

2 CHAIRPERSON HILL: Board Member Blake, could you also
3 please confirm?

4 MR. BLAKE: Yes. I have also read into the record, Mr.
5 Chair.

6 CHAIRPERSON HILL: Okay. Great. Thank you. All right.
7 So my plan was to go through the deliberations and see where the
8 Board lands. The order that I was hoping to go in -- well, I
9 was going to start with Vice Chair John, followed by myself,
10 followed by Mr. Blake, and then Mr. Smith and Chairman Hood. And
11 we'll just -- I think -- I think we're going to have a discussion
12 here. This has been a very long hearing in that we've had, you
13 know, there's 207 exhibits in the record, which is quite large
14 for us.

15 The first item, I think are these motions to strike.
16 And so I'm going to kind of talk through what I think about this.
17 I mean, there was a -- a motion to reopen the record by the party
18 in opposition because I guess there was a -- for one, there was
19 a -- a motion to reopen the record due to -- I believe they
20 thought that they didn't get an opportunity to do a -- a
21 conclusion. And at that time, I clarified that nobody was allowed
22 to give a conclusion other than the applicant, which is part of
23 the regulations, and that there -- I think someone had responded
24 to a question, and it wasn't so much a conclusion as a response
25 to a question. So we denied that motion to reopen the record

1 for a conclusion from the party in opposition.

2 However, there was a Karen Cruz who believed -- I can't
3 remember if there was a technical issue or something was unable
4 to provide testimony. So we went ahead and allowed them to
5 provide testimony. As per the regulations, once testimony --
6 once something has been submitted into the record, all parties
7 have an opportunity to respond to that. So then Ms. Cruz
8 submitted her testimony, and then parties were allowed to submit
9 a response to that, which they did. Then there, now, was a motion
10 to strike that response. And then there was a response to the
11 motions to strike. And then there, now, is another motion to
12 strike the responses to the motion to strike. And so what I
13 propose is that -- you know, I think that -- you know, again,
14 we've had, you know, hours and hours of testimony about this
15 particular case. And I think that I would strike both motions
16 to strike and that -- you know, we're going to leave what's in
17 the record now. And I think that the Board, you know, has -- is
18 able to give the appropriate weight to the items that are in the
19 record and know what is germane and what is within our purview,
20 and we'll be able to move forward in terms of this discussion.

21 So if anyone has any issues with that, please let me
22 know. Okay. Then I'm going to make a motion to -- I'm going to
23 make a motion to not approve the motions to strike, and for us
24 to move forward with our deliberations and ask for a second, Ms.
25 John?

1 VICE CHAIR JOHN: Second.

2 CHAIRPERSON HILL: The motion made and seconded. Madam
3 Secretary, if you'd take a roll call, please?

4 MS. MEHLERT: Yes. And to clarify, the Board is waiving
5 the response period for the second motion to strike?

6 CHAIRPERSON HILL: Thank you for the clarification.
7 Just so I'm -- I'm making a motion to deny the motion to strike,
8 and also that I'm waiving the ability of the applicants to provide
9 any testimony about the second motion to strike, because I'm now
10 removing both motions to strike. And I don't think that it's
11 necessary to continue this cycle because the Board's able to give
12 appropriate weight to what is being before us. And yes, to
13 clarify, that is correct, Madam Secretary.

14 MS. MEHLERT: Okay. Please respond to the Chair's
15 motion to deny the two motions to strike from Melinda Roth.
16 Chairman Hill?

17 CHAIRPERSON HILL: Yes.

18 MS. MEHLERT: Vice Chair John?

19 VICE CHAIR JOHN: Yes.

20 MS. MEHLERT: Mr. Smith?

21 MR. SMITH: Yes.

22 MS. MEHLERT: Mr. Blake?

23 Mr. BLAKE: Yes.

24 MS. MEHLERT: And Chairman Hood?

25 ZC CHAIR HOOD: Yes.

1 MS. MEHLERT: Staff would record the vote is five to
2 zero to zero to deny the motions to strike from Melinda Roth on
3 the motion made by Chairman Hill and seconded by Vice Chair John.

4 CHAIRPERSON HILL: Okay. Thanks. So I'm going to
5 start this discussion. I think we'll be talking about this for
6 a little bit. Again, I can't remember the hours of testimony
7 that we've had. We've had a long, long amount of testimony for
8 this case. And a little bit in summary, the ANC seems to be kind
9 of neutral about the special exception in this case now, although
10 they seem to be in support of the variance. The Office of
11 Planning was in favor of both the special exceptions and the
12 variance. The applicant has put some conditions concerning what
13 they propose in 183(a), and those are things that I think we'll
14 have to discuss a little bit more. I want to talk a little bit
15 about the area variance. I went back and looked through the
16 record and was specifically looking back to the Office of
17 Planning's report, pages 8 and 9, concerning the exceptional
18 situation resulting in a plot -- resulting in a practical
19 difficulty. And the other criteria concerning the variance, such
20 as no substantial detriment to the public good and no substantial
21 harm to the zoning regulations.

22 I actually appreciate the time that the Office of
23 Planning had taken to walk back through what had happened with
24 this case concerning the previous case that was then vacated and
25 put on remand. And so the -- I think that the exceptional

1 | situation -- now, I will agree with the Office of Planning's
2 | analysis concerning the corner store and how it was a corner
3 | store that was constructed in the 1800s -- I'm sorry. Yeah. A
4 | corner store and exempt in the 1800s and how -- it was -- it was,
5 | I think, a flower shop before this whole thing took place.
6 | Meaning, before the -- the new tenants came, which is Call Your
7 | Mother. So this again, is an application that is on the -- the
8 | property owner. And what's happening to that particular property
9 | and whether this property is meeting the criteria for the
10 | different things that are before us, meaning the variance and the
11 | special exception.

12 | I think that I -- I don't need to reread the Office of
13 | Planning's report and pages 8 and 9, but I will agree with it.
14 | I do think that the exceptional situation that they are putting
15 | forward, as well as the resulting in a practical difficulty --
16 | and I don't think there's a substantial detriment to the public
17 | good concerning this area variance. And I do also don't think
18 | that there's no substantial harm to the zoning regulations. So --
19 | I'm sorry, I thought -- I forgot. I was going to put Ms. John
20 | first, and now I've already started to talk. So Ms. John, I've
21 | already began. So I'm actually going to go ahead and agree with
22 | the Office of Planning's analysis concerning the area variance.

23 | Concerning the special exception, I think there's some
24 | issues that I'd like to talk through with the Board, right? And
25 | one of them is the storage of trash, which is in U 254.10 and

1 | whether or not that is something now that is before us. Whether
2 | or not the trash is being stored inside, whether it's taken away
3 | every day and whether that's something that I might even want to
4 | talk to legal about. So that's one item.

5 | The -- the special exception in U 254.14(a) and (b)
6 | really what to me is (a), "whether or not a corner store shall
7 | be located so that it is not likely to become objectionable to
8 | neighboring property because of noise, traffic, deliveries, or
9 | other objectionable conditions". And this is again, for the --
10 | the food that is going to be offered there in the corner store
11 | use, and -- the prepared food shop element of it -- and whether
12 | or not this is actually an objectionable issue and whether or not
13 | things can be addressed to mitigate anything that might be
14 | considered objectionable and therefore meet the criteria for this
15 | regulation. So I guess I'm kind of outlaying things. And then
16 | we'll kind of talk about them a little bit more. I'm not really
17 | clear where I am on the special exception. I think that there --
18 | before we kind of dig into it with everyone here, you know, I
19 | could see how, through the conditions, how I might be able to
20 | get to the point where I don't think this is particularly
21 | objectionable, whether or not, again, you know, there are some
22 | of the -- some of the conditions that have been put forward. Is
23 | it going to make it so it's not objectionable to the neighborhood
24 | there?

25 | And again, and I'll just, again, start this discussion

1 wherein this is not a -- you know, just from the testimony that
2 we've taken from the neighborhood, I think that, you know, there
3 are those that are in favor, and then there are also those that
4 are opposed. And those that are in favor, also -- you know,
5 the -- the letters that have been put forward in favor do speak
6 to the zoning criteria, whether they're trash, noise, you know,
7 how the people are using the -- the food shop, prepared food shop
8 there. And so I think that -- I guess what I'm trying to say is
9 even the letters that were in support were actually good letters
10 that explained how they thought maybe it was not objectionable.
11 Then, you know, we've heard a lot of testimony about how people
12 are -- primarily, I think it's the public space issue. Like,
13 people being in public space, eating the prepared food. And if
14 that can be somehow mitigated, I don't know.

15 Then there could be an opportunity to discuss, again,
16 a time limit on this. I mean, I know that when I first had asked
17 about a time limit, it was when the lease might expire, just so
18 we know where everybody might be. And then it seemed as though
19 there was a five-year option and that, you know, after five years
20 there was an option. And then it was ten years that the full
21 lease would run from this point, which is another discussion or
22 point of discussion that I would like to have with my fellow
23 colleagues. So I think I kind of laid out where I am at this
24 point. And please forgive me, Ms. John, for stepping on your
25 toes, because I kind of got lost. But if I could turn to you,

1 Ms. John, now, to hear some of your thoughts. And then we'll go
2 around the table.

3 VICE CHAIR JOHN: Thank you, Mr. Chairman. So I don't
4 disagree with your -- your comments and your review of where we
5 are, but I'll just sort of step through how I came to my reasoning
6 on this. So in the prior case, the Court of Appeals directed
7 the Board to decide whether Call Your Mother was required to
8 obtain a special exception under U 254.14, or instead could
9 proceed solely by obtaining an error variance, which was the
10 approach taken by the applicant in the prior case. And so I
11 would emphasize the word "solely". So as the Court of Appeals
12 analyzed the case, the Court of Appeals reemphasized that there
13 were three options available in this situation. First option
14 would be a matter-of-right application. The second would be
15 special exception, and the third would be a variance. And that
16 is in addition to proof that the application meets the two -- the
17 general special exception criteria now, which all applicants for
18 special exception must -- must also comply with.

19 So the -- as you -- as you stated, Mr. Chairman, U
20 254.14 has several criteria. Under (a), which is the one I agree
21 with you that that created much of the discussion, was the
22 requirement that the corner store shall be located so that it is
23 not likely to become objectionable to neighboring property
24 because of noise, traffic, deliveries, or other objectionable
25 conditions. I think that's the phrase that -- that's at issue

1 | because there wasn't any major discussion about the effects of
2 | noise and traffic and deliveries -- deliveries. And I'll come
3 | back to the first one again.

4 | The other criteria -- the second criteria under U
5 | 254.14 is in paragraph (b), which requires that "the proposed
6 | corner store use will not detract from the overall residential
7 | character of the area, and will enhance the pedestrian experience
8 | by providing within the application the information that is in U
9 | 254.14(b)(1)". And those describe how the application -- how the
10 | applicant will operate. Now, the problem comes with -- not
11 | problem. So there's a further requirement under U 254.14(b)(1),
12 | which says that the applicant will demonstrate conformity to the
13 | provisions of Subtitle U 254 through 254.12. So there is a
14 | potential issue as to whether or not that section requires --
15 | that section is mandatory, or is simply describes conditions that
16 | the Board should evaluate. In any event, the application before
17 | us interprets the provision as requiring an area variance because
18 | the application does not meet that 750-foot locational
19 | requirement. And I -- that's the approach adopted by the Office
20 | of Planning as well. And because this is a special exception --
21 | this is a self-certified application -- the Board is within its
22 | right to go ahead and evaluate the application as presented. And
23 | I think the self-certification discussion is a red herring.

24 | So as I said earlier, the major issue is in Subtitle
25 | 14(a), and the neighbors are split on this. There are neighbors

1 | who believe that the corner store is a valuable addition to the
2 | neighborhood, and there are others who are upset because patrons
3 | have been seen sitting on the neighbors' stoops, which are in
4 | public space, eating, of course, sandwiches. Now, we can discuss
5 | the mitigating conditions later on, but if the conditions can be
6 | mitigated, then -- excuse me, I would be more favorably disposed
7 | to voting to approving the application. So as the Chairman did --
8 | oh, not that. So I'm going to credit the Office of Planning's
9 | analyst, who made an unannounced visit to the site and observed
10 | that the store was complying with the revised conditions it has
11 | proposed, and that -- that the analyst did not observe any
12 | objectionable conditions during the time when the students had
13 | returned from vacation, which appears to be the busiest time for
14 | the store.

15 | And with respect to the trash storage, which you
16 | mentioned, Mr. Chairman, the applicant is proposing to move the
17 | trash cans indoors in the evenings, but not store any trash within
18 | the property itself. Instead, the trash would be collected
19 | outside the premises each day after the restaurant closes at 2.
20 | So the regulation itself does state that there should be -- and
21 | I'll have to find the exact provision, but it is consistent with
22 | what the applicant originally proposed, which is to store the
23 | trash inside at night and have it removed early in the morning.
24 | I believe that this new proposal is -- exceeds the standard in
25 | the regulation, because there will be no storage on the premises

1 as the -- as that term is commonly used in the zoning context.
2 Typically, what we see is that there are large bins at the rear
3 of the property with overflowing trash that are collected two or
4 three times a week, or as the regulation says, the trash is stored
5 inside the building. And that's to prevent exposure to you know,
6 rats and other, you know, folks who -- dumpster divers and so on.
7 So I believe that what the applicant is proposing is a higher
8 standard, but I am open to discussion on that.

9 The -- the -- there's also another question of whether
10 or not the applicant meets the -- the limitation on the five-
11 foot area and locational requirement under U 254.6, and I'm going
12 to also defer, again, to the Office of Planning's assessment of
13 that criteria.

14 Now, back to the area variance. As I said earlier, in
15 my view, the area variance is a subset of the special exception
16 criteria. So I'm not sure how one could, you know, approve the
17 variance but deny the special exception because it's -- it's an
18 application for a special exception, part of which is the
19 locational requirement. So the Court of Appeals stated that the
20 applicant -- or let me paraphrase -- the -- the applicant, had
21 proven that the property was affected by an exceptional condition
22 and that the approval of the variance would not cause substantial
23 detriment to the public good, but vacated the order because the
24 Board did not fully discuss how the property owner would incur
25 practical difficulties if there was a ten-year lease.

1 So this is another issue the Board has to review because
2 there is still a ten-year lease. So as the Chairman noted, I
3 believe the Office of Planning's report describes the current
4 situation fairly well and shows how the property owner would have
5 difficulty -- would have a practical difficulty if the relief is
6 not granted, because the tenant would not be able to operate a
7 prepared food shop, which is the nature of its business. And as
8 it stands, the original certificate of occupancy for retail use
9 has lapsed, and so the owner could not return to a retail use
10 without again seeking -- seeking relief from the -- from this
11 Board or converting the property to residential use. And here
12 again, I would note that this property is -- as OP stated has
13 been mixed use since the 1800s, I believe. And it's subject to
14 HPRB review and approval for any alterations, which adds another
15 complication. So I think whichever option the owner chooses
16 would incur additional expense and -- and economic hardship. And
17 so in the current context, I believe that the -- the property
18 owner would incur a practical difficulty if the release, you
19 know, if the relief isn't granted.

20 So with respect to the ANC's position, I had some
21 difficulty understanding what the ANC meant in exit (sic) 104.
22 And as I said, it does not support the special exception but
23 supports the area variance. So as I said, that's not a standalone
24 requirement, which is what I believe the Court of Appeals was
25 trying to nudge the -- the Board towards -- that an applicant

1 | could not apply for a special -- I mean a variance in isolation
2 | in -- in based on the regulatory context of this case. And so
3 | I -- it seems to me that the ANC does recognize that there is
4 | some conflict with the neighbors, and is neutral. But I will
5 | listen to what my fellow Board members think about that particular
6 | question.

7 | In any event, I'm only required to give great weight
8 | to the zoning concerns expressed by the ANCs, and the ANC did
9 | express some concern about the -- the potential -- the -- the
10 | potentially adverse conditions of the persons on the stoop. As
11 | the Chairman said, we also need to consider the conditions and
12 | whether they will mitigate any potential for -- for adverse --
13 | for an objectionable condition. And we can discuss that as well
14 | as the potential for a ten-year term limit. And I'm sorry I took
15 | so long.

16 | CHAIRPERSON HILL: Thank you, Vice Chair John. Vice
17 | Chair John, this -- this took 10 hours, 15 hours -- whatever it
18 | was. If this discussion takes an hour, I'll be pretty pleased.
19 | Let's see. Thank you, Vice Chair John, for your helpful analysis.
20 | And thank you for also pointing out, again, the retail use that
21 | it had prior to the -- this whole process beginning.

22 | Mr. Blake, can I hear your thoughts?

23 | MR. BLAKE: Thank you, Mr. Chair. This is, as you
24 | pointed out, a very challenging case because it's clear that the
25 | community is split on this with people both in favor and against.

1 So it's very difficult to kind of figure that out. That said, I
2 want to first look at the variance itself. I am comfortable with
3 the variance -- the area of variance, and I agree with the
4 analysis and comments made by you, Chairman Hill, and Vice Chair
5 John, as well as the Office of Planning. I do not think the --
6 obviously, a variance should be viewed in isolation. The variance
7 law would not provide anything. And I think that to go back,
8 since the retail issue has elapsed, you would have to go back
9 and get relief to do something else other than a matter-of-right.
10 That said, I do think a -- the variance argument does hold
11 currently for the requested relief.

12 The special exception, I think a comment made by Vice
13 Chair John was that she felt that given the right conditions,
14 this would be a -- an easy lift, assuming there were no -- that
15 the conditions of U 254.14, including the -- the objectionable
16 conditions, were addressed. So to me, the focal point became
17 more an issue of going through the proposed conditions and seeing
18 if, in fact, it was -- the issues have been addressed. When we
19 first had the hearing and participated in that, it was pretty
20 clear that, you know, we thought it would be important to think
21 outside the box, to do a little extra to make this work, given
22 the community's desire to have this for some and the desire to
23 not have the objectionable conditions. So we asked them to think
24 out of the box. And I think -- I'll be honest with you, I think
25 that they have gone a long way down the road to get there, but

1 I'm not convinced that we've met the -- fully mitigated, the
2 issues that are in front of us with the -- the current set of
3 proposed conditions.

4 Specifically, I'm going to look at the objectionable
5 conditions that we have in front of us. As I said, in looking
6 at 254.14(a), we look at the issue of noise, traffic, deliveries
7 first. And I think that the condition before us did address
8 noise with having no outside music or anything like that. They
9 also addressed issues of to some extent, traffic, because the
10 majority of people probably walk to the facility as opposed to
11 driving. There are limited parking spaces in Georgetown as it
12 is. And for that reason, I think it was -- and also in dealing
13 with the deliveries, I think that having the deliveries current
14 at 6 a.m. is a reasonable time frame to mitigate that.

15 But the other objectionable conditions were issues such
16 as the customer lines and public space and also the customers
17 sitting on stoops. One of the things that came out of these
18 conditions -- and of course, I'd say also trash, was another
19 objectionable condition. And as we went through the criteria,
20 the applicant made it clear that things like the hours of
21 operation were critical. And I do agree that it is the times of
22 operation are modest relative to a late-night thing and so forth,
23 and it is an enforceable criteria. It was part of the Office of
24 Planning's recommendations, part of the proposal, and it's also
25 part of the original application. The applicant also has agreed

1 to post signs. And I think this is, yes, doable and enforceable.
2 The trash issue, I think, is something that is a little bit
3 concerning to me. And I would actually -- Board Member -- I mean
4 Vice Chair John suggested that this exceeded the standard the way
5 it was written in this proposal, and I thought that, to some
6 extent, it was a little inconsistent with the proposal, but it
7 was a matter of interpretation. And for that reason -- I had
8 not even had the benefit of having them elaborate on it -- I
9 would like to know a little bit more about the execution of the
10 trash accumulation and storage, because as I listened and
11 reviewed the transcript and the video from the most recent hearing
12 on the 25th, it wasn't clear to me exactly how that would be
13 handled, and if, in fact, it was consistent with the requirement
14 for a corner store. Because if you look back in all the other
15 writings of the Office of Planning report, as well as the burden
16 of proof, it had initially said it would be stored indoors, but
17 there was no condition in the original with regard to that.

18 Another issue that we talked about that came up to me
19 was the whole issue of the customer lines and public space. This
20 was an issue, but the stanchions were largely put in place to
21 address managing that. There was a study done in the original
22 report -- original case, which showed that you could queue up to
23 50 people without -- without impairing the -- the pedestrian
24 experience, which I thought was good. The other thing that came
25 up, though, as an objection condition, which seems to be a

1 | lingering objection condition, is the customers sitting on
2 | neighborhood stoops. In the original case, there was a provision
3 | that there would not be any outdoor seating. And as I looked at
4 | that, one of the issues was that was to reduce the noise and to
5 | avoid having people gathered in the -- in front of and loitering
6 | in front of the store. The result of that provision, however,
7 | has led people to find other places to sit, which could be
8 | anywhere from people's stoops to curbs and other places.

9 | And so by maintaining the no outside space clause, it
10 | seems that we are actually -- that is actually supporting some
11 | of the issues that seem to exist and in fact, was actually
12 | designed to reduce noise and to eliminate loitering in the area
13 | by not having a designated area. When we had the discussion the
14 | other day at the last hearing with regard to this, the ANC was
15 | somewhat in -- was not anxious to revisit the -- the open seating,
16 | and the applicant said that they did not address this issue
17 | because it was already in the previous order. But since the
18 | conditions of the previous order are not relevant today, because
19 | they are not -- there is no agreement -- no -- it does imply we
20 | could revisit the outdoor space issue -- the outdoor seating
21 | issue or something in that context. For example, if you were to
22 | have a bar setting, some type of small 12-inch bar that people
23 | could stand at in front of the store, this could be permanent or
24 | removable, depending upon public space requirements. They could
25 | actually then be in front of the store, if they choose to, in an

1 organized way, and then this would be disassembled at the end of
2 the day or maintained however the public space allowed. And that
3 might address some of the loitering issues, because people just
4 frankly don't have a place to go.

5 I think that the -- to address this loitering issue,
6 secondary things have been -- been done. For example, the use
7 of the employee to go down and to monitor this and so forth and
8 move this away. Well, that is a good solution, but it seems that
9 it has only in part worked based on the evidence presented in
10 the in -- the last hearing. It may require a slightly heavier
11 hand, and I think there was a suggestion made by Board Member
12 Smith to perhaps use an off-duty police officer or something like
13 that -- some authority figure to help expedite that matter. Now,
14 if there is a combination of things between that and providing
15 some space for individuals along the street to -- along -- in
16 front of the store itself to eat their -- their food in an orderly
17 fashion, that might actually alleviate some of the movement down
18 the street. And I just would caution, again, that provision was
19 proposed by the applicant in the original case to deal with the
20 noise and to avoid people loitering in the block. And I don't
21 think it was effective. And I would like -- I think it's
22 important to revisit that and to see if there's a way that can
23 be worked out that would address some of these issues as well as
24 that of the, you know, the ANC about the objectionable conditions.

25 I think that the other provisions in here are fairly

1 enforceable and consistent. And therefore, like I said, I think
2 I would be inclined to support this if we could get a little bit
3 more meat on what we believe is an effective solution to this
4 problem. To the extent that we did a time, the less effective
5 the solution, the shorter the time limit. The longer the -- the
6 more effective the solution is, I think the longer the time limit
7 should be. If you look at a five-year time horizon, we
8 realistically have already had five years. So that's a ten-year
9 time horizon, which is not inconsistent with some of the orders
10 that we've done more recently. And a ten-year time horizon would
11 be effectively a 6/15-year time horizon. But that really does
12 not provide an incentive for the applicant to really -- and make
13 this work. So I think it's important that the time frame allowed
14 reflect the effectiveness of the proposed conditions. And I
15 think -- like I said, we've come a long way to get to where we
16 should be. But I do think there needs to be a little bit more
17 work and a little bit more creativity in terms of the provisions
18 and conditions. Those are my thoughts.

19 CHAIRPERSON HILL: Thank you. Board Member Smith?

20 MR. SMITH: So as everyone stated, we've had hours upon
21 hours of testimony on this. It's probably -- if we add it up,
22 it'll probably be half a day -- 12, 15 hours' worth of testimony
23 we've heard over this -- over this year regarding this. So the
24 request before us is for two items. The first is special
25 exception Subtitle U 254.14 to allow corner store use in an area,

1 and the second one is an area variance from the location
2 requirements of Subtitle U § 254.6(g). So first I'll start off
3 with the variance request. In evaluating the variance request
4 and the variance criteria, I agree with everything that was stated
5 by -- that I've heard thus far from you -- from my Board members.
6 I agree with the Office of Planning's evaluation that the
7 applicant has an exceptional situation and a practical
8 difficulty, and that the first floor has been configured as a
9 commercial space since the early 1800s and would be difficult to
10 reconfigure the space to convert to -- conforming uses within the
11 R-3 or a GT zone that are primarily residential in nature.

12 I disagree with the Office of Planning that granting
13 the variance would not be detrimental to the public good, and it
14 would not have substantial harm to the zoning regulations. And
15 I take this approach based on the definition of intended operation
16 of a corner store. And I will elaborate on that a little bit
17 more in discussing the special exception request. So based on
18 the information presented, I think the crux of this decision
19 hinges on finding the use would not have an undue impact. The
20 intent of a corner store is for a limited commercial and service
21 use in residential rowhouse zones, oriented to serve the
22 immediate neighborhood. Based on the information presented, I'm
23 struggling with the question of whether they can meet the criteria
24 for us to be able to grant or approve it -- this special
25 exception. You know, some of the concerns that was raised relate

1 | to noise, traffic, delivery -- deliveries, and other exceptional
2 | conditions.

3 | I think one of the main concerns here is the amount of
4 | traffic and noise, and the site doesn't have enough seating. So
5 | you know, I would welcome additional dialog, as stated by Mr.
6 | Blake, on ways that they can add some additional seating. And
7 | you know, we brought this up at the previous hearing and the
8 | applicant stated that they can't in any way, shape, or form
9 | configure the interior of the space to add some additional
10 | seating. But I think there is -- I think there is merit to having
11 | some additional outdoor seating to reduce the -- the amount of
12 | eating that may occur on adjacent stoops. So I welcome that. I
13 | welcome some additional dialog as -- as Mr. Blake stated, if --
14 | if the Board is inclined -- inclined to -- to address some of
15 | those conditions. But otherwise, now, just evaluating what we
16 | have here -- and I'm basing it off the primary -- let me base it
17 | off the primary criteria for evaluating the special exception,
18 | which to me is 2504.14(a). "A corner store use shall be located
19 | so that it is not likely to become objectionable to neighboring
20 | properties because of noise, traffic, deliveries, or other
21 | objectionable conditions", as well as 254.14(b). "The applicant
22 | shall demonstrate that the proposed corner store use would not
23 | detract from the overall residential character of the area and
24 | will enhance the pedestrian experience?

25 | So based on the testimony provided within the record,

1 | some of the primary concerns to me relate to trash and the
2 | potential attraction of pests, traffic from patrons and pick up
3 | of mobile orders, as well as patrons trespassing on neighboring
4 | properties. The applicant has made an effort to attempt to
5 | address these provisions, outlined in 254.14(a) and 254(b), with
6 | some of these conditions proposed as part of the application.
7 | Conditions one, three, four, five, six, and nine that attempt to
8 | address concerns about trash, pests, noise, and operating hours,
9 | traffic from patrons on the sidewalk, and pickup orders, I
10 | believe, do help to address some of these concerns. However, a
11 | few other conditions I believe do not lend themselves to meeting
12 | the criteria that I previously stated. Conditions 10 and 11,
13 | which seek to address patrons trespassing a (indiscernible) but
14 | completely unenforceable to address the concerns.

15 | When we last heard this case, I recommended to the
16 | applicant to think outside of the box to address some of the
17 | concerns raised by the surrounding community as well as this --
18 | as well as this Board. We, as a Board, also recommended to the
19 | applicant that they may want to think about ways to provide
20 | seating and providing seating inside the space and outside that
21 | could help alleviate some of the concerns regarding trash --
22 | trash and trespassing of patrons on private properties if the --
23 | if the food can be consumed on premises. The way it's presented
24 | does not address these concerns. I do believe that this type of
25 | corner store establishment, while extremely successful, does not

1 meet the criteria as to not be objectionable to neighboring
2 properties, nor has sufficiently demonstrated that the
3 operational nature of this use does not distract from the
4 residential character of the surrounding area. This use, by
5 operational nature and scale at this point may be more in
6 compliance with properties within the neighboring MU properties
7 along Wisconsin Avenue and M Street, and I believe that's the
8 intent of -- of trying to -- that -- that locational criteria is
9 to protect the -- the intent of the MU zone. Just -- just the
10 scale of the conditions that the applicant proposes by its very
11 nature is not in compliance with the residential character
12 provision of allowing this type of corner store by special
13 exception.

14 So to address concerns that was raised about trash
15 under 254.14(b)(1), a demonstration of conformity to the
16 provisions of Subtitle U § 254.5 through 254.12 -- 254.12, which,
17 the way I would interpret this, where it's unclear, you go to
18 the most strict interpretation. And to me, that means they would
19 need to meet the provision of 254.10 requiring storage of the
20 trash to be inside the building area of the corner store. They
21 would need a variance to store trash externally, but without this
22 variance, to me, they would be generally required to store the
23 trash inside the building, otherwise, in order to meet the
24 standard development standards of a corner store. So they need
25 to store the trash internal to the space anyway. So it shouldn't

1 | be any cans dedicated to this, particularly that are owned by
2 | this corner store that are exterior to the building just based
3 | on the general development standards.

4 | So right now, I cannot support the requested special
5 | exception with -- without substantial changes in either the
6 | layout of the corner store or some additional exterior seating.
7 | The seating needs to be increased in some way, shape, or form
8 | and some type of condition restrictions on the carry out of food
9 | at this location. So they're addressing that by conditioning no
10 | mobile orders, so that -- that's addressed. And I -- and I also
11 | do not think the applicant meets the last two prongs of the
12 | variance criteria and cannot support the requested variance. But
13 | I welcome any additional dialog to address some of these concerns
14 | that was raised by my other Board members. That's all I have.

15 | CHAIRPERSON HILL: Okay. Thanks, Mr. Smith. Chairman
16 | Hood?

17 | MR. HOOD: Mr. Chairman, that's quite a bit to digest
18 | going last, but I like going last. Let me just say that I think
19 | most of my colleagues, we all agree, I think, with the exception
20 | of Boardman Smith, I couldn't get all of it. You were kind of
21 | going in and out. If I'm going in and out to a point, let me
22 | know so I can make some adjustments. But anyway, the -- the area
23 | variance, as mentioned by most of my colleagues, I think they
24 | do -- there is some difficulty there. I don't need to go rehash
25 | that. I would agree with what I heard with the majority of my

1 | colleagues.

2 | For me, the special exception, let me try to be very
3 | brief. The special exception, I think, didn't go far enough to
4 | a point of trying to address some of the adverse impacts. For
5 | me, all those -- everything else I think could be mitigated. I
6 | do have some questions and concerns about or trying to figure out
7 | how the trash is going to -- I heard Vice Chair mention -- Vice
8 | Chair mentioned about what's been proposed about taking the
9 | trash. I'm trying to figure out how all that's going to work.
10 | I'm trying to visualize that. Maybe I can get further
11 | clarification if we keep -- if we proceed, but for me, I believe
12 | everything can be addressed. All adverse impacts can be addressed
13 | or mitigated if they go further enough, and I think Board Member
14 | Blake mentioned about the bar stools, when you go out to events,
15 | you know, they have places where you stand up and you enjoy your
16 | meal while you're standing there, and then you move on. It's a
17 | quick thing. You hit, and you eat, and you move.

18 | My -- my biggest issue out of all of this is the stoops,
19 | which we say in public space, but still you're -- you're impacting
20 | in front of residents' homes. To me, that's the biggest issue,
21 | and then we also heard, as the Vice Chair mentioned from Office
22 | of Planning when they did a surprise visit, if things are working
23 | well. So it's a lot of -- it's a voluminous of information to
24 | try to work with. I believe that all this can work out. It's
25 | not a popularity contest. Who wants it, and who doesn't? It's

1 | just about how we interpret whether they meet the statute.

2 | I think for most of us, the variance is not the issue.
3 | It's about the adverse impacts, the special exception, but I
4 | think if you go to -- if I start getting into the business of
5 | trying to figure out to lessen the lines. I don't know, do you
6 | do the app before you get there? Do you do an app, you order?
7 | So all you have to do, you pay for it? I don't know, they may
8 | do that already, but I don't know if they went far enough to
9 | address some of those long lines on the stoops, someone to keep
10 | people moving, but then, on the other hand, we have Office of
11 | Planning saying when they went over to surprise visit, everything
12 | worked.

13 | Long story short, Mr. Chairman and Board Members, I
14 | believe that everything here can be mitigated, and I believe the
15 | intention of the adverse impacts can be mitigated, and we all
16 | agree about the burn. So if with all that rambling, that's where
17 | I am. I don't -- you know, I know it's further discussion. Thank
18 | you, Mr. Chairman.

19 | CHAIRPERSON HILL: Okay. Thank you, Chairman. Okay.
20 | So I did have a question for legal concerning the -- let's see,
21 | what is it? The conformity of the provision subtitle U254.5
22 | through 254.12. It looks like Mr. Smith froze, and so I'm going
23 | to -- oh, he now he just unfroze. So I was able to interpret
24 | everything that Mr. Smith said, and what I would like to do, and
25 | I know that there is also a time limitation on some of our Board

1 members. So I have to do this quickly. If I could just do a
2 quick emergency meeting with legal and then we can come back,
3 unless anybody has a problem with that, I'm going to go ahead
4 and make a motion. So you click in this thing.

5 All right. As Chairperson of the Board of Zoning
6 Adjustment for the District of Columbia, and in accordance with
7 407 of the District of Columbia Administrative Procedures Act, I
8 move that the Board of Zoning Adjustment hold a closed emergency
9 meeting on 10/23/24 for the purpose of seeking legal advice from
10 counsel on case number 21157, deliberate upon, but not vote on
11 case number 21157 for the reasons cited in DC Official Code § 2-
12 575(b)(13). Is there a second, Ms. John?

13 MS. JOHN: Second.

14 CHAIRPERSON HILL: It appears the motion is passed.
15 Madam Secretary, if you could please take a roll call or -- I'm
16 sorry. Take a roll call, please, Madam Secretary.

17 MS. MEHLERT: Motion to hold an emergency closed
18 meeting with legal. Chairman Hill?

19 CHAIRPERSON HILL: Yes.

20 MS. MEHLERT: Vice Chair John?

21 MS. JOHN: Yes.

22 MS. MEHLERT: Mr. Smith?

23 MR. SMITH: Yes.

24 MS. MEHLERT: Mr. Blake? Chairman Hood?

25 MR. HOOD: Yes.

1 MS. MEHLERT: Staff will record the vote as five to
2 zero/zero to hold an emergency closed meeting with legal.

3 CHAIRPERSON HILL: Thank you. As it appears this motion
4 has passed, I hereby give notice that the Board of Zoning
5 Adjustment will recess this proceeding at 10/23/2024 at 12:23
6 p.m. to hold a closed emergency meeting pursuant to District of
7 Columbia Administrative Procedures Act. A written copy of this
8 notice will be posted, and we'll adjourn to the Memorial hearing
9 room at this time. Okay. I'll see you guys in the other room,
10 and then we'll come back. Thank you.

11 MS. JOHN: Okay. Another break at 12:23.

12 CHAIRPERSON HILL: Madam Secretary, can you hear me?

13 MS. MEHLERT: Yes.

14 CHAIRPERSON HILL: Okay. I just want to make sure I
15 was in the right room.

16 We haven't even gotten to the commissioner today yet,
17 which just stems out, they're like going, did I really sign up?
18 Didn't - didn't Ms. John say she was coming back or no? She said
19 she was coming back. I don't know if she's coming back.

20 Okay. Why don't you call us back because I don't know
21 who's coming back or not, Madam Secretary.

22 MS. MEHLERT: The Board has returned from a closed
23 meeting with legal to Application No. 21157 of 3428 O Street,
24 LLC.

25 CHAIRPERSON HILL: Okay. Thank you. So what I had

1 wanted to try to get some clarification on from legal was the
2 conformity with the provisions of Subtitle U, 254.5 through
3 254.12, and I think I did get that, and then I think there are a
4 couple of items that the 'Board might be interested in still
5 contemplating because we, the Board, seems to be -- some of us
6 are and some of us aren't -- continuing to contemplate 254.14(a),
7 primarily other objectionable conditions. So what I would like
8 to propose is that the applicant submit something in writing.
9 This isn't going to take -- I don't want a lot of time. I don't
10 want the applicant to have to spend a lot of time, but like, you
11 know, if they could please submit something in writing what they
12 thought of this discussion about some kind of temporary outdoor
13 seating, or some kind of way to provide a place for people to
14 just kind of stop, eat, and go, right? And in my opinion, again,
15 as what has been kind of conveyed is any kind of reaction to the
16 idea of like a, you know, a bar and then you take that bar inside
17 during the -- you know, after the hours are over. I mean, it's
18 only from 7 -- I don't know, 7 to 2, whatever the -- the
19 operating -- the proposed operating times were from 7:30 to 2
20 p.m. So this would be something that would come in and come out.

21 Interested in hearing in writing about that, and then
22 the other is more specificity about how this trash actually works.
23 Like where is the trash during the day, and then when is it
24 collected? That seems to be our two points. Did I miss anything
25 from my fellow 'Board members? If so, please raise your hand.

1 Okay. No hands are being raised. So those are two
2 items that we're requesting from the applicant. Madam Secretary,
3 can you tell us when we can have those two items, and then the
4 parties would have an opportunity to respond to those two items,
5 and then we would come back for a decision.

6 MS. MEHLERT: Sure. If the Board would like to return
7 for a decision, I think we could do November 13th again, and the
8 applicant could submit the requested items by October 30th, and
9 responses due by November 6th.

10 CHAIRPERSON HILL: Perfect. Chairman Hood, can we take
11 your time up on the 13th again?

12 MR. HOOD: I'm here. I will be here on the 13th.

13 CHAIRPERSON HILL: Okay. Does anybody have any
14 comments? Otherwise, I'm going to close this portion of the
15 hearing, except for the two items that were requested by the
16 'Board. Other than that, everything else is closed. We're not
17 talking about anything else. Don't need to hear about anything
18 else. Okay All right. Great. This portion of the hearing or
19 whatever it is. I don't even know. Is it a hearing? This
20 decision meeting session is now closed.

21 So Chairman Hood. Oh, we still have another thing with
22 Chairman Hood. Okay. So let's do the next thing with Chairman
23 Hood, and then we can take our lunch break, even though hopefully
24 you all have kind of snacked along the way here, and then we will
25 get to Commissioner Stidham. So give me one second to get my

1 paperwork all set, and then you may call our next case when you
2 have an opportunity, Madam Secretary.

3 MS. MEHLERT: The next case is in the Board's hearing
4 session. It's Application No. 21058 Rupsha 2011, LLC. This is
5 a self-certified application pursuant to Subtitle X § 901.2, for
6 a special exception under Subtitle U § 421, to allow a new
7 residential development. This is for a 39-unit apartment house
8 of inclusionary development and a new three-story detached
9 building for seller. It's located -- located in the RA-1 and R-
10 3 zones at 2424 Pomeroy Road, SE, Square 58 -- 5873, Lots 856,
11 857, 104, 903, and 932.

12 The hearing began on September 18th and the Board
13 requested additional information from the applicant, and
14 participating were Chairman Hill, Board Member Smith, and
15 Chairman Hood, and I believe Board Member Blake, were going. No,
16 I -- he's not reading. I'm just kidding. That's all.

17 CHAIRPERSON HILL: Okay. It's just the three of us.
18 Okay. If the applicant can hear me. If he can -- is this what
19 we got? Wait a minute.

20 Okay. If the applicant could please introduce
21 themselves for the record. I don't know who's trying to speak.
22 If the applicant's trying to speak, I cannot hear them.

23 MR. BLAKE: Hello?

24 CHAIRPERSON HILL: Yes. Can you hear me?

25 MR. BLAKE: Okay. Yes.

1 CHAIRPERSON HILL: Great. Could you introduce yourself
2 for the record?

3 MR. BLAKE: Yeah. This is Michael Blake from bestudio
4 Architecture.

5 CHAIRPERSON HILL: Okay. Great. Mr. Blake, can you
6 tell us what happened since the last time you were here?

7 MR. BLAKE: Sure. The first thing is that what we --
8 we held meetings with both Office of Planning and the ANC to
9 address some of the -- the final issues. The ANC, after -- after
10 a meeting, a full meeting, full hearing last week submitted a --
11 uploaded a letter to the record in support of the project, and
12 we met with the Office of Planning to -- to go over some of their
13 the final design recommendations and made those changes, which
14 I'm happy to review. I don't know if we need to review the
15 project in its entirety or just the -- the parts that have
16 changed, but we -- we added a perimeter fence. We moved --

17 CHAIRPERSON HILL: Mr. Blake, can you -- yeah. Can you
18 just -- just show us what's changed. I think -- is it in your
19 PowerPoint?

20 MR. BLAKE: Yeah. If we could pull up the PowerPoint
21 presentation that -- the most recent one, and if you could go to
22 slide 15, pretty much everything can be shown there. Okay. So
23 this is the site plan. Give me just one second to put my notes
24 there. Okay. So I'll -- I'll go through the changes that we
25 made. We added seven additional parking spaces east of the curb

1 cut to help alleviate the community concerns about parking. So
2 that took us from twenty-two spots to twenty-nine spots. We
3 added a six-foot-tall fence around the perimeter to help address
4 the community safety concerns. So the -- the image above in the
5 center is -- is the metal fence that will go around Pomeroy --
6 the Pomeroy side and the side property lines, and then at the
7 rear of the lot, there'll be a six-foot tall pressure-treated
8 wood fence.

9 In response to the Office of Planning comments, we
10 added fencing around the trash area to screen the trash area. We
11 moved the heat pumps from level 0-2 and level 0-3 to the roof,
12 so you can see there's a break in the solar panels at the -- at
13 the north side. So that's the heat pumps that will be serving
14 the second floor and third floor. The units that serve the cellar
15 and first floor are still located at grade level, which we
16 reviewed with Office of Planning, and we just improved the
17 graphics to show that we are maintaining a buffer of the existing
18 trees as much as possible to help provide screening for the
19 single-family homes to the south of the lot.

20 And then the last thing, if you can go to the last
21 slide -- actually, I can show it there. The -- in response to
22 Chairperson Hood's comment about the -- the concern of white
23 cladding. We changed that to a gray cladding. So that's all
24 the changes that were made in response to the -- the ANC and
25 Office of Planning comments and concerns, and I'm happy to take

1 any questions.

2 CHAIRPERSON HILL: Okay. Let's see. Before I turn to
3 my Board for questions, can I turn to the Office of Planning?

4 MR. JURKOVIC: Chairman, members of the Board. Michael
5 Jurkovic from the Office of Planning. OP is continuing to
6 recommend approval of the application as requested by the
7 applicant with the updated conditions submitted in our second
8 supplemental report and stand on the record of said report. Thank
9 you.

10 CHAIRPERSON HILL: Okay. Could the Office of Planning
11 kind of help me understand your condition number 4 a little bit,
12 because I don't know if it's necessarily within our purview to
13 ask someone to work with another agency. I don't know whether I
14 would be necessarily in agreement with condition number 4, but
15 could you explain it a little bit, about the trees?

16 MR. JURKOVIC: Right. Yeah. With my discussions with
17 OP's discussions with the applicant, they remained amenable to
18 said condition. So we kept it in our recommendation, and to my
19 understanding, they are intending to meet it. I -- I understand
20 it was not represented that way in the most recently submitted
21 plans, though.

22 CHAIRPERSON HILL: What was not represented that way
23 in the most recent submitted plans?

24 MR. JURKOVIC: The -- the limits that they will not --
25 not disturb the existing vegetation or trees on site.

1 CHAIRPERSON HILL: Mr. Blake, do you know about this
2 condition that the Office of Planning is speaking to?

3 MR. BLAKE: Yes, I do. We -- I -- we're not showing,
4 I guess, the -- in the site plan where we have the
5 pressure-treated fence at the back is showing the extent of the
6 disturbance for the lot because the lot actually goes well south
7 of that, as shown in the -- the site plans, and then I'll just
8 also add that there's a tree protection plan that's already in
9 place that was approved by DDOT Urban Forestry. That also helps
10 to -- helps to clarify this.

11 CHAIRPERSON HILL: Okay. So I'm just trying to
12 understand, are you -- is the Office of Planning saying that
13 the -- the applicant would continue to work with Urban Forestry?
14 Can you explain to me a little bit, Office of Planning?

15 MR. JURKOVIC: Yeah. From the forestry plan that was
16 submitted to the record, it didn't seem to be a final plan, and
17 along with the caveat that we talked about and the condition that
18 talks about how this property is split-zoned, and it would be
19 best to maintain that undisturbed area in R-3-zoned property --
20 portion of the property.

21 CHAIRPERSON HILL: Mr. Blake, do you understand the --
22 the comments from the Office of Planning?

23 MR. BLAKE: Yes, I do.

24 CHAIRPERSON HILL: Are you in agreement with those
25 plans or those -- those comments?

1 MR. BLAKE: Yes. And if I can, I'd like to also bring
2 in Omour Seck from the development team to -- to speak to this.

3 CHAIRPERSON HILL: Okay. Mr. Seck, could you introduce
4 yourself for the record, please?

5 MR. SECK: Yes, Chairman Hill. Good afternoon. Omour
6 Seck representing Rupsha, the development. I wanted to weigh in
7 on this, if I may.

8 CHAIRPERSON HILL: Okay. Go ahead.

9 MR. SECK: Good afternoon, everyone. The trees, we
10 have the permit, as Mr. Blake said, but the neighbors in the back
11 on Elvans Road have asked that we maintain some kind of buffer,
12 and that's what we wanted to honor in respect to their needs,
13 and that's why we keeping most of the trees. I have discussed
14 it with one of the resident, Mr. Jay. That anything that's
15 hazardous, that's part of the permit, we will remove, but we will
16 remain -- leave the remaining healthy threes (sic).

17 CHAIRPERSON HILL: Okay.

18 MR. SECK: Yeah.

19 CHAIRPERSON HILL: Okay. Thanks, Mr. Seck. Yeah. I
20 just don't know whether that's an enforceable condition from us.

21 MR. SECK: Correct.

22 CHAIRPERSON HILL: And so I wouldn't be in support of
23 that particular condition, but it seems as though you and the
24 Office of Planning are in agreement with what is the hope for
25 those trees?

1 MR. SECK: Yes.

2 CHAIRPERSON HILL: Okay. Let's see. Do my -- does my
3 Board have any questions for the Office of Planning and/or the
4 applicant?

5 MR. HOOD: I'd just like to thank the applicant for
6 relooking at some of those materials that were used. I think
7 it'll last longer and it'll look better. So thank you.

8 CHAIRPERSON HILL: Thank you. Thank you, Deputy
9 Chairman Hood. Let's see. Oh, Mr. Young, is there anyone here
10 wishing to speak?

11 MR. YOUNG: Mr. Jay Munyasya.

12 CHAIRPERSON HILL: Could you say that name again,
13 please?

14 MR. YOUNG: Jay Munyasya.

15 CHAIRPERSON HILL: Okay. Great. Mr. Munyasya, can you
16 hear me?

17 MR. MUNYASYA: I can. Can you hear me?

18 CHAIRPERSON HILL: Yes. Could you please introduce
19 yourself for the record? And then, as a member of the public,
20 you'll have three minutes to give your testimony. Then you can
21 begin whenever you like.

22 MR. MUNYASYA: Yeah. My name is Jay Munyasya. I'm a
23 resident. I live on the Elvans road, which is the south of
24 Pomeroy, directly behind the building. The same testimony I've
25 given before. Last time I was here, we were supposed to hear

1 from Omour, which he did come to the ANC meeting, and he's done
2 his part on that, and like he said, we've actually had
3 discussions, him and I, regarding the trees and various other
4 things. The opposition still -- we still have the same opposition
5 in terms of which -- the general project of adding more people
6 to the area, the density of people in the area just is going to
7 put a strain on -- and I know part of this is Office of Planning,
8 but it's going to put a strain on the resources, such as like
9 the police. Seventh District is already stretched thin. You
10 know, the density that's there already adding anything to it is
11 just going to cause problems.

12 The other concerns that we've had outside of safety,
13 because all of the other apartment buildings in here in the area
14 are fighting amongst each other, and there's literally gunshots
15 coming from one side of our place to the other, and we're used
16 as a pass-through. Outside of that, there's other, you know, the
17 food desert. There's other non -- there's not resources in the
18 community, those kind of things, and just keep putting people in
19 the same area. It's going to just keep continuing the problems
20 in the neighborhood. As Omour said, it's not just for him. It's
21 if the existing ones there, which we are also trying to fight on
22 another front, not on this, but the bottom line is we, as a
23 community, went to the ANC meeting. Not one person in the ANC
24 meeting was in favor of this, and that's been the case for the
25 past three or four ANC meetings. Not one community member has

1 | been in favor of this. The -- everyone, not just the neighbors
2 | right there, everyone that's just -- that lives blocks away or
3 | is confused on why this is a good idea to put another building
4 | right there.

5 | The result of all of the complaints from the community
6 | is our ANC commissioner turning around and saying he's in support
7 | of it, disregarding all of the community's thoughts and feelings
8 | on this. It's atrocious that he would then say, and everyone
9 | was opposed. I have -- there's not been one person that he's
10 | presented that is in favor of this project, and he turns around
11 | and writes a letter of support for this. He is not listening to
12 | the community. So that's why I'm on here again as the community,
13 | as a representative of the community to voice my opposition when
14 | it's not being heard anywhere else. It's not. And our ANC
15 | commissioner is just -- I don't know what the reason is for
16 | hearing everybody in the meeting say they don't want this --

17 | CHAIRPERSON HILL: Okay.

18 | MR. MUNYASYA: -- and the big part --

19 | CHAIRPERSON HILL: I got you.

20 | MR. MUNYASYA: -- a big part of this is the five
21 | bedrooms, and the five bedrooms is just going to cause more of a
22 | density than having a two-bedroom.

23 | CHAIRPERSON HILL: Okay.

24 | MR. MUNYASYA: And so if you had, I think there's eleven
25 | or twelve five-bedrooms.

1 CHAIRPERSON HILL: Mr. Munyasya, let me just interrupt
2 you one second. You've gone over your three minutes, but that's
3 okay. The -- the vote of the ANC, though, was four to zero.

4 MR. MUNYASYA: Yes. And this is -- it's four to zero.
5 Everybody -- those are the commissioners. Everybody, all the
6 community was saying no, no, no. He turned around and had a
7 vote. Our direct ANC who is Ann -- that Kimberly Little,
8 originally ANC Chairman Johnson was saying that he would get her
9 on 'Board to vote no. Now he has --

10 CHAIRPERSON HILL: Commissioner -- I mean, I'm sorry.
11 Commissioner. Mr. Munyasya, I'm just here to kind of take your
12 testimony. I was just commenting that -- of what the vote was
13 at the ANC. I can't really take your testimony as to what
14 somebody else said, but let me just --

15 MR. MUNYASYA: Sure. I can --

16 CHAIRPERSON HILL: Well --

17 MR. MUNYASYA: Let me just say this then. Everybody
18 in the meeting, the past two or three meetings, all the community
19 members in those meetings have said no to this, and so he's
20 listening to, I don't know who and writing a letter of support.

21 CHAIRPERSON HILL: Okay. Okay. Does -- does the Board
22 have any questions of Mr. Munyasya? Okay. All right. Okay.
23 Thank you, Mr. Munyasya. I don't know. We'll see how this vote
24 goes, but I'm going to look through the record here as to the
25 items that you spoke to, but thank you for your testimony.

1 MR. MUNYASYA: And I know some of this would be Office
2 of Planning, which we got on too late to oppose in that -- in
3 that front.

4 CHAIRPERSON HILL: Okay. Okay. Thanks, Mr. Munyasya.

5 MR. MUNYASYA: There's a -- somebody else just texted.
6 I don't know if they needed to sign up, but there's somebody that
7 wants to speak who's on the call. Are they able to?

8 CHAIRPERSON HILL: I don't know. Hang on one second,
9 Mr. Munyasya. Madam Secretary, I forget how people sign up for
10 testimony, and if there is a time limit for that.

11 MS. MEHLERT: So Friday, they certainly can. They just
12 need to take the oath, which I would have to give them --

13 CHAIRPERSON HILL: Okay.

14 MS. MEHLERT: -- in person.

15 CHAIRPERSON HILL: Mr. Munyasya, do you know who that
16 person is?

17 MR. MUNYASYA: Yeah, her name is Teyanna, and her -- I
18 could -- well, I have her number. I don't --

19 CHAIRPERSON HILL: That's okay. No, don't give out the
20 number, please. Yeah. Teyanna. Mr. Young, do you see a Teyanna
21 on there? And if not, then --

22 MR. YOUNG: What's the last name?

23 CHAIRPERSON HILL: Oh.

24 MR. MUNYASYA: Williams. She's under T.W.

25 MR. YOUNG: Okay. Yeah, I see her.

1 CHAIRPERSON HILL: Oh, great. Okay. All right.
2 Thanks, Mr. Munyasya.

3 MR. MUNYASYA: Yeah.

4 CHAIRPERSON HILL: Ms. Williams, is that you? Okay.
5 Great. Okay. Great. Ms. Williams, if you want to go ahead and
6 introduce yourself for the record, and you'll also have three
7 minutes to give your testimony, and you can begin whenever you
8 like.

9 MS. WILLIAMS: Hi. So I'm Teyanna Williams, and the
10 testimony I had kind of mirrored Jay's when it comes to the
11 density, of course the safety. We already discussed those things.
12 And also with the ANC meeting as well, the community was in an
13 uproar at the last ANC meeting asking if no one was or why was
14 it, you know, approved. We even -- even someone from the mayor's
15 office who works -- works for the mayor's office had said, you
16 know, that basically the property will turn into New Jack City.
17 And what was the plan? There's going to be a lot of kids there.
18 Did you think about a community room, resource -- resources?
19 Considering there's no community center nearby, playground,
20 nothing. You know, Omour told us no. We asked, was it --
21 obviously this has nothing to do with the -- you know, approval
22 of the permitting process because we asked it -- is basically
23 it's a money grab. He basically say he can't deny that. You
24 know, like, this is what business is.

25 We understand that, but I did want to mention to the

1 HVAC system so we can hear every single thing down the hill
2 already, even a dog barking. So I know our last meeting, you
3 mentioned the HVAC systems being on the top, and you were told
4 that we wouldn't be able to hear those. I think that that's
5 false, considering, again, we can hear dogs barking, music
6 playing. Everything that comes from down there, we hear. So I
7 am afraid that the HVAC system as well would be another issue on
8 that front.

9 And also when it comes to the trees, I just want to ask
10 Omour, like, how many trees are they planning to keep? Because
11 they say like a buffer, a buffer, and then that might be four
12 trees leaving these open gaps where everything is still visible.

13 CHAIRPERSON HILL: Okay. Ms. Williams, I will -- I'm
14 going to ask the applicant. Unfortunately, I shouldn't say
15 unfortunately. Witnesses can't ask the applicant things, but we
16 can ask the applicant things.

17 MS. WILLIAMS: I'm sorry. My apologies.

18 CHAIRPERSON HILL: That's all right, Ms. Williams. You
19 don't -- you're not doing anything wrong. Did you -- have you --
20 are you in contact with Mr. [Scheck] -- Mr. Seck, Omour. Have
21 you talked to Omour?

22 MS. WILLIAMS: You're asking if I've spoken to him?

23 CHAIRPERSON HILL: Yeah. Yeah.

24 MS. WILLIAMS: I've spoken -- we spoken directly at the
25 ANC meeting is when we were directly in communication, when I

1 asked about that and I asked about the decrease in the bedrooms
2 and the -- how the security. I asked about the security and how
3 they planning to do that, because also the lady from the mayor's
4 office said that they're going to need some type of concierge.
5 Stuff like cameras is not going to be enough.

6 CHAIRPERSON HILL: Do you live --

7 MS. WILLIAMS: And even someone who -- uh-huh.

8 CHAIRPERSON HILL: Do you live -- do you live -- hold
9 on. Let me -- Ms. Williams, I'm sorry. First of all, I got to
10 administer the oath to you.

11 MS. WILLIAMS: Oh, I'm sorry.

12 CHAIRPERSON HILL: That's all right. Madam Secretary,
13 can you administer the oath to Ms. Williams?

14 MS. WILLIAMS: Okay.

15 MS. MEHLERT: Sure. Ms. Williams, I can't see you, but
16 if you could please raise your right hand. Do you swear or affirm
17 that the testimony that you will give today is the truth?

18 MS. WILLIAMS: Yes.

19 MS. MEHLERT: You may consider yourself under oath.

20 CHAIRPERSON HILL: Okay. Great. Ms. Williams,
21 everything you just said was the truth, correct?

22 MS. WILLIAMS: Correct.

23 CHAIRPERSON HILL: Okay. Great. So do you live on the
24 other side of this -- this tree buffer?

25 MS. WILLIAMS: I do live on the other side of this tree

1 | buffer.

2 | CHAIRPERSON HILL: Okay. All right. Let's see. Mr.
3 | Seck, do you have Ms. Williams' contact information?

4 | MR. SECK: I do.

5 | CHAIRPERSON HILL: Okay. Would you be willing to have
6 | a conversation, continued conversation with her about these
7 | trees?

8 | MR. SECK: Yes, I can.

9 | CHAIRPERSON HILL: Okay. All right. Okay. Ms.
10 | Williams, do you have anything else you'd like to add?

11 | MS. WILLIAMS: That was it. Because, I mean, if our
12 | ANC wrote a letter of -- in support after the whole community
13 | said no. I don't know. There's nothing else we can do about
14 | that. So I mean, that would be my thing, and obviously the noise
15 | level from -- I was just trying to figure out how many HVAC
16 | systems are on top of the building, that we were all obviously
17 | potentially be affected from that noise as well, in addition to
18 | everything else that's on the street.

19 | CHAIRPERSON HILL: Okay. Ms. Williams, I'm going to
20 | ask some of those questions, I guess also the applicant, and Mr.
21 | Seck, please, you know, really do reach out to Ms. Williams.
22 | Okay?

23 | MR. SECK: Yes, sir. We'll do it.

24 | CHAIRPERSON HILL: All right, Ms. Williams, Mr. Seck
25 | will be reaching out to you to kind of discuss some of the

1 questions.

2 MS. WILLIAMS: Okay.

3 CHAIRPERSON HILL: Okay. Okay. Does the Board have
4 any questions of the witness? Okay. All right. Ms. Williams,
5 thank you so much for coming and giving us your testimony.

6 Okay. I don't know, so I forget. Mr. Blake, what
7 happened with the HVAC units again? Can you tell us?

8 MR. BLAKE: So we originally submitted the application
9 with all twenty-nine HVAC units. HVAC units at grade level or
10 in the area where that goes around the perimeter of this building.
11 Office of Planning asked us to reconsider that and put them all
12 on the roof. We -- because we also, the building is going to
13 have a solar panel array. We worked with the Office of Planning
14 and compromised to put basically the units from level 0-2 and
15 level 0-3 on the roof, and then keep the units from the partial
16 cellar in the first floor at grade level or in the area way. So
17 we have, I think it's twenty-four units on the roof, and then
18 the rest of them at grade level.

19 CHAIRPERSON HILL: And how many are at grade level?
20 How many did you move up? Twenty-four units?

21 MR. BLAKE: Yes. Well, hold on. So one, two, three.
22 Let me see something. I think -- I believe it's in the -- it's
23 in our drawings, but it's not on this presentation. I can get
24 you an exact number.

25 CHAIRPERSON HILL: Which exhibit has your -- has the

1 correct plans; do you know?

2 MR. BLAKE: That would be Exhibit 73.

3 CHAIRPERSON HILL: Okay. Yep, I got it. Okay. While
4 you count that up, let me just comment, I guess, as far as the
5 feedback that we received from the ANC. I mean, the ANC are
6 elected members of the community, and then we get the feedback
7 from the ANC as members of the community -- I mean, are
8 representatives of the community. So that's how we understand
9 what the neighborhood is thinking, and so I don't know exactly
10 how to comment on what has been now spoken to about the ANC. I
11 mean, we have a letter of support here from the ANC as a vote
12 with four to zero. And Mr. Seck, you are going to reach out to
13 the witness concerning -- we've already talked about these trees,
14 but also kind of like more clarification as to how those are
15 going to be kept and where, correct, Mr. Seck?

16 MR. SECK: Yes, sir.

17 CHAIRPERSON HILL: Okay. Mr. Blake, how many have
18 moved up and how many down there?

19 MR. BLAKE: There's twenty-four units that are on the
20 roof. That's shown on page 40, which is the last page of the
21 PDF. And then --

22 CHAIRPERSON HILL: Yeah. I can't see the ones on the
23 ground, though, right?

24 MR. BLAKE: Yeah. Those are shown on the floor plans.

25 CHAIRPERSON HILL: So all those ones, the -- the ones

1 | that are on the roof there, those were all down at grade level
2 | before, correct?

3 | MR. BLAKE: Correct.

4 | CHAIRPERSON HILL: Okay. And how many now are down at
5 | grade level?

6 | MR. BLAKE: Fifteen.

7 | CHAIRPERSON HILL: Okay. All right. So you moved the
8 | majority of them up there, huh? Okay.

9 | MR. BLAKE: Yeah. I mean, you know, Office of Planning
10 | was asking that we move all of them to the roof, but for the
11 | purpose of the solar panel array, and also just for the -- the
12 | logistics of the line sets that need to run from indoor units to
13 | the outdoor units to go all the way to the roof, that's why we
14 | split it by -- by level.

15 | CHAIRPERSON HILL: Okay. Mr. Jurkovic, you just popped
16 | on there. Is that correct?

17 | MR. JURKOVIC: Our original conditions had moved to the
18 | roof or another acceptable location that would not negatively
19 | impact residents of this or an adjacent building, for the record.

20 | CHAIRPERSON HILL: Okay. So then for the record, are
21 | you saying that those things are now going to be a problem?

22 | MR. JURKOVIC: You know, ultimately, we are taking the
23 | proposal from the applicant and asking them to show us how their
24 | HVAC composition of the building will be the least amount of
25 | impact to both those residents that would have been in that area

1 away, as well as the neighboring residents, an attempt to mitigate
2 the noise.

3 CHAIRPERSON HILL: So Mr. Blake, again, there's fifteen
4 HVAC units that you weren't able to move and/or -- Mr. Jurkovic,
5 I'm sorry. I always get your name wrong. Can you please
6 pronounce it again?

7 MR. JURKOVIC: Jurkovic.

8 CHAIRPERSON HILL: Okay. Jurkovic. Mr. Jurkovic, I
9 don't -- I'm not really clear as to then what the Office of
10 Planning's position is concerning those fifteen units. Are you
11 saying that you've worked with the applicant and the applicant
12 is unable to move them, or you're comfortable with the fifteen
13 units being there now?

14 MR. JURKOVIC: We -- we are comfortable with the
15 arrangement based on the explanation that was given to us by the
16 applicant that was to compromise on both the best location for
17 both noise and overall construction of the building.

18 CHAIRPERSON HILL: You're comfortable with the
19 compromise?

20 MR. JURKOVIC: Yes.

21 CHAIRPERSON HILL: Okay. All right. Okay. Does my
22 Board have any further questions of anyone? Okay. Mr. Blake,
23 do you have anything you'd like to add at the end?

24 MR. BLAKE: No, thank you.

25 CHAIRPERSON HILL: Okay. All right. I'm going to go

1 ahead and close the hearing of the record. Mr. Young, if you'd
2 please excuse everyone. Okay. We had this case before us, and
3 they've gone back and made changes that some of which I know that
4 Chairman Hood had spoken about, and then also we were concerned,
5 as was the Office of Planning, concerning those HVAC units, and
6 I -- as we have just stated, the compromise was to move up a
7 majority of them from grade level, even fifteen and putting
8 twenty-four up on the ceiling or the rooftop, I should say. I'm
9 comfortable with the second -- this second presentation and also
10 that they're meeting the criteria for us to grant the relief
11 that's being requested. I think that I appreciate the time that
12 the applicant has put forward in this particular project and
13 would again request the applicant to work with the community
14 concerning the tree line. I don't think I can feel comfortable
15 adopting condition 4 concerning the -- the trees, because I think
16 it would put DDOT more in line with what we're trying to approve.
17 Like we need to approve it one way or the other, not throw this
18 onto another agency, but I would go with the conditions 1, 2,
19 and 3 that the Office of Planning has put forward, and then those
20 are my thoughts. Mr. Smith, do you have anything to add?

21 MR. SMITH: No, I don't have anything to add, Chairman
22 Hill. I agree with your assessment of this particular case, and
23 also the reasons why do not include condition 4, and I will also
24 say that it's probably not needed because they -- they're going
25 to have to submit a grading plan to -- to -- through the -- as

1 part of the building permit process. So as part of that, they'll
2 probably have to submit something that shows tree protection plan
3 as part of that, anyway. So I don't think that's necessary for
4 the reasons you stated, and also, I think from an administrative
5 standpoint, that will be handled anyway through the development
6 process, the administrative development process. So with that,
7 I give OP staff report great weight and will support the
8 application.

9 CHAIRPERSON HILL: Thank you. Chairman Hood?

10 MR. HOOD: Mr. Chairman, with everything both of you
11 have said already, you and Board Member Smith, I was listening
12 to the two witnesses who were in opposition who mentioned that
13 everybody was against it, and unfortunately, maybe -- maybe
14 I'm -- when I read the letter from the ANC, it says -- and some
15 things that really push out at me when it says the Board of Zoning
16 Adjustment must consider zoning laws. I got that. Then it says,
17 and that it appears to comply with the relevant regulations. So
18 I don't know if -- if -- sometime it might not always go our way,
19 but I think the way I read this, the ANC has examined what's
20 before this Board and that's how they came to their conclusion.
21 So I'm hoping that's the case, and I'm hoping they will continue
22 to work, as you've already stated, to continue to work with those
23 who have some concerns and opposition, but if it meets those
24 regulations in which I believe that the ANC is saying, I think
25 all other counts, from what the record reflects, it does. It's --

1 | it's really, you know -- I think they have mitigated and taken
2 | care of any issues at hand, might not always be to our liking.
3 | I'm just trying to figure out the ANC and hearing after this,
4 | and I'm disturbed like you were, Mr. Chairman, that what's being
5 | said, nobody in the community wanted. I'm not saying whether
6 | it's true or false, or I'm not taking a position on any of that.
7 | I'm just saying it looks like we have more than one position, so
8 | I'll leave it at that for now. Thank you, Mr. Chairman.

9 | CHAIRPERSON HILL: Thank you, Chairman Hood. I'm going
10 | to make a motion to approve Application No. 21058, as captioned
11 | by the secretary, and ask for a second. Mr. Smith?

12 | MR. SMITH: Second.

13 | CHAIRPERSON HILL: Motion made and seconded. If you
14 | could take a roll call, please, Madam Secretary.

15 | MS. MEHLERT: So you're not, are you including the OP
16 | conditions?

17 | CHAIRPERSON HILL: I'm including -- I'm including
18 | conditions, yeah, 1, 2, and 3. I apologize. And Mr. Smith, are
19 | you seconding that, as well?

20 | MR. SMITH: Yes. Seconding those three conditions.

21 | CHAIRPERSON HILL: Thank you.

22 | MS. MEHLERT: Please respond to the chair's motion to
23 | approve the application with conditions. Chairman Hill?

24 | CHAIRPERSON HILL: Yes.

25 | MS. MEHLERT: Mr. Smith?

1 MR. SMITH: Yes.

2 MS. MEHLERT: And Chairman Hood?

3 MR. HOOD: Yes.

4 MS. MEHLERT: Staff would record the vote is three to
5 zero to two to approve application 21058 with conditions on the
6 motion made by Chairman Hill and seconded by Mr. Smith, with
7 'Board members, John and Blake, not participating.

8 CHAIRPERSON HILL: Thank you. All right. Chairman
9 Hood, that's it for you.

10 MR. HOOD: All right. Y'all have a great rest of the
11 day.

12 CHAIRPERSON HILL: Thank you. You, as well. Board
13 Member Smith, I guess we'll take a quick lunch. I don't know,
14 like -- I've been snacking, so I'm ready to go as fast as y'all
15 want to go. I mean, I'm looking to Mr. Blake. I mean, you want
16 to do fifteen minutes and just come back, or I mean, y'all need
17 time. I'm fine. Just let me know.

18 MR. HOOD: I'll say twenty.

19 CHAIRPERSON HILL: Okay. Mr. Blake, is that good with
20 you? All right. We'll come back at 2:05. Thank you. Bye-bye.

21 MS. MEHLERT: Off the record for a lunch break at 1:45.

22 (Whereupon, there was a brief recess.)

23 MS. MEHLERT: The Board is returned from its lunch
24 break and is now in its meeting session again. This is
25 Application No. 21189 of Sidney Neely. It's an expedited review

1 item. This is a self-certified application, pursuant to Subtitle
2 X § 901.2. For a special exception under Subtitle E § 5201, for
3 the side yard requirements of Subtitle E § 208.3. This is for a
4 new two-story rear addition to an existing two-story, semi-
5 detached principal dwelling. It's located in the RF-1 zone at
6 816 G Street, SE, Square 926, Lot 802.

7 CHAIRPERSON HILL: Great. Thank you. I thought this
8 was pretty straightforward. I didn't have any issues with it.
9 I thought that I would agree with the analysis of the Office of
10 Planning has provided, as well as HPRB's input, also ANC 6B, and
11 I do appreciate that the two adjoining properties have also
12 provided their support, and I do believe they're meeting the
13 criteria for us to grant this particular relief. I'll be voting
14 in favor. Mr. Smith, do you have anything you'd like to add?

15 MR. SMITH: I have nothing to add. I agree with your
16 statements and also the position of the Office of Planning, that
17 was for the application.

18 CHAIRPERSON HILL: Thank you. Mr. Blake?

19 MR. BLAKE: Yeah, I'm in support of the application.
20 It does appear to be fairly straightforward and meets the
21 criteria. I have nothing to add to it.

22 CHAIRPERSON HILL: Thank you. Thank you. Commissioner
23 Stidham?

24 MS. STIDHAM: I also agree this is very
25 straightforward, and I have nothing to add and prepare to support.

1 CHAIRPERSON HILL: Thank you. I'm going to make a
2 motion -- make a motion to approve Application No. 21189 as
3 caption read by the secretary and ask for a second. Mr. Blake?

4 MR. BLAKE: Second.

5 CHAIRPERSON HILL: Motion made and seconded. Madam
6 Secretary will take roll call, please.

7 MS. MEHLERT: Motion to approve the application.
8 Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MS. MEHLERT: Mr. Hood?

11 MR. HOOD: Yes.

12 MS. MEHLERT: Mr. Blake?

13 MR. BLAKE: Yes.

14 MS. MEHLERT: And Commissioner Stidham, staff record
15 the vote as four to zero to one to approve application 21189 on
16 the motion made by Chairman Hill and seconded by Board Member
17 Blake, with Board Member John not participating.

18 CHAIRPERSON HILL: Thank you. You may call our next
19 one when you have an opportunity.

20 MS. MEHLERT: Next is back in the Board's hearing
21 session. This is Application No. 21143 of Trustees for Harvard
22 University. This is a self-certified application pursuant to
23 Subtitle X § 901.2, for a special exception under Subtitle U §
24 203.1(o), to allow use of an existing residential building by a
25 nonprofit organization for the purposes of the nonprofit

1 organization and pursuant to Subtitle X § 1002, for an area
2 variance from the minimum gross floor area requirements of
3 Subtitle U § 203.1(o). This is for a nonprofit organization
4 office use in an existing four-story, semidetached building.
5 It's located in R-1B/GT zone at 3100 R Street, NW, Square 1281,
6 Lot 836. The public hearing was originally scheduled for July
7 17th and postponed twice. The merits have not been heard. On
8 July 17th, the Board granted a status in opposition to Daniel
9 Chao and Erin Drouin (phonetic). I believe they recently
10 submitted letters stating they are withdrawing their opposition.

11 CHAIRPERSON HILL: Okay. If the applicant could hear
12 me, if they could please introduce themselves for the record.

13 MS. BATTIES: Good afternoon. Leila Batties and John
14 Oliver on the -- with Holland & Knight, on behalf of the
15 applicant, the Trustees for Harvard University.

16 MS. BATSAKI: Good afternoon. I'm Yota Batsaki,
17 executive director of Dumbarton Oaks, Trustees for Harvard.

18 CHAIRPERSON HILL: Okay. Let's see. And then, Mr.
19 Chao, I see you're here as well; is that correct? You want to
20 introduce yourself for the record?

21 MR. CHAO: It's Daniel Chao. I live at 1698 31st
22 Street.

23 CHAIRPERSON HILL: Okay. So Mr. Chao, you are
24 withdrawing your opposition, correct?

25 MR. CHAO: I am, having engaged with the applicant

1 | thoroughly, with assistance from our ANC chair. We've really
2 | spent a lot of time on this and hashing out our concerns and
3 | details. I want to say that some neighbors still have their
4 | concerns, but I think it's a good foundation. I hope, you know,
5 | we can have support for it.

6 | CHAIRPERSON HILL: Okay. Great. Well, Mr. Chao, I'm
7 | going to then excuse you from the hearing, as you're no longer a
8 | party, and I wish you a good day.

9 | MR. CHAO: Thank you. I can still watch, right?

10 | CHAIRPERSON HILL: Yeah, yeah, yeah. You can watch.
11 | You can -- you can even -- you can even still testify if you want
12 | to do, when the public hearing portion comes up.

13 | MR. CHAO: Okay. Perfect.

14 | CHAIRPERSON HILL: Okay. Thank you, Mr. Chao. Ms.
15 | Batties, I want to go ahead and let you walk us through your
16 | client's application and why you believe they're meeting the
17 | criteria for us to grant the relief. I guess I would like to
18 | hear, you know, obviously, your arguments for how you're meeting
19 | the area variance requirements, as well as that for the special
20 | exception, and you may begin whenever you like.

21 | MS. BATTIES: Thank you, Mr. Chair. Mr. Young, do you
22 | mind pulling up the PowerPoint presentation? Thank you. So
23 | again, I just want to note. Thank you, Mr. Chao, for coming
24 | online and confirming the withdrawal of your opposition.
25 | There -- the -- there was another party that was granted party

1 status in opposition. That was Ms. Erin Drouin, and she also
2 has submitted a letter into the record at Exhibit 53, withdrawing
3 her opposition to the application, so just for the record.

4 Mr. Young, can you go to the next slide, please? So
5 there are two requests before the BZA this afternoon. First is
6 the special exception approval pursuant to Subtitle U § 203.1(o)
7 for the nonprofit use of the subject property, which is located
8 at 3100 R Street, Northwest in Georgetown. The second area of
9 relief before the 'Board is the area variance from the criteria
10 in § 203.1(o)(2) that requires a gross floor area of the
11 residential building to be 10,000 square feet. In this case, the
12 gross floor area of the building is 8,060 square feet, which is
13 ample space for the proposed nonprofit use of the property by
14 Dumbarton Oaks.

15 So the purpose of these requests is to allow Dumbarton
16 Oaks to occupy the property with uses that advance its mission
17 of scholarship in the humanities. Initially, the property will
18 be used on an interim basis by no more than four Dumbarton Oaks
19 employees for administrative tasks, office uses. Long term, once
20 the property is fully renovated, it will serve as housing for
21 Dumbarton Oaks Scholars, limited to no more than six at one time.
22 And so Mr. Hill -- Chairman Hill, before I present on the merits
23 of the case, I do want to allow Ms. Yota Batsaki an opportunity
24 to give brief testimony on behalf of the applicant.

25 CHAIRPERSON HILL: Sure.

1 MS. BATTIES: Mr. Young, just advance the next slide.

2 MS. BATSAKI: Thank you. This is a slide from outside
3 our library that speaks to our mission.

4 CHAIRPERSON HILL: Can you -- can you introduce
5 yourself for the record? I'm sorry.

6 MS. BATSAKI: Yes, I am Yota Batsaki, executive
7 director of Dumbarton Oaks, and I wanted to thank the Board of
8 Zoning Appeals for considering our application today and the ANC
9 commissioners, especially Commissioner Lohse and Commissioner
10 Chao, for their feedback. Over the past few months, as
11 Commissioner Chao mentioned, we've been engaging in extended
12 dialogue with the commissioners and with our neighbors, and the
13 results of that conversation are outlined in the MOU that is
14 attached to our application and where we provide a set of
15 principles that we voluntarily agree to abide by to mitigate any
16 impact from our application on our immediate and extended
17 neighbors.

18 I'm also here on behalf of our director, Professor
19 Thomas Cummins, who also thanks the 'Board and the commissioners
20 and neighbors for considering the application and for the
21 feedback.

22 I just wanted to spend just a few moments talking about
23 our plans for the 3100 R Street. We acquired the property in
24 2021 with the intention of renovating it to a high standard, and
25 eventually it will house, as Ms. Batties mentioned, up to six

1 scholars, distinguished, advanced career of scholars will come
2 to Dumbarton Oaks to pursue collaborative projects, such as
3 translations or publications.

4 Until that time, we would like to use the property as
5 administrative offices for up to four staff, so that it does not
6 remain vacant. We anticipate starting the renovation within the
7 two years, as soon as we finish another construction project on
8 the campus, which has received approval from the zoning
9 commission most recently last November.

10 For those who are not familiar with Dumbarton Oaks, I
11 also wanted to say a few words about our history and mission. We
12 are a nonprofit institution. The estate was bought in 1920 by a
13 couple, Robert and Mildred Bliss, who were distinguished for
14 their diplomatic career, their collecting, and their
15 philanthropy. They were long time Georgetown residents, and they
16 conveyed the estate to Harvard in 1940. So it would serve as a
17 research institute in our three areas: Byzantine, pre-Columbian,
18 and garden and landscape studies. Quite niche, but we support
19 them to the best of our ability.

20 We are not a teaching institution. We host about 50
21 scholars a year who work in our library. They're mostly advanced
22 graduate students or faculty, and we house them in the immediate
23 neighborhood. And we also have a program of lectures, conferences
24 that are around, and a music series that is open to the public
25 and has been around since the 1940's. We steward the historic

1 garden that is open to the public. There is only a charge during
2 the high season to keep numbers contained. And we often hear
3 from our neighbors how much they enjoy and value the garden. And
4 we also have a museum that's always free and a collection of
5 important architecture, including a pre-Columbian pavilion by the
6 artist -- by the architect Philip Johnson.

7 So what I want to convey is that we have been welcoming
8 the public and scholars for the past seven decades. We've been
9 a museum, historic garden, and research center, as well as a
10 Washington landmark for a very long time. And we really
11 appreciate your consideration. This application is material to
12 our mission of stewarding, sharing, and learning, and we are very
13 thankful that we are before you to be considered today. Thank
14 you.

15 MS. BATTIES: Mr. Young, can you move to the next slide,
16 please? This slide just has some of the application highlights.
17 I want to note that this application was filed on April 1st. As
18 was noted previously, there have been two deferrals of the public
19 hearing and since that time or actually, since the application
20 has been filed, we have hosted event participants in two community
21 meetings, one hosted by the applicant. And one hosted by the
22 ANC. There have been several meetings and communications with
23 Commissioner Gwen Lewis (phonetic), who is the chair of the ANC
24 2E, and the adjacent property owner, Mr. Chao, who also happens
25 to be the single member district representative for the area

1 | where the property is located.

2 | Over the last seven months, you know, we again, we've
3 | done all of this outreach. We're really pleased, Mr. Chair, to
4 | be before the BCA with support from the Office of Planning, ANC
5 | 2E, and both Mr. Chao and Mr. Stewart (phonetic). The applicant
6 | has entered into a memorandum of agreement with each of these the
7 | two parties in opposition and ANC 2E. And the memorandum of
8 | agreement includes conditions, not only the conditions proposed
9 | by the Office of Planning and its report, but several other
10 | conditions that are intended to specifically mitigate any
11 | potential impacts of the proposed nonprofit use of the property
12 | on the surrounding neighborhoods.

13 | Mr. Young, if you can go to the next slide, please.
14 | And I will note that should the BCA grant the approval of this
15 | application, the applicant would ask that all of the proposed
16 | conditions in the MOU or all of the conditions listed in the MOU,
17 | be included in the BCA order approving the application. So these
18 | next several slides list all of the proposed conditions. I'm not
19 | going to read from them. I will just highlight them as we go
20 | through.

21 | So on this first slide, these are some of the conditions
22 | that relate to the temporary office use. The applicant and the
23 | parties agree to limiting the time frame for the officers meeting
24 | the duration for no more than two years or December 31st, 2026,
25 | two years after the effective date of the order or December 31st,

1 2026, whichever is later. The parties agreed to limit the hours
2 of operation for the use, as well as the number of employees.
3 And the agreement requires the installation of acoustic panels
4 to mitigate any noise from the office use that could affect the
5 adjacent residential property. Next slide please.

6 Continuing with conditions related to the temporary
7 office use, Dumbarton Oaks has agreed to prohibit on-street
8 parking by its employees. It's agreed to also prohibit activities
9 that would generate excessive noise and traffic. Dumbarton Oaks
10 has agreed to limit the hours of construction and renovation on
11 the property, while the office use is in place. And then they
12 have agreed to maintain the exterior of the property in a manner
13 that is consistent with the residential use, as well as giving
14 the appearance that the property is in use and occupied. Next
15 slide please.

16 So these are some of the conditions that relate to the
17 housing for Dumbarton Oaks Scholars. After the property has been
18 fully renovated and the office use ceases to exist. So again,
19 in order to mitigate any noise from the housing on the adjacent
20 property Dumbarton Oaks -- Dumbarton Oaks has agreed to install
21 a sound wall. Dumbarton Oaks has also agreed to limit the number
22 of scholars who can stay at the property to no more than six at
23 one time. The Memorandum of Agreement prohibits the use of
24 vehicles by Dumbarton Oaks scholars, except for very limited
25 cases, and in those cases where the scholars would have cars they

1 would not be permitted to use on-street parking. And then
2 Dumbarton Oaks has also agreed to prohibit large gatherings or
3 functions or ticket sales, any type of activity that would
4 generate excessive noise and traffic. Next slide please.

5 So this slide deals with conditions about community
6 collaboration and the limitations on the special exception
7 approval. And so one of the things that was important to the
8 ANC and the adjacent residents was that there would be a community
9 liaison that would be available to address any issues regarding
10 the maintenance of use, maintenance or use of the property, which
11 Dumbarton Oaks has agreed to. And Dumbarton Oaks has also agreed
12 to enter into a construction management plan. Once the
13 renovations, significant renovations on the property begin for
14 housing the Dumbarton Oaks Scholars.

15 And then finally there was concern about the use of the
16 property for uses other nonprofit uses other than the office or
17 housing for scholars. And so they wanted the ANC and neighbors
18 wanted to make sure that the zoning approval that runs with the
19 land did not benefit either other users or other type of nonprofit
20 uses. So Dumbarton Oaks has agreed to limit the use of the
21 property to the nonprofit uses discussed in this application,
22 which are the office use and the housing for Dumbarton Oaks
23 Scholars. And Dumbarton Oaks has agreed that in the event it
24 decides to sell the property, it would seek approval from the
25 Board or apply to the BCA, requesting that the special exception

1 approval be terminated or extinguished.

2 CHAIRPERSON HILL: Ms. Batties, what number are you
3 reading to on that regard?

4 MS. BATTIES: Number 15.

5 CHAIRPERSON HILL: Okay. Great. Thank you. Please
6 continue. I'm sorry.

7 MS. BATTIES: Okay. So those are the conditions. These
8 are all of the conditions that were agreed to by the parties.
9 And again, we would ask that all of these conditions be included
10 in the Board's order should the Board decide to approve the
11 application. Next slide, please, Mr. Young.

12 And so now we will get into the compliance with the
13 relevant standard of review, legal standard of review. The
14 criteria in Subtitle U § 203.1(o), allowing for the nonprofit use
15 of a residential building is pretty straightforward. And the
16 applicant's satisfaction of the criteria is fairly clear. It's
17 pretty straightforward, particularly when you consider the
18 conditions that have been proffered to mitigate any potential
19 adverse impact to the residential area.

20 There's one criteria where we -- that we don't meet,
21 and that is the minimum gross floor area for the building. Again,
22 our gross floor, the gross floor area for our property is 8060
23 square feet, where the regulations require a minimum of 10,000
24 square feet. So for that -- for this specific criteria, we are
25 seeking an area variance. Next slide please, Mr. Young. Okay.

1 And you can go on to the next slide as well.

2 These are all the general -- the special exception
3 criteria again. But I don't think I need to read these, there
4 other than the not meeting the minimum square footage for the
5 building. The application is pretty straightforward in terms of
6 how these various conditions are met. So Mr. Young, if you can
7 go to the next slide. Thank you.

8 So compliance with the area variance criteria. As the
9 Board knows, there are three prongs to the area variance test.
10 The first is that there is an extraordinary exceptional condition
11 or situation that affects the property. And so in this case,
12 there's a confluence of factors. First, the property is the only
13 irregularly shaped lot in the square. It's located at the
14 intersection of R and 31st Street and is actually the largest lot
15 of the lots that front on this intersection. And it's directly
16 across the street from Dumbarton Oaks, which makes it ideal in
17 terms of being used to advance Dumbarton Oaks mission.

18 Additionally, the property has been vacant for a very
19 long time. At one community meeting, somebody mentioned that the
20 property has been vacant for approximately 15 years. All that
21 to say is that the building is in need of significant renovations
22 and repairs, to the tune of approximately \$9.5 million. And so
23 unlike a lot of properties in Georgetown, this property is in
24 again, significant need of repair.

25 And then finally, when Dumbarton Oaks first purchased

1 the property, it moved right away to get concept approval from
2 the Old Georgetown Board and CFA. They hired an architect to
3 come up with plans for the exterior and interior renovations.
4 And so they have been moving to get entitlements for the property
5 in place and working in good faith very early on from the time
6 that it purchased the property. So it's this confluence of
7 factors which create an exceptional or unusual condition or
8 situation for this property. Next slide please.

9 So the second prong of the area variance test is that
10 the owner would encounter practical difficulties if the
11 regulations were strictly applied. And in this case, there is
12 no practical way for Dumbarton Oaks to expand the footprint of
13 the building from 8060 square feet to 10,000 square feet. The
14 building is a contributing structure to the historic district and
15 not allowing -- so one, we don't want to compromise the
16 infrastructure of the building, but separately failing to grant
17 the variance would mean that they would not -- the property would
18 remain vacant. They would not be able to use it for the nonprofit
19 use and which would create a practical difficulty for Dumbarton
20 Oaks.

21 And then the third prong of the area variance test is
22 that the variance would not cause a substantial detriment or be
23 contrary to the intent of the zoning regulations or the zoning
24 map. And in this case, the residential esthetic of the building
25 will remain. Again, they have already gone through the process

1 of getting plans approved. The nonprofit use of the building
2 will not generate excessive noise or traffic, even as a matter
3 of fact, the office use would only allow four employees during
4 limited hours would actually be less intense than the matter of
5 right residential use, and the use of the property as housing for
6 scholars would actually be compatible with the matter of right
7 residential use. Next slide please.

8 So the next two slides really just walk through the
9 applicant's community engagement. I do want to point out that
10 Dumbarton Oaks has been at this site in Georgetown for since
11 1940. It's a beautiful 16-acre campus. And so it, Dumbarton
12 Oaks, has been a community stakeholder for 85 years. The director
13 of Dumbarton Oaks, professor Tom Cummings, lives just a few doors
14 from the subject property. He is also in the community. So when
15 we talk about community engagement this is not. I mentioned
16 that. So to note that this is not an institution coming into
17 the neighborhood. This is an institution that is here in the
18 neighborhood and that has been here for 85 years.

19 Now, as it relates to the application specifically, we
20 have met with Commissioner Chao and Commissioner Gwen Luce
21 (phonetic) immediately after the application was filed. And have
22 worked until now to get to a point where we have the support
23 again of the ANC and the parties that were originally in
24 opposition. I also want to note that we have some letters. Two
25 letters, excuse me, two letters in support of the application

1 that I'd like to just note for the record and read. Just two
2 quick excerpts.

3 The first is at Exhibit 20 of the record, and it's from
4 Wayne Coons (phonetic) and Harriet Pincus (phonetic). And in
5 their letter of support, they note it reads, "Having lived around
6 the corner from Dumbarton Oaks for 39 years, we have always been
7 interested and appreciative of its role as an international
8 center of research and the advancement of knowledge. Its museums
9 and gardens, its museum and gardens are treasures. Both the
10 office and residential use would seem to us to support Dumbarton
11 Oaks permanent -- to support Dumbarton Oaks permanent residential
12 use of the building. Reinforcing the residential fabric of the
13 neighborhood."

14 The second letter in support is from David Bland
15 (phonetic) and Marion Rouse (phonetic), and that is at exhibit
16 23 of the record and their letter. In their letter they state,
17 "Dumbarton Oaks, their academic mission is a mission that
18 benefits not just Dumbarton Oaks and Harvard University, but
19 Georgetown and the broader community as well. Dumbarton Oaks is
20 a jewel in our midst, and their proposed use of the property in
21 question enhances that mission." And so I think it's just
22 important to note those two letters of support for the record.

23 So I'll just conclude by saying, given that we've
24 demonstrated how the application complies with the applicable
25 legal standard of review for both the special exception and the

1 variance approval. And given that the application has the support
2 of ANC 2E, Mr. Chao and Ms. Drouin, subject to the conditions
3 outlined in the Memorandum of Agreement. Given the
4 recommendation of approval by the Office of Planning we, given
5 all of these factors, we respectfully request that the Board
6 approve the application subject to the conditions in the
7 memorandum of agreement filed at Exhibit 51 of the case record.
8 And this concludes our application or presentation to the Board.
9 And of course, we're happy to answer any questions that you have.
10 Thank you.

11 CHAIRPERSON HILL: Thank you. Thank you, Ms. Batties.
12 Okay. Before I turn to my Board members, can I hear from the
13 Office of Planning?

14 MS. THOMAS: Yes. Good afternoon, Mr. Chair, members
15 of the Board. Karen Thomas with the Office of Planning. And we
16 are recommending approval of the Special Exception Relief to
17 permit the nonprofit for Dumbarton to use the space that they
18 have acquired and in 2020 as a temporary office use. And we are
19 doing that in support of the variance, the related area variance
20 relief from the 10,000 square foot requirement, as the property
21 only has around 8000 square feet.

22 In this case we are in support of this application
23 because we do believe that there is a practical difficulty here
24 with respect to the area and it being a historic contributing
25 structure in the historic district. With that you know, it's

1 | hard to add on to the -- there's no opportunity to create an
2 | additional 10,000 square feet. And also, the properties vacancy
3 | status. It has been vacant for the past 15 years, as stated by
4 | the applicant, and a significant cost to its repairs, which
5 | wouldn't be typically amenable to an average family for them to
6 | convert and use as a residential use.

7 | So in this case the applicant is proposing a temporary
8 | office use. And we will stress temporary for a period of two
9 | years. And it of which it will revert to a residential use for
10 | its for housing its scholars for no more than six scholars at
11 | any one time. So with that we believe that the memorandum of
12 | understanding agreed to between the applicant and the trustees
13 | would mitigate any undue effects due to the office use and to
14 | the future residential use with respect to parking, and any
15 | pedestrian movement within the area, or vehicular movement rather
16 | within the neighborhood. So with that, we will rest on the record
17 | of our report and I'd be happy to take any questions. Thank you.

18 | CHAIRPERSON HILL: Okay. Before I get to questions
19 | again Mr. Young, is there anyone here wishing to speak?

20 | MR. YOUNG: I'll bring Mr. Chao in to see if he wants
21 | to --

22 | CHAIRPERSON HILL: Oh, great. Thanks.

23 | MR. CHAO: Okay. Thanks.

24 | CHAIRPERSON HILL: Hi, Mr. Chao, just real quick.

25 | MR. CHAO: Hi.

1 CHAIRPERSON HILL: Hi, hi. Before you introduce yours,
2 I'm sorry. If you could introduce yourself for the record. And
3 then you'll have three minutes to give your testimony. And you
4 can begin whenever you like.

5 MR. CHAO: Sure. My name is Daniel Chao, a resident
6 at 1698 31st Street Northwest. Immediate neighbor. Because the
7 video and the testimonies do live in as a reference for people
8 to go back to. I just wanted to mention one thing that was
9 glaring. That's a fact. This property is not -- had not been
10 vacant for 15 years. Look, I lived here for three years, but
11 Mr. Brian Gall (phonetic), not just somebody who was at a hearing
12 or meeting somewhere that remains nameless. Mr. Gall, who lives
13 at 3102, when I posed this question to him, he says, absolutely
14 not. And other neighbors I can find that says -- can say the
15 same thing. So someone was living there before 2021. And as I
16 mentioned in one of my statements, I think for the record the
17 lady might have been elderly and she might have had people come
18 in and out to fix it, but it wasn't like, so you know, decrepit
19 or anything. She was living there.

20 But also, number two, I want to say that I again, I
21 support this memorandum of agreement. I truly support it because
22 I have the commitment from the executive director to help and
23 work and build on this. And I think that as an immediate
24 neighbor, you can appreciate and enjoy the gardens and also be
25 very concerned about, you know, the intrusion into the

1 neighborhood. And also the traffic and all the footprint stuff.
2 It's not one or the other. And so and also, I just wanted to
3 mention there are several, you know, neighbors who also wrote
4 letters of opposition.

5 But at the end of the day, I do appreciate the Executive
6 Director's commitment to work with us on these issues. And I
7 think this is a first time that they've seen any kind of pushback
8 from the neighbors as far, as far as I'm concerned or aware of.
9 I know that Mr. Cummins lives nearby. He lives three blocks from
10 me. And I know that he may have some support, but I also know
11 that there are a lot of concerned residents. And so but with
12 that, that I, you know, I hope you'll, you know, respect and
13 appreciate the time that we spent on our MOA agreement.

14 CHAIRPERSON HILL: Okay. Thanks, Mr. Chao. I think I
15 saw the commissioner pop in there for a second.

16 MS. LOHSE: Hi, there. This is Chair Lohse. Gwendolyn
17 Lohse, Commissioner from ANC.

18 CHAIRPERSON HILL: Hi, Commissioner.

19 MS. LOHSE: How are you doing?

20 CHAIRPERSON HILL: Good. Thank you. How are you?

21 MS. LOHSE: Thank you.

22 CHAIRPERSON HILL: Good.

23 MS. LOHSE: I -- could I have just a few minutes to
24 speak if I.

25 CHAIRPERSON HILL: Yeah, of course, Commissioner, I

1 | didn't I didn't see you originally because your camera wasn't on.

2 | MS. LOHSE: Excellent. I can turn it on, I --

3 | CHAIRPERSON HILL: Yeah. So if you can -- that's great.
4 | Just give me one second. Just give me one second and then you
5 | can give your testimony. Let me see, what was I going to say.

6 | Mr. Chao, I'll just leave you here for a minute. Okay.
7 | So normally the order is the applicant gives their testimony,
8 | then we hear from the ANC.

9 | So Commissioner, please go ahead and give your
10 | testimony.

11 | MS. LOHSE: Okay. Thank you. So Gwendolyn Lohse,
12 | chair of ANC 2E, and commissioner of ANC 2E06. And I've been
13 | the commissioner managing this zoning case. And I appreciate
14 | we've spent a considerable amount of time. It's been very, a
15 | lot of time working through this MOU. I think without doubt,
16 | normally the neighborhood would not be supportive of this because
17 | of the fabric of the community as well as not wanting to remove
18 | housing stock. There were some offers on the house and we just
19 | want to support again the fabric of our community and maintaining
20 | the housing stock.

21 | But because they are long standing nonprofit and I
22 | think the applicant highlighted they've been there since about
23 | 1940, 1950 and very engaged in the community we looked at this
24 | differently and wanted to spend considerable time with the
25 | applicant to work through this. The MOU proposed to us in June

1 we've worked through a number of new terms, and we signed an MOU
2 in October that really reduced the number of years that the
3 building in question, the property in question that would be used
4 for office. And then ensured some terms around the use for
5 residential and should a sale occur.

6 And again, it was a tough one because there was a lot
7 of opposition in the community to move what is a residentially
8 zoned house even thought of for use as an office. That was not
9 well received, but because of the applicant and the time that I
10 think many of us spent on this, we have a firm MOU. But if it
11 wasn't, it wasn't that it was educational, a long-standing
12 nonprofit I don't think that would have happened. And especially
13 since there were offers on the home for families to live there.

14 So with that said, we signed this agreement on October
15 8th. I know I did. I think maybe the opposition signed it. The
16 parties in opposition signed it on the seventh or ninth. So the
17 MOU you see in October is the one that we would expect to sign
18 with the applicant and have and additionally, the applicant has
19 agreed to the terms, whether or not the terms are in the order
20 or not, which was important to us to show the community spirit.
21 I hope that was useful and helpful.

22 CHAIRPERSON HILL: Yeah. No, Commissioner, I mean,
23 it's a long process. You know, you've been with us before.

24 MS. LOHSE: Yes.

25 CHAIRPERSON HILL: And so you know, I mean, and you

1 know, the time that the Board puts in for all of its applications
2 and we meet every week. And so you know, I appreciate the time
3 that the ANC has put in and your constituents for this MOU. And
4 as you just mentioned, we'll see what happens with the conditions.
5 But the MOU has been signed, and oftentimes a lot of the
6 conditions that the different parties agree with are not
7 necessarily either within our purview or things that we would be
8 able to administer or enforce because it's not something that the
9 zoning administrator might be able to enforce.

10 But I'm glad that you guys signed it and are
11 understanding that some items might make it into the order and
12 some items may not. But the MOU was signed together.

13 MS. LOHSE: Yes, it was signed. Whether again the
14 applicant's agreeing to the conditions, whether or not they're
15 in the order. Obviously, we would want them to be in the order,
16 all of them. And the MOU is obviously in the record as well.
17 And it was not an easy process.

18 CHAIRPERSON HILL: Yeah, it's I mean, it's a pretty
19 extensive MOU.

20 MS. LOHSE: Yes. Yeah.

21 CHAIRPERSON HILL: So okay before I let Mr. Chao go,
22 because he's currently a witness. Does anybody have any questions
23 for Mr. Chao?

24 Okay. Mr. Chao, you enjoy your day. Okay. Thank you.

25 MR. CHAO: Thank you.

1 CHAIRPERSON HILL: Bye-bye. And I think we should all
2 enjoy this. We should get outside.

3 All right. It's not going to be me. Let's see. Okay.
4 Where are we? Oh, so the Board, do you guys have any questions?
5 Okay. I guess --

6 MS. STIDHAM: I just have a question.

7 CHAIRPERSON HILL: Go ahead, Commissioner.

8 MS. STIDHAM: More of a clarification. What is being
9 requested is just the two parts related to the nonprofit and the
10 area variance; is that correct? This is to make sure I understand
11 completely what is being requested?

12 MS. BATTIES: Yes, it's a special exception approval
13 for the nonprofit for nonprofit to use the property at 3100 R
14 Street, and then an area variance for the minimums size of the
15 building, which falls under the same special exception criteria.

16 MS. STIDHAM: Okay. So you're not asking anything
17 about the housing piece. That's a long-term goal that you're
18 just mentioning to us, correct?

19 MS. BATTIES: Yeah, well, the nonprofit use of the
20 property includes the interim office use and then the long-term
21 use of the property as housing for Dumbarton Oaks Scholars. Those
22 are both nonprofit uses.

23 MS. STIDHAM: Okay. Okay.

24 MS. LOHSE: And if I can just comment on that with
25 regard to the office, the ANC wrote terms when it would be used

1 as an office. And we also wrote terms as to when it would be
2 used for housing stock with the expectation that those are rolled
3 up together within this order.

4 MS. STIDHAM: Thank you, Chairman.

5 CHAIRPERSON HILL: Okay. I guess to follow on
6 Commissioner Stidham's question. So there are two things that
7 are being requested of us. Again, a special exception for
8 allowing the existing residential building by a nonprofit
9 organization for purposes of the nonprofit organization, and then
10 an area variance. So what I think we're kind of talking about a
11 little bit is that once this has expired, it goes back to whatever
12 the matter of right options are, and that can be housing for the
13 students. And so I mean, it just can be housing. It just can
14 be housing.

15 MS. LOHSE: Residential.

16 CHAIRPERSON HILL: Residential.

17 MS. BATTIES: So if the matter of right use is
18 residential. The regulations require a residential building to
19 be being used by a nonprofit to get special exception approval
20 for the nonprofit use. So right the matter of right uses anybody
21 can buy the house and use it as a residential building. That's
22 different than a nonprofit a request for approval for nonprofit
23 to use the building for nonprofit use. We're here before the
24 Board seeking special exception approval to use the building for
25 nonprofit use. The nonprofit use includes office and housing for

1 Dumbarton Oaks Scholars. Right, that's different than a
2 residential use.

3 CHAIRPERSON HILL: So then you're asking for and I'm
4 going to turn the Office of Planning in a second, Ms. Thomas. So
5 you're asking -- Ms. Thomas, can you hear me?

6 MS. THOMAS: Yes, I can hear you.

7 CHAIRPERSON HILL: Okay. Thanks, Ms. Thomas. So the
8 question I had for the Office of Planning, I just so I can be
9 clear, is they are asking for the special exception for a
10 residential building for a nonprofit use. Okay. And I guess
11 what the applicant is kind of clarifying is it's both office and
12 housing. However, then there's this three-year time, you know,
13 whatever, two-year up until December, whatever, you know, I have
14 to the year, and that use would then expire. And then I guess
15 what I'm unclear on Ms. Thomas is that they could still use the
16 home for housing, right, without this, once this is expired or
17 no?

18 MS. THOMAS: Yes, they can because it's still a
19 nonprofit use, the residential use. It's a nonprofit
20 organization that will be using the home as a residential use.
21 So it's still a nonprofit use.

22 CHAIRPERSON HILL: So then we -- so then I'm trying to
23 understand --

24 MS. STIDHAM: After two years, then it's no longer --

25 MS. THOMAS: The office use -- the office use expires.

1 The temporary -- the office use is slated as temporary office
2 use.

3 CHAIRPERSON HILL: So then the -- so then the office --
4 so what's being proposed in your, in your condition is that the
5 office use would expire after two years, but then the use as
6 housing for a nonprofit organization would still be in effect.

7 MS. THOMAS: Yes. And that's the way. Yes, that's the
8 way we understood it.

9 MS. BATTIES: That's correct. And Mr. Chairman, if I
10 were to we were to come before you. Let's just say Dumbarton
11 Oaks didn't want to have an office in there. They just wanted
12 the house to be used as housing for scholars. We would still
13 have to come before the BZA because the regulation, the regulation
14 reads, use of an existing residential building and the land on
15 which they are located by a nonprofit organization for the
16 purposes of the nonprofit organization. So --

17 CHAIRPERSON HILL: Ms. Batties, I'm sorry just to
18 interrupt you. No, I understand what you're saying. I'm just --
19 I understand the regulation. I'm just trying to clarify that how
20 to cut out the office use, right? Is what I'm just trying to
21 understand. And so -- okay.

22 MS. BATTIES: So we're -- we have agreed that the office
23 use -- so we're the house cannot be fully renovated for housing
24 scholars for at least two years. So what Dumbarton Oaks wants
25 to do, instead of allowing, instead of having the house remain

1 vacant until it can be fully renovated. They're having a few
2 employees use the house for office and administrative tasks as
3 opposed to just remaining vacant until the renovations are -- can
4 be completed.

5 MS. LOHSE: And Chairman Hill, just to add to that, the
6 original proposal was to make it for five years. And there was
7 a lot of pushback from the community and discussions with the
8 applicant. And so that time period was in the MOU is reduced to
9 two years, with the expectation that the applicant is undergoing
10 significant construction on its main campus. So its resource and
11 leadership is focused on that. And then it will move across the
12 street and finish up this property. But five years seem extensive
13 to us. So we as ANC and a community looked at it as two years
14 is a much more reasonable proposal given they've already owned
15 it for three years.

16 CHAIRPERSON HILL: That's fine. And I'm just trying
17 to -- and I appreciate that. I'm just trying to understand, even
18 from the Office of Planning now, and I see my other Board members
19 have their hand up. The request is to use the residential
20 building by a nonprofit organization for the purposes of a
21 nonprofit organization, right? And so what I'm just trying to
22 understand from the Office of Planning is that there's a way that
23 we can clarify office use versus -- I mean, we're saying you're
24 the nonprofit. Here's the use. You can do whatever. We don't
25 have it carved out. I've never seen it carved out before as to

1 | like, office or residential -- like the use is for the nonprofit.

2 | And I don't mind. I'm just trying to understand from
3 | the Office of Planning. The Office of Planning seems to be saying
4 | that we can do it this way. And so that's the only thing. And
5 | you guys have an MOU. And then that's one thing. And then the
6 | other is that this goes with the land.

7 | And so Ms. Batties, you're saying that your client says
8 | that if they were to sell this, then the MOU says what?

9 | MS. BATTIES: The MOU -- so that if the Dumbarton Oaks
10 | were to sell this property or the Trustees of Harvard, they would
11 | have to apply to the BZA to basically extinguish the special
12 | exception.

13 | CHAIRPERSON HILL: Okay. Do my fellow Board members
14 | have questions? Go ahead, Mr. Blake.

15 | MR. BLAKE: In the event that the current owners
16 | determined to use the facility for something other than housing
17 | for the scholars, the approval would allow them to do that so
18 | long as it fell within the auspices of a nonprofit function,
19 | correct?

20 | MS. BATTIES: No, we have --

21 | MR. BLAKE: The MOU, does the --

22 | MS. BATTIES: Under the MOU we're limited to both the
23 | office, only office and housing.

24 | MR. BLAKE: But under the MOU you'd be limited to only
25 | housing, but under the approval you would be able to do whatever

1 | you did under the context of being a not for profit.

2 | MS. BATTIES: Well --

3 | MR. BLAKE: Are there any other benefits that accrue
4 | proved to you as a result of that designation?

5 | MS. BATTIES: The designation of? Well, so let me just
6 | say we're asking Commissioner Blake that the order also include
7 | a condition that limits it to office and housing for Dumbarton
8 | Oaks Scholars as well. So we're not -- we want that to be part
9 | of the order because that is the only, our only intention for
10 | the property. So I don't know if that answered your question.

11 | MR. BLAKE: Thank you. Okay. It's just that the
12 | housing, the way you described it is consistent with the matter
13 | of right for the, for the property. So it's a little bit
14 | confusing why that you're asking for that particular position,
15 | that's all.

16 | MS. BATTIES: Oh. Well, as a nonprofit use because
17 | Dumbarton Oaks would not be able to under the regulations,
18 | Dumbarton Oaks could not use it to house scholars on a temporary
19 | basis. That's not a residential use. So it houses people but
20 | that is not a residential use. Housing for scholars is different,
21 | right? Scholars that will come for a limited period of time and
22 | leave. That is housing for scholars. That's not like a family
23 | or residence for a family.

24 | MR. BLAKE: Here's a question for you. In a building
25 | like this, it's a big building. And each of these is essentially

1 1,300 square feet per person. Now, you might have a couple that
2 resides in this building. If it were a family, the family could
3 be larger than -- could be substantially larger than this because
4 it would accommodate a substantially larger family. So I just
5 want to make sure I just help you sort through that just so I
6 can understand better. I think what you're saying, this is more
7 of a communal living structure with one or two kitchens, maybe,
8 I think, and so forth. And each person has essentially a suite
9 available to them. And it would be housed with one person in
10 each of the suites, but it could be more than that. And would
11 other people who aren't Dumbarton Scholars be able to be in those
12 suites?

13 MS. BATTIES: So no. And I think it's really important,
14 I'm going to ask you to, to talk about what they actually do as
15 Dumbarton Oaks Scholars in the property, because, again, they're
16 not just sleeping there and somebody can't just bring their wife
17 and kids. It's academic. Go ahead.

18 MS. BATSAKI: So it is ready to serve, in the
19 humanities. We are lacking in collaboration. It's something
20 that scientists are really used to doing getting together in
21 teams and producing research collectively. And we want to further
22 that in the humanities, in our fields. So the idea is that up
23 to six scholars would come for a period of a few weeks at a time.
24 It would require quite a lot of coordination in advance. So this
25 is not a revolving door. This is a very deliberate kind of

1 project that's being undertaken.

2 And from what I remember, the plan for the building but
3 I mean, I remember is that there are six bedrooms that would be
4 individual bedrooms with a desk and a study area in each and
5 their own bathroom. So up to six scholars would have sleeping
6 and working quarters in that building. And then there is some
7 communal space where all six could come together to brainstorm,
8 to do translation work, to do editorial work. And there is one
9 large kitchen, but we actually offer lunch to all our scholars
10 in our refectory, which is on the main campus. So they would
11 likely have lunches there and the kitchen is available for them
12 to have breakfast, make a coffee in the morning. There is a
13 dining room that can accommodate up to 12 people. So it is
14 conceivable that we would have a dinner there for the six scholars
15 and the Director, and the Director of studies in their field.
16 But this would not be big communal events, so they might have
17 the occasional dinner or two in that space. But most of the
18 facilities for dining or recreation would be on the main campus.

19 I hope that gives a sense, but I'm happy to answer any
20 other.

21 MR. BLAKE: Yes, actually it does. So the -- my
22 understanding now is that it's a few weeks per each scholar in
23 different combinations or something like that. So it would never
24 be a long term stay where one particular scholar was there for
25 five years --

1 MS. BATSAKI: Exactly.

2 MR. BLAKE: -- but it would be more like -- okay.
3 Great. Thank you very much for clarifying that.

4 MS. BATTIES: Activity there would be geared toward
5 academic and scholarly research.

6 MS. BATSAKI: And we are, frankly, very excited about
7 this. It's something we've been dreaming for a long time. And
8 so some of the conditions that you see are really there to attest
9 to this vision that we have and that we are committed to not
10 exceeding those parameters, because we don't want to. This is
11 this is the vision. The building.

12 MR. BLAKE: Okay.

13 CHAIRPERSON HILL: Mr. Smith, did you have a comment?

14 MR. SMITH: So are those -- these are. Yeah. Yeah.
15 I was struggling with this whole residential because to me, it
16 still sounds residential. To be completely transparent. I get
17 this for scholars, but if they -- the way it's laid out is, is
18 if the Dumbarton scholars could decide to get together, rent the
19 house, and it would it wouldn't be considered separate from the
20 nonprofit, it would still be like a residential structure. So I
21 think my question is, are those rooms separate from the communal
22 space on the first floor?

23 MS. BATTIES: You broke up a little bit.

24 MR. SMITH: Those divisions in the upper floors
25 separate -- separate can be separately accessed from the first

1 floor because it seems like the first floor that's the communal
2 space. That's the research space that you're referring to. Are
3 those upper floor rooms because the upper floor rooms look, they
4 just look like apartments to me. Is this separately accessible?

5 MS. BATTIES: No access, there's one entrance to the
6 house. Right.

7 MS. BATSAKI: So there are two.

8 MS. BATTIES: But I'm saying they make one main.

9 MS. BATSAKI: And one staircase that goes up. In fact,
10 there is a big communal space on the ground floor. But there
11 are two smaller offices, not office, but gathering spaces on each
12 floor. And then the bedrooms, which are individual with each
13 with a door. But we are not in the business of renting space.
14 We have never done that. The only people we have on the property
15 are people we support with scholarly awards or fellowships who
16 come to conduct research.

17 MS. BATTIES: And I think one thing is really important
18 to distinguish between, like just a residential use and a
19 nonprofit use. The regulations say that the use of the property
20 has to further the mission of the nonprofit, right? So you're
21 not just housing people randomly. They have to be there for the
22 academic, scholarly purpose of Dumbarton Oaks. That has to be
23 the use of the property. That's their purpose for being at the
24 property.

25 MS. LOHSE: And I just would like to highlight that,

1 the importance of that to our community, because we are not
2 supportive of turning a residential home into an Airbnb, for
3 instance. We want people in our community going to the schools,
4 using the restaurants, using the walkways, showing that the
5 building is it did have offers on it. And so we highlighted
6 within our MOU that it was the scholars and it was an educational
7 purpose for those exact reasons. Again, it would have been a
8 hump we couldn't have gotten over unless they'd been in the
9 neighborhood since 1940.

10 MR. SMITH: Okay. I appreciate Ms. Lohse. Thank you
11 for that. And Ms. Batties, thank you for that. I think that
12 provided the clarification, but let me explain the reason why we
13 are kind of forcing this. And this is from a zoning technical
14 standpoint. We cannot -- we have to -- we want to ensure that
15 residential dormitory use is completely separate or can be
16 completely folded into this definition of nonprofit. Because we
17 cannot condition what is a residential use, which is matter of
18 right. If we -- if the use because the use is matter of right.
19 Residential is a matter of right. Ms. Lohse, and Airbnb and I
20 completely agree with you, but an Airbnb is a residential use,
21 so that is even --

22 MS. LOHSE: Yeah. No, I hear you. An Airbnb hotel I
23 should say.

24 MR. SMTIH: Now, that that is a completely separate
25 use.

1 MS. LOHSE: Yes.

2 MR. SMITH: So we just want to make sure that whatever
3 we're doing from a legal zoning standpoint, just sitting as the
4 Board now, we can't legally condition it. But that's the only
5 reason why we're trying to get clarification of whether we can
6 parse this. But I think you've -- Ms. Batties, I think you've
7 given us the clarification. It is all one nonprofit use with
8 a --

9 MS. BATTIES: It would be --

10 MR. SMITH: -- a residential dormitory component.

11 MS. BATTIES: Yes. And we would be open, for example,
12 to a special exception for the nonprofit use subject to on the
13 condition that the special exception approval or the use be
14 limited to housing for Dumbarton Oaks Scholars and office -- and
15 interim office use -- no later than two years or whatever we've
16 written in the order. Like, so we and I think that's a condition
17 that is that would be acceptable to your counsel. And let me
18 just say, Commissioner Lohse was very clear. She didn't want a
19 blanket, any nonprofit use, being able to come in and use the
20 site, use the property. So we agreed to specifically limit the
21 nonprofit use to either office for a period of time and housing
22 for Dumbarton Oaks Scholars. Those are the only nonprofits use.

23 MS. LOHSE: It is in Number 14 of the MOU. Point Number
24 14 in the MOU.

25 CHAIRPERSON HILL: Okay. I got a question. Can I --

1 | you guys mind? I hate to do this. Like, by the way, Ms. Batties,
2 | Commissioner, we're not trying to stop you guys from what you
3 | guys have already tried to figure out. We're just trying to
4 | figure out that whatever we approve actually is going to do
5 | whatever it is that you think you figured out. Okay.

6 | MS. LOHSE: We appreciate that. And I just want to
7 | make sure whatever we figure out, technically, it's not a hotel,
8 | right?

9 | CHAIRPERSON HILL: So whatever you just said, I'm just
10 | saying we're going to approve something, and then that goes with
11 | the land, right? And so they can say whatever they want to say
12 | and do whatever they're going to do. But I don't know if we can
13 | enforce that, right. So I mean, and Harvard, you know, I mean,
14 | they're Harvard, right? So they should be good, right? I don't
15 | know what that means either. But nonetheless, let's go talk to
16 | legal. Just oh, sorry. Can I talk to legal? Can we talk to
17 | legal? Is that just okay? I just want to talk to legal. Oh.
18 | Okay. Let's see where the heck was that stuff I got to read?

19 | MS. LOHSE: And I appreciate your focus on making sure
20 | this is appropriately and technically labeled because we have
21 | that understanding of the uses. So thanks for taking that extra
22 | effort.

23 | CHAIRPERSON HILL: Yeah, you all did a lot of work.
24 | Just want to make sure the work you did is correct. Go ahead,
25 | Mr. Blake -- and Commissioner.

1 MR. BLAKE: Just a question before we go. And I know
2 we haven't gone through the specifics of the conditions yet but
3 I just wanted to understand the nature and purpose of that
4 termination clause. And could you just explain exactly what
5 happens there? Because to me, if you abandon the current, the
6 proposed use, it would revert to residential over time. But tell
7 me, I just want to make sure I understand what that -- where that
8 just that particular one where that came from.

9 MS. BATTIES: So the neighbors were concerned the
10 special exception approval would run with the land, right? So
11 there's no way to abandon it, right? As long as you continue to
12 use it as a nonprofit use and compliance with the order. What
13 the neighbors did not want is for Harvard to sell that property
14 to another nonprofit organization that would then benefit from
15 the approval that is before the Board. So what we agreed to is
16 if Harvard is not going to own the property and use it for the
17 two uses discussed here today, they would agree they would ask
18 the Board to terminate the special exception approval. And I did
19 actually discuss that approach with the OAG.

20 MR. BLAKE: Okay. Thank you.

21 CHAIRPERSON HILL: Okay.

22 So just as we're -- okay. Go ahead Commissioner
23 Stidham. You're on mute Commissioner Stidham.

24 MS. STIDHAM: Sorry. So just one point of clarification
25 for me. The long-term use after the two years is for housing;

1 is that correct? That's --

2 MS. BATTIES: Correct.

3 MS. STIDHAM: -- temporary that you're looking for is
4 the office use. But the long term like forever for as long as
5 you own the building is housing?

6 MS. BATTIES: Yes. That's correct, Commissioner.

7 MS. STIDHAM: Okay. Thank you.

8 CHAIRPERSON HILL: Okay. Okay. As Chairperson of
9 Board of Zoning for District of Columbia, and in accordance with
10 407 of the District of Columbia Administrative Procedures Act I
11 move that the Board of Zoning Adjustment hold a closed meeting
12 on 10-23-2024 for the purposes of seeking legal counsel on 21143,
13 deliberate upon, but not vote on 21143.

14 Is there a second, Mr. Blake? Mr. Blake is nodding in
15 approval of the second.

16 MR. BLAKE: Second, and I didn't have my finger on the
17 button. Sorry.

18 CHAIRPERSON HILL: Madam Secretary, could you take a
19 roll call, please?

20 MS. MELHERT: Please respond to the Chair's motion to
21 hold a closed meeting with OSI legal. Chairman Hill?

22 CHAIRPERSON HILL: Yep.

23 MS. MELHERT: Mr. Smith?

24 MR. SMITH: Yes.

25 MS. MELHERT: Mr. Blake?

1 MR. BLAKE: Yes.

2 MS. MELHERT: Commissioner Stidham?

3 MS. STIDHAM: Yes.

4 MS. MELHERT: Staff for the vote is four to zero to one
5 to hold a closed meeting with those OSI legal on the motion made
6 by Chairman Hill and seconded by Board member Blake.

7 CHAIRPERSON HILL: Thank you. As appearing the motion
8 is passed, I hereby give notice that the Board of Zoning
9 Adjustment will recess this proceeding on 10-23-2024, 3:14 p.m.
10 to hold a closed emergency meeting pursuant to the District of
11 Columbia Administrative Procedure Act. Written copy of this
12 notice will be posted to the Jerry R. Kress Memorial Hearing
13 Room. Okay. We'll see you guys in a little bit. Thank you.

14 (Whereupon, there was a brief recess.)

15 MS. MELHERT: Yes. The Board is returning after a
16 closed meeting with OSI Legal to application Number 21143 of
17 Trustees for Harvard University.

18 CHAIRPERSON HILL: Great. Did I get Mr. Smith back?
19 Great. Commissioner Lohse, are you there?

20 MS. LOHSE: I am, yes.

21 CHAIRPERSON HILL: Okay. Great. Okay. Great. So
22 what we clarified with legal and this is all I want to kind of
23 share with the applicant, and the ANC is, again, we're approving
24 a special exception for a nonprofit organization use, right? And
25 so they are offering up a condition. It's really just a condition

1 that on, and I think what we're going to end up doing is with
2 the Office of Zoning date, you know they have a December 31st,
3 2026 date that Ms. Batties, I believe your applicant is saying
4 they're going to stop the office use by, correct?

5 MS. BATTIES: Either two years from the effective date
6 of the order or December 31st, 2026, whichever is later.

7 CHAIRPERSON HILL: Okay. I'm sorry it's been a long
8 day for me. Is December 31st, 2026 as long as they would need
9 the office use?

10 MS. BATTIES: Yes, we'll agree to that.

11 MS. BATSACKI: Yes. Yes, we want to.

12 CHAIRPERSON HILL: I'm just trying to clarify. You can
13 propose a different date.

14 MS. BATTIES: We propose that or two years from the
15 effective date of the order, whichever is later. Because and
16 I'll say the reason why is because sometimes it takes, it has
17 taken up to a year for the order to come out in some BZA cases.
18 So that's, that was the reason we wrote whichever is later, we
19 it just if the order were to come out quickly then December 31st.
20 Yeah. But --

21 MS. LOHSE: And we're supportive of that because they
22 originally had proposed five years and we are not supportive of
23 that.

24 CHAIRPERSON HILL: Okay. All I'm trying to clarify is
25 that there's not a mechanism for us to necessarily carve this

1 out. Like they're proposing, they're proposing a date, right,
2 for which they need this office use, and then they'll stop using
3 it as an office. I'm just trying to get to that date.

4 MS. BATTIES: Yeah.

5 CHAIRPERSON HILL: And so which date, Ms. Batties, do
6 you think that is?

7 MS. BATTIES: December 31st, 2026

8 CHAIRPERSON HILL: Okay. Great. And if you need
9 something different after that, you can come back to us, okay.
10 And just, you know, get an amendment, I suppose, talk to the ANC.
11 But anyway, because all I'm just trying to point out is this is
12 a condition. We're not actually getting rid of anything, right?
13 A nonprofit use is what is being approved. And so in the order
14 it will refer to the MOU and all of the different things in the
15 MOU. And also then in the order, it will state that what this
16 use is, is for the office use, which is going to -- if this is
17 approved, the office use which will expire on December 31st,
18 2026. And then the hours that the Office of Planning had put
19 forward and that this is going to be used for housing for the
20 nonprofit. And then that's all that it's going to say. So just
21 to clarify that that's what is being asked of us.

22 Does the Board have any questions for the applicant or
23 the ANC?

24 MR. SMITH: Let me make sure that what the condition
25 was, say it would drop the term office it would just say the

1 | proposed use. Is that what we're saying?

2 | CHAIRPERSON HILL: It would say office -- it would say
3 | that the, the special that they will use it as office in the
4 | conditions that the Office of Planning has put forward, the
5 | proposed office use of the building will expire two years after
6 | the effective date of the BZA order approving the application,
7 | or December 31st, 2026. I guess you need to leave it in the way
8 | that is as well. Like, that's --

9 | MR. SMITH: Yeah.

10 | MS. BATTIES: Just leave that.

11 | CHAIRPERSON HILL: We can leave it the way it is that
12 | way, too. And then I'm just saying the office use is going to
13 | expire.

14 | MS. BATTIES: Yes. And then it will then be used solely
15 | for housing for Dumbarton Scholars.

16 | CHAIRPERSON HILL: Yeah, we got you. I'm just looking
17 | at Mr. Smith. Is that good?

18 | MR. SMITH: Yeah. If it can be parsed, that's fine.

19 | CHAIRPERSON HILL: Okay. All right.

20 | MS. LOHSE: Can I --

21 | CHAIRPERSON HILL: Sure, go ahead Commissioner.

22 | MS. LOHSE: Thank you. Just to clarify, when the
23 | parsing in the second part of the parsing -- it would clarify
24 | that sole use for housing, as contemplated in education, college,
25 | and university use category, correct?

1 MS. BATTIES: It should have the language from our
2 memorandum of agreement.

3 MS. LOHSE: It does, but you didn't apply for that. So
4 remember we talked about, you applied open-ended. So because
5 your application doesn't focus in on that, we couldn't just
6 generally support it. And I'm just clarifying with the Board
7 that, while the parsings specifically say, "Housing has
8 contemplated in education, college, and university," and again,
9 because of the significant pushback in the community that it
10 wouldn't be just general housing. I want to do my job. It was
11 a long few months.

12 CHAIRPERSON HILL: That's fine. I understand. It's
13 in the MOU, correct?

14 MS. LOHSE: It is. Yeah.

15 CHAIRPERSON HILL: Okay. Fine. Go ahead, Mr. Blake.

16 MR. BLAKE: Which is provision is it in the MOU that
17 has that?

18 MS. LOHSE: Number 14.

19 MR. BLAKE: Okay. Thank you.

20 MS. LOHSE: Yeah.

21 CHAIRPERSON HILL: Okay. Did I ask for? Yeah, we took
22 public testimony.

23 Does anybody have anything else before we leave? Okay.
24 Well, Commissioner, thanks for joining us. Ms. Batties, thank
25 you for joining us. And I apologize, the Executive Director's

1 name is?

2 MS. BATSAKI: I'm Yota Batsaki, Commissioner Hill,
3 Yota. Thank you for your time today.

4 CHAIRPERSON HILL: Thank you.

5 MS. LOHSE: Thank you. I know you have had a long day.
6 So thank you.

7 MS. BATTIES: So Mr. Chairman -- and thank you,
8 Commissioner Lohse -- I just want to clarify. This is an approval
9 of the non-profit use of we're going to specify by parsing out
10 the office use based on condition number 1, in the memorandum of
11 agreement, and then the housing from Dumbarton Oak Scholars using
12 provision number 14. And then --

13 CHAIRPERSON HILL: Ms. Batties, Ms. Batties. Let me
14 just interrupt you one second. So whatever the Board does now
15 after we decide to deliberate, right, what probably is going to
16 happen is the MOU is the MOU, which is between you guys and the
17 ANC -- and it is extremely extensive. So we're not going to
18 parse out and go through all that; you guys have agreed to what
19 you've agreed to, right? And so we're probably just going to do
20 whatever the Office of Planning's recommendations were, because
21 those specifically talk to the office use, and then the time, the
22 hours, of the office use. And then the MOU is what you guys have
23 done for the past two months. Okay?

24 MS. BATTIES: Okay. I hear you.

25 CHAIRPERSON HILL: All right. Does the Board have any

1 other questions? Okay. Thank you. All right. Thanks, Ms.
2 Batties.

3 MS. BATTIES: Thank you.

4 MS. BATSAKI: Thank you.

5 CHAIRPERSON HILL: Have a good day. Thank you. All
6 right. Oh my god, does somebody else want to talk? No? I don't
7 get extra money, by the way, for being chairman. I don't get a
8 dollar more; we all get the same little lunch money every hour.

9 Okay. I am fine with the analysis that the Office of
10 Planning has provided concerning the special exception for the
11 non-profit use. I'm even fine with the area variance argument.
12 I think it's a little weak, but I'm okay with it, and so I would
13 agree with what the Office of Planning has put forward with the
14 area variance, and I'm going to vote in approval. And I'm
15 comfortable with, as we've already kind of stated, the conditions
16 that the Office of Planning has put forth because it specifies
17 how long the office use would take place in number 1, and then
18 it speaks to the hours, and then the employees, in condition
19 number 2.

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

21 MR. SMITH: No. I'm comfortable with everything that
22 you just stated; I agree with everything. And I'm comfortable
23 with the conditions as recommended by the Office of Planning. I
24 guess if I were to quibble with it, I wouldn't say the proposed
25 office use; I would say the office operations, because it's a not

1 a separate use. It's all the non-profit use; it's just different
2 operations. So just for clarification purposes, I would change
3 it from "use" to "operations" if I had my druthers, or if I had
4 to beat a horse, I guess. But with that, I will support the
5 application.

6 CHAIRPERSON HILL: Thank you. Mr. Blake?

7 MR. BLAKE: Yeah. Mr. Chairman, I'm in support of the
8 application. I actually find that variance analysis to be
9 properly strong, and I'm comfortable with it. And I like the --
10 I believe the applicant has met the burden of proof, and I'm
11 comfortable with the provisions that we've outlined. I will be
12 voting in favor of the application.

13 CHAIRPERSON HILL: Thank you. Commissioner Stidham?

14 MS. STIDHAM: I will vote in favor of the conditions,
15 as we have discussed and others have already mentioned, and
16 prepared to support.

17 CHAIRPERSON HILL: Okay. Thanks. Okay. I'll make a
18 motion to approve Application No. 21143, as caption read by the
19 Secretary, including the conditions that were proposed by the
20 Office of Planning. However, changing "office use" to "office
21 operations," and ask that when the order is written it refers to
22 the MOU that has been put forward by the ANC and the applicant,
23 and ask for a second. Mr. Blake?

24 MR. BLAKE: Second.

25 CHAIRPERSON HILL: The motion is made and seconded.

1 Madam Secretary, if you could take a roll call?

2 MS. MEHLERT: Please respond to the Chair's motion to
3 approve the application with the conditions in the OP report, as
4 modified by the Chair and referencing the MOU.

5 Chairman Hill?

6 CHAIRPERSON HILL: Yes.

7 MS. MEHLERT: Mr. Smith?

8 MR. SMITH: Yes.

9 MS. MEHLERT: Mr. Blake?

10 MR. BLAKE: Yes.

11 MS. MEHLERT: Commissioner Stidham?

12 MS. STIDHAM: Yes.

13 MS. MEHLERT: Staff would record the vote as four to
14 zero to one to approve application 21143 with conditions on the
15 motion made by Chairman Hill, and seconded by Board Member
16 Blake -- Board Member John not participating.

17 CHAIRPERSON HILL: Okay. Do you want to call the next
18 one, please?

19 MS. MEHLERT: Next is Application No. 21171 of Ezekiel
20 Reich. As amended, this is a self-certified application pursuant
21 to Subtitle X § 901.2 for special exception under Subtitle U §
22 301.1(e) to allow use of a new accessory building as a principle
23 dwelling. This is for a new two-story accessory structure in the
24 rear yard of a two-story attachment dwelling for use as a garage
25 on the first floor and a principle dwelling on the second floor.

1 It is located in the RF-1 zone at 1374 Taylor Street
2 NW, Square 2823, Lot 89.

3 CHAIRPERSON HILL: Thank you. Can the applicant hear
4 us? And if so, could they please introduce themselves for the
5 record?

6 MS. SCHINDER: Yes, I can hear you, Mr. Chairman. I'm
7 on the street right now, but can you hear me clearly?

8 CHAIRPERSON HILL: Yeah. Do you want to get to a
9 computer? We'll do another one in front of you.

10 MS. SCHINDER: No, no, it's fine. All the materials
11 have already been submitted, but I'm available to answer
12 questions if anything comes up.

13 CHAIRPERSON HILL: You have to give a presentation.

14 MS. SCHINDER: The materials, it's already
15 (indiscernible) application.

16 CHAIRPERSON HILL: Slow down, slow down. Sorry. Okay.
17 Can you introduce yourself again for the record?

18 MS. SCHINDER: Yes. My name is Ileana Schinder. I'm
19 the architect for this project.

20 CHAIRPERSON HILL: Okay. All right. I got you. Okay.
21 Why don't you go ahead and walk us through your client's
22 application, and why you believe you're meeting the criteria for
23 us to grant the relief requested? And you can begin whenever
24 you like.

25 MS. SCHINDER: So simply to present this is an accessory

1 structure that will be located in the rear of a townhouse on
2 Taylor Street. The massing of the building complies with the
3 zoning requirements of height and floor plan. It will be used
4 by the homeowner. It is not planned to be rented. And we had
5 some disagreements at the beginning if this was an additional
6 dwelling unit or a secondary principle dwelling. We understand
7 that their proposed use in massing does not interfere with the
8 neighbors' quality of life and the intention of the zoning plan,
9 and it's a very simple project. So it's a very short
10 presentation.

11 CHAIRPERSON HILL: Okay. All right. Does my Board
12 members have any questions of the applicant?

13 Go ahead, Mr. Blake.

14 MR. BLAKE: I didn't see the ANC report in the document;
15 perhaps I missed it. Could you discuss the community outreach?

16 MS. SCHINDER: We had several discussions with Dr.
17 Antoine Kirby. I understand that he was in charge of
18 communicating with the neighbors directly, and he took the lead
19 on the ANC. I am unaware if he issued an ANC report or not. We
20 didn't receive it directly. We understand that some ANCs sent
21 it to the Board instead of the applicant. If that has not been
22 submitted, I am happy to reach out to him personally and make
23 sure it was submitted.

24 CHAIRPERSON HILL: Did you present at the ANC?

25 MS. SCHINDER: We did not present. I am unaware if the

1 homeowner presented without us. Many times, our clients present
2 separate from us.

3 CHAIRPERSON HILL: So you don't know if this was
4 presented to the ANC?

5 MS. SCHINDER: No. I don't know if it was presented
6 to ANC. I know it was presented to the ANC individually to the
7 ANC member, Dr. Kirby.

8 CHAIRPERSON HILL: Are you saying that it was presented
9 to the SMD --

10 MS. SCHINDER: Correct.

11 CHAIRPERSON HILL: -- and that's Mr. Kirby?

12 MS. SCHINDER: Yes.

13 CHAIRPERSON HILL: Okay. Does anybody else have any
14 questions for the applicant? Okay.

15 MR. SMITH: It's look like they've submitted an
16 upcoming meeting request. That was back in December. So there
17 was no follow-up?

18 MS. SCHINDER: I had to follow-up at this time if that
19 wasn't done by the homeowner or by Dr. Kirby.

20 MR. SMITH: Was there any discussion with the
21 neighboring property owners that would be most directly affected
22 by this petition?

23 MS. SCHINDER: One of the neighbors had no objection;
24 the other one is a recluse and is not available to interact with
25 neighbors. That's why Dr. Kirby took the initiative to reach

1 out personally to him.

2 MR. SMITH: Okay. There's a lot of discussion about a
3 Dr. Kirby, but I don't see it in the record.

4 MS. SCHINDER: Right. So we did do all the efforts
5 required by the Board by issuing all the post cards, and we put
6 the signage. We did everything to make sure that the process
7 was in the public arena.

8 MR. SMITH: Okay. What is the height of the existing
9 structure?

10 MS. SCHINDER: There is no structure at the building
11 currently. One neighboring property has a structure that is a
12 garage about 14 feet high. We are proposing under 22 feet. I
13 think it's like 21 and change.

14 MR. SMITH: Okay. Thank you.

15 Chairman Hill, to be completely honest with you, being
16 that we don't have anything within the record from the adjacent
17 property owners, from Mr. Kirby, or from the ANC, given the height
18 of this building as 22 feet, the adjacent building is 14 feet at
19 its tallest and there aren't any adjacent structures of this
20 particular height, I'm not comfortable with approving this
21 special exception at this particular time, and I would like to
22 continue this after the applicant has met with the ANC or have
23 gotten additional information from whoever Mr. Kirby is.

24 MS. SCHINDER: Yeah. So just to clarify, 22 feet is
25 the height by right in this zone for accessory structures. We're

1 not proposing to exceed that height. In fact, that exemption is
2 not for the maxing of the height of the building, but for the
3 use. So the exemption for the height is not part of this case.

4 MR. SMITH: I completely understand that you're within
5 the height, but there's special exception criteria, and I'll read
6 it to you. It says, "Will be in harmony with the general purpose
7 and intent of the zoning regulations and the zoning mass. B,
8 will not tend to affect adversely the use of neighboring
9 properties in accordance with zoning regulations and zoning
10 mass." An open question about that, given the height of this
11 particular building is getting the flavor from the adjacent
12 property owners to understand if they feel like there may be some
13 type of impacts from the ANC, and also what may be helpful is
14 some light studies, given the height of this structure. So I
15 think that will be helpful --

16 MS. SCHINDER: We did talk to -- sorry. We did talk
17 to our neighbors to our left. They were completely fine with
18 the project. I'm happy to submit that. Like I said, our neighbor
19 to the right is a recluse that is not open to any type of
20 conversation. We did deliver by certified mail all of the
21 drawings, and we did submit proof that to the BZA. We also
22 submitted a notification of this BZA case via post card. So I
23 understand that it was not -- may have not represented to the
24 ANC. I'm happy to put it in the agenda, but I'm not sure what
25 other efforts we can do aside from showing that we made all the

1 | efforts. I mean, the neighbor to the right would not have signed
2 | the acknowledgement of receipt of the drawings. So I'm not sure
3 | we what else I can do.

4 | MR. SMITH: What you can do is attempt to reach out to
5 | Mr. Kirby again to see if you can get a letter from him, and also
6 | to schedule a meeting with the ANC.

7 | MS. SCHINDER: Okay. I'll do those things.

8 | MR. SMITH: Okay. Because I, as Board Member Smith,
9 | would not vote on this today.

10 | MS. SCHINDER: Okay. I'll do that, and then we'll
11 | request another hearing?

12 | CHAIRPERSON HILL: Yeah. So is it Ms. Schinder?

13 | MS. SCHINDER: Yes.

14 | CHAIRPERSON HILL: Okay. Mr. Schinder, so what we will
15 | need from you -- again, to clarify Board Member Smith, either
16 | something from Commissioner Kirby, who I assume is the SMD that
17 | this property is in, but normally you would present to the ANC.
18 | Because Board Member Smith is correct that this will have some
19 | impact --

20 | MS. SCHINDER: Okay.

21 | CHAIRPERSON HILL: -- and that's what we're kind of
22 | looking at. So you can go ahead and submit something into the
23 | record indicating that you have reached out to both neighbors,
24 | and that you have had a response from one of the neighbors. If
25 | you can get something into the record that says that that neighbor

1 | doesn't have an issue, that's fine, but it's really the ANC that
2 | we would want to hear from next. Okay?

3 | MS. SCHINDER: All right. I'll do so.

4 | CHAIRPERSON HILL: Okay. Before I leave you here, Ms.
5 | Mehlert, when -- I mean, I know we've been piling on all kinds
6 | of stuff now. I don't know when. Do you know, Ms. Schinder,
7 | when the ANC meets next?

8 | MS. SCHINDER: I don't know. I will find out that and
9 | send it to Mr. Robert Reid (phonetic) as soon as I know.

10 | MS. MEHLERT: The 13th. I believe it's the second
11 | Wednesday of each month, so their November 13th agenda has
12 | probably been drafted. I'm not sure how they do their --

13 | CHAIRPERSON HILL: So why don't you go ahead, Ms.
14 | Schinder, and see what happens in terms of when you can get in
15 | front of the ANC again. The ANC meeting is on the 13th, right?

16 | MS. SCHINDER: Okay.

17 | CHAIRPERSON HILL: But I'm saying we wouldn't be able
18 | to get back to you -- I'm trying to see, when is it -- the 20th.
19 | When do we leave, Ms. Mehlert, for Thanksgiving?

20 | MS. MEHLERT: So you have a November 20th hearing, and
21 | then the next one after that is December 4th.

22 | CHAIRPERSON HILL: Okay. What does the 20th look like?

23 | MS. MEHLERT: Of November?

24 | CHAIRPERSON HILL: Yeah.

25 | MS. MEHLERT: You've got six cases, including an appeal

1 and one expedite review case.

2 CHAIRPERSON HILL: Is that appeal going to be there?

3 MS. MEHLERT: I believe so, yes.

4 CHAIRPERSON HILL: Okay. Then we can't do that. And
5 how did we get six cases and an appeal? And so, okay, December
6 4th -- how many cases have we got on December 4th?

7 MS. MEHLERT: December 4th, there are six cases and an
8 expedited review.

9 CHAIRPERSON HILL: Six cases and an expedited review?
10 Okay.

11 MS. MEHLERT: Given the ANC's schedule, it might be
12 better to either do the last hearing date in December or in
13 January, if you --

14 MS. SCHINDER: I'm okay with that.

15 CHAIRPERSON HILL: Pardon me, Ms. Schinder?

16 MS. SCHINDER: I'm okay with that.

17 CHAIRPERSON HILL: You're okay with January?

18 MS. SCHINDER: With the last of December.

19 CHAIRPERSON HILL: What's the last of December, Ms.
20 Mehlert?

21 MS. MEHLERT: December 18th.

22 MS. SCHINDER: Okay.

23 CHAIRPERSON HILL: How many cases do we have -- wait a
24 second, Ms. Schinder. How many cases do we have on the 18th?

25 MS. MEHLERT: There are seven, but I know at least one

1 is going to go away.

2 CHAIRPERSON HILL: How many do we got on the 11th?

3 MS. MEHLERT: There are six, including one appeal.

4 CHAIRPERSON HILL: Oh my god. How many do we have on
5 the 4th? Tell me again.

6 MS. MEHLERT: There are six hearing cases and one
7 expedited review.

8 CHAIRPERSON HILL: Ms. Schinder, I'm going to turn to
9 the Office of Planning for a second, just because we're going to
10 ask. But Ms. Schinder, try to find out -- just put something in
11 the record by the 4th, okay?

12 MS. SCHINDER: Okay.

13 CHAIRPERSON HILL: Go ahead and try to get in front of
14 the ANC. If you can get something from this doctor, the
15 Commissioner --

16 MS. SCHINDER: Uh-huh.

17 CHAIRPERSON HILL: -- saying that you've reached out
18 to the ANC. The ANC has this on the agenda, or doesn't want to
19 put this on the agenda -- find out something, right. Because I
20 want to try to get you --

21 MS. SCHINDER: I will do it.

22 CHAIRPERSON HILL: I want to try to get you in on the
23 4th. Because that last hearing date before vacation, I mean, the
24 holidays? I know it's going to get packed.

25 MS. SCHINDER: Yeah.

1 CHAIRPERSON HILL: And so we're going to pile on even
2 more stuff onto that date.

3 MS. SCHINDER: I get it, I get it.

4 CHAIRPERSON HILL: Can I hear from the Office of
5 Planning concerning this application?

6 MR. JURKOVIC: Good afternoon, Chairman and members of
7 the 'Board. This is Michael Jurkovic, a development and review
8 specialist with the Office of Planning. OP recommends approval
9 of the requested relief to the prohibition, five-year
10 prohibition, of use of an accessory structure for dwelling unit
11 purposes. And we stand on the record of our report, and are here
12 to answer any questions.

13 CHAIRPERSON HILL: Does anybody have any questions of
14 the Office of Planning? Okay. Give me one second. Okay. All
15 right. Then we will come back on 12 --

16 MR. SMITH: Really quickly.

17 CHAIRPERSON HILL: Yeah. Sure.

18 MR. SMITH: Also, I just wanted to just make just one
19 additional clarification. Definitely get that letter from the
20 adjacent property owner that you spoke to, because I think this
21 one will probably -- that particular property owner will be most
22 impacted because you have windows on the west facade there. So
23 if they are fine with it and they can put it in writing, that's
24 better. That's great. And also, see if you can talk with the
25 property owner on the end of the estate.

1 MS. SCHINDER: Yeah. One thing -- we had several
2 conversations with that neighbor. They did not want to sign
3 anything, aside from acknowledging that the BZA case was moving
4 forward. They didn't want to agree or object; they just wanted
5 to acknowledge the receipt. Despite our conversations, that's
6 as far as we got. They wanted certain things done via lawyers,
7 and we did not agree to that, but they didn't have any particular
8 objections to the project. So I will try to get something. I
9 will share communications with you, but I'm not sure that, aside
10 from our acknowledgement, we'll get much.

11 MR. SMITH: That's fine.

12 MS. SCHINDER: Okay.

13 MR. SMITH: If you can meet with the ANC --

14 MS. SCHINDER: I'll do that.

15 MR. SMITH: -- and it sounds like you've been talking
16 with the SMD --

17 MS. SCHINDER: Uh-huh.

18 MR. SMITH: I think that'll be fine.

19 MS. SCHINDER: I'll do that, I'll do that. Thank you.

20 CHAIRPERSON HILL: Okay. Thank you. Madam Secretary,
21 do you need to specify anything about anything in terms of
22 filings?

23 MS. MEHLERT: So when did you want them to come back,
24 December 4th?

25 CHAIRPERSON HILL: Yeah.

1 MS. MEHLERT: Okay. Then the applicant should submit,
2 I would say, anything she has on the outreach to neighbors or
3 the ANC by November 22nd, and then any responses would be due on
4 November 29th.

5 MS. SCHINDER: I'll do that. Thank you.

6 CHAIRPERSON HILL: Okay. All right. Thank you, Ms.
7 Schinder. We'll see you again.

8 MS. SCHINDER: See you. Thanks so much. Good for luck
9 for the rest. Bye.

10 CHAIRPERSON HILL: Thank you. Bye-bye.

11 Okay. We got one more, and Madam Secretary, do you
12 want to call it?

13 MS. MEHLERT: Okay. The next case is Application No.
14 21180 of Steve Kaplan and Kelly Voss. As amended, this is a
15 self-certified application pursuant to Subtitle E § 403, and
16 Subtitle X § 901.2 for special exceptions under Subtitle E §
17 207.5, to allow a rear wall of a road building to extend farther
18 than ten feet beyond the farthest rear wall of an adjoining
19 principle residential building on an adjacent property. And
20 under Subtitle E, 5201 from the law occupancy requirements of
21 Subtitle E § 210.1. This is for a two-story rear addition to an
22 existing two-story attached principal dwelling, located in the
23 RF-1/CAP zone at 530 5th Street SE, Square 846, Lot 22.

24 CHAIRPERSON HILL: Great. Thank you. If the applicant
25 can hear me, if they could please introduce themselves for the

1 record.

2 MS. BOYETTE: Yes. Good afternoon, this is Melissa
3 Boyette, architect with Old City Design Studio.

4 CHAIRPERSON HILL: Hello, Ms. Boyette.

5 MS. BOYETTE: Hello.

6 CHAIRPERSON HILL: I'm having difficulty pulling up
7 your case for some reason, but if you want to go ahead and walk
8 us through your client's application and why you believe they're
9 meeting the criteria for us to grant this relief requested,
10 specifically, obviously, speaking to the ten-foot rule. And you
11 can begin whenever you like.

12 MS. BOYETTE: Absolutely. Thank you very much. Yeah.
13 So I'm representing my clients Steve Kaplan and Kelly Voss who
14 own the subject property at 530 5th Street SE. I don't know if
15 you'd like to bring up the PowerPoint, but if --

16 CHAIRPERSON HILL: If you've got a PowerPoint, that
17 would be great, because I'm having a hard time just bringing up
18 the case. Oh, there it comes now.

19 MS. SCHINDER: Great. Thank you so much. I appreciate
20 that. So if you could go to page 2, please. Thank you.

21 So the property is an east-west directed lot. It has
22 the front of the house facing west and the back of the house
23 facing east onto a 26-foot wide public alley. This is an RF-1
24 district. Next slide, please. The property to the north, which
25 is on the right side of this diagram -- so on this diagram, north

1 is to the left. The property to the north is an attached
2 apartment building. The property to the south, which is the
3 grey-hatched area on the right side, is an attached single-family
4 home. Next slide, please. So the subject property is a two-
5 story plus cellar of single-family residence. The proposed
6 addition is a two-story plus cellar rear addition that eliminates
7 the dog leg at the first floor, but creates a new dog leg
8 condition along the south side of the rear addition. The
9 application is requesting lot occupancy of 69.8 percent, which
10 exceeds the allowed 60 percent by 9.8 percent. And requesting a
11 14-foot, 10 rear wall extension beyond the furthest rear wall of
12 the adjoining principal structure, which that would be up to the
13 south side, which exceeds the allowed 10 foot by 4 foot, 10.

14 One clarification I'd like to make that I realized
15 while waiting a few hours for this presentation today -- and I've
16 been in contact with Mr. Bradford about this -- that the plat
17 that I submitted incorrectly lists the rear extension as 14 foot,
18 5; and the rear yard as 27 foot, 11 and 5/8th. Those numbers
19 should actually be 14 foot 10; and the rear yard should be 27
20 foot, 6 and 5/8th. Those are proposed, and those are reflected
21 on all of the documents that were submitted; it's just I realized
22 the plat had an incorrect number on there. So these drawings
23 that you're looking at here reflect the correct numbers -- the
24 14 foot, 10 rear addition that we're proposing.

25 Next slide, please. So regarding the 14 foot, 10

1 extension relative to the apartment building to the north, this
2 puts our proposed rear wall approximately in line with their rear
3 wall. They do have a dog leg condition on the south portion of
4 the rear of their building. So if you can see the photo at the
5 right side, the right top and bottom, show the apartment building.
6 So our proposed addition will go very close to the rear wall of
7 that building -- pretty close to in-line with that. And then for
8 the property to the south, which you can see in the photo on the
9 bottom-left, the grey house -- that's the property to the south.
10 Their rear wall is in-line with the existing rear wall of the
11 subject property. This property also has a one-story covered
12 porch off the rear of the house that's approximately eight-foot
13 deep beyond their rear wall. So regarding lot occupancy with the
14 existing, it's just slightly over the allowed 60 percent max. So
15 our existing lot occupancy -- and I'm including in that, there's
16 a trellis. If you can see on the photo on the bottom-right,
17 there's a trellis over a parking area. I'm including that as
18 existing lot occupancy. I'm suggesting that we are going to
19 remove every other trellis member so that we have greater than
20 24-inch on-center spacing for that trellis that's not counted
21 against our lot occupancy.

22 Next slide, please. And if you want to just sort of
23 shuffle through these slides a little bit -- no specific timing;
24 just kind of shuffle through them. So these are the existing
25 condition plans, and then after this are the proposed plans. We

1 have letters of support from both adjoining neighbors. The rear
2 addition is not visible from the main street at all, and the rear
3 yard setback, as I mentioned previously, is greater than the
4 required 20-foot setback. And because we are mentioning a dog
5 leg condition at the second floor, and the property to the north
6 already has a dog leg, we do not feel that we're negatively
7 affecting the light and air into either property.

8 There is a proposed roof deck. So if you kind of
9 shuffle through a few of the slides to I believe it would be A-
10 2, I think? Yeah this one -- I'm sorry, one more. We do have a
11 proposed roof deck. It's a small roof deck that's the rectangle
12 that you see there that's kind of the darkest line. That is
13 where we will be housing some mechanical equipment, and it's set
14 back from the adjacent properties. We have no windows facing
15 adjacent properties, and I believe that is the end of my
16 presentation. So I'm happy to answer any questions. I know the
17 owners are on as well, if there's anything that they need to
18 specifically address, but I'm happy to address any questions.
19 Thank you.

20 CHAIRPERSON HILL: Okay. Before I turn to my fellow
21 Board members, can I turn to the Office of Planning, please?

22 MR. BRADFORD: Chairman Hill, members of the 'Board.
23 For the record, my name is Philip Bradford. I'm a development
24 review specialist with the Office of Planning. I'd like to begin
25 by making several corrections to the report. The ward is listed

1 as Ward 7, and the ANC is listed as 7(d), however the site located
2 in Ward 6 and ANC 6(b). Notice was served to the correct ANC,
3 and there's a report from ANC 6(b) in Exhibit 25. The square
4 and lot are also incorrect -- the site is located in Square 846
5 and Lot 22. With the applicant clarifying the rear extension as
6 14 feet, 10 inches instead of the 14 feet, 5 inches, OP is still
7 supportive of the requested special exception relief for the rear
8 extension and lot occupancy, and finds the request meets the
9 criteria in Subtitle E and X, and stand on the record of the
10 report in Exhibit 28. And I'm available for any questions.

11 CHAIRPERSON HILL: Okay. Do my fellow Board members
12 have any questions for the applicant or the Office of Planning?

13 Mr. Young, is there anyone here wishing to speak? Okay.
14 Last call. Anybody got any questions for anybody?

15 Okay. Ms. Boyette, do you have anything to add at the
16 end?

17 MS. BOYETTE: I do not. Thank you very much.

18 CHAIRPERSON HILL: Okay. Thank you. I'm going to
19 close the hearing on the record. Okay. All right. It's been a
20 long day for all of us. I'm going to rely on the Office of
21 Planning's report on this one, and also that of the ANC. I also
22 will agree with the analysis that the applicant has put forward
23 concerning the extension and lot occupancy. And I am going to
24 be voting in favor of this application.

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

1 MR. SMITH: Nothing to add, Chairman Hill. We agree
2 with your assessment and we'll vote to support.

3 CHAIRPERSON HILL: Thank you. Mr. Blake?

4 MR. BLAKE: I agree with your assessment, Mr. Chair.
5 I agree with the Office of Planning's recommendation for
6 approval, ANC's report, and I also would note that the adjacent
7 neighbors are also in support of the application.

8 CHAIRPERSON HILL: Thank you, Mr. Blake.

9 Commissioner Stidham?

10 MS. STIDHAM: I also agree with your assessment, and
11 am prepared to support.

12 CHAIRPERSON HILL: Thank you. All right. Then I'm
13 going to go ahead and make a motion to approve Application No.
14 21180, as captioned and read by the Secretary, and ask for a
15 second, Mr. Blake.

16 MR. BLAKE: Second.

17 CHAIRPERSON HILL: Motion has been made and seconded.
18 Madam Secretary, take a roll call, please.

19 MS. MEHLERT: Please respond to the Chair's motion to
20 approve the application.

21 Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MS. MEHLERT: Mr. Smith?

24 MR. SMITH: Yes.

25 MS. MEHLERT: Mr. Blake?

1 MR. BLAKE: Yes.

2 MS. MEHLERT: Commissioner Stidham?

3 MS. STIDHAM: Yes.

4 MS. MEHLERT: Staff will record the vote is four to
5 zero to one to approve Application 21180 on the motion made by
6 Chairman Hill and seconded by Board Member Blake, with Board
7 Member John not participating.

8 CHAIRPERSON HILL: Thank you. All right. Does anybody
9 have anything that they'd like to add for the day? All right.
10 Well, I hope you all have a lovely evening, and it was a pleasure
11 seeing you.

12 We are adjourned. Bye-bye.

13 (Whereupon, the above-entitled hearing was adjourned.)
14
15
16
17
18
19
20
21
22
23
24
25

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

This is to certify that the foregoing transcript

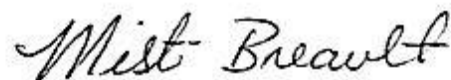
In the matter of: Public Hearing

Before: DCBZA

Date: 10-23-24

Place: Teleconference

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



Misti Breault