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GOVERNMENT OF THE DISTRICT OF COLUMBIA
Office of Zoning
Board of Zoning Adjustment

PUBLIC HEARING

9:42 a.m. to 2:59 p.m.
Wednesday, January 11, 2017

441 4th Street, N.W.
Jerrily R. Kress Memorial Room
Second Floor Hearing Room, Suite 220 South
Washington, D.C. 20001

OLENDER REPORTING, INC.
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2 FREDERICK L. HILL, Chairperson

3 JEFFREY L. HINKLE, Board Member

4 ROBERT MILLER, Zoning Commission

5 CLIFFORD MOY, Board Secretary

6

7

8 Office of Planning:

9 ELISA VITALE

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

2 CHAIRMAN HILL: All right, good morning,
3 everyone. The hearing will please come to order.
4 We're located in the Jerrily R. Kress Memorial
5 Hearing room at 441 4th Street Northwest. This is
6 the January 11th, 2017 public hearing of the Board of
7 Zoning Adjustment of the District of Columbia.

8 My name is Fred Hill, Chairperson. Joining
9 me today is Carlton Hart, Board Member, and
10 representing the Zoning Commission is Rob Miller.

11 Copies of today's hearing agenda are
12 available to you and are located in the wall bin near
13 the door. Please be advised that this court
14 proceeding is being recorded by a court reporter and
15 is also webcast live. Accordingly, we must ask you
16 to refrain from any disruptive noises or actions in
17 the hearing room. When presenting information to the
18 Board please turn on and speak into the microphone,
19 first stating your name and home address. When
20 you're finished speaking, please turn off your
21 microphone so that your microphone is no longer
22 picking up sound or background noise.

23 All persons planning to testify either in
24 favor or in opposition must have raised his or her
25 hand, and been sworn in by the secretary. Also, each

1 witness must fill out two witness cards. These cards
2 are located on the table near the door, and on the
3 witness tables. Upon coming forward to speak to the
4 Board, please give both cards to the reporter sitting
5 at the table to my right.

6 If you wish to file written testimony or
7 additional supporting documents today, please submit
8 one original and 12 copies to the secretary for
9 distribution. If you do not have the requisite
10 number of copies or can reproduce copies -- or you
11 can reproduce copies on an office printer in the
12 Office of Zoning located across the hall.

13 The order of procedures for special
14 exception, variances, and appeals are also located in
15 the back corner there on the wall. The record will
16 be closed at the conclusion of each case, except for
17 any materials specifically requested by the board.
18 The board and the staff will specify at the end of
19 the hearing exactly what is expected and the date
20 when the persons must submit the evidence to the
21 Office of Zoning.

22 After the record is closed, no other
23 information will be accepted by the Board. The
24 District of Columbia Administrative Procedures Act
25 requires that the public hearing on each case be held

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

12 The decision of the Board in these contested
13 cases must be based exclusively on the public record.
14 To avoid any appearance to the contrary the Board
15 requests that the persons present not engage the
16 members of the Board in conversation. Please turn
17 off all beepers and cell phones at this time so as to
18 not disrupt these proceedings.

19 Preliminary matters are those which relate to
20 whether a case will or should be heard today, such as
21 request for postponement, continuance or withdrawal,
22 or whether proper and adequate notice of the hearing
23 has been given.

24 If you're not prepared to go forward with the
25 case today, or if you believe that the Board should

1 not proceed, now is the time to raise such a matter.
2 Mr. Secretary, do we have any preliminary matters?

3 MR. MOY: No preliminary matters other than
4 preliminary matters that the Board can take up on
5 case by case basis, when the case is called. Other
6 than that, if I may, if I have the microphone to
7 clarify the cases that's not on the docket for today,
8 if I may.

9 Two cases on the hearing docket have been
10 postponed and rescheduled. They are Application
11 Numbers 19400 of Alabama Avenue, LLC. This
12 application has been rescheduled to February 15th,
13 2017.

14 Application No. 19396 of Hatem -- Hatem, has
15 been postponed and rescheduled to March 8th, 2017.
16 Also, a motion for advance party status to
17 Application No. 19377 of Boundary Companies and
18 Missionary Society of St. Paul Apostle has been moved
19 to February 1st, 2017.

20 And finally, Mr. Chair, we are scheduling for
21 the Board to address in its public meeting session on
22 next Wednesday, January 18th, 2017, a motion from ANC
23 1 for reconsideration of Application No. 19387, and
24 that's it for me.

25 CHAIRMAN HILL: Okay. Great. Thank you. If

1 you could administer the oath. If anyone who is here
2 is going to testify, if they would please stand to
3 take the oath administered by the secretary? Thank
4 you.

5 MR. MOY: Good morning.

6 [Oath administered to the participants.]

7 MR. MOY: Ladies and gentlemen, you may
8 consider yourselves under oath.

9 CHAIRMAN HILL: Okay, great. So, Mr. Moy, if
10 you could call our first, I guess, hearing case?

11 MR. MOY: Good morning, Mr. Chairman and
12 Members of the Board. That would be, I believe,
13 Application No. 19153. This is the application of
14 Independence Avenue Investments, LLC. as captioned
15 and advertised for variance relief from the off-
16 street parking requirements under Section 2101.1.
17 Clearly this is under the ZR-1958 regulations, Mr.
18 Chairman.

19 This would commit parking spaces to a car
20 sharing service in the R-4 District, premises rear
21 1524 Independence Avenue Southeast, Square 1072, Lots
22 2025 through 2032.

23 CHAIRMAN HILL: Good morning.

24 MS. DEAN: Good morning.

25 CHAIRMAN HILL: If you could please introduce

1 yourselves from my left to right and give your name
2 and home address? And you can just push the -- yeah,
3 there you go.

4 MR. SNOOK: Dan Snook with McAllister
5 Architects. We're at 1437 Powhatan Street in
6 Alexandria, Virginia.

7 CHAIRMAN HILL: You have to push the
8 microphone.

9 MR. CROWLEY: David Crowley, Capital
10 Properties Group and Independence Avenue Investments,
11 211 North Union, Alexandria, Virginia, 22314.

12 CHAIRMAN HILL: Okay.

13 MS. DEAN: Good morning, Veronica Dean
14 representing Capitol Square Condominium. I'm with
15 Whiteford, Taylor, and Preston. We're at 1800 M
16 Street.

17 CHAIRMAN HILL: Okay. Ms. Dean, again you
18 had requested for party status?

19 MS. DEAN: Correct.

20 CHAIRMAN HILL: Okay.

21 MS. DEAN: On behalf of the association.

22 CHAIRMAN HILL: Okay. All right. Great.
23 Okay, so Mr. Crowley, you're back again and I guess
24 it continues to be -- it continues to be complicated,
25 right? Like, you sent in something last night,

1 correct? Or yesterday.

2 MR. CROWLEY: Thanks, Dan. Yesterday.

3 CHAIRMAN HILL: So, the last time we were
4 here, this is the 10th -- I don't know what time. I
5 mean, the first time you were here was like a year
6 ago, correct?

7 MR. CROWLEY: Yes, this week. Yeah.

8 CHAIRMAN HILL: And so, the last time you
9 were here there were, I think, six things that -- I
10 didn't have a report from the Office of Planning, or
11 we didn't have as a Board, the report from the Office
12 of Planning, and there were things that you were
13 supposed to have submitted to the Office of Planning
14 so that they could have given us a report. And, have
15 you submitted those things? I mean, I know you
16 haven't, but.

17 MR. CROWLEY: We've submitted, I don't know,
18 two out of the six because we're hung up on this
19 ruling that came in from the Zoning Adjuster. Excuse
20 me, from Mr. LeGrant, the Zoning Administrator.

21 CHAIRMAN HILL: Okay. And then in addition
22 to that you're aware of now that what is going to be
23 the threshold issue for us as to whether or not we
24 can even get past this is in terms of whether or not
25 you own -- you have the rights to be putting this

1 application before us, whether you own the -- you
2 know, whether you are the correct person to be
3 putting this application before us. And that was one
4 of the things that you were to have supposed to have
5 submitted.

6 MR. CROWLEY: That's been ongoing for the
7 past year. In the exhibit list there's, you know,
8 the DCRA that show our LLC is the proper tax recorded
9 owner, and the condo association documents show us as
10 the owner of the six parking spaces.

11 CHAIRMAN HILL: Well, there's eight, I
12 thought.

13 MR. CROWLEY: We don't own two.

14 CHAIRMAN HILL: Okay. But you're asking to
15 change something about the two.

16 MR. CROWLEY: Well, Dan can probably address
17 that a little better. On Lot 81.

18 MR. SNOOK: If I can speak on behalf of Mr.
19 Crowley?

20 CHAIRMAN HILL: Sure.

21 MR. SNOOK: Okay. So, we've been assisting
22 Mr. Crowley in trying to help prepare some of this
23 and the difficulty has been, without a clear
24 understanding of the requirements on the site it has
25 been impossible to provide the requested relief

1 required. Even in preparing for meetings with the
2 condo association, without a clear understanding of
3 the requirements and what relief is being required of
4 us, what we're required to request, we're -- the
5 nature of what that relief is, is going to determine
6 who has the authority of applying for that relief, is
7 our understanding.

8 CHAIRMAN HILL: Okay. Well, we'll see what
9 the condo association, I guess, has to say about
10 that.

11 MR. SNOOK: Sure. Yeah.

12 CHAIRMAN HILL: And, Mr. Crowley, again,
13 since we've been here and we've gone through a full
14 hearing and everything, I'm trying to clear up this
15 as quickly as possible for all of us as to whether or
16 not we can move forward and whether or not you are
17 the right party to move this forward. Okay?

18 So, I am actually -- I want to turn to the
19 Office of Planning if I could. And again, I've now
20 gone through hundreds of cases and unless I have
21 something from the Office of Planning, it's a little
22 difficult for any of us here on the Board to review
23 anything. Okay?

24 So, may I turn to the Office of Planning and
25 if you could introduce yourself again, and then I

1 have a question for you.

2 MS. VITALE: Certainly. Good morning, Mr.
3 Chair, members of the Board. Elisa Vitale with the
4 Office of Planning.

5 CHAIRMAN HILL: The question I have, Ms.
6 Vitale, is again I don't have any kind of a report
7 and again as I understand, there was a list of things
8 that you wanted. Some things were very basic in
9 terms of you know, a site map to what is actually
10 there now, in order for you to do your analysis.

11 So, you did not get anything since the last
12 time we were here to allow you to provide your
13 analysis. Is that correct?

14 MS. VITALE: That is correct. We did not
15 submit a report because the requested information was
16 not entered into the record, so we didn't feel that
17 we had any more, you know, any more to provide at
18 this time until that information was submitted by the
19 application.

20 CHAIRMAN HILL: Okay. All right, great. So,
21 and again, please, if any other members from the
22 Board have any questions as I kind of go through
23 this, please let me know.

24 So, Mr. Crowley again, what that does for me
25 is I'm still in a difficult place. Even if we got to

1 the merits of the case, now how to move forward
2 because there's no report from the Office of
3 Planning. There's nothing I have to review because
4 you haven't provided the documents necessary for them
5 to provide an analysis.

6 And I've seen all of the different excuses, I
7 think, as to why you can't do some of the things that
8 they asked for. I mean, a site map for what is
9 actually there, that is not a difficult thing to do.
10 Photographs for what is actually there, you know, I
11 don't see -- so, before I get to that as well, okay,
12 let's just see first of all whether or not this is
13 something that you should be here for. Okay?

14 So, I'm going to turn to -- and I'm sorry,
15 it's Ms. Dean?

16 MS. DEAN: Yes.

17 CHAIRMAN HILL: Ms. Dean. So, Ms. Dean, I
18 mean, I know that you have before us a party status
19 request. And the party status request is obviously
20 really late because, you know, it was a year ago, you
21 know, that this first came before us. And so, before
22 we even get to that, I've seen, and the Board has
23 seen all of the documents that you have submitted in
24 terms of why you feel that this is not something that
25 the applicant should be able to bring forward. Would

1 you be able to just please go through all of that?
2 I'd like to know why the applicant is not the person
3 who should be putting this application forward.

4 MS. DEAN: Sure. So, that's two-folds.
5 First, the applicant has submitted an application
6 based on being the owners of Lot 80 and 81. The
7 applicant was the declarant of the condominium
8 association at one time. In the District of Columbia
9 a condominium association has to be submitted. Once
10 the condominium association is submitted, it then
11 becomes a condominium. It then becomes an entity.
12 It has a board of directors, and that board of
13 directors, who I represent, they own the land and the
14 common interest in the association.

15 Now, obviously the condominium units as well
16 as the individual parking spaces are individually
17 owned. However, those lots in those spaces between
18 the common space between the building and the parking
19 spaces, the alleyways, all of Lot 80 and 81 are in
20 fact owned and operated by the condominium
21 association.

22 In addition to that the individual parking
23 space owners and the individual unit owners are
24 contractually obligated and bound by the condominium
25 documents, as well as the D.C. Condominium Act.

1 The relief that's being requested is not only
2 contrary to the D.C. Condominium Act, it is also
3 inconsistent with the association's condominium
4 documents. So, aside from any type of civil action
5 the Association may have against the applicants, they
6 don't have the authority to request this relief.
7 They're requesting the relief on behalf of the
8 association, although it's not postured in that
9 manner. They don't have the authority to do that.

10 The second issue is that based on all of the
11 proposals that have been submitted as to how they're
12 going to adjust these spaces, they are providing
13 suggestion that they're going to change the
14 boundaries of parking spaces 3 and 4.

15 Well, the issue with that is that parking
16 spaces 3 and 4 are not owned by the applicant.
17 They're owned by unit owners in the association.
18 Both of those unit owners have repeatedly advised Mr.
19 Crowley that they are not in agreement with this.
20 This is real property. He cannot unilaterally change
21 the boundaries and essentially take away a portion of
22 their parking space.

23 CHAIRMAN HILL: Okay. Thank you. Does the
24 Board have any questions for Ms. Dean?

25 No? Okay. So, Mr. Crowley, do you

1 understand what Ms. Dean is saying?

2 MR. CROWLEY: Yes, but she's addressing the
3 Lot 80, which that's not part of the relief that
4 we're requesting. Ours is 81. And when she refers
5 to proposals, these are just proposals in terms of
6 the fact that one of the spaces before, which you can
7 see in the surveyor's plat, Exhibit 3, is over the
8 former boundary line between 80 and 81. But it's
9 just on paper.

10 In reality, and if you look to the color
11 photographs, Exhibit 4 and 8, you can see that the
12 car isn't -- the P4 doesn't physically park over the
13 former boundary line. So, what in essence we're
14 trying to do is just correct an oversight from 10
15 years ago, when the surveyor at the time lined up
16 four spaces of 10-feet wide each, when he only had 36
17 feet to work with. He should have done four spaces
18 at nine feet each. That's why we got the extra five
19 feet that carries over. And that's what I've been
20 trying to -- I've been communicating with the owner
21 of P4 to suggest that listen, let's all pitch in and
22 just shift this to come into compliance. So, P4, we
23 don't own P4, so that P4 is no longer on paper,
24 straddling the former border between 80 and 81.

25 CHAIRMAN HILL: Okay.

1 MR. CROWLEY: But we all have to shift.

2 CHAIRMAN HILL: Okay. I understand what
3 you're trying to do. I understand what you're trying
4 to do. I don't agree with you. I don't think that
5 you have the right to be putting this application
6 forward. I agree with the representative. I'd like
7 to hear what other members of the Board have to say.
8 I mean, I just think that I'm kind of at an impasse.
9 I mean, the applicant would need some kind of a
10 letter from the association saying that they agree to
11 this or, you know, that this is something that they
12 want to see take place.

13 MR. HART: Yes, Mr. Chairman. Having read
14 the full record, it is very clear that there is a lot
15 of -- I shouldn't say a lot. There is information
16 that has not been submitted to us for us to be able
17 to make a determination in this case. And I think
18 until we get that information it's going to be very
19 difficult to say, sure this can move forward with
20 this. We don't know what a clear understanding of
21 what your thinking that the ZA, the Zoning
22 Administrator is saying is necessary. And without
23 that, then it becomes hard to figure out about this
24 kind of this other stuff that you're looking for.

25 And it doesn't seem as though it should have

1 really taken this long, but it has, and I think that
2 those -- the ownership issue needs to be a very clear
3 thing because we are making a determination on --
4 taking information that Ms. Dean has provided, and
5 that you have provided, to get a full picture of
6 this. And right now that full picture is somewhat
7 murky. And I don't think that it's helpful for us to
8 be able to -- or we're able to make a determination
9 without having a very clear understanding of this. I
10 understand that things may have gone difficult, or
11 gone -- may have been wrong in the past, but we're
12 having to look at what's before us now, and right now
13 I don't perceive to have enough information to be
14 able to say, okay, I clearly understand this and this
15 is what we're deciding on, and the condo association
16 is in agreement with that.

17 And again, these pieces are not there for us
18 to be able to do that.

19 CHAIRMAN HILL: Okay, Mr. Miller.

20 MR. MILLER: Thank you, Mr. Chairman. Yeah,
21 I think I agree with you and Mr. Hart that we can't
22 get beyond the threshold issue of the owner. The
23 application has to be submitted by the owner of the
24 property and I don't think that that's been
25 demonstrated so I think we need to dismiss this

1 application.

2 CHAIRMAN HILL: Okay. So, I'm going to make
3 a motion to -- I'm trying to think. Mr. Crowley, I
4 want to allow you to go ahead and say anything if
5 you'd like in the 30 seconds that you have. I mean,
6 this is -- I'm already telling you what I think. The
7 Board has already told you what they think. You're
8 going to have to try to figure out what the
9 association, how you might be able to move forward
10 with this application in another way, and/or I would
11 again work with your attorneys to see if there is
12 some other -- you know, there's plenty of land use
13 attorneys here in this room that might be able to see
14 if there's some other way that you can work with the
15 association to achieve what you need to achieve or
16 would like to achieve, and if it's possible, and you
17 can obviously present your case to the Board again.

18 Is there anything you'd like to say before I
19 make a motion?

20 MR. CROWLEY: Yes, please. Under Lot 81
21 we're not asking for any relief. This whole idea of
22 the shifting of spaces was merely a proposal that I'm
23 trying to get the association, to everybody work
24 together. But if it doesn't work in that particular
25 instance, then it doesn't work. Our relief is solely

1 related to Lot 80, where there is no border or
2 neighboring property. We own all four that are
3 behind Lot 80, which is 1524 Independence Avenue.

4 CHAIRMAN HILL: Have you understood the
5 argument that the association is making, that you're
6 not even -- you're not the person to bring this
7 application forward.

8 MR. CROWLEY: I would assume it's a co-
9 application between our LLC and the association,
10 which Ms. Dean put in one of her memos at one point.

11 CHAIRMAN HILL: Okay. So, is that your -- is
12 that the last statement you'd like to make?

13 MR. CROWLEY: Dan, you have anything to
14 answer? Add?

15 MR. SNOOK: I mean, a lot of I think still
16 what the issue is, being unclear of the nature of the
17 requirements of the site and the relief that's
18 required. It has been impossible to prepare the
19 documents that have been requested by the Office of
20 Planning, by the condo board.

21 And so, even in Ms. Dean's discussion of the
22 nature of the relief that is being requested, the
23 relief that has currently been requested is not
24 consistent with the Zoning Administrator's most
25 recent determination, and without a clear

1 determination of what the requirements of the site
2 are, it is -- even applying for the relief itself is
3 not -- doesn't make sense.

4 And so, if the relief in question is
5 affecting the other property owners of P3 or P4, then
6 the fact that our authority to do that, but if the
7 relief ends up affecting only the parking spaces that
8 Mr. Crowley owns, then I think there is a position
9 which we would be the appropriate applicant to bring
10 forward the relief.

11 CHAIRMAN HILL: Okay. So, I'm in
12 disagreement with you. However, I think that if you
13 have, Mr. Crowley, you know, moving forward, see if
14 you can talk with the association or speak with again
15 the counsel that you've been working with.

16 But I'm going to go ahead and make a motion
17 to dismiss this case, and I'm going to do so to
18 dismiss, I guess, case 19153. I guess, again, due
19 notice of the deficiency and expiration of reasonable
20 time as affixed by the Board, and the deficiency has
21 not been corrected. And I look for a second.

22 MR. HART: Second. Second.

23 CHAIRMAN HILL: Motion has been made and
24 seconded.

25 [Vote taken.]

1 CHAIRMAN HILL: The motion carries, Mr. Moy.

2 MR. MOY: Staff would record the vote as
3 three, to zero, to two. This is on the motion of
4 Chairman Hill to dismiss the application based on
5 that regulation that was cited. Seconding the
6 motion, Mr. Hart. Also in support, Mr. Rob Miller.
7 We have two vacancies on the Board. The motion
8 carries, sir.

9 CHAIRMAN HILL: Thank you. Mr. Moy, just to
10 clarify, it was Subtitle Y, Section 600.4.

11 MR. MOY: Thank you, sir.

12 CHAIRMAN HILL: Thank you.

13 MR. MOY: The next application if parties
14 could come to the table, to Application No. 16011A of
15 the American Tower Corporation, captioned and
16 advertised for special exception relief under the
17 antenna requirements of Subtitle C, Section 1313.1,
18 which would allow the continued operation of a
19 nonconforming monopole in the PDR-1 Zone, 3701
20 Benning Road Northeast, Square 5044, Lot 807.

21 CHAIRMAN HILL: Good morning.

22 MS. GIORDANO: Good morning.

23 CHAIRMAN HILL: If you could please introduce
24 yourself?

25 MS. GIORDANO: Cynthia Giordano with Saul

1 Ewing.

2 MR. RAPISARDA: And, good morning. I'm one
3 of Cynthia's partners. I'm Greg Rapisarda with Saul
4 Ewing.

5 CHAIRMAN HILL: Okay. And you're obviously
6 representing the applicant.

7 MS. GIORDANO: That's correct.

8 CHAIRMAN HILL: So, Ms. Jordan (sic), I guess
9 there's a little bit of similarity between these two
10 cases now. There is, you know, if it has been
11 brought -- can you -- you can go through the case and
12 we're going to go through the case. There's people
13 here who wanted to speak about it and different
14 things.

15 MR. BELT: [Speaking off mic.]

16 CHAIRMAN HILL: One moment, sir. Just give
17 me a second.

18 MR. BELT: [Speaking off mic.]

19 CHAIRMAN HILL: Okay. Please come forward.
20 Good morning.

21 MR. BELT: Good morning.

22 CHAIRMAN HILL: Just, it's okay. Just speak
23 into the microphone. I'm just not sure who you're
24 with first, and --

25 MR. BELT: Okay.

1 CHAIRMAN HILL: That's okay. And if you
2 could give me your name and address again?

3 MS. GIORDANO: Just push the -- push the
4 button.

5 CHAIRMAN HILL: Yeah, just push the green
6 button there.

7 MR. BELT: Okay. My name is David Belt. I
8 live at 3940 Benning Road Northeast, Washington,
9 D.C., 20019.

10 I am a member of the community. I was the --
11 at the time this case came up I was a single-member
12 district ANC Chairman for 7F-01.

13 CHAIRMAN HILL: Okay.

14 MR. BELT: Commissioner.

15 CHAIRMAN HILL: Mr. Belt, I'm sorry, just
16 give me a second.

17 So, I mean, you're here probably to speak in
18 opposition? Is that correct?

19 MR. BELT: Correct.

20 CHAIRMAN HILL: Okay. So, normally at the
21 end of the case I go ahead and call people forward
22 who are here to speak in opposition or in approval,
23 right? So, you would not be in the approval
24 category. But, have you been sworn in already?

25 MR. BELT: Yes, I have.

1 CHAIRMAN HILL: Okay. If you wouldn't just
2 mind, just let me speak to the applicant for a little
3 while and then when we get to opposition we'll go
4 ahead and call you up again.

5 MR. BELT: Okay. Thank you very much.

6 CHAIRMAN HILL: Okay? Thank you, sir.

7 So, Ms. Jordan (sic) again, as I said you'll
8 have an opportunity to present your case and tell us
9 how again you meet the standards for the special
10 exception I think it was. Special exception that
11 you're looking for.

12 But the first thing I'd like to -- and I
13 guess again, if the Board would please jump in with
14 any questions they might have, just kind of, if you
15 can explain to me how you're the rightful person to
16 bring this application forward?

17 MS. GIORDANO: Okay. There was some
18 confusion initially. We're not -- we represent
19 American Tower Company and the property owner is D.C.
20 Eagle Limited. There is an easement for this use and
21 D.C. Eagle is a recent purchaser of the property and
22 was unaware of the easement. But I think that they
23 have resolved that issue with a letter to the Board
24 indicating that their original objection to the
25 filing has been rescinded.

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1 CHAIRMAN HILL: Yeah, and Ms. Jordan (sic),
2 can you just tell me where that exhibit is again, if
3 you -- I remember the --

4 MS. GIORDANO: Okay. It's a letter from Ted
5 Clemens, and we also submitted a letter prior to that
6 last Friday setting forth basically also, copying
7 again the board on the authorization, the agent
8 authorization from D.C. Eagle, the property owner, to
9 American Tower and Saul Ewing to bring this case, as
10 well as a copy of the easement and the lease.

11 And I think we've shared that information
12 with the Office of Attorney General.

13 CHAIRMAN HILL: Okay. Great. No, thank you.
14 I reviewed this during the weekend when I was looking
15 through the cases.

16 MS. GIORDANO: Right. And I apologize, it
17 was a little last minute filing on our part but it
18 took a little while to work through the issue with
19 the property owner.

20 CHAIRMAN HILL: Okay. Does the Board have
21 any questions for the applicant for this issue?

22 MR. MILLER: Yes, Mr. Chairman. So, I saw
23 what you submitted last Friday. I don't think I saw
24 the letter, recent letter from Ted Clemens, you said?

25 MS. GIORDANO: Yes.

1 MR. MILLER: That was just submitted
2 yesterday?

3 MS. GIORDANO: I think it was submitted
4 yesterday.

5 MR. MILLER: Okay.

6 MR. RAPISARDA: We have hard copies if you
7 want.

8 MR. MILLER: I see it on the Chairman's --

9 MS. GIORDANO: He actually is not authorized
10 to represent the property owner, but just to clarify
11 any confusion, since he had previously sent a letter
12 objecting he is part of D.C. Eagle, but he's not
13 their authorized representative.

14 MR. MILLER: Okay. Thank you. I just saw
15 the letter on the Chairman's tablet, which I was
16 having difficulty bringing up. So, I'm okay now.

17 CHAIRMAN HILL: Okay. I'm also fine. Thank
18 you for bringing all that information to our
19 attention on the record. It makes it easier to move
20 forward, whereas the previous case it wasn't as easy.

21 So, I don't have any questions from the
22 Board. I think the applicant's -- those are the
23 person to talk to. It's the person to talk to.

24 So, Mr. Hart, do you have any comments or are
25 you okay?

1 MR. HART: Yeah. Yeah, I'm okay with it. I
2 would like to -- you're just looking for a, I guess,
3 renewal.

4 MS. GIORDANO: Yes.

5 MR. HART: For this --

6 MS. GIORDANO: It's an existing tower. Uh-
7 huh.

8 MR. HART: And are you -- the technology for
9 antennas changes fairly regularly, or yes, regularly.
10 And so this is really just the tower itself, not any
11 of the actual cells, the antennas, I guess that are
12 on top of --

13 MS. GIORDANO: Correct.

14 MR. HART: And that technology would require
15 that you have something on the ground which is an
16 electrical box or some sort, and then the cells
17 themselves, antennas themselves.

18 I don't have a question necessarily. It's
19 just more if you could talk a little bit about --

20 MS. GIORDANO: Yes.

21 MR. HART: -- the antenna itself.

22 MS. GIORDANO: And that's why I brought my
23 partner here, Mr. Rapisarda. He --

24 CHAIRMAN HILL: Okay. Ms. Jordan (sic), I'm
25 sorry, just before you go ahead and start. Yeah, if

1 you could then just go ahead as Mr. Hart just
2 mentioned, speak to that during your presentation.

3 MS. GIORDANO: Yes.

4 CHAIRMAN HILL: And then, also for me, I'd
5 like to hear you kind of talk about some of the
6 opposition and some of the issues that they have
7 raised. Do you know how long you might need?

8 MS. GIORDANO: We are prepared to really do
9 this in summary fashion and then respond to any
10 questions that the Board may have.

11 CHAIRMAN HILL: Okay. Great. So then,
12 please, go ahead.

13 MS. GIORDANO: Okay. As I indicated, Mr.
14 Rapisarda, he represents American Tower and does a
15 lot of these cases throughout the country from a
16 zoning standpoint. So, and he has a lot of knowledge
17 about the industry, so he's going to present the
18 case.

19 MR. RAPISARDA: Thank you, Cynthia, and thank
20 you Board, Members of the Board.

21 And just a quick overview, and I think I will
22 get to Mr. Hart's question. And that is, you know,
23 who is American Tower? What do they do?

24 Well, they have a portfolio of towers. Those
25 towers are the infrastructure for the wireless

1 carriers and other providers of wireless services, to
2 provide wireless services, because it's got to be up
3 in the air and it's got to be line of sight.

4 And so, American Towers is the largest in the
5 country. They have 40,000, they have 40,000 sites.

6 This one wasn't one of their original ones.
7 I mean, they acquire portfolios over the years. This
8 was built in '95 with the compound that it has. They
9 call it an equipment compound. It's fenced. It has
10 barbed wire on the top so that people can't get into
11 it, and it has the equipment that relays and
12 transfers those wireless calls. Because really, when
13 you make the wireless call it's just going to the
14 antenna, and then after that it's all going through
15 landlines.

16 So, they have that fenced equipment compound,
17 and they've had this tower there. It was built in
18 '95, mid '95. It transferred a couple times,
19 ownership and subleasing. And American Tower
20 acquired it along with thousands of others. And then
21 as they're going through their due diligence process
22 and looking at everything, they see that this has a
23 limited special exception.

24 It got caught. It got caught late. They
25 applied as quickly as they could; contacted us, they

1 applied as quickly as they could, and that's kind of
2 where we get to today. Things were going along. We
3 would have been here in November, and then -- and
4 that's the only way I can really refer to it is,
5 there's confusion. Mr. Lloyd, the CEO of our
6 landlord. This is our landlord. He does the letter
7 of authorization in June, and then I guess a couple
8 months latter Mr. Clemens filed a letter of
9 opposition and he, I guess he's a part owner but --
10 and you know, his letter said, we don't know anything
11 about this.

12 And so, it took some time, so we asked for
13 the postponement. It took some time to communicate,
14 but once we did we sat down. I'm not sure how it
15 would slip through the cracks when you buy a property
16 like that for almost \$1 million or, you know,
17 according to the tax records, \$925,000.

18 But as a lease, a first amendment, and an
19 easement, all of which have been recorded. Mr.
20 Lloyd, the CEO, knew what we were doing and he issued
21 a letter of authorization in June, and then Mr.
22 Clemens came along.

23 So, when we connected with him last week was
24 the first time we were able to actually connect with
25 him. You know, he took some time to look at it and

1 then he filed that letter yesterday saying, oh yeah,
2 I'm not opposed anymore.

3 I also want to hit -- I do want to address
4 some of the other opposition. So, I say other
5 opposition. It really all stems from the fact that
6 there was a perception, which really is confusion
7 because we have land owner authorization that the
8 owner of the property didn't want American Tower
9 there anymore. So, it's wrong as a matter of fact,
10 and it's wrong as a matter of law.

11 And so I can certainly, and I will take a
12 look at this just a -- there's a couple points, I
13 think, in the ANC. And I know Mr. Belt, when he
14 wrote that report as the representative, he was the
15 representative. I get that -- I understand as of
16 what he was just saying this morning is that he's not
17 here as the representative, but he's here as a
18 neighborhood.

19 CHAIRMAN HILL: It doesn't matter. We'll get
20 to Mr. Belt.

21 MR. RAPISARDA: Okay. Well, I'm just saying
22 that he wrote that report. That's the only other
23 opposition that I know of, other than Mr. Clemens,
24 who has revoked his opposition.

25 CHAIRMAN HILL: I understand.

1 MS. GIORDANO: And if I could just also
2 interject here that I tried on numerous occasions to
3 contact the ANC and make a presentation to the ANC.
4 I emailed them on three separate occasions, the
5 chair, the ANC, the SMD person, to try and make a
6 presentation. We never really -- we never had that
7 opportunity.

8 I finally, in response to my last
9 communication there was a response from Mr. Belt
10 indicating that they were supporting the property
11 owner and opposing this, and that's when sort of our
12 first clue that there was an issue with the property
13 owner.

14 But unfortunately we've never really had the
15 opportunity to present this matter to the ANC and
16 have any dialog with the ANC until this morning. And
17 my --

18 CHAIRMAN HILL: Until this morning?

19 MS. GIORDANO: Yes. Well --

20 CHAIRMAN HILL: What happened this morning?

21 MS. GIORDANO: This morning I just approached
22 him and --

23 CHAIRMAN HILL: Oh, no. I thought you said
24 the ANC. I'm sorry.

25 MS. GIORDANO: Well, Mr. Belt. Mr. Belt.

1 CHAIRMAN HILL: Okay. So, you didn't get a
2 chance to present in front of the ANC.

3 MS. GIORDANO: That's correct.

4 CHAIRMAN HILL: Because they did say that
5 after -- I guess, you know, in their letter it says,
6 you know, after reviewing reports and hearing
7 constituents concerns. So, that's without you being
8 there.

9 MS. GIORDANO: Correct.

10 CHAIRMAN HILL: Okay. All right. Thank you.

11 MR. RAPISARDA: Okay. So, we know that Mr.
12 Clemens has revoked his, but his initial opposition
13 seems to be what sparked the ANC report. So, if I
14 could just touch on, and you asked to touch on some
15 of their concerns from the ANC. I say they, but it's
16 the Advisory Neighborhood Commission report.

17 The new owners of the property, D.C. Eagle,
18 want their property returned to them. Well, they're
19 our landlord, so once they realize that, that
20 argument goes away.

21 It says that the tower could put patrons at
22 risk due to EMF radiation. And that's -- there's two
23 things I guess I'd like to say on that. One, all of
24 those wireless emissions are regulated by the FCC.
25 And, these companies know what they're -- they're not

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1 in any danger there at all. It's proven
2 scientifically. I get it from industry standpoint
3 folks might say, well of course you'd say that. But
4 the study is out there. And in fact the FCC has
5 said, folks, we've taken that off the table for
6 jurisdictions to even consider the health effects.

7 So then, it ruins the tree scape. Clearly
8 visible. Well, it is visible. I mean, you can't
9 have an invisible tower, but it is next to railroad
10 tracks, surrounded by industrial uses, and adjacent
11 to an elevated 295 platform. Four lanes or maybe
12 more. But it's in a -- as towers go, it's in a
13 pretty good location for minimizing adverse impacts
14 to residential areas for certain.

15 The other point in there is that there was a
16 mention that business interests or businesses in the
17 community didn't support it. We don't know of any
18 specifics on that. In 20 plus years, nobody could
19 find evidence of any complaint. I know American
20 Tower hasn't owned it the whole time, but nobody
21 could find evidence of any complaint.

22 And I can also say, just the way that
23 wireless habits develop, that tower, those carriers,
24 there are two carriers on the tower right now, there
25 were three and there probably will be three because

1 there's an open spot on it right now, they've been
2 providing wireless services to this general area for
3 20 plus years. So, I don't think that people would
4 be supportive if all of a sudden losing their
5 wireless services. Not to mention that if they
6 needed to replace it, it would have to be replaced by
7 a new tower. And you have an existing 20-year old
8 tower in what we think is a good location.

9 There was also, this was in the -- and I
10 think this stems from the confusion. This was in the
11 ANC letter and it just said, they didn't understand
12 how American Tower could be there and squat,
13 basically be squatters. Well, one, I guess that is
14 outside. I'm not going to get too much into it
15 because I know it's outside the scope of zoning, but
16 you do have the lease.

17 CHAIRMAN HILL: Okay.

18 MR. RAPISARDA: You do have the amendment.

19 CHAIRMAN HILL: Okay, Mr. Rapisarda. I'm
20 going to kind of cut you off here just a little bit
21 because there might be some --

22 MR. RAPISARDA: Sure.

23 CHAIRMAN HILL: -- questions from the Board
24 and stuff. Was there anything else you were kind of
25 -- you were talking in summary at first. I'm going

1 to --

2 MR. RAPISARDA: Oh, right.

3 CHAIRMAN HILL: -- throw the clock up next.

4 You know, but --

5 MR. RAPISARDA: Oh, I'm sorry.

6 CHAIRMAN HILL: No, that's all right.

7 MR. RAPISARDA: You know, what, though? I
8 was trying to address --

9 CHAIRMAN HILL: That's okay. I got you.

10 MR. RAPISARDA: I thought you wanted me to
11 address --

12 CHAIRMAN HILL: No, I appreciate it. I
13 appreciate it.

14 MR. RAPISARDA: -- those things. That wasn't
15 part of my summary.

16 CHAIRMAN HILL: I appreciate it. I
17 appreciate it.

18 MR. RAPISARDA: So, I was off track.

19 CHAIRMAN HILL: That was part of your
20 summary. Would you like to make your summary?

21 MR. RAPISARDA: Sure.

22 CHAIRMAN HILL: Okay. Thanks for specifying,
23 I know. You were responding to my question. I
24 appreciate that, so, but go ahead.

25 MR. RAPISARDA: May be too much of a good

1 thing though. So, I get it.

2 I guess, bottom-line, for 20 plus years
3 there's been a tower here. It's an existing tower.
4 In fact the Zoning Regulations encourage carriers.
5 Before another tower gets built they've got to rule
6 this one out and show why they don't do it. And
7 American Tower is the largest tower company in
8 America. They have relationships with all these
9 folks. That's how the spots are going to get filled.

10 So, you got this existing pole providing
11 coverage, losing it would harm the people. It would
12 certainly harm American Tower. And probably harm the
13 landlord as well.

14 Generally speaking, we just would submit on
15 the record and with what we've asked, or what we've
16 presented this morning and if you had any other
17 questions, we'd submit on the record and ask that you
18 approve it.

19 CHAIRMAN HILL: Okay. I'm going to go to the
20 Office of Planning in a second but does anyone here
21 have any questions right now for the applicant?

22 Please, go ahead.

23 MR. MILLER: Thank you, Mr. Chairman. Thanks
24 for your presentation and for clarifying earlier, the
25 ownership issue. Or the -- well, the application

1 presentation.

2 Who are the two current providers and who was
3 the third one that I guess expecting to come back, or
4 some new one coming about? I just want to know.

5 MR. RAPISARDA: Right.

6 MR. MILLER: I just want to get a sense of --
7 and give the community a sense of --

8 MR. RAPISARDA: Right.

9 MR. MILLER: -- the service that's being
10 provided to them.

11 MR. RAPISARDA: Currently, it's AT&T and
12 Cricket. Clearwire was on there for a very long
13 time. They were fairly recently acquired by Sprint.
14 Their antennas right now have been decommissioned and
15 we really don't know what will happen with that, that
16 third space right now.

17 MR. MILLER: Okay.

18 MR. RAPISARDA: Nothing that we could say
19 official. But that's what happened to Clearwire,
20 which had been there providing services.

21 MR. MILLER: Okay. Thank you.

22 CHAIRMAN HILL: Okay. Great. Could I turn
23 to the Office of Planning now?

24 MS. THOMAS: Yes, good morning, Mr. Chair and
25 Members of the Board.

1 CHAIRMAN HILL: Good morning. Happy New
2 Year.

3 MS. THOMAS: Happy New Year. I have a cold.
4 Sorry, but --

5 CHAIRMAN HILL: I'm glad you're staying over
6 there.

7 MS. THOMAS: Exactly. Yeah, OP is in support
8 of this tower because this is precisely where we'd
9 want a tower to be per zoning. It's in an industrial
10 zone. It's well out of residential area. It's near
11 the 295, it's as you can see from the applicant's
12 photos and from OP's photos in our report, it is
13 indistinguishable from let's say other light fixtures
14 and electrical fixtures along the railroad tracks and
15 the highways.

16 So, in this case we would support the
17 continuation of this tower without any further time
18 limits and have -- give other carriers an opportunity
19 to locate, or co-locate on towers which is one of
20 OP's policies for co-location for carriers.

21 CHAIRMAN HILL: I'm sorry. Did you state
22 your name on the record?

23 MS. THOMAS: Yes, I did.

24 CHAIRMAN HILL: Oh, okay.

25 MS. THOMAS: Karen Thomas.

1 CHAIRMAN HILL: Oh, you did? Okay. I don't
2 know. Okay, great. Sorry.

3 MS. THOMAS: Uh-huh.

4 CHAIRMAN HILL: Okay. Does the -- I do have
5 one question. So, when you say you support the
6 application and it's like in perpetuity? I mean,
7 there's no -- you said no time limits.

8 MS. THOMAS: No time limits because of its
9 location. In this location we would support no time
10 limits. It's in an industrial zone. It's well out
11 of -- it's near to highways, it's barely noticeable
12 among other fixtures that are about the same height
13 in terms of light poles, wires, telephone, and all
14 that electrical activity. In this location I would
15 say no time limits, no further time limits.

16 But if the Board so considers, we wouldn't
17 object to another 20 years.

18 CHAIRMAN HILL: So, and I'm just curious
19 because we have these things come before us quite a
20 bit. I mean, it's just odd to get no time limits.
21 It's, again, because of the industrial area that it's
22 in.

23 MS. THOMAS: Yes. Yes.

24 CHAIRMAN HILL: And so forth. Okay.

25 MS. THOMAS: Because some of them that we

1 have in the District are not exactly in industrial
2 areas, so we put time limits on them to make sure
3 everything, the community, there are no complaints,
4 you know, and the community is still in agreement
5 with it and it's operating the way it should operate
6 and functioning the way it should function.

7 CHAIRMAN HILL: And previous time limit was,
8 you said, 20 years?

9 MS. THOMAS: Yes.

10 CHAIRMAN HILL: Okay. Does the Board have
11 any questions for the Office of Planning?

12 MR. HART: Just one question, Mr. Chairman.
13 The area where we're talking about has actually gone
14 through some changes in terms of the amount of
15 development. There is an apartment building complex,
16 it's on the corner of Minnesota and Benning. And
17 there's also a District Department building as well,
18 which are high-rise buildings that are in this
19 vicinity. You don't really have a lot of high-rise
20 buildings here, and I would suspect there would be
21 some other development happening, you know, as
22 through, in the next 20 years.

23 In many parts of D.C. they have a lot of
24 these types of antennas happening on tops of
25 buildings. And it is somewhat foreseeable that this

1 could actually change; that you could have antennas
2 on buildings and making the need for this particular
3 location unnecessary or you wouldn't have to have a
4 tower itself. And I think that a time limit would be
5 helpful because then in another 20 years we could
6 kind of relook at this and understand that.

7 MS. THOMAS: Absolutely. Yeah.

8 MR. HART: That was it. Thanks.

9 CHAIRMAN HILL: I guess I'm just more to tag
10 on a question really. I suppose like, so the 20
11 years would, Office of Planning, if there were a time
12 limit the time limit before was 20 years. To me 20
13 years seems like, you know, might as well be 50
14 years, then, I guess. Is 10 years also something
15 that -- or is that also -- you know, what is the
16 Office of Planning's thought on a 10-year limit
17 versus a 20-year limit?

18 MS. THOMAS: I would support a 20-year limit
19 more than a 10-year limit. Although technology is
20 changing there is, from my reading in the industry,
21 there is still need for towers.

22 I know we have -- we're coming on to small
23 cell capability, but we still need these towers, they
24 act as repeaters for the cell towers. The height
25 itself is necessary for the -- to repeat for the

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1 small DAS systems, the Distributed Antenna Systems
2 that we have going on buildings. And so, there is
3 still some importance to towers. And in the near
4 foreseeable future 10, 20 years, yes.

5 CHAIRMAN HILL: Okay. All right. Does the
6 applicant have any questions for the Office of
7 Planning?

8 MS. GIORDANO: No, but we'd like the
9 opportunity to respond to Mr. Hart's question at the
10 appropriate time.

11 CHAIRMAN HILL: Okay. You can respond now if
12 you like.

13 MR. RAPISARDA: Well, let me turn that on.
14 Thank you. Greg Rapisarda, for the record, Mr. Hart,
15 Mr. Chair.

16 So, the question had to do with about the
17 time limit, and it also touched on a part of your
18 earlier question which was, changing technology. Are
19 towers going to become obsolete? Well, as far as we
20 know, and there's a lot of time and money in this
21 industry, they're not.

22 Even the small cells that were referenced,
23 that's called a complimentary network. So, these
24 macro sites aren't going anywhere. Maybe there are
25 ways to fill in, but what happened, all that's

1 happening is people are using more data, and so there
2 need to be more antennas within a smaller area.

3 The other thing, and I don't know the
4 specific building, but I do think that when we talk
5 about a high-rise, the difference between a 60-foot
6 high-rise and a 100-foot monopole is a big
7 difference. And so, if they're providing those
8 wireless services at 100 feet now, or 90 feet, you
9 know, whichever height elevation that particular
10 carrier is in, that's the height that they need. And
11 so, I would just throw that out, that I don't know
12 that there's going to be 100-foot tall high-rises
13 here. And so, we would ask for no time limit.

14 The other reason would be, in the unlikely
15 event, let's say I'm completely wrong, the industry
16 is wrong, if this tower doesn't get used, if there's
17 not a carrier on it for a year, the code says you
18 have to take it down. So, there is a built-in safety
19 feature there.

20 MS. GIORDANO: Which code?

21 MR. RAPISARDA: The Zoning Regulations said
22 if it's not used for 12 months.

23 CHAIRMAN HILL: Okay. But again, if the
24 choice was not for this to get supported, or a 20-
25 year time limit, you would be fine with a 20-year

1 time limit.

2 MR. RAPISARDA: Yes, we would.

3 CHAIRMAN HILL: Okay. All right. You won't
4 be here in 20 years. Okay? At least, I doubt you
5 will be. I won't be here in 20 years.

6 MR. RAPISARDA: I don't think we will be,
7 right.

8 CHAIRMAN HILL: So, yeah no. Oh yeah,
9 working here. You're right. Exactly correct. I
10 hope you're alive 20 years from now.

11 So, let's see. Okay, so I did that. I'm
12 going to turn to see who's here in the audience. Is
13 anyone here from the ANC? Oh, please, come forward.

14 MR. MILLER: While they're coming forward,
15 Mr. Chairman, I just had one question for the -- Mr.
16 Rapisarda. What is the term of your lease, the
17 current term of -- is it --

18 MR. RAPISARDA: There's a 50-year easement.
19 I'm not sure about -- so, there's an easement.

20 MR. MILLER: And you're 20 years into the 50-
21 year easement?

22 MR. RAPISARDA: No, not quite.

23 MR. MILLER: Oh.

24 MR. RAPISARDA: That was the -- one second,
25 the easement was --

1 MR. MILLER: I'm just trying to relate that
2 to the time. To the time.

3 MR. RAPISARDA: Oh, okay. So, the easement
4 is from, I want to say, 2013. I know it's in there,
5 so the easement was in 2013 and it's a 50-year
6 easement.

7 MR. MILLER: Thank you.

8 MR. RAPISARDA: You're welcome.

9 CHAIRMAN HILL: Okay. If I could turn to
10 you, and then if you could introduce yourself,
11 please, and then give me your home address?

12 MR. HOLCOMB: Good morning. And thank you,
13 Tyrell Holcomb, ANC Commissioner 7F-01, newly
14 elected. I reside at 4020 Minnesota Avenue
15 Northeast, Washington, D.C., 20019.

16 CHAIRMAN HILL: Okay, great. Mr. Holcomb,
17 were you here for the swearing in?

18 MR. HOLCOMB: I was not.

19 CHAIRMAN HILL: Okay. If I could just get
20 you to swear in with the secretary if you would stand
21 up, please?

22 [Oath administered to the participant.]

23 CHAIRMAN HILL: Okay. Mr. Holcomb, well,
24 congratulations on your election.

25 MR. HOLCOMB: Thank you, sir.

1 CHAIRMAN HILL: And, welcome. And as the ANC
2 representative you'll have five minutes to tell us
3 whatever you'd like to tell us. And so, please, go
4 ahead.

5 MR. HOLCOMB: Yes, sir. Thank you again for
6 this opportunity today and to all of the members on
7 the Board and those here in attendance. As the
8 current commissioner of single-member district, 7F-
9 01, and as a representative of the 7F Commission, we
10 stand in strong opposition of the application for
11 permanent exception for the monopole located at the
12 property of 3701 Benning Road Northeast, and ask that
13 this request be denied.

14 The Commission voted at the December meeting
15 with the unanimous vote for this exception to not be
16 passed. We are not asking that the pole be removed,
17 however that the exception be denied.

18 Many of the constituents in my district have
19 expressed how this unappealing aesthetically looking
20 tower spoils the view from their home and how
21 unpleasant it is to be blended with our skyline. We
22 are fortunate to have a skyline that includes the
23 Capitol, the Washington Monument, as well as Nats
24 Park. Unfortunately, the tower's height is blended
25 with the aforementioned skyline and can clearly be

1 seen behind the neighboring properties on 36 and Eids
2 (phonetic) Streets.

3 We, as a community, request this application
4 not receive preferred treatment with a permanent
5 zoning exception. Again, we are not asking that this
6 tower be removed, but that they not receive preferred
7 treatment. For the past two years, the tower has
8 been operating in violation of the bench decision
9 order in 1994, which granted the subject the zoning
10 exclusion subject to the follow conditions.

11 Approval shall run concurrently with the
12 lease agreement between the property owner and
13 Cellular One. But in no event shall it extend beyond
14 a period of 20 years. Ward 7 is transforming and we
15 will no longer sit idle on matters that impact our
16 communities. Therefore, it is imperative we are in
17 compliance with the District's newly revised zoning
18 laws, and the District's Comprehensive Plan.

19 In close I ask the members of the BZA to act
20 on the request of the residents of 7F, and strongly
21 encourage you to ensure proper zoning laws are
22 adhered to and deny the applicant's request for
23 permanent exception. Thank you.

24 CHAIRMAN HILL: Thank you, Mr. Holcomb. Does
25 the Board have some questions for the ANC,

1 Commissioner?

2 MR. HART: Yes. Thank you, Mr. Chair. Thank
3 you very much for coming out, Mr. Holcomb.

4 MR. HOLCOMB: Yes, sir.

5 MR. HART: You said that the ANC is not
6 asking for the tower to be removed.

7 MR. HOLCOMB: Correct.

8 MR. HART: But you wanted to deny the
9 application. So, as you've heard from the applicant,
10 if this is laid vacant for, or there are not cell
11 tower carriers on it, it would have to be removed --

12 MR. HOLCOMB: Yes, sir.

13 MR. HART: -- itself. So, are you -- does
14 the ANC want this to be removed at some point, or is
15 it just that you want to have a limit on the actual
16 time that would be allowed for the -- for the tower
17 to be in existence.

18 MR. HOLCOMB: Mr. Hart, as you stated, that
19 there is development that has occurred on the
20 Minnesota Avenue corridor, and there is additional
21 development that is coming. And so with that at some
22 point, if there is a discussion that needs to be had
23 about the tower being removed, then that will be had.
24 But at this point the ANC would like there to be a
25 time limit on which the tower receives in terms of

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1 its operational use.

2 MR. HART: And at that point are you thinking
3 that the tower would be removed in, we've been
4 talking about 20 years, so I'll throw that out.
5 Would it be removed in 20 years, or you're just
6 saying that it would -- you would have a chance to be
7 able to kind of discuss it, looking at the
8 development that has transpired?

9 MR. HOLCOMB: I definitely think we're
10 talking about the opportunity to discuss it at that
11 point.

12 MR. HART: Thank you. No further questions.

13 CHAIRMAN HILL: Mr. Holcomb, again, yeah,
14 thanks for coming down, because you know, it's not
15 part of your normal job, I'm sure.

16 So, if there were a 20-year time limit, would
17 then the -- well, a couple things, actually. So,
18 they didn't have an opportunity to present, is that
19 correct? Or you don't know?

20 MR. HOLCOMB: I'm not 100 percent sure.

21 CHAIRMAN HILL: Okay. And the vote, I think
22 it says is four to one, but I don't know if you were
23 there because you just got newly elected, correct?

24 MR. HOLCOMB: Correct.

25 CHAIRMAN HILL: So, you don't know who was

1 the one vote that was in favor, I guess.

2 MR. HOLCOMB: I'm not sure.

3 CHAIRMAN HILL: Okay. All right. So, if
4 there were a 20-year time limit do you think that the
5 ANC would then withdraw its opposition?

6 MR. HOLCOMB: I do.

7 CHAIRMAN HILL: Okay. All right. Okay.
8 Does anyone have any other questions?

9 MR. HOLCOMB: And, Mr. Hill, if I could?

10 CHAIRMAN HILL: Sure.

11 MR. HOLCOMB: I, as the Commissioner of 7F-
12 01, the tower sits in my district.

13 CHAIRMAN HILL: Okay.

14 MR. HOLCOMB: So, I would be in favor of the
15 20-year exception, especially since the tower sits in
16 my district.

17 CHAIRMAN HILL: Okay. Okay. All right.
18 Great. Thank you.

19 MR. HOLCOMB: Yes, sir.

20 CHAIRMAN HILL: So, is there anyone else here
21 who would like -- well, is there anyone here who
22 would like to speak in support of the application?
23 You may leave if you like, Mr. Holcomb.

24 Yes, sir. One second.

25 MS. GIORDANO: I think we get the opportunity

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1 to cross-examine.

2 CHAIRMAN HILL: Sure.

3 MS. GIORDANO: Okay, I just --

4 CHAIRMAN HILL: Mr. Holcomb, I'm sorry.

5 MS. GIORDANO: Just had a --

6 CHAIRMAN HILL: You can come on back and sit
7 down. I guess you're going to get cross-examined.
8 So, you know, although they seem to be doing well, so
9 I don't know why they want to cross-examine.

10 MS. GIORDANO: This isn't softball, but I
11 have to --

12 MR. HOLCOMB: The seats are comfortable, so -
13 -

14 CHAIRMAN HILL: Go ahead. That's good.

15 MS. GIORDANO: I just have to point out --

16 CHAIRMAN HILL: Sure.

17 MS. GIORDANO: -- whether you have been
18 authorized by the ANC to represent the ANC tonight.
19 Today.

20 MR. HOLCOMB: Yes, ma'am. I have.

21 CHAIRMAN HILL: Okay. okay, great. All
22 right. Thank you. Thank you.

23 All right. So, is there anyone here wishing
24 to speak in support of the application? No? No one
25 is here to support a tower?

1 Is there anyone here to speak in opposition?

2 Please, come forward.

3 Good morning, again, sir.

4 MR. BELT: Good morning.

5 CHAIRMAN HILL: If you wouldn't mind just
6 please, reintroducing yourself and your home address
7 again?

8 MR. BELT: Okay. My name is David Belt,
9 former ANC Commissioner 7F-01. At the time this was
10 brought forward, my address is 3940 Benning Road
11 Northeast, Washington, D.C., 20019.

12 CHAIRMAN HILL: Okay. Great. All right, Mr.
13 Belt, as a former commissioner you know the different
14 time limits and everything, so we're going to give
15 you three minutes to go and present what you'd like
16 us to hear. We do have your letter that you did
17 submit. But please, go ahead.

18 MR. BELT: Okay. Do you have the revised one
19 as of last night?

20 CHAIRMAN HILL: Yeah, I believe so. Is that
21 correct, Mr. Moy? Yes.

22 MR. BELT: Okay, that's --

23 MR. RAPISARDA: Mr. Belt, do you have an
24 extra copy of that? I haven't seen that since last
25 night. If it's the only one then --

1 MR. BELT: No, I have an extra one.

2 MR. RAPISARDA: Okay. Thank you. Excuse me.

3 CHAIRMAN HILL: That's okay. Mr. Moy, you
4 want to reset that clock for me on three minutes?
5 Thank you. Please go ahead.

6 MR. BELT: This is short so I'll briefly read
7 it.

8 CHAIRMAN HILL: Sure, that's all right.

9 MR. BELT: Okay. Dear Board of Zoning
10 Adjustment, as long-time resident and former ANC
11 commissioner of SMD 7F-01, I am requesting that the
12 application for the permanent exemption for the
13 monopole located on the property of 3701 Benning Road
14 be denied.

15 The unsightly tower spoils the view from the
16 residential single-family homes on 3900 block of
17 Benning Road and is clearly visible behind the
18 neighboring properties on 36 and Eids Street
19 Northeast.

20 I've always enjoyed a postcard panorama view
21 from my front porch with the exception of those
22 unsightly towers, as being the dominant structure
23 against the skyline. The existing tree line height
24 is consistent with all existing conforming structures
25 in the background, with the view of the Capitol

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1 Building and the Washington Monument being the focal
2 points with National Stadium, the Smithsonian Museum,
3 and Regan National visible in the background, and now
4 the MGM Grand blending harmoniously with the existing
5 skyline.

6 Section 1313.1 of special exceptions provides
7 that a monopole is permitted in special exception in
8 the P-D-R-1 Zone in accordance with the following
9 standard depicted in bold type and just below what
10 you have. Location, height and other characteristics
11 consistent with the purpose of this chapter.
12 Location so the visual impacts are minimized to the
13 greatest practical extent from neighboring properties
14 and adjacent public spaces, and appropriately
15 screened by landscaping or other techniques to
16 minimum the visibility of the antenna tower or
17 monopole.

18 According to the cell tower map on the
19 website, cellreception.com, this tower is the closest
20 -- is in the closest proximity and has the highest
21 visibility to any residential area in the city. This
22 is inclusive of all towers and providers.

23 Ward 7 is not the same as it was back in
24 1994. And even this usage was not a by-right zoning
25 usage and required special exception back then. The

1 tower for the past two years, or actually a little
2 over a year, has been operating in violation of the
3 bench decision order in 1994, which granted the
4 subject zoning exclusion subject to the following
5 conditions. Approval shall run concurrent with the
6 lease agreement between the property owner and
7 Cellular One, but in no event shall it extend beyond
8 a period of 20 years.

9 Since D.C. has undergone a major zoning
10 rewrite, and which during this time the Office of
11 Zoning and the Office of Planning were open for
12 comment and recommendations pertaining to future and
13 existing building and structure use, Ward 7 is
14 changing demographically, and aesthetically, so it is
15 becoming more and more important that we're not
16 inconsistent with the District's newly revised zoning
17 laws, as well as the District's Comprehensive Plan.

18 For these reasons the residents of 7F would
19 like to consider the adverse effect that a permanent
20 exemption would have on the use of neighboring
21 properties, and urge the members of the BZA to adhere
22 to the proper zoning regulations by law and deny the
23 application request for permanent exemption.

24 CHAIRMAN HILL: Okay, great. Thank you. So,
25 Mr. Belt, so I'm curious. So you are the previous

1 SMD that I guess -- or, I don't know whether you were
2 the previous or not, but you were in the SMD that now
3 Mr. Holcomb is in?

4 MR. BELT: Yes.

5 CHAIRMAN HILL: Okay.

6 MR. BELT: I was formerly the Commissioner
7 before Mr. Holcomb. I was the one when this was
8 initially --

9 CHAIRMAN HILL: Okay.

10 MR. BELT: -- brought forward and spoke with
11 the D.C. Eagle. And I know their situation, why they
12 are unable to speak on it.

13 CHAIRMAN HILL: Okay. So, as Mr. Holcomb
14 also stated in terms of what he thought the ANC would
15 do, if this had a 20-year limit on it, would you then
16 agree with what he was saying in terms of the ANC,
17 that that would be acceptable?

18 MR. BELT: Emphatically no. That's not what
19 the ANC voted on. The ANC voted -- I was ANC
20 commissioner at that time, and part of that vote, the
21 vote was unanimous. The vote was unanimous that the
22 tower not be given a special exception and be removed
23 --

24 CHAIRMAN HILL: Okay. So --

25 MR. BELT: -- for the reasons that we've gone

1 by aesthetics, the tower location, it's --

2 CHAIRMAN HILL: Okay. That's all right. I'm
3 just asking.

4 MR. BELT: Every aspect of it is --

5 CHAIRMAN HILL: So, you want the tower
6 removed?

7 MR. BELT: Yes.

8 CHAIRMAN HILL: Okay. All right. So, now
9 I'm just kind of curious because I've seen the
10 photographs. I mean, there's other telephone poles
11 and everything else.

12 MR. BELT: Exactly. And those are also -- I
13 know at least one other tower is special exception,
14 is also a special exception. I don't know the
15 specifics on it. That's in 7D, and I have talked to
16 their Chairman on that particular tower in the
17 future.

18 CHAIRMAN HILL: Okay.

19 MR. BELT: But all of these towers which have
20 been there at a time when there was little voice for
21 Ward 7 as a whole, now things 20 years later people
22 are changing, demographics are changing, and the
23 towers, those particular towers proliferated are not
24 as --

25 CHAIRMAN HILL: Okay.

1 MR. BELT: -- important as they were 20 years
2 ago, due to the emerging technologies.

3 CHAIRMAN HILL: Okay. Okay. Does the Board
4 have any questions for the witness?

5 Okay, please. Go ahead, Mr. Miller.

6 MR. MILLER: Thank you, Mr. Chairman. Thank
7 you for your testimony. You said the ANC vote was
8 unanimous, but the letter we have from the ANC 7F,
9 dated September 20th --

10 [Discussion off the record.]

11 MR. MILLER: When he was there in September
12 20th, 2016, it says four to one.

13 MR. BELT: Well, that's incorrect. It was
14 actually --

15 MR. MILLER: It's signed by the chair, it's
16 in our record.

17 MR. BELT: Yeah, that's -- I'd ask to remove
18 that. We have the original, on record we have the
19 original official --

20 MR. MILLER: I just wanted to point out that
21 discrepancy.

22 MR. BELT: Okay.

23 MR. MILLER: I don't know what's the --

24 MR. BELT: Yeah, it's in the official form
25 that it was five to -- not that letter. She was

1 mistaken on that.

2 MR. MILLER: Okay.

3 MR. BELT: And just in -- because I spoke
4 with her about that. Evidently she didn't send in a
5 change. But the official ANC document form for full
6 weight, yeah, that shows five to zero. That's
7 correct. That was the --

8 MR. MILLER: I see. I see that as well.

9 MR. BELT: Yeah.

10 MR. MILLER: So, we have that dated November
11 15th, so we have that discrepancy in the record.

12 The only other comment I would just make is
13 just for my own personal observation, I think there
14 are other towers in this city that are close to
15 residential neighborhoods. Not that it's desirable,
16 ever. But I know near my neighbor in Tenley Town, I
17 mean, there is that huge tower that everyone sees.

18 MR. BELT: It's a zone. Now some towers that
19 are owned by D.C., you do have some towers that are
20 owned by the --

21 MR. MILLER: Well, there's the Georgia Avenue
22 -- and there's the Georgia Avenue tower.

23 MR. BELT: Yeah. Those towers are exemptions
24 because they're owned by the D.C. Government on
25 government property. So.

1 MR. MILLER: No, the one in -- I think the
2 one in Tenley Town is privately -- it's probably
3 American Tower.

4 MR. BELT: Yeah.

5 MR. MILLER: But, I just wanted to make that
6 observation.

7 MR. BELT: You know whether it's in their
8 zone by special exception or --

9 MR. MILLER: I just wanted to point out that
10 Ward 7 isn't being singled out in terms of having
11 this type of --

12 MR. BELT: Right.

13 MR. MILLER: -- use.

14 MR. BELT: Right. The problem is --

15 MR. MILLER: I've seen it elsewhere in the
16 city.

17 MR. BELT: Right. The problem is, in Ward 7,
18 it's not zoned for this particular use, and that's
19 going to cause issues as we come along now. Twenty-
20 years ago we didn't imagine development coming to
21 Ward 7 the way it has begun, you know. We didn't
22 imagine that. And now, these things are becoming a
23 serious issue. There will be development in that
24 warehouse area.

25 Now, and I'm sure the presence of those

1 towers they're on special exception because it's not
2 just like -- it's not like a little minor, you know,
3 a few inches here, a few inches there. We're talking
4 about major zoning violations, you know, or major
5 zoning exemptions in height, in the setbacks on all
6 four sides.

7 CHAIRMAN HILL: Okay, Mr. Belt.

8 MR. BELT: I'm talking about the entire
9 thing.

10 CHAIRMAN HILL: Okay. All right. Thank you.
11 I think Commissioner Miller was just making a
12 comment, but okay. Thank you.

13 Do you have any questions or comments? No?

14 MR. RAPISARDA: Mr. Belt, you said that
15 according to -- I'm familiar with Cellreception.com.

16 MR. BELT: Uh-huh.

17 MR. RAPISARDA: It's the closest proximity
18 with the highest visibility. But do they show you
19 how visible things are to residential neighborhoods?

20 MR. BELT: Well, they have maps and I live
21 there.

22 MR. RAPISARA: Okay. But throughout all of
23 the District.

24 MR. BELT: I step out on my front porch, I
25 can look and see it's visible if you go across the

1 street, East River Shopping Center.

2 MR. RAPISARDA: Okay.

3 MR. BELT: It's extremely -- it's one of the
4 most prominent ones, and from there you see three
5 huge towers. I know at least this one and another
6 one --

7 MR. RAPISARDA: That answered my question.

8 MR. BELT: -- is special exception.

9 CHAIRMAN HILL: Okay. All right. Okay.
10 Great. All right. Well, thank you, Mr. Belt.

11 All right. Is there anyone else here wishing
12 to speak in opposition or support? No? All right.

13 The Board doesn't have any further questions?
14 Would the applicant like to say anything in closing?

15 MS. GIORDANO: If I might? Just to make sure
16 that the Board understands the context here of this
17 location.

18 The tower is located behind a strip shopping
19 center along Minnesota Avenue, and then behind,
20 again, the D.C. Eagle building. I think it's a
21 three-story building there.

22 To the north Benning Road is elevated. So,
23 there is really nothing from Benning, from the north
24 that really has any visibility to this.

25 And then to the west is the railroad tracks,

1 Anacostia Freeway, and I think Mr. Belt submitted a
2 graphic to his initial letter that shows the distance
3 to the residential area that he's talking about at 36
4 and Eids, which is several thousand feet away from
5 this tower.

6 So, anyway, I just wanted to reiterate that,
7 you know, the location here is really quite far
8 removed from any residential or even any commercial.

9 CHAIRMAN HILL: Okay. Okay. Thank you. Is
10 that it?

11 MS. GIORDANO: And one other thing.

12 CHAIRMAN HILL: Sure.

13 MS. GIORDANO: I think Mr. Belt said that the
14 zoning doesn't permit this. It does permit it with
15 special exception and it is a permitted use with a
16 special exception in an industrial zone.

17 CHAIRMAN HILL: Okay. Mr. Belt, I understand
18 what you're saying. You don't need to comment back
19 or anything. You want the tower removed, and so, you
20 know, I understand what you're saying in terms of you
21 can see it.

22 MR. BELT: Well, not only -- yeah.

23 CHAIRMAN HILL: Yeah. Yeah.

24 MR. BELT: Not only myself, but other
25 neighbors.

1 CHAIRMAN HILL: Yeah. Okay. Okay.

2 MR. BELT: Other constituents.

3 CHAIRMAN HILL: Okay. All right. Okay,
4 thank you.

5 Is there something else you wanted to finish?
6 I'm sorry.

7 MR. BELT: Oh, you know there is.

8 CHAIRMAN HILL: Yeah, no. That's okay. Mr.
9 Belt, we do have your letter in the record and I do
10 understand what you're trying to get done. And so,
11 okay.

12 Does the Board have any other questions for
13 the applicant? Okay. All right.

14 Well, then in that case I'm going to go ahead
15 and close the hearing. Is the Board ready to
16 deliberate? Okay.

17 It is unfortunate, I guess, that we have
18 poles in the city, in my opinion also, I suppose.
19 And as the technology moves forward, you know,
20 perhaps you know, some of these things can be removed
21 and things might be able to change in terms of what
22 does and doesn't block people's views.

23 I guess also on the other hand, you know,
24 some people actually do find the -- not exactly the
25 poles, but this kind of like view, interesting, I

1 suppose. Or you know, some people -- it's all really
2 in the eye of the beholder, I suppose, to a certain
3 extent.

4 The discussion that Mr. Hart, you brought up
5 in terms of a time limit, and then also that the ANC
6 was in support, or at least the SMD seemed like they
7 could possibly be in support of the application is
8 something that I would be now more in favor, inclined
9 to agree to in terms of the 20 limit time limit.

10 After, you know, going through all of the
11 files in the record and then also really taking a
12 hard look at the Office of Planning, and that this
13 has been there already for 20 years, I mean, the main
14 thing for me was again trying to establish who
15 actually had ownership and who had the ability to
16 step forward with the application.

17 So, I would be in approval of this with the
18 20-year time limit. Does anyone else have anything
19 to add?

20 MR. MILLER: I would second that motion.

21 MR. HART: Yeah, I also would second it. I
22 think that the time limit helps to give the
23 neighborhood an assurance that this would kind of be
24 revisited at some point in the fairly near future.
25 But also understanding that the development has to

1 kind of catch up to this, to this technology. I
2 think removing the antenna at the time would cause a
3 loss of service or a loss of some issue. I don't
4 know that for sure. I'm just saying that that's --
5 there's a possibility, but I do think that there
6 needs to be a little bit more development that
7 actually occurs to be built to kind of deal with
8 that. But be that as it may --

9 CHAIRMAN HILL: Okay. Great.

10 MR. HART: -- I think that I'd be supportive.

11 CHAIRMAN HILL: Okay. Thank you. Then, I
12 will go ahead and make a motion to approve
13 Application 16011A of American Tower Corporation with
14 a 20-year time limit.

15 MR. MILLER: Second.

16 CHAIRMAN HILL: Motion has been made and
17 seconded.

18 [Vote.]

19 CHAIRMAN HILL: The motion passes, Mr. Moy.

20 MR. MOY: Staff would record the vote as
21 three, to zero, to two. This is on the motion of
22 Chairman Hill to approve the application for the
23 relief requested for a period of 20 years. Seconded
24 the motion, Mr. Miller. Also in support, Mr. Hart.
25 We have two seats vacant. The motion carries.

1 CHAIRMAN HILL: Okay. Thank you, Mr. Moy.
2 Everyone, we're just going to take a quick
3 five-minute break.

4 Oh, sure. Sorry.

5 MS. GIORDANO: I guess we can't do a summary
6 order because the ANC position, but would you like us
7 to submit a draft order?

8 CHAIRMAN HILL: Yes, that would be great.
9 Thank you. Thank you.

10 MS. GIORDANO: Okay.

11 [Recess from 10:58 a.m. to 11:07 a.m.]

12 CHAIRMAN HILL: All right. We'll get started
13 again. Mr. Moy, if you wouldn't mind calling our
14 next case?

15 MR. MOY: With pleasure. Thank you, Mr.
16 Chairman. If I can ask parties to the table to
17 Application No. 19386 of IREI 22nd Street, LLC.

18 Mr. Chairman, I believe this application has
19 been amended for variance from the lot width and area
20 requirements of Subtitle D, Section 302.1 and
21 variance from the side-yard requirements of Subtitle
22 D, 307.1 which would construct a new one-family
23 dwelling, R-1-B Zone, 3702 22nd Street Northeast,
24 Square 4226, Lot 42.

25 CHAIRMAN HILL: Good morning, everyone. If

1 you could, just please introduce yourself from my
2 left to right and if you could give me your name and
3 home address, that would be great. Thank you.

4 You can just push the green button there.

5 MS. BREVARD: Okay. I'm Gail Brevard. I'm
6 the Advisory Neighborhood Commissioner 5C-01, 2848
7 Myrtle Avenue Northeast, Washington, D.C. is my
8 residence.

9 CHAIRMAN HILL: Okay. Could you spell your
10 last name for me real quick?

11 MS. BREVARD: It's B, like in boy, R-E, V
12 like in Victor, A-R-D, like in David.

13 CHAIRMAN HILL: Okay. Great. Thank you.

14 MR. WARREN: Good morning. I'm Charles
15 Warren, Principle of Teass Warren Architects, here on
16 behalf of the applicant. Home address is 11 U Street
17 Northwest, Washington, D.C., 2 triple 0, 1.

18 MR. DeVERGER: My name is Paul DeVerger. I'm
19 owner of the property and managing member of RIEI
20 22nd Street, LLC. My address is 1316 Webster Street
21 Northeast, Washington, D.C., 20017.

22 MR. SULLIVAN: Good morning. My name is
23 Marty Sullivan with the law firm of Sullivan and
24 Barros on behalf of the applicant.

25 MR. CHANG: Hi. My name is Sam Chang. I'm

1 the owner of the property. My resident address is
2 1920 14th Street Northwest, Washington, D.C.

3 CHAIRMAN HILL: Okay, great. So, Mr.
4 Sullivan, I guess we're going to need pretty much a
5 full presentation from you today. And then there are
6 obviously, you know, the record in terms of the
7 different forms of opposition that you have, there
8 are going to be some questions in terms of what the
9 opposition has stated that I have as well. But
10 please, I want to go ahead and just give you an
11 opportunity to present your case and I'm not going to
12 throw you off, I hope, or interrupt you. I'll just
13 let you kind of go ahead.

14 How long do you think you might need? And,
15 I'm sorry, did everybody fill out their witness cards
16 for the transcriptionist? Okay.

17 MR. SULLIVAN: Fifteen minutes.

18 CHAIRMAN HILL: Okay. Great. Mr. Moy, thank
19 you.

20 And, Ms. Brevard.

21 MS. BREVARD: Yes, sir.

22 CHAIRMAN HILL: Did you get sworn in this
23 morning?

24 MS. BREVARD: No.

25 CHAIRMAN HILL: Okay. Let's go ahead and do

1 that real quick, if you don't mind. Mr. Moy, if you
2 would just swear in the commissioner.

3 [Oath administered to the participant.]

4 CHAIRMAN HILL: Okay, great. And,
5 Commissioner Brevard, the way this goes, you know,
6 we're going to hear from the applicant and then we're
7 going to call forward for the ANC and opposition and
8 support and such, so you know, you're free to sit
9 there if you like or go back into the audience and
10 come back up later. Whatever you'd like to do. The
11 ANC speaks a little later, but you're welcome to stay
12 right there. I just wanted to let you know; I just
13 wanted to let you know the process. Okay?

14 All right, Mr. Sullivan.

15 MR. SULLIVAN: Thank you, Mr. Chair and
16 Members of the Board. First of all, I have a letter
17 of authorization since I'm recently brought into the
18 case. So I'll submit that.

19 CHAIRMAN HILL: Okay. Great. Sure.

20 MR. SULLIVAN: Thank you. I'll be very brief
21 and we can get to the architect's presentation. Just
22 to summarize, the relief being requested is for a
23 minimum lot and area relief, which under the 2016
24 regulations it actually isn't even a required relief
25 anymore, except for the fact that we're also asking

1 for side-year relief. And apparently, according to
2 the AG's office, when you're asking for side-yard
3 relief you then do need to ask for the minimum lot
4 area and width relief. So, we're asking for that in
5 order to do a -- the lot area is 2,500 square feet.
6 We're proposing a house with three and a half foot
7 side yards, 40 percent lot occupancy, two stories.

8 And just with that then I'll turn it over to
9 the architect.

10 CHAIRMAN HILL: Okay. Great. Thank you.

11 MR. WARREN: I'll be pretty brief on this and
12 just sort of run through the general context and the
13 design, how we arrived at the design that is in front
14 of you today.

15 So, the lot, you can see, is in the Woodridge
16 neighborhood in Northeast D.C. This is just north of
17 Otis Street on 22nd Street. You can see from the
18 vicinity plan there's several small narrow lots, and
19 this is all in R-1-B and you can see that there are
20 several lots that would be nonconforming under the
21 current zoning.

22 The neighborhood is characterized generally
23 by single-family detached bungalow style residences
24 with a few legacy semi-detached structures.

25 This is the lot. You can see it's fairly

1 narrow. It's between the fence and, you know, where
2 the form tree was on the lot.

3 You can see from this aerial photo, the lot's
4 pretty narrow but you can see that there's, in the
5 context of several of these free-standing semi-
6 detached structures, and it's very common in the
7 neighborhood as you can see.

8 You can see from this base map expert that
9 we've pulled up that it's a little tough to read, but
10 right around that number, 42, that's our lot.
11 There's a yellow square that represents the way those
12 maps work, that would represent a wood frame duplex
13 structure that straddles the lot line between our
14 lot, 42 and 41. So, historically there was a semi-
15 detached structure on the property.

16 This aerial photo I just highlighted several
17 of the lots that have similar side-yards to what
18 we're proposing on our property. You can see it's
19 quite common. 22nd Street here, almost all the lots
20 across the street, while the lot widths vary the side
21 yards are pretty similar to what we're proposing.
22 Perry Street, to the north, almost all these lots are
23 pretty tight, the siting of houses on these lots.

24 Some Google street views just to give you a
25 context of what the housing types are like. A lot of

1 these 1920-ish craftsman style bungalows, sided very
2 tight, this row on the upper part of this image is
3 directly across the street from our property. And
4 you can see, there's -- it's an eclectic mix of these
5 bungalow style free-standing detached structures.

6 The block, the image at the bottom here is
7 actually our side of the street, and you can see that
8 there's several properties that have a similar
9 situation. We've actually took some inspiration from
10 some of these two-story farmhouse, what we'd probably
11 call dogtrot or shotgun houses in a different region.

12 So, this is our proposed plan. You can see
13 we're taking pretty direct inspiration from those
14 structures, really looking to try to recreate that
15 two-story with a gabled front, traditional placement
16 of windows, pretty simple structure. The porch
17 obviously is a great feature in the neighborhood that
18 we'd like to integrate into our design.

19 Courtside plan here, just illustrating the
20 placement of the proposed building on the site. You
21 can see the lot to the south, the structure is about
22 six feet off the common property line, and the
23 structure to the north, the nearest structure, is
24 about 18 feet away.

25 I put together a quick little zoning diagram

1 here to just sort of illustrate the area of relief
2 and why we're asking for it. So, you can see the lot
3 is 25 feet wide by 100 feet deep, 3700 is to the
4 south here, represented by this mass, and 3706 is to
5 the north here, represented by this general massing.

6 So, 25 feet wide, 100 feet deep. This is our
7 zoning envelope that's allowable as a matter of
8 right. It's a nine-foot wide, eight-foot setbacks on
9 either side, 60-feet deep, and 40-feet tall.

10 CHAIRMAN HILL: Just real quick, I'm sorry.
11 Can you tell me which house it is again, to the left?

12 MR. WARREN: That's the southern house, so
13 that's 3700 22nd Street.

14 CHAIRMAN HILL: Okay. Thank you.

15 MR. WARREN: So, I think we could all agree
16 that volume doesn't exactly make a friendly structure
17 on this site.

18 So this is what we're proposing, a contextual
19 building very much in keeping with the design of
20 similar houses in the neighborhood, really emulating
21 that craftsman style dogtrot house on a narrow lot.

22 This is the two overlaid. You can see that,
23 why we need relief, basically. It's impossible to
24 get a structure that's really a viable dimension for
25 a single-family house. And it's really -- we're

1 proposing a pretty modest structure, about 2100
2 square feet total, 720 square feet per floor. So,
3 it's really three-bedroom, fairly modest house. And
4 it's pretty much in keeping with other houses on
5 similar sized lots in the neighborhood.

6 I thought I would take a minute to respond to
7 some of the concerns of the ANC and the neighbors.
8 Coming out of the ANC, obviously we ran in to pretty
9 much complete opposition so I thought -- I read
10 through most of the notes and I think it really
11 boiled down to two points. Generally speaking, the
12 protection of the neighboring properties. Clearly
13 understandable that property owners are concerned
14 about damage to their particular properties. So, I
15 thought I would just run through some bullet points
16 here about what we are willing to do to try to
17 alleviate some other concerns.

18 The bottom of the footings will be
19 approximately seven feet below grade, so it's not a
20 very deep excavation. Sheeting and shoring obviously
21 will be required as part of that excavation.

22 CHAIRMAN HILL: Mr. Warren, is that -- it's
23 Warren, correct?

24 MR. WARREN: Yes.

25 CHAIRMAN HILL: Is that anywhere in the

1 record, there or what --

2 MR. WARREN: This isn't in the record.

3 CHAIRMAN HILL: Okay.

4 MR. WARREN: Per se.

5 CHAIRMAN HILL: Okay. I mean, I just can't
6 read it. It's really it's -- but I'm listening to
7 you now so.

8 MR. WARREN: Sure. I don't know if I can
9 zoom in on this.

10 CHAIRMAN HILL: Mr. Moy, I'm sorry, did you
11 have something to add?

12 MR. MOY: Well, since you brought it up I was
13 going to say where that -- as Mr. Sullivan is aware,
14 the PowerPoint or the hard copy should also be
15 exhibited in the record after the hearing.

16 CHAIRMAN HILL: Okay.

17 MR. WARREN: Sure.

18 CHAIRMAN HILL: Okay. So, go ahead, tell me
19 how you're going to try to alleviate some of the
20 concerns again. So, the footing you were at, that's
21 where you were?

22 MR. WARREN: The footing I was just
23 describing the extent of excavation. It's only seven
24 feet below grade. It is not a deep foundation. The
25 -- we would obviously, we're required to shore the

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1 properties. We can't do that. We have to protect
2 that as law, basically when we submit for building
3 permits.

4 The applicant is willing to name the
5 neighboring property owners as additionally insured
6 on their construction insurance policies.

7 CHAIRMAN HILL: Both property owners. Is
8 that what you said?

9 MR. WARREN: Both property owners.

10 CHAIRMAN HILL: Okay.

11 MR. WARREN: And the applicant with neighbor
12 consent, obviously, would be willing to perform an
13 analysis or a survey of existing conditions with a
14 structural engineer to monitor those properties
15 during construction. Provisions obviously have to be
16 made for water runoff and erosion control. That's a
17 requirement of the building permit submission, and
18 obviously we would adhere to that.

19 The applicant is also willing to work with
20 the neighbors to coordinate window placement along
21 the side property lines for privacy concerns.

22 And the applicant obviously is willing to
23 enter into a construction management agreement that
24 memorializes those points.

25 And I wanted to talk a little bit about the

1 tree removal on the property. I'm going to start off
2 by saying, I'm not a tree expert by any means, but we
3 did hire one. There were four trees on the property.
4 Two are pin oaks. One was an American elm, and one
5 was a mulberry. We sort of -- I'm sorry, retained a
6 certified arborist to identify those trees and to
7 estimate the circumferences at breast height, which
8 is how that dimension is determined, according to the
9 tree regulations. It's four and a half feet above
10 the stumps, right. The trees have already been
11 removed, so we're having to do the math, basically,
12 and make some inferences about what the
13 circumferences would have been.

14 From that analysis it was determined then,
15 none of those trees were defined as heritage trees,
16 which is greater than 100-inch circumference. There
17 was a pin oak that was below the permit size. It's
18 less than 44 inches in circumference, and the
19 mulberry tree is an exempt species from the tree
20 regulations.

21 So, it really comes down to two of the trees
22 that were classified as special trees, the pin oak
23 and the American elm. The pin oak was 84 inches in
24 circumference, or 26.7 in diameter. The American elm
25 was 71 inches in circumference, and that's well below

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1 the threshold for heritage trees.

2 And honestly this was just an honest mistake
3 by my clients. They hired a tree service to remove
4 the trees. Didn't know that a permit was required,
5 personally, and they have since reached out to Urban
6 Forestry and hired an arborist and those trees were -
7 - it was legal to take them down and Urban Forestry
8 has been aware of the situation and we've talked to
9 them and they're willing to work with us to try to
10 bring the project into what they call retroactive
11 compliance. So, a tree permit has actually been
12 submitted and approved, pending payment. And the fee
13 for that is around \$8,500, and that goes directly to
14 the City Tree Fund.

15 And that's my presentation.

16 CHAIRMAN HILL: Okay, great. Mr. Sullivan.

17 MR. SULLIVAN: Thank you. I don't have
18 anything further at this point. If there's any
19 questions we'd just reserve time for rebuttal and
20 closing.

21 CHAIRMAN HILL: Okay. Great. Does anyone
22 have any questions right now for the architect?

23 MR. HART: Yeah, just a couple of questions.
24 Thank you very much for the presentation, Mr. Warren?

25 MR. WARREN: Mr. Warren, yes. Thank you.

1 MR. HART: You did describe some of the
2 things that the applicant is willing to agree to
3 regarding a construction management agreement, and so
4 there were certain things also with the -- in both
5 neighbors, I guess, adjacent neighbors being listed
6 on the insurance policy, I did hear that correctly?

7 MR. WARREN: Yes, sir.

8 MR. HART: And you -- I understand that
9 you've now hired an arborist that was a certified
10 arborist.

11 MR. WARREN: Correct.

12 MR. HART: And that upon doing kind of a
13 retroactive look on the trees that have been removed,
14 you have talked to the Urban Forestry group,
15 Department I guess, and you've gotten a tree permit -
16 - you have submitted a tree permit which has been
17 permitted, I guess, but with that, because these
18 trees have been removed, you have to pay or are
19 paying an \$8,500 -- I don't know what they call that.

20 MR. WARREN: It's --

21 MR. HART: To the D.C. Tree Fund.

22 MR. WARREN: It's actually not the fine.
23 It's what the fee would be if we were to apply for it
24 --

25 MR. HART: Okay.

1 MR. WARREN: -- prior to the trees coming
2 down.

3 MR. HART: I'm just saying these things to
4 make sure I understood all of them.

5 MR. WARREN: Oh, sure. Yeah.

6 MR. HART: Because we don't have that so it's
7 hard for me to -- I'd have to write all this down so
8 I'm trying to make sure --

9 MR. WARREN: Yeah, understandable.

10 MR. HART: -- that I have that correctly. I
11 don't have any further questions. I just wanted to
12 make sure I got that all.

13 CHAIRMAN HILL: Okay, great. Thank you. I'm
14 going to turn to the Office of Planning now.

15 MS. BROWN-ROBERTS: Good morning, Mr.
16 Chairman and Members of the BZA. Maxine Brown-
17 Roberts from the Office of Planning.

18 And my analysis just focused on their request
19 for the variance and not on the issue of the tree
20 coming down. And basically just to go through is
21 that we recommend approval of the requested special
22 exception for the side yards. The Office of Planning
23 believes that the lot area and the lot width relief
24 is not necessary. If the Commission believes that it
25 is, then we are in support of granting the approval

1 recommend approval. And I'm available for questions.

2 CHAIRMAN HILL: Does the Board have any
3 questions for the Office of Planning?

4 Okay, Ms. Brown-Roberts, since I know there's
5 people here that are wishing to speak on this
6 particular case, can you kind of just walk -- I mean,
7 I thought your report was very thorough, and if you
8 could just kind walk us through again how you came
9 about deciding that the applicant has met the three-
10 prong test.

11 MS. BROWN-ROBERTS: Okay. The first part of
12 the test talks about exceptional situation resulting
13 in a practical difficulty. This -- and the lots with
14 -- much of the lots within the community were
15 constructed prior to the 1958 and of course prior to
16 the current ZR-16 regulations.

17 And, most of the lots were what we call
18 substandard right now, that does not meet the
19 requirement for a lot area of 5,000 square feet, what
20 we have is actually half of that. And also for a lot
21 with a 50 feet and we have 25 feet.

22 So, if we were -- if the applicant was to
23 build a house that is -- that meets the side-yard
24 requirements, we'd have a very narrow lot as
25 demonstrated, I think, by the applicant in their

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1 presentation, that it would become a very narrow lot
2 that makes it sort of impossible for functions of a
3 house to operate. And therefore they have asked for
4 a reduced side-yard of 3.5.

5 We have seen in other cases before the BZA
6 where the setback of 3.5 is, really is pretty
7 reasonable.

8 CHAIRMAN HILL: Just to be clear, and I would
9 like you to continue, but it would be -- from your
10 report it would be a seven-foot wide home? I thought
11 that's what you said.

12 MS. BROWN-ROBERTS: I think maybe it -- let's
13 see.

14 CHAIRMAN HILL: It was under exceptional
15 situation resulting in a practical difficulty.

16 MS. BROWN-ROBERTS: Yes.

17 CHAIRMAN HILL: Okay.

18 MS. BROWN-ROBERTS: Yes.

19 CHAIRMAN HILL: All right. Thank you.
20 Please continue.

21 MS. BROWN-ROBERTS: Yes. And then the second
22 prong is for no substantial detriment to the public
23 good. And we looked at -- so, with the reduced rear
24 yard of 3.5, we have to look at the impact that it
25 has on the -- having that house so close to the

1 property line, the impact it has on the adjacent
2 properties.

3 I'm not sure of the direction, but one house
4 is -- has a setback of approximately six feet. The
5 other is even wider. The setback is even wider. And
6 therefore we think that with that additional, with
7 the 3.5 and the additional setback on the adjacent
8 properties, then that is enough to give air flow
9 between the buildings and also to accommodate
10 privacy. I think it's imperative that the applicant
11 work with the neighbors to make sure that the
12 location of the windows does not give a direct view
13 into the adjacent property.

14 Again, but I think that that can be minimized
15 because of the width that their 3.5 in addition to
16 the existing width of the existing houses. And
17 therefore we do not believe that it will be a
18 substantial detriment to the public good. And that
19 goes to the adjacent neighbors.

20 And again, this is something, this width is
21 something that is consistent with the other houses
22 within the community and therefore the construction
23 of this house on such a narrow is consistent
24 throughout the community and won't be looking as if
25 it's something different.

1 And then the no substantial harm to the
2 Zoning Regulations, we looked to the Zoning
3 Regulations that sort of encourages development of
4 these vacant properties, and it -- the variance
5 relief is one of the highest standards of relief that
6 the BZA grants. And we think that the regulations
7 are intended to encourage in-fill development and
8 also to make sure that the impact on the adjacent
9 properties are minimized, and we think that the
10 proposal does that.

11 CHAIRMAN HILL: Okay, great. Thank you.
12 Does anyone else on the Board have any questions for
13 the Office of Planning?

14 Okay. Does the applicant have any questions
15 for the Office of Planning?

16 MR. SULLIVAN: No, thank you.

17 CHAIRMAN HILL: Okay. So, with that I'm
18 going to go ahead and turn to the audience here and
19 see if there's anyone here from the ANC wishing to
20 speak. Obviously you're first, hear from the ANC.
21 And again, it's Ms. Brevard?

22 MS. BREVARD: Brevard.

23 CHAIRMAN HILL: Brevard. Brevard.
24 Commissioner Brevard. So, as a representative for
25 the ANC you'll get five minutes to go ahead and tell

1 us what you'd like to say. And please, begin
2 whenever you'd like.

3 MS. BREVARD: Okay. Good morning, all.

4 CHAIRMAN HILL: Good morning.

5 MS. BREVARD: I'm speaking on behalf of my
6 single-member district. We oppose the construction
7 of this home. And my neighbors' concerns are the
8 inescapable assured damage to their property unless
9 the property owners actually take down their fences
10 to allow construction equipment to come in there
11 without damaging their property.

12 The disruption of their property's foundation
13 as the roots of three large trees are removed, my
14 measurements were, the smallest tree was 60 inches in
15 diameter and the largest, 106 inches in diameter.

16 They complained about the trees being
17 removed. From my research there were special trees
18 and one heritage tree which should not have been
19 removed. I would like to see the arborist's report,
20 also, that was mentioned earlier.

21 The owners have failed to maintain the
22 property. The neighbors had to cut the grass and
23 pull the weeds, and I believe they purchased the
24 property in July of 2015. And so, the neighbors have
25 had to -- I'm sorry, 2016. And the neighbors have

1 had to care for that property.

2 The owners -- the neighbors feel that the
3 owners' disregard for D.C. regulations speaks volumes
4 to the conduct that they may receive if this special
5 exception is approved. And the owner's reluctance to
6 commit to repairing any damage to anyone's property.
7 We could not get a commitment from them. This is the
8 first I've heard of any attempt to, you know,
9 alleviate the community's concerns.

10 The adjoining property owner purchased half
11 of that lot and she can speak to that. There was a
12 reason why she could not purchase the piece of land
13 that the owners here purchased. She was not allowed
14 to purchase that.

15 The lot is too small for a single-family
16 home, and a house that narrow would be out of
17 character for the community. It would be an eyesore.

18 And my commission voted, six opposing, one
19 abstaining this project. We do not want the request
20 approved.

21 And that's it. I think my neighbors could
22 give you more information, or detailed information
23 about their concerns.

24 CHAIRMAN HILL: Okay. I have a few
25 questions. Does the Board have some questions as

1 well, or you want me to go first?

2 MR. HART: Actually, I do. Thank you,
3 Commissioner Brevard, for coming today.

4 MS. BREVARD: Yes, sir.

5 MR. HART: Just a quick question around the
6 tree, the trees themselves. Who actually did the
7 measurement for the trees?

8 MS. BREVARD: I did.

9 MR. HART: And are you an arborist or --

10 MS. BREVARD: No, I'm not, sir.

11 MR. HART: I have to ask because I --

12 MS. BREVARD: Right. Yes, sir.

13 MR. HART: I just don't know and I want to
14 make sure that I understood that.

15 And are you -- you said that the tree, one of
16 the trees was a specimen tree, or a --

17 MS. BREVARD: Two were special tree. One was
18 a heritage tree because --

19 MR. HART: And who --

20 MS. BREVARD: I'm sorry.

21 MR. HART: How as that determined?

22 MS. BREVARD: I went by the law. DCMR Title
23 24.

24 MR. HART: And that was a designation that
25 was given to these trees prior to you. You were not

1 the person who was doing that, you were just saying
2 that these were already listed on some --

3 MS. BREVARD: Well, according to the law, the
4 diameter of the 106 inch tree was exempt from being
5 cut down. It was determined to be a heritage tree.

6 Now, I'm not an arborist, I'm an
7 investigator.

8 MR. HART: No, the reason I ask is that trees
9 do need to be measured at a particular height and the
10 applicant described what that was, which is why an
11 arborist needs to do that because there is a kind of
12 understanding of what the height is because you can
13 get a different girth of the tree depending on where
14 you measure it. And so, when you're measuring it at
15 chest height, which is around four feet or so, that's
16 how you get the specific girth for the tree and it is
17 helpful for an arborist to be able to do that so that
18 you do get an understanding, a clear understand where
19 those -- it's a standard.

20 And so, that's why I was trying to understand
21 how you got to the specific height and specific
22 sizes, which would then give you if it was a heritage
23 tree or not, depending on that. So, thank you very
24 much for your information.

25 MS. BREVARD: Yes, sir.

1 CHAIRMAN HILL: Can I ask a quick question of
2 the audience? By show of hands, how many people are
3 here to speak in opposition? Okay. All right. I'm
4 just trying to get a sense of time.

5 So, let's see, so a lot of the concern in the
6 letter that you submitted, Commissioner Brevard, was
7 about again kind of like damage and how they were
8 going to -- the developer would kind of like ensure
9 that the damage would be resolved if this project did
10 move forward, in particular for the neighbors next
11 door.

12 I guess you haven't had a chance to really
13 talk with them, necessarily in terms of what the
14 insurance, and I like -- you guys can speak forward
15 to that right now, like because that's something that
16 I'm interested in as well. But, if -- did you hear
17 anything today that would alleviate that concern?
18 Not yet, I suppose, because you don't know the
19 specifics of how the insurance works?

20 MS. BREVARD: No, I don't. But they did
21 address obtaining a structural engineer survey.

22 CHAIRMAN HILL: Uh-huh.

23 MS. BREVARD: And ensuring that both owners
24 are insured. And that mentioned the footing again.

25 CHAIRMAN HILL: Uh-huh.

1 MS. BREVARD: I believe in the plans they
2 would be digging six feet down. It was told to us at
3 the ANC, I believe 10 feet down.

4 CHAIRMAN HILL: Yeah, he stated seven
5 earlier, I think, just a minute ago. Uh-huh right.
6 Yeah.

7 [Discussion off the record.]

8 MS. BREVARD: Right.

9 CHAIRMAN HILL: Okay. Everybody will get a
10 chance. But, thanks.

11 So, can the owner and the -- well, actually
12 the owner -- well, again, again, you've seen all of
13 the opposition. You've seen all of the concerns and
14 some of the concerns, I think, is, I don't want to
15 say suspect or whatever. But like, you know, the
16 trees are gone, right? And the trees were there.
17 And so somebody just came in and got rid of the
18 trees.

19 And so, you know, there's a concern from the
20 ANC commissioner in terms of the fence, in terms of
21 like you know, the insurance. Like what assurance
22 can you provide the Board that in particular the
23 neighbors next door will be made whole, and how are
24 you planning on doing that?

25 MR. DeVERGER: So, in the letters that we've

1 provided to the neighbors we've explained that we
2 would be willing to add them to our builder's risk
3 policy, just to give that additional insurance that
4 we would take care of any damages that would happen
5 to their properties. And we've also communicated
6 that we will bring in an engineer to just do a
7 preliminary survey to get an assessment of kind of
8 their properties prior to construction.

9 CHAIRMAN HILL: Ahead of time for both
10 properties?

11 MR. DeVERGER: Yeah, so that we document
12 everything before construction and then as
13 construction we will kind of keep in contact, and at
14 the end of construction document again to see there
15 are any damages. And if anything is damaged we would
16 be more than welcome to make repairs.

17 CHAIRMAN HILL: Okay. Just real quick. And
18 what about the concern about the fence? How does
19 that work?

20 MR. DeVERGER: So the fence, it is in close
21 proximity. We feel that we won't damage the fence,
22 and my partners and I did talk about the fence being
23 in close proximity, and we did allocate funds for any
24 damages to the fence if that were to happen.

25 CHAIRMAN HILL: Uh-huh. Okay. And then I'm

1 sorry, go ahead, Mr. Hart.

2 MR. HART: Yeah, just one question. You said
3 there was a letter you submitted to the adjacent
4 neighbors and to the ANC?

5 MR. DeVERGER: Yes, well to the neighbors.
6 We wrote a letter. This was recently this week that
7 we wrote a letter to the neighbors kind of outlining
8 the items that Mr. Warren presented earlier about the
9 -- adding them to the policy and having the engineer
10 go out and do the preliminary surveys, as well as the
11 other obligations we have based on the permitting in
12 regards to erosion and settlement control.

13 MR. HART: And did you submit that to us?
14 That was just --

15 MR. DeVERGER: I don't know if that made it
16 into the record or not.

17 MR. HART: Okay. Thank you.

18 MR. DeVERGER: I think it was too late.

19 CHAIRMAN HILL: Okay. Before we get to --
20 oh, sorry. Go ahead, Mr. Miller.

21 MR. MILLER: Thank you, Mr. Chairman. So, I
22 think you, in your presentation, you said you were
23 willing to enter into a construction management
24 agreement to memorialize all these commitments.
25 That's, you know, that whole construction management

1 area is not something that's under Zoning's
2 jurisdiction, but we often accept into the record a
3 draft agreement or an agreement that's been executed
4 with the neighbors, and often -- and often reference
5 it in the zoning order, even though it's not, as I
6 said, under our jurisdiction and not enforceable by
7 zoning. It's enforceable by others.

8 But, I think that would be helpful in this
9 case, for you to submit that to the neighbors and try
10 to get an executed agreement that we can have as part
11 of our record. So that's just my only -- and I think
12 that might address a lot of the concerns of the ANC
13 and I haven't heard the concerns of the neighbors
14 yet, but it would go a long way to address that, to
15 see that in writing.

16 CHAIRMAN HILL: Commissioner Brevard, just
17 real quick. The one person that abstained, I'm just
18 curious, do you know why they abstained from the
19 vote? They voted, you said there was someone didn't
20 vote yes or no.

21 MS. BREVARD: Right. I think he was
22 daydreaming during the --

23 CHAIRMAN HILL: Okay. All right. That's
24 okay. That's all right.

25 MS. BREVARD: Okay.

1 CHAIRMAN HILL: That doesn't happen to me,
2 but I can see how you might abstain. But thank you.

3 So, before I get to the opposition, is there
4 anyone here wishing to speak in support? No? Okay.

5 Then, I am going to request just that we take
6 a three minute break before we go to the opposition
7 because I just have to take a three minute break.

8 So, and then we'll get started. Okay? Right back.
9 Thanks.

10 [Recess from 11:45 a.m. to 11:49 a.m.]

11 CHAIRMAN HILL: All right, we're going to get
12 back started here again. Thank you all so much.

13 If the two people that are the adjoining
14 property owners, are you both here? Okay. If you
15 guys could go last, okay? We'll take you last. All
16 right?

17 So, Ms. Brevard, if you wouldn't mind just
18 giving up your seat there and we'll take people three
19 at a time for those that wanted to speak in
20 opposition. So, could the first three people come up
21 who would like to speak in opposition?

22 Good morning. Now, I know that you guys have
23 been listening to the testimony here, and I know
24 you've probably had a chance to read a little bit
25 into the record, but you know, I know you guys aren't

1 zoning experts. But, if you can kind of -- if you
2 particularly could just specify things that maybe you
3 haven't already heard talked about, that would be the
4 best thing for the Board, I think.

5 So, if you could go kind of left to right
6 here, introduce yourself, give me your address, and
7 then again also even proximity to the property. That
8 would also be helpful, like across the street, where
9 you are. And then each person will get three
10 minutes. Please, go ahead.

11 You need to push the green button there.

12 MS. SCRUGGS: My name is Annette Scruggs, and
13 I'm at 2227 Perry Street Northeast, 20018.

14 My question is, is this a business venture
15 for your gentlemen, or are you guys actually going to
16 live in the property, because that's a whole
17 different ballgame for us in our community. And that
18 might not be a question I should ask, but that is a
19 concern because we're dealing with a lot of issues
20 now from our homeowners that are absent, and we're
21 having a lot of issues with the tenants. So, that's
22 why I'm asking.

23 CHAIRMAN HILL: Okay. Yeah, Ms. Scruggs, you
24 can go ahead and provide testimony as to what your
25 questions are, and then we can go ahead and ask the

1 applicant. But that is something that's a concern of
2 yours, correct?

3 MS. SCRUGGS: Yes, it is. And I'm
4 representing our block club, which is 22nd, 24th,
5 Otis, and Perry.

6 CHAIRMAN HILL: Okay. And where is your home
7 in relationship to the property?

8 MS. SCRUGGS: My home is north in the -- we
9 share an alleyway across -- the other side of Otis,
10 north of 22nd Street, the house on that side. We're
11 in that alleyway.

12 CHAIRMAN HILL: Okay.

13 MS. SCRUGGS: On Perry Street.

14 CHAIRMAN HILL: Okay. Okay.

15 MS. SCRUGGS: Between Otis and between 22nd
16 and 24th. So, we hear a lot of stuff on that
17 neighbor, from that block.

18 CHAIRMAN HILL: Okay. Okay. Thank you, Mr.
19 Warren, that's very helpful. Appreciate it. Okay.

20 Would you like to go next?

21 BOYKIN-PAIR: Hi. My name is Valerie Boykin-
22 Pair. I live at 2433 Perry Street Northeast, which
23 is about a block and a half from this location. I'm
24 also a member of the T-Top Block Club, and so I have
25 a couple of areas of concern.

1 I do think the presentation was helpful. We
2 have meetings and it would have been great for them
3 to have come and talked to us because we meet once a
4 month. They had spoken to somebody in the
5 neighborhood. They definitely could have gotten to a
6 point where we could have had a conversation about
7 this.

8 I'll co-sign what Annette said. We have had
9 some concerns with rental properties in the
10 neighborhood that have really been a problem for us
11 lately, so that is an interest to us, you know, what
12 is the plans for the property. There are also a
13 couple of buildings that we feel are out of character
14 in the neighborhood, and I have some concerns that
15 there are multiple lots like this one, so if we start
16 here, then are we going to see eight more houses, you
17 know, in a year or two which will truly change the
18 character of our neighborhood.

19 I do feel some kind of way about the trees.
20 I mean, they're gone at this point, but we also had a
21 situation here where our block club had to come and
22 speak to you guys a few years back and it was about a
23 heritage tree on a similar piece of property and we
24 were able to save that one, so we're really sorry
25 about what happened here, because they are important.

1 The other one was like the second oldest tree in the
2 city. You know, we didn't even get a chance to
3 really evaluate that one.

4 So, I saw the bullets, but what I didn't hear
5 was the specifics from the arborist, and specifics in
6 terms of my neighbors, because we're concerned about
7 them and their property as well. So, just telling
8 me, this is what we could do, it isn't really
9 helpful. I think we need a lot more detail and I'd
10 like to see, or know, was that submitted to you all?

11 CHAIRMAN HILL: Not yet.

12 BOYKIN-PAIR: Not yet. Okay.

13 CHAIRMAN HILL: Right.

14 BOYKIN-PAIR: All right. Thank you.

15 CHAIRMAN HILL: Sir.

16 MR. THOMPSON: Yes. Good morning.

17 CHAIRMAN HILL: Good morning.

18 MR. THOMPSON: My name is Enoch Thompson, and
19 I live in the neighborhood.

20 CHAIRMAN HILL: I'm sorry, sir, your last
21 name was?

22 MR. THOMPSON: Enoch Thompson.

23 CHAIRMAN HILL: Thompson.

24 MR. THOMPSON: Yes, and I live in the
25 neighborhood from 1971, and I studied architecture at

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1 Howard University.

2 One of the first thing we always do is do a
3 feasibility study. And at the moment this is just a
4 feasibility study to say this project is not feasible
5 for the neighborhood. There are specific zoning
6 regulations that apply here for single-family homes
7 that this project will not address, no matter how you
8 turn it, upside down, one way or another, this will
9 not comply. It's going to go on asking for this
10 variance, that variance, and to me that's not
11 respecting the fabric of the neighborhood.

12 Of course there's an economic value for these
13 guys. They are not the single proprietor ownership
14 of this. It's an LLC. And that's a good question,
15 who is going to own this property afterwards.

16 Why am I saying that? I live at 3205 16th,
17 Street. My neighbor bought their property and it was
18 bought from a company like this. And some of our
19 concerns were, who is going to occupy this building.
20 And we were blessed that we had very good neighbors.
21 We talk and we do all those things. My property and
22 their property are in regulation in terms of meeting
23 all the requirements of the zoning. This project
24 would create more problems because even with that
25 problem, we had some problem with even just the

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1 trash. You must have put dumpster there to do all
2 these things. That's going to greatly impact the
3 neighborhood, whether you like it or not. The
4 insurance is not going to do what you think it's
5 going to do, because I have a problem with that and I
6 learned my lesson when I first purchased my house, I
7 had my insurance with somebody else's insurance.
8 Their insurance lapsed and I found out my property
9 was not covered. To me, that's not a viable solution
10 to this problem.

11 I feel as though, if they're really serious
12 about it, this project can be built within those
13 figures. And I'm going to go to some specifics here
14 in terms of what you're asking for.

15 Under the R-5-B, the percentage is 40
16 percent, right? Forty percent coverage. You're
17 asking for 50. I mean, it's fine-tuned right here.
18 You're asking for 50. That's why I'm saying, every
19 time you ask for one variance, you're going to ask
20 for another trying to make this comply, when it
21 really wouldn't.

22 Sure, the insurance is going to affect
23 everybody in the neighborhood, because when you do
24 this type of construction, if you understand the soil
25 coverage in Northeast D.C., it is a problem. You do

1 need an engineer to say that their project will work.
2 When you apply for building permits, you have to do
3 all those things. This is a part of your feasibility
4 lecture. This is not feasible.

5 And it's a shame you spent \$90,000 to buy
6 that piece of property that you can't do nothing on.

7 One thing I think is missing here, the
8 original property had two separate entity, which was
9 a duplex. They were owned by two different people.
10 However, it seemed as though he purchased this half
11 without purchasing the other half. It might have
12 been to his betterment how he purchased both
13 properties and then go ask for the rezoning. But
14 this little property would not meet it whether you
15 turn it upside down, squeeze it this way or that way.

16 However, the architect might go back to the
17 drawing board and be very creative within the
18 allowable and do a very creative design. It's an
19 opportunity to create and I would like to see that
20 from the architect.

21 CHAIRMAN HILL: Okay. Okay, thank you, sir.
22 Just, and I'll let the Board ask any questions of the
23 applicant based upon the testimony from the
24 witnesses. But just really quickly from me, so the
25 property owner, what's your intent in terms of after

1 it's -- are you intending on just selling it? You're
2 going to rent it?

3 MR. DeVERGER: Yeah, that's the plan,
4 currently, just to sell it. Obviously if we are
5 granted to move forward here today, you know, that
6 will be evaluated at the time that the structure is
7 completed. But the plan as of today is to sell the
8 property, and that's been the plan all along.

9 CHAIRMAN HILL: Okay. And, Ms., is it Pair?
10 I'm sorry, Pair. So, Ms. Pair, when you were talking
11 about the character, I'm just kind of curious, are
12 you talking about like the way the drawing looks
13 itself, or the --

14 BOYKIN-PAIR: Well, yeah. So, we have a
15 couple of other what we refer to as monster houses
16 that have been put right in that area. There's
17 actually one under way right now at 22nd and Randolph
18 Street, which just -- so, it's changing
19 significantly, the look and feel of the neighborhood.
20 Like I said, this presentation was helpful.

21 CHAIRMAN HILL: Uh-huh.

22 BOYKIN-PAIR: In terms of it's going to look
23 similar to other houses on the block. It's just
24 going to be taking up more of the lot and be deeper
25 than those other houses. But yeah, and then the

1 concern that there are lots of little lots like this
2 throughout our neighborhood. So, you're not talking
3 about adding one house. This will set precedent for
4 many more to come.

5 CHAIRMAN HILL: Right. Okay. Does the Board
6 have any other questions for the witnesses? Okay.
7 All right. Thank you all very much.

8 How many more do we have if you wouldn't mind
9 raising your hand? Is it just the property owners
10 that are next door? Is that it? Okay, then please,
11 step forward.

12 Good morning. If you wouldn't mind again
13 just introducing yourself left to right and then just
14 again, tell me which home you guys are in. Thank
15 you.

16 MS. DEADWYLER: So, my name is Andrea --

17 CHAIRMAN HILL: You need to push the green
18 button. Push the button there until the green light
19 comes on.

20 MS. DEADWYLER: My name is Andrea Deadwyler.
21 I live at 3706 22nd Street, and I'm north of the land
22 in question.

23 CHAIRMAN HILL: You have the putting green?

24 MS. DEADWYLER: I have the putting green.

25 CHAIRMAN HILL: Okay. All right.

1 MS. DEADWYLER: Yes, sir.

2 CHAIRMAN HILL: Okay.

3 MS. DEADWYLER: And I'm concerned about my
4 putting green.

5 CHAIRMAN HILL: Yeah, sure.

6 MS. DEADWYLER: And the rest of my --

7 CHAIRMAN HILL: Yeah, I understand. That's
8 all right.

9 MR. DEADWYLER: Good morning. My name is
10 John Deadwyler and I'm the resident as well of 3706
11 22nd Street.

12 MS. STEVENS: Nicole Stevens.

13 CHAIRMAN HILL: Oh, you need to push the
14 button there. I'm sorry.

15 MS. STEVENS: Nicole Stevens. I'm the owner
16 of 3700 22nd Street Northeast.

17 CHAIRMAN HILL: Okay, great. And I have
18 neglected to ask this the last time, but you all have
19 all been sworn in?

20 ALL: Yes.

21 CHAIRMAN HILL: Okay. And the last set of
22 witnesses, you all were sworn in?

23 ALL: Yes.

24 CHAIRMAN HILL: Okay. All right. Thank you.
25 If you could just go ahead and begin and I'm going to

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1 put three minutes on the clock for you.

2 MS. DEADWYLER: Okay. So, my concern -- we
3 met with the team that's trying to build in front of
4 the property. My concern is at that time to me there
5 was very limited commitment to making us whole if
6 something were to happen. And even if there is
7 commitment to it, these are words. And so, even
8 reducing it to writing or having a contract or having
9 an insurance as the other guy mentioned, insurance,
10 people run out of money on these types of projects
11 all the time. So if somehow the insurance were to
12 lapse, where does that leave us?

13 The neighbors next door, the developer who
14 developed the house next door, they did the work,
15 they tore down, cutting down a tree. Probably didn't
16 have permit for that either. Wasn't them, but they
17 tore down the tree. In that process they took down a
18 wire that was attached to my home, tore down part of
19 my siding. Kept promising they were going to fix it,
20 promising they were going to fix it. Never happened.

21 So, in my opinion, we have no guarantees.
22 We've invested a significant amount of money in our
23 property. And the reason they couldn't buy the other
24 side is because we own the other side. And so it was
25 50 -- that lot, it's 25 and 25, and there used to be

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1 homes on the two, which was the two lots, which made
2 up 50.

3 And so, we purchased the side closest to us,
4 the 2500, which is why we're able to have a putting
5 green. But you know, my biggest concern is that I
6 don't feel like the team has had enough respect or
7 concern for our neighborhood when they bought the
8 house, the property. They tore down all the trees
9 without getting proper approvals. On top of that,
10 then there was nothing. Nobody came to cut the
11 grass, there was no presence.

12 So, the grass grew very high. We're on the
13 other side of the fence, grass coming through our
14 fence because it's very high. We have small
15 children. We don't want rats and rodents running
16 around. So, for years we maintained the lots because
17 nobody did. Both lots, before we even owned it. We
18 still were getting mosquito squat for there because
19 the grass is high, there's moisture, all kinds of
20 things.

21 So, we have invested in not only keeping the
22 grass away from our fence, but also in pan to you
23 know, remediate the mosquito problem and everything
24 else.

25 I just don't feel like there's enough of a

1 concern for us, and I have no faith that we would be
2 made whole if something were to happen to my
3 property. No faith.

4 CHAIRMAN HILL: I just had a quick question,
5 I'm sorry. When you're talking about the grass and
6 all that, taking care of. Was that when they owned
7 it or it was somebody else?

8 MS. DEADWYLER: Well, we used to do it
9 before, but since they've owned it we did have to cut
10 it off of our fence, because it was coming, weeds
11 coming through fence and impacting our yard.

12 CHAIRMAN HILL: Right. Right. No, I'm just
13 asking. So, it was before though. The trees were
14 still there at that time.

15 MS. DEADWYLER: Yeah.

16 CHAIRMAN HILL: Right. Okay.

17 MS. DEADWYLER: There were trees. Uh-huh.

18 CHAIRMAN HILL: Okay. All right. Are you
19 finished?

20 MS. DEADWYLER: I'm good.

21 CHAIRMAN HILL: Okay, sir.

22 MR. DEADWYLER: Again, my name is John
23 Deadwyler. Thank you.

24 I have just two points. First and foremost,
25 as my wife stated, the investment that we've made, I

1 believe that the premise of our concern and what
2 causes us anxiety is the fact that the disregard for
3 following the permitting process to remove the trees
4 sets a precedent of possibly the tone of this
5 particular project. That's number one.

6 Number two, we are very, very grateful that
7 the opportunity is very, very supportive of in-fill
8 development and the like, and that's great. But,
9 what happens if as was stated, if there is a
10 construction management agreement between the
11 neighbors and the developer, it is not enforceable by
12 this Board. So, where is the legal accountability to
13 the Stevens family and the Deadwylers if there is
14 some type of agreement, regardless of insurances
15 lapsing, or what have you. And, as my wife stated,
16 we've already been personally affected by another
17 developer damaging our home in the renovation of the
18 other adjacent property. And so, I believe where it
19 could be stated or viewed as trivial about trees and
20 all of these other things. Again, it is the tone
21 that's already been set that contributes to the
22 anxiety.

23 The other component that I wanted to share is
24 that the excavation, whether it's seven or 10 feet,
25 the width of those particular trees in any

1 construction project, there is unforeseen issues that
2 will occur. Second, the depth and the roots of these
3 trees, no one, RE 22nd Street, LLC. cannot speak to
4 that, nor can we, but guess what? Once the
5 excavation has started, we then will find out the
6 width and the damage of those trees. And beyond the
7 fence that's a big water line and will that
8 construction agreement speak to, or has the allotment
9 gone beyond just the repairing of a fence. But we
10 all know that water damage is very, very expensive.

11 So, again, I could go on and on but I wanted
12 to at least speak to, as we stated to you all
13 directly, we're not here to oppose anyone making a
14 profit. But because we have already been personally
15 effected by something similar in a smaller manner,
16 what's most important is that the tone that was set
17 by disregarding of the permitting process.

18 Second, I also have to state honestly that we
19 were not contacted until yesterday. I believe that
20 if there is some type of incentive to show good
21 faith, then there should have been some communication
22 well ahead of the zoning hearing today to give us
23 some assurances that you mean well by making sure
24 that we have some comfort in this particular project.

25 MS. DEADWYLER: We got the letter yesterday.

1 MR. DEADWYLER: Yesterday. Lastly, we have
2 61-year history in this neighborhood. My
3 grandparents purchased this home, working class
4 individuals, and my wife and I purchased it from the
5 family when my grandmother passed, and we're very,
6 very proud to be -- we're native Washingtonians.
7 We're proud of being owners of this property. And
8 so, the investment to extend a play area for our
9 daughter and our nieces and nephews speaks to the
10 importance of the property to us and we believe that
11 if at all possible, as our letter states on record,
12 we oppose this construction project to not to
13 interfere with our livelihood.

14 CHAIRMAN HILL: Okay. Thank you. I'm going
15 to let you go in one second. I just had a question
16 for the Office of the Attorney General. I don't know
17 if you heard that one portion there that the witness
18 was bringing up in terms of like, you know, any kind
19 of memorandum of understanding that they might enter
20 into between the developer and the neighbors, like we
21 don't have any enforceability on it, right? Are you
22 able to tell me what the enforceability is?

23 MR. EBI: I believe --

24 CHAIRMAN HILL: I'm not a lawyer. That's why
25 I'm asking you.

1 MR. EBI: I believe when there is a
2 memorandum of understanding between the developer,
3 the applicant, and the neighbors, the neighbors can -
4 - if that memorandum of understanding is violated the
5 neighbors can bring that to the attention of DCRA or
6 the permitting agency, and seek enforcement that way.
7 But it's not the Board of Zoning Adjustment.

8 CHAIRMAN HILL: Mr. Sullivan, is that right?

9 MR. SULLIVAN: Every situation is different
10 of course, and it depends on the written document.
11 But the things typically that are in the construction
12 management agreement can reaffirm what's already
13 required by law.

14 So, the applicant is not entitled to damage
15 anybody's property and is obligated to repair it with
16 or without the agreement. But the agreement helps I
17 think give some structure to that.

18 CHAIRMAN HILL: The enforceability, I
19 understand. I like the lawyer thing at the beginning
20 that you did. No, no, that's okay. It's okay. I'm
21 just saying, so you could go to DCRA with the
22 memorandum of understanding and get the permits
23 pulled.

24 MR. SULLIVAN: I don't know that -- no, I
25 don't know that DCRA would look to a private

1 agreement and say they're not held to that agreement.
2 But they may -- you would take the agreement and say,
3 not only did they agree to this but they're violating
4 some provision of the building code.

5 MS. DEADWYLER: But then are we left to have
6 to sue them, like --

7 CHAIRMAN HILL: Hold on one second. I'm
8 sorry. I'm trying to also -- no, no, I agree. Ari,
9 did I miss that? No.

10 MR. EBI: I mean, as Mr. Sullivan said, every
11 situation is different. I think that -- I believe
12 that in some cases it's possible to go DCRA.

13 CHAIRMAN HILL: Okay. Okay. That's all
14 right. So, that's enough. That's enough. Sorry.

15 MR. HART: Just one question for the
16 Deadwylers.

17 MR. DEADWYLER: Uh-huh.

18 MS. DEADWYLER: Uh-huh.

19 MR. HART: Thank you very much for coming in
20 today. I know it's a burden to have to come down
21 here also, but we do appreciate hearing from you all.
22 And, Ms. Stevens, we haven't heard from you yet, but
23 that is forthcoming.

24 Just a really kind of basic question. And I
25 want to say I heard this earlier, that I know that

1 you all have purchased the lot that was part of the
2 former duplex that was on this site. Were you not
3 able to purchase this property as well?

4 MS. DEADWYLER: No, we --

5 MR. HART: And can you explain that? I just
6 was curious as to why that wasn't --

7 MS. DEADWYLER: The property, the lady who
8 owned it for many years, she absolutely approached us
9 many times to purchase that property. But it was
10 before we even knew who the owner of the one closest
11 to us was. So, there was no reason for us to
12 purchase a property that was that far removed from
13 our property.

14 And so, once we bought the property that we
15 did acquire, which we got at tax sale at a very
16 reasonable price, we did not -- her price was
17 \$60,000. We wanted the property for our own private
18 enjoyment, not for investment purposes. So, we had
19 no reason to spend another \$60,000 to just to have
20 control of another strip of land.

21 And so, and we assumed, based on D.C. Code,
22 that they -- it couldn't be built upon. And so, if
23 there are codes that say it has to be eight feet, why
24 are they in place if they can just be ignored; if
25 they can be overturned by you know, an action such as

1 this.

2 MR. DEADWYLER: And I would like to add for
3 the record that my wife and I were very interested
4 and did the research to buy the entire property.
5 However, but the way, again speaking to the history
6 of the neighborhood, I believe it was the McGregors.
7 I can't remember the name of the neighbors who were
8 with my grandparents. We had a difficult time, the
9 way the property went back on the books in the city,
10 as we know the lots were separate. We were trying to
11 buy both but we could not find the owner of the
12 property --

13 MS. DEADWYLER: Closest to us.

14 MR. DEADWYLER: -- closest to us.

15 So, to make a long story short, through that
16 particular tax sale we were able to purchase it and
17 made the investment to, you know, acquire the title
18 and adjoin it with our property. But every effort
19 was made to purchase the entire lot.

20 MR. HART: Thank you. Thank you.

21 CHAIRMAN HILL: And just before you move on,
22 Ms. Stevens.

23 MS. STEVENS: Yes.

24 CHAIRMAN HILL: And you will get to speak.
25 That just the whole point of why we're here at all is

1 because if the lot can't be built on or there's no
2 use for it, that's why people come to us, so that
3 they're able to do something with it. I'm just kind
4 of letting you know, that's the whole point that
5 we're here.

6 MS. STEVENS: Okay.

7 CHAIRMAN HILL: Okay, Ms. Stevens.

8 MS. STEVENS: Do you need me to repeat my
9 name or --

10 CHAIRMAN HILL: No, you're all good.

11 MS. STEVENS: Okay. So, just to partially
12 answer that question, since I am directly adjacent to
13 the lot. That lot has been bought several times and
14 I have been approached to buy that lot, but the
15 reason that I didn't -- one of the reasons that I
16 didn't purchase it was because of the heritage tree
17 as well as it's a small amount of space. And anyone
18 who purchased it, knew that when they purchased it.

19 If I thought that I could circumvent every
20 regulation that has been provided to protect me and
21 my neighbors, I would have purchased the property.
22 If I thought that I could basically cut down the tree
23 before even considering going to an arborist or doing
24 any type of feasibility study, I would have bought
25 the property. Okay?

1 By allowing this, this variance, this
2 exception to the variance, you're basically rewarding
3 them for bad behavior. They do not come to this with
4 clean hands. They should not be rewarded for what
5 they have done. Okay?

6 That property might have been on the market,
7 I don't know, a week, and they snatched the property
8 up. And the owner before that, he would come and
9 actually clean the property and take care of the
10 property, and he would tell us all the time that he
11 can't build on it yet because of certain things and
12 because of zoning, as well as he has a tree problem,
13 and just the affordability. This is basically, as
14 far as I'm concerned, a money grab that is going to
15 be to my detriment, that is definitely going to
16 change the character of the neighborhood.

17 But, I shall speak directly to the variance
18 now. The first thing I'd like to say is that I take
19 exception to the memorandum by the Zoning Adjustment,
20 from the Board of Zoning Adjustment.

21 CHAIRMAN HILL: That's all right. The Office
22 of Planning, I think is what you're speaking of.

23 MS. STEVENS: The Office of Planning. I take
24 exception to that. As I stated in my letter of
25 opposition, the three-paragraph memorandum

1 essentially fails to meet the conditions of their own
2 analysis requirements. There's no exceptional
3 situation here. The difficulty in development and
4 reduced living space, that's not an exceptional
5 situation. It's always been like that. Anyone who
6 purchased it knew that. They definitely should have
7 known that. I cannot believe this is the first time
8 that they have developed a property.

9 It fails -- the memorandum, from what I've
10 seen, it fails to analyze any of the architect plans
11 or the elements and cannot -- and doesn't really
12 identify any detriment, much less a substantial
13 detriment to the public good. I haven't seen that in
14 any way.

15 We don't lack for development in our
16 neighborhood. And the land, the lot itself, has not
17 lacked for -- it's not an eyesore at this point
18 because someone took care of it. The Deadwylers took
19 care of it.

20 The property that they want to build on
21 there, it's essentially a townhouse. That's what
22 they're asking to build. The neighborhood has
23 already undergone significant development and it has
24 been sought after by individuals and families. The
25 relief is unnecessary to encourage development so I

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1 definitely take exception to the Board of Planning's
2 memorandum in that respect.

3 As far as the variance is concerned, the
4 eight feet is necessary and not only do I appreciate
5 it, I will fight it tooth and nail, I'm sorry to tell
6 -- to put it out there, if they are given an
7 exception to this. I have privacy concerns. I live
8 in the home. I purchased the home before I was
9 married. My husband lives there with me now. We
10 have two children. We also have a autistic adult
11 living with us, my sister-in-law who has come to live
12 with us from -- due to circumstances, due to her
13 mother dying. So, we are her only family.

14 Occasionally she sits outside or she likes to
15 walk around. A fence will definitely bother her, so
16 to speak, and affect her, her ability essentially to
17 function. That's going to be a big change for her.

18 A house that close is definitely going to be
19 a big deal. I will have to construct, definitely a
20 much larger fence, which will -- and the fence that's
21 already there, it doesn't go straight back. Part of
22 it, part of the fence is on the adjacent property
23 that they want to build on. So, my land use is
24 reduced. So the fence would be a lot different. The
25 fence kind of does this little L thing, because there

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1 was a tree there. So, the fence can't go through the
2 tree.

3 So, I'd also like to say that -- excuse me.
4 By allowing them this exemption, we don't all get an
5 exemption because of they get an exemption. If I'm
6 going to do anything to my property at this point,
7 I'm going to be back here asking for this eight-foot
8 exemption. They get it, but my neighbor doesn't get
9 it. I don't get it. We would each have to
10 individually come and ask for this exception, from
11 what I've read.

12 And as far as the agreement is concerned, an
13 agreement requires a meeting of the minds. These
14 people have not sat down with us in any respect. I
15 haven't even received that letter. And at this point
16 they're about to cost us all money because they went
17 out and got a lawyer. I'm going to have to go out
18 and get a lawyer, besides the fact that I am a
19 lawyer. Okay? We're all going to need
20 representation to make sure that they don't stick
21 something in there that is going to affect us.

22 And as far as any DCRA issues are concerned,
23 I've been through DCRA, okay? We will be in court at
24 the end of the day, after we spend eight months in
25 DCRA trying to navigate that system and then dealing

1 with a hearing commissioner who is going -- I'm going
2 to have to bring another expert witness. And I'd
3 like to add that Mr. Enoch Thompson was my expert
4 witness that I brought and had look at the
5 architecture plans to basically debunk everything
6 that they listed in their plan.

7 Everything that they have presented has been
8 after the fact, after the ANC hearing where they did
9 not present any ideas, essentially. They didn't have
10 that whole lovely overlay. They didn't have any of
11 that.

12 To give them an exception at this point,
13 that's the first domino. And I would please ask the
14 Board to consider that. This is one exception
15 they're asking for and they stated in their -- what's
16 it called? Excuse me. They state it in their plans
17 and that summary of, I don't know --

18 CHAIRMAN HILL: It's okay.

19 MS. STEVENS: They state that, you know, this
20 is the only one we're asking for at this time.

21 CHAIRMAN HILL: Okay.

22 MS. STEVENS: They will be back here.

23 CHAIRMAN HILL: All right. So, I mean, well,
24 they won't be back here for this property. But, let
25 me -- just give me just a second. Let me just say --

1 MS. STEVENS: Oh, and one --

2 CHAIRMAN HILL: I just want to say --

3 MS. STEVENS: One little thing.

4 CHAIRMAN HILL: Okay. Sure.

5 MS. STEVENS: And if they are going to submit
6 these architecture plans then I would ask for a
7 continuance of this hearing and that we have time to
8 study those and provide a rebuttal to those if
9 necessary. Thank you.

10 CHAIRMAN HILL: Okay. Great. I'm sorry. Go
11 ahead, sir.

12 MR. DEADWYLER: All I wanted to do was state
13 for the record that when I brought up the excavation
14 of the trees and the unforeseen damage, a part of
15 that concern was a serious issue that happened a few
16 years ago with AH Development with 1744 D Street.
17 And at the end of the day that type of water damage,
18 as far as excavation, is one of the things that we're
19 majorly concerned about. So, I wanted to at least
20 state that for the record.

21 CHAIRMAN HILL: Okay. All right. Great.
22 Thank you.

23 All right. And, Ms. Stevens, thanks for
24 speaking. I let you go a little bit longer because
25 you guys are the neighbors. You know, you're right

1 next door to the property and everything. And so,
2 you know, I know that the Board is going to have some
3 questions and the property owner there, I have some
4 questions for, I suppose.

5 You haven't done a great amount of community
6 outreach on this one. You know, or at least you
7 might want to have done it a little differently to
8 this point. Particularly if you're saying that the
9 neighbor just got a letter yesterday kind of
10 explaining anything. You know?

11 The timing doesn't make you feel very
12 confident about you know, how things will move
13 forward. Even listening to everything here today,
14 right?

15 MR. DeVERGER: Yes. Yes, certainly.

16 CHAIRMAN HILL: And before I start to ask
17 some of my questions, I mean, this is not your first
18 development project, correct?

19 MR. DeVERGER: No, this is second. To be
20 honest with you, this is a new venture.

21 CHAIRMAN HILL: Okay. Did you come here the
22 first time, for your first one as well?

23 MR. DeVERGER: No, first time in BZA.

24 CHAIRMAN HILL: No? Okay.

25 MR. DeVERGER: First time in front of BZA.

1 CHAIRMAN HILL: Okay.

2 MR. DeVERGER: One thing I definitely want to
3 cover and I just want to kind of put it out there, in
4 regards to the tree. There was no malicious intent
5 regarding the trees.

6 CHAIRMAN HILL: Right.

7 MR. DeVERGER: If you look at the slide that
8 Mr. Warren pulled up earlier, the tree was on the
9 neighbor's property. So my partners and I made a
10 judgement call when we purchased the property to go
11 ahead and take down the tree. And we made a
12 conscious decision to leave the stumps there, which
13 if we were trying to hide something we could have
14 easily grounded the stumps and got rid of that. That
15 wasn't our intent. Our intent was to leave
16 everything there just to cut the trees down to avoid
17 any sort of situation with a tree falling on the
18 neighbor's property.

19 CHAIRMAN HILL: Okay. Okay.

20 MR. DeVERGER: And that was our decision,
21 now. Definitely it's our fault that we were unaware
22 of the new regulation.

23 CHAIRMAN HILL: That's okay, Mr., is it
24 DeVerger?

25 MR. DeVERGER: Yeah, DeVerger. Yes.

1 CHAIRMAN HILL: DeVerger.

2 MR. DeVERGER: Yeah, DeVerger. Yes.

3 CHAIRMAN HILL: DeVerger.

4 MR. DeVERGER: Yeah, DeVerger.

5 CHAIRMAN HILL: DeVerger. Okay. That's
6 okay. I'm just kind of curious. So, again, you're
7 under oath, okay?

8 MR. DeVERGER: Yes.

9 CHAIRMAN HILL: So, you cut down the trees
10 but you didn't know that you were supposed to apply
11 for something to cut down the trees?

12 MR. DeVERGER: Yeah, we were totally unaware
13 of the special permit or any special permit. And
14 this was --

15 CHAIRMAN HILL: Okay. That's all right.
16 I've got to take you at that word, whether or not you
17 believe it or not, that's what I have to do. Okay.

18 MR. DeVERGER: And this was coming from the
19 landscaping company that we used to cut down the
20 tree.

21 CHAIRMAN HILL: Okay.

22 MR. DeVERGER: We asked the question. They
23 said, no special permits allowed. We said, go ahead.

24 CHAIRMAN HILL: Okay. And when you bought
25 the lot, you know, when you were going through your

1 analysis, you probably had to understand that you
2 were going to go through the BZA process in order to
3 build anything on it.

4 MR. DeVERGER: Yes. Yes, we were aware of
5 that.

6 CHAIRMAN HILL: Okay. All right. So, have
7 you talked to Ms. Stevens yet about the windows and
8 everything like that?

9 MR. DeVERGER: I have not personally. I,
10 myself, I would say I've been by Ms. Stevens's
11 property at least a half a dozen times. No one has
12 ever come to the door.

13 CHAIRMAN HILL: No one has ever come to the
14 door? What does that mean, you went and knocked on
15 the door?

16 MR. DeVERGER: Yeah, I went. I stopped by.
17 I'm a person that would rather talk in person versus
18 kind of --

19 CHAIRMAN HILL: Uh-huh.

20 MR. DeVERGER: -- back and forth through e-
21 mails, which that would have probably been a probably
22 easier way to get in touch.

23 CHAIRMAN HILL: Okay. So, you did go to the
24 ANC, obviously.

25 MR. DeVERGER: Yes.

1 CHAIRMAN HILL: And did you present?

2 MR. DeVERGER: Yes. Myself and Mr. Warren.
3 Yes.

4 CHAIRMAN HILL: Okay. And you have other
5 partners as well?

6 MR. DeVERGER: Yes. Sam, Mr. Chang, and one
7 other partner that's not in the D.C. area right now.

8 CHAIRMAN HILL: Okay. So, Mr. Chang, you
9 also didn't know about the trees being cut down and
10 that, you know, you didn't need a permit for that?

11 MR. CHANG: No, I was not aware of it.

12 CHAIRMAN HILL: Okay. All right. Let's see.
13 So, the issue with the fence and like, you know,
14 making the neighbors here feel more comfortable about
15 the development and also the issue with the roots
16 and, you know, how they were big trees, and so the
17 roots obviously have gone out, you know. Have you
18 thought -- I mean, you've read everything in the
19 record and the opposition's comments.

20 MR. DeVERGER: Yes.

21 CHAIRMAN HILL: Do you have -- what are your
22 thoughts on that and how to make them feel more
23 comfortable about moving forward?

24 MR. DeVERGER: So, I have a lot of experience
25 in land development, site development, excavation,

1 grading, that sort of thing. And so, I definitely
2 understand their concern regarding the trees and the
3 roots. And so, you know, our plan was to, as we
4 start excavation, to just monitor that. We're not
5 pulling roots from areas outside of our property and
6 more so kind of pruning those roots and cutting them
7 off so that we're not creating voids underground.

8 CHAIRMAN HILL: Okay. So, I'll let the Board
9 ask questions. I mean, me personally again, I'm not
10 ready to vote on this now. Like, I'd like to hear
11 and see you work with particularly the neighbors next
12 door because, you know, as you can imagine, they
13 don't feel particularly comfortable as to what is
14 going to happen moving forward. They're concerned
15 about their fence. They're concerned about the root
16 system. They're concerned about -- and I didn't get
17 a clear answer as to how there could be an
18 enforceability factor with any kind of a memorandum
19 of understanding that I'd just kind of like to learn
20 a little bit more about.

21 As you're -- depending upon what the rest of
22 the Board thinks, if we do advise you guys to go
23 ahead and talk to the neighbors here to kind of come
24 up with something that makes them feel more
25 comfortable with what's going to happen, I would then

1 turn to the neighbors also and mention that, you
2 know, it is -- you need to kind of work together.
3 You know, you have to feel comfortable about what may
4 happen. I mean, I don't know what's going to happen,
5 right. But definitely like one of the things -- and
6 I don't know if Ms. Spencer had mentioned -- I mean,
7 I know how negotiations work when you're in talking
8 with people. People try to get things and do stuff.
9 And you really want to, as I feel it, be comfortable
10 about if this did move forward how you would feel
11 with it and how your concerns would be addressed.

12 One of those that you mentioned, you were
13 just talking about a fence. There might be a higher
14 fence or something, I don't know, that might work for
15 Ms. Stevens. Thank you.

16 But that's kind of my initial thoughts, and
17 I'll let the board members speak up what they have to
18 say. Thank you.

19 MR. HART: Mr. Chair, I also agree. I think
20 that there -- agree with the idea that we don't have
21 -- this is not ripe yet for us to make a decision, a
22 determination. There are things and piece of
23 information that we're -- when we are learning today,
24 and the neighbors are learning today, and I think
25 that that needs to be further discussed with the

1 neighbors. I think that they need to have some level
2 of comfort, or at least understanding of where this
3 is with regard to a variety of things. I'm not going
4 to go over them again because they've been discussed
5 about the fence, construction impacts, the trees
6 themselves. I'd like to understand -- actually have
7 the arborist report itself. That would be helpful
8 for us.

9 I think, actually just to have it as one of
10 the exhibits on the record. And it seems as though
11 you are looking at trying to address many of these
12 concerns. But, you are still in that process and
13 kind of haven't gotten to a finality. And I think
14 that the neighbors would like to have some finality.
15 I'm not sure if anything is going to be -- I think
16 that more discussion with the neighbors will -- may
17 get you to a point that there is some trust that
18 becomes -- that starts to get built between you all.
19 It may not, but it -- I think that time will tell
20 that and I would suggest that we continue this
21 discussion at a later hearing date.

22 MR. MILLER: Thank you, Mr. Chairman, and Mr.
23 Hart. Yeah, I concur with the unreadiness to go
24 forward at this point, and think that there needs to
25 be another presentation, probably to the ANC and

1 discussion with the neighbors and the block club, so
2 that the trust can be built or try to be built.

3 You know, the side-yard requirement, you
4 know, is an important one for privacy in single-
5 family residential neighborhoods. I get the
6 impression from the applicant's presentation that you
7 all have -- you've met your side-yard more than that
8 because you bought the adjacent property as well.
9 But I got the impression that across the street and
10 maybe in the pattern of the neighborhood that there
11 are three and a half foot similar side-yards. And
12 maybe, I just wondered if you could comment on that.

13 MS. DEADWYLER: Can I --

14 MR. MILLER: It doesn't make it an
15 exceptional --

16 MS. DEADWYLER: Sure.

17 MR. MILLER: -- situation so I don't know if
18 that helps with the variance test. But I just want,
19 in terms of the character of the neighborhood, are
20 there --

21 MS. DEADWYLER: Absolutely.

22 MR. MILLER: -- certain homes --

23 MS. DEADWYLER: There are houses that are
24 similarly -- that look similar to what he presented.
25 Yeah, what he put up there was all factual. The

1 houses across the street are close to one another.

2 The issue, one of the biggest issues I have,
3 we did a rental when we bought his grandparent's
4 house. And when we -- just the basic things we were
5 trying to do, we added on to the back of our house
6 and where we were doing the addition we wanted to go
7 out on both sides, two feet. Like out and back.

8 And so, because of this very requirement we
9 were not allowed to do that on one side. Right? And
10 so, we just weren't allowed to do it. So, because of
11 that we have two or three feet less space in our
12 kitchen. Okay. You know.

13 But and I guess my concern is they bought the
14 property knowing, these are the requirements. And if
15 you bought the property how can it be some sort of a
16 detriment to them, or some sort of a -- they bought
17 it knowing that this was not something that they
18 could build on. The lady before, when we bought that
19 piece of land that we bought, she screamed in my ear
20 because we weren't willing to buy hers.

21 Nobody can build on half a lot. They won't
22 let us build on half a lot. Why won't you buy mine?
23 Like, she's screaming in my ear because we wouldn't
24 buy the other lot for \$60,000.

25 And so, because she'd had it for years and

1 was not able to do anything with it. And so, you
2 know.

3 MR. MILLER: But the smaller side-yard
4 pattern --

5 MS. DEADWYLER: Yeah.

6 MR. MILLER: -- does exist.

7 MS. DEADWYLER: It does exist. It was done -
8 -

9 MR. MILLER: Elsewhere in the neighborhood.

10 MS. DEADWYLER: -- in the '20s. Yeah, this
11 was done in the 1920s.

12 MR. MILLER: Right.

13 MS. DEADWYLER: And all of these houses were
14 being built all at the same time. What is the impact
15 on structure now --

16 MR. DEADWYLER: Now, exactly.

17 MS. DEADWYLER: -- if somebody goes in and
18 excavates down 10 feet in -- you know, at that point.
19 Especially on them, because their actual structure,
20 their house is right there. We're going to have
21 impact on our investment. You know, our fence and
22 all of that. And I don't want to have to get an
23 attorney and have to sue somebody because they
24 damaged my property.

25 I ended up paying for my own siding because

1 the last developer damaged my property and did not
2 come back and fix it. So, we're out of pocket. Why
3 should we be subject to that? We paid for this
4 improvement to our land for our own quite enjoyment,
5 and that will be gone. The quiet enjoyment piece,
6 nonexistent. Certainly while construction is
7 underway.

8 MR. DEADWYLER: Impact the quality of life.

9 MS. DEADWYLER: And, why should we be okay
10 with the prospect, the inevitable prospect of damage
11 to our property?

12 MR. MILLER: I understand where you're coming
13 from but I would encourage you to try to --

14 MS. STEVENS: I'll also say that the side-
15 yard requirement --

16 MR. MILLER: -- engage in good faith -- what?

17 MS. STEVENS: -- to answer your --

18 MR. MILLER: Yes.

19 MS. STEVENS: To further answer your
20 question. On our side of the block you don't get any
21 kind of exception to the variance until like three
22 houses from the end of the block, okay? And
23 everybody, from my house on for about I'd say at
24 least six or seven houses, past the middle of the
25 block, has complied with the requirement.

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1 MR. MILLER: Okay. I appreciate -- I wanted
2 to get a feel for the neighborhood.

3 MS. STEVENS: And can I also ask, if -- I'm
4 going to ask and I don't know if this is out of order
5 or how the rules work. I'm going to ask that this be
6 denied. I think that they should come back and
7 represent --

8 CHAIRMAN HILL: I know you're --

9 MS. STEVENS: -- represent.

10 CHAIRMAN HILL: That's okay. I know you're
11 asking. You're here to get it denied.

12 MS. STEVENS: Yes. I'm asking that it be --

13 CHAIRMAN HILL: I understand completely.

14 MS. STEVENS: -- denied.

15 CHAIRMAN HILL: Yeah.

16 MS. STEVENS: They have not met the
17 requirements. They have not provided all the --

18 CHAIRMAN HILL: Okay, Ms. Stevens. I got
19 you, Ms. Stevens. I got you, Ms. Stevens.

20 MS. STEVENS: Okay. Thank you.

21 CHAIRMAN HILL: Okay? I got you. Okay?

22 So, I guess in that vein --

23 MS. STEVENS: Yes.

24 CHAIRMAN HILL: -- you know, again, I'm going
25 to -- we are asking the applicant to meet with you

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1 guys. Okay? And talk with you guys, particularly
2 the next door neighbors is my real question, because
3 I think that a lot of the things that you brought up
4 are reasonable, meaning, how do you know whether
5 they're going to behave the way they say they're
6 going to behave because, no offense, the trees were
7 gone all of a sudden, right? So, that's what their -
8 - part of the concern, right?

9 So, I'm interested in seeing some kind of,
10 you know, memorandum of understanding or something,
11 or getting some kind of feedback that makes them feel
12 more comfortable about this project moving forward.

13 Now, Ms. Stevens, I know you just don't want
14 the project, okay? But I would definitely suggest
15 you go talk with them anyway, and see about like, you
16 know, a fence, or windows, or things such as that.
17 Commissioner Miller here to my left, he mentioned
18 again going to the ANC.

19 So, you know, that seems like there's an ANC
20 presentation that we'd like you to go and do.

21 Now, I also think that it is an exceptional
22 lot. I think that what you would end up building is
23 a very narrow building, okay? However, I don't think
24 that you did great with your community outreach,
25 okay? And I also think that you knew that you needed

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1 a variance in order to do anything with it when you
2 bought the lot. So, this is not a surprise to be
3 here. Okay?

4 So, I would suggest, go back before the ANC,
5 see if you can get them to do it, because if you can
6 get the ANC to pull their opposition, then you know,
7 you might get a summary order. You know? And so,
8 that's what I would suggest you do. And, does the
9 Board have anything else to add?

10 MR. MILLER: No, I would echo what you said
11 and encourage -- despite your opposition and your
12 request for denial, which if we had to make a
13 decision today that probably would be what the
14 decision would be. But, you're neighbors now, and
15 you have been, whether it's been good neighbors or
16 not, I would encourage you to try to engage in some
17 good faith --

18 MS. DEADWYLER: But they're not actually our
19 neighbors.

20 MS. STEVENS: And they will never be our
21 neighbor, because it's investment now.

22 CHAIRMAN HILL: That's okay. That's okay.
23 Somebody is going to be your neighbors.

24 MS. DEADWYLER: Yeah, it's true.

25 MR. MILLER: I understand. And I understand

1 where you're coming from. I would just encourage you
2 to try to have some discussions and see if they can
3 result in a productive outcome for you. Just try.

4 CHAIRMAN HILL: And so --

5 MR. MILLER: Make the effort.

6 CHAIRMAN HILL: Sorry. And you're here for
7 that reason. I mean, you guys came here today to --
8 and everyone came here today so their voices could be
9 heard, and we definitely do appreciate it and want to
10 hear from the community because if people don't show
11 up we don't know. And then it just kind of goes the
12 way it goes.

13 So, that being the case, Mr. Moy, I don't
14 know -- and, Mr. Sullivan, I don't know if you can
15 tell me when the -- oh, the ANC Commissioner is here.
16 When does the ANC meet next?

17 MS. BREVARD: The third -- well, actually
18 next week. The 18th. The third Wednesday.

19 CHAIRMAN HILL: The third Wednesday. Okay.
20 So, would you guys be ready for the third Wednesday,
21 you think with -- I don't know whether you'll be
22 ready by the third Wednesday. So, you'd have to get
23 them to sign off first in order to get the ANC to
24 sign off. So, you'd probably have to go the next
25 month. Okay?

1 So, Commissioner Brevard. Brevard. Brevard?
2 Brevard? Brevard?

3 MS. BREVARD: Brevard.

4 CHAIRMAN HILL: Oh, yes. Commissioner, could
5 you come up? I'm sorry, the transcriptionist is
6 asking me for the record. You can sit over here to
7 the right.

8 MR. MOY: Mr. Chairman.

9 CHAIRMAN HILL: Yes.

10 MR. MOY: The third Wednesday in February
11 will be the 15th.

12 CHAIRMAN HILL: Okay. When is Valentine's
13 Day? Is it the 14th? Oh, okay. All right.

14 So, Commissioner, you think they can get on
15 the agenda for the 15th?

16 MS. BREVARD: Of February, yes.

17 CHAIRMAN HILL: Yes. Okay.

18 MS. BREVARD: Yes, sir.

19 CHAIRMAN HILL: All right. Would that be
20 fair?

21 MS. BREVARD: Yes. Absolutely.

22 CHAIRMAN HILL: Okay. All right. So, can
23 you guys try to -- so, you guys can get together
24 beforehand. And again, I mean, really, I mean two of
25 the three partners are here, right? And, really try

1 to work with the neighbors to make them feel better
2 about the construction, the fence, they've got a
3 putting green. They've got, you know, there's like -
4 - that has to level out. You know, you can't just --
5 so, you know, and then the swing set there and
6 things. So, you know, please, and please work with
7 the next door neighbors and see if you can get a
8 memorandum of understanding that makes them feel
9 better, that maybe you can work with the ANC the next
10 time. Okay?

11 And again, Ms. Stevens, I know you don't want
12 it to happen, okay? But at least go there and see
13 what you can kind of work out, okay? And see if you
14 can get something out of this. Okay? Okay. Good
15 faith is great. Good faith is great.

16 I mean, it's an empty lot right now. The
17 tree has been cut down. You know. And so, so
18 there's nothing I can do about the tree. Okay.

19 MR. DEADWYLER: Thank you for the opportunity
20 to share our concerns.

21 CHAIRMAN HILL: Oh, thank you. Thank you for
22 saying thank you. I rarely get thank you up here.

23 Okay. So, okay. The date then, what's
24 happening? So, when are we going to come back?

25 MR. MOY: Mr. Chairman, first it would help

1 me, is the Board intending for a continued hearing or
2 for a decision meeting?

3 CHAIRMAN HILL: I'd like a continued hearing.

4 MR. MOY: Okay. So, if the applicant meets
5 with the ANC and the community on the 15th of
6 February, the earliest for a continued hearing for
7 the BZA would be the 22nd, which is the following
8 Wednesday and February. Otherwise, the next date in
9 March would be March the 8th. So there's two
10 potential dates for a continued hearing. March 8th,
11 or February 22nd.

12 CHAIRMAN HILL: You guys want the 22nd or the
13 8th?

14 UNIDENTIFIED SPEAKER: 22nd.

15 CHAIRMAN HILL: 22nd?

16 MR. DeVERGER: Yeah, 22nd.

17 CHAIRMAN HILL: I'm going to give them the
18 22nd just because you may or may not be here, to be
19 quite honest. You know, you should be doing all your
20 work ahead of time, and then you don't need to come,
21 right? Or you can come, obviously, it's a continued
22 hearing.

23 So, let's see. Yeah. So, that's it. I was
24 going to say something --

25 MR. MOY: So, February 22nd for the continued

1 hearing. Is the Board going to set any deadlines for
2 filing, or not?

3 CHAIRMAN HILL: Yes, please. Yes, please.

4 MR. MOY: All right. Well, if the ANC is
5 meeting on the 22nd, I'm assuming the applicant is
6 going to be --

7 CHAIRMAN HILL: No, the ANC is meeting on the
8 15th.

9 MR. MOY: I mean rather, the 15th. So, I'm
10 going to talk off the top of my head. So, I'm
11 assuming the applicant is going to prepare revised
12 materials for I would assume to be presented to the
13 ANC meeting on the 15th. So, if the applicant can
14 make those filings into the record, let's say a week
15 before, or which would be February 8th, or Monday
16 February the 13th. I don't know what your work time
17 schedules would be to allow the community to have a
18 constructive discussion at the ANC meeting, right?

19 MS. BREVARD: Yes.

20 MR. WARREN: Well, I think the more time, the
21 better. So if we have the 13th to file that would
22 give us a chance to meet those negotiations.

23 MR. MOY: Okay. That would be Monday,
24 February 13th.

25 CHAIRMAN HILL: Okay. So that's the filing -

1 - no, just give me one second.

2 So, that's the filing deadline.

3 MR. MOY: Yes. Yes.

4 CHAIRMAN HILL: Okay. All right. Ms.
5 Stevens?

6 MS. STEVENS: That's his filing deadline,
7 right?

8 UNIDENTIFIED SPEAKER: Microphone.

9 CHAIRMAN HILL: You need to push the
10 microphone.

11 MS. STEVENS: That's his filing deadline?

12 CHAIRMAN HILL: The 13th.

13 MS. STEVENS: Or is that the record?

14 CHAIRMAN HILL: The 13th is when they would -
15 - actually, clarify that for me, Mr. Moy.

16 MR. MOY: That's when the applicant would
17 file into the record with answers to the questions
18 that has been posed by the Board.

19 CHAIRMAN HILL: Right. So, by the --

20 MR. MOY: Into the record.

21 CHAIRMAN HILL: So by the 13th we would have
22 hoped that you guys would have resolved or at least
23 not resolved, whatever it ends up being, by the 13th.
24 You would have had your meeting. You would have
25 tried to get to it, whatever it is. And they can

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1 submit something to us that says, this happened, we
2 agreed to this, we didn't agree to that. What have
3 you. Okay?

4 MS. STEVENS: Okay.

5 CHAIRMAN HILL: Okay. And I suppose -- and
6 right now might not be the best time because
7 everybody might be a little hot or cold or what have
8 you. But you might want to get together and try to
9 figure out a date that you can meet now, since you're
10 all in the same room, to discuss what to do moving
11 forward. I know they want to discuss things moving
12 forward, and I'm sure you all also want to discuss
13 things moving forward as well. So, okay?

14 MR. MOY: And then the next deadline, Mr.
15 Chair if I may, so, just thinking this through. So
16 then this would be held that the ANC meeting on the
17 15th of February, would the ANC be able to submit a
18 supplemental report from the ANC into the record by
19 that Friday?

20 MS. BREVARD: Yes, absolutely.

21 MR. MOY: Okay. Which would be the 17th.
22 Would the Board entertain another supplemental from
23 OP or not?

24 CHAIRMAN HILL: Sure, if OP wants to. If
25 they want to. If they don't need to, they don't have

1 to.

2 MR. MOY: And if they want to then I would
3 hold them the same date on the 17th. Sound good?

4 CHAIRMAN HILL: That's fine. I don't think
5 OP is going to give us anything else.

6 Okay. Oh, so the ANC, I'm sorry, that was
7 that again. You will have met and then you'll give
8 us something.

9 MS. BREVARD: Yes.

10 CHAIRMAN HILL: Okay. All right. And then
11 just for one last thing for the developers, I am
12 conscious of finance carries and things such as that.
13 You guys are kind of okay until that time, I would
14 imagine, in a \$90,000 lot.

15 MR. DeVERGER: Yes. Yes.

16 CHAIRMAN HILL: Okay. All right. Okay.
17 Thank you all so much.

18 [Recess from 12:43 p.m. to 12:45 p.m.]

19 CHAIRMAN HILL: All right, everyone. Let's
20 just come back to order here if you don't mind here.
21 Mr. Moy, if you could call the next case. But before
22 you do I did want to mention one thing in terms of
23 the agenda.

24 I'm just switching the last two, so the
25 application of Bellview Development is going to be

1 the last case. And the second to last case is going
2 to be the application of Paige Reffe, I think it is.
3 Okay. All right. Thank you.

4 MR. MOY: Just also to let you know, Mr.
5 Chairman, since we're reviewing the lineup for the
6 remaining cases, I was told whether correctly or
7 incorrectly that I think the applicant to 19402 may
8 have to leave before 2:30. So, I just want to be
9 sure that we're aware of our time scheduling.

10 Cluss Alley would be the third case after
11 Warder.

12 CHAIRMAN HILL: Okay. Let's see how this
13 goes.

14 MR. MOY: Okay.

15 CHAIRMAN HILL: Let's go ahead and start.

16 MR. MOY: That's what I agree.

17 CHAIRMAN HILL: Yeah, but thank you.

18 MR. MOY: Okay. So, parties to the table to
19 Application No. 19271A of DGS of DC. as advertised
20 and captioned for a request for modification of
21 significance to BZA Order 19271 for a special
22 exception relief under the rooftop mechanical
23 screening requirements of Subtitle C, Section 1500.6.
24 This would modernize rooftop equipment on existing
25 public school, R-2 zone, 4800 Meade Street Northeast,

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1 Square 5159, Lot 801.

2 CHAIRMAN HILL: Okay. Thank you, Mr. Moy.
3 Good afternoon. If you could please introduce
4 yourself from left to right.

5 MS. RANKIN: Good afternoon. I'm Mary
6 Rankin. I'm with Perkins Eastman D.C., address 1
7 Thomas Circle Northwest, Washington, D.C., 20005.

8 I'm the architect for the property and the
9 authorized agent for the owner.

10 CHAIRMAN HILL: Thank you.

11 MS SENSABAUGH: Good afternoon. I am Mia
12 Sensabaugh with DGS. I am the project manager,
13 address 1250 U Street Northwest, Washington, D.C.

14 CHAIRMAN HILL: Thank you. Let's see. So, I
15 don't have a lot of questions. I think the record is
16 pretty straightforward. I would give you more of an
17 opportunity to speak, but it being DGS, you were here
18 before and will be here again.

19 So, unless you have anything specific, and if
20 the Board doesn't have anything specific, then I'm
21 going to look to the Office of Planning to respond to
22 their report. Does the Board have any particular
23 questions of DGS?

24 [No audible response.]

25 CHAIRMAN HILL: Okay. Is that all right,

1 moving to the Office of Planning?

2 MS SENSABAUGH: Yes, that is.

3 MS. RANKIN: Okay. Great. Could I hear from
4 the Office of Planning, please?

5 MR. MORDFIN: Good afternoon, Chair and
6 Members of the Board. I'm Stephen Mordfin and the
7 opportunity continues to support this application and
8 stands on the record and is available for questions.

9 CHAIRMAN HILL: Great. Thank you, Mr.
10 Mordfin. Does the Board have any questions of the
11 Office of Planning?

12 [No audible response.]

13 CHAIRMAN HILL: All right. Then I'm going to
14 turn to the audience here. Is there anyone here from
15 the ANC on this application? Is anyone here wishing
16 to speak in support of this application? Is anyone
17 here wishing to speak in opposition of this
18 application? Okay.

19 Then, with that I'm going to go ahead and ask
20 the applicant if they have anything else to add.

21 MS. RANKIN: No.

22 CHAIRMAN HILL: Okay. All right. I would
23 like to note again for the record that you have --
24 oh, actually wait a minute. So, there is the
25 approval of the Office of Planning and I didn't see a

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1 specific ANC report. Did I miss that?

2 MS. RANKIN: It was emailed to Steve Varga
3 yesterday and uploaded to the file yesterday.

4 CHAIRMAN HILL: Okay.

5 MS. RANKIN: The ANC supplied both a letter
6 of support for this BZA issue, for the rooftop
7 screens, as well as a letter for the previous BZA
8 where they were unable -- we met earlier in June --

9 CHAIRMAN HILL: Oh, right. Okay. Yeah, I
10 understand. Sure.

11 MS. RANKIN: -- with the same number.

12 CHAIRMAN HILL: Okay.

13 MS. RANKIN: They didn't have a quorum at the
14 time to submit an official letter. They submitted a
15 single-member letter.

16 MS SENSABAUGH: Single. Uh-huh.

17 CHAIRMAN HILL: Okay.

18 MS. RANKIN: So, they submitted both
19 yesterday.

20 CHAIRMAN HILL: Okay. Great. Thank you for
21 providing that clarification.

22 MR. MOY: And that's in their exhibit 35 and
23 36, Mr. Chair.

24 CHAIRMAN HILL: Okay. Great. And then I
25 also see the Department of Transportation has weighed

1 in and doesn't have any objection.

2 So again, I'm sorry, I'm just going to turn
3 to the applicant. You don't have anything else you'd
4 like to add?

5 MS. RANKIN: No.

6 CHAIRMAN HILL: Does anyone on the Board here
7 have any questions?

8 Sure, please, go ahead, Mr. Miller.

9 MR. MILLER: I just had one question. I the
10 perspective that you submitted from Main Street in
11 Exhibit No. 5 shows why the two -- what you're
12 proposing is less visible --

13 MS. RANKIN: Correct.

14 MR. MILLER: -- than what would be --

15 MS. RANKIN: Required.

16 MR. MILLER: -- required under the code.

17 But I just had a question. Does the
18 screening meet the setback requirements of the --

19 MS. RANKIN: Yes. Yes.

20 MR. MILLER: Okay. Thank you. I'm prepared
21 to move forward, Mr. Chairman.

22 CHAIRMAN HILL: Okay, great. Thank you. So
23 with that then I'm going to go ahead and close the
24 hearing, and is the Board ready to deliberate?

25 And this particular case, again, I think is

1 very straightforward. I thought that DGS -- thank
2 you for going to the ANC and getting the letters that
3 you needed to get and then also the diagrams, I found
4 very helpful in terms of the screening and what could
5 be there and what you're proposing. So, I would go
6 ahead and make a motion to approve application No.
7 19271A as read by the secretary.

8 MR. MILLER: Second.

9 CHAIRMAN HILL: Motion has been made and
10 seconded.

11 [Vote taken.]

12 CHAIRMAN HILL: The motion passes. Mr. Moy,
13 if --

14 MR. MOY: Yes, staff would record the vote as
15 three, to zero, to two. This is on the motion of
16 Chairman Hill to approve the application for the
17 relief being requested. Seconding the motion, Mr.
18 Rob Miller. Also in support, Mr. Hart. Two seats
19 vacant. The motion carries, sir.

20 CHAIRMAN HILL: Great. Thank you. Summary
21 order.

22 MR. MOY: Yes, sir. Thank you.

23 CHAIRMAN HILL: Thank you.

24 MS. RANKIN: Thank you.

25 CHAIRMAN HILL: Thank you. Let's see. So,

1 whenever you're ready, Mr. Moy.

2 MR. MOY: Application No. 19401 of 3645
3 Warder, LLC., captioned and advertised for a special
4 exception relief under the RF use requirements of
5 Subtitle U, Section 320.2, permitting the conversion
6 of an existing one-family dwelling into a three-unit
7 apartment house, RF-1 zone, 3645 Warder Street
8 Northwest, Square 3034, Lot 279.

9 CHAIRMAN HILL: Okay. Good afternoon. If
10 you could just introduce yourself?

11 MR. CROSS: My name is Michael Cross. I'm
12 the architect for the Application 19401. My address
13 is 2001 S Street Northwest, Washington, D.C., 20009.

14 CHAIRMAN HILL: Okay. Mr. Cross, did you get
15 sworn in this morning?

16 MR. CROSS: I did.

17 CHAIRMAN HILL: Okay. You are the only one
18 here?

19 MR. CROSS: I am.

20 CHAIRMAN HILL: No property owner?

21 MR. CROSS: No property owner today.

22 CHAIRMAN HILL: They think you can handle it
23 all on your own?

24 MR. CROSS: I hope so.

25 CHAIRMAN HILL: Okay. All right. So, I

1 don't have a lot of questions, although the Board
2 might. The only -- and please, go ahead and I would
3 like to hear a very brief overview of the project in
4 terms of also how you meet the standard. But the one
5 thing that I did notice from Office of Planning
6 report again was their concern about your -- the
7 endeavor to retain the existing masonry railings or
8 replace it in kind as it represents an architectural
9 feature seen on a majority of the houses along Warder
10 Street.

11 Are you and the applicant agreeable to that?

12 MR. CROSS: Yes, we are.

13 CHAIRMAN HILL: Okay. All right. Well, then
14 with that, does the Board have anything more specific
15 than just hearing kind of a high level presentation
16 on the project?

17 MR. HART: Would you like me to ask questions
18 later?

19 CHAIRMAN HILL: Is it about the -- please, go
20 ahead now, just to hear what he wants to --

21 MR. HART: Yeah. It is --

22 CHAIRMAN HILL: So you can focus on this
23 particular -- these particular issues, if you have
24 any.

25 MR. HART: I'm glad that -- thank you, Mr.

1 Chairman. I'm glad you brought up the Office of
2 Planning report. One of the things that I started to
3 look at, I first kind of looked at the entire case;
4 looked at the architectural drawings. And I noted
5 that the railing is something that was -- that's
6 something that the Office of Planning brought up, and
7 I also started noticing some other kind of details.
8 And if you could kind of talk about if the
9 architectural drawings that we see are very
10 representative, or are there things that were just
11 too detailed to actually show up in the renderings?

12 In particular what I'm talking about, the
13 front door, the existing side and transom lights
14 around the front door have been removed. I
15 understand that that may be some -- some of the other
16 buildings in the neighborhood may look like that. I
17 just wanted to understand if that actually did occur.

18 The soffit no longer has a detailing that
19 some of the other soffits have in some of the other
20 buildings that are adjacent to this. The capitals
21 are gone from the first floor porch columns, and
22 again, I'm just looking at what are some of the other
23 neighbors actually have on their facades.

24 The dormer windows had recessed column
25 decoration around them. Again, it lends -- these,

1 while they are details, they do help to kind of blend
2 better with the neighborhood that this is being put
3 within. And then some of the window sills have also
4 changed and if you could kind of talk to that a
5 little bit.

6 And again, I don't know if it's just the
7 details that are just not in this, or of it's just
8 that they are actually not going to be there. And
9 the question is, could they be there? And I'll leave
10 it at that. Thank you.

11 CHAIRMAN HILL: So, Mr. Cross, I would just
12 go ahead and highlight all the areas that Mr. Hart
13 just mentioned and just focus on those questions.

14 MR. CROSS: Great. Thanks to the Board for
15 the time, Office of Planning for their report, and
16 also to the ANC for all the time they've spent
17 reviewing this and preparing their comments.

18 This is a three-unit conversion in an RF Zone
19 and that's why we're here before you today. We are
20 lucky to be working with a client who is very
21 sensitive to the character of the neighborhood, so
22 that was one of the tasks that he put on us as
23 architects from the very beginning.

24 We are looking to expand this property only
25 minimally from the exterior view. Thanks to a

1 substantial, what I call a faux mansard around the
2 top of the roof, the two dormer windows at the front
3 are actually in a small attic space that very quickly
4 tapers off to virtually nothing. So, the mansard
5 that you see at the rear and side of the property is
6 really just a very large parapet wall which will be
7 building behind, not visible to the street.

8 The elements that you cite specifically, they
9 are a little nuanced. I think that my answer is,
10 it's a little bit of both. The drawings have been
11 prepared to a certain level of resolution, and so
12 some of those items are changing and also will remain
13 the same.

14 The only item that I noted that I think is an
15 actual change is as you observed, the front door, we
16 are proposing to remove the two side lights. That is
17 -- that obviously exists today with two side lights
18 and a transom. The rest of the block, the majority
19 of the houses, is just a transom, and that's going to
20 allow us a better entry configuration for the
21 proposed layout.

22 The elements that you list, the detail at the
23 cornice, we are looking to maintain and restore that
24 existing cornice, so those details are simply not
25 shown in for drawing efficiency, as are the capitals

1 on the front columns. That front porch will remain
2 in -- and be restored in its existing form, along
3 with those capitals.

4 And, likewise, the sills in those windows
5 will be maintained. Obviously there will be work in
6 and around the windows, but the sills themselves will
7 not be changed.

8 The work with maintaining the brick piers and
9 wood columns on the porches is our intent,
10 particularly where they exist today. And as you
11 might have noted, on the side elevation I believe
12 it's Quebec Street, we are actually proposing
13 emulating what's there on the existing second floor
14 on the proposed third story as we are actually
15 extending that side addition up one story, but
16 keeping the brick pier and wood railing.

17 I may just stop there. If I have missed
18 something, please let me know.

19 MR. HART: Are there dormer windows on the
20 front as well?

21 MR. CROSS: Oh, yes. All the existing dormer
22 windows are existing to remain. All their detail
23 will remain. The physical windows in those openings
24 may be switched out simply because of the state of
25 the current window, but the dormer structure and all

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1 its detailing will remain.

2 MR. HART: Thank you. And that's actually --
3 you hit all the pieces that I raised, so I appreciate
4 it. Thank you.

5 CHAIRMAN HILL: Okay. Great. Thank you.
6 Does anyone else have any questions right now for the
7 applicant?

8 MR. HART: On the site plan there were some
9 garages that are -- are they being -- are they
10 actually going to be used for storage, or are they
11 going to be actually used for cars? I was just
12 curious.

13 MR. CROSS: Yeah. So, the parking
14 requirement for this would be one and a half spaces,
15 which is proposed as two. Currently there's no
16 parking on site.

17 What we found in our initial documentation of
18 the property is that there is two old garages,
19 nonconforming spaces but were originally built as
20 garages with the doors very clearly headered off and
21 all the detailing of a garage, masonry walls between
22 the home and that structure, that we are going to be
23 restoring back to their original, you know, garage
24 space. Albeit, nonconforming.

25 MR. HART: Thank you.

1 CHAIRMAN HILL: Mr. Miller, do you have any
2 questions at this time?

3 MR. MILLER: No, thank you, Mr. Chairman.

4 CHAIRMAN HILL: Great. All right, then if
5 that's all right with the applicant, I'm going to
6 turn to the Office of Planning.

7 MR. CROSS: Thank you.

8 MS. BROWN-ROBERTS: Good afternoon, Mr.
9 Chairman and Members of the BZA. For the record,
10 Maxine Brown-Roberts from the Office of Planning.

11 In our analysis for this request, we went
12 through all the standards that had to be met under
13 Subtitle U 320. As the applicant said, we had -- I
14 had conversations with him concerning the
15 application, and I did highlight a lot of the issues
16 that -- the elements that Mr. Hart just identified
17 that -- and expressed a concern that they were not
18 shown on the elevations that we got.

19 This application is -- has in sort of an
20 architectural review portion to it, and therefore I
21 do believe that some of the things that the applicant
22 has stated that are going to be retained should be
23 shown on the elevations, because when it goes to DCRA
24 those are things that they'll be looking at.

25 If this is approved and those details are not

1 shown on the plan and DCRA is not listening to the
2 conversation that we are having today, that the
3 applicant has stated that they're going to do. So, I
4 think it's -- we recommended approval of the
5 application, but I also would like to say that those
6 sort of details, I think, should be on the approved
7 plans that go to DCRA.

8 Another concern that we had that I had
9 expressed to the applicant, and they addressed it to
10 some extent through their shadow studies, was that
11 along the alley all the buildings have a setback of
12 the upper portion, and it seems to say that, you
13 know, it's to give additional light to the adjacent
14 property.

15 And in this case that is being filled on the
16 second floor, and the proposed third floor. And so
17 the applicant stated that they had the support from
18 the adjacent neighbor, but I'm not sure if that was
19 something that was brought to their attention.

20 So, you know, that is something I think we
21 would -- I would say maybe the Commission may want to
22 talk to the applicant some more about. But again,
23 from their shadow studies it does show that it's
24 going to be -- those windows are going to be
25 impacted. A little bit more than they are impacted

1 now. I wouldn't say it's a substantial, you know,
2 that the impact would be substantially above what is
3 there right now, but it does.

4 Otherwise, the Office of Planning is in
5 support of the application. Thank you, and I'm
6 available for questions.

7 CHAIRMAN HILL: Thank you. Does anyone have
8 any questions for the Office of Planning?

9 [No audible response.]

10 CHAIRMAN HILL: Okay. I have a question for
11 you, Mr. Cross. So, as far as what the Office of
12 Planning just mentioned about the neighbor really
13 realizing that in-fill, do you know if that's the
14 case?

15 MR. CROSS: I can't speak to whether he
16 understands the impact of the solar study. We are
17 actually in ongoing conversation with him about his
18 property as well as a separate client. So, I think
19 he's approachable to -- to discuss this further. But
20 he has expressed no opposition to date.

21 CHAIRMAN HILL: Okay. And you think that
22 even if you did point that out to him, he would
23 probably be okay?

24 MR. CROSS: Yeah, as reference, we've done a
25 solar analysis. I believe it's part of the uploaded

1 material. I'm not sure. I have it here on the
2 screen. This is --

3 CHAIRMAN HILL: Mr. Moy, are you -- do you
4 know whether that actually had gone into IZIS?

5 MR. MOY: It's not showing it being entered
6 into IZIS.

7 CHAIRMAN HILL: Okay, Mr. Cross, if you can
8 make sure we --

9 MR. MOY: I'm looking at it now.

10 CHAIRMAN HILL: -- get that into the record?

11 MR. CROSS: Yeah. As you can see on the
12 screen the summer solstice study shows very little
13 difference between the existing condition and that
14 proposed in the impact of the shadow on the adjacent
15 property. Maybe the biggest difference is shown
16 towards the end of the day here where previously it
17 was the shadow did not touch the windows. But in the
18 existing condition, or in the proposed condition it
19 is going to shade half of the windows.

20 CHAIRMAN HILL: Okay. That's all right. I
21 think, Mr. Cross, you're aware of the -- you
22 understand the comments from the Office of Zoning
23 concerning the drawings?

24 MR. CROSS: That -- yes. With respect to
25 what is permitted and that it reflects the statements

1 today.

2 MS. BROWN-ROBERTS: I think what I wanted, I
3 think, is to have all the details that you spoke
4 about that are going to be there, be shown on -- be
5 shown on an elevation and then submitted to the BZA
6 so that is what is approved to go to DCRA.

7 CHAIRMAN HILL: And that is something that I
8 also agree with, I'm going to need, or we're going to
9 need. But we can -- depending upon how this goes,
10 we're going to try to get it as quickly as possible.
11 Perhaps taking a look at the drawings. We're going
12 to need those before we're able to make a decision.

13 MR. CROSS: You'll need the permit set? How
14 will you enforce that?

15 MS. BROWN-ROBERTS: No.

16 MR. CROSS: We'll need the official permitted
17 set to --

18 CHAIRMAN HILL: No, no, no, just let the
19 Office of Planning respond.

20 MS. BROWN-ROBERTS: No, I think if you look
21 at the elevations you have the existing with all the
22 elements that Mr. Hart detailed. And you say that a
23 lot of them will be retained. That's not shown on
24 your existing elevation. So, that's what we want to
25 see on that.

1 MR. CROSS: We can certainly upload it to
2 IZIS, and I guess go on the record to say we will --

3 CHAIRMAN HILL: That's all right. That's
4 okay.

5 MR. CROSS: -- we will upload those --

6 CHAIRMAN HILL: Yeah, unfortunately I need to
7 see -- it's okay.

8 MR. CROSS: -- same drawings just
9 (simultaneous speech).

10 CHAIRMAN HILL: That's all right. As long as
11 you do understand what she's talking about and asking
12 for. Okay.

13 MR. CROSS: Yes.

14 CHAIRMAN HILL: Because I'm going to need
15 that before we can vote, just to let you know.

16 MR. CROSS: Okay.

17 CHAIRMAN HILL: So but, but nonetheless. So,
18 does anyone have any questions for the applicant at
19 this time?

20 Okay. I'm going to turn to the audience. Is
21 anyone here from the ANC? Is anyone here wishing to
22 speak in support? Is anyone here wishing to speak in
23 opposition? Commissioner Miller, do you have any
24 questions?

25 MR. MILLER: I just wanted to comment that we

1 do have a letter from the ANC 1A dated November 9th,
2 2016, in support of the application and I just wanted
3 to emphasize what they emphasize, that while they
4 normally have some concerns about conversions of
5 single-family structures into apartments, in this
6 case they find that the conversion will actually
7 expand family-sized housing with two of the three
8 units being larger three-bedroom units, I believe.
9 So, I just wanted to note that support --

10 CHAIRMAN HILL: Okay. Great.

11 MR. MILLER: -- for the record and my support
12 for the record.

13 CHAIRMAN HILL: Okay. Great. Thank you. Do
14 you have anything else to add before we -- well, I
15 don't know. Let me think. What am I doing? Sorry.
16 We're going to -- I need to see the drawings before
17 we're able to vote. What I'd also like to see is
18 just a letter or something that talks about the
19 neighbor in that in-fill that the Office of Planning
20 had brought up. Like they're really aware and
21 understand the in-fill. I don't necessarily know if
22 that's going to change if you got a no or not. But I
23 just want to check off that box.

24 So then I'd be looking for a letter about the
25 neighbor understanding the in-fill area there. And

1 then also the drawings as asked for by the Office of
2 Planning. And I'd like to see the -- if you can get
3 those to us right away, then I think we'd be able to
4 do a meeting date even next week, Mr. Moy?

5 MR. MOY: Yes, that -- yes. If the applicant
6 can prepare his filings by the, I would say the end
7 of the week. Or maybe Monday at the latest if you
8 need the time. But, I'll defer it to the Board on
9 that.

10 MR. CROSS: We should be able to provide the
11 revised drawings to show the architectural elements
12 which are being maintained. I cannot promise we'll
13 have a letter from the neighbor by that time, simply
14 because I don't know his schedule.

15 CHAIRMAN HILL: Mr. Hart, did you have
16 something to add?

17 MR. HART: Just out of -- just wanted to make
18 sure that the Office of Planning was -- or not going
19 to be submitting a supplemental.

20 CHAIRMAN HILL: I don't think I need a
21 supplemental unless the Office of Planning thinks
22 they need to do a supplemental.

23 MS. BROWN-ROBERTS: No. No.

24 CHAIRMAN HILL: Okay. So, I'm trying to work
25 with you here and be as efficient as possible. So,

1 that means right, you'd be back with us for the
2 meeting date next Wednesday. Is that correct, Mr.
3 Moy? Is that what you're saying?

4 MR. MOY: Yes, it would be the 18th. But if
5 the applicant can't -- is unable to file all that's
6 being requested then the next date for a public
7 meeting would be February the 1st, decision meeting.

8 MR. CROSS: I believe we can get all the
9 drawings to you by the end of the week to satisfy
10 next week's meeting.

11 CHAIRMAN HILL: Okay. And then the --

12 MR. MOY: Also --

13 CHAIRMAN HILL: I'm sorry.

14 MR. MOY: I'm sorry. Include the letter.

15 CHAIRMAN HILL: Yeah, that's all right.

16 Yeah, the letter is what we're talking -- we're
17 trying to like figure this out. Like I suppose it's
18 somewhat up to you. If you think, if the 1st doesn't
19 throw off your timeline so much, then you might as
20 well wait until the 1st, unless you think you really
21 need approval one way or the other by next Wednesday,
22 then go ahead and make it the 1st and see if you can
23 get -- I mean, even if an e-mail from him, obviously
24 or something. You said you're in negotiations with
25 him, so you should be able to contact him but it's

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1 kind of up to you.

2 MR. CROSS: Knowing that we are -- we have
3 been in continued contact with the neighborhood, I
4 believe that we should be able to satisfy that
5 timeline and we are working on the permit drawings
6 currently, so we would like to have them submitted to
7 DCRA prior to February 1st. So, we'd like to keep
8 the schedule.

9 CHAIRMAN HILL: Okay. Okay. All right,
10 that's fine. So next week?

11 MR. MOY: Yes, January 18th.

12 CHAIRMAN HILL: Right. And then we'll get
13 what we wanted by Friday.

14 MR. MOY: Friday.

15 CHAIRMAN HILL: Okay.

16 MR. MOY: Which would be the --

17 CHAIRMAN HILL: It's like two days from now.

18 MR. MOY: Yeah.

19 MR. CROSS: It's doable. We're working on
20 the drawings currently.

21 CHAIRMAN HILL: Okay. Great.

22 MR. CROSS: We can have them --

23 CHAIRMAN HILL: Too bad your client's not
24 here. You're just so reasonable and like two days,
25 working so fast. You know.

1 MR. CROSS: We work hard.

2 CHAIRMAN HILL: That's good.

3 MR. CROSS: At Steve's.

4 CHAIRMAN HILL: That's it. Okay.

5 MR. CROSS: Thank you.

6 CHAIRMAN HILL: That's all right. So, I'm
7 going to go ahead and close the hearing then. I'm
8 closing the record, other than those two items that
9 we're requesting, unless the Board has any other
10 thoughts or concerns.

11 [No audible response.]

12 CHAIRMAN HILL: Okay. Then, Mr. Cross, we
13 are done with you.

14 MR. CROSS: Thank you, all.

15 CHAIRMAN HILL: Thank you.

16 MR. CROSS: Board, Planning, everyone.

17 CHAIRMAN HILL: Mr. Moy, just to be clear, I
18 forget, you had mentioned some -- and again, we're
19 doing our best to help whoever this, or whatever this
20 issue is. But I think is the next one anyway?

21 MR. MOY: Yes, it is. Yes, it is.

22 CHAIRMAN HILL: Okay. Great. So, that
23 worked out.

24 MR. MOY: So again, that would be Application
25 No. 19402 of Cluss Alley, LLC., request for a special

1 exception on the alley under the alley width
2 requirement, Subtitle C, Section 303.3A, and the rear
3 yard requirements of Subtitle E, Section 5104.1.
4 This would subdivide a lot and permit the conversion
5 of an existing building into two one-family alley
6 dwellings in the RF-1 Zone, 1223, at the rear, C
7 Street Southeast, Square 1017, Lot 79.

8 CHAIRMAN HILL: Okay, great. Thank you.
9 Good afternoon. Would you please introduce
10 yourselves when you have a moment?

11 MR. KADLECEK: Hi, good afternoon. Cary
12 Kadlecek from Goulston and Storrs on behalf of the
13 applicant.

14 CHAIRMAN HILL: And I apologize. I should
15 know it by now, but could you spell your last name
16 for me?

17 MR. KADLECEK: Sure. It's K-A, D as in dog,
18 L-E-C-E-K.

19 CHAIRMAN HILL: Okay. Thank you.

20 MR. RUPPERT: Hi. My name is Sean Ruppert.
21 I am the owner of OPaL, LLC., the developer of the
22 project.

23 CHAIRMAN HILL: Okay. Great. Thank you.
24 So, let's see. And now I'm going to have to ask you
25 to pronounce it again. Mr. Kadlecek?

1 MR. KADLECEK: Kadlecek, yes.

2 CHAIRMAN HILL: Kadlecek, sorry. Mr.
3 Kadlecek, so I don't have a lot of questions
4 concerning this. I can see again that you've done
5 obviously a lot of your homework, being so involved
6 with the Board as you have been over the years. But
7 see, you know, the ANC 6b is in approval of the
8 application, as is the Office of Planning, who we
9 will hear from, and DDOT.

10 I don't, other than I suppose kind of like a
11 high level discussion of the project and the
12 requirements, on how you're meeting the requirements,
13 I don't have any specific questions. Does the Board
14 have any other specific questions? Okay.

15 So then again, just kind of a little high
16 level presentation about how, you know, we went
17 through this. I'd even, you know, I'd be kind of
18 curious but I'm always curious about the ANC, as to
19 how the ANC meeting went, and then again, how you're
20 meeting the standard.

21 MR. KADLECEK: Sure.

22 CHAIRMAN HILL: Thank you.

23 MR. KADLECEK: I'll let Sean actually speak
24 to the project itself, but I just want to give the
25 Board a little bit of an overview. I know you've

1 read everything but as you saw there --

2 CHAIRMAN HILL: No, please, go ahead. Yeah.

3 MR. KADLECEK: -- is a letter in the record
4 that expressed some opposition so we just kind of
5 wanted to respond to that with some of the points
6 that that letter raised.

7 Again, this application is for two special
8 exceptions to allow the conversion in addition to an
9 existing historic garage. It's to create two single-
10 family houses. One of the special exceptions is for
11 relief from a side-yard setback, a five-foot side-
12 yard setback. Again, it's only for a portion of the
13 eastern sidewall. It's not for the entirety of the
14 wall.

15 The second is to allow the subdivision of
16 this property into two lots, and that derives from
17 the fact that the requirement in the Zoning
18 Regulations is that all alleys leading out to streets
19 are at least 24 feet wide and as we explained, the
20 alleys that lead out the streets are only 15 feet
21 wide.

22 Again, the relief before you is for special
23 exceptions, not variances. So, there's no need to
24 prove any sort of hardship. The regulations allow
25 for the creation of new alley lots. Subject to the

1 standards. Relief from most of those standards is by
2 special exception, which is the case here.

3 With respect to the open space between the
4 north side of the proposed project and those adjacent
5 property lines, it's important to remember that the
6 regulations require only a separation of five feet.
7 What's being provided here is 14 feet. So, it's
8 almost three times greater than what's required
9 there.

10 With respect to the windows providing a
11 vantage point, or some sort of invasion of privacy,
12 it's important to note that the relief again with
13 respect to the building form is only for a portion of
14 the five-foot setback on the eastern property line.
15 There are no windows on the eastern property line, so
16 there's nothing -- there's no vantage point to that
17 direction.

18 The rest of the building structure is
19 conforming as to the zoning regulations. It meets
20 the height lot occupancy, and all the setback
21 standards. The original building is 20 feet -- about
22 20 feet tall, which is what the zoning limit is. The
23 new additions are only 16 feet tall, so they're
24 actually below what the Zoning Regulations allow.
25 And then of course there's ample open space around

1 it. So, there's no vantage point in which privacy
2 would be compromised on adjacent properties.

3 And finally, the relief does not harm the
4 zone plan. It allows the development of alley lots
5 which the new regulations are explicit in allowing
6 for. And because there is a consistent development
7 with respect to the neighborhood, the lots are larger
8 than many of the lots on street-fronting properties
9 in the neighborhood, so it's not like there's some
10 sort of overcrowding of units here. We're basically
11 adding one additional unit than would be allowed as a
12 matter of right.

13 So, with that I'll let Sean walk you briefly
14 through just the elements of the project.

15 MR. RUPPERT: Hi, everybody. I bought this
16 building. It was originally built in 1920 by the
17 Stewart brothers, who ended up doing Stewart Volvo
18 and Stewart Petroleum. Martin's Volvo, and Stewart
19 Petroleum. But it's a really charming little brick
20 building on the alley.

21 So, what we've designed are two, two-level
22 homes. And to get to that, to get to two levels,
23 because we're not raising the roof line at all, at
24 the highest point it's 20 feet tall. At the pitch in
25 the center. And then it goes down gradually to 16

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1 feet on the alley and just off of the easement in the
2 back.

3 So, to get to two levels we've dug out the
4 ground. We'll be digging out the ground by three
5 feet. That way we'll have a two-level home in there.
6 Each of the houses, each home is about 2,700 square
7 feet with three bedroom suites, which is a pretty
8 decent sized carriage house. And they each have
9 parking and a huge outside patio.

10 Our architect, who has done all of the --
11 I've built 200 homes in this city. This is my fifth
12 alley project. We use the same architect for
13 everything. He's from Seattle and -- but he grew up
14 in Annapolis, so he really does get a D.C. aesthetic.
15 And, but our homes really come across with a
16 different energy because he's from the Pacific
17 Northwest.

18 So, our floorplans are really kind of
19 interesting and clever, and that's one of the reasons
20 that they sell pretty well. So, what we've done is
21 take the existing building, which you see here on the
22 right-hand side. We're switching out the garage door
23 to the -- for the windows. And then on the right-
24 hand side -- left-hand side, looking at that view,
25 that addition is a modern addition. That's what

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1 Office of Planning loved. That's what historic
2 helped us design and at the end of the day voted
3 unanimously to approve it.

4 So, it's supposed to be as if you took the
5 side of the building and extruded, like pulled out a
6 jewelry box to expose that -- the modern interior
7 there. So, that's kind of what's happening there.
8 And that's the full side view where you see each
9 garage entry for each house. And that's the rear
10 view.

11 So, going through the ANC where we had
12 unanimous support through the historic process, and
13 then unanimous support just recently through the
14 architectural and zoning, and then through the full
15 member, all four times were unanimously approved.

16 What we ended up doing, our first time
17 through I had three units there. After that ANC
18 meeting, even though it was approved, we switched to
19 two units just for marketability, just because I feel
20 better about selling two big homes there, rather than
21 three two-bedrooms. I just feel it's a better
22 concept in general.

23 So, we switched to two bigger homes, and in
24 doing that, because some of the people had comments
25 about how -- we were building up to the easement. We

1 pulled the building off of the easement by four feet,
2 and then we agreed with the neighbors to plant --
3 well, there will be crape myrtles in the back here,
4 if you're looking at the rear view where the brick
5 is, that brick wall with the windows, that will have
6 crape myrtles and carpet roses on it.

7 And then on the right-hand side is a patio
8 that belongs to one of the homes, one of the new
9 homes. We agreed to put in two four-inch caliper
10 maple trees, which if you don't know, like that's a
11 huge -- of the truck that thing will be 16 feet tall,
12 both of them. So, that's the existing -- that's what
13 it looks like now. So, that's my story.

14 CHAIRMAN HILL: Okay. Great. Thank you.
15 And, Mr. Ruppert? Ruppert?

16 MR. RUPPERT: Yes.

17 CHAIRMAN HILL: I appreciate the passion
18 you're coming with. That's really nice. It's a nice
19 design project and I'm glad you've been so successful
20 here in the city. That's great.

21 MR. RUPPERT: Thanks.

22 CHAIRMAN HILL: If anyone has anything for
23 the applicant, I was going to turn to the Office of
24 Planning. Okay.

25 MS. THOMAS: Good afternoon, Mr. Chair.

1 Karen Thomas for the Office of Planning.

2 CHAIRMAN HILL: Good afternoon.

3 MS. THOMAS: We would stand on the record of
4 our report in support of this application because it
5 meets the standards, it satisfies the standards under
6 the special exception test. It is minimal what is
7 being requested for the rear yard. It conforms with
8 the design concepts that HP will approve, and we were
9 happy with the design. And they're providing parking
10 as well, so.

11 CHAIRMAN HILL: Okay. Great. Thank you.
12 Does anyone have any questions for Office of
13 Planning? Does the applicant have any questions of
14 the Office of Planning?

15 MR. KADLECEK: No questions, thank you.

16 CHAIRMAN HILL: Okay. I'm going to turn to
17 the audience, then. Is there anyone here from the
18 ANC? Is anyone here wishing to speak in support of
19 the application? Is anyone here wishing to speak in
20 opposition of the application?

21 If you could please come forward?

22 MR. MILLER: As they're coming forward, Mr.
23 Chairman, I just would note that we do have a letter
24 from ANC 6B dated December 14th in support of the
25 application.

1 CHAIRMAN HILL: Thank you, Mr. Miller. Good
2 afternoon.

3 If you could just introduce yourself from
4 either way, left to right, and just also tell me
5 where you live. And if you wouldn't mind even tell
6 me where you live in relationship to the property?

7 MR. NASH: MY name is Carl. Excuse me, Carl
8 Nash.

9 CHAIRMAN HILL: Nash? Nash?

10 MR. NASH: N-A-S-H.

11 CHAIRMAN HILL: Okay. Thank you.

12 MR. NASH: I live at 330 Adolf Cluss Court,
13 which is right across the alley from the subject
14 property.

15 CHAIRMAN HILL: Okay. Thank you. Oh, you
16 need to push the green button there, or let the light
17 come on.

18 MR. DOHERTY: My name is Myles Doherty and I
19 live at 725 H Street Southeast, but my property is at
20 1239 C Street Southeast. It's a four-unit condo
21 building with a deck and a patio.

22 CHAIRMAN HILL: Okay. And how is that in
23 relationship to this property?

24 MR. DOHERTY: The property that they're
25 thinking of building is directly behind my property.

1 CHAIRMAN HILL: Okay.

2 MR. DOHERTY: You have the condo, then you
3 have the deck, then you have the common yard, and
4 then there's a fence, and the property is going to be
5 built directly behind that fence.

6 CHAIRMAN HILL: Okay. Great. No, I see it.
7 Thank you so much. And then, Mr. Nash, where are you
8 located again?

9 MR. NASH: We're on the alley, but right
10 across from the subject property.

11 CHAIRMAN HILL: Okay. All right.

12 MR. NASH: There were two warehouses on that
13 property when we purchased ours, and we purchased one
14 of them and the other one is now being developed.

15 CHAIRMAN HILL: Okay. So, I'm going to give
16 you each three minutes so if you want to go ahead and
17 either one of you can speak and tell the Board here
18 what you'd like to share.

19 MR. DOHERTY: Well, let me speak first then.
20 I have a four-unit condo building that my wife and I
21 bought in 1986. There's a deck and then there's a
22 patio. Then there's a fence. The property that's
23 going to be -- they're suggesting to be built, they
24 want an exception for, is 12 feet from my fence,
25 going up 20 feet, with four windows on the top. The

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1 windows will directly look down into my patio, into
2 my decks, and into my condos. It's going to
3 definitely invade the privacy. It's going to make my
4 tenants be uneasy. They sunbathe out there. They
5 have barbeques. It's going to devalue my property.

6 I think it will increase the value of the
7 contractor and his profit margin, but it will
8 decrease the value of my property. The wall will be
9 intimidating and overwhelming.

10 Zoning, I believe that is in there now, I
11 like very much. To make an exception so that it
12 increases the value of the contractor and decreases
13 the value of my property, I don't think is how zoning
14 is meant to be.

15 So, I'm opposed to the zoning -- I mean, the
16 exception, and I think it definitely will negatively
17 affect my property and positively affect the profit
18 margin of the contractor. So, I'm against it.

19 CHAIRMAN HILL: Okay.

20 MR. DOHERTY: Oh, also, it will affect the
21 value of the property, 1237 on the left, and 1241 on
22 the right, which is all windows on the back. These
23 windows on the second floor will be looking directly
24 into my property, 1237, and 1241. So it's just going
25 to really affect negatively all the neighbors while

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1 it is positively affecting the contractor.

2 CHAIRMAN HILL: Okay. Thank you. Mr.
3 Doherty.

4 MR. DOHERTY: Yes.

5 CHAIRMAN HILL: Oh, I'm sorry. So, Mr. Nash,
6 please if you could just -- I'm sorry. I got you
7 mixed up there. Please, Mr. Nash, if you could go
8 ahead?

9 MR. NASH: Yes. We purchased our property in
10 2009. It had to be mostly torn down and rebuilt
11 because it was in such poor condition. But in doing
12 so we worked very closely with the historic
13 preservation people, and we actually got the District
14 of Columbia Award for Excellence in Historic
15 Preservation.

16 We preserved our footprint and the look of
17 the building, the materials and so on. And we had
18 been hoping that this building across the alley would
19 be similarly developed. And it could be developed, I
20 think, under the existing rules, as a single-family
21 dwelling and still provide a profit.

22 And my primary concern actually is that with
23 the brand new zoning code, I think it is important
24 that exceptions not be granted willy-nilly simply for
25 the profitability of a builder. And whereas we're

1 very much in favor of that building being developed,
2 we're not particularly happy about the particular
3 plans. They're not terrible plans, but as I say, I
4 would much prefer that it be simply a single-family
5 dwelling.

6 Many other people who live in the area have
7 expressed concerns similar to Mr. Doherty's. And I
8 have here a letter from Heathery Foley, who has lived
9 on this alley for quite a number of years, which I'll
10 submit for the record here, along with my full
11 statement.

12 CHAIRMAN HILL: I think we have her letter
13 already. She's the person who is out of the country.
14 Is that correct?

15 MR. NASH: Yes, that's correct.

16 CHAIRMAN HILL: Sure.

17 MR. DOHERTY: Well, yeah. I'm also concerned
18 about building on 73 percent on the lot. It's almost
19 like pushing in and squeezing in these lots in order
20 to make a better profit, where it would be beautiful
21 as a single-family home with that brick structure
22 built around it. It would be magnificent.

23 So, 73 percent of the land, I thought the
24 city had a 60/40 ratio, where you're supposed to have
25 40 percent land, 60 percent building. So, I really

1 think we're squashing in this two units that are very
2 high and very intrusive. So, hopefully you'll
3 consider that when you grant an exception.

4 CHAIRMAN HILL: Okay. So, Mr. Doherty,
5 you're not -- the four-unit condo building that you
6 guys have, that's a rental income property for you?
7 You don't live there?

8 MR. DOHERTY: It's a rental income property,
9 right.

10 CHAIRMAN HILL: Okay. And you guys both went
11 to the ANC meeting?

12 MR. NASH: Yes.

13 CHAIRMAN HILL: And did you go to the ANC
14 meeting? You did not, Mr. Doherty, is that correct?

15 MR. NASH: I was there.

16 CHAIRMAN HILL: So, you were there and you
17 spoke in opposition at that time, I would imagine?

18 MR. NASH: We probably made some remarks. We
19 hadn't fully developed our position at that point.

20 CHAIRMAN HILL: Okay. Because I'm just kind
21 of -- you guys a couple of times, I'm just letting
22 you know, you said willy-nilly and like, you know,
23 like we take this very seriously and the Office of
24 Planning takes all this very seriously, whether it's
25 a special exception or whether it's a variance, there

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1 is a lot of work that goes into it. I just want to
2 let you know, it's not like people just show up here
3 and we say, hey, that sounds great, let's go ahead
4 and move forward.

5 MR. DOHERTY: Fully understand that. That's
6 serious business.

7 CHAIRMAN HILL: Okay. Okay.

8 MR. NASH: Also, I would say, by the way,
9 that we had to come before this Board to get our
10 zoning changed from warehouse to R-4, even though we
11 were in the midst of an R-4 sea of development, and
12 it cost us \$40,000 in legal fees, and the opposition
13 of the planning office.

14 CHAIRMAN HILL: Oh, so you lost.

15 MR. NASH: No, we finally got it.

16 CHAIRMAN HILL: Oh, you won.

17 MR. NASH: We won, but it put off for a
18 month, for instance, the beginning of construction
19 because of the planning office's objections. And of
20 course under the current rules they would have said,
21 oh yeah, that's great. That's fine.

22 CHAIRMAN HILL: Well, those are the old
23 rules.

24 MR. NASH: Yeah, the old rules.

25 CHAIRMAN HILL: Yeah.

1 MR. NASH: But I must say, I still have some
2 unhappiness about the way we were treated at that
3 time.

4 CHAIRMAN HILL: Well, I'm sorry that you have
5 some residual emotions there for that one, but it is
6 good that you got passed.

7 MR. NASH: Yes, we did. And we're very happy
8 with our house, by the way.

9 CHAIRMAN HILL: Okay. That's good. That's
10 good.

11 MR. NASH: And it is a single-family dwelling
12 with a mother-in-law suite attached to it.

13 CHAIRMAN HILL: Thank you. Thank you. I'm
14 sure your mother-in-law is very happy.

15 Let's see. Does anyone have any questions
16 for the witnesses? No? Okay.

17 Does the --

18 MR. NASH: Can I make one last one statement?
19 I would say that Mr. Ruppert has been cooperative in
20 discussing with us, you know, his plans and so on.
21 So, it's not like we've been ignored by them.

22 CHAIRMAN HILL: Okay. That's good.

23 MR. NASH: Or that they -- I mean, when I
24 heard the story about the developer who came in and
25 just willy-nilly chopped down a bunch of trees and so

1 on, I mean, that was horrible.

2 CHAIRMAN HILL: Oh, I appreciate you making
3 that comment. Actually, from the Office of Planning,
4 if I could ask the Office of Planning just in terms
5 of the light and air question that Mr. Doherty is
6 bringing up. I mean, is that something that you took
7 into consideration when you approved or went into
8 your analysis?

9 MS. THOMAS: Yes, we did light and -- with
10 respect to the extension that was being put on, we
11 found that it would not affect the light and air that
12 would be available to the house to the north, if you
13 look at that picture, because there's already an
14 existing wall and there are no windows there.

15 CHAIRMAN HILL: Okay.

16 MS. THOMAS: Yeah. So --

17 CHAIRMAN HILL: Okay. All right. Thank you.

18 MS. THOMAS: To the -- yes.

19 CHAIRMAN HILL: Okay. Thank you.

20 MS. THOMAS: We did consider light and air.

21 CHAIRMAN HILL: Okay. Thank you. Does the
22 applicant have any questions for the witnesses?

23 MR. HART: I just have one question for Mr.
24 Nash. Is it safe to assume that your concern is more
25 about the design rather than the proposed two units?

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1 MR. NASH: I have a general policy concern
2 that with a new zoning code that that code be
3 strictly followed without giving exceptions very
4 easily the way they had been in the past. I have
5 some concerns about the design and lot coverage. But
6 I suspect we can work them out one way or another.

7 MR. HART: That's all I have.

8 CHAIRMAN HILL: Okay. Great. All right.
9 Thank you, gentlemen.

10 All right. Is there anyone else here -- I
11 asked already, in opposition that would like to
12 speak? Okay.

13 Does the applicant have anything they'd like
14 to add in summary?

15 MR. KADLECEK: Yeah, I just want to summarize
16 a couple quick issues that came up with the testimony
17 from Mr. Doherty and Mr. Nash. One thing I want to
18 point out is with this issue of the light and air
19 that he's talking about, Mr. Doherty is talking about
20 his condo building. If you see the screen and you
21 see the hand moving here, so I believe his property
22 is one of these over here.

23 This separation is what I was talking about
24 at the beginning which is about -- here is about 14
25 feet. Again, as a reminder, the requirement under

1 zoning is five feet. So, what's being provided here
2 is three times greater than what the zoning
3 requirement is for that separation. The relief we're
4 asking for is for this up here, for a 12-foot section
5 up here, which is the addition. And that setback as
6 we mentioned, there's no windows along this line, so
7 any of these properties aren't going to have adverse
8 impacts.

9 So, the separation between Mr. Doherty's
10 property and Mr. Ruppert's property is three times
11 greater than the zoning requirements require. Plus
12 the building addition right here is only 16 feet
13 where 20 feet is permitted. The lot occupancy is
14 within the limits permitted. The height of the
15 building is within the limits permitted.

16 I think maybe what some of the confusion was,
17 is that Mr. Doherty may not have been aware of, which
18 is understandable is that under the new regulations
19 lot alleys are regulated differently than street-
20 fronting alleys. The lot occupancy requirements are
21 different. The setback requirements are different
22 and so forth. So, that's just something that I
23 wanted to remind the Board of.

24 And then, of course, with respect to the idea
25 of granting relief, you know, this is a special

1 exception not a variance, as the Board is well aware.
2 As long as we can prove that there's no adverse
3 impact it warrants the granting of a special
4 exception and I believe that that has been
5 demonstrated here. As Office of Planning mentioned
6 and as Mr. Ruppert mentioned, this case has been
7 reviewed by the Historic Preservation Review Board
8 and was approved. And then of course as the final
9 design of all -- as the project moves to permitting,
10 I know Mr. Rupert would be happy to work with Mr.
11 Nash on issues like materials and those sorts of
12 things that I think might be a bigger concern to him.
13 So, with that, we have nothing further. Thank you.

14 CHAIRMAN HILL: Okay. Does the Board have --
15 oh, sorry. Go ahead.

16 MR. RUPPERT: Can I say one thing?

17 CHAIRMAN HILL: Of course.

18 MR. RUPPERT: Actually, two of his tenants
19 had showed up at the first two ANC meetings, and so
20 he has a representative that was there as well. And
21 the neighbor who owns the house to the right of
22 theirs, they all back up, they were all at the ANC
23 meetings and that's when we -- it still passed that
24 day. It still unanimously passed, but even outside I
25 talked to the neighbors, and that's when we pulled

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1 the building in and went to two units, and that's
2 when we added the landscaping too. So, all those
3 neighbors were there and a part of that discussion.

4 CHAIRMAN HILL: Okay. Okay, thank you. I'll
5 give you another, I'll give you -- no, actually, I
6 can't let you. I'm sorry. They have to go last.
7 They're the applicant. Then they get to go again and
8 so, you know.

9 Let's see. Okay. So, does the Board have
10 any other questions? Actually, hold on. I'll take
11 him for one second. Mr. Doherty, go ahead. What did
12 you want to say, and I'll ask the applicant again.
13 But just make a comment. Don't start anything.

14 MR. DOHERTY: Three properties that are
15 absolutely the most negatively impacted are 1237,
16 1239, and 1241.

17 CHAIRMAN HILL: But those people aren't here.

18 MR. DOHERTY: But they've said that they are
19 against it and asked me to speak for them.

20 CHAIRMAN HILL: And do you have anything on
21 the record saying that?

22 That's okay. It doesn't matter. It doesn't
23 matter. I was just asking. I was just asking.
24 Okay. All right. Thank you.

25 All right. I let him speak. Do you have any

1 comment, or are you okay with that?

2 MR. KADLECEK: I have nothing further.

3 CHAIRMAN HILL: Okay. All right.

4 MR. KADLECEK: I think we have made it clear
5 what our relief relates to.

6 CHAIRMAN HILL: Okay. Okay. Thank you.
7 Does the Board have any other questions of the
8 applicant?

9 Okay. I'm going to go ahead and close the
10 hearing now, then. And is the Board ready to
11 deliberate? Okay. Mr. Hart, would you like to --
12 somebody else can talk for a while if you'd like.

13 MR. HART: Well, you do so well. Mr. Chair,
14 thanks.

15 I think we've heard quite a bit of kind of
16 discussion about this case. I have, kind of on the
17 outset I'm supportive of the application that's
18 before us. I think that the applicant has provided
19 the sufficient information for us to understand and
20 to be able to decide on this case today. I
21 appreciate the amount of work and outreach that you
22 have done for both the ANC, for the, what is it, the
23 Capitol Hill Restoration Society, and making sure
24 that there is the historic aspects of this have been
25 looked at as well.

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1 I understand that there are some opposition
2 to this and whenever you do development there's
3 always something that is -- that you may not get
4 everybody on the same page as it were. I think in
5 this case that you have shown a design that is, I
6 think acceptable for the application that you have
7 before us. I appreciate the Office of Planning for
8 providing us the information in the report regarding
9 this project, and I think that with that I would be
10 able to support the application and would make a
11 motion for that.

12 MR. MILLER: I would just echo -- I would
13 join Mr. Hart in his opinions about the project. I
14 think it will be an improvement to the neighborhood.
15 Hopefully they'll be good neighbors and you'll be
16 able to enjoy each other's companies and back yards
17 and open space.

18 So, I just note that the exception that's
19 being asked for is the alley width, which really
20 doesn't really relate to the testimony that we heard
21 in opposition. I mean, and I think I even -- the
22 Zoning Commission, I think I supported the narrower
23 alley width and lost on that point. But anyway, I'm
24 happy to support this case.

25 CHAIRMAN HILL: Okay. And I just want to

1 again mention that I'm in agreement of my colleagues
2 and I'm going to let Mr. Hart make a motion. But I
3 did want to mention that I hope that the applicant
4 does work with Mr. Nash as you mentioned in terms of
5 if there's any further things that you could do. I
6 also do want to appreciate -- let the opposition know
7 that I appreciate you guys coming down. Like, this
8 is what we're here for. This is why you come down.
9 And if you don't have an opportunity to speak then we
10 can't hear you. Sometimes it doesn't go your way,
11 but it is always good to hear from the community and
12 so I appreciate that.

13 So, you want to make a motion?

14 MR. HART: Sure. I'd like to make a motion
15 for Case No. 19402, to approve this case and --

16 CHAIRMAN HILL: I second. Motion has been
17 made and seconded.

18 [Vote taken.]

19 CHAIRMAN HILL: Motion passes.

20 MR. MOY: Staff would record the vote as
21 three, to zero, to two. This is on the motion of Mr.
22 Hart to approve the application for the relief being
23 requested. Seconded the motion, Chairman Hill. Also
24 in support, Mr. Robert Miller. Two seats vacant.
25 Motion carries, sir.

1 CHAIRMAN HILL: All right. Can we get a
2 summary order, Mr. Moy?

3 MR. MOY: Yes, sir.

4 CHAIRMAN HILL: Thank you. Thank you, all.

5 MR. KADLECEK: Thank you.

6 MR. MOY: All right, I believe the next --

7 CHAIRMAN HILL: I'm sorry. Mr. Moy, we're
8 going to take apparently a couple minute break.

9 MR. MOY: Very good.

10 [Recess from 1:41 p.m. to 1:46 p.m.]

11 CHAIRMAN HILL: Let's go ahead and get
12 started again, if you don't mind.

13 MR. MOY: Yes, sir. With pleasure. That
14 would be, I believe, Application No. 19406 of Paige
15 Reff. It's spelled R-E-F-F. I'm not sure I
16 pronounced that correctly. This application was
17 captioned and advertised for special exception relief
18 under Subtitle D. Amended for special exception
19 under Subtitle D, Section 5201, from the lot
20 occupancy requirements under Subtitle D, Section
21 304.1, rear yard requirements of Subtitle D, Section
22 306.1 to allow a two-story addition to an existing
23 one-family dwelling, R-1-B Zone, 3300 Lowell Street
24 Northwest, Square 2091, Lot 28.

25 And I believe -- yeah, well, this is the

1 amended. The original request I believe had removed
2 relief from the pervious surface requirements.

3 CHAIRMAN HILL: Okay, great. Thank you.
4 Good afternoon. If you could just please introduce
5 yourself and give us your address?

6 MR. NATHANIEL: Good afternoon. My name is
7 Gabriel Nathaniel. I'm with Ballard Mensua
8 Architectural firm. Address is 450 West Broad
9 Street, Falls Church, Maryland, 22046.

10 CHAIRMAN HILL: All right,, Mr. Nathaniel,
11 you're not the property owner. Is that correct?

12 MR. NATHANIEL: No. No.

13 CHAIRMAN HILL: Okay. All right. So, I
14 don't think you've been -- you haven't been before
15 me, correct, here in the BZA?

16 And so, I guess, you know, I appreciate all
17 of the work that you've already gone through in terms
18 of getting things with the Office of Planning, and
19 then also DDOT. I don't particularly have a lot of
20 questions on your project overall, other than -- or
21 some of the more specific ones I guess I have is
22 like, I don't see an actual report from the ANC, so I
23 was kind of curious as to how that process went or
24 what you got. I mean, I know that there is an e-mail
25 recommending approval to HPRB that you put in there.

1 And then we are going to get to the Office of
2 Planning, but they -- and I didn't really catch
3 whether when Mr. Moy read it or not, if you were then
4 also in agreement with the Office of Planning's
5 suggestion to structure requirement, Subtitle C,
6 202.2 to be added for relief. Are you aware that?

7 MR. NATHANIEL: No, I was not aware of that.

8 CHAIRMAN HILL: Okay. Well, I'll let the
9 Office of Planning speak to that when we get to it.
10 But in general, I suppose, if you could just tell me
11 a little bit about the project at kind of a high
12 level and really -- and be somewhat brief unless you
13 had other things. I don't have a lot of questions
14 for you. But, speak to again kind of the ANC and how
15 your outreach efforts had gone concerning the
16 community.

17 Does anyone else on the Board have any more
18 particular questions? Okay. So, then that's
19 basically it if you want to go ahead and speak to
20 those.

21 MR. NATHANIEL: Sure. Our principle, Seth
22 Ballard, went through an exhaustive process with Mr.
23 Reff and his neighbors, the ANC Historic Preservation
24 and the Architectural Review Board.

25 We've entered into the record, approval or if

1 you will, acceptance from all those entities. I
2 believe the ANC consent letter was sent by e-mail.
3 We don't have the actual letter in hand. We can
4 enter that into the record also.

5 CHAIRMAN HILL: Yeah, we don't have -- you're
6 saying you got a letter from the ANC?

7 MR. NATHANIEL: Well, we had -- we received a
8 letter via e-mail from the ANC. But you know, just
9 in keeping with the way these transactions happen,
10 we've been through all -- in front of the entire
11 community several times. And in order to get the
12 Historic Preservation approval we had to get ANC
13 approval also.

14 CHAIRMAN HILL: Yeah, well just for us we
15 need some -- I mean, whether or not we need it for
16 this particular case, but in general if you come back
17 again, getting a letter, a report from the ANC that
18 allows us to give it great weight.

19 MR. NATHANIEL: Okay.

20 CHAIRMAN HILL: Which is what we are supposed
21 to do for the recommendations of the ANC. What you
22 seem to have in the record is Exhibit 9, which says
23 that the ANC -- or was it 9 here? It's an e-mail
24 about HPRB.

25 Okay. All right. I'm sorry. I'm sorry.

1 Okay. All right. So, in any case I'm going to turn
2 to the Office of Planning in a minute here, unless
3 you have anything else to add?

4 MR. NATHANIEL: No, I don't.

5 CHAIRMAN HILL: Okay. Hello, Office of
6 Planning.

7 MS. THOMAS: Yes, good afternoon, Mr.
8 Chairman, Members of the Board. I'd like to
9 introduce Crystal Myers to our Development Review
10 Team. She comes from the Maryland National Capital
11 Planning Commission with extensive number of years in
12 planning and development review. So, please welcome
13 her.

14 CHAIRMAN HILL: Great. Thank you. Welcome,
15 Ms. Myers.

16 MS. MYERS: Thank you. The Office of
17 Planning recommends approval of this project in
18 relationship to your question about the C202
19 recommendation. My understanding that's a pretty
20 typical recommendation we have whenever there is an
21 existing nonconformance on the property. The
22 existing house is nonconforming, which is why the
23 Office of Planning is recommending that C202.2,
24 special exception, also be included.

25 But otherwise the Office of Planning stands

1 on the record of the staff report and is here for any
2 questions you may have.

3 Mr. Nathaniel, do you understand now that the
4 Office of Planning is recommending and also approving
5 recommendation of C202.2. Would you be willing to
6 add that to your application?

7 MR. NATHANIEL: Yes.

8 CHAIRMAN HILL: Okay. Mr. Moy, is that
9 sufficient for the record?

10 MR. MOY: Yes. I would also ask that
11 although, that if you could resubmit a revised
12 certification with the addition of that relief?

13 MR. NATHANIEL: Revised certification.

14 MR. MOY: Self-certification.

15 MR. NATHANIEL: Well, we were certified
16 through the BZA -- not BZA. Through Matt LeGrant's
17 office. So, would we go back to them and have them
18 reissue that letter?

19 MR. MOY: No, I don't think -- no, no, you
20 won't need to do that.

21 MR. NATHANIEL: Okay. Okay. Just, okay.
22 So, we can do it through the self-certification
23 process. Okay. Okay.

24 CHAIRMAN HILL: Is that clear?

25 MR. NATHANIEL: Yes.

1 CHAIRMAN HILL: Okay. Great. Thank you.
2 Does the Board have any questions for the Office of
3 Planning?

4 [No audible response.]

5 CHAIRMAN HILL: Okay. All right. Well, Ms.
6 Myers, welcome. This looks easier than probably most
7 will be.

8 Is anyone here from the ANC? Is anyone here
9 wishing to speak in support of the application? Is
10 anyone here wishing to speak in opposition? All
11 right. Then, that being the case does the Board have
12 any questions, further questions for this applicant?

13 Then, I'm going to go ahead and close the
14 hearing. Oh, I'm sorry. Do you have anything you'd
15 like to add?

16 MR. NATHANIEL: No, thank you.

17 CHAIRMAN HILL: Okay. Then, I'm going to go
18 ahead and close the hearing. Is the Board ready to
19 deliberate?

20 Mr. Nathaniel, I'm sorry, were you sworn in
21 today?

22 MR. NATHANIEL: Yes, I was.

23 CHAIRMAN HILL: Okay. Great. Thank you.
24 So, with that again I'll go ahead and close the
25 record. And as far as the deliberation, I can go

1 ahead and start. I mean, I think that the Office of
2 Planning has done a very good job in explaining why
3 they're in support of the special exception. I'm
4 happy to see that they have also -- meaning the
5 applicant, has done a significant amount of community
6 outreach. I would have preferred there been an
7 official report from the ANC. However, I'm able to
8 live with what has been submitted by the application,
9 I mean, by the applicant. I also do appreciate the
10 Office of Planning and how they have encouraged, or
11 not encouraged, but just, you know, mention again
12 Subtitle C202.2 and that the applicant should add
13 that to their self -- or, should add it to their
14 application.

15 And so, I would go ahead and make a motion to
16 approve Application No. 19406 as read by the
17 secretary, as well as including the relief of 202.2.

18 MR. MILLER: I would second that.

19 CHAIRMAN HILL: Motion has been made and
20 seconded.

21 [Vote taken.]

22 CHAIRMAN HILL: The motion passes, Mr. Moy.

23 MR. MOY: Staff would record the vote as
24 three, to zero, to two. This is on the motion of
25 Chairman Hill to approve the application for the

1 relief requested, as well as the amendment to include
2 the nonconforming structure provision.

3 Seconding the motion, Mr. Miller. Also in
4 support, Mr. Hart. Two seats vacant. Motion
5 carries, sir.

6 CHAIRMAN HILL: Thank you, Mr. Moy. Can we
7 do a summary order, please?

8 MR. MOY: Yes, thank you.

9 CHAIRMAN HILL: Thank you.

10 MR. NATHANIEL: Thank you.

11 CHAIRMAN HILL: Thank you. Good afternoon.
12 Or goodbye.

13 MR. MOY: The next application before the
14 Board is Application No. 19404 of Bellview
15 Development, Inc., as captioned and advertised for
16 relief for variances from the lot area requirements
17 of Subtitle E, Section 201.1, lot occupancy
18 requirements Subtitle E, Section 504, rear yard
19 requirements, Subtitle E, Section 506, permitting the
20 -- which would permit the construction of a three-
21 story flat in the RF-3 Zone, 434 3rd Street
22 Northeast, Square 755, Lot 816.

23 And I believe in this application, Mr.
24 Chairman, there is a request for a party status.

25 CHAIRMAN HILL: Thank you, Mr. Moy. Good

1 afternoon, everyone. If we could work from my left
2 to right and just introduce yourself with name and
3 address?

4 MR. SULLIVAN: Good afternoon. My name is
5 Marty Sullivan, Sullivan and Barros on behalf of the
6 applicant.

7 MR. ALI: Good afternoon. Ramy Ali from Ram
8 Design Architects.

9 MS. BURRIS: Good afternoon, Veleria Burris
10 from -- I'm actually the owner of 436 3rd Street
11 Northeast. I reside at 2204 Parallel Lane, Silver
12 Spring, Maryland, 20904.

13 CHAIRMAN HILL: Thank you. And, I'm sorry,
14 the place that you're the owner of, that's the next
15 door -- the next property over, is it?

16 MS. BURRIS: On the right-hand side of that
17 structure.

18 CHAIRMAN HILL: Okay.

19 MS. BURRIS: I own that, that house.

20 CHAIRMAN HILL: Okay, great. Okay, great.
21 Thank you.

22 MR. BRAND: Good afternoon. I'm Michael
23 Brand. I represent Dr. and Mrs. Burris.

24 MR. FINN: Michael Finn. I'm an architect in
25 D.C. and I'm working with Michael Brand on this case.

1 CHAIRMAN HILL: Oh, okay, great. All right.
2 So everybody is here helping out Ms. Burris?

3 MS. BURRIS: I'm sorry?

4 CHAIRMAN HILL: Everyone is here helping out
5 you, is that correct?

6 MR. BRAND: Yes.

7 CHAIRMAN HILL: Okay, great. Just wanted to
8 make sure I understood.

9 All right. I guess the first issue that we,
10 as a board, are going to have to talk about and
11 discuss is again the party status application, that
12 you have submitted.

13 MR. MOY: Yes. Yes, the filing of the party
14 status, Mr. Chairman, was -- it did not meet the 14-
15 day requirement, and it was about a week.

16 CHAIRMAN HILL: Okay.

17 MR. MOY: And I believe there's a waiver for
18 that time to file.

19 CHAIRMAN HILL: Okay.

20 And, Ms. Burris, can you tell me again? I
21 think it is in the record but I guess if you can kind
22 of like walk me through it? Like, how did you miss
23 the deadline, and what is the reasons for it?

24 MR. BRAND: Actually, if I could explain
25 that?

1 CHAIRMAN HILL: Sure. Of course.

2 MR. BRAND: That was mostly as a result of
3 conflicts in holiday schedules. We got the
4 information in November and between Thanksgiving and
5 Christmas it was -- it somehow just didn't get done
6 as expeditiously as we wanted.

7 We submitted a -- and then Ms. Burris, there
8 was a question about retaining a consultant in order
9 to look at the property and make sure, and make sure
10 that there was -- whether there was a viable
11 opposition that could be filed and we had to do a
12 fair amount of examination in order to do that.

13 And so we did submit it a bit late, but it
14 was submitted about a week ago.

15 CHAIRMAN HILL: Okay. And, Ms. Burris, your
16 -- and thank you guys for having the diagram already
17 up. Which property is yours that you own?

18 MS. BURRIS: 436. It's to the right of the
19 new structure.

20 CHAIRMAN HILL: Okay, I see. Thank you.

21 MS. BURRIS: Uh-huh.

22 CHAIRMAN HILL: All right. Does anyone have
23 any comments concerning the time waiver for the
24 applicant? I'm sorry, for the party status
25 applicant?

1 [No audible response.]

2 CHAIRMAN HILL: Okay. Mr. Sullivan, do you
3 have any opposition to the waiver and then us
4 granting party status?

5 MR. SULLIVAN: Just a nominal objection
6 because of the time. I think it does prejudice the
7 applicant, but I'll leave it at that and --

8 CHAIRMAN HILL: Okay.

9 MS. BURRIS: Well, I'm just --

10 CHAIRMAN HILL: That's okay. That's okay.
11 It's all right. Normally the time limits we are
12 somewhat lenient with, I suppose, if it's an
13 immediately adjacent property. I mean, if there was
14 somebody who was like, you know, with the 200 feet
15 then I would have more of an issue with the time
16 waiver.

17 I'm comfortable granting the party --
18 granting the waiver of the time limit, and also
19 granting party status. Would everyone agree?

20 MR. MILLER: Yes.

21 CHAIRMAN HILL: Okay. Thank you. So, that
22 being the case now, you guys will have an opportunity
23 to present the same amount of time as the applicant
24 have. You'll have an opportunity to cross-examine
25 the applicant, and then also the applicant will have

1 the opportunity to basically rebut anything that you
2 said and they'll get the -- and the way the new
3 regulations work out, they get the last word.

4 And I think they got the last word the last
5 time, actually. I'm thinking of the appellants that
6 are different. But nonetheless.

7 So, Mr. Sullivan, I'm going to go ahead and
8 turn to you first. How much time would you like me
9 to put on the clock for you?

10 MR. SULLIVAN: Ten. Ten minutes.

11 CHAIRMAN HILL: Great. That's great. So 10
12 minutes. We'll start you off with 10 minutes and
13 then we'll also allow the applicant, the party status
14 holder, the same amount of time.

15 So, if you could please go ahead with your
16 presentation?

17 MR. SULLIVAN: Thank you, Mr. Chair and
18 Members of the Board. My name is Marty Sullivan from
19 Sullivan and Barros on behalf of the applicant. The
20 applicant is requesting here the address is 434 3rd
21 Street Northeast, is relief from the lot dimension
22 requirements because the lot is currently a tax lot,
23 and so it does need to go through subdivision
24 process. So, there's no ambiguity there. It does
25 need that relief for the minimum lot area.

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1 And we're asking for relief from the 60
2 percent lot occupancy requirement and the 20-foot
3 rear yard requirement. And this is the RF-3 Zone.

4 The project has been approved in concept by
5 the Historic Preservation Board, and so the relief
6 that we're requesting and the unique condition and
7 exceptional situation is related to the size of the
8 property. It's a tiny lot. It is 816 square feet.
9 If we were to comply with the rear yard requirements
10 the lot -- the house would be 14-feet deep. And if
11 we were to comply with that, the footprint of the
12 building would be 336 feet.

13 This is in a row of homes that are all at or
14 close to 100 percent lot occupancy. And, there is
15 one issue I need to present to the Board regarding a
16 court at the rear.

17 There's a setback provided on the third
18 floor, adjacent to Ms. Burris's deck in the back.
19 And, under the regs as currently written, that would
20 be a nonconforming court. And, to eliminate that
21 court we would put the trellis structure up and get
22 rid of that court.

23 Under regulations that have been voted on,
24 but are not yet effective, there is no minimum court
25 required for one and two-unit buildings. So, we're

1 proposing to not have the trellis on top of that in
2 expectation that those regulations will be effective
3 in the next 30 days or so.

4 So, that's why you may see two plats in
5 there, one with a trellis, one without. But we are
6 providing a setback in that area there.

7 CHAIRMAN HILL: Actually, Mr. Sullivan, I am
8 going to interrupt just one moment. Again, like so
9 the conditions that the Office of Planning that we
10 will eventually end up getting around to, is removal
11 of the proposed trellis, moving the roof deck back
12 from the rear façade to minimize any potential
13 privacy impacts. Then DDOT had a condition that the
14 applicant revise the area concept to show all
15 elements projection no further than six and a half
16 feet from the building face, and move the trash room
17 at cellar level to behind the property line.

18 And then the last one, again, is from the ANC
19 6C. And you can speak to this now or later, but the
20 strong recommendation that the applicant be required
21 to install and pay for a preconstruction inspection
22 and monitoring equipment to detect any -- well,
23 actually, the way the Office of Zoning quotes it is,
24 conditions deal with construction impacts outside the
25 scope of zoning. However, the Board can ask whether

1 the applicant agrees to these recommendations and
2 suggests that the applicant memorialize this
3 agreement with the neighbors and the ANC.

4 So, I'm just kind of putting that out for
5 your discussion, since you brought up the issue of
6 the trellis.

7 MR. SULLIVAN: Thank you. And I'll turn it
8 over to the architect.

9 MR. ALI: I'll just do a small brief
10 introduction of the project and I will touch on those
11 points that you brought up.

12 Just as a summary, it's like a two-unit flat,
13 three-story plus cellar. Mr. Sullivan already
14 introduced the issue of having a very small lot and
15 applying the current zoning regulations will make it
16 kind of a really challenging or impossible footprint
17 to work with. Just applying the roof setback leaves
18 us with only a 14-foot deep building. So, it's
19 pretty much a nonfunctionable space to work with.

20 That's why we have proposed initially 100
21 percent lot occupancy and after we did several light
22 and air and additional studies to the project, we
23 ended up setting back the property in the upper right
24 corner to allow more light and air coming through to
25 the neighboring property.

1 As far as the architecture, the building is
2 going to be completely of brick exterior finish with
3 the common double-hung windows that I've seen along
4 the block. Just wanted also to point out the
5 majority of these buildings along this block they are
6 for small lots and they do occupy 90 to 100 percent
7 lot occupancy with no rear setbacks. And they all
8 fall under the same condition of being a landlocked
9 lot.

10 No parking has been provided given the
11 landlock condition, the trash, and the fire control
12 room. There have been screen and cellar level, below
13 the entry landing. We are proposing green wall
14 facing the neighboring properties, which is actually
15 recessed within the building structure. And that
16 whole concept was presented to the Office of Planning
17 and to the ANC, if you see on record that they're in
18 support of the current design.

19 However, we did get a couple of comments
20 during the ANC that we complied with, and the points
21 that you just addressed having the curb cut being
22 closed from DDOT, we have addressed that, we updated
23 our plans to close that curb cut. The roof deck has
24 been reduced and will be set back to respond to this
25 comment.

1 The courtyard, or the area where we have
2 proposed in the back was also one of the items that
3 we revised, which actually works better for our
4 project. That gives us the light and air and means
5 of escape for bedrooms toward the back of the
6 building. However, actually, these windows, they
7 were reduced in size. As we doubled up the project
8 we had to reduce them in size to meet some of the
9 code, the fire code requirements.

10 Other revisions that we have done to the
11 project is the exterior finish. That was a comment
12 from the ANC that they wish to have all the
13 surrounding walls to be of brick, not of stucco as we
14 report initially. Additional comments that we
15 corresponded with was the means of escape was also
16 brought up, which was an issue. And actually, it's
17 basically an issue with all the landlocked
18 properties, when there's no way out for the bedrooms
19 are facing the back. There is no way they can access
20 the public alley. That's where the area way acts as
21 a place of refuge for firemen to come and rescue
22 anybody coming out of these escape windows.

23 The front bay that projects beyond the
24 property line, we're still working with Office of
25 Planning and working on the details, because as you

1 see at the front elevation that shows the building in
2 context that the width of the lot is 24-foot wide,
3 which is not average to what you see on this block.
4 All of them are narrower lots. So, we're working
5 with Office of Planning to reduce the impact of this
6 bay window. We're going to end up either reducing
7 the width of this bay, or try to work with the window
8 proportions to make it more of a repetitive element,
9 and repeat that character along that block.

10 The cornice was also a comment from the
11 Office -- I'm sorry, it was from the ANC, that we
12 have revised our elevations to make that cornice a
13 continuous element all around the building. Original
14 we only proposed it along the bay window, the bay
15 area, and the purpose of that cornice was only to
16 screen the rooftop units of the condensers on top of
17 the building.

18 But then they asked us to continue that
19 element throughout the whole façade, in which the
20 updated setoff package reflects that.

21 I do have additional drawings that has not
22 been handed out. It basically, is there are minimal
23 details that we are doing to make the -- you know, as
24 we double up the projects, such as window sizes and
25 wall detailing. I don't think there are that much

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1 related to the case, but I'm more than happy to pass
2 those out, you know, for additional information.

3 I just want to make sure that I have touched
4 all the points that Mr. Hill brought up. I don't
5 think I missed anything, but if I did, please let me
6 know.

7 And that pretty much concludes the, you know,
8 the project presentation from what I have. If you
9 have any questions I'll be happy to respond.

10 CHAIRMAN HILL: Did you go to the ANC
11 meeting?

12 MR. ALI: Yes.

13 CHAIRMAN HILL: Okay.

14 MR. ALI: Twice.

15 CHAIRMAN HILL: So how did -- and I'll have a
16 chance to hear from the party in the party status in
17 opposition. But, how did the meeting go. You know,
18 what was the feedback from the community?

19 MR. ALI: When we did the first ANC
20 presentation we didn't had any feedback from the
21 community. However, we did get five comments from
22 the ANC Board, and we have responded to them
23 verbally. With the five points, I can conclude them.

24 It was the curb cut. They were trying to
25 avoid -- there was an existing curb cut right now,

1 and people have been utilizing this lot as illegal
2 parking, so they requested us to provide a site plan
3 to show that we are proposing to close that curb cut.
4 So, we complied with that revision.

5 The other comment was the cornice. We
6 updated our elevations with that cornice. The third
7 comment was the exterior. They would like to see the
8 whole walls and brick. We also updated the plans.
9 The roof deck, we also reduced the roof deck. And I
10 believe they had additional concerns about the
11 adjoining property that is under the same ownership
12 of 434 3rd, but we brought the construction manager
13 for this adjoining property, and he clarified and
14 responded to their concerns.

15 On the second ANC meeting, the full ANC Board
16 meeting, we presented the final package and they were
17 in support of it. And one of the adjoining neighbors
18 showed up showing some concerns as they have three
19 windows along their sidewall that overlooks the
20 subject property. And I recall that my client, the
21 owner, has been talking with the neighbor to see how
22 -- to close those windows because they are like
23 windows face on line and they're in code violation.
24 So the last thing I heard from my client is that he's
25 talking with the property owner and you know, he's

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1 going to be covering those windows on his expense.

2 I don't know if there's anything additional
3 that has been going on and they're arguing, but I'm
4 aware that they are communicating back and forth.
5 And I believe the neighbor is in the audience. I saw
6 her earlier. And if there's anything else going on I
7 would -- you know, she will help us, tell us more
8 about those meetings or communication with the owner.

9 As far as the other adjoining neighbor to the
10 north, we didn't -- they were not present at the
11 first, nor the second ANC meeting, and we didn't have
12 any input. However, for the better design we have
13 looked at how we can make our project not impacting
14 them as much. So, that's why we did the light and
15 air, and shade and shadow study for our own purpose.
16 For the shade and shadow study reflected that the
17 property south of us puts the north -- the north of
18 us in shade already. The only thing that we saw from
19 our project that would impact on the property north
20 of us is the light. So, that's why we proposed on
21 setting back five feet from that property line, to
22 keep air flowing through to the existing deck on the
23 property north of us.

24 CHAIRMAN HILL: Okay. Okay. So, Mr. Ali,
25 I'm just trying to get one more thing in here and

1 then I'm happy with any questions I might have. But
2 then with the Office of Planning's report again,
3 they're speaking of this deck and I think you kind of
4 addressed it, but may result in a privacy impact on
5 the adjacent neighbor and recommends that the deck be
6 eliminated or moved back from the rear lot line. Any
7 required guardrails would need to meet the one-to-one
8 setback. So you're all -- that's taken place?

9 MR. ALI: Yes, because we replaced any
10 guardrails with a -- the code says, if there is rails
11 on the roof level they have to set back one-to-one.

12 CHAIRMAN HILL: Right.

13 MR. ALI: But we are proposing a continuous
14 parapet of brick that goes all the way up to three
15 foot and six inches from the roof.

16 CHAIRMAN HILL: Okay. So, the deck is still
17 there. You just have the one-to-one setback.

18 MR. ALI: Right.

19 CHAIRMAN HILL: Okay. All right. Thank you.
20 Okay. Does the Board have any other questions right
21 now to the applicant? Okay.

22 So, I'm going to go ahead and move to the
23 party status to go ahead and present. And it looks
24 like they've got 13 minutes, so we're going to go
25 ahead and give you 13 minutes.

1 MR. BRAND: Very well. Thank you very much.

2 CHAIRMAN HILL: Sure.

3 MR. BRAND: I'll be very brief. Our position
4 of course is that the applicant hasn't submitted
5 sufficient justification to sustain its burden of
6 proof that of extraordinary and exceptional
7 circumstances affecting the property that create a
8 practical difficulty in complying with the Zoning
9 Regulations.

10 I think it's important to point out,
11 initially that it's somewhat misleading to suggest
12 that they would end up with a 14-foot building. If
13 the Board were to grant them a variance on the rear
14 lot petition, to allow that to be somewhat smaller,
15 but leave them at the 60 percent occupancy position,
16 the 60 percent lot occupancy, that would end up being
17 a 20-foot building with a 14-foot rear lot.

18 But, I'm going to let Mr. Finn address those
19 issues, and then I'll hear from Ms. Burris. So, go.

20 MR. FINN: Okay. Can I stand up?

21 CHAIRMAN HILL: Sure.

22 MR. FINN: I prefer to gesticulate if I can.
23 Initially, there --

24 CHAIRMAN HILL: Can I just make sure that the
25 transcriber can hear you. Kind of yes, kind of no.

1 Mr. Moy, do we have a microphone. Didn't we
2 have a standing mic? No, no, no, no, we -- no, no,
3 no, no, it's on. But --

4 MR. FINN: Am I on now? Is that good?

5 CHAIRMAN HILL: Just give me one second,
6 actually, if you're going to stand. We'll go ahead
7 and get the Vanna White over here to -- if you want
8 to come over and grab a microphone here. Oh, thank
9 you, Mr. Sullivan.

10 MR. FINN: Is that good?

11 CHAIRMAN HILL: Yeah, that's fine.

12 MR. FINN: Okay. There are a couple of
13 building code issues that I'd like to bring up
14 because I do believe they might, in this case, affect
15 some of the zoning issues.

16 The first and foremost one is the --

17 CHAIRMAN HILL: Can I interrupt you one
18 second? I just want to interrupt you one second. I
19 am going to -- if the Office of Planning could pay
20 close attention because this is what I'll be asking
21 you about later. Thanks. Okay.

22 MR. FINN: The first and foremost one that
23 was brought up here, and is listed on the drawings
24 that I got from the BZA site, was that this courtyard
25 in the rear was going to be used for emergency

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1 egress. And I'd like to submit that that is
2 impossible because of the building code specifically
3 says that emergency egress windows from sleeping
4 rooms must open on to a, basically on to a public
5 way. This building is face online, so it's
6 physically impossible for someone to egress these
7 windows and have any sort of emergency firefighter
8 rescue them. You just can't do it.

9 And I've got the section of the code right
10 with me here, and I also had -- I had also reviewed
11 this with a structural reviewer, and a fire reviewer
12 at DCRA. So, you can't say that. So I don't know
13 quite how this impacts the architectural design, but
14 that courtyard area way cannot be used for emergency
15 egress.

16 In addition, the plans that I've gotten seem
17 to show some windows on the, I believe it's the
18 cellar floor. And those are also impossible to
19 include on the architectural design for the same
20 reason that the adjoining neighbor has to block up
21 their windows that are face online. These windows
22 are shown face online. They're impossible. I've got
23 the code, the code section right here with me. A
24 wall that is online can have zero openings. Okay?

25 Also in the drawings I have for the

1 courtyard, the windows are much too big for five feet
2 -- between five and 10 feet I believe you're limited
3 to 25 percent of an opening. In addition, the part
4 of the code still holds here that no opening can be
5 within four feet of a property line. This is all
6 cast in stone. So, you just can't do that.

7 The rear elevation that I have shows a green
8 wall. I think, if it's in any way keeping with the
9 green wall that's shown on the presentation, that
10 would be on somebody else's property. On the rear
11 elevation. Take a look at that. You just can't do
12 it.

13 So anyhow, I'm just wondering how these
14 things impact the architectural drawings. Now, if
15 they do, you know, they do because the emergency
16 egress and rescue openings are definitely in the
17 code. And I've reviewed these with DCRA.

18 Now, one other thing I'd like to -- let's
19 turn from that -- oh, one other thing. The applicant
20 can actually put up a parapet on this building, all
21 the way around it. It's not a zoning issue. DC
22 Zoning allows it, and the building regulations allow
23 it also. So, in other words, this building could
24 actually be three feet taller, which brings me to
25 another point here that I'd like to bring up.

1 Now, if we look at the section on variances
2 in the Zoning Regulations, there's a reason for
3 granting variances. And I've seen this, you know,
4 time and time again in my practice. If there is some
5 difficulty in the property that requires a variance
6 in the zoning regulations, you know, the Board is
7 urged to acknowledge it. And we're talking about
8 exceptional narrowness or shallowness, or shape of a
9 piece of property, but it doesn't talk about the
10 size. Only the fact that it's a particularly
11 difficult property.

12 And as far as I can tell from an
13 architectural point of view, especially since there's
14 no parking requirements in this area anymore, this
15 property is a piece of cake. It's flat, it's
16 accessible. There's nothing odd about this property
17 that would give one reason to request a variance.
18 That's why we're concerned with the size here.

19 And if we could get this first slide on here
20 real fast, that was on here, keep going. Where we
21 showed the front elevation.

22 Okay. Ms. Burris lives right here. Now, if
23 I lived here and this building were proposed for face
24 online next to me, I would consider it sort of a
25 hostile act. It's almost, when you're asking for a

1 variance because the lot is too small, well, you
2 know, why even have the Zoning Regulations at all
3 because it's in essence saying that Ms. Burris's
4 house is insignificant. I mean, and it's a perfectly
5 fine house.

6 So, the scale on the streetscape seems to be
7 a little overwhelming.

8 CHAIRMAN HILL: Mr. Brand, I have a question.
9 I'm a little bit lost. That's okay.

10 MR. BRAND: That's Mr. Finn.

11 MR. FINN: Finn. Yeah.

12 CHAIRMAN HILL: Oh, sorry, Mr. Finn. I'm
13 sorry. Mr. Finn, what are you saying that's a
14 problem with -- say again? You walked over there and
15 you pointed at something and then you said --

16 MR. FINN: Oh, I just said, just look at the
17 size of the proposed building next to Ms. Burris's
18 house. It's pretty big. And the overhead view that
19 the applicant submitted demonstrates the fact that
20 this building is going to cast -- is going to --
21 well, let's use a -- make a play on words here. It's
22 going to overshadow this house. Ms. Burris has a
23 deck in the back of her house which is a priceless
24 thing on Capitol Hill, and it's going to be
25 completely overshadowed.

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1 So, I submit that this is -- if I were living
2 in Ms. Burris's house, I would think this would be
3 rather a hostile act, allowing this house to take up
4 100 percent of the occupancy of the lot, where the
5 lot is a very simple straightforward lot to build on.
6 It's basically saying that Ms. Burris's house, you
7 know, is insignificant.

8 CHAIRMAN HILL: Well, I don't necessarily
9 agree with saying that Mrs. Burris's house is
10 insignificant.

11 MR. FINN: I don't either. I think it's a
12 charming row that Ms. Burris is in. And I hate to
13 see it overshadowed by construction that's this
14 overwhelming.

15 Ms. Burris, may I?

16 MS. BURRIS: Yes. Okay. Good afternoon.

17 CHAIRMAN HILL: Good afternoon.

18 MS. BURRIS: My husband and I purchased -- if
19 you allow me to read it, I thought it would make it
20 quicker.

21 CHAIRMAN HILL: Please. No, that's fine.

22 MS. BURRIS: My husband and I purchased our
23 home at 436 3rd Street Northeast as a young couple 34
24 years ago during the infancy of the restoration of
25 the Capitol Hill residential area.

1 structure is four stories.

2 When I was down applying for windows, the
3 later part of last year, for the Historic District,
4 they were telling me that they wanted that area to be
5 conformed in the same format, not to have anything
6 that's outstanding. The windows, they made us go --
7 the stain glass windows we had to replace. In fact,
8 we did most of the windows in the house that were new
9 -- had to be new.

10 Sitting on our deck would be like having
11 blinders on one side and being down in a hole. Not
12 only will our vision be impaired, that would not be
13 sufficient light for my plants, or for my family
14 members to enjoy the vitamin D absorption.

15 Breeze and airflow would be impaired. My
16 deck would be an excellent area for foul smells,
17 green algae, mold, mildew, and a good chance of upper
18 respiratory problems for my family. My husband is an
19 interventional cardiologist. I'm a retired
20 administrative pharmacist, and we recognize health
21 issues when they occur, and this would definitely be
22 one. As the windows are limited in number in our
23 property and also all the properties that are in that
24 neighborhood because basically all of them are about
25 the same.

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1 Let's see. I've lost my point. The breeze
2 will not come through on any level of our home with
3 the wall that's being built, the height of that new
4 structure. The majority of the sunlight comes from
5 the west. Sunlight would be blocked from the west
6 side by the new structure if they are asked to bring
7 the structure in. There will be a negative air flow
8 on our outside space. There will be no hope for roof
9 gardening, and I love gardening.

10 I notice in one of the developer's letters
11 they stated that our home occupied 100 percent of my
12 land. It does not occupy 100 percent of my land.
13 There's a deck, there is a patio garden that the deck
14 look over into the patio garden, which means that is
15 not 100 percent.

16 The back of this proposed property would
17 create a living hardship for us and anyone who
18 resides at 436 3rd Street Northeast.

19 CHAIRMAN HILL: Okay. So, Mr. Burris, you
20 all are a little bit out of time on this side here,
21 but if you want to -- there are going to be questions
22 and we're going to have some questions and things.
23 Is there anything you'd like to say in terms of --

24 MR. BRAND: I just wanted to add one thing in
25 summary.

1 CHAIRMAN HILL: Okay. Sure.

2 MR. BRAND: If I could, it will take a
3 moment.

4 It just seems to me that the extraordinary
5 circumstance that the applicant is citing that
6 creates the practical difficulty justifying the
7 variance is the size of the lot. The lot is actually
8 significantly larger than the four lots to the north.
9 And the -- and if the Board were to limit, were to
10 limit the structure to a structure that covers 60
11 percent of the lot as required by the regulations,
12 they'd end up with a building with a footprint of 490
13 square feet, which is about the same sizes as the
14 four buildings to the north.

15 So that the variance in our view, isn't
16 really necessary in that regard and they haven't been
17 able to sustain a burden because they can build
18 within that, and that would require a somewhat
19 smaller rear yard than required. But the area
20 variance isn't necessary because they'll end up with
21 a building that's just as big as the buildings to the
22 north, just configured somewhat differently. But
23 it's wider and somewhat narrower.

24 CHAIRMAN HILL: Okay. All right. So, does
25 the Board have any questions right now for the party

1 status, party in opposition?

2 [No audible response.]

3 CHAIRMAN HILL: Okay. I actually do have a
4 little bit. So, there is the deck in the back,
5 right? So that's where, as I recall from your
6 application, you talked about a hole. Like, you
7 know, you're going to be in a hole. And there was
8 the building that is directly across the street now.
9 Or, I'm sorry, directly across from your deck now
10 that seems like it's pretty close to that deck. Is
11 that correct?

12 MS. BURRIS: No. There's air, there's space.
13 No, nothing is really close to the deck. A building
14 that's close to the deck? No.

15 CHAIRMAN HILL: Okay. I'm going to look
16 through the record.

17 MS. BURRIS: It's not a building.

18 CHAIRMAN HILL: That's okay. There was
19 something I thought that was behind you.

20 MS. BURRIS: No, there's plenty of air,
21 plenty of space.

22 CHAIRMAN HILL: All right. Okay. Because as
23 I'm looking here, now on the color photos, it seems
24 like there is something -- and maybe I just am
25 looking at the wrong photos and I'm looking at

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1 Exhibit 44, that it looks like something is being
2 built right now behind your deck. Is that correct?

3 MS. BURRIS: No. Behind my deck there is a
4 structure that's over from my deck. Over that way.
5 But no, the deck is free-standing.

6 CHAIRMAN HILL: I'm looking at Exhibit 44.

7 MR. BRAND: You talking about that --

8 MS. BURRIS: Okay, that's over from the deck.
9 It's --

10 MR. BRAND: Well, the deck is here. Right.

11 MS. BURRIS: Uh-huh. Right. Yeah.

12 MR. BRAND: Right.

13 MR. ALI: 229 E Street.

14 MS. BURRIS: Oh, this is new.

15 CHAIRMAN HILL: I'm just saying what's right
16 across from the back of your -- or is it -- right.
17 Maybe not the back. The side then. I'm a little
18 disoriented. There's a new building going up right
19 now.

20 MS. BURRIS: Yeah.

21 CHAIRMAN HILL: Okay.

22 MR. BRAND: I don't think that's a new
23 building. I think it's actually a building that
24 belongs to the applicant that's being renovated of
25 some sort, and there is a, in fairness, and there is

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1 plywood around the --

2 CHAIRMAN HILL: Right. But that's another
3 property.

4 MR. BRAND: Yes.

5 CHAIRMAN HILL: Right. Okay. Yeah. I mean,
6 I'm just trying to visualize the hole that you're
7 going to be put in. Okay?

8 MR. BRAND: Well, it's over here.

9 CHAIRMAN HILL: Okay. All right. So, that
10 was the main question that I had real quick. And so,
11 you all have had an opportunity now to speak after
12 the applicant has, and so now the applicant, do you
13 have any questions or rebuttal towards the party
14 status? Party that are in opposition, I should say.

15 MR. SULLIVAN: No questions, no cross-
16 examination. We would have some rebuttal testimony.

17 CHAIRMAN HILL: Okay. Okay. Then if that's
18 the case then I'm going to turn to the Office of
19 Planning. And, just in terms of what -- I mean, I
20 would kind of be interested, obviously, you have the
21 report from the Office of Planning and kind of
22 interested in hearing your thoughts on the party
23 status presentation. And the architect listed like
24 six different little points.

25 And actually before I do get over there, just

1 real quick, Ms. Burris. Burris? I'm sorry, Burris?

2 MS. BURRIS: Burris.

3 CHAIRMAN HILL: Burris.

4 MS. BURRIS: Burris. Yes, uh-huh.

5 CHAIRMAN HILL: Burris. Ms. Burris.

6 MS. BURRIS: Yes.

7 CHAIRMAN HILL: So, did you go to the ANC
8 meeting?

9 MS. BURRIS: No, I didn't.

10 CHAIRMAN HILL: You didn't go to any of the
11 ANC meetings?

12 MS. BURRIS: No, I didn't because I was with
13 family emergencies, no.

14 CHAIRMAN HILL: Okay. No, I'm just curious.
15 So, the ANC, your SMD, your single member district
16 person, does he know or she know that you're in
17 opposition to this or like -- I'm trying to figure
18 out where you would have had an opportunity to --
19 because your ANC voted unanimously to support this.

20 MS. BURRIS: Uh-huh.

21 CHAIRMAN HILL: You're aware of that,
22 correct?

23 MS. BURRIS: Yes.

24 CHAIRMAN HILL: Okay.

25 MS. BURRIS: Yeah. Uh-huh.

1 CHAIRMAN HILL: So, does your single -- I
2 mean, you just said you didn't go to the ANC meeting
3 when this came up.

4 MS. BURRIS: No, I was really out of town --

5 CHAIRMAN HILL: Okay.

6 MS. BURRIS: -- for family emergency. So.

7 CHAIRMAN HILL: Okay. But, does your single-
8 member district know that you're in opposition to
9 this?

10 MS. BURRIS: I don't think so.

11 CHAIRMAN HILL: Okay. All right. Okay.
12 Thank you.

13 So now I'm back over here to the Office of
14 Planning.

15 MR. GOLDEN: Good afternoon, Bryan Golden
16 with the Office of Planning. So, we continued to
17 recommend approval for this project, however that is
18 subject to the conditions that were laid out in the
19 report.

20 Mainly, principally either the removal of the
21 roof deck, access to the roof deck, or setting that
22 back. And then in response to some of the opposition
23 parties' points, there was a question about the rear
24 cellar windows. And I did have a discussion with the
25 applicant about that and I think what that was in

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1 reference to was the cellar floor plan. It looks
2 like it's showing three windows on the rear façade.
3 But those are not windows. There will be no windows
4 except for in the window well on the side area.

5 Let's see. There was also a question about
6 the parapet increasing the height. So, if the deck
7 were to be removed, there would be no need for that
8 parapet. But, I believe and it's my understanding
9 that that parapet would not be included in the height
10 regulation because it's not a part of the -- it's a
11 building code issue. It's not a part of the zoning.

12 And then there was another point about the
13 emergency access and egress on the rear side. And
14 again, that would be a building code issue. I don't
15 think that the Zoning Regulations speak to that.

16 CHAIRMAN HILL: Okay. Does anyone have any
17 questions for the Office of Planning? Okay. Does
18 the party status people have any questions for the
19 Office of Planning?

20 MR. BRAND: No, thank you.

21 CHAIRMAN HILL: Okay. Does the applicant
22 have any questions for the Office of Planning?

23 MR. SULLIVAN: No, thank you.

24 CHAIRMAN HILL: Okay. Let's see. So, I'm
25 going to go ahead and just turn here to the audience

1 real quick here now, and see is there anyone here
2 from the ANC? Is there anyone here further wishing
3 to speak in opposition? In opposition? Okay, please
4 come forward.

5 You can sit on that side if you'd like. Your
6 microphone is still on, sir. Oh, no, that's all
7 right. You can use -- yeah, use that one there.
8 Yeah, the one on the desk. And if you could give me
9 your name and I'll give you three minutes.

10 MS. STEWART: Oh, okay. My name is Julie
11 Stewart, address is 1213 C Street Northeast,
12 Washington, 20002. But we are the owners of 432 3rd
13 Street Northeast, which is immediately to the south
14 of the planned project. It's a two-condo building
15 and we rent those out and we used to live there and
16 would like to live there again someday.

17 My husband couldn't be here, but he has been
18 speaking with the contractor and it seems positive.
19 We just don't have anything in writing yet. What our
20 concern is, we don't oppose the project entirely.
21 We're just concerned about the impact that the
22 construction is going to have on our building, which
23 already is exposed to construction on the immediate
24 other side. If you're familiar with the Heritage
25 Foundation Development, they've been working with us

1 and we have a construction --

2 CHAIRMAN HILL: Mr. Moy, if you could start
3 the clock. I'm sorry. I just had to interrupt you
4 there.

5 MS. STEWART: Oh, okay. We have a
6 construction agreement in place with the developer on
7 the other side of our building, thank goodness,
8 because there actually have been some issues and we -
9 - they are working with us to address those. But
10 we're just very concerned that now we're going to get
11 hit from the other side. We've got people living in
12 there. We're concerned for their safety. We're
13 concerned for the integrity of our structure.

14 And we did receive the, like a work plan from
15 you guys. I believe we have a week to submit a
16 written objection to that, which at this point we
17 would object because it just doesn't seem sufficient.
18 And that's what I know my husband has been talking
19 with the contractor about that, but we -- I'm just,
20 I'm here to express my concerns and to be heard and
21 to emphasize that we need something from you guys in
22 writing. I would like to have a construction
23 agreement in place, like how we have with the
24 developer on the other side of our property that
25 would make us feel a lot more safe.

1 Also, don't love the fact that our windows
2 are going to be blocked over. I know this came up
3 before. We have three windows that will that will
4 just literally be covered, and we have some vents
5 over there too, and those are going to have to be
6 rerouted, you know, like for the dryer and stuff.

7 CHAIRMAN HILL: Ms. Stewart, so I'm just
8 checking. So, the windows that are getting covered,
9 those are at-risk windows. Is that why they're
10 getting covered?

11 MS. STEWART: They're getting covered because
12 their building will be smack up against it.

13 CHAIRMAN HILL: Right. Sure, okay.

14 MS. STEWART: So, I'll open my window and
15 have --

16 CHAIRMAN HILL: Well, I say at-risk, like you
17 don't have the right to those windows. That's why
18 I'm just trying to --

19 MS. STEWART: Well, they were there when we
20 bought it and I feel like it's something that's being
21 taken away from us.

22 CHAIRMAN HILL: I understand. I understand.

23 MS. STEWART: And it's something that we've
24 enjoyed from --

25 CHAIRMAN HILL: I'm just trying to figure it

1 out.

2 MS. STEWART: Right.

3 CHAIRMAN HILL: Sure.

4 MS. STEWART: And so, just bringing that up
5 because it's, I mean, it's going to be a financial
6 burden and we just -- we talked about this at the ANC
7 meeting. Our concerns remain the same that we had
8 discussed. And in fact, I noticed in the ANC letter
9 that they just submitted the other day they also
10 added, you know, strong recommendation to conduct a
11 preconstruction inspection of our property and to
12 install and pay for any monitoring equipment. And I
13 just wanted to show that we care, we're here.

14 CHAIRMAN HILL: Okay. Okay.

15 MS. STEWART: You know. Help.

16 CHAIRMAN HILL: Great. No, thank you. Okay.
17 All right, thank you. Does anyone have any questions
18 for the witness?

19 [No audible response.]

20 CHAIRMAN HILL: Okay. Mr. Sullivan, so, I'm
21 going to turn back to you and if you'd like to, you
22 know, close, rebut anything, I'm a little -- I would
23 like to, even if we were to, depending upon how the
24 Board feels again, we would need to see, I guess, I
25 don't know if the -- some of like the -- well, first

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1 of all I guess, even to Ms. Stewart's issue, that is
2 something that the Office of -- the ANC 6C had asked
3 for in terms of, you know, a memorandum of
4 understanding in some capacity that speaks to
5 probably both neighbors, you know, in terms of what
6 you would do in terms of preconstruction inspection
7 or monitoring concerning the work. And that is
8 something that we would need to see and look at as a
9 board before we could move forward anyway.

10 And then if there are any changes to the
11 plans concerning, also, the issues that DDOT had for
12 the, I guess the six and a half feet from the
13 building face, and move trash room and so, over to
14 behind property line, and off the top of my head I
15 can't remember whether you already had changed those
16 plans or not to reflect that. Had you?

17 MR. SULLIVAN: I don't think they're
18 submitted yet.

19 CHAIRMAN HILL: Okay.

20 MR. SULLIVAN: I think there's a recent --
21 so, we would probably -- if we're going to submit
22 after this, then we won't hand them in.

23 CHAIRMAN HILL: Right. Yeah, no, that's
24 great because we would need that for the record and
25 also be able to understand DDOT's concerns. So,

1 those are things for sure that we're going to be able
2 to need before we're even going to be able to
3 deliberate on what we're going to do here. But, I'm
4 now going to turn it back over to you, which is to go
5 ahead and since we do have the party status here in
6 opposition to be able to respond to anything that
7 might come up or what have you, go ahead and let you
8 summarize and then -- yes, I'm sorry.

9 MR. SULLIVAN: Yeah, just one addition to
10 that. You, I think Mr. Ali said that you had
11 conducted a shadow study.

12 MR. ALI: Well, we did this --

13 MR. SULLIVAN: All I'm just asking for is if
14 you could actually submit that to us for us to be
15 able to see that. Your neighbor to the north, which
16 would actually be impacted, this other neighbor is
17 not going to be impacted by the blockage of sun and
18 light. But the one to the north will because you are
19 south of them, and so that would be helpful for us to
20 understand that. Right now we don't really have any
21 information to kind of -- to really deal with that.
22 So, if you could provide that, that would be helpful.
23 Thank you.

24 MR. ALI: Sure.

25 MR. SULLIVAN: Okay. I'm going to have the

1 architect respond to a couple of the issues if
2 they're -- if it's outside the scope feel free to
3 tell them to stop, but it just, respond to some of
4 the building code questions and other issues, and
5 then I'll wrap up real quick.

6 CHAIRMAN HILL: Okay. And I do appreciate
7 that. I do want to point out something. There's
8 unfortunately a hard stop for us, the Board, at 3:00.
9 So, just to let you know, okay? And, okay. Thanks.

10 MR. ALI: Okay. I'll be very brief. I just
11 wanted to respond real quick on a couple of the code
12 comments that Mr. Finn have presented. Regarding the
13 window egress issue, all of landlocked properties
14 have that issue. All the neighboring properties have
15 the issue, like all the bedrooms with windows, with
16 no alleys. They've got nowhere to go, but to get to
17 the firefighters to come and help them out.

18 This applies all to the both adjoining
19 neighbors. That's why I called the area way as area
20 of refuge where the firefighter will come in and
21 rescue them. The same exact way that their client,
22 in case of fire, they will get out through that
23 window to that deck, and they have nowhere to go.
24 The deck is not public space.

25 However, Mr. Finn have explained the code

1 perfectly correct that at least public space, but in
2 this condition his client is also will be left on the
3 deck and our client tenant will be in the area way.
4 We both called as area or refuge where the
5 firefighter will come and rescue them out. This
6 applies to all landlocked conditions.

7 As far as the windows on the cellar,
8 previously we had a design package that showed the
9 two R-rated glass blocks to bring light into the
10 units, but those were eliminated. The most recent
11 design package that I'm not sure why it's not --
12 they're not looking at it, but there's no windows
13 there at the back wall anymore, because we have
14 replaced that green wall. So, there's no windows at
15 the cellar level.

16 As far as the green wall, the green wall will
17 not be projecting over the property line. It will be
18 recessed inside that wall and the frame will be
19 within the property lines, because that would be a
20 code violation and zoning violation if we were to
21 propose that. It won't be able to get permits.

22 The scale of the building being overwhelming,
23 but I think he was pointing to the bay window, and
24 that's exactly what we are working with, with Office
25 of Planning, to reduce that width, or to work with

1 the window's proportions to bring that bay window to
2 scale and maintain that repetitive character on the
3 block.

4 The deck overshadowing the 229 E Street, as
5 you see from the photographs, there is a new
6 construction going on for the back addition. This is
7 actually not new construction. There was always a
8 two-story structure in the back. However, this top
9 floor had some collapse and they're just rebuilding
10 the same exact second-story portion of that building.
11 So, it's always been there. And it only sets back
12 three foot, six inches from the adjoining neighbor,
13 that wood deck. So, that was part of my study that I
14 included the 229 E Street rear structure. It's
15 always been there as part of my shade and shadow
16 study that I will put forward.

17 As far -- I just heard that there was also a
18 second-floor new deck from the neighboring property
19 that we don't see yet. I think that's coming, but if
20 so, we'll leave that up until it comes up. There is
21 a comment that also brought up about that we will
22 have a 490 square feet footprint if we were to comply
23 the zoning requirements correct. That's only for
24 considering the lot occupancy. But when you apply
25 the setback, this square footage will drop down to

1 300 something.

2 The impact of the building is also another
3 comment from the neighbor to the south. They were
4 concerned about the construction and I believe
5 there's a construction agreement going on that will
6 be signed off by the owner.

7 But, I just wanted to point out again, that
8 in our case it's a new construction and we would not
9 be trying to any of the party walls on either side.
10 The construction is going to be new walls, face
11 online for 434 with no tying in to any of the
12 adjoining properties. The property south of our
13 property does have a full basement. No underpinning
14 required. The building north of our property the
15 cellar will be going down to that cellar level, no
16 underpinning will be required.

17 Well, actually I take that back. The
18 building north of us, there is only four inches that
19 we might have to drop our new footing, and we have
20 full structural drawings that we presented in the ANC
21 last time showing that if we were to underpin, it's
22 only going to be four inches. That's only for one
23 side.

24 And, one other comment I took is the
25 construction agreement. That's ongoing between my

1 client and the neighbor. I believe I covered
2 everything as far as notes that I took.

3 CHAIRMAN HILL: Okay. Mr. Ali, you talked
4 about the -- so, would your -- what is it. Would the
5 property owner be interested or willing to include
6 the people under the insurance policy for the next-
7 door neighbors?

8 MR. ALI: Insurance, and as far as what?
9 Sorry, I don't understand that question.

10 CHAIRMAN HILL: Like the -- I always forget
11 how the terminology works, exactly. But like, you
12 know, the insurance for construction. If something
13 were to affect the -- because one of the concerns is
14 that the neighbor is concerned about damage being
15 done to their home. And so, in the past the Board
16 has mentioned, and I'm going to clarify the language
17 at another time. But including them in the
18 construction insurance policy.

19 MR. ALI: I really doubt that he will be --
20 object to that. He will be open to this, but I
21 cannot talk for him, but I'll note it down and --

22 CHAIRMAN HILL: That's okay. Something that
23 you -- yeah, right.

24 MR. ALI: -- I'll have that --

25 CHAIRMAN HILL: So that will be both

1 neighbors.

2 MR. ALI: Sure.

3 CHAIRMAN HILL: I'd like to know if he has
4 any --

5 MR. BRAND: I think it's called additional
6 insurance.

7 CHAIRMAN HILL: Additional insurance. Okay.
8 Thank you.

9 MR. BRAND: Additional insurance.

10 CHAIRMAN HILL: Thank you. All right. Does
11 the Board have any other questions for the applicant?
12 Please.

13 MR. MILLER: I think you've covered it, Mr.
14 Chairman, but I just want to in a post-hearing
15 submission you're going to give us revised drawings.
16 But if you can just address, in writing, how you are
17 meeting all the conditions that have been requested
18 by the Office of Planning, by DDOT, and by the ANC.
19 And so, that's -- I just would want that as part of
20 the written submission to show. Particularly the
21 roof, how your roof deck has been eliminated or moved
22 back, and all the other conditions that are there.
23 And I would encourage you to enter, as the Chairman
24 did, into a construction management agreement with
25 your adjacent neighbors.

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1 CHAIRMAN HILL: Yeah, and Mr. Sullivan, do
2 you understand all the conditions that -- I mean, I
3 read them earlier, before, in terms of how we would
4 like to see that you have gone about and done all
5 those things again. And I'm just going to reread
6 them just because they're actually somewhat brief.
7 But removal of the proposed trellis, and moving the
8 roof deck back from the rear façade to minimize any
9 potential privacy impacts, that the applicant revise
10 the area concept to show all elements projecting no
11 further than six and a half feet from the building
12 face, and move the trash room where it's cellar level
13 to behind the property line. And then again,
14 conditions dealing with construction impacts outside
15 the scope -- well, this is outside the scope of
16 zoning. However, the Board can ask whether the
17 applicant agrees to these recommendations that were
18 from the ANC, which was that they require to install
19 and pay for a preconstruction inspection and then
20 monitoring to detect any substance of other material
21 impacts to the neighboring structures. Okay?

22 So, that's the memorandum of understanding,
23 basically. Okay? All right.

24 So, does Board have any other questions for
25 the party status? Okay. I'm sorry, sure. Go ahead.

1 MR. MILLER: I just had one quick one. Ms.
2 Burris, you own the property. You currently rent it
3 out to others?

4 MS. BURRIS: It's currently rented.

5 MR. MILLER: And maybe someday, like the
6 other neighbor, you might want to move back into it?

7 MS. BURRIS: Well, we are moving -- we've
8 moved them out. We think -- well, I'm retired. I've
9 been retired for a year. My husband is an
10 intervention cardiologist, and he's trying to retire.
11 He said he will be retired in two years. But I don't
12 think that's going to happen. But we are just going
13 to proceed with that. Yes, it's rented.

14 MR. MILLER: Thank you.

15 MS. BURRIS: For now.

16 MR. MILLER: Okay.

17 CHAIRMAN HILL: Well, Ms. Burris again, as I
18 was mentioning to the applicant as well as then, Ms.
19 Stewart, you guys meet and speak with the applicant
20 in terms of the memorandum of understanding, in terms
21 of how you can be covered if there's any damage or
22 insurance in terms of if this were to move forward,
23 there to be construction. Okay?

24 All right. So then I'd like, Mr. Moy, can we
25 talk about when we're going to get everything and

1 when we're going to come back?

2 MR. MOY: Well, once again, Mr. Chairman.

3 CHAIRMAN HILL: Sure.

4 MR. MOY: Is the Board considering a
5 continued hearing, or is this scheduled for a
6 decision meeting?

7 CHAIRMAN HILL: I guess I'm kind of on the
8 fence a little bit. Since there's new plans and
9 since there is a party status person, I'd go ahead
10 and do a continued hearing, I guess. So, then the
11 party status people would have an opportunity to look
12 at the plans again, okay? And then would be able to
13 come back and discuss that.

14 I would mention one thing from again the --
15 for the applicant as well as the person in
16 opposition. Again, we've gone through the different
17 aspects with the Office of Planning. This has gone
18 through the ANC and has gotten a unanimous support.
19 So, now you're kind of working with -- you could work
20 with the applicant to see if there are some things
21 that you could possibly do to remove your party
22 status or opposition. And therefore, if you did do
23 that, they would be able to get a summary order. And
24 if they got a summary order they wouldn't have to
25 wait as long to get a full order. And therefore, it

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1 gives you a little bit of initiative on their part to
2 try to do something with you. Okay?

3 Now, whether or not, you know, whether or not
4 you know, it's some huge thing, they're not going to
5 do it. Okay? But maybe there's some way to get it
6 to a summary order. So, I'm just trying to see that
7 that, you know, because the full orders are taking a
8 year. You know. So, that's why I had to mention
9 about that. So, it is going to be a continued
10 hearing, Mr. Moy, and then can we talk about dates
11 and everything?

12 MR. MOY: We're here again, given the Board's
13 past practice with the Zoning Commissioner, with Mr.
14 Miller in particular, if Mr. Miller can be available,
15 and of course contingent on when the applicant can
16 make their filings, I'm looking at a continued
17 hearing as early as February 8th, or as late as
18 February 22nd.

19 CHAIRMAN HILL: Is Mr. Miller back with us on
20 the 8th?

21 MR. MOY: Mr. Miller would be back with us
22 sometime in March.

23 CHAIRMAN HILL: Oh, okay.

24 MR. MOY: Unless you want to go that long.

25 MR. MILLER: I'm okay with coming just for

1 this case, and I think I'm on the -- I think we
2 continued something else to February; February
3 earlier in the meeting. I've already forgotten when.
4 But I will come back --

5 CHAIRMAN HILL: I think it was the 22nd.

6 MR. MILLER: I will come back whenever the
7 Board --

8 CHAIRMAN HILL: So, I would prefer, then, to
9 do it on the 22nd, which Mr. Miller is going to be
10 back with us. Okay. Great. Or at least he's going
11 to come in for something. He could come in for
12 something else, so.

13 MR. MOY: Okay. If we work with that,
14 continued hearing on the 22nd. So, the Board is
15 expecting filings from the applicant as well as
16 responses from the party status, right?

17 MR. BRAND: Sure.

18 MR. MOY: Working backwards, that's a
19 continued hearing on the 22nd, let's say responses
20 from the party status a week before, which would be
21 February the 15th.

22 MR. BRAND: That's fine.

23 MR. MOY: And then, so the applicant then
24 could make their filing -- I'm assuming they're going
25 to be working with the party status up to their

1 filing, so this is the 11th. Well, I can actually
2 leave it to the applicant. Maybe the 8th of
3 February. Is that good?

4 CHAIRMAN HILL: Okay. Any questions on the
5 filings?

6 MR. BRAND: That's fine.

7 CHAIRMAN HILL: Okay. All right. Great.
8 Well, thank you guys very much.

9 MR. BRAND: Thank you.

10 CHAIRMAN HILL: Mr. Moy, I think we still
11 have one issue, correct?

12 MR. MOY: Yes.

13 MR. BRAND: We'll come back on the 22nd.

14 CHAIRMAN HILL: I got you, right here.
15 Thanks. Let's see.

16 In accordance with Section 405C of the Open
17 Meetings Act, D.C. Official Code Section 2575C, I
18 move that the Board of Zoning Adjustment hold a
19 closed meeting on Wednesday, February 8th, 2017. The
20 meeting will begin at 9:00 a.m. and held for the
21 purpose of obtaining legal advice from our counsel
22 and deliberating upon, but not voting on the remand
23 of 18852, and 18853 of SB Urban, and the remand of
24 18638 of Rosebush, LLC., and Greg Bush. A closed
25 meeting of this purpose is permitted by Section

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1 405(b) (4) and (b) (13) of the act.

2 Is there a second?

3 MR. HART: Second.

4 CHAIRMAN HILL: The motion has been made and
5 seconded. Will the secretary please take a roll call
6 vote on the motion?

7 MR. MOY: When I call a member's name if you
8 could reply a response with a yes or a no?

9 [Roll call vote taken.]

10 MR. MOY: Mr. Miller?

11 MR. MILLER: Yes.

12 MR. MOY: Chairman Hill?

13 CHAIRMAN HILL: Yes.

14 MR. MOY: Mr. Hart?

15 MR. HART: Yes.

16 MR. MOY: And we have two seat vacancies, Mr.
17 Chairman, but the motion carries.

18 CHAIRMAN HILL: Thank you, Mr. Moy. Mr. Moy,
19 is there anything else today?

20 MR. MOY: Not from the staff.

21 CHAIRMAN HILL: All right, thank you. Then,
22 we're adjourned. Thank you, everybody.

23 [Whereupon, at 2:59 p.m., the Board Hearing
24 was adjourned.]

25