

GOVERNMENT OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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REGULAR PUBLIC HEARING

+ + + + +

WEDNESDAY

DECEMBER 18, 2024

+ + + + +

The Public Hearing of the District of Columbia Board of Zoning Adjustment convened via teleconference, pursuant to notice at 9:42 a.m. EDT, Frederick L. Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LORNA JOHN, Vice Chair
CARL H. BLAKE, Commissioner
ANTHONY J. HOOD, Zoning Commission Chairperson
ROBERT E. MILLER, Zoning Commission Vice Chair
TAMMY STIDAM, Zoning Commission

BOARD OF ZONING ADJUSTMENT STAFF COUNSEL:

PAUL YOUNG, Zoning Data Specialist

The transcript constitutes the minutes from the Regular Public Hearing held on December 18, 2024

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(9:42 a.m.)

CHAIRPERSON HILL: Good morning, ladies and gentlemen. The Board of Zoning Adjustment will please come to order. Today is 12/18/2024.

My name is Fred Hill, Chairman of the District of Columbia Zoning adjustment. Joining me today are Board members Lorna John, Carl Blake, Zoning Commissioner's 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 is listening on WebEx or by telephone will be muted during the hearing. Also, please be advised we do not take any public testimony at our decision meeting session.

If you're having difficulty accessing WebEx or with your call-in instruction, then please call our OZ hotline number at (202) 727-5471. once again, (202) 727-5471 to receive WebEx login or call-in instructions.

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

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

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

16 All persons planning to testify either in favor or
17 opposition should have signed up in advance. They will be called
18 by name to testify. This is an appeal, only parties are allowed
19 to testify. By signing up to testify, all participants will
20 (indiscernible) the oath of affirmation as required by Y-408.7.

21 Request to enter evidence at the time on online virtual
22 hearings, such as testimony or additional supporting documents
23 other than live video, which may not be presented as part of the
24 testimony, may be allowed pursuant to Y-103.13, provided that the
25 persons making the request to enter an exhibit explain, a), how

1 the proposed exhibit is relevant; b), the good cause to justify
2 allowing exhibit in the record, including explanation why the
3 requestor did not find exhibit prior to hearing pursuant to Y-
4 206; and c) how the proposal would not unreasonably prejudice any
5 parties.

6 The order of procedures for special exemptions and
7 variances are pursuant to Y 409. Appeals are pursuant to Subtitle
8 Y 507. At the conclusion of each case, an individual who is
9 unable to testify because of technical issues may file a request
10 for leave to file a written version of the planned testimony to
11 the record within 24 hours following the conclusion of public
12 testimony in the hearing. If additional or testimony accepted,
13 the parties will be allowed a reasonable time to respond as
14 determined by the Board.

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

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

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

7 Madam Secretary, do we have any preliminary matters?

8 MR. HAMALA: Good morning everyone. We do have a few.
9 First, we have some scheduling changes. Application No. 198878,
10 Marjorie Hutchinson has been postponed to February 12th, 2025.
11 Application No. 21176, Natalia Banulescu-Bogdan has also been
12 postponed to February 12th, 2025. Appeal No. 20889, of Chukwuma
13 Ewelike has been postponed to March 26th. And Application No.
14 21080 of Aulona Alia has been postponed to March 12th.

15 We also had a late filing that the Chairman has reviewed
16 and agreed to waivers to allow into the local case record pursuant
17 to Subtitle Y Section 2617 and Section 103.13. Any other late
18 filings during the course of today's live hearing should be
19 presented before the Board by the applicant, parties, or
20 witnesses, after the case is called. And any other preliminary
21 matters could be noted when the case is called.

22 CHAIRPERSON HILL: Great. Thank you, Mr. Hamala. Thank
23 you for covering for Ms. Mehlert today.

24 Let's see you may call our first item.

25 MR. HAMALA: Our first item is the hearing session, and

1 it is Appeal No. 20944 of ANC 3D and Rohit Kumar and as amended,
2 it is an appeal pursuant to Subtitle X Section 1100 from the
3 decision made by the Department of Buildings to issue building
4 permits to allow a detached principal dwelling in the R-1B zone
5 at 5122 Cathedral Avenue, NW, Square 1439, Lot 60. This appeal
6 has been called several times and was last heard on September
7 18th. And -- with Board members Hill, Blake, Smith and
8 Commissioner Miller -- and before the Board is a preliminary
9 matter from the Department of Buildings in a motion to postpone.

10 CHAIRPERSON HILL: Okay. Great. I didn't think I was
11 going to get everybody today. Hello, everybody. All right. I'm
12 going let you all introduce yourselves for the record.

13 Mr. Cox, I'm going to start with you.

14 MR. COX: Good morning. And happy holidays Board.

15 Erik Cox, Deputy General Counsel, D.C. Department of
16 Buildings.

17 CHAIRPERSON HILL: And the other Department of
18 Buildings person, please.

19 MR. HARESIGN: Good morning, Chris Haresign, Assistant
20 General Counsel, Department of Buildings.

21 CHAIRPERSON HILL: Commissioner Duncan.

22 MS. DUNCAN: My name is Tricia Duncan, I'm Chair of ANC
23 3D, and SMD 3-D02.

24 CHAIRPERSON HILL: If we ever leave, like, the Zoom
25 world, I will miss being able to roll over a Square and know

1 somebody's name.

2 Okay. Let's see. So there's a motion to postpone --
3 yeah, continued, postpone, postpone for 60 days. And DOB is in
4 favor of the motion. However, they also again reiterate that
5 they like us to make it go away. And I am -- this has been around
6 Commissioner Miller for us for a while. And so I'm going to
7 postpone for 90 days so that we can see where what might finally
8 happen with this, because as I understand it, they're waiting for
9 DOEE to approve water management -- storm water management. My
10 brain is not awake yet. And so that would be my opinion on the
11 matter.

12 May I hear from you, Mr. Blake?

13 COMMISSIONER BLAKE: I agree with you. I think that
14 this is appropriate and I would support that decision.

15 CHAIRPERSON HILL: Vice Chair John?

16 VICE CHAIR JOHN: I don't have any objection to that
17 proposal.

18 CHAIRPERSON HILL: Vice Commissioner Miller?

19 ZC VICE CHAIR MILLER: Mr. Chairman, I agree with your
20 comments. It's like deju vu all over again.

21 CHAIRPERSON HILL: Okay.

22 And any of you witnesses would like to say something,
23 do you want to raise your hand? Otherwise, I'm going to move
24 forward. Okay. Great. Well, thank you.

25 Happy holidays as well, Mr. Cox and to everybody. Happy

1 new year. We will see any of you until next year. So you all
2 have a good holiday. I'm going to excuse the witnesses, please,
3 Mr. Young.

4 ZC VICE CHAIR MILLER: And I'm going to leave you.

5 CHAIRPERSON HILL: Okay. Let me make a motion, Mr.
6 Miller.

7 ZC VICE CHAIR MILLER: Okay.

8 CHAIRPERSON HILL: Because I just want -- Mr.
9 Secretary, when 90 days out, when does this put this kind of sort
10 of?

11 MR. HAMALA: That would put into March.

12 CHAIRPERSON HILL: March what? You want to give me a
13 date? I don't think it matters.

14 MR. HAMALA: This Board date, March -- (indiscernible)>

15 VICE CHAIR JOHN: Can we make that before the 18th of
16 March, Mr. Chairman?

17 CHAIRPERSON HILL: Sure, we can do that. Let's do it
18 the first week.

19 Actually, you know what, Mr. Hamala? Let's see. Now
20 I'm going to look. The 18th of March. Okay. Let's do the 12th
21 of March.

22 MR. HAMALA: Well, we do have another appeal on the --

23 CHAIRPERSON HILL: Okay. Okay.

24 MR. HAMALA: I believe the 5th or April 2nd.

25 CHAIRPERSON HILL: Let's do -- if the 5th is available,

1 then let's do the 5th.

2 MR. HAMALA: Okay. And just to confirm the 5th. The
3 5th we have four hearing cases and no appeals.

4 CHAIRPERSON HILL: Okay. Well, I certainly hope this
5 doesn't end up being an appeal. So we'll see what happens. And
6 so I'd like to make a motion, I guess I don't think I have to
7 make a motion, right? I'm going to make a motion. I make a
8 motion to postpone this hearing until 3/5/2025 and ask for a
9 second. Vice Chair John?

10 VICE CHAIR JOHN: Second.

11 CHAIRPERSON HILL: Motion has been made and seconded.

12 Mr. Hamala, if you can take a roll call?

13 MR. HAMALA: When I call your name, please respond to
14 the Chair's motion to postpone the hearing to the March 5th
15 hearing date.

16 Chairman Hill?

17 CHAIRPERSON HILL: Yes.

18 MR. HAMALA: Vice Chair John?

19 VICE CHAIR JOHN: Yes.

20 MR. HAMALA: Mr. Blake?

21 COMMISSIONER BLAKE: Yes.

22 MR. HAMALA: Commissioner Miller?

23 ZC VICE CHAIR MILLER: Yes.

24 MR. HAMALA: Staff would record the vote as 4-0-1 to
25 postpone the application to March 5th, 2025.

1 CHAIRPERSON HILL: Thank you.

2 Well, Commissioner Miller, happy holidays and happy new
3 year to you as well.

4 ZC VICE CHAIR MILLER: Thank you, Mr. Chairman. I wish
5 you and our colleagues, along with the Office of Zoning staff and
6 those who are listening, a peaceful holiday season. Thank you.
7 See you next year, maybe.

8 VICE CHAIR JOHN: Thank you. Same to you, Commissioner
9 Miller.

10 ZC VICE CHAIR MILLER: Thank you.

11 CHAIRPERSON HILL: Okay. One of our colleagues is ill,
12 and we hope he gets better.

13 And then, Mr. Blake, I don't know if you noticed that,
14 we are all going to cry come March 18th, it's going to be like a
15 sad day.

16 COMMISSIONER BLAKE: It will be a sad --

17 CHAIRPERSON HILL: That's a weird, like March 18th.
18 Like that doesn't even make sense. But I guess it's just how
19 that whole clock runs.

20 VICE CHAIR JOHN: Yeah. It's good enough, I think.

21 CHAIRPERSON HILL: I think it's good enough, I agree.

22 VICE CHAIR JOHN: A good enough date. Yes, I think.

23 CHAIRPERSON HILL: I think there should be like awards
24 and roses and cakes.

25 COMMISSIONER BLAKE: Perhaps there will be.

1 CHAIRPERSON HILL: Perhaps there will. Right. There
2 will. I agree. Oh, we know somebody who bakes.

3 VICE CHAIR JOHN: We do.

4 CHAIRPERSON HILL: We know somebody who bakes. That's
5 right, that's right. All right.

6 VICE CHAIR JOHN: We know people. We know people.

7 CHAIRPERSON HILL: We have a plan.

8 All right. Mr. Secretary, you may call our next one
9 when you have an opportunity, please. And I think we have
10 Chairman Hood joining us.

11 MR. HAMALA: That's right. Our next application is No.
12 21163 of Kaely Michels-Gualtieri. And as amended, this
13 application is seeking special exceptions under Subtitle E,
14 Section 5201.2 and Subtitle X, Section 901.2, from the lot
15 occupancy requirements of Subtitle E, Section 210.1, and from the
16 building area requirements of Subtitle E, Section 5003.1.

17 It is also seeking a special exception under the
18 residential conversion requirements of Subtitle U, Section 320.2,
19 pursuant to Subtitle X 901.2. And from the Accessory Building
20 Use Requirements of Subtitle U, Section 301.1(c) pursuant to
21 Subtitle U, Section 301.1(g) and Subtitle X 901 1.2.

22 And this is to construct a second story addition to an
23 existing accessory building, and to convert the accessory
24 building into a principal dwelling unit on the same lot as an
25 existing semi-detached two-story with cellar flat.

1 This application is located in the RF-1 Zone at 627 A
2 Street, NE, Square 868, Lot 49. And this application -- the
3 Board granted party status in opposition to Jessica Smith
4 (phonetic) on September 25th. And the Board heard the case on
5 October 9th, with the Board requesting further submissions from
6 the Applicant. And it was continued to November 6th and
7 subsequently postponed to today.

8 CHAIRPERSON HILL: Okay. Great. Thank you. Could the
9 Applicant please introduce themselves for the record?

10 VICE CHAIR JOHN: So Mr. Chairman, I'm not on this.

11 COMMISSIONER BLAKE: Mr. Chairman, I am not on this as
12 well.

13 CHAIRPERSON HILL: Okay. That's a problem. That's a
14 problem.

15 VICE CHAIR JOHN: I did look at the case. Perhaps we
16 can go over in a little bit more detail. So that if there's
17 anything missing, I can, you know, I think --

18 CHAIRPERSON HILL: Okay. No. That's great. That's
19 great.

20 VICE CHAIR JOHN: -- on the decision, but I, I did look
21 at the record, so maybe Ms. Fowler can go through what the changes
22 are between the last design and this one.

23 CHAIRPERSON HILL: Okay. Ms. John, that's helpful.
24 Thank you. Exactly. We can hear what happened since the last
25 time.

1 And then also you can, Ms. Smith -- I'm sorry, Ms.
2 Fowler, you can go over again some of the justifications for the
3 relief just to give Ms. John an opportunity. And then we'll
4 probably, correct, we'll probably hold off on a decision on this
5 until at least next week to also see if Commissioner Smith might
6 be available for the decision. Because he can also then watch
7 this and then get caught up. Okay.

8 Ms. Fowler, could you introduce yourself for the
9 record?

10 MS. FOWLER: Hi. Good morning. I'm Jennifer Fowler,
11 the architect representing the homeowners.

12 CHAIRPERSON HILL: Okay. Great.

13 Ms. Smith, can you hear me?

14 MS. SMITH: Yes, I can hear you.

15 CHAIRPERSON HILL: Great.

16 MS. SMITH: Can you hear me?

17 CHAIRPERSON HILL: I can hear you. Does your camera
18 work?

19 MS. SMITH: Yeah. Hang on a minute. Oh, I have to
20 click start video. Hang on.

21 CHAIRPERSON HILL: Oh, great. Perfect.

22 MS. SMITH: On?

23 CHAIRPERSON HILL: Yep. We can see you. Thank you.

24 MS. SMITH: Sure.

25 CHAIRPERSON HILL: Could you introduce yourself for the

1 record, please?

2 MS. SMITH: Yes. My name is Jessica Smith. I live at
3 625 A Street, NE. I'm the immediate neighbor to this project,
4 so I'd be most immediately impacted. So I am the party in
5 opposition to the request.

6 CHAIRPERSON HILL: Great. Thank you. All right.

7 So I guess, Ms. Fowler, what would actually be helpful
8 perhaps, and this I think is easier, you know, this was a limited
9 scope hearing on the things that we had asked about from the last
10 time. And so rather than just going over through the application
11 because I think that Vice Chair John has had an opportunity to
12 review this, and then we can also all take a look at the testimony
13 prior to making a decision, could you just tell us what happened
14 since the last time you were with us?

15 MS. FOWLER: Of course. Yes. Thank you for your time.

16 So based on the discussions we had the last hearing and
17 the feedback from the Board, we did submit revised plans with a
18 reduction of 3 feet in depth of the garage. So originally, the
19 addition into the yard was 13 feet. And we reduced that to 10
20 feet. And that's reflected in the latest filings. And that
21 takes a lot of occupancy from a proposed originally 68.4 percent
22 to 66 percent. And it also changes the square footage of the
23 accessory structure from 800.7 square feet to 731 square feet as
24 we're asking for the relief from the 450 square foot requirement.

25 The other thing that we did was we frosted the windows

1 on the second floor yard-facing facade to address privacy
2 concerns that were raised by the neighbors. So that's the summary
3 of the changes that we made and uploaded along with the revised
4 sun study.

5 CHAIRPERSON HILL: Thank you. I see the revised sun
6 study. I just make sure I want to look at the right plan. You
7 know what exhibit the revised plans are in?

8 MS. FOWLER: It's --

9 MR. HAMALA: The sun study is in Exhibit 103, and the
10 latest architectural plans are in 88-A.

11 CHAIRPERSON HILL: Thank you, so much.

12 MS. FOWLER: Thank you. You're faster to the draw than
13 I am.

14 CHAIRPERSON HILL: Okay. Great. Does the Board have
15 any questions concerning what the Applicant has just said about
16 what has happened since the last time they were here? Okay.
17 Maybe questions will arise as we go forward.

18 Ms. Smith, do you have any -- can you tell us what
19 happened since the last time you were with us?

20 MS. SMITH: Yes. So applicants continue to refuse to
21 meet with me. And they have not made any changes that
22 meaningfully impact the loss of light and privacy. Can you just
23 show for the commissioners who weren't here, Photo 83-A to look
24 at the original proposal? And I want them to look at what happens
25 when you take 3 feet off the length. I mean, the length of this

1 house is 35 -- was 35 feet. So bringing it to 32 feet doesn't --
2 I mean, it still destroys all the light and patio -- and there's
3 no privacy mitigation. So if you could -- can I show a photo?

4 CHAIRPERSON HILL: What is it? That's okay. I have
5 to pull everything up from the exhibit.

6 MS. SMITH: Oh, yeah. It's 83-A. So that's the
7 original photo that I -- it was a photo I -- so to the
8 commissioners who are new, the sun study, I submitted a separate
9 sun study which shows much more significant loss of light. Even
10 without the expansion, I'd be losing light. But with the
11 expansion, I mean -- so that's the backyard. If you can scroll
12 down to show the mockup of what the -- no, no, further down.
13 That's the wall. Thanks. That's the wall. Okay. So stop there.
14 So this is what the house would look like. It would just
15 completely tower over. You can see the loss -- complete permanent
16 loss of light in my patio. And so if you wouldn't mind -- I
17 wasn't able to do the graphic again. I forgot -- I don't know,
18 I'm not a graphic person. But if you could go to photo 106, I
19 just marked off where in the wall 3 feet looks like. It's not
20 in this one. It's if you go back into the file and bring up
21 number photo 106.

22 CHAIRPERSON HILL: It's okay. Do you know which exhibit
23 you're trying to pull up?

24 MS. SMITH: Exhibit 106.

25 CHAIRPERSON HILL: Oh, sorry.

1 MS. SMITH: Sorry. No, I used the wrong word.

2 CHAIRPERSON HILL: Mr. Young, Exhibit 106.

3 (Pause.)

4 MS. SMITH: So, yeah, and if you could go down a little
5 bit, you can get a broader view. So where that line is,
6 everything to the left is -- that's 3 feet. So you'd still have
7 this massive wall that blocks all the light in front of it. And
8 this is the area that -- of my -- this is where the patio is.
9 And of course, any light coming in diagonally was going to
10 block -- if you can go down to the other photo that has a broader
11 look of -- see, so that's still a massive amount of light being
12 blocked. I mean, 3 feet is really not -- doesn't really do much.

13 And also in the last meeting, going back, going to
14 privacy, the other proposal shows, I mean, they're going to have
15 a bank of windows looking right into my kitchen, where we spend
16 98 percent of our time because of -- the light goes right into
17 the second floor bedroom. They'd be looking down at us. And I
18 mean, that's just -- they've done nothing. And also,
19 Commissioner Smith suggested that they frost the windows and
20 their response was to say, we will frost the bottom half of the
21 windows. They're just -- they just are giving crumbs and crumbs,
22 and it doesn't change anything. They can open the window and
23 the house loses privacy.

24 If you could -- this is the last time I'm going to ask
25 you to pull up an exhibit. Would you please pull up 105 --

1 Exhibit 105? And this is a picture of the carriage house directly
2 across the alley from 627. Now, in the original hearing, I want
3 to point out Ms. Michels -- Dia Michels, the Applicant's mother,
4 said she just wants parity with the other carriage houses. So
5 this is a carriage house. And on the side, the inside wall which
6 faces the principal dwelling has windows. And I just want to
7 show you what these windows look like, which are more appropriate.

8 If you could go down, down, down down, down. Yeah.
9 So you can see of 627 is the low garage with the ivy. And this
10 is the carriage house. If you look at these windows, it's not a
11 bank of windows with a Juliet balcony. And these are two small
12 windows that mitigate the privacy because it looks into the
13 principal dwelling. But the Applicant is not even considering
14 that. We've asked for smaller windows. And the Commission asked
15 them to frost the windows and they frosted the bottom half of
16 the windows. They just really don't want to make anything. And
17 it's unnecessary all the asks that they have. So they're still
18 clear sight -- and they're only pulling back 3 feet. So there's
19 a clear sight line right into the back of my house, which takes
20 away the privacy.

21 Also in an email, they had agreed to put parking safety
22 barriers because under the current design, there's a two-car
23 parking lot inside the lot. And so the cars will turn off the
24 alley and park facing the fence right into my back yard. So if
25 you have a renter, one slip up, they're drunk, boom, they go

1 right into the fence. I asked in an email for a safety barrier.
2 I don't want the parking lot next to my house, but there's only
3 so much -- they're going to do as much as they can. So I relented,
4 I said, just put a safety -- an industrial grade safety barrier.
5 So if the car goes too close to the fence, it'll hit a steel
6 barrier. That's not -- they didn't offer that. They said -- Dia
7 Michels, I believe, they agreed to it in an email and then it
8 wasn't included in in the plans. So I have serious safety
9 concerns.

10 I also asked them what a fence would look like. No
11 sign of a fence, no design. I don't see what a fence looks like.
12 So I have safety concerns, I have privacy concerns, and I've lost
13 the light. And Ms. Fowler can submit sun studies, but to me it's
14 a bunch of diagonal lines and boxes because I submitted a sun
15 study from another respected architect, which showed much more
16 significant loss of light. And I don't -- people didn't seem to
17 just -- they didn't seem to regard that. It doesn't reflect
18 that. That's why I had to do the graphics. So you could actually
19 see what this house is going to do to my backyard.

20 CHAIRPERSON HILL: Okay.

21 MS. SMITH: A piece of paper with lines. So I'm -- all
22 I was asking is to deny the request for such a massive building,
23 and they're just not giving up an inch.

24 CHAIRPERSON HILL: Okay. All right, Ms. Smith. Okay.

25 Mr. Young, want to drop that down?

1 Okay. Before I turn back to my Board, can I just hear
2 from the Office of Planning? Again, I don't think there's any
3 different recommendation from what the previous design was, but
4 Mr. Jurkovic, if you could please introduce yourself and then
5 just provide us with any feedback?

6 MR. JURKOVIC: Michael Jurkovic, development review
7 specialist with the Office of Planning. OP has no updates, and
8 we stand on the record of our original report recommending
9 approval of the relief requested.

10 CHAIRPERSON HILL: Okay. Does my Board have any
11 questions of the party in opposition or the Office of Planning?

12 ZC CHAIRPERSON HOOD: Mr. Chairman, I do want to follow
13 up with something that Ms. Smith mentioned. I thought that the
14 Board's direction -- we was were encouraging the opposition to
15 meet with the Applicant and Ms. Smith you --

16 MS. SMITH: Oh, yeah. I have an email in the record
17 that -- with Ms. Michels saying that they -- it doesn't make --
18 quote, it doesn't make sense to meet at this time. So they didn't
19 want to meet with me.

20 ZC CHAIRPERSON HOOD: Didn't this Board encourage that
21 to happen or did we?

22 MS. SMITH: You did.

23 CHAIRPERSON HILL: I don't recall, Chairman Hood. I
24 know that we asked for some communication and hopefully a meeting,
25 I guess, with the Applicant and the party in opposition. And I

1 don't know what happened. I mean, Ms. Fowler, you guys didn't
2 meet face-to-face?

3 MS. FOWLER: No, we didn't. But we did propose the 3-
4 foot reduction and Ms. Smith's response was to just build matter,
5 right? So we kind of -- negotiations kind of didn't get anywhere
6 beyond that. We also -- can I respond to a couple of the other
7 points?

8 CHAIRPERSON HILL: Sure. You can have rebuttal in one
9 second.

10 MS. FOWLER: Okay.

11 ZC CHAIRPERSON HOOD: Right now I need (indiscernible).

12 MS. FOWLER: I'm sorry?

13 CHAIRPERSON HILL: Chairman, you froze.

14 Hold on, Ms. Fowler.

15 MS. FOWLER: Yeah.

16 CHAIRPERSON HILL: Chairman Hood, are you back?

17 ZC CHAIRPERSON HOOD: Yep. What about now?

18 CHAIRPERSON HILL: Yeah. We can see you. Can you hear
19 us?

20 ZC CHAIRPERSON HOOD: I can hear myself talking.

21 CHAIRPERSON HILL: Okay. That's good.

22 Then, go ahead, Ms. Fowler.

23 ZC CHAIRPERSON HOOD: So Mr. Chairman --

24 CHAIRPERSON HILL: Yes?

25 ZC CHAIRPERSON HOOD: -- I wanted my question answered

1 about, I thought we had asked him to meet and I'm hearing that
2 that didn't even happen.

3 MS. SMITH: They refused to meet. The Applicant refused
4 to meet.

5 ZC CHAIRPERSON HOOD: Not that it's going to, but
6 sometime those conversations and -- I believe we did because I
7 would have to go back and review it, but I believe we did ask
8 because even if you come back to the same place, sometime those
9 discussions will soften things, and people may look and say,
10 okay, well, we can compromise on this.

11 And if that didn't happen for me, Mr. Chairman, that's
12 a nonstarter. And I can look at (indiscernible) because I do
13 think it's a large impact on the neighbor. So I think those
14 conversations need to happen. But I'll let you continue. Thank
15 you, Mr. Chairman.

16 CHAIRPERSON HILL: All right, Chairman Hood. Okay.
17 Is there anyone here wishing to testify, Mr. Young? Okay. Who
18 you got?

19 MR. YOUNG: We have two witnesses. Allison Pugh and
20 Alison Van Horn.

21 CHAIRPERSON HILL: Okay. Ms. Pugh, can you hear me?

22 MS. PUGH: Yes. Can you hear me?

23 CHAIRPERSON HILL: Yes. Could you go ahead and
24 introduce yourself for the record, and then you'll have three
25 minutes to give your testimony, and you can begin whenever you

1 like?

2 MS. PUGH: My name is Alison Pugh. I am the resident
3 and co-owner of 629 A Street, NE, which is on the other side of
4 the property, other side of the alley from the property. So Ms.
5 Smith abuts the property on one side, and we abut the property
6 on the other side. And yeah, I mean, much of what Ms. Smith is
7 experiencing, we also will experience. The lack of privacy is a
8 principal concern because the addition as proposed has, as she
9 says, a bank of windows. We also spend 98 percent of our time
10 in our kitchen. The kitchen is on the rear of our property, and
11 it basically has only windows more or less, so having a direct
12 sight line into that area would pretty radically change our
13 experience of our own property. So the privacy issues are
14 paramount for us. And the fact that the proposal was to just
15 frost the bottom half is a disappointment.

16 I also want to comment on the light issue. There's
17 significant light that comes from the fact that on the north side
18 of the alley, none of the existing properties have carriage houses
19 that are the size of the carriage house that we saw on the other
20 side of the property that Ms. Smith brought up as an example. So
21 the other side of the alley does have carriage houses that are
22 this really large, but not on our side, nobody does. So it would
23 be a dramatic change in precedent to do that. And the neighbors
24 on this side of the alley really enjoy an unusual amount of light
25 and ventilation because of the kind of ex post facto precedent

1 of such a limited height of buildings on our side of the street.
2 So this would really change that precedent. And so I guess I'm
3 hoping that the Board kind of acts with appropriate caution to
4 kind of open that door to other buildings in the future, et
5 cetera.

6 The only other thing I would say is that parking that
7 is proposed with the two parking spaces in this area would
8 directly affect our experience of our property because it
9 requires cars to make a very sharp turn right where our house
10 is. And so it feels, while Ms. Smith is, in my view, rightly
11 concerned about the safety of people going up against her fence,
12 we're concerned about the safety of people making that really,
13 really sharp turn right in and out of the property that abuts
14 ours into our alleyway or into the shared community alleyway,
15 which is, of course, populated by many other users.

16 CHAIRPERSON HILL: Okay.

17 MS. PUGH: Thank you for your attention to this matter.
18 I appreciate the way this Board has been handling this so far.
19 Thank you.

20 CHAIRPERSON HILL: Thank you, Ms. Pugh.

21 Let's see, it was -- what was the second witness's
22 name, Mr. Young?

23 MR. YOUNG: Alison Van Horn.

24 CHAIRPERSON HILL: Is she on the phone?

25 Ms. Van Horn, can you hear me?

1 MR. YOUNG: Yes, she's calling in by phone.

2 CHAIRPERSON HILL: Oh, great.

3 Ms. Van Horn, can you hear me?

4 MS. VAN HORN: I can hear you. Can you hear me?

5 CHAIRPERSON HILL: Yes. Thank you. Could you please
6 introduce yourself for the record? And then you will also have
7 three minutes to give your testimony.

8 MS. VAN HORN: My name is Alison Van Horn, and I am a
9 neighbor at 619 A Street, NE, so a couple of houses down. And I
10 just wanted to emphasize the points that Jessica and Alison made
11 and to say that I think, again, this would set a terrible
12 precedent. All the houses, again, on the north side of the alley,
13 the carriage houses are all low; almost all one level uniformly
14 down the line. And it really is -- and so all of our kitchens
15 all are in the back. We all spend all our time in the back of
16 our house and in our patio.

17 And I can attest, having sat in Jessica's backyard,
18 that this would have a huge negative impact, a really substantial
19 impact on her ability to enjoy the back of her house, not only
20 her patio. And I'm looking at the alley right now. There are
21 all kinds of carriage houses that are oriented towards the alley.
22 There's -- so I would just say also in terms of privacy it would
23 be a substantial impact looking straight into the windows in her
24 back bedroom, into her kitchen, down into her patio. There would
25 be -- it -- there's no question that it's going to have a

1 substantial negative impact both on her privacy and on the light.
2 And I think it's really setting a terrible precedent. We're
3 going to turn the alley into something more of a cavern than the
4 sort of open light and sort of airy place that I am looking out
5 at right now from my home office in the back.

6 CHAIRPERSON HILL: Okay. Thank you. Thank you for
7 coming and joining us today.

8 Does my Board have any questions of the witnesses?

9 Ms. Smith, do you have any questions of the witnesses?

10 MS. SMITH: No, I don't have any questions. There's
11 one more point I want to make if it's possible at some point in
12 the hearing when appropriate. But I don't have any questions for
13 the witnesses.

14 CHAIRPERSON HILL: Okay.

15 Ms. Fowler, do you have any questions for the
16 witnesses?

17 MS. FOWLER: No, I do not.

18 CHAIRPERSON HILL: Okay. Great. So Mr. Young -- thank
19 you guys for coming. I hope you guys have a happy holiday.

20 All right. So let's see. So the way this is going to
21 work again now for us, so we've heard from the Applicant, we've
22 heard from the party in opposition, we've heard from the Office
23 of Planning. And the -- I forget now, Ms. Smith, you didn't have
24 any questions for the Office of Planning, correct?

25 MS. SMITH: No.

1 CHAIRPERSON HILL: Okay. And you don't have any
2 questions -- now, this is all on the current testimony that we
3 just heard because we did this once before, and I hope I did it
4 the same way. But do you have any questions for Ms. Fowler?

5 MS. SMITH: I do actually.

6 There have been so many changes and proposals. Is the
7 proposal -- I wanted to ask, is the proposal still proposing the
8 1600 square foot house that's going to replace the garage or now
9 it's about 1400 - 1500? Is that a third accessory dwelling or
10 just an accessory dwelling? I'm trying to figure out how many
11 units will be in the whole property because there's four units
12 in the principal dwelling, which would make the proposed dwelling
13 of fifth dwelling. Which -- or possibly six if it's then
14 separated into two units because it's large enough. So I'm trying
15 to figure out how many is this dwelling that you're proposing, a
16 third dwelling, or a fourth dwelling, or a fifth dwelling?

17 MS. FOWLER: The property will be a three-unit dwelling
18 with the end of this project. Sorry. Three units.

19 CHAIRPERSON HILL: It's one more unit, Ms. Smith.

20 MS. FOWLER: Yeah.

21 MS. SMITH: But there's four units in the principal
22 dwelling, so that would be a -- so there's four units in the
23 principal. So the accessory would be a -- the proposed accessory
24 would be a fifth.

25 MS. FOWLER: Currently it's single family. There's no

1 separate units. And so we're trying to make the basement unit
2 legal. And there's not four units.

3 MS. SMITH: Well --

4 CHAIRPERSON HILL: Ms. Smith, I can go back and look
5 at the plans also. So they're saying it's one -- what they're
6 allowed to do is they're allowed to have two units in the
7 principal dwelling, and then they're trying to get a third unit
8 for an existing -- an accessory dwelling. So it's going to be
9 three units total. At least that's what the plan -- I'll go back
10 and look at the plans. But that's what they have.

11 MS. FOWLER: There are unit plans in the set that show
12 where the unit is in the basement and the upper floors.

13 MS. SMITH: Then why is Ms. Michels advertising two
14 units in the basement?

15 CHAIRPERSON HILL: Ms. Michels advertising --

16 MS. SMITH: The Elder, the older, the Applicant's
17 mother, Dia Michels. She's advertising them -- she's advertised
18 on the LISTSERV, two units in the basement.

19 CHAIRPERSON HILL: Ms. Smith, I can only look at what
20 the plans is. So you asked your question, and Ms. Fowler is
21 saying there's one more unit.

22 MS. FOWLER: Uh-huh.

23 CHAIRPERSON HILL: Okay? Do you have another question?

24 MS. SMITH: Just is that accurate?

25 CHAIRPERSON HILL: I can go back and look at the plans.

1 MS. SMITH: Well, you can look at the plans, but they
2 don't reflect what's going on in the house.

3 MS. FOWLER: I mean, if they're Airbnb'ing, that's
4 different than having a legal separate rental unit, accessory
5 apartment. That's a different category. So I don't know what
6 they're advertising, but as far as legally, there's just going
7 to be three proper units on this property.

8 MS. SMITH: Well, I have an exhibit, In the exhibit,
9 there's a listing of advertising a room and a studio with a
10 kitchen in the basement.

11 CHAIRPERSON HILL: Okay.

12 MS. SMITH: I can pull that up if you want to see it.
13 So that would be three units at least.

14 CHAIRPERSON HILL: So you -- that was your -- you had
15 a question there for Ms. Fowler. What was the statement that
16 you wanted to make, Ms. Smith?

17 MS. SMITH: Just that the proposal doesn't -- isn't
18 accurate. I mean, the principal dwelling is zoned for three
19 kitchens in Scout, it's got three kitchens. So there's a kitchen
20 in the basement which is being advertised as one of two units.
21 So the upstairs, which if it's -- when it's rented out could be
22 two additional units. So feasibly there could be four units in
23 the principal dwelling. And then you've got the proposed
24 structure which could be one possibly two. So what I'm saying
25 is that the proposal is misleading because you're saying it's

1 only going to be -- and that -- the reason it's an issue for me
2 and the broader alley is because of the congestion, the number
3 of people --

4 CHAIRPERSON HILL: Okay.

5 MS. SMITH: -- and cars.

6 CHAIRPERSON HILL: Okay.

7 MS. SMITH: And so I don't think -- I think the proposal
8 isn't accurate.

9 CHAIRPERSON HILL: Okay. All right, Ms. Smith. Okay.
10 So we're going to have to go back and take a look at the record,
11 obviously.

12 So now Ms. Fowler, you have rebuttal and then there
13 will be questions on rebuttal. So the questions are only on the
14 rebuttal. Do you have any rebuttal, Ms. Fowler?

15 MS. FOWLER: Yes. Thank you. So just kind of going
16 through the points, as far as the privacy and the frosted windows,
17 a couple people have mentioned half of the window -- like half
18 frosted, but the windows are proposed to be fully frosted on the
19 second floor. So it's the full windows frosted in our most recent
20 filing. So I just wanted to clarify that.

21 I also wanted to note that the garage, the wall is 33
22 and a half feet from the rear facade of Ms. Smith's house to the
23 back facade of the garage.

24 And also, the ANC and the Office of Planning have
25 reviewed the case, and even at the bigger proposal, have deemed

1 that this privacy issue is not a reason to deny the case.

2 As far as the sun study is concerned, our new sun study
3 compares the existing footprint expanded versus the proposed.
4 And as you can see, when you look through, there is very minimal
5 impact, very little change. And it was definitely approved by
6 the reduction in size. The sun study that Ms. Smith submitted
7 has the same sun angles and everything; however, she omitted the
8 fences claiming that that's not a permanent structure, but we
9 always include fences in our sun studies. And so that's why it
10 looks like it's different relative to what our sun study shows.
11 The regards to the mockup that she presented, it was definitely
12 misleading; it was a foot taller, 22 feet, so it doesn't
13 accurately show the height. And I don't believe that the depth
14 was accurate either. So I don't think that that's something that
15 should be considered as part of this case.

16 Finally, the fence design and the parking issues. It
17 is a 15-foot alley, so parking is very legal there, we can do
18 that. She was asking us to give her metal fencing and all this
19 fence design and at the same time saying you shouldn't do this
20 project, you should go to matter of right. So if we can kind of
21 work that out, that's obviously a permit-related issue,
22 construction-related issue, not a zoning issue. So that's why
23 we did not include that in the zoning hearing -- in the zoning
24 application. I think that's all I have. The homeowners may want
25 to speak at this point, if that's possible. I think they were

1 trying to raise their hand before and were not able to.

2 CHAIRPERSON HILL: Okay. I don't -- let me -- let me
3 say let me do a couple of things here, right?

4 MS. FOWLER: Okay.

5 CHAIRPERSON HILL: So it's very clear where everybody
6 is on this particular case, right? I'm happy to bring the
7 homeowners in. And I don't know what necessarily the homeowners
8 are going to bring value to at this particular point, unless the
9 Board wants to hear from the homeowners. But I guess actually
10 that's not true. The homeowners can speak if they want to.

11 But before I get there, Ms. Smith, do you have -

12 Well, first of all, does the Board have any questions?
13 The Board is -- Ms. Smith -- anyway, the Board has to figure this
14 out, right? We're the ones that are going to have to figure this
15 out.

16 Does the Board have any questions of Ms. Fowler's
17 rebuttal?

18 Okay. Ms. Smith, do you have any questions?

19 MS. SMITH: Yes.

20 CHAIRPERSON HILL: Questions about the rebuttal?

21 MS. SMITH: Do you know for sure that the depth of the
22 wall, Ms. Fowler, is inaccurate? You're suggesting that it's
23 inaccurate, but you never requested to come and measure it, so
24 you don't know. I say it's accurate. You're trying to throw
25 out. So have you -- I don't recall, did you ever ask to come

1 measure it to make sure it was accurate?

2 MS. FOWLER: I believe that Dia, that they measured it
3 from the other side. And that's why I'd love for them to be able
4 to talk --

5 CHAIRPERSON HILL: Okay.

6 MS. FOWLER: -- because they did look at that --
7 measure --

8 MS. SMITH: So what was the measurement?

9 MS. FOWLER: Hold on a second. Give me a second. I'm
10 just trying to get her to answer your question.

11 MS. SMITH: Okay.

12 CHAIRPERSON HILL: She's answering it by saying that
13 the homeowners measured it. So I'm going to bring the homeowners
14 in in a second.

15 MS. SMITH: Okay. I have a couple other questions.

16 CHAIRPERSON HILL: Okay. Go ahead, Ms. Smith.

17 MS. SMITH: So you are saying that the second-story
18 windows are fully frosted, yet there'd still be light pollution.
19 So at night, I would have light disturbing the back of the -- so
20 what would you do to mitigate the light pollution from the large
21 bank of frosted windows that would still be like a --

22 CHAIRPERSON HILL: It seems like Ms. Smith, they're
23 just -- they're proposing the frosted windows because, also, we
24 offered those. I think that's what they're proposing is the
25 frosted windows.

1 MS. SMITH: Okay.

2 CHAIRPERSON HILL: Is that correct, Ms. Fowler?

3 MS. FOWLER: That is correct. And they're fully
4 frosted. I imagine they'll have window treatments for their own
5 benefit to block out the light during the day.

6 MS. SMITH: Uh-huh.

7 CHAIRPERSON HILL: Okay.

8 MS. FOWLER: But --

9 CHAIRPERSON HILL: What's your next question, Ms.
10 Smith?

11 MS. SMITH: Did you and the Applicant ever consider
12 smaller windows?

13 MS. FOWLER: We did, but they specifically wanted large
14 windows and that's why we proposed that -- that design.

15 CHAIRPERSON HILL: Okay.

16 MS. SMITH: My last question. The first-floor windows,
17 the top half will not be frosted. Will there be sight lines or
18 did you measure the sight from -- because we don't know what the
19 fence is going to be like if it's -- so do you know if there's
20 going to be sight from the unfrosted clear windows in the first
21 floor into my kitchen, which is raised or into the --

22 CHAIRPERSON HILL: I would imagine on that floor
23 they'll be able to see into everyone's different rooms.

24 But go ahead, Ms. Fowler; is that correct?

25 MS. FOWLER: I mean, probably, but my point on that is

1 that currently they can stand in their backyard and have that
2 same exact view. In fact, this is going to reduce their view --

3 CHAIRPERSON HILL: Okay.

4 MS. FOWLER: -- if you're looking through windows and
5 doors versus just standing in the yard.

6 CHAIRPERSON HILL: So the answer is yes.

7 MS. SMITH: Yes.

8 CHAIRPERSON HILL: So go ahead Ms. -- but also Ms.
9 Smith, we look into everybody's windows. Like you live in a city
10 where people look into people's windows. And so I don't know
11 exactly how the sight line changes, but regardless. Now, Ms. --

12 MS. SMITH: But currently, I have privacy and they'd
13 be taking that away.

14 CHAIRPERSON HILL: Ms. Michels, can you hear me?

15 MS. MICHELS: Yes, I can hear you.

16 CHAIRPERSON HILL: Okay. I want to let you know,
17 obviously, this is incredibly contentious, like this whole
18 situation, because I can tell that it's been difficult for
19 everyone to work through this. And so Ms. Michels, what testimony
20 would you like to give?

21 MS. MICHELS: I just wanted to clarify one thing Jessica
22 said. Our house has three electric meters and three gas meters.
23 When we bought it, it was that way. We looked into converting
24 it back and apparently there was no benefit to doing it. It is
25 not indicative of it having three units. It's a single-family

1 house with a basement rental. There's only two kitchens, one in
2 the house, one in the unit. So I think some of the neighbors
3 had mentioned that it's a multi-unit house because it has three
4 gas and three electric meters. That was from the owner's previous
5 to the previous owners to us. There's nothing new about that.

6 I also just wanted to stress that two floor garages
7 with residents on top is the absolute norm in the entire
8 neighborhood. There are four facing the alley, and three of them
9 have two-floor units across the street. On the other side of
10 the street, it's the absolute norm, so we are simply trying to
11 do what is the norm in the neighborhood, which is to add
12 additional housing by popping up one floor on the garage.

13 CHAIRPERSON HILL: Okay. Thank you, Ms. Michels.

14 So Ms. Michels seem to bring up, it was actually kind
15 of rebuttal, I think, but two issues concerning the three units
16 and what Ms. Michels believes is normalcy.

17 And does the Board have any questions on those two
18 issues?

19 Okay. Ms. Smith, do you have any questions on those
20 two issues?

21 MS. SMITH: Yes, I wanted to ask Dia, are you aware
22 that in Scout your house is listed as having three kitchens?

23 CHAIRPERSON HILL: Ms. Smith, that's not what she just
24 testified to. She testified that she has three electric and gas
25 units.

1 MS. SMITH: Uh-huh.

2 CHAIRPERSON HILL: And then she said that there are
3 what she believes is the norm is the garage. Do you have any
4 questions on those two issues?

5 MS. SMITH: Dia, are there any -- do you know of any
6 second-story carriage houses on the north side of the alley?

7 MS MICHELS: There's one on the end. And they're all
8 the way down across, all the way down on the side, all the way
9 down on the other side.

10 CHAIRPERSON HILL: Okay. All right.

11 MS. SMITH: No, on the north side; on the north side?

12 MS. SMITH: At the very end, there's one.

13 CHAIRPERSON HILL: Okay. All right.

14 Ms. Fowler, I'm going to go ahead and give you an
15 opportunity to give us a conclusion. And then the Board's going
16 to take all this under consideration and come back with a decision
17 probably next week.

18 I'm looking forward to Mr. Smith joining us.

19 Ms. Fowler, do you have any conclusions?

20 MS. FOWLER: Thank you. Just wanted to reiterate that
21 we have tried to kind of compromise here. We did try to follow
22 the Board's feedback and guidance in terms of the reduction of
23 depth and the frosted windows. And Office of Planning has
24 analyzed the new proposal and is in agreement. They're standing
25 by their support. And we think -- we feel like it's a reasonable

1 project and it's in concert with the intent of the zoning
2 regulations. And I really appreciate all your time on this one.
3 I know it's been a tough one, and hope you can come to the right
4 decision on it. Thank you.

5 CHAIRPERSON HILL: Okay. Thank you.

6 All right, everyone, I hope you all have a nice holiday.

7 MS. SMITH: Hey, do I get a final word? Something
8 totally new.

9 CHAIRPERSON HILL: The conclusion goes to the applicant
10 as the last word. At times I've asked for conclusion from other
11 parties in opposition. But if you want to, go ahead Ms. Smith,
12 you can give a conclusion. And then Ms. Fowler is going to have
13 an opportunity to again give a conclusion --

14 MS. SMITH: Okay.

15 CHAIRPERSON HILL: -- because she gets the last word
16 as the applicant.

17 MS. SMITH: Uh-huh. So the main point I want to make
18 is that nobody wants a second story but we are resigned. We
19 would accept it. It would create housing. It would achieve the
20 goal. What we don't want is the expanded mass, which is
21 unnecessary. There's no reason to blow out. They can have more
22 than a thousand square feet if they build a second story above
23 the current garage space. All we don't want is for to blow it
24 out into the massive house that they want, which would be 15 --
25 that's all we want. That's my main point.

1 CHAIRPERSON HILL: Okay. Okay. Thank you, Ms. Smith.
2 Ms. Fowler again, you get the last word. Is there
3 anything you'd like to add?

4 MS. FOWLER: No, thank you.

5 CHAIRPERSON HILL: Okay. All right. Okay. I'm going
6 to go ahead and close the hearing. I hope you guys have a nice
7 holiday.

8 MS. SMITH: Thank you. Thank you all.

9 CHAIRPERSON HILL: Bye-bye.

10 Mr. young.

11 ZC CHAIRPERSON HOOD: Mr. Chairman?

12 CHAIRPERSON HILL: Go ahead, Mr. Hood.

13 ZC CHAIRPERSON HOOD: Everybody can be dismissed. But
14 I want to let you know --

15 CHAIRPERSON HILL: Okay. Let me let everybody get
16 dismissed then, Chairman Hood.

17 ZC CHAIRPERSON HOOD: Okay.

18 CHAIRPERSON HILL: Mr. Young, if you could please
19 dismiss everyone. Thank you.

20 (Pause.)

21 CHAIRPERSON HILL: Go ahead, Chairman Hood.

22 ZC CHAIRPERSON HOOD: Okay. Sorry, my phone was
23 ringing. You mentioned about coming next week. I think you
24 meant sometime in January, but I would agree it'd be good if our
25 Board Member Smith also joins in. And it would probably be good,

1 I hate to say this, but Board member Blake maybe read the record
2 if he could, but I think it'll be good. It would be good to have
3 five of us. That's just my suggestion. Nobody has to listen to
4 me. At least not in the BJ (phonetic).

5 CHAIRPERSON HILL: No, that's fine. Chairman Hood,
6 you're get you get a voice just like everybody else. And your
7 voice does have a little bit more weight. But let me see. I'm
8 going to -- I mean, let me just see whether or not -- where I
9 can get Mr. Smith. I mean, you're correct. I was talking about
10 next week, and it's Christmas next week, and then it's New Year's,
11 and then it's -- I mean, it's terrible that, like, this decision
12 is not going to come down one way or the other until the 15th.
13 So I will go ahead and that'll give everybody a chance to really
14 review this. And I'll check with the secretary as to -- and also
15 Mr. Blake, I suppose if he wants to read in, he can. And I'll
16 see what his plans are. But even if I get one more person on
17 here, which is great, which is currently Vice Chair John, that's
18 helpful.

19 Vice Chair John, is January 15th good for you?

20 VICE CHAIR JOHN: Yes.

21 CHAIRPERSON HILL: Okay. All right.

22 Mr. Secretary, can you hear me?

23 MR. HAMALA: Our first date back is January 22nd. And
24 we have seven hearing cases scheduled for that day.

25 CHAIRPERSON HILL: Okay. I just want to put this on a

1 decision then for January 22nd. We'll do it first thing, just
2 so we can have what's going to be a decision.

3 Chairman Hood, are you available that day?

4 COMMISSIONER BLAKE: January 22nd? Yes, I will make
5 myself available.

6 CHAIRPERSON HILL: Okay. Great. All right. Then
7 we'll come back for a decision on January 22nd.

8 And I think we have one more with Chairman Hood today.

9 MR. HAMALA: Yes. The Board is moving to its meeting
10 session, and we have Application No. 20280-A of Nathaniel Lewis
11 and as amended, it's a modification with hearing pursuant to
12 Subtitle Y 704, and an area variance from the new lot street
13 frontage requirements of Subtitle C, Section 303.4 pursuant to
14 Subtitle X, Section 1002.

15 And this is to permit the enlargement and conversion
16 of an existing semi-detached principal dwelling unit to a three-
17 unit apartment house in the RF-1 Zone at 622 I Street, NW, Square
18 857, Lot 32 and Lot 113.

19 This application was heard on November 6th. And where
20 the Board requested additional submissions. And on December
21 11th, the Board denied ANC's 6-C's motion to strike.

22 CHAIRPERSON HILL: Okay. Give me a second. Right.
23 Mr. Secretary, this is here for decision, correct?

24 MR. HAMALA: That's correct.

25 CHAIRPERSON HILL: Okay. Sorry, I got mildly confused.

1 So all right. So there's only three of us. So okay.

2 Mr. Smith, I didn't realize, I'm sorry that he's not
3 feeling well. Okay.

4 So my thoughts on this was that this was before us
5 again for an area variance. The first order that was done was
6 for a self-certified application for a special exception under
7 320.2 for a three-unit apartment house and then under E 205.5 for
8 10 feet beyond the rear wall. And those special exceptions were
9 accepted by the Board.

10 Then after the self-certified application went through,
11 it was realized that they needed an area variance. And an area
12 variance, again, from not less than 30 feet of street frontage
13 for the proposed project.

14 In my opinion, I don't think they meet the area variance
15 need. Hold on a second. I'm sorry. We're going to -- after
16 this, we'll take a break. So I think -- yeah, after this, we'll
17 take a break.

18 So I don't see anything unique about the 30 feet, not
19 less 30 feet of street frontage. I mean, all those other homes
20 have the same amount of street frontage, and I don't think that
21 there's anything unique for the area variance in this. I mean,
22 as far as the zoning history goes and what the Applicant is
23 putting forward in terms of the zoning history, it was a special
24 exception that was requested first. We weren't approving a
25 project. We were approving relief for particular special

1 exceptions.

2 And now they had to come back again for an area
3 variance. And the first prong I don't think is met. So I don't
4 see how I can vote for this particular application. I think that
5 the -- as I even look back again or had looked back, the property
6 was bought -- I guess it was approved, then it was bought, and
7 then within a month there was the ANC appealing the decision. So
8 that should have at least let the second owner know that there
9 was probably an issue. Now whether or not the second owner has
10 to go back to the first owner and clarify what they ended up
11 buying, I don't know. That's for them to deal with.

12 And then also there possibly could have been -- they
13 probably can do something matter of right from like the a rear
14 alley kind of thing. And so -- but that's again on them. They
15 can figure that out. I just I just don't see how they're meeting
16 the area variance relief. And so I'm going to ask Mr. Smith
17 his -- I'm sorry I'm going to ask Mr. Blake his thoughts.

18 COMMISSIONER BLAKE: Mr. Chairman, I agree with you.
19 I want to just go through my logic in looking at this. Primarily,
20 this is because the Applicant is creating a new record lot.
21 Otherwise, this would be permissible if it were an existing lot.
22 But because it's not an existing lot and the subdivision would
23 create a new lot, this is the requirement that necessitates C
24 303.4, area variance. In the area variance, it's important that
25 we look at the physical characteristics, or extraordinary or

1 exceptional situation or condition of the property that makes
2 strict application of zoning regulations result in peculiar or
3 exceptional practical difficulties to the owner.

4 And also, we also look at the granting of relief being
5 in harmony with the general purpose and intent of the zoning
6 regulations are met.

7 When you turn to the first prong, as you pointed out,
8 the subject site consists of two abutting record lots, a street-
9 facing lot with 20 foot of frontage, and an alley lot with no
10 street frontage. The adjacent row dwellings and alley
11 configuration do make it impossible to create a 30-foot street
12 frontage on the subject property. But the evidence in the record
13 indicates there are similar configurations as you pointed out,
14 along the square and along the alley that this property is not
15 unique. In the post-hearing submission, the Applicant argued
16 that the zoning history should be a factor. The D.C. Court of
17 Appeals has held that the zoning history of a site can be
18 considered an exceptional condition. That said, having reviewed
19 the case record and the zoning history, which broadly we define
20 as the acts of the zoning officials on which the Applicant might
21 have relied and also looking at the timelines of events.

22 I don't believe that the zoning history materially
23 contributes to the extraordinary situations. First of all, as
24 you point out, this is a self-certified application. In
25 submitting a self-certified application, the applicant, in this

1 case it was VBS (phonetic), which assumed the risk that the relief
2 was granted was sufficient for the project. That risk was later
3 assumed by the new owner when purchasing the property as you
4 pointed out. The BZA's approval of the self-certified
5 application filed by the Applicant did not constitute BZA
6 approval of the project, nor did it combine the two record lots
7 in the subdivision.

8 In reviewing the timeline of events, it appears the
9 Department of Buildings acted timely. The Applicant knew within
10 a month of issuance that the permanent had been appealed, and
11 learned that the Department of Building determination of the need
12 for the variance within five months of obtaining permit.

13 Now we can argue that the Applicant proceeded, but the
14 record shows that the subdivision was not perfected nor the
15 construction took place. So with no construction, no
16 subdivision, I'm not sure exactly what happened.

17 So that leads me to the practical difficulty. If we
18 look at this in terms of a monetary impact, the Applicant
19 indicated that he paid 1.25 million for the property and spent
20 another \$300,000 to develop the permit set of drawings, paying
21 property taxes, and permit fees. On the surface, these numbers
22 seem a bit high given the fact that it's a three-unit building.
23 However, there's no documentation other than the Applicant's
24 statement. So in this sense, I do not believe the Applicant has
25 offered sufficient evidence or analysis of economic harm or

1 financial feasibility.

2 So these two existing lots can be used to create three
3 dwelling units. The project as designed should not have an
4 adverse impact on the neighboring properties, which is what
5 really came out of the special exception. But I do believe that
6 granting relief here, especially without meeting the first prong
7 of the test, would not be in harmony with the zoning regulations.
8 So for that reason I would not be voting in support of this
9 application.

10 CHAIRPERSON HILL: Thank you, Mr. Blake, and thank you
11 for your well thought out discussion.

12 Chairman Hood?

13 COMMISSIONER BLAKE: Mr. Chairman, what they say in
14 some churches is the sermon has already been given and Board
15 member Blake has really executed of where the direction -- I'll
16 just reiterate as he's mentioned in creating a new zone, I was
17 going to really looking at the zoning history. And I think Board
18 Member Blake and yourself have already articulated that. And
19 through all of that, I'll just end it like this. I don't think
20 there's no exceptional condition to justify this, which has been
21 stated. So I will be voting to deny as well.

22 Thank you, Mr. Chairman, and also Board member Blake,
23 for that very thorough analysis.

24 CHAIRPERSON HILL: Thank you. Thank you.

25 All right. I'm going to make a motion to deny

1 application 20280-A as caption read by the secretary and asked
2 for a second, Mr. Smith -- I mean, Mr. Blake?

3 COMMISSIONER BLAKE: Second.

4 CHAIRPERSON HILL: Motion made and seconded.

5 If you could please take a roll call, Mr. Secretary?

6 MR. HAMALA: Please respond to the Chair's motion to
7 deny that application.

8 Chairman Hill?

9 CHAIRPERSON HILL: Yes.

10 MR. HAMALA: Mr. Blake?

11 COMMISSIONER BLAKE: Yes.

12 MR. HAMALA: Commissioner Hood?

13 ZC CHAIRPERSON HOOD: Yes.

14 MR. HAMALA: Staff would record the vote as 3-0-2 to
15 deny the application on the motion made by Chairman Hill and
16 seconded by Mr. Blake.

17 CHAIRPERSON HILL: Great. Okay.

18 Chairman Hood, that's also the end for you, correct?

19 ZC CHAIRPERSON HOOD: That's the end for me. I'll see
20 you all. You all have a great holiday and a happy New Year.

21 CHAIRPERSON HILL: Same to you and your family,
22 Chairman Hood.

23 We're going to take a 15-minute break. We'll come back
24 at 11 a.m.

25 Thank you.

1 (Whereupon, there was a brief recess)

2 CHAIRPERSON HILL: Okay. Thank you. Mr. Secretary,
3 if you could call us back and call our next case?

4 MR. HAMALA: The Board is back in its hearing session
5 after a quick recess.

6 And next is Application No. 21232 of Kevin Roshdieh.
7 And this is a special exception from side yard requirements of
8 Subtitle D, Section 208.2, pursuant to Subtitle D, Section 5201.1
9 and Subtitle X 901.2. To construct front and rear additions, and
10 a third story addition to an existing two-story with cellar
11 principal dwelling unit. The project is located in the R-1B Zone
12 at 5310 Cathedral Avenue, NW, Square 1444, Lot 41.

13 CHAIRPERSON HILL: Great. Thank you. Can the Applicant
14 hear me? And if so if they could introduce themselves for the
15 record.

16 MR. ROSHDIEH: Good morning. Kevin Roshdieh speaking
17 on behalf of my family, owners of the home.

18 CHAIRPERSON HILL: Okay. Great. Mr. Roshdieh, why
19 don't you go ahead and explain to the Board what your project is
20 about? And if you know something about the regulations, you can
21 speak to them. But we will also be walking through this
22 ourselves. And you can begin whenever you like.

23 MR. ROSHDIEH: Yes. Thank you so much. And I'll try
24 to keep things concise since I know we're ready to get into the
25 holiday break.

1 So we purchased this home together with my father and
2 my brother in October of 2022. And after the first year that I
3 was living in the home, I noticed a number of issues, significant
4 issues with the home, including per Exhibit 26, I've supplied a
5 couple of photos, which, I mean, we don't have to show them, but
6 essentially, things like flooding, decaying rotted wood boards
7 throughout the house and the frame of the house. I found out
8 that the previous owner of the home didn't disclose that a giant
9 tree fell on the house, and that explained why the entire roof
10 was actually lopsided.

11 So basically, in summary, a lot of issues that we
12 noticed. And so we made the decision, okay, we're going to have
13 to replace the roof anyway, let's go ahead and do renovation.
14 And so my family, none of us are developers, or really have
15 experience in construction necessarily, so began to talk to the
16 City, Department of Buildings to understand what the process is.

17 So basically, throughout this entire process, we did
18 everything in our power to make sure that we're following all the
19 rules and regulations; comply with whatever the City needs to
20 make sure that we're doing everything right, and the safest
21 possible way. And essentially, what happened was we went through
22 a preliminary design meeting, which I learned online, you should
23 do that with the Office of the Zoning Administrator before you
24 start a project. So we went through that process. And we
25 actually got a determination letter from the previous zoning

1 administrator that basically explained the guidelines of, okay,
2 here's what you need to do for this to be a renovation or
3 extension and not a new build.

4 So later, fast forward 15 months throughout of what we
5 learned to be a more challenging permitting process than we
6 realized, but finally got through. The home is actually currently
7 half built. Essentially, the framing is totally done. Numerous
8 inspections took place, we passed our wall checks; everything was
9 good. And then essentially, the Department of Buildings realized
10 that they had made a mistake. And by the way, the current zoning
11 administrator, Ms. Beeton, was very helpful with us and kind of
12 explain to us that, okay, the next step is we're going to have
13 to come to the BZA. But essentially, they explained that the
14 previous zoning administrator was wrong. The determination
15 letter did not give the correct guidelines for what constitutes
16 a renovation. And for that reason, we've been stuck and I'm
17 living in my parent's house since September.

18 So again, there were numerous things that we did to
19 make sure that we're in full compliance with the zoning rules.
20 The special exception in question today honestly only pertains
21 to the original footprint of the original home. And we did
22 maintain to the absolute maximum ability that we could, the entire
23 foundation and structural walls of the previous home. But again,
24 the Department of Buildings determined that even though they did
25 not give us the correct guidance before, that we did not keep

1 enough of the previous walls for it to constitute a renovation.
2 So that's why we're here today, unfortunately.

3 But really what we're looking to do is finish our home.
4 You'll note that DDOT in Exhibit 20, Office of Planning and
5 Exhibit 21, the ANC Exhibit 18, all have unanimously expressed
6 their support for approval of the special exception. I raised
7 our garage, again to comply with zoning rules. We wanted to make
8 sure that we're total compliance of lot coverage. Again, any
9 extension that we've done beyond the original footprint of the
10 home is compliant fully with the setback requirements currently.
11 So really, it's actually just the original home where it stands
12 which needs the special exception for the side yard. So -- and
13 by the way, all our neighbors are fully supportive of the project,
14 and really, they want me to be able to finish and move back into
15 the into the neighborhood. And you'll see Exhibit No. 15 is a
16 letter of support from our next door neighbor, which is the only
17 home that is adjacent to the actual expanded house. The other
18 neighbor that's adjacent to the garage that is no longer there,
19 obviously has no problems with the garage that used to be there,
20 but no longer is. And then the other sides of the home are a
21 public alleyway and the street. Again, everything else with the
22 home is in full compliance with the -- with the zoning
23 regulations.

24 So with that all being said again, as I mentioned,
25 throughout the entire process, we've been in constant

1 communication with Department of Buildings to make sure that
2 we're following all the procedures correctly and doing everything
3 right. But again, kind of where we're at now is the unfortunate
4 mix up that the previous zoning administrator had done, which
5 that's why we're seeking the special exception from the Board
6 today.

7 As I said, Exhibit 26 is a couple of photos of the
8 previous home. But also there's the exhibit that has current
9 photos of the home that, as you can see, it is totally built.
10 And honestly, we felt it was a little unfair that after we had
11 spent significant money of our personal bank accounts, again
12 we're not developers, that suddenly the City said, oh, yeah, we
13 approved and stamped all your permits, and your plans, and
14 everything look good. But actually, by the way, we were wrong
15 and you need to stop. So really, really looking for the Board's
16 understanding of our difficult situation so that we'd be able to
17 finish our home and move back in.

18 CHAIRPERSON HILL: Okay. Thank you.

19 Before I turn to my Board, can I turn to the Office of
20 Planning?

21 MR. BRADFORD: Good morning, Chairman Hill, Members of
22 the Board. For the record, my name is Philip Bradford,
23 Development Review Specialist with the Office of Planning. The
24 Office of Planning recommends approval of the requested special
25 exception relief and finds the request meets the criteria in

1 Subtitle D and X, and we stand on the record of the report in
2 Exhibit 21. And I'm available for any questions you may have.

3 CHAIRPERSON HILL: Okay. Thank you.

4 Before I turn to questions again, Mr. Young, do you
5 have anyone here wishing to speak?

6 Okay. Does the Board have any questions of either the
7 Applicant or the Office of Planning?

8 Okay. All right. Is Mr. -- can you pronounce your
9 last name for me, sir?

10 MR. ROSHDIEH: It's Roshdieh.

11 CHAIRPERSON HILL: Roshdieh. All right. Mr. Roshdieh,
12 thank you for taking the time to be with us today. And wish you
13 a happy holiday as well.

14 MR. ROSHDIEH: Thank you so much, sir. Really
15 appreciate the Board's time.

16 CHAIRPERSON HILL: Thank you.

17 Mr. Young, if you could please excuse the Applicant.

18 I didn't have any issues with this application. I
19 thought it was relatively straightforward. I understand the
20 situation that the homeowner is in. And I also do agree with
21 the analysis that the Office of Planning has provided concerning
22 the criteria, and I will agree with that. And it also is nice
23 to see that the ANC was in support as well as the adjoining
24 neighbors. And I'll be voting in favor.

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

1 COMMISSIONER BLAKE: Yeah, I think granting the
2 requested leave would allow the house to be complete construction
3 with the side yard setbacks in the same location they were in
4 the original property. Since there's no change in the existing
5 condition, the project would not have an adverse impact on light
6 and air available to neighboring properties. And it shouldn't
7 unduly the affected any of the privacy -- unduly compromised
8 privacy.

9 The relief will result in a condition that does not
10 visually intrude on the character of the houses on the block, the
11 Cathedral Avenue. I give great weight to the office of Planning's
12 recommendation for approval. Note that DDOT has no objection,
13 and as you pointed out, ANC 3-D is in support and has stated no
14 issues of concern. And I also acknowledge the support of the
15 adjacent neighbor. I'll be voting in favor of the application.

16 CHAIRPERSON HILL: Great. Thank you.

17 Vice Chair John?

18 VICE CHAIR JOHN: Thank you, Mr. Chairman. I have
19 nothing to add. I'm in support of the application. Excuse me.

20 CHAIRPERSON HILL: Thank you.

21 Commissioner Stidham?

22 COMMISSIONER STIDHAM: I have nothing to add. I think
23 you and Board Member Blake covered things well, and I'm prepared
24 to support as well.

25 CHAIRPERSON HILL: Thank you.

1 All right. I'm going to make a motion to approve
2 Application No. 21232 as caption read by the secretary.

3 And ask for a second, Ms. John?

4 VICE CHAIR JOHN: Second.

5 CHAIRPERSON HILL: Motion been made and seconded.

6 Mr. Secretary, if you take a roll call, please?

7 Oh, I'm sorry. Hold on, hold on, hold on. I just got
8 a text.

9 Is Commissioner Duncan here?

10 COMMISSIONER DUNCAN: Thank you, Chairman Hill. I
11 wanted to make a comment for the record.

12 CHAIRPERSON HILL: Sure.

13 COMMISSIONER DUNCAN: My name is Tricia Duncan, ANC 3-
14 D. We are in support of this application.

15 CHAIRPERSON HILL: Ms. Duncan, I'm sorry. Can you give
16 me one second?

17 Mr. Young, is the Applicant still here? And if so, can
18 you bring him back?

19 And just so for the record, I'm reopening the hearing
20 to hear from the ANC.

21 COMMISSIONER DUNCAN: Thank you.

22 CHAIRPERSON HILL: Mr. Kevin, can you hear me?

23 COMMISSIONER DUNCAN: Mr. Roshdieh.

24 CHAIRPERSON HILL: Great. Mr. Roshdieh, I have a hard
25 time with the name.

1 Go ahead, Chairman (sic) Duncan.

2 COMMISSIONER DUNCAN: I wanted to point out for the
3 record that ANC 3-D has been having issues with the Department
4 of Building with developers or homeowners tearing down too much
5 of their home. And this is the fourth stop work order in the
6 neighborhood regarding this very issue. But I would like to say
7 that Mr. Roshdieh was the most transparent, engaging with us, did
8 everything right. It was clear the Department of Buildings was
9 issuing them terrible wrong advice. And he is here today, we're
10 in full support, doing the right thing by coming to this BZA
11 hearing for this relief.

12 But I wanted to point out for the record that we are
13 having problems with the Department of Buildings allowing this
14 sort of thing to happen again, and again, and again. And like I
15 said, this is the fourth stop work order. But Mr. Roshdieh, in
16 our view, has acquitted himself with all the regulations. So we
17 are here in support. But I wanted to put on the record that this
18 is a problem we're having --

19 CHAIRPERSON HILL: Okay.

20 COMMISSIONER DUNCAN: -- in general.

21 CHAIRPERSON HILL: Okay. Thanks, Commissioner. I
22 mean, I don't know what kind of feedback we can give to DOB, but
23 I'll be happy to pass your comments along when I have an
24 opportunity.

25 COMMISSIONER DUNCAN: They're aware. I have a feeling

1 more of these are going to come up, and there may not be as easy
2 as this one. So I guess I wanted to put on the record that this
3 has been a pattern.

4 CHAIRPERSON HILL: Okay. Well, I'd rather this not
5 happen so that nothing comes up before that's more problematic
6 because I don't want to be on the other side of this either.
7 So -- okay. All right. Thank you, Commissioner.

8 COMMISSIONER DUNCAN: Thank you, very much.

9 CHAIRPERSON HILL: Thank you, Mr. Roshdieh and still
10 have a nice holiday.

11 Okay. Now I'm closing the hearing and the record again.
12 I don't think there is anything else to discuss. I'm going to
13 make a motion to approve Application No. 21232 as captioned by
14 the secretary.

15 And ask for a second, Ms. John?

16 VICE CHAIR JOHN: Second.

17 CHAIRPERSON HILL: Motion has been made and seconded.

18 Mr. Secretary, if you could take a roll call, please?

19 MR. YOUNG: To respond to the Chair's motion to approve
20 the application.

21 Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MR. YOUNG: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. YOUNG: Mr. Blake?

1 COMMISSIONER BLAKE: Yes.

2 MR. YOUNG: Commissioner Stidham?

3 COMMISSIONER STIDHAM: Yes.

4 MR. YOUNG: Staff would record the vote as 4-0-1 to
5 approve the application on the motion made by Chairman Hill and
6 seconded by Vice Chair John.

7 CHAIRPERSON HILL: Thank you. Mr. Secretary, you may
8 call our next one when you get an opportunity.

9 MR. YOUNG: The next application is No. 21167 of Behzad
10 Hossienkhani, Trustee. And as amended, its special exception
11 relief from the rear yard requirements of Subtitle G, 207.6
12 pursuant to Subtitle G, Section 207.14, and Subtitle G, Section
13 5200.1, and Subtitle X 901.2.

14 Also, a special exemption from the lot occupancy
15 requirements of Subtitle G 210.1 pursuant to Subtitle G, Section
16 5200.1, Subtitle X 910.2.

17 And a special exception from the nonconforming
18 structure requirements of Subtitle C, Section 202.2, pursuant to
19 Subtitle X, Section 901.2.

20 And this is to construct front and rear additions and
21 a third story to an existing two-story cellar principal. I'm
22 sorry about that. Let me reread that.

23 CHAIRPERSON HILL: Okay.

24 MR. YOUNG: This is for a second floor rear deck to an
25 attached sub flat in the MU-4 Zone located at 527 Florida Avenue,

1 NW, Square 3093, Lot 29. And this application was continued from
2 the December 4th public hearing.

3 CHAIRPERSON HILL: Great.

4 Let's see if the Applicant can hear me, if they could
5 please introduce themselves for the record.

6 MR. BELLO: Good morning, Mr. Chairman and Board
7 members. Olutoye Bello, representing the owner and the
8 Applicant.

9 CHAIRPERSON HILL: Great. Thank you, Mr. Bello. Okay.
10 Mr. Bello, I'm going to go ahead and let you walk us through your
11 client's application and why you believe they're meeting the
12 criteria again to grant this particular relief. After reviewing
13 this and discussing this with the Office of Zoning, one moment
14 please. Office of Zoning, Legal Division, it doesn't seem like
15 you need 202.2 -- C 202.2 and whether or not it is necessarily
16 even appropriate. It seems as though this can be done without
17 that requested relief. And so if you and -- I'm going to, I'm
18 going to turn to the Office of Planning and help them also explain
19 this to me. But I believe that it's not necessary for you to
20 make that argument. And it could still be moved, argued in the
21 same way. But let me see if the Office of Planning understands
22 what I'm trying to say and if they agree.

23 MR. BRADFORD: Good morning again, Chairman Hill.

24 Yes, we would agree that 202.2 relief isn't required.
25 It's more so directing one to pursue the normal special exceptions

1 that you would need for the development requirement relief you're
2 requesting --

3 CHAIRPERSON HILL: Okay.

4 MR. BRADFORD: -- the Applicant's requesting.

5 CHAIRPERSON HILL: Okay. So Mr. Bella, do you
6 understand and are you in agreement?

7 MR. BELLO: Yes, sir. I have no issues with that.

8 CHAIRPERSON HILL: Okay. So I'm going to strike that.
9 So we're going to remove that relief being requested. And Mr.
10 Bello, you may continue on whenever you get an opportunity.

11 MR. BELLO: Yes. If Mr. Young would bring up the
12 PowerPoint presentation, please? Thank you.

13 CHAIRPERSON HILL: Which exhibit is this in, Mr. Young?
14 Is this 37?

15 MR. BELLO: -- know what the exhibit number is.

16 CHAIRPERSON HILL: Okay. Because I don't know. I have
17 it as 37.

18 I mean, you submitted this a little while ago, correct,
19 Mr. Bello?

20 MR. BELLO: Yes, sir.

21 CHAIRPERSON HILL: Okay. Great. All right. Go ahead.

22 MR. BELLO: It is 37.

23 CHAIRPERSON HILL: Yeah, that's what I thought. Okay.
24 Thank you, Mr. Bello. Okay. Please go ahead.

25 MR. BELLO: All right. So this is the application of

1 Behzad Hossienkhani, Trustee.

2 Next slide please. The special exception would be from
3 two areas as just discussed, which would be Subtitle G 210,
4 percentage of lot occupancy, and Subtitle G 207.6 from the rear
5 yard setback requirement.

6 Next slide please. The burden of proof for special
7 exception. The Board is authorized to grant a special exception
8 where in its judgment the special exception will be in harmony
9 with the purpose and intent of the zoning regulations and the
10 zoning map; b), will not tend to affect adversely the use of a
11 neighborhood property in accordance with the zoning regulations
12 and the zoning map; and c), will meet such special exceptions,
13 conditions as may be specified in this title.

14 Next slide, please. The intents and purpose with
15 respect to the first burden of proof test. The intent and purpose
16 of the MU-4 zone district which this property is located in is
17 set forth under the Subtitle G, Chapter 1, Sections 101.1 and
18 101.2.

19 And in summary, the intent of purpose is to provide for
20 mixed use development ranging from commercial, institutional, to
21 multiple residential development. This property meets that test
22 because it's intended as a purely residential property, a two-
23 unit flat which is used that is permitted as a matter of right.
24 So it meets that first test.

25 Second, please. Next slide, please. In that the use

1 would not tend to affect and adversely the use of the neighboring
2 properties in accordance with the zoning regulations and the
3 zoning maps. The subject property is among a cluster of
4 neighboring properties which share a common rear yard, use of
5 which together abuts a 15-foot public alley. The adjoining
6 property northwest of the subject property is primarily zoned RF-
7 1 Zone. And these properties are arranged in such a way that
8 the properties that are zoned RF-1 abut this rear property line
9 are removed for at least 30 feet or more from the rear deck that
10 is proposed.

11 Next slide, please. The Applicant seeks special
12 exception relief from the minimum required rear yard pursuant to
13 Subtitle G 207.14 and the conditions specified and set forth
14 under A through E, 1, 2, and 3.

15 Next slide please. These are the conditions. No
16 apartment windows shall be located within 40 feet directly in
17 front of another building. This is a proposed deck, an exterior
18 deck, it's not an enclosure, so it has no windows. And the
19 distance of the existing building window does not undergo a net
20 difference in distance. Further, there will not be a net change
21 in the existing distance between apartment windows and another
22 building. No office window shall be located within 30 feet
23 already in front of another office window. As already testified,
24 the rear properties are zoned RF-1 and so do not contain any kind
25 of office use.

1 Next slide, please. In buildings that are not parallel
2 to the adjacent buildings, the angle of sight lines in the
3 distance of penetration of sight lines into habitable rooms shall
4 be considered in determining the distance between the windows and
5 appropriate yards. As already testified, this is a proposal for
6 an open deck and we're not creating any windows that are closer
7 than the existing situation.

8 Next slide, please. These are just references to the
9 requisite departments. I believe the Office of Planning provided
10 a report in support of the application. The ANC is also in
11 support of the application, and the Applicant has provided its
12 records. The support of adjoining neighbors; there's not one
13 single objection to or opposition to this application.

14 Next slide, please. And these are just floor plans of
15 the conversion. The Applicants provided in the records, their
16 approved drawings. That has already been approved to convert
17 this building into a two-unit building. One of the units will
18 be occupied by the owner of this property, so it's not a
19 commercial project in that sense.

20 Next slide, please. Next slide, please. Yes. And
21 this is just the drawing of the deck. The deck would be 10 foot
22 by 18 feet wide and would be about 12 feet in height.

23 Next slide, please. It's the plat of the property
24 showing the depth of the deck.

25 Next slide, please. The Applicant respectfully -- the

1 Applicant respectfully requests that the Board grant the special
2 exception, having met the burden of proof for the requested
3 relief. That will be our presentation. Thank you very much.

4 CHAIRPERSON HILL: Oh, sorry, I was on mute. Thank
5 you, Mr. Bello. If you could drop that -- before I turn my Board,
6 if I could hear from the Office of Planning.

7 MR. JURKOVIC: Yes. Mike Jurkovic with the Office of
8 Planning. OP recommends approval of the requested relief for
9 rear yard and lot occupancy development requirements as it
10 pertains to the second-story rear-deck addition proposed. And
11 we stand on the record of our report. I'm here to answer any
12 questions. Thank you.

13 CHAIRPERSON HILL: Thank you. Does the Board have any
14 questions of the Office of Planning or the Applicant?

15 (No audible response)

16 CHAIRPERSON HILL: Okay. Mr. Bello, do you have
17 anything you'd like to add at the end? Oh, I'm sorry.

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

19 MR. YOUNG: We do not.

20 CHAIRPERSON HILL: Okay. Mr. Bello, is there anything
21 you'd like to add at the end?

22 MR. BELLO: No, sir. We stand on the record. Thank
23 you.

24 CHAIRPERSON HILL: Thank you, Mr. Bello.

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

1 and the hearing. If you could please excuse everyone, Mr. Young.

2 I am comfortable with this application. I believe it's
3 meeting the criteria for us to grant the relief requested. I
4 would agree with the analysis that the Office of Planning has
5 provided. And I do appreciate that the Applicant has gone through
6 the efforts of working or -- sorry, presenting and getting an
7 approval from the ANC, as well as the adjacent ANC, not wishing
8 to submit anything for this particular case. And I will be voting
9 in favor of this application.

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

11 COMMISSIONER BLAKE: Just one point of clarification
12 first, Mr. Chair. Have we dismissed the request for 202 --
13 special exception 202?

14 CHAIRPERSON HILL: Yes.

15 COMMISSIONER BLAKE: Okay. So we're voting just on the
16 first two elements, correct?

17 CHAIRPERSON HILL: Yes.

18 COMMISSIONER BLAKE: Okay. Thank you. I believe that
19 the Applicant has met the burden of proof to be granted that
20 relief for those two elements. I credit the Office of Planning's
21 report that the application meets the criteria. I give great
22 weight to the Office of Planning's recommendation as well for
23 approval. Note ANC 1B support. I note that DDOT has no
24 objections. And the Applicant has also received approval from
25 HPRB. I'll be voting in support of the application.

1 CHAIRPERSON HILL: Thank you.

2 Vice Chair John?

3 VICE CHAIR JOHN: I don't have anything to add to that,
4 Mr. Chairman. I believe that the Applicant also withdrew its
5 request for 202 -- his request for 202 -- C-202.2 relief. I'm
6 not sure it's a dismissal, but I guess Legal can correct us on
7 that, because we would have to vote on the dismissal, I believe.
8 If it's withdrawn, we don't have to vote on it, but if we dismiss
9 it, I think we have to take a vote. So to be safe, maybe we
10 should vote on the dismissal just in case I'm unclear about the
11 record.

12 CHAIRPERSON HILL: Okay. I --

13 VICE CHAIR JOHN: Mr. Blake had a question.

14 COMMISSIONER BLAKE: Vice Chair John, I do think that
15 Mr. Bello did withdraw it in this instance. So that's why I was
16 a little bit confused as to whether it was removed from the topic.
17 It wasn't that it was dismissed. I maybe used the wrong words,
18 but I think it was addressed and I do wish to say Mr. Bello did,
19 I believe, withdraw it.

20 VICE CHAIR JOHN: Okay. All right. Thank you. In
21 which case we don't need a vote on C-202.2, Mr. Chairman.

22 CHAIRPERSON HILL: Okay. No, I appreciate it. I'm
23 just going to bring Mr. Bello back in if he's still there.

24 Mr. Young, is Mr. Bello still there?

25 (No audible response)

1 CHAIRPERSON HILL: Mr. Bello, can you hear me?

2 MR. BELLO: Yes, sir.

3 CHAIRPERSON HILL: Okay. Just for the record, I'm
4 reopening the record and allowing the Applicant's representative
5 to come back in here to ask a question. Mr. Bello, you're
6 officially withdrawing the request for C-202.2, correct?

7 MR. BELLO: That is correct, sir.

8 CHAIRPERSON HILL: Okay, great. Anybody have any
9 questions?

10 (No audible response)

11 CHAIRPERSON HILL: Okay. Great. Thank you, Mr. Bello.

12 MR. BELLO: Thank you. I'm going to go ahead and close
13 the hearing and the record.

14 Thank you, Vice Chair John and Mr. Blake for your help.
15 Commissioner Stidham, do you have anything you'd like
16 to add?

17 COMMISSIONER STIDHAM: No, nothing to add. And I'm
18 prepared to support.

19 CHAIRPERSON HILL: Thank you. I'll go ahead and make
20 a motion to approve Application No. 21167 as captioned and read
21 by the secretary, excluding C-202.2, and ask for a second. Ms.
22 John?

23 VICE CHAIR JOHN: Second.

24 CHAIRPERSON HILL: The motion has been made and
25 seconded. If you could take a roll call, please, Mr. Secretary?

1 MR. HAMALA: When I call your name, please respond to
2 the Chair's motion to approve the application. Chairman Hill?

3 CHAIRPERSON HILL: I'm sorry. I apologize. Someone's
4 at the front door. I vote yes.

5 MR. HAMALA: Vice Chair John?

6 VICE CHAIR JOHN: Yes.

7 MR. HAMALA: Mr. Blake?

8 COMMISSIONER BLAKE: Yes.

9 MR. HAMALA: Commissioner Stidham?

10 COMMISSIONER STIDHAM: Yes.

11 MR. HAMALA: Staff would record the vote as 4-0-1 to
12 approve Application No. 21167 on the motion made by Chairman Hill
13 and seconded by Vice Chair John.

14 CHAIRPERSON HILL: I'm sorry, guys. I need to take a
15 quick five minutes and I'll come right back. Thank you.

16 (Whereupon, there was a brief recess)

17 CHAIRPERSON HILL: Mr. Secretary, you can call our next
18 case.

19 MR. HAMALA: The Board is back in its meeting session
20 after a quick recess. And next is Application No. 21207 of Stacy
21 Roberts. And this self-certified application seeks relief under
22 Subtitle E 5201.1 and Subtitle X 901.2; from the rear yard
23 Requirements of Subtitle E Section 207.1; from the side yard
24 requirements of Subtitle E Section 203.1; and an area variance
25 from the lot occupancy requirements of Section E 210.1 pursuant

1 to Subtitle X 1002. And this is to construct a one-story side
2 addition to an existing, semi-detached, two-story with cellar
3 principal dwelling unit in the RF-1 zone at 15 Rhode Island Avenue
4 NW, Square 3112, Lot 89.

5 CHAIRPERSON HILL: Okay. Great. If the Applicant
6 could hear me, if they could please introduce themselves for the
7 record.

8 MR. PUTNAM: Yes. Bill Putnam from Putnam Architects,
9 representing the owner.

10 CHAIRPERSON HILL: Okay. Ms. Roberts, since you're
11 here, you want to introduce yourself as well?

12 MS. ROBERTS: Yeah, Chairman Hill. Stacy Roberts, I
13 live at 15 Rhode Island, NW.

14 CHAIRPERSON HILL: Great, thank you. All right. Mr.
15 Putnam, if you want to go ahead and walk us through your client's
16 application and why you believe they're meeting the criteria for
17 us to grant the relief requested. I'm going to put 15 minutes
18 on the clock --

19 MR. PUTNAM: Sure.

20 CHAIRPERSON HILL: -- so I know where we are. And you
21 can begin whenever you'd like.

22 MR. PUTNAM: Thank you. If we can see the slideshow,
23 please? Thank you. 15 Rhode Island is a semi-detached, two-
24 story dwelling on an irregularly shaped lot that presents several
25 exceptional conditions. The lot is a through lot of 1,519 square

1 feet, resulting in nonconformity in both lot area and lot
2 occupancy. The proposed work is the --

3 CHAIRPERSON HILL: Mr. Putnam, can I interrupt you one
4 second? Do you know if this is in the record?

5 MR. PUTNAM: It is in the record. The photos were
6 switched from the record from the last page to the first page.
7 And that is the only difference. This was emailed to staff.

8 CHAIRPERSON HILL: And do you know where --

9 COMMISSIONER STIDHAM: Exhibit 6.

10 CHAIRPERSON HILL: Commissioner Stidham?

11 COMMISSIONER STIDHAM: Exhibit 6.

12 CHAIRPERSON HILL: Oh, great. Thank you.

13 Okay Mr. Putnam, please go ahead. Thank you. I'm
14 sorry.

15 MR. PUTNAM: Yep. The proposed work is to enclose the
16 porch in the existing side yard. You can see it in these photos
17 here. It is visible both from Rhode Island and U Street, so
18 front and rear. And the proposal is to use the existing
19 structure, which is in good condition, but enclose it and add
20 windows to the front and rear. The relief that we are seeking
21 is for a area variance from E 210.1. The lot area, again, is at
22 1,519 square feet and almost a little over half of the required
23 3,000 square feet in the RF-1 zone. And this results in a lot
24 occupancy of 73.2 percent. The proposed work will, enclosing the
25 porch, will increase the lot occupancy by 0.5 percent to 73.7

1 percent. And the reason that it's increasing that much is because
2 of -- to bring it up to current building and energy codes. So
3 it's essentially building out the walls so that we can have what's
4 required by light, safety, and energy requirements.

5 Furthermore, the Applicant faces practical
6 difficulties as they would not be allowed to remove the porch
7 because it is in a historic district, and as the OP report states.
8 And so really the only option they have is to improve on the
9 porch or leave it in its current existing condition. The
10 Applicant is also seeking a side yard special exemption from E
11 208.3.

12 And we can go to the next slide, go and see the site
13 plans, please? You can see here that the size of the porch is
14 not increasing very much. In fact, we are increasing -- the side
15 yard will decrease by 2 and 3/8 inches because of those -- the
16 building assembly -- the wall assembly that I mentioned earlier.
17 And so the side yard will decrease from 2.6 feet to 2.4 feet.
18 The result is nominal from both Rhode Island and U Street. It
19 will have no effect on the neighboring apartment building to the
20 east on their light and air as there are no windows at grade at
21 that elevation on the first floor. No impact on the privacy or
22 use or enjoyment, again, because no windows at grade. And
23 finally, it will not detract. In fact, it will enhance the
24 character of the house in the neighborhood by improving on the
25 lattice elevation that is currently there. And this was all

1 stated as well in the OP report.

2 Finally, we're seeking relief for the existing
3 nonconforming rear yard special exception E 207.1. The rear yard
4 will not be impacted at all. We are not going into the rear
5 yard. It is a nonconforming condition that we wanted to bring
6 to attention.

7 Finally, in closing, the owner has reached out to just
8 about everybody possible. They have support from adjacent
9 neighbors, both the ANC 5F and the ANC 5E, the Office of Planning,
10 and the Bloomingdale Civic Association.

11 CHAIRPERSON HILL: All right, Mr. Putnam. Thank you.

12 Mr. Young, if you could drop the slide deck. Before I
13 turn to my Board, could I hear from the Office of Planning?

14 MS. BROWN-ROBERTS: Good afternoon. Good afternoon,
15 Mr. Chairman and members of the BZA. I'm Maxine Brown-Roberts
16 from the Office of Planning. I think I'll just stand on the
17 record because I think the Applicant has gone through most of the
18 standards for the area variance, that there will be no substantial
19 detriment to the public good, and that there is an extraordinary
20 and exceptional situation. And also that the, again, there'll
21 be no substantial impairment to the intent, purpose, and
22 integrity of the zoning regulations.

23 Regarding the special exception, we had said that the
24 special exception for the rear yard is not required; however, we
25 did provide it in our analysis. But it's a nonconforming rear

1 yard that is not being affected by the changes to the porch. And
2 we think that the lot occupancy and the side yard changes are
3 very minimal and will not impact the adjacent neighbors or when
4 viewed from the street. Therefore, we recommend approval.

5 Thank you, Mr. Chairman.

6 CHAIRPERSON HILL: Thank you. Let's see. One more
7 thing, Mr. Young. Is there anyone here wishing to speak?

8 MR. YOUNG: We do not.

9 CHAIRPERSON HILL: Okay. My Board, what do you have
10 to say in terms of questions to either the Applicant or the Office
11 of Planning?

12 (No audible response)

13 CHAIRPERSON HILL: Okay. Mr. Putnam, I'm just a little
14 curious again. The property, what you guys are trying to do, it
15 doesn't look onto any windows onto that neighboring property,
16 correct?

17 MR. PUTNAM: I'm sorry. You cut out and I did not hear
18 that. Do you mind repeating yourself?

19 CHAIRPERSON HILL: Sure. The deck there -- the
20 enclosure, they don't look at any windows on the right side of
21 that -- on the other property, correct?

22 MR. PUTNAM: Correct. We're not allowed because it's
23 within the setback where -- the 5-foot setback. We're not allowed
24 to have any windows on that facade. So that's going to be a one-
25 hour fire-rated wall.

1 CHAIRPERSON HILL: Oh. I got it. Okay. I'm sorry.
2 I got a little confused. Thank you. All right. Okay. Do you
3 have anything to add at the end, Mr. Putnam?

4 MR. PUTNAM: No. No, thank you.

5 CHAIRPERSON HILL: Okay. All right. Well, I hope you
6 and your Applicant have a lovely holiday, and --

7 MR. PUTNAM: Thank you.

8 CHAIRPERSON HILL: -- I'm going to close the hearing
9 on the record. Thank you.

10 Okay. I am, again, comfortable with this application.
11 I think that they meet the criteria for us to grant the relief
12 that is being requested. I did have the question about that side
13 and now understand it better in terms of the fire-rated wall
14 that's there. And I do appreciate, also, all of the outreach
15 that the Applicant has done with the ANC as well as their
16 neighbors. And I will be voting in support of this application.

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

18 COMMISSIONER BLAKE: Chairman, I agree that the
19 Applicant has met the burden of proof for both the variance and
20 the special exception. I believe that this entire thing is driven
21 primarily by the need for -- to meet the fire and safety
22 requirements and to comply with the historical requirements to
23 not destroy or tear down that facility. I believe that the
24 Applicant met the burden of proof. I give great weight to the
25 Office of Planning's report, note the support from ANC 5E and the

1 adjacent ANC 5F. I'll be voting in favor of the application.

2 CHAIRPERSON HILL: Great. Thank you.

3 Vice Chair John?

4 VICE CHAIR JOHN: Thank you, Mr. Chairman. I don't
5 have anything to add. I am in support of the application.

6 CHAIRPERSON HILL: Thank you.

7 Commissioner Stidham?

8 COMMISSIONER STIDHAM: I am in support of the
9 application as well.

10 CHAIRPERSON HILL: Thank you. All right. I'm going
11 to make a motion to approve Application No. 21207 as caption read
12 by the secretary and ask for a second. Ms. John?

13 VICE CHAIR JOHN: Second.

14 CHAIRPERSON HILL: Motion been made and seconded.

15 Mr. Secretary, if you could take roll call, please?

16 MR. HAMALA: When I call your name, please respond to
17 the Chair's motion to approve the application. Chairman Hill?

18 CHAIRPERSON HILL: Yes.

19 MR. HAMALA: Vice Chair John?

20 VICE CHAIR JOHN: Yes.

21 MR. HAMALA: Mr. Blake?

22 COMMISSIONER BLAKE: Yes.

23 MR. HAMALA: Commissioner Stidham?

24 COMMISSIONER STIDHAM: Yes.

25 MR. HAMALA: Staff will record the vote as 4-0-1 to

1 approve Application No 21207 on the motion made by Chairman Hill
2 and seconded by Vice Chair John.

3 CHAIRPERSON HILL: Thank you, Mr. Secretary. You can
4 call our next one when you get a chance.

5 MR. HAMALA: Let's see. Our next application is No.
6 21208 of Beacon Communities, LLC, and Christian Tabernacle of
7 Church of God, Inc. And as amended, this is a self-certified
8 application for an area variance from the access requirements of
9 Subtitle C Section 711.8 pursuant to Subtitle X Section 1002; and
10 then for special exceptions under Subtitle X Section 901.2, and
11 that is from the minimum vehicle parking requirements of Subtitle
12 C Section 701.5 pursuant to Subtitle C Section 703.2; from the
13 loading requirements of Subtitle C Section 901.1, pursuant to
14 Subtitle C, Section 909; from the setback requirements of
15 Subtitle C Section 1504.1(d) pursuant to Subtitle C Section 1506;
16 from the lot occupancy requirements of Subtitle K Section 804.1
17 pursuant to Subtitle K Section 813; and from special -- and from
18 the court requirements of Subtitle K Section 807 pursuant to
19 Subtitle K Section 813.

20 And this is to construct a new semi-detached, seven-
21 story mixed use building with below-grade parking and penthouse,
22 for use as an apartment house with approximately 65 dwelling
23 units and a ground floor child development center in the ARTS-2
24 zone located at 2033 11th Street NW, Square 332, Lot 807.

25 And there is one preliminary matter before the Board.

1 The Applicant has proffered two expert witnesses, Mr. Joseph
2 Iwaskiw as an expert in architecture --

3 MS. BATTIES: Iwaskiw.

4 MR. HAMALA: My apologies -- who's not in the witness
5 book, and Daniel Solomon as an expert in transportation, who is
6 in the witness book.

7 CHAIRPERSON HILL: Okay. Thank you. Let's see. If
8 the Applicant can hear me, if they can introduce themselves for
9 the record?

10 MS. BATTIES: Leila Batties with the law firm of Holland
11 and Knight, 800 17th Street NW.

12 CHAIRPERSON HILL: Okay. Great. So Mr. Solomon is in
13 the book already for transportation. So I think we will go ahead
14 and allow him to testify as an expert. And Mr. Lewinsky (sic);
15 is that correct?

16 MS. BATTIES: Iwaskiw.

17 CHAIRPERSON HILL: Iwaskiw.

18 MR. IWASKIW: Yes.

19 CHAIRPERSON HILL: Okay. Mr. Iwaskiw.

20 Ms. Batties, do you know which exhibit his resume is
21 in?

22 MS. BATTIES: Yes. Exhibit 25-D.

23 CHAIRPERSON HILL: And he will be testifying as an
24 architect?

25 MS. BATTIES: Yes.

1 MR. IWASKIW: Correct.

2 CHAIRPERSON HILL: Okay. All right. I have no issues
3 with Mr. Iwaskiw being admitted as an architect -- an expert in
4 architecture, him being an architect. Does my Board have any
5 issues with that? And if so, please raise their hand.

6 (No audible response)

7 CHAIRPERSON HILL: Seeing no one raising their hand,
8 we'll go ahead and allow him into the record -- I'm sorry -- into
9 our book also.

10 And with that, Ms. Batties, it looks like DDOT's here.
11 Is DDOT here?

12 MR. OZBERK: Yes.

13 MS. BATTIES: DDOT is on the line.

14 CHAIRPERSON HILL: Great. You want to introduce
15 yourself for the record, please?

16 MR. OZBERK: Hi. My name is Erkin Ozberk from the
17 Department of Transportation. Happy to testify --

18 CHAIRPERSON HILL: Great.

19 MR. OZBERK: -- later.

20 CHAIRPERSON HILL: That's great. I don't normally get
21 DDOT, so that's why I was surprised. I was like, okay, a little
22 bit of a surprise, but I guess we're -- that's great. Further
23 experts are always welcome.

24 Let's see. So Ms. Batties, you can go ahead and begin
25 whenever you like. And I'm going to put 15 minutes on the clock

1 just so I know where we are. And go ahead and continue, please.

2 MS. BATTIES: Okay. Good morning again. Leila Batties,
3 representing Beacon Communities and Christian Tabernacle Church,
4 which is the owner of the subject property. Also representing
5 the Applicant is Joseph Iwaskiw of Soto Architects and Daniel
6 Solomon of Grove Slade.

7 Just some additional preliminary matters. I wanted to
8 make sure that the Board is aware we withdrew our relief from --
9 withdrew our request for relief from the GAR requirements. And
10 that was included on our prehearing statement at Exhibit 25 of
11 the record. And yesterday, ANC 1B submitted its support in
12 support of the application, and that is at Exhibit 38 of the case
13 record.

14 CHAIRPERSON HILL: Ms. Batties, there's a lot of
15 different things that are -- in terms of the request for relief.
16 The way the secretary read it, those are all the ones that you're
17 going to be arguing today, correct?

18 MS. BATTIES: Correct. I don't think he included GAR.
19 I just --

20 CHAIRPERSON HILL: I don't see it --

21 MS. BATTIES: Okay.

22 CHAIRPERSON HILL: -- so I think that's correct. Okay.

23 MS. BATTIES: All right. Great.

24 CHAIRPERSON HILL: Go ahead, please.

25 MS. BATTIES: So if you can pull up the first slide,

1 please? That's Slide 1, the next one. Okay. Great. Thank you.

2 So the subject property is located on the south side
3 of V Street between 10th and 11th Streets, and is currently
4 improved with the Christian Tabernacle Church on the western
5 portion of the site, and a child development center on the eastern
6 portion of the site. The property is zoned ARTS-2 and is within
7 the Greater U Street Historic District.

8 The Applicant seeks the Board's approval of six areas
9 of relief in order to develop the eastern portion of the property
10 with a mixed-use building that contains an 8,200 square foot
11 child daycare center and an affordable mixed-income apartment
12 house. The church that was -- church building, constructed in
13 1902, will remain on the site. And just by way of background,
14 the church building was constructed in 1902. Christian
15 Tabernacle moved into that building in 1986, and the portion of
16 V Street that fronts the church is named after the first pastor
17 of the church, Bishop William Hart, and his son, Kevin Hart, is
18 now the pastor of the church. So they are a longstanding
19 community stakeholder.

20 The proposed redevelopment of the property is truly an
21 urban infill project in a transit-rich area and compatible in
22 scale and design with other newer development projects in the
23 immediate area, which is zoned primarily ARTS-2 and ARTS-4. The
24 new apartment house advances the District's housing goals, and
25 the new daycare provides an important neighborhood service that

1 has been offered by the church for many years. So if you can
2 turn to the next slide, please?

3 Joe Iwaskiw will walk the Board now through the site
4 plan and the project design and identify on the plans the
5 requested areas of relief. And then after Joe speaks, Daniel
6 Solomon will testify on the transportation-related issues. And
7 I will follow up with a discussion on the various criteria and
8 how they are satisfied. And so with that, I'm going to turn the
9 presentation over to Joe.

10 MR. IWASKIW: Great. Thank you, Board. My name is Joe
11 Iwaskiw. I'm with Soto Architecture and Urban Design, located
12 here in DC. Thank you for allowing me to speak today. If you
13 could go to the next slide?

14 So this is our lot here. As you can see in the top-
15 left corner, we have the existing church. And then in this kind
16 of square on the right side is where we are proposing to demolish
17 the existing one-story daycare and build our new seven-story
18 residential building with 65 units. The variety of mix to ones,
19 twos, threes, and studios and majority affordable apartments, and
20 then a daycare center on the ground-floor level with a parking
21 garage as well. So this is the lot that we'll be looking at.
22 You can go to the -- actually go to Slide 6 if you could do that,
23 please? Two more slides. Slide 6, please? Thank you.

24 So this is the ground-floor level of the property. As
25 you can see, we have a lobby that's at the corner of 10th and V,

1 which is to the top-right corner there. We also have our garage
2 ramp off of 10th Street. Our first area that we're asking for
3 relief here is the lot occupancy. Because this is considered a
4 full record lot, the church and the residential building are
5 calculated in the lot occupancy percentage. So we are asking for
6 a slight variance on the lot occupancy here. We have a outdoor
7 childcare space in the back left there where you can see in green.
8 And that, along with some of the other kind of yards that are in
9 between areas, are combining to get us to that lot occupancy
10 area. I started on this slide just to give you the overview of
11 the ground floor. If we could go back one slide to Slide 5?

12 So you can see this garage ramp is a -- kind of
13 tight. We do not have alley access on this site, and it is a
14 square building, so getting down to a garage to fit the parking
15 is very tight. And so one of the areas that we're asking for,
16 which is an area variance, is the 20 percent grade on the
17 garage ramp. As you can see, we provided transition areas on
18 this for 5 percent -- starts at 5 percent, goes to a 10
19 percent. Then there's a portion of the ramp that goes to 20
20 percent. Then it goes back to 10 percent, and then 5 percent
21 as it gets down to the garage. The floor plan we're looking at
22 here is the cellar level, so it is slightly below grade. So
23 that is one area I wanted to flag was the garage ramp. If you
24 could go to Slide 4, please?

25 As you can see, also, because of this ramp, because

1 we do not have alley access, we have only enough space here for
2 16 parking spaces where 20 are required. And so we are asking
3 for a special exception at this area as well. If you could go
4 now forward to Slide 7?

5 So this is the typical floor -- residential floor
6 that's above the ground floor. This goes from floors 2 through
7 5. As you can see, this courtyard space starts to expand and
8 get a little bit larger, and the lot occupancy decreases to
9 closer to the allowed amounts for this zone. We are asking for
10 areas of relief on this courtyard. There's actually a
11 courtyard diagram coming up, so I will wait on that, but we are
12 asking for basically courtyard variances between the church and
13 our building. Because it is a record lot, it is not considered
14 a side yard. It is considered an open court. And so that is
15 the area we're asking for relief. And I will get into that in
16 a few slides. Next slide?

17 This is just the last two floor plans for the sixth
18 and seventh floor. The only difference here is that we lose
19 some of the public space bump outs along 10th Street and V
20 Street if you go to the next slide. And then we are asking for
21 a penthouse setback special exception off of the courtyard
22 only. We are providing the setback along 10th Street, along
23 the church, and along V Street. But we are asking for the
24 variance along the courtyard in the back. The Court is sized
25 appropriately for the height in this area and the width. And

1 so we are asking for relief to be able to increase the amount
2 of units that we have, again, in a majority affordable project.
3 So this is the penthouse. If you go one more slide. Penthouse
4 roof. No exceptions being asked here. I just wanted to show
5 that we're showing a mechanical screen that's set back
6 appropriately. If you could go to Slide 11?

7 So this is the courtyard diagram. The two areas of
8 relief that we're asking for are between the church and our
9 building, which is in the red. What is required there is a 13
10 foot 4 width if it's an open court, and we provided an 11 foot
11 8 width, and that width is what would be required if it was a
12 side yard. But of course it's being counted as an open court
13 here, so that's why we're asking for relief. And then we also
14 have this area in blue. Because that area abuts the property
15 line, there's a higher width that is being requested there per
16 the zoning, which is 25 feet 4. We are again providing the
17 amount for a side yard, which is 11 foot 8, and that is the
18 two, I guess, combined special exceptions we're asking for at
19 the courtyard. Everything else in the courtyard is by right.
20 If you could go to the next slide?

21 These are a few elevations. So you can see this is
22 the elevation of V street, and you can see that gap, the 11
23 foot 8 between the church and our building. Next slide? This
24 is the elevation on 10th Street. You can see that we do not
25 provide the penthouse setback against the property line on the

1 left there, but that is -- that's a by-right function. If you
2 could go to the next slide?

3 This is the elevation kind of looking at the church.
4 We're cutting a section through the church. So the reason that
5 we're asking for these special exceptions, so we can have some
6 windows for those units that look out over top of the existing
7 church's rooftop. And you can also see the court space with
8 the outdoor play yard kind of to the right.

9 CHAIRPERSON HILL: Hello. Did you guys break up? Can
10 you all hear me? Hello?

11 COMMISSIONER STIDHAM: I can hear you.

12 VICE CHAIR JOHN: I can hear you.

13 CHAIRPERSON HILL: Okay. I think something happened
14 to the Applicant.

15 (Pause)

16 MR. SOLOMON: Hi, folks. Sorry. Just got a text from
17 them that they're working on it and should be back shortly.
18 Apologies for the technical issue.

19 CHAIRPERSON HILL: Okay. Thank you.

20 (Pause.)

21 MR. SOLMON: Are we able to elevate Joe to a panelist?
22 I think he joined from another device. I think that might be a
23 quick way to bring them back.

24 MR. IWASKIW: I really apologize. Our computer died
25 mid-talk, so.

1 CHAIRPERSON HILL: Okay. Mr. Young, could you pull
2 back up the slide? Are you going to continue?

3 MR. IWASKIW: Yeah. That would be great if we could.

4 CHAIRPERSON HILL: Yeah. Okay. Perfect.

5 MR. IWASKIW: So yeah, I think this is -- we can go to
6 the next slide here. This is looking at it from the -- kind of
7 through the existing row home that's next to it. We have a party
8 wall there, and then to the left there, you can kind of see the
9 courtyard space with the play area. Next slide?

10 This is a section looking through -- so we are not
11 asking for any height or density special exceptions. It's all
12 kind of the nature of the weird shape of the site. So this is
13 kind of looking at the section of what we're doing along 10th
14 Street. And then if you could go to the next slide? This is
15 looking at it through V Street. You can see that open court
16 there along the back side there. If you could move to the next
17 slide?

18 This is a rendering, again, looking at that gap in
19 between the church and our building. Next slide? And this is
20 looking at the church and kind of the kind of windows along there
21 that are -- look over top. Next slide? All right. Great. Now
22 I'll kick it over to Daniel from Grove Slade.

23 MR. SOLOMON: Fantastic. Thanks, Joe.

24 Good afternoon, Commissioners. For the record, I'm
25 Daniel Solomon, principal with Grove Slade. We've been working

1 with Beacon Communities, Christian Tabernacle Church, the project
2 team, and DDOT related to the transportation aspects of this
3 project. I'm going to touch the highlights of our review in
4 coordination with DDOT.

5 In a broad scale, the project is situated in the U
6 Street neighborhood, bordered on the west by 11th Street, north
7 by V Street, and east by 10th Street NW, and row homes to the
8 south. Currently, the site is improved by the Christian
9 Tabernacle Church, the Love First childcare -- daycare, and a
10 surface parking lot containing ten parking spaces. It is located
11 less than a quarter mile from the U Street Metro Rail station to
12 the south. There are existing bus stops near the site, along U
13 Street and Vermont Avenue NW, as well as Georgia Avenue, which
14 include bus-only lanes, providing the site access to high-
15 frequency Metrobus routes. Bus priority lanes will also be added
16 to U Street in 2025, and 14th Street and Florida Avenue in 2026,
17 further improving transit access to the site.

18 The project has access to several on-street bicycle
19 facilities, including V Street NW, 9th Street, 15th Street, and
20 New Hampshire Avenue as well. There are seven Capital Bikeshare
21 stations located within a quarter mile of the site, offering
22 access to over 65 docks. The site is also surrounded by a robust
23 pedestrian network that consists of well-connected sidewalks and
24 crosswalks. Next slide, please?

25 The two existing curb cuts along V Street will be

1 removed, returning approximately 27 feet of curbside space. A
2 40-foot pickup and drop-off zone is being proposed along V Street,
3 denoted here in the orange box. The existing curb cut on 10th
4 Street will be relocated southwards and will provide access to
5 the below-grade parking garage. Area variance is being requested
6 for this section of the garage ramp that has a 20 percent slope,
7 which is an increase from the 12 percent slope dictated in zoning,
8 but it is still within industry standards and will be accompanied
9 by transitions of slope and the ramp along the entirety of the
10 ramp, which Joe covered in an earlier slide.

11 Bicycle and pedestrian access and circulation are shown
12 here in green and blue, respectively. Short-term bicycle parking
13 is provided on 10th Street, situated besides the pedestrian
14 entrance. Long-term bicycle parking is located internally and
15 will be accessed through the residential lobby as well as the
16 garage ramp. The daycare center's entrance is located on V
17 Street.

18 The garage will provide 16 vehicular parking spaces.
19 The church and daycare occupy the same lot and do not require
20 parking at the same time throughout the week, and therefore will
21 be sharing spaces between the two uses. Relief is being requested
22 for four parking spaces as zoning requires 20 be provided.
23 However, the site's proximity to reliable high-frequency transit
24 and the robust and -- robust bicycle and pedestrian facilities
25 will reduce any significant impacts to the neighborhood due to

1 the reduction of parking spaces. Additionally, the Applicant has
2 worked with DDOT on a robust transportation demand management
3 plan, which I'll review in a subsequent slide.

4 In terms of loading, due to the limited size of the
5 parcel, the site will provide no on-site loading facilities and
6 is requesting relief from one loading berth and one service and
7 delivering space. The development is not anticipated to generate
8 high volumes of loading activity. If a resident needs to reserve
9 curbside space to facilitate a move in or move out, they can do
10 so through DDOT's Transportation Online Permitting System, TOPS,
11 and place temporary emergency no parking signs reserving that
12 space. Additionally, a segment of the garage ramp is being
13 widened to accommodate any loading, service, and trash operations
14 if needed. A loading management plan has been established with
15 DDOT to ameliorate any potential impacts due to loading and pickup
16 and drop-off activities.

17 For bicycle parking, the project will include 24 long-
18 term and 10 short-term bicycle parking spaces, exceeding zoning
19 requirements. Additionally, the secure bicycle room will include
20 cargo tandem bike spaces, and at least 10 percent of the spaces
21 will have access to electrical outlets per DDOT guidelines. DDOT
22 is supportive of the amount of bicycle parking being provided by
23 this development. Next slide, please?

24 Here I've listed the highlights of the transportation
25 demand management plan that we've coordinated and agreed to with

1 DDOT. It includes many of the typical components expected of
2 such a package. We believe this TDM plan is appropriate for this
3 project to help encourage non-single occupancy vehicle trips and
4 non-auto trips. Next slide, please?

5 Here are the highlights of the loading management plan.
6 As I mentioned previously, it has been crafted to ameliorate any
7 potential impacts due to the loading and pickup/drop-off
8 activities. It has been reviewed and agreed to by DDOT as well.
9 Next slide, please?

10 So in summary for this project, we performed a
11 comprehensive transportation review, which was scoped with DDOT.
12 Our study concluded that the development of the site will not
13 have a detrimental impact on the surrounding transportation
14 network and minimizes impacts by exceeding the amount of short-
15 and long-term bicycle parking that is required, accommodating
16 pickup and drop-off activities curbside, and providing a robust
17 transportation demand management and loading management plan.

18 We have coordinated extensively with DDOT during the
19 review. We're pleased to have their support in the form of a
20 no-objection staff report. DDOT support did include two
21 conditions which require the Applicant to implement the TDM and
22 loading management plan, as included in the CTR (phonetic) for
23 the life of the project, which the Applicant has agreed to do.
24 At this time, we believe we have addressed all of DDOT's concerns.

25 That concludes my testimony, and I'll be available for

1 any questions. Thank you, and I'll pass it back to Leila.

2 MS. BATTIES: Thank you, Daniel. Next slide, please?

3 So the Applicant seeks special exception relief in five
4 areas: lot occupancy, court width, loading, penthouse, and
5 parking. And so over the next several slides -- the next several
6 slides will list the applicable criteria, and I will discuss how
7 the application -- how the application meets each of the
8 criteria. Next slide, please?

9 So as it relates to the relief from lot occupancy and
10 court width requirements. The type of mixed use -- mixed-
11 income -- infill development that's being proposed by the project
12 advances several stated purposes of the ARTS zone, including
13 encouraging a pedestrian scale of development and a mixture of
14 building uses. It requires -- or promotes uses that encourage
15 pedestrian activity, particularly residential uses. It expands
16 the area's housing supply in a variety of rent and price ranges.
17 It encourages, again, development -- the development of
18 residential activities. It strengthens the design, character,
19 and identity of the area by means of physical design standards,
20 and it encourages the combination of new and old buildings, as
21 well as fosters 18-hour activity and increased public safety.

22 So the ARTS-2 zone is specifically intended to permit
23 medium density, compact, mixed-use development with an emphasis
24 on residential development. And I just want to note, as it
25 relates to the lot occupancy request for relief, the ARTS-2 zone

1 actually permits a lot occupancy of 100 percent for uses other
2 than residential uses and public recreation centers. So the only
3 reason why we don't comply with the lot occupancy in this case
4 is because we have a residential unit at the ground floor. So
5 the regulations say where you have a mixed use building, you
6 calculate lot occupancy at the lowest level where the residential
7 use begins.

8 If we were to remove the one residential unit from the
9 ground floor of the building, we would comply -- we would have --
10 we would not have a need for relief from the lot occupancy
11 requirements, because we would be able to have 100 percent lot
12 occupancy at the ground floor. But as Joe mentioned, as you go
13 to the second level of the building, the lot occupancy is reduced
14 to 82.7 percent, which complies with the lot occupancy
15 requirements. So I do want to note that it is the one unit on
16 the ground floor of the building that triggers the need for the
17 lot occupancy requirement.

18 As it relates to the second criteria, the property is
19 within the Greater U Street Historic District. The Historic
20 Preservation Review Board has reviewed and approved the project
21 and acknowledges that the proposed building height and massing
22 is consistent with the development character of the U Street
23 Historic District. And the report also says that the design of
24 the building enhances the compatibility within the Historic
25 District, particularly through its use of brick and vertically

1 oriented projecting bays. So we comply with the second criteria.

2 And as it relates to the third criteria, subject to the
3 review and approval of the Public Space Committee, the entire
4 property will be served by a single curb cut that's located on
5 10th Street, and that vehicular entrance is located on the side
6 opposite of where pedestrian entrances for the residential and
7 daycare uses will be, therefore minimizing the number of
8 pedestrians who will need to cross the curb cut and conflict with
9 vehicular travel. Next slide, please?

10 So as it relates to the relief from the loading
11 requirements, again, the criteria are on the screen. In this
12 case, providing on-site loading is impractical because of the
13 site constraints. Again, the church will remain on the site. So
14 although the property is approximately 14,000 square feet,
15 because the church will remain, the actual developable area is
16 approximately 9,000 square feet. And so we have an irregularly
17 shaped site with an existing building to remain, and then a
18 relatively small site -- or portion of the site to be developed.
19 And in this case, constructing the loading berth would utilize a
20 significant portion of the property that is programmed for the
21 daycare, which is a long-standing neighborhood-serving use. So
22 we are doing everything to maintain the programming for the
23 daycare.

24 Also, the site doesn't have alley access, as Joe
25 mentioned. So if we were to provide on-site loading facilities,

1 we would have to have a curb cut that is wider than what's
2 typically permitted by DDOT, and so would be contrary to those
3 regulations and policies. As Daniel mentioned, this site -- the
4 project is subject to a loading management plan that has been
5 submitted into the record and approved by DDOT. And so with
6 that, we don't think any additional conditions would be
7 appropriate. Next slide, please?

8 The relief from the penthouse requirements -- we'll go
9 over the special exception, the general standard of review,
10 shortly. But again, the irregular shape of the site has caused
11 some difficulty in meeting all of the criteria. In this case,
12 the only location where the penthouse setback requirement is not
13 met is at the rear of the property facing the court that's in
14 the center of the lot. And so there's no negative impact on any
15 of the surrounding properties, and the penthouse area that does
16 not meet the setback requirement is not visible from any of the
17 public streets. The penthouse meets the setback requirements on
18 all street frontages.

19 But also, it's important to note that the penthouse
20 setback in this case is necessary to accommodate residential
21 units at the penthouse level. So these are -- this is the
22 habitable penthouse area. And if this relief isn't granted, it
23 would require either reducing the size of the penthouse units,
24 which are two-bedroom units, or removing them altogether. And I
25 think this Board knows that we encourage -- the District

1 encourages two-bedroom family-sized units when applicable. And
2 so the reduction or the removal of these penthouse units makes
3 the project less viable, both financially and -- makes the
4 project less viable financially, and would also be contrary to
5 the Mayor's priority of increasing housing and affordable housing
6 throughout the District. Next slide, please?

7 So the project proposes 16 parking spaces where 20 are
8 required under the zoning regulations. Again, the criteria for
9 granting relief is on the screen. And in this case, meeting the
10 minimum parking requirements is impractical because of the site
11 conditions that have been discussed. In addition, the
12 flexibility from the parking requirement is appropriate because
13 this is a transit-rich area. As noted, the property is within a
14 quarter mile from the Metrorail station and is served by robust
15 priority -- by the U Street Garfield Priority Bus Network.

16 And as it relates to the -- Subtitle C 703.2, the
17 project demonstrates several of the criteria listed for granting
18 relief from the parking requirements. It's well-served by mass
19 transit and other modes of transportation. It's -- has a lot of
20 robust transit options besides parking, including, as I stated
21 already, the Metro and Bus Priority Network. And also, it's
22 important to note that 85 percent of the families that use this
23 daycare center take public transportation or walk to the site.
24 So they are not -- it's not a daycare center that brings in people
25 that are driving from other areas of the city.

1 And then a significant number of the units here -- so
2 this is an affordable mixed-income project. But of the 65 units,
3 52 will be affordable; eight units will be reserved for households
4 that are at 30 percent MFI; ten households will be -- ten units
5 will be reserved for households that are at 50 percent MFI; and
6 34 percent will be reserved for households that are at 60 percent
7 MFI. So a significant range of income levels will be served by
8 the project. Next slide, please?

9 So all of the areas of relief that I've just discussed
10 have to comply with the general special exception standard in
11 Subtitle X, Chapter 9. And in this case, the approval of the
12 relief and the project will facilitate the development of the
13 property in a manner that advances several of the listed purposes
14 of the ARTS zones. As I mentioned previously, it'll encourage a
15 pedestrian scale of development, a mixture of building uses, and
16 the adaptive reuse or combination of old and newer projects. It
17 will promote residential uses, expand the area's housing supply
18 in a variety of rent and price ranges, and the ARTS zone also
19 encourages the attractive combination of new and old buildings.
20 And so here we have the existing church that will remain on the
21 western portion of the site, and then the new mixed-use
22 development on the eastern portion of the site. Next slide,
23 please?

24 So the garage ramp, that portion that is -- has a 20
25 percent slope requires an area variance. And as Daniel mentioned,

1 the 20 percent is within industry standard. And as Joe showed
2 in his testimony, it's only a third of the ramp that does not
3 meet the 12 percent slope requirement. But the three-pronged
4 area variance test is met in this case for granting the relief
5 for the ramp slope.

6 The exceptional condition or situation stems from a
7 variety of factors, including the fact that the property has an
8 irregular shape, the fact that the property does not have alley
9 access, the historic's -- church that will remain on the west
10 side of the property all make the site unique. And the resulting
11 practical difficulty is that meeting the -- if the project was
12 forced to meet the 12 percent slope for the entire portion of
13 the drive aisle, much of the developable area will impact the
14 daycare at the cellar and ground-floor levels of the project,
15 making it really difficult to meet the programmatic requirements
16 such as classroom size, outdoor play area, safety standards, and
17 operational needs. And as we mentioned, the daycare has been a
18 long-time use -- neighborhood serving use. And so it is an
19 important part of this -- the redevelopment of the site.

20 And then finally the relief for the parking -- the
21 slope can be granted without substantial detriment to the public
22 good. The 20 percent grade, again, is industry standard. And
23 the Applicant proposes to provide safe transitions both at the
24 top of the ramp at 10th Street and then at the lower level -- or
25 at the bottom of the ramp where it goes into the garage. And so

1 the garage will serve a relatively small number of people; there
2 are only 16 spaces. So that, again, also minimizes the safety
3 hazards as it relates to the use and operation of the ramp. Next
4 slide, please?

5 So that concludes the Applicant's presentation. The
6 application meets all of the criteria for special exception
7 relief as well as the area variance. ANC 1B did vote in support
8 of the application at its regularly scheduled meeting on November
9 7. Both OP and DDOT are in support of the project, and as a
10 result, we think the project warrants being approved and ask the
11 Board's approval of the application. Thank you.

12 Sorry. It was a long presentation, but lots of area
13 of relief -- areas of relief, I know.

14 CHAIRPERSON HILL: Thank you, Ms. Batties. All right.
15 Let me see. Before I turn to the Board, can I go ahead and
16 turn -- from the Office of Planning?

17 MR. JURKOVIC: Good afternoon, Chairman and members of
18 the Board. It's Mike Jurkovic with the Office of Planning. OP
19 recommends approval of the requested area variance and special
20 exceptions, with the condition requiring the implementation of
21 the loading management plan and stand on the record of our report.
22 I'm here to answer any questions. Thank you.

23 CHAIRPERSON HILL: Okay, thanks. So you guys, there's
24 questions that you may or may not have for the Office of Planning
25 or the Applicant. And also just to remind everyone, DDOT is

1 here. Does anyone have any questions of anyone?

2 (No audible response)

3 CHAIRPERSON HILL: Okay. Mr. Young, is there anyone
4 here wishing to speak?

5 MR. YOUNG: We do not.

6 CHAIRPERSON HILL: Okay. All right. Okay. That's it
7 then. All right. Ms. Batties, do you have anything you'd like
8 to add at the end?

9 MS. BATTIES: I have nothing further.

10 CHAIRPERSON HILL: Okay. All right. I'm going to
11 close the hearing in the record. Thank you all for your
12 testimony. And have a nice holiday.

13 Okay. There was a lot of different areas of relief,
14 and I appreciate the Applicant walking us through all of them and
15 their argument as to why they are needed and how they're meeting
16 the criteria for us to grant them. The one that seemed most --
17 not problematic, but I guess the area variance concerning the
18 ramp was something I had not known about, I guess, before. And
19 so I am now understanding more why that's needed and how they're
20 meeting the particular prongs to grant that relief. I mean, I
21 think that the uniqueness of the irregular shape, the no alley
22 access, and really the combination of that with the historic
23 church and that the loss of that -- or sorry, the grade of that
24 might affect the some of the units and their ability to bring
25 housing to this area does not really -- sorry -- complicate how

1 that first prong is being met. But I think that the irregular
2 shape, the alley access, and the historic church is something
3 that I can agree with in terms of the nature of why it's unique.

4 In terms of the other areas of relief, I don't really
5 have any questions about it. I do appreciate why the penthouse
6 setback is there and why it's required, and that it's going to
7 be only really seen from that little corner area of the alley if
8 you're back there. And so I was not -- that it can't be seen
9 from the public space area, the sidewalks. So that was another
10 area that I was at least somewhat curious about.

11 And then the lot occupancy, I do appreciate the
12 explanation as to why it was being triggered from that one unit
13 on the ground floor. And I will also agree with the analysis
14 that the Office of Planning has provided and give them great
15 weight. And I do appreciate also that the Applicant has reached
16 out to the ANC, and it seems like has been working with them.
17 And I will be in support of this project.

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

19 COMMISSIONER BLAKE: Chairman, I actually don't have
20 anything to add. I think that this applicant meets the burden
21 of proof for approval. It's a very thorough presentation, as you
22 talked about and went through all the specifics. I also thought
23 the Office of Planning's report did very well support that as
24 well.

25 I do think the TDM and LMP plans should be incorporated

1 into the order via reference to Exhibit 33, specifically for the
2 loading management plan on page 32 and 33, and on the TDM plan
3 presented on page 35 and 36. Otherwise, I think it's in very
4 good order, and I would be in support of the application.

5 CHAIRPERSON HILL: Thank you, Mr. Blake, and thank you
6 for the referencing and clarification concerning the TDM and LMP
7 plan, as well as the exhibit.

8 Vice Chair John, do you have anything you'd like to
9 add?

10 VICE CHAIR JOHN: Nothing very much. I do appreciate
11 that very thorough briefing from the Applicant, because I too was
12 not quite clear on the variance for the 20 percent slope in the
13 ramp, but I'm satisfied with the explanation given.

14 I believe DDOT is requesting that the Applicant close
15 existing curb cuts, and that's not within the Board's purview to
16 require that. And so to the extent that we include the TDM plans
17 and the loading -- not the loading management plan, but the TDM
18 plan, we should not include that provision. And we should also
19 delete any reference to the life of the project because the
20 condition would run with the land for the duration of the zoning
21 relief. So it creates some confusion in the minds of the
22 Applicant and others as to what -- as to the effect of the Board's
23 approval of the relief. So based on those two comments, I am in
24 support of the application.

25 CHAIRPERSON HILL: Okay. Thank you.

1 Commissioner Stidham?

2 COMMISSIONER STIDHAM: I echo Board Member John and am
3 prepared to support.

4 CHAIRPERSON HILL: Thank you. All right. I'm going
5 to make --

6 COMMISSIONER STIDHAM: Sorry. My Alexa seemed to think
7 that I was talking to it and added on to this conversation.
8 Apologies.

9 CHAIRPERSON HILL: Great. Thank you. All right. I'm
10 going to make a motion to approve Application No. 21208 as
11 captioned and read by the secretary, including reference -- or
12 inclusion of conditions in Exhibit 33, which is the TDM and LMP
13 plan on pages 32 and 33, and 35 and 36, excluding the condition
14 concerning the curb cut and language for the life of the project.
15 And add a second -- and ask for a second. Ms. John?

16 VICE CHAIR JOHN: Second.

17 CHAIRPERSON HILL: The motion made and seconded. Mr.
18 Secretary, if you take a roll call, please?

19 MR. HAMALA: When I call your name, please respond to
20 the Chair's motion to approve the application with the conditions
21 as read by the Chair. Chairman Hill?

22 CHAIRPERSON HILL: Yes.

23 MR. HAMALA: Vice Chair John?

24 VICE CHAIR JOHN: Yes.

25 MR. HAMALA: Mr. Blake?

1 COMMISSIONER BLAKE: Yes.

2 MR. HAMALA: Commissioner Stidham?

3 COMMISSIONER STIDHAM: Yes.

4 MR. HAMALA: Staff would record the vote as 4-0-1 to
5 approve Application No. 21208 with conditions on the motion made
6 by Chairman Hill and seconded by Vice Chair John.

7 CHAIRPERSON HILL: Okay. Thank you. All right. If
8 we could actually just take a quick ten, fifteen minutes. And
9 then I know that we're going to have to stop again at 1:15. So
10 we're basically going to get started a little bit, and then we'll
11 probably take the break, have lunch, and then come back for the
12 continuation of the last case. If anybody has an issue with
13 that, please raise your hand.

14 Okay. All right. I'll see you guys in about, like,
15 ten, fifteen minutes. Thank you.

16 (Whereupon, there was a brief recess.)

17 CHAIRPERSON HILL: Okay. Great. Mr. Secretary, if you
18 could call us back in and then call our next case, please?

19 MR. HAMALA: The Board is back from a brief break into
20 its hearing session for the last case of the year. And that is
21 Application No. 21224 of Ai Pop Up, LLC, and as amended, this is
22 a self-certified application for special exceptions under
23 Subtitle X 901.2 from Subtitle U Section 801.2(c), to allow an
24 eating and drinking establishment with live performance,
25 nightclub, or dance venue; and under Subtotal U 802.1(e) to allow

1 entertainment, assembly, and performing arts uses. And then it
2 is -- has two variances under Subtitle X -- area variances under
3 Subtitle X Section 1002 from Subtitle U Section 802.1(c)(2) to
4 allow an eating and drinking establishment with a live
5 performance, nightclub, or dance venue at a property abutting a
6 residential use or residential zone; and from Subtitle U Section
7 802.1(e)(2) to allow entertainment, assembly, and performing arts
8 uses at a property abutting a residential use or residential
9 zone.

10 And then there's a quick preliminary matter that I
11 think will clarify some of the relief. The Applicant submitted
12 a motion for a late filing to amend their relief back to what
13 was originally captioned by OZ. And that would just be for the
14 special exception and area variance from the entertainment,
15 assembly, and performing arts usage requirements. But I think
16 the Applicant can better explain and articulate what the relief
17 they're seeking now is.

18 CHAIRPERSON HILL: Okay. Great. So a couple of
19 things --

20 MR. HAMALA: And this is for entertainment use is in
21 PDR-1 zone at 530 Penn Street NW, Square 3404, Lot 6. All right.

22 CHAIRPERSON HILL: Okay. Thanks. Let me see. Ms.
23 John, you are with us, correct?

24 (No audible response)

25 CHAIRPERSON HILL: Okay. Great. Perfect. So that's

1 one. Next, could the Applicant please introduce themselves for
2 the record?

3 MS. MOLDENHAUER: Good afternoon. Meridith Moldenhauer
4 from Cozen O'Connor here on behalf of the Applicant. We have a
5 full team with us. And I will see if the ownership team from
6 EDENS and the UM 500 Penn Street can introduce themselves.
7 They're also here today with Co-Counsel Jeff Utz as well, and two
8 representatives, one from Ai Pop Up and one from Songbyrd. So
9 if we can start off and have everybody just unmute yourself and
10 introduce yourself with your business address.

11 CHAIRPERSON HILL: Okay. Let me start with Mr. Utz.

12 MR. UTZ: Thank you, Chairman Hill. I'm Jeff Utz with
13 Goulston and Storrs. I'm land use counsel for the owner of the
14 properties at 1999 K Street NW.

15 CHAIRPERSON HILL: Okay. Thank you. And Mr. Allen?

16 MR. ALLEN: Hi. Thank you. Reynolds Allen with EDENS,
17 owner of the property.

18 CHAIRPERSON HILL: Thank you. And I'm sorry, is Mr.
19 Ragonese?

20 MR. RAGONESE: Ragonese. Alex Ragonese with EDENS, the
21 owner of the property. Our offices are at 1272 5th Street NE.

22 CHAIRPERSON HILL: Okay. Great. Okay.

23 So Ms. Moldenhauer, I guess if you -- there's a couple
24 of things that I think the Board needs to kind of talk through a
25 little bit, I think, and we'll see how it goes, and also what

1 the Office of Planning had done. So if you can reclarify what
2 it is that is the relief that you all are requesting. And then
3 I guess there was -- if I'm mistaken, you all are adding another
4 property to this application, I think, and that may or may not
5 be right. You can kind of -- the Ai Pop Up, like, I don't know
6 if -- what I'm also trying to get at is what was noticed and what
7 wasn't noticed and how it was noticed. And it is things that
8 the Board can waive; however, I'm trying to understand what the
9 Board may or may not be waiving. And then in addition to that,
10 is what you presented to the ANC and the Office of Planning what
11 you have before us, meaning including the Ai Pop Up?

12 Go ahead, Ms. Moldenhauer.

13 MS. MOLDENHAUER: Sure. And yes, we also have Nayef
14 Issa from Ai Pop Up as a representative here today on the call
15 as well, as well as Joe Lapan from Songbyrd. I just wanted to
16 make sure that they were introduced as well on the call.

17 I'm happy to walk through the relief. We have been
18 working extensively with the zoning administrator as well as
19 Office of Planning and the ANC to clarify this relief. We
20 appreciate the Board having actually expedited this case, given
21 the unique situation upon which we are here, which were notices
22 from the zoning administrator and the Department of Buildings
23 regarding prior C of O's that had been issued erroneously by the
24 Department of Buildings. But we are here -- and actually we've
25 limited it and made it very easy to kind of, I think, understand.

1 We're here for two areas of relief, and they are both
2 the same areas of relief for both Ai Pop Up and Songbyrd. It is
3 special exception relief under U 802.1(e), and that is for the
4 entertainment and assembly use. And then it is variance relief
5 under U 802.1(e)(2) also for -- under the entertainment and
6 assembly use for Ai Pop Up and Songbyrd, and that is from the
7 specific condition for having this use located on a lot that
8 abuts residential or residential zoned property -- to that in our
9 presentation as we move forward.

10 From a notice perspective, this is one single lot. So
11 from a noticing perspective, while the addresses are both 530 and
12 550 -- 530 for Ai Pop Up and 5 -- sorry -- 540 for Songbyrd,
13 they're all part of one single record lot. And so from a notice
14 perspective, that notification has always followed that
15 individual record lot.

16 We did supplement the record to include Songbyrd as
17 part of this relief, but again, because they're on the same lot,
18 the notice follows through in regards to the special exception
19 and the variance relief. We did include the disclaimer about
20 Songbyrd on the physical poster board that has been posted at the
21 property in accordance with your regulations.

22 CHAIRPERSON HILL: Repeat that. Repeat that part, Ms.
23 Moldenhauer. I'm sorry.

24 MS. MOLDENHAUER: The relief for both Ai Pop Up and
25 Songbyrd was both noticed and written out in the placard that was

1 posted --

2 CHAIRPERSON HILL: On the placard.

3 MS. MOLDENHAUER: -- at the property.

4 CHAIRPERSON HILL: Okay.

5 MS. MOLDENHAUER: In our final presentation to the ANC
6 on November 12th, we did incorporate the relief requested for
7 Songbyrd and explain that we were requesting the special
8 exception and the variance relief for both Songbyrd and Ai Pop
9 Up. And so they have a resolution -- I don't know if the Board
10 saw that -- at Exhibit 35 in the record.

11 CHAIRPERSON HILL: Yeah. We saw it. Or at least I
12 saw it. Okay. So the relief that you're requesting, again, is
13 all that is listed within the Office of Planning's report?

14 Did I lose Ms. Moldenhauer? Can you all hear me?

15 UNIDENTIFIED SPEAKER: Yes, we can.

16 CHAIRPERSON HILL: Great. Ms. Moldenhauer, did you
17 hear my question?

18 MS. MOLDENHAUER: I did not. I think I had a technical
19 issue, so if you could repeat the question --

20 CHAIRPERSON HILL: Okay. Sure.

21 MS. MOLDENHAUER: -- Chairman Hill? Thank you.

22 CHAIRPERSON HILL: I said that the -- I didn't write
23 it all down. So like, the relief that you all are requesting is
24 what you're saying is in the Office of Planning's report, correct?

25 I lost her again.

1 MR. UTZ: So I think it's slightly different in that
2 the OP report references Subsection C, and we are requesting
3 relief from two instances of Subsection E. So it's generally the
4 same, it's just a -- which portion of Subtitle U Section 802.1
5 we're using, (c) or (e). So there's some variation in that. But
6 we are currently using Subsection E, which relates to live music
7 venues. But it's the same special exception concept within the
8 use regulations of the PDR zone. But otherwise the OP report is
9 in accordance with our request, yes.

10 CHAIRPERSON HILL: Okay, Mr. Utz. Okay.

11 Ms. Moldenhauer, can you hear me again?

12 MS. MOLDENHAUER: Yeah.

13 VICE CHAIR JOHN: So Mr. Chairman, if I could follow
14 up. So 802.1(e)(2) is for a variance, because it's so close to
15 a residential zone. Did I get that right, Mr. Utz?

16 MS. MOLDENHAUER: Ms. John, yes.

17 VICE CHAIR JOHN: Okay. Thank you. So if you could
18 just one more time repeat what is being requested for me so I
19 can follow along as you --

20 MS. MOLDENHAUER: Sure. It is special exception relief
21 from U 802.1(e) for both Songbyrd and Ai Pop --

22 CHAIRPERSON HILL: Slow down. Special exception relief
23 from --

24 MS. MOLDENHAUER: U 802.1(e) --

25 CHAIRPERSON HILL: Okay.

1 MS. MOLDENHAUER: -- for both Ai Pop Up and Songbyrd.
2 And that is to permit the entertainment, assembly, and performing
3 arts use.

4 CHAIRPERSON HILL: Okay.

5 MS. MOLDENHAUER: And then variance relief under U
6 802.1(e)(2) for both Ai Pop Up and Songbyrd, which as Board Member
7 John said it is variance relief because the special exception
8 condition requires that the entertainment use shall not abut a
9 residential use or zone. And we were asking for variance relief
10 for that.

11 CHAIRPERSON HILL: Go ahead, Mr. Blake.

12 COMMISSIONER BLAKE: I just want to clarify the fact
13 that -- so the eating and drinking establishment is the
14 difference between the two, and as I understand it, Songbyrd
15 already has that. Is that why that's removed from it as opposed
16 to the total?

17 MS. MOLDENHAUER: Correct, Board Member Blake. We had
18 had a conversation and received an email the day after -- or the
19 evening after Office of Planning filed their supplemental report,
20 from the zoning administrator. And we originally were under the
21 impression that Songbyrd, because it currently has a restaurant
22 C of O, could fall under the eating and drinking establishment
23 with live music section, which is Subtitle C. We were clarified
24 and were told by the zoning administrator that no, based on their
25 current operation, that -- they need to fall under C. And so

1 that's where that change occurred between the OP report and our
2 supplemental filing before this hearing today.

3 COMMISSIONER BLAKE: Okay. Thank you for that
4 clarification.

5 CHAIRPERSON HILL: Okay. I'm going to do this. Does
6 anybody have any -- I want to talk to the Office of Zoning's
7 Legal Department, just so I can make sure I do all this properly
8 and that I know what I'm doing. And so I'm going to go talk to
9 them, and then that will make us probably get near the 1:15
10 cutoff. So what probably is going to happen -- we'll go talk to
11 the Office of Zoning Legal Department. I'll come back and
12 basically excuse everybody.

13 And Ms. Moldenhauer, can you send an email to the staff
14 listing the requested relief the way you just said it, so I know
15 what I'm looking at?

16 MS. MOLDENHAUER: I will definitely -- it's also part
17 of our PowerPoint on Slide 10, but I'll send a email right now
18 to the zoning staff.

19 CHAIRPERSON HILL: Okay, great. Thank you. All right.
20 I am going -- as chairperson of the Board of Zoning Adjustment
21 for the District of Columbia, and in accordance with 407 of the
22 District of Columbia Administrative Procedures Act, I move that
23 the Board of Zoning Adjustment hold a closed emergency meeting
24 on December 18th, 2024, for the purposes of seeking legal advice
25 on Case No. 21224, deliberate but not vote on Case 21224. Is

1 there a second? Ms. John?

2 VICE CHAIR JOHN: Second.

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

5 MR. HAMALA: When I call your name, please respond to
6 the Chair's motion to hold an emergency closed meeting with OZLD.
7 Chairman Hill?

8 CHAIRPERSON HILL: Yes.

9 MR. HAMALA: Vice Chair John?

10 VICE CHAIR JOHN: Yes.

11 MR. HAMALA: Mr. Blake?

12 COMMISSIONER BLAKE: Yes.

13 MR. HAMALA: Commissioner Stidham?

14 COMMISSIONER STIDHAM: Yes.

15 CHAIRPERSON HILL: All right. The motion has been
16 approved to hold that emergency closed meeting as motioned by
17 Chairman Hill and seconded by Vice Chair John.

18 CHAIRPERSON HILL: Thanks. Mr. Hamala, if you can go
19 ahead and send me again the reading for the closed meeting, that'd
20 be helpful. And we're getting closer and closer to when we're
21 taking a break anyway. So Ms. Moldenhauer and your parties here,
22 I know that it has to be 1:15 -- let's say 2 o'clock, okay? We'll
23 just come back at 2 o'clock together so that you all know, okay?

24 MS. MOLDENHAUER: Thank you very much.

25 CHAIRPERSON HILL: All right. I'll see you all in the

1 next hearing -- or meeting.

2 (Whereupon, there was a brief recess.)

3 CHAIRPERSON HILL: Okay. Mr. Secretary, you can call
4 us back in. And I believe -- if you can read the caption the
5 way we believe the Applicant is now putting before us. And
6 then -- that'd be great.

7 MR. HAMALA: The Board has returned after recess from
8 its closed meeting and lunch break, and the Board is back in its
9 meeting -- hearing session to hear Application No. 21224 of Ai
10 Pop Up, LLC, and it's seeking special exception relief under
11 Subtitle X Section 1.2 from under the entertainment, assembly,
12 and performing arts use requirements of Subtitle U Section
13 802.1(e); and for an area variance from the entertainment,
14 assembly and performing arts uses requirements of Subtitle U
15 802.1(e)2 pursuant to Subtitle X Section 1002. And this is to
16 permit an entertainment use in an existing attached office in the
17 PDR-1 zone at 530 Penn Street NW, Square 3404, Lot 6.

18 CHAIRPERSON HILL: Okay. Thank you. Can you all hear
19 me?

20 (No audible response)

21 CHAIRPERSON HILL: Okay. Thank you. So I'm going to
22 say a couple of things, and I think we can move forward after
23 having an opportunity to consult with OZLD. But as I'm thinking
24 about this, I wanted to let the Applicant know -- in terms of
25 the variance, again, the argument should be a little bit geared --

1 not a little bit -- geared towards the impact and detriment to
2 the owner. And that is something to focus upon as we're kind of
3 moving forward with this.

4 In terms of the notice, it seems as though each placard
5 was put on each building, and that notice was given to the ANC
6 in the proper time for the correct -- or for the correct relief
7 that is currently being asked for. And the only thing that
8 probably should have been a little bit -- for clarity, was the
9 name of the property owner and not the two establishments, Ai Pop
10 Up and Songbyrd. However, it seems as though if there are any
11 other notification issues, we -- I -- the Board can waive those.
12 And so that is what I'm proposing to do and -- yes. That's it.
13 Okay.

14 So I'm going to go ahead and ask the Applicant to go
15 ahead and move forward with their argument, again, providing a
16 little bit more clarity on the use variance and the issues with
17 the property owner. And I will turn to you, Ms. Moldenhauer,
18 whenever --

19 Oh, I'm sorry. Ms. John, you had your hand up?

20 VICE CHAIR JOHN: Yes, Mr. Chairman. I was not clear
21 about the notice to the ANC. What was provided to the ANC and
22 when was it given?

23 CHAIRPERSON HILL: Okay. And I just want to make sure
24 I'm clear on this as well. I thought that the ANC got the
25 original notice for what was captioned by the secretary just now.

1 Is that correct, Ms. John -- Ms. Moldenhauer?

2 MS. MOLDENHAUER: The ANC -- so the secretary just read
3 what was on Exhibit 21, which included the correct area of relief,
4 and that was notice to the ANC. And we did present to the ANC
5 on November 12th and did outline both the relief for the
6 operations at 530 and 540. But by the secretary, there are Lot
7 6, and they're all owned by the same owner.

8 VICE CHAIR JOHN: One follow-up. And in the
9 presentation to the ANC, did the Applicant address the burden on
10 the owner if the relief was not being granted? Or was it
11 presented in terms of the Applicants -- well, in this case
12 Songbyrd and the other one.

13 CHAIRPERSON HILL: Ai Pop Up.

14 VICE CHAIR JOHN: Ai Pop Up.

15 MS. MOLDENHAUER: So Mr. Allen, on behalf of the
16 ownership, was present at all three ANC meetings and did express
17 the practical difficulty and challenges of the relief that would
18 be bestowed upon the owner as a pass through from the tenants
19 that -- obviously it currently has tenants in this property. And
20 so we do think that obviously it was appropriately explained, and
21 as I said the ownership entity was present at all three ANC
22 meetings.

23 VICE CHAIR JOHN: Okay. Thank you.

24 CHAIRPERSON HILL: Okay.

25 All right. Ms. Moldenhauer, you can begin whenever you

1 like.

2 MS. MOLDENHAUER: Wonderful. If Mr. Young or whoever's
3 controlling could pull up our PowerPoint presentation? Thank
4 you. Next slide?

5 So the property that we are referring to today is Lot
6 6, and we are speaking specifically about the property owner, UM
7 500 Penn Street NE, LLC, and the two leases that it has at that
8 property for 530 and 540 Penn Street, which is located in the
9 PDR-1 zone in the heart of Union Market. As you can see, it
10 abuts property owned -- that is federally owned and operated as
11 identified in Square 3594. Next slide.

12 I'd like to turn it over for a brief moment for Mr.
13 Reynolds Allen to introduce the property ownership, some
14 background, obviously, on their community outreach, as well as
15 providing an understanding of its relationship to the two
16 tenants. Thank you.

17 MR. ALLEN: Thank you, Meridith. Thank you all for
18 giving us an opportunity to present today. My name is Reynolds
19 Allen, managing director for EDENS. We are the owner of the
20 property we are discussing today. We also own properties on
21 either side of the site, where our ownership extends from New
22 York Avenue to 4th Street, all the way to 6th Street NE as well.

23 As Meridith mentioned, and I think in relation to the
24 questions around difficulty for ownership, these -- both these
25 spaces were vacated during COVID and remained vacated for quite

1 a period of time. So it's nice to have businesses back in place.
2 Where Ai Pop Up was was a large office use, and where Songbyrd
3 is was a -- was a food and beverage establishment. Both of the
4 new operators that we've been able to secure for this site are
5 both local businesses. And Songbyrd has been, I think, in a --
6 they have a business that has been well-adopted and loved by the
7 community. Both these businesses really meet the vision of the
8 overall area, and both are additive to bringing culture and
9 entertainment to the District.

10 As the owners of these -- of this and the properties
11 on either side, when we think about what we're doing here, we
12 think holistically about the two blocks in their entirety and how
13 they all fit together. As Meridith mentioned, we did have, and
14 I did attend, all ANC meetings. We always keep a very open line
15 of communication with the ANC, make sure that we are there to
16 address any questions online or offline. We did have those
17 meetings and those discussions, and the ANC did vote in support
18 of the items that we're here requesting today.

19 MS. MOLDENHAUER: Thank you very much, Mr. Allen. Next
20 slide?

21 If Joe Lapan just wants to introduce himself and
22 provide a brief background on Songbyrd? Joe, are you available
23 to come off mute and turn on your camera?

24 MR. LAPAN: Yeah. You got me?

25 MS. MOLDENHAUER: Yep. Got you.

1 CHAIRPERSON HILL: Yeah. Did you introduce yourself,
2 sir?

3 MR. LAPAN: Did I or can I? I'm happy to do so.

4 CHAIRPERSON HILL: Yes, please. Go ahead. And can you
5 turn -- oh, great. Perfect.

6 MR. LAPAN: Joe -- Joseph or Joe Lapan, co-owner of
7 Songbyrd. We started in Adams Morgan 2015. For a variety of
8 reasons, including COVID times being one of them, Union Market
9 and EDENS is our partner now, and our landlord has been at this
10 location. That's me. Happy to answer any questions or say more
11 as directed.

12 MS. MOLDENHAUER: Thank you so much. I appreciate it.
13 And if Nayef Issa can come off of mute and just introduce yourself
14 and provide a brief introduction to Ai Pop Up?

15 MR. ISSA: Hi. I'm Nayef Issa. I'm a co-owner of Ai
16 Pop Up. Ai Pop Up is a multi-dimensional event space, curating
17 private events, experiential events, music events. That's it.

18 MS. MOLDENHAUER: Thank you so much. And so as you can
19 see here, members of the Board, both of these spaces are all
20 located on one single record lot, Lot 6. Lot 6 has three
21 different structures and uses. We have, in blue, Songbyrd; in
22 pink or salmon color, Ai Pop Up; and then we have a Maurice Office
23 component, which is an office component, which is a -- under the
24 PDR-1 zone, you're permitted to have multiple primary structures
25 on a single given lot. And so there's a separate structure,

1 which is an office use, which separates these uses from any other
2 abutting sites. Next slide, please?

3 So as indicated, this is an application which is -- as
4 a board sometimes sees, it's a retroactive application. So we're
5 trying to describe what the uses and the property was. To go to
6 Board Member John's question about practical difficulty and
7 challenge here, Ai Pop Up's site was a previous vacant office
8 building that was vacated and -- long vacated through COVID. And
9 Ai Pop Up came in and coordinated with the ownership, and the
10 ownership obviously was looking forward to occupying that space
11 pursuant to the Department of Building's new short-term program
12 to allow for entertainment pop up uses.

13 Songbyrd has been operating and under a lease with the
14 property owner since 2021, when they moved to this location and
15 did receive a certificate of occupancy for a restaurant use, and
16 has been operating as an event space with restaurant food and
17 drink. And they also were subject to unique historic building
18 permit issues when they received a correction order from the
19 Department of Buildings in November 7, 2024. Next slide?

20 So obviously we are relying on Oakland Condo v. the
21 Board of Zoning Adjustment, which determines that, from a
22 variance perspective, the detrimental reliance on building permit
23 history and certificates of occupancy can lead to the unique and
24 exceptional condition. Here, in June 26 of 2024, the Department
25 of Building issued the Applicant a temporary C of O for assembly

1 use for art and music activation for an Ai Pop Up use. Ai Pop
2 Up organized several events that they coordinated and began to
3 hold on September, 2024. Obviously, they had entered into a
4 lease which included different factors in regards to tenant
5 improvements and obviously the ability for them to pay their
6 leases -- or subject to increase the direct detrimental reliance
7 for their ability to host these types of events.

8 In September 25th, 2024, the Department of Buildings
9 informed the Applicant that the certificate of occupancy had been
10 issued in error and that they must seek this special exception
11 relief under Subtitles E -- I'm sorry, 802.1(e). And so they
12 immediately filed the application. The Board granted the ability
13 for them to expedite the case as they have multiple events that
14 they are continuing to try to operate, and they utilize a proper
15 certificate of occupancy. As anticipated, there is requirements,
16 obviously, for any tenant to have the proper licensing under any
17 leases with the property owner.

18 In addition to that, on November 7th, 2024, the
19 Department of Buildings informed the Applicant that relief was
20 also needed for Songbyrd, another tenant on the lot here. After
21 receiving that information, the Applicant filed a pre-hearing
22 statement to incorporate Songbyrd, which, again, is located on
23 the same lot, Lot 6, as this application. Next slide?

24 The parent corporation, EDENS, has developed The MO on
25 your far left, which is a mixed-use apartment building, and was

1 subject to a PUD, and was formerly PDR-1. That residential use
2 is separated from the property here given the unique layout of
3 Lot 6, where it is separated, as you can see, from the green use,
4 the Maurice Office component, which is an office use located in
5 green on Lot 6. The two uses that we are seeking special
6 exception relief and variance relief from are the red and blue,
7 which is the Ai Pop Up and Songbyrd location. Next slide?

8 Here you can see the relationship of -- in red, the
9 dotted red line, the Ai Pop Up and Songbyrd spaces, as it relates
10 to the MO, which is, from a lot perspective, the abutting
11 residential use. And the abutting RF-1 use, which is currently
12 not being used for residential purposes but has long -- going
13 back historically on historic maps, going back pre-1958, been
14 used and owned by the federal government. It is the location
15 for the United States Park Police facility. It is an industrial
16 and commercial location for storage for that facility. Next
17 slide?

18 The closest RF-1 actual residential use is over 1,845
19 feet from the property. To the south of the site, you have
20 Gallaudet. You also have D.C. public school uses, none that are
21 obviously residential in nature. And so that also leads to the
22 practical difficulty and the uniqueness of this site as it relates
23 to the specific variance relief being requested. Next slide?

24 So as we've talked about a little bit already this
25 morning or this afternoon, the specific relief that we're asking

1 for is we're asking for special exception relief, which is
2 permitted to be allowed in the PDR zone under X 901.2 for
3 entertainment, assembly, and performance arts use, for both Ai
4 Pop Up and Songbyrd on behalf of the property owner, the
5 Applicant. This is under U 802.1(e), and variance relief under
6 the sub-conditions. The Applicant meets all of the sub-
7 conditions except for one. That is that the entertainment use
8 shall not abut a residential use or zone. And so we are seeking
9 variance relief from that. Next slide?

10 We believe that we have satisfied the special exception
11 conditions under this section given the fact that the use would
12 be in harmony with the general purpose and intent of the zoning
13 regulations. The proposed use is permitted by special exception
14 in the RF-1 zone. We also believe that the district-wide policy
15 to encourage infill and to address, obviously, some of the
16 challenges that occurred during COVID, given that these were
17 prior vacant office spaces, is satisfied from the general purpose
18 and harmony of the zoning regulations. In addition to that, the
19 relief would not tend to adversely affect the use of neighboring
20 properties, as this is a vibrant mixed-use area that makes up
21 Union Market, and that the proposed use would not anticipate to
22 have any impact on adjacent property owners. Next slide?

23 Under the special exception sub-conditions, we believe
24 we satisfy all of them except for the one area that we're asking
25 for variance relief from. The first sub-condition is that the

1 use would not likely become objectionable to neighboring
2 properties because of noise, traffic, parking, loading, number
3 of attendees, waste control, or any other conditions. And we
4 believe the proposed use has anticipated to take place primarily
5 inside these structures, that the longstanding ownership of EDENS
6 and their relationship in the community obviously leads them to
7 have a very clear understanding of the needs, and ensure that
8 they are obviously protecting and taking care of all these issues
9 to not adversely impact other properties that they both own or
10 have developed in the area.

11 In addition to that, we think that majority -- as we
12 know from the operations -- obviously since Songbyrd has been
13 operating since 2021 and Ai Pop Up has been operating when it
14 got issued its building permit, that they're able to operate with
15 individuals walking, residents coming, and kind of utilizing the
16 already vibrant community of Union Market.

17 The second prong is a condition that we are actually
18 seeking variance relief from, which is that the property shall
19 not abut a residential use or zone. So I'll address that in a
20 moment. And the next -- the third prong on the slide here is
21 that no property containing a live performance, nightclub, or
22 dance venue, either in the same square within 1,000 feet of any
23 other portions of your property. This is one of the areas that
24 we had originally asked for relief from, which we then removed,
25 leading to some of the confusion earlier. But that's because we

1 had extensive and very positive meetings with the zoning
2 administrator, and the zoning administrator, in a letter that's
3 part of your record now, confirmed that the Applicant does not
4 need to request that relief, given the fact that the two uses
5 are both located on lot 6. And since they're on the same lot,
6 this section is compliant, and we do not need variance relief
7 from it. Next slide.

8 Additional conditions that may be required. In
9 regards, the Applicant has proffered that there will be no
10 external performances or amplification. And obviously if the BZA
11 feels that there's additional conditions that may be required,
12 the Applicant would obviously work with the Board to consent to
13 those. Next slide.

14 We now move on to the variance relief upon which -- we
15 are seeking it under X 1000.1 for Subtitle U 802.1(e)(2). And
16 again this is the sub-condition (e)(2), which talks about a
17 entertainment use not abutting a residential use or a residential
18 zone. And we believe that the property is exceptional and unique
19 based on a confluence of factors that does go to the property
20 ownership. The fact that one, the property does abut a federally
21 owned land, that even though it's zoned RF-1 has been federally
22 owned for years and is actually utilized by the United States
23 Park Police for federal, commercial, almost industrial-type of
24 storage and repair uses.

25 We also believe that the unique configuration of the

1 property having multiple different structures and the fact that
2 the Maurice Office component separates the entertainment use from
3 The MO, which is the residential building, is a unique
4 configuration of the lot that creates the uniqueness and the
5 practical difficulty here. We also believe that the property
6 owner, as the individual that has leased these spaces and has
7 been -- requires that its tenants comply with all regulations and
8 have all proper certificates of occupancy, has uniquely been
9 burdened by the detrimental reliance on the Department of
10 Building's issuance of certificates of occupancy for Ai Pop Up
11 and then its subsequent revocation and hold on those permits,
12 subject to this BZA application, as well as the fact that Songbyrd
13 was operating since 2021 and just recently received this
14 notification of the need to seek this relief.

15 We believe that all of those factors create a practical
16 difficulty that creates -- that is a detriment to the property
17 owner, and that there would be no substantial detriment to the
18 public good. And obviously also that these uses have been
19 operating in a way and that the ANC has been aware of this and
20 is supportive. And that they do support the overall Union Market
21 goal and initiative of a vibrant community occupying previously
22 vacant office space. Next slide?

23 As indicated previously, we attended three ANC
24 meetings. The ANC 5D has a sub-zoning committee. We attended
25 that on October 17th, 2024. We attended the Committee of a Whole

1 meeting, which is their executive committee meeting, on October
2 22nd. And then we presented to the full ANC on November 2nd and
3 received their support in the record. And their support in the
4 record is currently filed late, but in the record and at
5 Exhibit -- one moment, please -- sorry. Exhibit 35. Just
6 checking my notes there. And we also have the Office of
7 Planning's report, which also recommends support. And I would
8 just note that the Office of Planning's report at Exhibit 27 does
9 identify the specific use of -- the special exception relief
10 under 802.1(e) for both uses. And then the difference is --
11 under the Exhibit 27, they had included relief under Subtitle
12 (e)(2) and (4). So (4), which was that thousand square foot,
13 which now the zoning administrator said we don't need anymore.

14 And then they, in their Exhibit 30, indicated that they
15 clarified the relief, but they did include the relief for the
16 restaurant use, which we're now saying is no longer necessary.
17 We're just simply sticking with the assembly used for both
18 operators.

19 Happy to clarify those issues, but we believe that
20 we've satisfied the standards and are happy to answer questions.
21 So next slide. That concludes our presentation.

22 CHAIRPERSON HILL: Okay. Thank you for your
23 presentation. Before I get to the Board, could I hear from the
24 Office of Planning?

25 MR. LAWSON: Hi. Good afternoon, Mr. Chair and members

1 of the Board. I'm not sure if my video is working. But this is
2 Joel Lawson with the DC Office of Planning. I'm essentially
3 going to stand on the record. The OP has submitted two reports
4 in this case. The first one was our understanding of the original
5 application. We submitted an amended report subsequently, which
6 was based on what, at the time, we thought was the relief that
7 was being requested. I understand that the relief has been
8 amended subsequently.

9 However, our report does include analysis of the relief
10 that continues to be requested. And we believe that the Applicant
11 has sufficiently met the test for approval of that relief, and
12 so we support this application. I would note also that -- our
13 report also notes that DDOT informed OP that they have no concerns
14 with this application as well. Thanks.

15 CHAIRPERSON HILL: Thank you, Mr. Lawson. I'm going
16 to turn the Board in one second. I'm just going to see -- is
17 there anybody here with you -- is there anyone here wishing to
18 testify, Mr. Young?

19 MR. YOUNG: Yes. We have one witness.

20 CHAIRPERSON HILL: Okay. Let's go ahead and hear from
21 the witness. What's the witness's name, Mr. Young?

22 MR. YOUNG: Eduardo Nunez.

23 CHAIRPERSON HILL: Oh, great. Okay. Mr. Nunez, can
24 you hear me?

25 (No audible response)

1 CHAIRPERSON HILL: Mr. Nunez, can you hear me?

2 MR. NUNEZ: Okay. I am now unmuted. Apologies.

3 CHAIRPERSON HILL: Great. That's all right. You want
4 to go -- is your camera working? That's fine if it's not. I'm
5 just asking.

6 MR. NUNEZ: It is.

7 CHAIRPERSON HILL: Great.

8 MR. NUNEZ: I didn't have the option to turn it on
9 until just now.

10 CHAIRPERSON HILL: There you go. Mr. Nunez, if you
11 want to go ahead and introduce yourself for the record, and as a
12 member of the public, you'll have three minutes to give your
13 testimony. And you can begin whenever you like.

14 MR. NUNEZ: Absolutely. Thank you all so much. My
15 name is Eduardo Nunez. I'm a resident of the neighborhood. I
16 live in Northeast DC. I live very close to Union Market and to
17 Songbyrd, and I wanted to speak a little bit about the impact
18 Songbyrd has had on the neighborhood and my relationship to it
19 as a resident of the neighborhood.

20 So from 2021 to 2024, I lived at 331 N Street NE.
21 That's the Press House building. It's square in the heart of
22 the Union Market District. And I chose to live there because I
23 really valued the fact that this neighborhood provides a wide
24 range of options for entertainment, retail, and businesses, both
25 during the day and in the evening. More recently, my partner

1 and I, we were looking to buy a house, and we knew we wanted to
2 stay in this neighborhood exactly for those reasons, because we
3 think Union Market offers such a vibrant mix of daytime
4 programming and nightlife. And so now we live just a few blocks
5 away on 9th Street.

6 We go to Union Market frequently and we frequent
7 businesses in and around that District, often multiple times a
8 week. And it's my sense that venues like Songbyrd really do a
9 lot to blend in with the character and the nature of the area.
10 They contribute to the vibrancy, both sort of on a human level
11 and the economic vibrancy of the area. I'm a frequent customer
12 of Songbyrd, and I really view it as an essential part of D.C.'s
13 arts and culture scene. I've attended numerous concerts there,
14 too many to count, but also other community gatherings, social
15 events. To me, it's really a staple of this part of D.C. and
16 really critical for those of us who seek live music events with
17 with great food. I'll mention the yucca fries in particular. I
18 think their kitchen does a wonderful, wonderful job with those,
19 and if you haven't tried those, I would highly recommend them.

20 I've attended events there and in between sets I'll
21 sometimes step outside to talk to other patrons. And more than
22 once we've sort of lost track of time and realized that the music
23 inside the club had already started and we just didn't know
24 because the sound dampening is such that, even standing right
25 outside the venue, it's difficult to know that there is a live

1 band playing there. I've also watched as the patrons of the
2 venue walk down the hill on 5th Street and 4th Street, back to
3 the Metro to go to other businesses. I usually meet friends for
4 a bite or a drink before the show, and we usually linger after
5 and go to another business afterwards. So to my mind, it's really
6 a central part of driving not only foot traffic but really
7 supporting other businesses in the neighborhood.

8 As I said, I've been going to this location of Songbyrd
9 since shortly after their relocation, which I think was in the
10 summer or early fall of 2021. And in my experience, the venue's
11 really well-suited to the area and to that block in particular.
12 Living a few blocks away, I never experienced any negative impacts
13 from the venue. And as I mentioned, on the contrary, it's
14 actually made this area a -- sort of more of a nighttime
15 destination than it might have been otherwise.

16 So I just wanted to register my support for this and
17 to note that, from my perspective, both Songbyrd and Ai Pop Up
18 would really contribute positively to the neighborhood. And I
19 think it's not coincidental that this neighborhood has really
20 emerged as a critical nexus of D.C.'s many different creative
21 communities. There's no shortage of both daytime and evening
22 events that bring interested folk out. And I urge the Boards to
23 approve this BZA application. Thank you for your time.

24 CHAIRPERSON HILL: Thank you, Mr. Nunez, and thank you
25 for your testimony. As I'm sure you know, we normally only get

1 people that want to vote the other way. We rarely get people
2 that show up to say positive things about the application, because
3 that's just not the way the world works. And so I'm glad you
4 took a little time to be with us, and I'm sure you will be more
5 welcome now at your establishment.

6 MR. NUNEZ: Thank you.

7 CHAIRPERSON HILL: So all right. Does anybody have any
8 questions for Mr. Nunez?

9 (No audible response)

10 CHAIRPERSON HILL: Okay. All right. Thanks, Mr. Nunez.
11 You have a good evening.

12 MR. NUNEZ: Thanks.

13 CHAIRPERSON HILL: Okay. Mr. Young, you want to
14 excuse -- okay. All right.

15 So back to the Board. I'm looking at my Board members.
16 Where did my Board members go? Okay. Oh, I see them. The
17 squares are moving around. So does my Board have any questions
18 of the Applicant or the Office of Planning?

19 VICE CHAIR JOHN: This is for the Applicant. Please
20 remind me of the capacity for both businesses. Is it 150 people
21 for Songbyrd? Ms. Moldenhauer?

22 MS. MOLDENHAUER: Hold on. I'm not sure. I know that
23 for Ai Pop Up, they'll be obviously applying for an updated
24 certificate of occupancy in connection with, hopefully, this
25 application. And so that would be having to go through the Fire

1 Safety Code requirements for that. So we don't have that final
2 number yet until that gets approved. And I see that Joe has
3 gotten off his -- is on as well. Maybe if you can provide your
4 final C of O count, or --

5 MR. LAPAN: Yes. 150 is correct. And I believe that
6 exhibit is in the record.

7 VICE CHAIR JOHN: Thank you. And for the Ai Pop Up,
8 is that approximately the number?

9 MS. MOLDENHAUER: For Ai Pop Up, the number would be,
10 again -- based on what we are applying for, the number would be
11 higher. Let me get that number. Hold on. That number would be
12 closer to around 500. 287 based on the current C of O, but again,
13 we'd have to go through -- because we don't have a final C of O
14 yet for that. Based on what happened with the Department of
15 Buildings, we would be going through a review process if and when
16 the Board approves this application for fire and life safety
17 review.

18 VICE CHAIR JOHN: So in terms of the special exception
19 criteria -- in terms of noise, traffic, parking, loading, number
20 of attendees, I don't know if there was anything on this in your
21 burden of proof or I missed it. If not, would you address it
22 briefly?

23 MS. MOLDENHAUER: Sure. We believe that the physical
24 capacity of the structures would be the maximum limit for total
25 occupancy. We also believe that both uses have a different way

1 of operating in working hours. Ai operates with typically later
2 venues and has -- are typically event specific, whereas Songbyrd
3 operates with more frequent opportunities and has a smaller of
4 150 individuals. And therefore one, those venues will obviously
5 be positive and while most of those individuals, as indicated by
6 our wonderful Mr. Nunez who came and supported the application,
7 are typically visiting the site either from an existing
8 restaurant use and are walking to the site and gaining access.
9 And so we don't believe that the proposed number of attendees
10 would have any adverse impact on the Union Market community or
11 neighborhood.

12 VICE CHAIR JOHN: And that includes any parking impacts
13 to the neighboring residential uses?

14 MS. MOLDENHAUER: Correct, yes. And if you, again --
15 because this is a retroactive application, both of these uses
16 have been in operation now. Obviously, Songbyrd has been in
17 operation since 2021 with having no adverse impact for their
18 parking or their number of individuals. Ai Pop Up did obtain a
19 temporary certificate of occupancy and was allowed to operate
20 under that by the Department of Buildings, and there's been no
21 concern about parking or impact as well for those. And so we
22 believe that the fact that we don't have anybody in opposition
23 and we have the ANC support also lead to the conclusion that
24 there would be no adverse impact.

25 VICE CHAIR JOHN: Okay. That's it for me. Thank you,

1 Mr. Chairman.

2 CHAIRPERSON HILL: Thank you.

3 Mr. Blake?

4 COMMISSIONER BLAKE: I have two quick questions. With
5 regard to the lease terms, what are the lease terms for the two
6 tenants? The time -- just the time.

7 CHAIRPERSON HILL: When do the leases run through?

8 MR. ALLEN: Through the end of 2026 at least.

9 CHAIRPERSON HILL: The end of '26. Which one's
10 answering the question? Sorry.

11 MR. ALLEN: Reynolds Allen with EDENS.

12 CHAIRPERSON HILL: Oh, Mr. Allen. Okay.

13 COMMISSIONER BLAKE: They both run -- Mr. Allen, they
14 both run through 2026, or just Songbyrd?

15 MR. ALLEN: Both, and they have the ability to be
16 extended beyond that point.

17 COMMISSIONER BLAKE: In both cases?

18 MR. ALLEN: Yeah. They're --

19 COMMISSIONER BLAKE: Is there a different lease for Ai?
20 Different --

21 MR. ALLEN: They're different leases.

22 COMMISSIONER BLAKE: Okay. What's the term on the Ai
23 lease?

24 MR. ALLEN: Through 2026 as well.

25 COMMISSIONER BLAKE: Okay. They both are to 2026.

1 Okay. The fact that it's a temporary use is not reflected in
2 that, or is it -- is there a special program for that that's
3 different?

4 MS. MOLDENHAUER: Well, I would just say that the
5 temporary use was the original -- there was a -- the original
6 request that we were seeking under, and that's when they received
7 the certificate of occupancy. If we receive this application,
8 it would then be permitted under the special exception for
9 whatever period of time until, obviously, EDENS pursues the full
10 development of the site.

11 COMMISSIONER BLAKE: Okay. Okay. I think I've said
12 it. In the event that this application is not approved for the
13 variance, what implications would it have to the owner of the
14 property?

15 MR. ALLEN: Can you guys hear me? Seem to be freezing
16 up?

17 COMMISSIONER BLAKE: We can hear you --

18 MR. ALLEN: Can you hear me okay?

19 COMMISSIONER BLAKE: -- that the lease did not -- or
20 we did not approve this request, what implications would it have
21 for the property owner?

22 MR. ALLEN: Yeah, we'd have -- I'd say numerous -- for
23 the specific property itself, obviously, we would lose the
24 tenancy of two businesses that we are anticipating to collect
25 rental income from. It also has impact on the surrounding

1 properties, as vacancies in these properties would impact the
2 businesses surrounding it, as well as the leasing strategy and
3 the ability to produce additional leasing in the area, as well
4 as future planned development for the area. So this overall area
5 has many more residential units. It has many more -- much more
6 retail planned. There's a lot more development that we are hoping
7 to obtain, and having large vacancies in this area of the site
8 is very detrimental to that strategy.

9 COMMISSIONER BLAKE: And lastly, the intent for this
10 property is to maintain it as an entertainment venue, essentially
11 serving about 600 people up and down, or is it meant to be
12 developed into some other type of venue at some point?

13 MR. ALLEN: It is eventually meant to be redeveloped
14 into something else, hence the pop-up nature of it, and the term
15 through 2026. Assuming there's an opportunity to redevelop the
16 property in the future, we hope to do that. But I would say that
17 the community has also reached out about -- when that does happen,
18 making sure that Songbyrd and these uses have places to be.

19 COMMISSIONER BLAKE: So realistically, this is -- it
20 could be an in-perpetuity type thing if it's a successful -- the
21 venue proves to be successful for these two businesses?

22 MR. ALLEN: That's right. It could continue. That's
23 right.

24 COMMISSIONER BLAKE: Thank you.

25 CHAIRPERSON HILL: Okay. Anyone else?

1 (No audible response)

2 CHAIRPERSON HILL: So Ms. Moldenhauer, right. This is
3 already -- I got a little confused. I know it's been existing,
4 it's been there, and the community has had time to reflect upon
5 it being there and whether there's any issues. The fact that
6 the ANC has provided their input and you've gotten their support
7 tends to lead to the fact that they're not here concerned about
8 it. I was looking -- is there an office building right next
9 door, or that's the apartment building?

10 MS. MOLDENHAUER: There's an office building. So there
11 are the two uses, and then it's separated by the Maurice West or
12 Maurice component, which is an office building, which is also on
13 the Applicant lot, Lot 6. So that separates these --

14 CHAIRPERSON HILL: Yep.

15 MS. MOLDENHAUER: -- entertainment uses from The MO,
16 which is the apartment building.

17 CHAIRPERSON HILL: Okay. I understand. I mean, I
18 think most of us are familiar with the area and even familiar
19 with the venue. So okay. I don't have any further questions.

20 All right. Ms. Moldenhauer, you want to give us any
21 kind of a conclusion?

22 MS. MOLDENHAUER: Thank you so much for your time today.
23 We appreciate working with you, the Office of Planning, and the
24 zoning administrator to clarify the relief being requested. We
25 do appreciate the Board expediting this case and hopefully being

1 able to enter into deliberation, as these two uses are kind of
2 nervously waiting for this decision, having given the zoning
3 administrators a notification that they do need to seek this
4 relief in order to continue to operate.

5 And we do think that with the ANC in support, the Office
6 of Planning and Support, as well as Mr. Lawson, did indicate that
7 DDOT found no objection from a parking impact perspective as to
8 the special exception condition here as well, that we have
9 satisfied both the special exception as well as the variance
10 condition for this property. And we look forward to hearing your
11 final conclusion. We end our presentation. Thank you.

12 CHAIRPERSON HILL: Thank you. Mr. Allen, are you back
13 before us again in any time or space?

14 MR. ALLEN: Not that I know of.

15 CHAIRPERSON HILL: Okay. I just want to prepare myself.
16 Okay. All right. Oh go ahead, Ms. John.

17 VICE CHAIR JOHN: So if I could hear from the Applicant
18 about any proposed term limit, especially with respect to the
19 variance for the 500-capacity venue?

20 MS. MOLDENHAUER: I mean, the Applicant -- we do not
21 proffer a term limit, Ms. John. I think that if the Board were
22 looking for a term limit, I think, obviously, we've got a lease
23 right now for -- to 2026. That's only two years. I would think
24 that at least a four-year, five-year term, if necessary, would
25 be reasonable, especially given the investment both in tenant

1 improvement, and as Mr. Allen indicated, kind of overall being
2 able to address the practical difficulty of this larger impact
3 or an impact on vacancy on the overall area. So I think that if
4 there were a term limit needed, maybe a five-year term limit
5 would, I think, be reasonable.

6 VICE CHAIR JOHN: Okay, thank you.

7 CHAIRPERSON HILL: Okay. Thank you. All right. I'll
8 go ahead --

9 VICE CHAIR JOHN: Wait.

10 CHAIRPERSON HILL: -- to Mr. Blake.

11 VICE CHAIR JOHN: -- Mr. Blake had his hand up.

12 COMMISSIONER BLAKE: Question for, actually, the Office
13 of Planning. I apologize for taking out of context, but just
14 need a quick reference. Mr. Lawson, are you there?

15 MR. LAWSON: Yes.

16 COMMISSIONER BLAKE: I just wanted to make sure I
17 understood clearly the intent of that regulation on the proximity
18 of the RF-1 zone.

19 MR. LAWSON: Yeah, I think that if you're talking about
20 the condition related to the proximity of the use to residential,
21 it -- I can't speak to the exact intent because I didn't write
22 the provision, but I assume that the intent was to protect low-
23 density residential neighborhoods from what could otherwise be
24 very large and potentially noisy with a lot of patrons kind of
25 nightclub uses that would be otherwise permitted, and we did find

1 at one time in some of our PDR-zoned areas.

2 I think that's why -- one of the reasons why we were
3 comfortable with this application, because even though it's
4 technically close to some low-density residential zoning, as Ms.
5 Moldenhauer pointed out, there really is no low-density
6 residential neighborhood anywhere in the vicinity. It's just
7 kind of a quirk of the zoning in this case, that all that federal
8 land and behind -- federal land, which is not subject to zoning,
9 of course, but which is technically zoned RF-1. So I think that
10 was the intent, was to protect the lower-density areas from the
11 potential impacts of large nightclub uses in an industrial zone.
12 We think that is not a concern in this case.

13 COMMISSIONER BLAKE: Thank you.

14 CHAIRPERSON HILL: Okay. All right. Thank you so
15 much. You all have a nice holiday, and we'll see you -- some of
16 you next time.

17 MS. MOLDENHAUER: Thank you.

18 MR. ALLEN: Thank you.

19 CHAIRPERSON HILL: Mr. Young, if you could excuse
20 everyone. Okay. Oh, we still got a couple to go.

21 I mean, Mr. Blake, you don't know, but back in the day,
22 people didn't leave the room. And so you know, it was a whole
23 thing. It was a show. So -- and one day, maybe we'll go back
24 to the show, but some of us won't be there for sure.

25 And I'm going to say one more thing. I didn't know the

1 federal people can do whatever they want to do with the land.
2 I'm going to go look into that. That's just crazy. I love it.
3 Commissioner Stidham is nodding their head. They can just put
4 whatever they want there. Okay. That -- all right. Okay. So.
5 All right.

6 In terms of the application, I'm glad we got straight
7 whatever it is that we're trying -- supposedly going to look at.
8 In this particular case, I have had at least some experience with
9 the neighborhood and the area. So at least that's also -- I
10 mean, there's so many restaurants around there. There's so much
11 stuff that used to never be there, and now there's all this stuff
12 that's there, obviously, right?

13 I think that I'm comfortable with allowing all of the
14 special exceptions as they were argued, and as the Office of
15 Planning has put forward. The variance standard, I will go with
16 the exceptional situation being the -- I'm sorry -- being the
17 argument that the Applicant has put forward, in particular, I
18 guess that that park area being right next to there, and how,
19 again, this affects the property owner in their ability to use
20 the property with the people that they have in there now. Those
21 leases have already been put into place because of the Department
22 of Building's, I suppose, error. I'm not exactly sure -- well.
23 And so I am fine with the first prong.

24 The second prong, I don't think there's -- I understand
25 how the practical difficulty would then convey to the owner if

1 this were not approved. I don't think that there's a substantial
2 detriment to the public good, again, because there has been a
3 little bit of a track record.

4 I wouldn't really be in -- I wouldn't really be in
5 favor of a time limit, and the reason why is I think that if this
6 were -- it's already been there for some time and there hasn't
7 been any opposition to it. And I don't know how much this is --
8 but this is -- I'm just thinking this through. And the reason
9 why I'm not terribly thrilled about time is this is now going to
10 possibly be there, and so people that move in know that it's
11 there. And so then, if they then complain about something that's
12 already there, it's there. It's been there. It's been there
13 for five years, eight years, and then some other Board of Zoning
14 Adjustment is going to have to hear about how people that have
15 just moved into the area are upset about something that's been
16 there. So that's my argument on that. But so those are my
17 thoughts. And then I'll be voting in favor of the application.

18 Mr. Blake, do you have something you'd like to add?

19 COMMISSIONER BLAKE: Mr. Chair, yes. I'm going to also
20 vote in favor of the application in support. I do think that
21 the Applicant has provided me an adequate description of how the
22 conditions will adversely -- would become a practical difficulty
23 for the owner, which was a concern I had. Because I think we
24 have articulated what would happen to the businesses, but I think
25 in today's hearing, I had an adequate discussion about the impact

1 on the owner and the community surrounding it and the development
2 of that area, which makes sense. Also acknowledge the fact that
3 at -- post-Covid, this made -- is a very thriving area and it's --
4 it makes sense.

5 I also appreciate the fact that the federal land and
6 understanding that barrier to the true residential zone is
7 significant. And the intention of this PDR zone and this
8 development is consistent with what they're doing here. I believe
9 the Applicant has met the burden of proof for both the variance
10 and the special exemptions, and I will be voting in favor of the
11 application.

12 CHAIRPERSON HILL: Thank you.

13 Vice Chair John?

14 VICE CHAIR JOHN: Thank you, Mr. Chairman. I'm also
15 in support of the application. I did have some concerns about
16 the pop up, and if the Board were inclined to impose a five-year
17 term limit, I would be fine with that. If not, I can go either
18 way. So that's my thought.

19 CHAIRPERSON HILL: Okay. Thank you.

20 VICE CHAIR JOHN: And particularly because of the
21 owner's testimony that they're thinking of doing some
22 redevelopment and have an agreement in principle to keep the two
23 businesses there. But I don't have a strong feeling about it
24 either way.

25 CHAIRPERSON HILL: Okay. Well, thank you, Ms. John.

1 And I respectfully appreciate you saying that your -- flexibility
2 with this, because we do put time limits that oftentimes are
3 towards these kind of applications. In this particular
4 situation, I'd have a hard time with the time limit. But I do
5 appreciate it.

6 Oh, I'm sorry. Mr. Blake?

7 COMMISSIONER BLAKE: Mr. Chair, I'd like to speak to
8 the time limit as well. I think that the time limit in this
9 particular case is not necessary only because we don't see a lot
10 of conflict or issues that -- with regard to the requested relief
11 in terms of opposition. I also think that market conditions will
12 ultimately dictate how this property ultimately evolves. To put
13 a 80 -- 80, 90, 100 square -- unit apartment building there would
14 certainly probably be a more lucrative venture than this, and it
15 will play itself out.

16 So I do not think that it materially will make a
17 difference at this point in terms of putting a time limit. And
18 a five-year time limit, I don't think, would -- is the right
19 metric because you've got a shorter-term lease, a longer-term
20 lease. This is a use that they think would work in this area
21 for now, and I do think market conditions will ultimately drive
22 that. So that's where I'm at with time limit.

23 CHAIRPERSON HILL: Thank you, Mr. Blake.

24 Commissioner Stidham?

25 COMMISSIONER STIDHAM: You guys really make my job easy

1 coming in at the tail end of the conversation. So I have to say,
2 I agree with everything that has already been said, absolutely,
3 and am prepared to support.

4 CHAIRPERSON HILL: Okay. Thank you. All right. I'm
5 going to make a motion then to approve Application 21224 as read
6 by the secretary and ask for a second. Ms. John?

7 VICE CHAIR JOHN: Second.

8 CHAIRPERSON HILL: The motion has been made and
9 seconded. Mr. Secretary, if you could take a roll call, please?

10 MR. HAMALA: When I call your name, please respond to
11 the Chair's motion to approve the application. Chairman Hill?

12 CHAIRPERSON HILL: Yes.

13 MR. HAMALA: Vice Chair John?

14 VICE CHAIR JOHN: Yes.

15 MR. HAMALA: Mr. Blake?

16 COMMISSIONER BLAKE: Yes.

17 MR. HAMALA: Commissioner Stidham?

18 COMMISSIONER STIDHAM: Yes.

19 MR. HAMALA: Staff would record the vote as 4-0-1 to
20 approve Application 21224 on the motion made by Chairman Hill and
21 seconded by Vice Chair John.

22 CHAIRPERSON HILL: Thank you. All right. Well, you
23 all can -- we can go around the table and wish each other a Merry
24 Christmas, happy new year. I'm going to go first. I wish you
25 all a happy new year. And if you celebrate Christmas, great.

1 Happy holidays. And I look forward to seeing you all in the new
2 year. And if this is Ms. John's last little time doing this
3 little holiday thing, I wish you a happy new year. It's been
4 wonderful.

5 I will go next to Commissioner Stidham, if I might.

6 COMMISSIONER STIDHAM: Yes. I think I said Happy
7 holidays last week because I thought that was my last go. And
8 Kira (phonetic) seems to navigate my schedule better than I and
9 reminded me I was here today. So again, I'm wishing everyone a
10 happy holiday and a good new year. And I'll see you next year.

11 CHAIRPERSON HILL: Thank you. And also to the Office
12 of Zoning, all of the People on this call, including our friend
13 way out in Arizona, you all have a happy new year and Merry
14 Christmas.

15 Mr. Blake?

16 COMMISSIONER BLAKE: I was going to say the same thing,
17 Mr. Chair. Merry Christmas, happy holidays to everyone on the
18 OZ staff, legal, and all those fans out there on YouTube. Anyway,
19 we want to thank you all and wish you a very happy -- Merry
20 Christmas. Happy holidays.

21 CHAIRPERSON HILL: Thank you. May we end with you,
22 Vice Chair John?

23 VICE CHAIR JOHN: I would just like to echo all of the
24 wonderful comments so far. I just want to express my heartfelt
25 thanks to all of the people who make us look good every week

1 through their hard work. It looks as if we're knowledgeable and
2 we have -- we understand every single thing that a -- that is in
3 the record and don't have any questions. So thank you to all of
4 those people. We couldn't do this without you. And I have to
5 echo Board Member Blake's comments about the folks who watch on
6 YouTube. I don't know why anyone would watch on YouTube, but if
7 you do, happy holidays to you as well. Thank you, Mr. Chairman.

8 CHAIRPERSON HILL: Okay, you all. We will see you in
9 2025.

10 VICE CHAIR JOHN: See you. Bye.

11 CHAIRPERSON HILL: Bye.

12 (Whereupon, the above-entitled matter went off the
13 record at 3:03 p.m.)
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C E R T I F I C A T I O N

This is to certify that the foregoing transcript

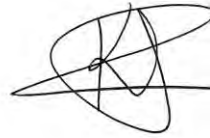
In the matter of: Public Hearing

Before: DCBZA

Date: 12-18-24

Place: Webex videoconference

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



Kelley Roberson