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

PUBLIC HEARING

9:46 a.m. to 1:04 p.m.
Wednesday, December 14, 2016

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

1 Board Members:

2 FREDERICK L. HILL, Chairperson

3 CARLTON HART, Board Member

4 MICHAEL TURNBULL, Zoning Commission

5 CLIFFORD MOY, Board Secretary

6

7

8 Office of Planning:

9 MATT JESICK

10 ANNE FOTHERGILL

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

2 CHAIRMAN HILL: Okay. The hearing will
3 please come to order. Good morning, ladies and
4 gentlemen. We are located in the Jerrily R. Kress
5 Memorial Hearing Room at 441 4th Street Northwest.
6 This is December 14th 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 Mike Turnbull.

11 Copies of today's hearing agenda are
12 available to you and are located on the wall bin near
13 the door. Please be advised that this proceeding is
14 being recorded by a court reporter and is also
15 webcast live. Accordingly, we must ask you to
16 refrain from any disruptive noises or actions in the
17 hearing room.

18 When presenting information to the Board,
19 please turn on and speak into the microphone, first
20 stating your name and home address. When you're
21 finished speaking turn off your microphone so that
22 your microphone is no longer picking up sound or
23 background noise.

24 All persons planning to testify either in
25 favor or in opposition must have raised his or her

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

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

14 The order of procedures for special
15 exceptions and variances as well as appeals are also
16 located in the bin to my left. The record will be
17 closed to the conclusion of each case, except for any
18 material specifically requested by the Board. The
19 Board and the staff will specify at the end of the
20 hearing, exactly what is expected and the date when
21 the persons must submit the evidence to the Office of
22 Zoning.

23 After the record is closed, no other
24 information will be accepted by the Board. The
25 District of Columbia Administrative Procedures Act

1 requires that the public hearing on each case be held
2 in the open before the public, pursuant to Section
3 405B and 406 of that act. The Board may, consistent
4 with its rules of procedures and the act, enter into
5 a closed meeting on a case for purposes of seeking
6 advice on a case pursuant to D.C. Official Code
7 Section 2-575(b)(4), and/or deliberating on a case
8 pursuant to D.C. official code, Section 2-575(b)(13),
9 but only after providing the necessary public notice.
10 And in the case of an emergency closed meeting, after
11 taking a roll call 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 persons presenting not engage the
16 members of the Board in conversation.

17 Please turn off all beepers and cell phones
18 at this time so as not to 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 a postponement, continuance, or
22 withdrawal, or whether proper and adequate notice of
23 the hearing has been given. If you're not prepared
24 to go forward with the case today, or if you believe
25 that the Board should not proceed, now is the time to

1 raise such a matter.

2 Mr. Secretary, do you have any preliminary
3 matters?

4 MR. MOY: Yes. Good morning, Mr. Chairman,
5 Members of the Board. I do.

6 This is for the record with regards to the
7 cases on today's docket. First, Application No. --
8 Appeal No. 19374, this is the DuPont Circle Citizen's
9 Association, with a request from the appellant was
10 granted, the request to postpone and reschedule, and
11 the rescheduled date is January the 18th, 2017.

12 Second, there are -- we have one, two, three,
13 four cases that have been also rescheduled, granted
14 by the Board at the applicant's request. Case No.
15 17549A, this is of Georgetown Visitation Prep School
16 has been rescheduled to February the 8th, 2017.
17 19386 of IREI, 22nd Street, LLC., rescheduled to
18 January 11th, 2017. And next two cases rescheduled
19 to February 1st, 2017, Case number 19355 of
20 Selenfriend and Christopher Pharr, and 18690A of Rito
21 Loco, LLC., also rescheduled to February 1st.

22 Finally, Mr. Chairman, although this doesn't
23 concern any of the cases for today's docket, but all
24 of the docket of cases originally announced the
25 schedule for January 25th, 2017, has been relocated

1 or rescheduled, rather, to February 8th, 2017. And
2 very quickly, they are case numbers 19395, 19382,
3 19407, 19408, 19409. Again, 17549A, and 18915A. And
4 that's it from staff, Mr. Chairman.

5 CHAIRMAN HILL: Okay. Great. Thank you.
6 So, as far as the audience is concerned here today,
7 just to let you know as far as what we're going to do
8 with the agenda, we're going to -- there's a few
9 appeals that are -- we have to -- there's some things
10 we're going to have to talk through in terms of that,
11 so I'd like to do that first, Mr. Moy, if we could.
12 And that will be -- and I'll let you announce them
13 when we come up, but it's going to be Appeal 19360,
14 and then 19361. And then after that, if it's all
15 right with the Board, I'd like to go ahead and do,
16 follow basically the agenda after that. So then
17 we'll go to the applicant of D.C. Department of
18 General Services, then the applicant of Graham Smith
19 and Alexis Diao. I'll learn how to say it when they
20 come up. Sorry. And then the last one is
21 application of Zachary and Robert Bernstein.

22 MR. MOY: Okay. Very good. Thank you, Mr.
23 Chairman.

24 As to the two appeals on the docket, since
25 the appeals are attended to the same address, square

1 and lot, which is the premises at 475 School Street
2 Southwest, Square 9 -- or rather, Square 494, Lot
3 860, I'll call each of these two, Mr. Chairman.

4 The first is appeal No. 19360 of Southwest
5 Business Improvement District, captioned and
6 advertised for -- as an appeal from -- of a June
7 24th, 2016 decision by the Zoning Administrator,
8 Department of Consumer and Regulatory Affairs that
9 our proposed use meets the definition of a community-
10 based residential facility in the C-3-C District.

11 And again, 475 School Street Southwest,
12 Square 494, Lot 860, the companion appeal to the same
13 location is Appeal No. 19361 of ANC 6D. Again,
14 appeal of a June 24th, 2016 decision by the Zoning
15 Administrator that a proposed used meets the
16 definition of the community-based residential
17 facility, C-3-C District, 475 School Street
18 Southwest, Square 494, Lot 860.

19 And, Mr. Chairman, as you know in the case
20 record there is a motion to dismiss as moot.

21 CHAIRMAN HILL: Okay. Great. Thank you, Mr.
22 Moy. If we could introduce ourselves going from my
23 right to the left?

24 MR. TONDRO: Good morning. Maximilian Tondro
25 on behalf of the Zoning Administrator and DCRA.

1 MS. MOLDENHAUER: Meredith Moldenhauer, land
2 use counsel from the law firm of Griffin, Murphy,
3 Moldenhauer, and Wiggins, representing the Southwest
4 bid.

5 MR. GITTLESON: Frank Gittleson, I represent
6 Talarium, LLC., which is the new owner of 475 School
7 Street Southwest.

8 CHAIRMAN HILL: Okay. Could you say your
9 name again for me, sir?

10 MR. GITTLESON: First name is Frank, last
11 name is G-I-T-T-L-E-S-O-N.

12 CHAIRMAN HILL: And who are you here
13 representing?

14 MR. GITTLESON: Talarium, LLC. Well School
15 Holdings no longer owns the property.

16 CHAIRMAN HILL: Okay. All right. So, what I
17 was going to do, Ms. Moldenhauer, I suppose, and Mr.
18 Tondro, and there's been a motion made to dismiss the
19 appeals as moot. Are you aware of that?

20 MR. GITTLESON: I was not aware of that.

21 CHAIRMAN HILL: Okay. All right. So, I had
22 -- DCRA had submitted and filed a motion to dismiss
23 both appeals as moot, and the applicant had agreed to
24 dismiss those motions.

25 MS. MOLDENHAUER: Yes, we filed a consent.

1 MR. TONDRO: Okay. And if I can say, since
2 there are two appeals Ms. Moldenhauer represents the
3 Southwest bid, in was it 19360? And the other
4 parallel -- the parallel appeal of 19361 was by the
5 ANC and I had an e-mail from Commissioner Litsky,
6 also consenting to the motion to dismiss. So, in
7 other words, there are two separate appeals, two
8 different appellants. Both agreed to the motion to
9 dismiss.

10 CHAIRMAN HILL: Okay. So, Mr. Gittelsohn, I'm
11 sorry. I'm confused as to who you're with.

12 MR. GITTLESON: Well, I represent the new
13 owners of the building.

14 MS. MOLDENHAUER: The property on which the
15 determination was based.

16 MR. GITTLESON: Right.

17 MS. MOLDENHAUER: The property had been sold
18 and I believe he owns -- now represents the
19 ownership. So, he would be an intervener.

20 MR. GITTLESON: Right. Thank you.

21 CHAIRMAN HILL: Okay. If you could just turn
22 off your microphone? Thank you.

23 [Discussion off the record.]

24 CHAIRMAN HILL: Okay. So, as the property
25 owner, you would not object to dismissing this

1 appeal? Okay. All right. Sorry, I was just
2 confused.

3 All right. So, be it that DCRA has, you
4 know, made a motion to dismiss as moot, and the
5 applicant has agreed, I would go ahead and grant that
6 motion. And if I'm turning to the Office of Attorney
7 General here as to go ahead and how I would do that,
8 do I have to list those or read those both separately
9 in different motions?

10 MS. NAGELHOUT: I think you could do it in
11 one motion, and mentioning both numbers if you like,
12 or do separate motions. Either way.

13 CHAIRMAN HILL: Okay. Okay. All right.
14 Then I'm going to close this portion of the hearing
15 and then I would like to make a motion to dismiss
16 both Application 19360 and 19361.

17 MR. HART: Second.

18 CHAIRMAN HILL: The motion has been made and
19 seconded.

20 [Vote taken.]

21 CHAIRMAN HILL: The motion passes.

22 MR. MOY: Staff would record the vote as
23 three, to zero, to two. This is on the motion of
24 Chairman Hill to dismiss the appeal, the two appeals
25 as moot. Second the motion, Mr. Hart. Also in

1 support, Mr. Michael Turnbull. We have a board seat
2 vacant and a board member not present today. The
3 motion carries, sir.

4 CHAIRMAN HILL: Thank you, Mr. Moy.

5 [Pause.]

6 MR. MOY: All right. I believe the next
7 application case before the Board is Application No.
8 19379 of D.C. Department of General Services as
9 amended. As amended. This is a request for special
10 exception under the off-street parking requirements
11 of Subtitle C, Section 703.2, and the penthouse
12 requirements of Subtitle D, 5205.1, which would
13 replace an existing recreation center with a new
14 recreation center, R-2 zone at 6201 Bank Street
15 Northeast, Square 189, Lot 22. I say amended because
16 the applicant withdrew the request for special
17 exception under Subtitle C, Section 802.1 for bicycle
18 parking.

19 The only other preliminary before the Board,
20 and I apologize, Mr. Chairman, this just arrived this
21 morning, and there is a request which I'll pass out
22 to you. It was received by e-mail, by the SMD to ANC
23 7; ANC 7C-07, the SMD. And apparently the ANC 7C
24 chair, Antoine Holmes is requesting a -- quote, "We
25 are requesting that Zoning postpone their December

1 meeting on this application after our ANC 7C meeting
2 on January 12th, 2017."

3 So, I'll pass this out to the Board as to the
4 Board's action. This is again, not from the full
5 ANC.

6 [Pause.]

7 MR. MOY: Typically, Mr. Chairman, for the
8 record, filings made on the morning of a BZA hearing
9 does not enter into the record until I hear
10 permission from the Board. So, this would be any
11 filing submitted at the time of the hearing after
12 9:00, which this qualifies.

13 [Pause.]

14 MR. MOY: This qualifies because it was
15 either submitted as a filing into IZIS, or by e-mail.
16 But of course, any individuals appearing before the
17 Board can hand-carry documents to the Board.

18 CHAIRMAN HILL: Okay. I'm going to go ahead
19 and get started first here. So, if you could just
20 introduce yourselves from left to right, please? Or
21 right to left?

22 MR. SCHNEIDER: Good morning, Board. Rick
23 Harland-Schneider, Art Studio Architects, the
24 architect for the project.

25 MS. MOLDENHAUER: Good morning, Meredith

1 Moldenhauer, land use counsel for DGS.

2 MS. McCLENDON: Cynthia McClendon, project
3 manager for DGS. Kramer Harry team.

4 CHAIRMAN HILL: Okay. I mean, you just heard
5 that we just got this. If you can just give us just
6 like two minutes here real quick?

7 MS. MOLDENHAUER: Dr. Gaffney is actually
8 present in the audience, from the ANC, and I don't
9 believe she filed that. She might be able to provide
10 some clarity as well, and I can provide some
11 additional information on when we attended the ANCs
12 and community outreach.

13 CHAIRMAN HILL: Okay.

14 MS. MOLDENHAUER: If the Board would so
15 request.

16 CHAIRMAN HILL: Okay. Is Ms. Holmes here?
17 No? Okay. Okay. Ms. Moldenhauer, I'm going to go
18 ahead and let you start and we'll get to the issue of
19 this as we go through.

20 I didn't particularly have a lot of questions
21 about the case. However, since there seems to be a
22 little bit of concern from at least one member of the
23 SMD here as to what they would like to do with
24 postponement, I guess, you know, if you could
25 address, obviously, you're working through the ANC.

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1 But if you could actually go ahead and walk through
2 your presentation at kind of a high level, it will
3 give me a chance to also kind of wrap my head around
4 the issues.

5 MS. MOLDENHAUER: Okay. So, we are here
6 today working on a recreation center. It is a
7 recreation center that currently exists. It has
8 actually been closed, just for some background facts.
9 This application, DGS had already closed down the
10 center, filed for permits when they were aware that
11 their proposed plans needed zoning relief from the
12 penthouse enclosure requirements and from one parking
13 space.

14 So, not until they had already kind of taken
15 the recreation center away from the public and the
16 community did they realize this, and so then we filed
17 the application. They are -- they have their crews
18 ready. We can have testimony on that issue as well,
19 to move forward with the recreation center which is
20 going to be an expanded project.

21 What I'll do is I'll just flip through the
22 case very quickly on these two minor areas of relief.
23 We also have an extensive list of summaries of
24 community outreach that I'll have one of our
25 witnesses testify to, as well as discussing, you

1 know, the overall project.

2 So, if we could just walk through the site
3 very quickly?

4 MR. SCHNEIDER: Yeah, no problem. So, what
5 you're seeing here is the site outlined in black,
6 right near the D.C. border. I guess we can move
7 forward from there. There's the R-2 zoning on that.
8 Seeking to raise the existing center and relocating
9 it from the north side of the site to the other side
10 of Watts Branch, on the south side of Watts Branch,
11 and entering from 61st Street.

12 No, that's good. Let's go to that next one.
13 So, this is a diagram that really explains the
14 existing conditions on the site. You can see banks
15 placed to the north, in the northwest corner you'll
16 see an existing playground that's already been built.
17 In the northeast corner, you can see there are three
18 basketball courts there that reside under the canopy
19 of some really majestic, mostly willow oaks in that
20 area that, you know, they're specimen trees that
21 we're looking to retain.

22 The basketball courts currently don't meet
23 regulation size. In the middle there, that brown
24 square is the existing 2,000 square foot recreation
25 center built in 1950s, one-story brick. To the south

1 you see practice fields for both football and
2 baseball. Those facilities currently exist already
3 with backstop lighting, et cetera, for the baseball
4 field and the practice field for the football, for
5 football.

6 Running right through the site, sort of
7 bisecting it, running from east to west is Watts
8 Branch. That is -- and the dash line that she's
9 indicating here shows you where the flood way is for
10 that property. That's under Army Corps of Engineers
11 and FEMA jurisdiction at a national level. So, that
12 entire riparian zone and some of the adjacent land is
13 actually in the flood way. There are significant
14 limitations on what we can actually develop within
15 the flood way.

16 I'll branch outward a little bit. You'll
17 also notice that the majority of the site falls
18 within the 100-year floodplain, and there are also
19 significant limitations on what we can build within
20 the 100-year floodplain. Yeah, the red hashmark.

21 So, you know, again, just to summarize,
22 narrow band of Watts Branch and the flood way, and
23 then a wider version, or a wider amount of space
24 that's the 100-year floodplain. These things, the
25 limitations on space, and the limitations on what we

1 can do with the site are really what drove the
2 program for the site.

3 You can go to the next slide. So, we worked
4 very closely with the neighborhood to retain the
5 existing outdoor programmatic spaces, the playground
6 in the northwest, basketball courts to be improved in
7 the northeast corner, while still keeping those
8 healthy majestic willow oaks, and then on the south
9 side, the existing baseball field and practice field.
10 If you want to expand the size of a built facility
11 from the 2,000 square foot facility that was within
12 the 100-year floodway, or the floodway and the 100-
13 year flood zone, the idea was to expand this to come
14 up with a larger facility. The only way we could
15 realistically do this programmatically without
16 reducing or eliminating programmatic space for
17 outdoor was to relocate the facility to the south
18 side of Watts Branch.

19 And you can see that this is the facility
20 right here, in Brown. And it goes from a 2,000
21 square foot one-story to a 7,200 square foot two-
22 story facility on the south side of Watts Branch.

23 Yeah, let's go -- so, you'll see, too, that
24 it's actually -- it's actually built very close to
25 the 100-year flood -- the floodway itself, while not

1 actually being in the floodway. And it actually does
2 reside within the 100-year floodplain, because that
3 was really all that was left without eliminating
4 outdoor program space.

5 MR. HART: Mr. Chair.

6 CHAIRMAN HILL: Yeah, sure.

7 MR. HART: There was no ability to move that
8 to another -- like, you could actually move one of
9 the fields over to adjust that to possibly move this
10 in a different location. Have you looked at any
11 other locations outside of the floodplain, the 100-
12 year floodplain? Or was that --

13 MR. SCHNEIDER: And are you referring to the
14 practice fields here?

15 MR. HART: Yeah, I mean, there are fields
16 that are there. The baseball diamond and the
17 rectangular field.

18 MR. SCHNEIDER: Correct. Correct.

19 MR. HART: If you move the baseball diamond
20 over to the, I guess to the east, you might have some
21 space to be able to do that. I mean, moving a
22 baseball diamond is not that expensive. There is a
23 cost to it.

24 MR. SCHNEIDER: There is, right. Then the
25 problem became programmatic too. It also has to do

1 with -- it has to do with budget, for one thing.
2 You're right. It is budget. It's not a complete
3 deal breaker but it would have taken up a majority of
4 the budget. And then of course you have the
5 limitations of being able to enter from a
6 neighborhood street, like 61st. And keeping
7 ourselves from being too far from the neighborhood
8 itself, which is really more to the north and
9 northwest.

10 Entering from Southern Avenue is really a
11 non-starter because that's a major thoroughfare.
12 Yeah, you're nodding your head. You understand that.
13 So, it was trying to work with site access from the
14 neighborhood, as well as not incurring the additional
15 cost of having to move those facilities.

16 MS. MOLDENHAUER: The request that we're
17 asking for is for one parking space, so can you
18 explain why the single one parking space requirement,
19 obviously based on these factors, was practically
20 difficult and challenging?

21 MR. SCHNEIDER: Oh, sure. Well, as you can
22 see, we're basically taking up -- I can't seem to get
23 that. Yeah. All right, cool.

24 You know, the northwest corner is entirely
25 taken up by a playground that was previously build

1 before we got to the project. The Northeast corner
2 is essentially taken up by these reconfigured
3 basketball courts, and then not doing anything to
4 mess with these majestic trees. And then meanwhile
5 you also have topographic issues here. This is
6 fairly sloped all along this edge right here. And
7 then we had similar issues here where we're really
8 limited in how much space we have trying to get
9 anything here with parking access turnarounds, et
10 cetera. It was just particularly challenging.

11 MS. MOLDENHAUER: And then we'll just --

12 MR. SCHNEIDER: If not unfeasible.

13 MS. MOLDENHAUER: Let's just walk through the
14 relief if the Board would like us to, for the
15 penthouse setback, penthouse single enclosure
16 requirements.

17 MR. TURNBULL: Well, I mean, before you get
18 to that can I -- just following up on Mr. Heart's
19 comments. I mean, So, there was no way to come in
20 off of Banks and then reuse those high school
21 basketball court areas for the building area?

22 MR. SCHNEIDER: That's correct. That
23 feasibility study was done. What you have here --
24 sorry, getting my --

25 MR. TURNBULL: I mean, the entrance now is

1 off of Banks, right?

2 MR. SCHNEIDER: That's exactly right. What
3 you have is an existing facility that's within the
4 floodway, so we had to stay out of the floodway.
5 That meant coming in to this area here. Anything you
6 start to build in this area, other than resurfaced
7 basketball courts, is going to kill these trees right
8 here. And it was no more -- it was no easier,
9 physically, to build here than to build here, and
10 those areas are both within the 100-year floodplain,
11 if that answers that question.

12 MR. TURNBULL: Okay. What about the trees
13 within the floodway now, that are existing?

14 MR. SCHNEIDER: Trees within the floodway now
15 are not being impacted. So, that riparian zone will
16 remain intact.

17 MR. HART: One other question. Have you all
18 looked at possibly using porous pavement for the area
19 that you're having for emergency access.

20 MR. SCHNEIDER: We did. We did look at that.
21 We were limited in, you know, the ability to actually
22 get emergency vehicles over porous pavement and get
23 access to the building. From 61st Street, I assume
24 you're referring to that.

25 MR. HART: Yes. And so you're saying it's

1 basically a structural issue?

2 MR. SCHNEIDER: Yeah.

3 MR. HART: Structural soil or structural --

4 MR. SCHNEIDER: No, the paving itself. We
5 had two issues really. One was the maintenance and
6 the other was the structural capacity of that to
7 actually hold the weighty emergency vehicles.

8 MR. HART: Thank you.

9 MS. MOLDENHAUER: So, now we'll just, we'll
10 move on to the other area, which is having multiple
11 enclosed enclosures, if you can walk through that, I
12 guess for the best image.

13 MR. SCHNEIDER: Absolutely. I'll give a
14 brief overview.

15 We worked very closely with DGS, DPR, and the
16 community to design a new facility that really was in
17 the spirit of an earlier concept that had attempted
18 to bridge over Watts Branch. Not possible. However,
19 we raised this thing up out of the 100-year
20 floodplain, two stories, and then cantilevered it out
21 in a gesture that was reminiscent of the bridge
22 scheme that the community approved early on.

23 But what you see here is the south elevation
24 that's been designed with a -- I'll call it a two-
25 part façade. On the top you see the south elevation,

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1 just the metal skin and the glazing. It faces south
2 so it has a potential for gaining a lot of solar
3 gain, a lot of heat buildup from the sun there. But
4 has great views on to the field. What we did is we
5 designed a two-part façade. The other part you see
6 in the bottom image is the second part of that façade
7 that's designed to provide us with a unified
8 elevation on the one, aesthetically, but also to help
9 control solar gain and glare.

10 So, that perforated metal screen there
11 actually helps to control energy consumption in the
12 building. We worked very hard to come up with a
13 project that was very sort of forward thinking in
14 terms of sustainability. It's designed to be
15 passive, to be naturally daylight, and then also to
16 have natural ventilation as much as possible. And
17 one way to do that is to cut down on the cooling
18 load.

19 The other benefit we got from this was, as
20 you can see in the top image, the façade steps down
21 to the left of the image, which is the west side.
22 That's where we placed our large equipment, and that
23 façade extension in the bottom image gives us an
24 opportunity to provide screening, or essentially the
25 façade covers our mechanical equipment, from both the

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1 southern elevation and the west elevation.

2 Yeah, another shot of that. Meanwhile, to
3 the east the mechanical units are screened by the
4 building itself, stepping up. And then to the north
5 it was the riparian zone, that area where you have
6 mature trees in a belt on both sides of Watts Branch
7 that, you know, that's under FEMA jurisdiction and
8 can't be touched. And that's what you're seeing in
9 that image back there. Yeah, sure. The existing
10 trees in that area are again, in that floodway, and
11 are there for good.

12 We've already walked through the zoning and
13 kind of walked through this I think in a more
14 expedited fashion in regards to the zoning for the
15 one parking relief, which is a special exception, and
16 the exceptional conditions in regards to maintaining
17 the canopy of the trees, working with maintaining
18 also, the existing playgrounds, the existing fields,
19 and the challenges of the site.

20 The property is also located by transit and
21 would be, obviously, easily utilized by the community
22 and the neighborhood, and that there would be no
23 adverse effect on the community based on the
24 visibility as we just heard testimony from the
25 existing trees and the screening of those for the

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1 relief on the penthouse mechanical equipment.

2 I'll now turn it over to a representative
3 from DGS to walk through some of the community
4 outreach.

5 CHAIRMAN HILL: And I'm sorry, Ms.
6 Moldenhauer, did you show the penthouse relief again?

7 MR. SCHNEIDER: Yeah, absolutely. So, we've
8 been referring to it as a -- so sorry about that.
9 Yeah, so the image in the upper left -- well, the
10 image in the lower right shows us both the low roof,
11 which is a green roof, what we call the mid-roof,
12 where the equipment is located, and then the high
13 roof where you essentially just have some exhaust
14 fans coming out.

15 This mid-roof is where we located that
16 equipment and if I start from the east side it's
17 blocked from view by the fact that the building steps
18 up to the east. On the south it's screened from view
19 by this two-part façade, the fact that the façade
20 extends up. And then similarly to the west by that
21 same two-part façade that extends up.

22 To the north is that belt of trees on both
23 sides of Watts Branch. Again, mature trees, both
24 sides of a riparian zone under federal government
25 control.

1 This is a little bit more site, site plan
2 that shows you both that belt of trees along Watt's
3 Branch. The red is the façade extension that
4 provides screening for the mechanical, and then I
5 think the items in question are highlighted in
6 yellow. Those are the two that need to be screened
7 from view.

8 MS. MOLDENHAUER: And so, in order to comply
9 with zoning we would have had to provide a fully
10 encapsulated 6.6 foot tall screening on the back
11 side. But as you've indicated, based on the trees,
12 the natural location of the site, it's naturally
13 screened and we believe that by not providing that
14 specific screening it actually is a better overall
15 design architectural and visibility for the site as
16 required by the special exception substandards, which
17 we believe we satisfy.

18 MR. TURNBULL: I'm confused. If you could
19 pull up slide 14, which is a sort of a -- yeah. What
20 I'm confused about is that it looks like the entrance
21 is by the l-shaped area at the left of the slide.
22 But, the screening is almost at the height of the
23 roof, so that if I'm coming in from the street --

24 MR. SCHNEIDER: From 61st.

25 MR. TURNBULL: -- I will see the mechanical

1 equipment.

2 MR. SCHNEIDER: No, the screening actually
3 sits away from the building and it's higher than the
4 parapet in that location, so it provides screening of
5 the units from that location.

6 MR. TURNBULL: Well, can you show a better
7 view that shows how high that is at that section?

8 MR. SCHNEIDER: Oh, I see what you're saying
9 too. It's a little bit of a trick of the
10 perspective.

11 MR. TURNBULL: Yeah, I mean --

12 MR. SCHNEIDER: Yeah.

13 MR. TURNBULL: -- from right now it looks
14 like you're not really screening.

15 MR. SCHNEIDER: The point is that the screen
16 or that part of the façade in that location is
17 sitting away from the building, and so the
18 perspective is, you know, sort of a trick. I believe
19 that what you're seeing are lines that start to show
20 it --

21 MR. TURNBULL: Okay.

22 MR. SCHNEIDER: -- at a similar height. But
23 it's not, really. It's actually higher than the roof
24 and it does provide the screening required.

25 MR. TURNBULL: Well, but the windows at the

1 other end are not -- have any solar screening on
2 them. They're just open.

3 MR. SCHNEIDER: Well, yes. And actually,
4 this would -- this elevation here will better show
5 what I just described, the fact that the building
6 stops before you actually get the screening, and the
7 screening sits out away from the building, and
8 significantly higher in order to provide the
9 screening required.

10 MR. TURNBULL: By those windows?

11 MS. MOLDENHAUER: So, Mr. Turnbull, if you
12 look at the large image on the screen.

13 MR. SCHNEIDER: Yeah.

14 MS. MOLDENHAUER: Where my mouse is, is where
15 you'd actually would walk up. And then the
16 screening, as just indicated, would actually step
17 away from the building providing that screening from
18 that vantage point.

19 MR. SCHNEIDER: Correct.

20 MR. TURNBULL: Okay. But go back down to the
21 dash line where the windows are toward the right.
22 How are you screening those windows in? I mean, if
23 we're talking about energy --

24 MR. SCHNEIDER: Oh, are you talking about --
25 he's talking about this area over here. We created a

1 little view window where we control the majority of
2 day lighting and solar gain, but we actually still
3 provided a view window, sort of a framed view through
4 that part of the façade, the screen.

5 MR. HART: So this is -- if I may? This is
6 somewhat, on a much smaller scale, similar to the
7 African/American Museum. You have a screen that's in
8 front of a glass kind of -- I don't want to say
9 partitioned wall, but that's --

10 MR. SCHNEIDER: Yeah. That's a terrific
11 precedent, and that actually has some view windows
12 cut into it.

13 MR. HART: I mean, it's a much smaller scale,
14 so it's --

15 MR. SCHNEIDER: Exactly. Exactly.

16 MR. TURNBULL: Okay.

17 MR. SCHNEIDER: Yeah.

18 MS. MOLDENHAUER: Are we okay now to proceed
19 to community input?

20 CHAIRMAN HILL: No, that was helpful. Thank
21 you.

22 MS. MOLDENHAUER: That helpful?

23 CHAIRMAN HILL: Yeah.

24 MR. SCHNEIDER: Okay.

25 MS. MOLDENHAUER: Okay.

1 MS. McCLENDON: Okay. The Marvin Gaye
2 recreation project is a two-phase project, so we
3 started with phase 1, which was the playground. And
4 it's very critical that we bring in the community
5 when we start the design process in construction.
6 So, the playground was started in 2013, actually, in
7 March 2013, and we completed the project in January
8 and we had two community meetings then, March 20th,
9 2013, and July 17th, 2014.

10 We then moved into Phase 2, which is the
11 building. And again, through the process we include
12 the community. And we had seven meetings since 2015,
13 once we had brought on the architect. The first
14 meeting was August 10th, 2015, September 14th, 2015,
15 April 11th, 2016, June 20th, 2016, August 24th, 2016,
16 and then we had October 10th, 2016, and November
17 10th, 2016.

18 And at those times when we were with the ANC
19 community and talked about the Marvin Gaye project
20 and the new facility. So, we were under the
21 impression that the community is aware that the
22 project has been going on now for almost several
23 years, through the process.

24 MS. MOLDENHAUER: And can you identify -- so,
25 you attended the November 10th, ANC meeting. Is that

1 correct?

2 MS. McCLENDON: Yes.

3 MS. MOLDENHAUER: And can you identify the
4 main question that the ANC had outstanding that they
5 wanted to address in January?

6 MS. McCLENDON: The main question they had is
7 also during construction on DGS projects they do
8 invite -- they have an outreach project where they
9 ask for the ward -- I mean, for the contract to hire
10 some people from the ward to do some of the work.
11 And that seemed to be their biggest question. And
12 since they weren't aware of the project, they wanted
13 to be sure that the contractor was going to hire some
14 people from the ward to work on the project.

15 So, that is something that happens outside of
16 DGS. It's another agency that does it. It's a First
17 Source, is the name of the agency that does -- they
18 go through for this outreach and not -- so, it
19 shouldn't affect the project at all.

20 MR. HART: And as part of this project you
21 have just listed, and I didn't take all the actual
22 dates.

23 MS. McCLENDON: Oh, right.

24 MR. HART: But it's fine. You listed the
25 number of meetings that you had for the project?

1 MS. McCLENDON: Yes, with the ANC. Uh-huh.

2 MR. HART: It seems like a lot of meetings
3 with the ANC, and it seems as though when you do that
4 -- I mean, I've had community meetings that I've had
5 to organization as well, that seems to be the --
6 there are issues that you are trying to address
7 throughout that kind of process. Or, there are
8 things that are being raised as, you know, as you're
9 moving along.

10 And so, I don't want to go through each of
11 the meetings. It's more just -- it seems as though
12 this issue with the hiring is one of the -- the
13 actual construction of it is one if you -- and you
14 know, we've received this e-mail regarding this
15 parking, which is not the question that you're
16 raising here. It's more about as these events happen
17 at this facility there are a number of people that
18 actually come to the facility. And one parking space
19 or not is not going to be enough for it. It seems as
20 though the issue that's here. But can you speak to a
21 little bit about the kind of neighborhood parking
22 issue it seems like they're raising.

23 MS. McCLENDON: Well, the only thing I know
24 they're talking about neighborhood parking is -- has
25 been during when they have a basketball tournament,

1 which happens in the summer, with the outdoor
2 basketball courts. And there is no parking there
3 now, so I guess there may be some concern that once
4 we build a new center and we still have the
5 basketball court that there will still be some impact
6 to the parking.

7 But they have -- the other ANC has now looked
8 into DDOT, and trying to look at some other
9 regulations they could put in the neighborhood so
10 that the residents that live there would only have,
11 you know, the zoning opportunity to park there, and
12 not people who are coming to the basketball.

13 So, I was not aware that one --

14 MS. MOLDENHAUER: And so, as I think you
15 brought up, you know, Board Member Hart, is that
16 there's only one parking space required, that one
17 parking space is not going to address a need when
18 there is a single event throughout the entire year.
19 We did hear testimony or discussion amongst the
20 community, but the community did, I think,
21 acknowledge and we do have, as I said, Dr. you know,
22 Graffe here today to testify as to the SMD member for
23 the ANC. But the community did acknowledge that the
24 relief that we're requesting, really, is not related
25 to their concerns on the tournament, but rather that

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1 it's an opportunity to do dialog with, you know,
2 program requirements, discussing this, and to have
3 the community understand that they need to work with
4 DDOT and the D.C. Police Department, you know, to
5 better coordinate that one event.

6 But from a zoning perspective, that one event
7 is not really specifically related to this building
8 or the request for the two areas of relief.

9 CHAIRMAN HILL: So, again, I read, there were
10 seven meetings.

11 MS. MOLDENHAUER: Right.

12 CHAIRMAN HILL: Were those all with the ANCs,
13 or how did you -- what seven meetings did you do?

14 MS. MOLDENHAUER: Yes.

15 CHAIRMAN HILL: You didn't go to the ANC
16 meeting seven times.

17 MS. McCLENDON: No, we went to the -- was it
18 SMD, I guess?

19 MS. MOLDENHAUER: So, there were multiple
20 different meetings. We attended both the northeast
21 boundary civic association meeting, ANC meetings,
22 they had community meetings discussing the design, so
23 that there was meetings that were both coordinated
24 through and inviting the public regarding the overall
25 project. And so, that includes the variety of

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1 different types of meetings that were coordinated
2 over the course of the initial design concept for the
3 project, review, and then we did have, you know, I
4 believe two specific meetings where we discussed the
5 zoning and there were no specific questions about the
6 zoning, per se, other than the only question that was
7 raised that I heard was the question of the hiring
8 and then the overall comments about the tournament,
9 which we all agreed was really not specifically
10 related to this, these areas of relief.

11 MR. TURNBULL: The ANC, though, did not vote
12 on this?

13 MS. MOLDENHAUER: They did not vote, no.
14 They asked for us to come back in January to address
15 the hiring issue.

16 MR. TURNBULL: Oh, so they wanted you to come
17 back in January.

18 MS. MOLDENHAUER: To address the hiring
19 issue, yes, which we indicated was not germane to the
20 zoning relief and we asked them to vote on that
21 issue.

22 As I indicated, you know, the project is
23 literally scheduled for -- when is the
24 groundbreaking?

25 MS. McCLENDON: The groundbreaking is

1 Saturday. We have a contractor on board and we've
2 also closed the existing center. So, it's in our
3 best -- and the community, to get started on this
4 project.

5 MS. MOLDENHAUER: So, you know, we would ask
6 that the Board, you know, if they find that we have
7 satisfied the legal standards for the special
8 exception, that they would support this case and move
9 forward given the fact, one, we actually attended
10 that ANC on November 10th, and there was nothing
11 filed until this morning, which obviously did not
12 give us the time to properly respond to it or address
13 it prior to this morning.

14 CHAIRMAN HILL: Okay. This again, this is
15 ANC 7C, right? Okay. Okay.

16 MS. MOLDENHAUER: Yes, correct.

17 CHAIRMAN HILL: All right. Okay. As far as
18 -- and I'm sorry, how do you say your name. Ms. --
19 how do you say your last name?

20 MS. McCLENDON: McClendon.

21 CHAIRMAN HILL: McClendon?

22 MS. McCLENDON: Uh-huh.

23 CHAIRMAN HILL: So, Ms. McClendon, and I know
24 that it's not germane to the case in terms of the
25 parking for the basketball tournament. So, but what

1 did DGS say anything about how they -- and I might
2 have missed it when you're talking about like, what
3 things that they -- you conveyed to the community in
4 terms of that tournament and what, you know, they
5 might be able to alleviate the parking, or if there's
6 any kind of trash issues afterwards.

7 MS. McCLENDON: Yes. And we talked to the
8 community about that and some of that, DGS does go
9 out, or DPW, I think, they do go out and pick up the
10 trash. But the community did have an issue with the
11 timing of that.

12 So, DPR, Department of Parks and Recs, is
13 working to make sure that they can take care of those
14 kind of incidents hence forward.

15 We also had talked to the community again to
16 discuss with DDOT, and the police as Ms. Moldenhauer
17 had mentioned, to you know, minimize or alleviate
18 some of those problems they're having at the park.

19 CHAIRMAN HILL: Is there a particular person
20 at the community center that could maybe be a conduit
21 with the community. Like, is there a person that you
22 can assign to that role?

23 MS. McCLENDON: Not that I know of.

24 CHAIRMAN HILL: There's not an administrator?
25 I'm saying, there's not a fulltime person there or?

1 MS. McCLENDON: They have a site manager on
2 site, yes.

3 CHAIRMAN HILL: Okay.

4 MS. McCLENDON: For the center.

5 CHAIRMAN HILL: Okay. And maybe that site
6 manager could work with the ANC on that particular
7 tournament day, and making sure that things get
8 cleaned up afterwards?

9 MS. McCLENDON: Yes, that could happen. Yes.

10 CHAIRMAN HILL: Okay. Okay. Does anyone
11 have any more questions for the applicant? Okay.
12 All right. Then, I'm going to turn to the Office of
13 Planning.

14 MS. FOTHERGILL: Good morning. For the
15 record, I'm Anne Fothergill with the Office of
16 Planning, and we rest on the record in support of the
17 applicant and recommend approval of the special
18 exception relief.

19 I'm happy to answer any questions.

20 CHAIRMAN HILL: Does anyone have any
21 questions for the Office of Planning?

22 MR. HART: Just a quick question about the
23 building in the 100-year floodplain. That's, as a
24 federal employee we have to deal with that issue as
25 well and I just wanted to understand a little bit

1 further about kind of doing that. Are there any
2 things that we need to be aware of? I asked about
3 just the, you know, the porous pavement or some other
4 thing that they may need to do and I just wanted to
5 see if there was --

6 MS. McCLENDON: I'm not sure off the top of
7 my head. I know the specific answers of what
8 requirements there are, but I'm sure DGS might be
9 able to answer that, or I can get back to you with
10 more information.

11 MR. HART: Thank you.

12 CHAIRMAN HILL: Okay. All right. Does the
13 applicant have any questions for the Office of
14 Planning?

15 MS. MOLDENHAUER: No questions of Office of
16 Planning. Thank you.

17 CHAIRMAN HILL: Okay. Well then, with that
18 I'm going to go ahead and see who's here. Is anyone
19 here from the ANC? Is anyone here from the ANC that
20 would like to speak? Would you like to speak? Would
21 you like to come forward?

22 UNIDENTIFIED SPEAKER: [Speaking off mic.]

23 CHAIRMAN HILL: Okay. I'm sorry. You have
24 to say it in the microphone if you wouldn't mind.
25 Now that -- I mean, you might as well come on forward

1 and tell us what you think because you are here. You
2 came all the way out. Just come on out and identify
3 yourself.

4 Did you fill out two witness cards? Oh,
5 okay.

6 MS. MOLDENHAUER: Chairman Hill, I just -- on
7 a procedural point.

8 CHAIRMAN HILL: Sure.

9 MS. MOLDENHAUER: None of the witnesses today
10 were --

11 CHAIRMAN HILL: I just realized that. Thank
12 you so much, Ms. Moldenhauer.

13 MS. MOLDENHAUER: Sorry.

14 CHAIRMAN HILL: Ma'am, that's okay. If you
15 don't want to speak, you don't have to speak. Now,
16 just I'm going to --

17 [Pause.]

18 CHAIRMAN HILL: Okay. As I was asking for
19 witnesses I realized we hadn't sworn anyone in yet.
20 So, if you are here to testify in either support or
21 opposition for anything today, please go ahead and
22 stand so Mr. Moy can swear you in.

23 UNIDENTIFIED SPEAKER: On any case?

24 CHAIRMAN HILL: On any case. Thank you.

25 MR. MOY: Yeah, this is --

1 CHAIRMAN HILL: We'll swear in when she comes
2 in. Okay. Somebody is coming in now. Yeah, would
3 you like to swear in the child also? Okay. There we
4 go. Perfect.

5 MR. MOY: Yes, I'm going to make this
6 swearing in retroactive.

7 [Oath administered to the participants.]

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

10 CHAIRMAN HILL: Thank you, Mr. Moy. I
11 apologize. This was on my notes also to do but --

12 MR. MOY: Oh, that's all right. I should
13 have remembered.

14 CHAIRMAN HILL: Yeah, technically that one's
15 on you, so that's okay.

16 All right. So, as I was saying, was there
17 anyone here from the ANC who would like to speak, and
18 I didn't see anyone step forward. Is there anyone
19 here who would like to speak in support of the
20 application? Would anyone like to speak in support
21 of the application?

22 Would anyone like to speak in opposition of
23 the application? Okay. No one like to speak in
24 opposition. Okay.

25 All right. Well, then that being the case,

1 does the Board have any questions for the applicant?

2 MR. HART: No.

3 CHAIRMAN HILL: Okay. Does the applicant
4 have anything further they'd like to say?

5 MS. MOLDENHAUER: No, there are two areas of
6 special exceptions. We believe we've satisfied the
7 standards and we would ask the Board for a summary
8 order.

9 CHAIRMAN HILL: Okay. All right. With that
10 I'm going to close the hearing. Is the Board ready
11 to deliberate? Would someone like to begin?

12 I can go ahead and start. I mean, I think
13 that they've satisfied the requirements. I was happy
14 to hear that, and I would like again to ask DGS to
15 speak to whoever the fulltime person is that's there
16 to make sure they work with the community for that
17 particular basketball event, and any trash issues or
18 concerns that the community has.

19 I think that also the fact that the
20 groundbreaking is Saturday. That's, you know, your -
21 - you're pretty fortunate. This is great. It's
22 working out. Or at least it seems to be working out.

23 And so, I would go ahead, unless the Board
24 has any other questions in terms of deliberation,
25 make a motion.

1 MR. TURNBULL: I just had a comment. I mean,
2 on many levels I hate not to ignore the ANC. I mean,
3 I think that's one of the primary groups that
4 represents the citizens of the city. And so, to
5 ignore them is counter to what I always like to do.
6 But since there's people here from the ANC that don't
7 want to talk about it, I think that's unfortunate but
8 I guess we'll have to live with that.

9 I think on the other level, I think the
10 concern, the SMD letter, I would accept it in to the
11 record. I mean, that's just my feeling.

12 CHAIRMAN HILL: I'm fine with that.

13 MR. TURNBULL: The only thing is whether the
14 thing about the first source, and if you're
15 contracting is it your intent to --

16 MS. McCLENDON: Yeah, it's in our contract.
17 This is in his contract, that he --

18 MR. TURNBULL: Okay. I just wanted to be
19 clarified on that. Other than that, I have no other
20 comments.

21 CHAIRMAN HILL: Okay. And I'll continue, as
22 you do mention that, Commissioner Turnbull, I also
23 don't like being -- it's kind of an odd situation
24 right now because it does seem as though there's
25 people from the ANC that are in agreement. However,

1 you know, there is a -- whether people are shy, or I
2 don't know. So, but the letter that came in from the
3 ANC was again kind of addressing that basketball --
4 the tournament issue, and that wasn't necessarily
5 going to pertain to the one parking space in relief,
6 so that's where I was kind of -- you know, I
7 definitely am you know, all -- you know, the ANC is
8 anyone who has now watched me over a year and a half
9 knows that the ANC is definitely what I take a lot of
10 consideration in, in so the community. So, I also, I
11 appreciate you bringing that up.

12 MR. TURNBULL: Yeah. No, and you're right,
13 the issue that they brought up is not really germane
14 to what the relief they're looking for. It's just a,
15 I think from a technical standpoint it would be nice
16 to see an ANC report on record in a case.

17 CHAIRMAN HILL: I agree. So, yes, sir.

18 MR. HART: Just a few points. One, I thought
19 it was very helpful to hear from DGS. I think that
20 in some ways this is some of the things we want to
21 see in terms of not requiring parking just because
22 it's in the regulations. And, I understand that
23 there are some issues regarding the community and the
24 neighbors. It seems as though, as the other board
25 members have said it, have stated, that that issue is

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1 somewhat of a different issue with regard to an event
2 that's actually occurring at the park.

3 And so, I think that it's helpful to not have
4 to have the parking, you know, the impervious surface
5 being placed in a, especially in the 100-year
6 floodplain, just because the regulations say to do
7 that. And it would probably require fairly extensive
8 parking area to actually, as you've noted, the
9 architect noted, to actually turn around.

10 So, I think all of that is helpful to see
11 that this does not -- this is actually, in some ways,
12 kind of working well, so that we can have a
13 discussion about this and understand that this is not
14 necessary to occur.

15 I also think that the applicant has satisfied
16 my, you know, interest in this as well as the --
17 what's required in the zoning as well. So, I
18 appreciate you all for coming in and doing this. So,
19 thank you.

20 CHAIRMAN HILL: Yeah, and again, you know I
21 wouldn't want to hold up something for the January
22 ANC meeting where, you know, the community is now
23 waiting for this to come online and they're in the
24 next phase of it. And so, again with that, I would
25 go ahead and make a motion to approve Application No.

1 19379 as captioned by the secretary.

2 MR. HART: Seconded.

3 CHAIRMAN HILL: Motion been made and
4 seconded.

5 [Vote taken.]

6 CHAIRMAN HILL: Motion carries, Mr. Moy.

7 MR. MOY: Staff would record the vote as
8 three, to zero, to two. This is on the motion of
9 Chairman Hill to approve the application for the two
10 areas of relief under the special exception.

11 Seconded the motion, Mr. Hart. Also in support, Mr.
12 Michael Turnbull. Board seat vacant and a board
13 member not present with us today. Motion carries,
14 sir.

15 MR. TURNBULL: Thank you. If we can get a
16 full order, Mr. Moy?

17 MR. MOY: We can do a summary order, unless
18 you --

19 MR. TURNBULL: I'm just kidding. Can we get
20 a summary order, Mr. Moy.

21 MR. MOY: Double-sized full order? No,
22 summary order.

23 MR. TURNBULL: Summary order would be great.

24 MR. MOY: Summary order.

25 MR. TURNBULL: Thank you. Thank you so much.

1 MS. MOLDENHAUER: Thank you very much.

2 CHAIRMAN HILL: Guys, we're going to take a
3 quick five minute break. Okay? Thank you.

4 [Off the record from 10:41 a.m. to 10:48
5 a.m.]

6 CHAIRMAN HILL: All right. If we can go
7 ahead and get started again?

8 MR. MOY: Thank you, Mr. Chairman. So, the
9 next case application before the Board is, I believe,
10 Application No. 19387. This is of Graham Smith and
11 Alexis Diao, D-I-A-O, as captioned and advertised for
12 special exception relief under the RF use
13 requirements of subtitle U, Section 320.2 and 320.2A,
14 and a variance from the 900-square foot per dwelling
15 unit requirements of Subtitle U, Section 320.2D,
16 which would permit the conversion of a flat into a
17 three-unit apartment house, RF-1 Zone, 3616 11th
18 Street Northwest, Square 2829, Lot 169.

19 CHAIRMAN HILL: Okay. Great. Thank you, Mr.
20 Moy. Okay, good morning, again. If you wouldn't
21 mind just introducing yourselves from my right to
22 left.

23 MR. SMITH: Hi. I'm Graham Smith. I'm one
24 of the homeowners, along with my wife.

25 MS. DIAO: Alexis Diao.

1 MS. AGBOOLA: Ajoke Agboola, land use counsel
2 for the applicant.

3 MS. MOLDENHAUER: Good morning, Meredith
4 Moldenhauer, land use counsel for the application.

5 MR. GRONNING: Good morning. I'm Eric
6 Gronning, the architect for the project.

7 CHAIRMAN HILL: I apologize. How do you say
8 your name again?

9 MS. AGBOOLA: Agboola.

10 CHAIRMAN HILL: Agboola. Agboola. Last name
11 Agboola.

12 MS. AGBOOLA: Uh-huh.

13 CHAIRMAN HILL: Okay.

14 MS. AGBOOLA: Thank you.

15 CHAIRMAN HILL: Well, I hope I get it right
16 eventually.

17 MS. AGBOOLA: It's okay. It's fine.

18 CHAIRMAN HILL: Okay. All right. So, if you
19 would go ahead. And then the Board members are
20 welcome to chime in now if they have anything
21 specific they'd like to talk about. I would like to
22 hear basically a full presentation because you know,
23 where the Office of Planning is in their report and
24 how they've reached their decision. And so that kind
25 of puts most of the focus that I would be interested

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1 in on your presentation. So, do any Board members
2 have anything --

3 MR. TURNBULL: Well, Mr. Chair, I would echo
4 your -- I think the key is on the variances. The
5 first prong, I think. OP's major concern. And you
6 have to satisfy that. So, I think we would like you
7 to address how you feel you meet that. And we have a
8 -- I have a comment about the architecture at one
9 point, but I'll get to that later.

10 CHAIRMAN HILL: Okay, great. Thank you, Mr.
11 Turnbull.

12 MS. AGBOOLA: Okay. I'm going to go ahead
13 and start.

14 So, the property is located in Columbia
15 Heights. The address is 3616 11th Street Northwest.
16 The property is in the R-F-1 Zoning District, and it
17 occupies Lot 169, which is a new lot that has not
18 been reflected in the zoning map or in public record.
19 Originally, when the applicant purchased the property
20 it was through speculation, two lots. So they had
21 purchased the first portion, which was Lot 167. And
22 then eventually over the years, were able to purchase
23 Lot 851 and consolidate those two lots to create a
24 new Lot 169.

25 The project --

1 CHAIRMAN HILL: May I just ask a question?
2 I'm sorry to interrupt you. The lot, 851, what was
3 on it?

4 MS. AGBOOLA: I'm going to let Graham answer
5 that question.

6 CHAIRMAN HILL: Okay.

7 MR. SMITH: It was sort of oddly separated in
8 the 60s and given to somebody's son, who was a minor
9 at the time. He never realized that he owned it and
10 eventually it built up like \$20,000 in back taxes.
11 It was just our back yard, but basically it used to
12 be together back in the day and it was separated, and
13 we brought it back together and turned it into one
14 lot.

15 CHAIRMAN HILL: So, that's good. So, you
16 tracked the person down?

17 MR. SMITH: Yeah.

18 CHAIRMAN HILL: Okay. Thank you.

19 MS. MOLDENHAUER: But was anything built on
20 it?

21 MR. SMITH: There's nothing built on it.
22 It's just -- I mean, you look at it, it looks like it
23 should be the back yard, and now it is.

24 CHAIRMAN HILL: Sure. Okay, great. Thank
25 you.

1 MS. AGBOOLA: The proposed project -- the
2 existing structure is a two-unit dwelling. It is a
3 flat. And the proposed project would convert the
4 flat to a three-unit apartment house that would be
5 owner occupied. Graham and Alexis would live at the
6 property.

7 And before we get into the architectural
8 plans, I'd like to give Graham just a few seconds to
9 talk about why they're seeking to do this project.

10 CHAIRMAN HILL: Graham, you can take all the
11 time you like. Just to let you know.

12 MR. SMITH: That's very kind.

13 So, basically, I moved here, into this house
14 in 2003 when I came down to D.C. to work for NPR.
15 And it was at the time, a group house. It's sort of
16 weird because there is an apartment on the top floor
17 and apartment on the first floor, and the basement
18 was just empty, kind of bad concrete and lally
19 columns holding up these broken joists.

20 And I was able to buy it in 2011, and
21 basically Lexi and I met and we've started a family.
22 And what was perfectly appropriate for a bunch of
23 young people living in a group house is just not
24 really safe or appropriate for a family. So, we've
25 been working for a long time to try to figure out a

1 way to make it into where there's a family-sized
2 space that we can afford to, you know, live in and
3 have some rental space that helps us pay for it.

4 MS. AGBOOLA: Okay. Now, I'm going to turn
5 over to the architect, Eric Gronning, who will talk
6 about the property and talk about the architectural
7 plans. Mr. Gronning lives in the neighborhood. He
8 has been in the property and so I'll let him start.

9 MR. GRONNING: Sorry. Good morning. This
10 project is an existing row house. It's two stories,
11 plus a cellar and it was built around 1908. It has
12 masonry walls, two party walls in the front and rear
13 wall. It's currently a flat with a unit on the first
14 floor and a separate unit on the second floor and the
15 cellar is currently unused.

16 There is currently no parking at the
17 residence. The property is in a state of disrepair.
18 It has been neglected over the years and I think you
19 can see from this photo on the left, that the
20 basement has undergone, over the years, there's just
21 a few lally columns holding up the floors. I mean,
22 it's in pretty sad state.

23 I recommended to the owners that they should
24 gut out the entire residence because it's just
25 structurally not sound at this point.

1 I think we switched slides here. You can see
2 on the next slide, we just put a level on the steps
3 to show you that they're probably sloping about an
4 inch, and there's been a lot of settling in the
5 property. Next slide.

6 On the left, you can see our proposed front
7 façade. We are proposing to add a story. There is
8 an existing spire that you see to the left, and we
9 are introducing two dormers into that façade for
10 light to the third floor, which is behind that
11 mansard roof.

12 On the right you can see the site plan and
13 I'd like to point out the two spots that we're adding
14 to the back of the property, which now abuts the
15 alley.

16 On the left here, you can see the existing
17 cellar plan, which is not currently in use. On the
18 right is the proposed -- this will be a separate
19 unit. There's a bedroom towards the back, a small
20 den area in the center, and living and kitchen
21 towards to the front of the property.

22 Next slide is the existing first floor plan.
23 This is one of the existing units in the property
24 currently. There is a kitchen area in the back, a
25 living area in the front, and two very small bedrooms

1 located off of a nonconforming light well toward the
2 center of the property.

3 The right-hand image shows our proposed
4 first-floor plan. This will also be a separate unit,
5 living area towards the front, bedroom in the back,
6 and a small den in the center of the plan.

7 And if we move to the next floor, this will
8 be the main residence. Let me back up. On the left
9 is the existing second floor, which is currently a
10 separate unit. Similar to the first floor kitchen
11 and living in the back, small bedrooms towards the
12 center of the property also bordering this non-
13 conforming court. And living area towards the front.

14 The proposed layout would be, there would be
15 one bedroom towards the front of the property. The
16 kitchen and living is on this floor, and steps lead
17 to the third floor. If we can switch, which will
18 contain two bedrooms and a small den in the center.

19 Next slide. We're showing here some
20 contextual photographs of buildings that are in the
21 neighborhood. I also live in this neighborhood and
22 own a property across the alley. One thing that's
23 unique to this area of Washington is the diverse
24 types of buildings and some of the slides actually
25 show the condition that we're trying to recreate

1 here. We're trying to design something that isn't
2 balanced with, you know, the language that exists in
3 the neighborhood. So, you can see mansard roofs with
4 dormers. We also have spires with mansard roofs and
5 this condition that we're proposing, or the design
6 that we're proposing something that, you know, we
7 took from existing buildings in this area. I can
8 answer any other questions if there are any.

9 And then the rendering we're showing here,
10 looking to the south up 11th Street, you can see that
11 even on this street you'll find an eclectic mix of
12 conditions at the roof line. And we're just trying
13 to prepare something that fits in with the balance
14 and the rhythm of the street, using materials that
15 are, you know, found you know, in this area of
16 Washington. We're proposing to keep the existing
17 brick façade. It will need some repair. We'll have
18 a synthetic slate roof which is consistent with
19 roofing materials on the neighborhood, and we're
20 trying to incorporate the spire with the mansard roof
21 and just trying to achieve a balance with that which
22 I think this demonstrates.

23 This is just landscape plan that shows the
24 stairs that were digging to the basement and you can
25 see the property to the right has an existing stair

1 currently.

2 MS. AGBOOLA: Thank you, Eric. Do you have
3 any questions for the architect before we move on to
4 the zoning relief?

5 MR. TURNBULL: Yeah, I just had -- first of
6 all I think, grateful for your PowerPoint
7 presentation because it -- your drawings originally
8 submitted doesn't do justice to what you're trying to
9 do. I think when I first looked at it, it looked
10 like that in the front on the third floor was flat.
11 And it really looked out of place when I first saw
12 it. But now I see your perspective and I can see
13 where you are angling it back as if it's a mansard.

14 MR. GRONNING: That's correct.

15 MR. TURNBULL: The question, one of the
16 questions is, a lot of times typically in the
17 neighborhood, it looks like here you're running the
18 slate roof from edge to edge. Slate or artificial
19 slate, I'm not sure what you're using. But a lot of
20 the existing row houses have a coping at the party
21 walls. And I'm just wondering why you weren't trying
22 to reintroduce that to keep -- there's several row --
23 if I look down further here, you can see the coping -
24 - the clay tile coping on the party walls, and I'm
25 just wondering why you hadn't thought about doing

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1 that, or is it --

2 MR. GRONNING: If I could, that's a really
3 good suggestion. I hadn't thought about that. I
4 mean, when we talked to Eric at first we said, you
5 know, look we're not coming in as developers. We're
6 not trying to stick you in the biggest thing we
7 possibly can. We want to have something that's going
8 to work, that our neighbors are going to like, and
9 we're going to do it, we're not going to like try to
10 get away with a lot of stuff. We're just going to
11 try to follow all the rules and do everything.
12 Right. I mean, my idea is, if our neighbors ever
13 decided to like expand, for those five houses that
14 are together would look like they've been there for
15 100 years.

16 MR. TURNBULL: Uh-huh.

17 MR. SMITH: I mean, and that's what we wanted
18 to do because we all know that there's a lot of pop-
19 ups that don't work around and we've wanted to make
20 something that we could live in and love and that
21 people would like.

22 MR. GRONNING: If I could answer that? I
23 think that's a great idea. You know, this is you
24 know, in process and I think that would be actually a
25 nice thing to add to this project.

1 MR. TURNBULL: Yeah, I'm not recommending it
2 one way or another. I was just looking at the -- as
3 you walk down the street and you look at it, I think
4 you're attempt -- and I guess the only thing would be
5 the angel. Is that the -- I guess from the
6 standpoint of the living space, what works the best,
7 or can it be shifted more or --

8 MR. GRONNING: I think, you know, we just
9 tried to keep it in balance. You know, we tried to
10 mimic some of the angels that we find in that area,
11 but it doesn't really -- I mean, obviously it does
12 have some effect on the space behind it, but it could
13 be sloped a little bit, a little bit more, and you
14 know, I think putting the two flanking parapet walls
15 actually gives it a good place to stop the roofing.
16 It just makes sense from a construction point of view
17 as well, and I think that's a, it's a very great --

18 MR. TURNBULL: Yeah, well I think you, as I
19 say, I'm glad that we have the PowerPoint
20 presentation because when I first looked at it you
21 simply saw a white space back there and you really
22 didn't know what was going on. It looked kind of
23 like, this isn't going to fit in at all. But after
24 seeing the PowerPoint I can see where you're really
25 trying to blend it in, so I appreciate that. I think

1 it's a very sensitive approach.

2 MR. GRONNING: Thank you.

3 MS. AGBOOLA: Do you have any other questions
4 for the architect?

5 CHAIRMAN HILL: Mr. Hart? No, but I also
6 would like to mention, I do like the PowerPoint too.
7 It's great, like, you know, let's keep doing the
8 PowerPoint. Not that I think that will change, but
9 yes.

10 MS. AGBOOLA: Okay. So, in order to do this
11 project and convert this flat to an owner occupied
12 three-unit apartment house, the applicant is seeking
13 a special exception from Subtitle U, 320.2, a special
14 exception to go to 40-feet in height, a waiver for
15 the modification of the turret, the front part of the
16 roofline, which the Office of Planning does not
17 object to.

18 And we also seek a lot area variance because
19 the lot -- one of the requirements of U, 230.2 is 900
20 square feet of lot area per dwelling unit. The
21 property has 2,556 square feet and therefore is 144
22 square feet short.

23 Just to review the area variance standard, we
24 are required to prove that the exceptional conditions
25 at the property result in a practical hard practical

1 difficulty for the applicant in that complying with
2 the Zoning Regulations would be unnecessarily
3 burdensome. This property is affected by an
4 exceptional conditions for a confluence -- for a
5 variety of reasons that combined result in a
6 confluence of factors. The property as was discussed
7 earlier and as you saw the pictures, is in a
8 deteriorated condition and requires substantial
9 rehabilitation. The property is on a large lot size.
10 It's 75 -- it's larger than 75 percent of the other
11 properties within the square. It has a peculiar
12 subdivision history which has resulted in the
13 applicant having to purchase their rear yard, and an
14 inability to purchase any other land to meet the lot
15 area requirement. And it has a unique existing unit
16 configuration which has resulted in two small
17 dwelling units that are not family sized appropriate,
18 instead of what is most often found in a flat where
19 you already have an existing family sized unit, and
20 then a smaller unit.

21 The Board has, in previous cases, and this
22 has been affirmed by the Court of Appeals, found that
23 a property having a deteriorated condition is an
24 exceptional situation and it does make the property
25 unique. In prior cases the Board found that deferred

1 maintenance by a prior property owner that resulted
2 in a property needing a lot of work was an
3 exceptional condition. The Board has considered it
4 in a case where extended vacancy and the deferred
5 maintenance of the property resulted in a dilapidated
6 building that required a lot of work as an
7 exceptional situation.

8 And the Board has found that even having
9 something like an interior load bearing wall that
10 needs to be replaced can constitute an exceptional
11 condition of the property.

12 In this particular case, as I can go back to
13 the pictures, this property is in a deteriorated
14 condition. There are temporary columns in the
15 basement holding the property up. The property is
16 structurally unsound as was discussed by the
17 architect, there is water damage, there is electrical
18 work that needs to be done. The property needs to be
19 rehabilitated in order to be structurally sound and
20 safe for a family.

21 And that is an exceptional condition and the
22 Board has found that in prior cases. Those
23 conditions have resulted in a practical difficulty
24 for the applicant because it has resulted in a
25 situation where the applicant needs to do more than

1 just renovate the property. The property needs to be
2 rehabilitated. And the applicant cannot increase the
3 lot area any more. There's no ability for the
4 applicant to acquire an additional 144 square feet of
5 land to comply with the Zoning Regulations.

6 And I just wanted to point out that the
7 relief being requested and the severity of relief
8 being requested is something that the Board can
9 consider. In *Gill Martin v. the BZA*, the Court of
10 Appeals stated that the BZA has the flexibility to
11 consider a number of factors, including but not
12 limited to the weight of the burden of strict
13 compliance, the severity of the variances requested,
14 and the effect the proposed variances would have on
15 the overall zone plan.

16 And I just wanted to show you in this chart
17 that while they are seeking a lot area relief, the
18 severity of the relief they are seeking is minor.
19 Each unit would only be short 48 square feet. So,
20 over all, the lot area per unit is really much higher
21 than what the Board has -- it's higher than what the
22 Board has approved in past circumstances, and this
23 project would allow an existing building that is in
24 terrible condition to be rehabilitated to have a
25 family sized unit, to provide two rental units in a

1 neighborhood that is amenity rich and transit
2 friendly.

3 The property itself is large. It has an
4 exceptionally deep rear yard. They're not doing a
5 bump back. I have a picture of the rear. They're
6 not doing a bump back. The properties along the back
7 have a lot of windows and are flat, so these
8 properties here have -- that's where they get a
9 considerable amount of light from. The applicant is
10 not doing a bump back, and the applicant will be
11 providing two off-street parking spaces which
12 currently don't exist at this property. Currently
13 there's no parking being provided on site.

14 In addition, the variance relief will allow
15 the applicant to address the significant
16 rehabilitation this property needs, the removal of
17 lead paint, fixing the structurally unsound
18 conditions, and it creates a family sized unit for
19 Graham and Alexis.

20 We have done a considerable amount of
21 community outreach. Before they even filed the BZA
22 application, they worked with their architect, they
23 talked to members of their community to really figure
24 out what kind of design would be appropriate here.
25 We have 23 letters of support from neighbors.

1 Several of those letters are individualized
2 personalized letters of support. We had two
3 community meetings with the zoning chair for ANC 1A
4 prior to going to the ANC meeting, and then the ANC
5 voted to support all areas of relief.

6 I would like to reserve some time for
7 rebuttal and open it up to questions.

8 CHAIRMAN HILL: Okay. Thank you. I had a
9 quick question. On slide 24, the second case done,
10 the 19057, do you happen to know enough about it that
11 you can kind of walk me through that, because I'm a
12 little confused as to -- so, there's 27 units and
13 then the lot area per unit was only 239. Is that
14 what you're saying there?

15 MS. MOLDENHAUER: So, that was a case that my
16 firm handled and it was a request for relief and we
17 received approval from the Board. In that case
18 Office of Planning did not support the case for that
19 degree of number of relief. It was a large
20 institutional building where there -- the total lot
21 area was 6,641 square feet. And so when we ended up
22 requesting 27 units there were only, at the end of
23 the day, 239 square feet per unit, instead of the
24 requested 900 square feet per unit. So, the degree
25 of relief that was sought and approved in that case

1 is substantially more. In this case we are asking
2 for, as Ms. Agboola indicated, only was it, 40 -- no.
3 What's the difference? Forty-eight square feet per
4 unit so that you can see in regard to the delta or
5 the degree of relief that the Board has sought in
6 other case.

7 CHAIRMAN HILL: No, that's okay. Yeah. No,
8 I'm sorry. I just want to -- and I can't recall the
9 case off the top of my head, and I'm trying to figure
10 out -- yeah, so there was 27 units and each unit was
11 only having 239 square feet for each unit?

12 MS. MOLDENHAUER: It's not a question of the
13 unit size. It's a question of the land area divided
14 by the number of units. So, the units could end up
15 being 1,000 square feet. The regulation does not
16 regulate the physical size of the unit, it regulates
17 the number of units that can be located at a property
18 based on the land area divided by -- so, they want to
19 see, so if you have three times 900, your land area
20 has to be 2,700 square feet. If you don't have 2,700
21 square feet then you need to seek relief.

22 Here, we only have 2,556 square feet. So, in
23 order to kind of compare these what we do is we would
24 take the number and we would show you how far off
25 from that 900 square foot requirement those cases

1 were and those cases that got -- received approval
2 for that project, so you can see in case 18515, at
3 the end of the day that lot was so small, even those
4 six units were approved by this Board, ended up only
5 being 181 square feet per unit. Obviously a large
6 area of relief to the 900. Our site would be 852.

7 CHAIRMAN HILL: Okay. No, thank you. And I
8 misspoke. I understood what you're saying so I
9 appreciate that. Okay. That's it. That's all I've
10 got for that.

11 MR. TURNBULL: My laptop has stopped working
12 here. The neighbors on either side.

13 MS. AGBOOLA: We have communicated with both
14 neighbors and I'll let Graham speak to them, but they
15 have not written us a letter of support, but they are
16 aware of, or opposition. They are neutral. But they
17 are aware of the case and I can let Graham speak to
18 that a little bit.

19 This is one of our neighborhoods. It's a --
20 sorry, I don't know why I was using my finger. You
21 can't see my finger behind the screen. This is a
22 three-unit existing three-unit apartment house, and
23 the owner does not reside there and then this is a
24 single-family home and I can let Graham talk about
25 his communication with both of these neighbors.

1 MR. SMITH: Sure. Yeah. We've been in touch
2 with the folks, with Nefertiti, who owns the white
3 house that you see there.

4 MR. TURNBULL: You said Nefertiti?

5 MR. SMITH: Nefertiti, that's her first name.

6 MR. TURNBULL: Okay.

7 MR. SMITH: She hasn't -- is not in
8 opposition to it, she just wants to make sure that we
9 do it in a safe way that doesn't compromise her
10 property in any way. And folks, Patrick and Olga,
11 who live in the gray house there, honestly, like I
12 think Patrick supports us and Olga has got some
13 reservations, but not enough reservations to want to
14 oppose us.

15 She wrote to me recently and said she was
16 wondering about whether it would block if they ever
17 wanted to have solar. Which, because they're to the
18 south of us it doesn't actually block. So, I talked
19 to her about it and she was relieved to know that.

20 MR. TURNBULL: Okay. But neither one have
21 written letters in support or opposition.

22 MR. SMITH: Right.

23 MS. MOLDENHAUER: Correct. And we
24 communicated with them and they're very much aware of
25 the project, so if they had wanted to they had the

1 ability to file a letter both in support or in
2 opposition.

3 MR. TURNBULL: And to your best ability
4 you're not impacting any other mechanical vents or
5 flues up on the roof?

6 MS. AGBOOLA: Can, Eric, can you --

7 MR. GRONNING: Sorry, yeah. I can answer
8 that. There is an existing chimney on the north
9 property that is not built or currently being used
10 for wood fired, what do you call it, fireplaces.
11 Sorry.

12 MR. TURNBULL: Yeah.

13 MR. GRONNING: We will probably have to
14 extend that, but it's up to (simultaneous speech)
15 process.

16 MR. TURNBULL: You will extend that for them
17 as part of the project?

18 MR. GRONNING: Yes, I think we're going to be
19 compelled to. I'm not exactly sure yet, but since
20 it's not being used for wood fire, nor could it ever
21 be, it --

22 MR. TURNBULL: Is that in the record at all
23 that you would comply with that?

24 MS. MOLDENHAUER: It's not in the record, but
25 I do know that I've had conversations with the Zoning

1 Administrator and as counsel, and that if we can
2 prove that it's capped and that it's not --
3 throughout the city there are times when people have
4 a wood burning fire where they literally close it up
5 and they put drywall on top of it and it's just not
6 being used at all --

7 MR. TURNBULL: Right.

8 MS. MOLDENHAUER: If we can show that then it
9 would not be required. If that is then insufficient
10 then we would obviously be complying with all the
11 requirements in order to get a permit issued.

12 MR. TURNBULL: Getting back to the variance
13 test, are you saying that you can't keep this, once
14 you do the renovation, as a flat? In other words,
15 just two units? Is that --

16 MS. AGBOOLA: Yes. We're saying that due to
17 the exceptional condition of the property and the
18 extensive rehabilitation that is needed at the
19 property, in order for it to be feasible, three units
20 are needed.

21 MR. TURNBULL: And you've done a cost
22 analysis of that, or --

23 MR. GRONNING: Maybe I can add something to
24 that. I did send out for three, three bids from
25 contractors. Given the extent of the renovation

1 that's necessary here we're going to have to bring in
2 new water, bring in new electric, put in sprinklers.
3 Pretty much gut the entire thing due to the
4 structural conditions. The rear wall is also
5 crumbling. I mean, you could literally just pick
6 bricks right out of it. So, given the amount of work
7 that needs to be done in order to, you know, make
8 this a viable project in the first place, adding I
9 think an extra unit on, you know, the first floor in
10 terms of percentage of cost is really pretty
11 insignificant. I mean, we're just talking about a
12 kitchen at that point.

13 So, it was my recommendation in talking, you
14 know, to Graham and Lexi, that they should maybe look
15 at this as an option.

16 MR. TURNBULL: Okay. All right. Thank you.

17 CHAIRMAN HILL: Does anyone have any more
18 questions for the applicant at this time? Okay. I
19 just have to take a 30 second break before we turn to
20 the Office of Planning. Just give me one second.

21 [Off the record from 11:18 a.m. to 11:19
22 a.m.]

23 CHAIRMAN HILL: Okay. All right. So, I'm
24 going to go ahead and turn to the Office of Planning
25 if I could.

1 MR. JESICK: Thank you, Mr. Chairman and
2 members of the Board. My name is Matt Jesick. The
3 Office of Planning really appreciates the design of
4 the project. We appreciate the architecture that has
5 been proposed, which is much more sensitive to its
6 context than some other examples we've seen
7 throughout the city as we, again, we feel the design
8 is not the issue here.

9 Where we came across a stumbling block in our
10 analysis was the variance to the 900-square foot
11 rule, and felt that the applicant had not
12 demonstrated that there is an exceptional condition
13 that leads to a practical difficulty.

14 I think Commissioner Turnbull hit on the
15 point that we were wondering about, which is why
16 would a flat not be a potential solution here,
17 providing two larger units instead of one large unit
18 and two smaller units. That would be more in keeping
19 with the purposes of the R-F-1 zone, which gets to
20 you know, the practical difficulty and exceptional
21 conditions in the first part of the test, and then
22 the third part of the variance test gets to the
23 intent of the Zoning Regulations.

24 And the R-F-1 zone is intended to, and I'll
25 just quote from my report here, prohibit the

1 conversion of flats and row houses for apartment
2 buildings as anticipated in the R-A zones.

3 So the R-F zones are intended to provide
4 larger types of units rather than smaller apartment
5 units. So, we felt that the variance test fell short
6 on both first and third prongs, so we were not able
7 to recommend approval of the variance. Thank you.

8 CHAIRMAN HILL: Does anyone have any
9 questions for the Office of Planning?

10 MR. TURNBULL: Yes, Mr. Chair. I just had,
11 is the cost of the rehabilitating -- I mean, we
12 haven't received any documents to show that, but
13 would that enter into any of your consideration of
14 the state of the building, what it would cost to
15 bring it back to operating status?

16 MR. JESICK: We have traditionally not done
17 economic analysis --

18 MR. TURNBULL: Right.

19 MR. JESICK: -- at the Office of Planning. I
20 think we would certainly review any information
21 that's submitted and see how that may or may not add
22 to the applicant's argument.

23 MR. TURNBULL: They're at 852. I guess one
24 of the -- how close do you have to get to 900 to be -
25 - I mean, is 900 -- I mean obviously the Zoning

1 Commission, we've already established 900 as the
2 rule, but I'm just -- I always wonder how close to
3 flexibility we get to being close to 900 to --

4 CHAIRMAN HILL: If I can add on to the
5 question before you answer? Like, I am curious what
6 -- and I don't know if you do have a direct answer
7 for this, but what would you think the Office of
8 Planning, and I know you're probably not going to
9 answer, is thinking is de minimis? Is that kind
10 of --

11 MR. TURNBULL: Yeah.

12 MR. JESICK: I can answer those questions.
13 I'd say the Office of Planning has been very
14 consistent over the years not recommending approval
15 of variances to this 900 square foot rule.

16 MR. TURNBULL: I know.

17 MR. JESICK: You know, largely on that
18 question of the intent of the regulations.

19 MR. TURNBULL: Right.

20 MR. JESICK: And also, frankly most
21 applicants have not demonstrated it in our, you know,
22 sense of it, that there is a practical difficulty.

23 I can recall one case. I did not work on it
24 myself, but a colleague of mine, where I believe it
25 was three units, each unit would be short by nine

1 square feet, and I don't think we recommended support
2 of that one. So, I would say 900 would be the
3 number. I don't think we would see a de minimis
4 number, you know, for any value less than that.

5 MR. TURNBULL: So, the only way that they
6 could actually do this is if the building was
7 smaller? Smaller? Is that right?

8 MR. JESICK: No, the size of the building
9 does not factor into it.

10 MR. TURNBULL: Oh, it's the lot size. Yeah,
11 you're right, you're right, you're right, you can't -
12 - yeah, yeah. Okay. All right. Thank you.

13 MR. HART: Just one question. So, right now
14 we're looking at this particular lot, and there are
15 of course other lots that are you know, this
16 possibility. So, we're talking about none of the
17 lots would be able to kind of get to the three-unit -
18 - the 900 square feet, three-unit -- or sorry. Nine
19 hundred square feet requirement for any of the lots
20 that are here, if they're looking to do somewhat
21 significant, you know, renovations?

22 MR. JESICK: I'm not familiar with all the
23 lots. I mean, I think it's possible that some may
24 exceed 2,700 square feet in size. The lot to the
25 south in fact, may exceed 2,700 square feet if I

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1 recall. So, there may be an odd lot here or there
2 that exceed that threshold, but I can't speak to, you
3 know, each individual lot.

4 MR. HART: I guess I was also looking kind of
5 at the uniqueness, that there would be likely other
6 lots that would be able to -- that may have this
7 difficulty as well in this, in this square or
8 actually kind of in this neighborhood.

9 MR. JESICK: I guess I would rephrase your
10 question, actually a little bit. We don't find that
11 there is a difficulty. The lot is not unique, or in
12 our view, exceptional. It's the same size, or
13 similar size to most lots in the square and in the
14 surrounding squares. So that was a factor that led
15 to our recommendation.

16 MR. TURNBULL: I think the applicant stated
17 that the building next door was an apartment
18 building. But it may be nonconforming. I don't know
19 if that was --

20 MR. JESICK: The building to the north is a
21 three-unit apartment building. I don't believe it
22 exceeds 2,700 square feet in lot area. But the one
23 to the south has a little side yard which adds to the
24 lot area, so for that reason I believe it may exceed
25 2,700 square feet. The one to the south.

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1 MR. TURNBULL: Okay. Okay. Thank you.

2 CHAIRMAN HILL: Okay. Does the applicant
3 have any questions for the Office of Planning?

4 MS. AGBOOLA: Yes. Has the Office of
5 Planning found that the inability to acquire
6 additional and is a unique condition?

7 MR. JESICK: No.

8 MS. MOLDENHAUER: Are you aware that there's
9 a Court of Appeals case that addresses that on point
10 and has found that?

11 MR. JESICK: No.

12 MS. AGBOOLA: Has the Office of Planning
13 consider the condition of a building of an
14 improvement to a property as a unique condition?

15 MR. JESICK: Can you repeat that question?

16 MS. AGBOOLA: Has the Office of Planning
17 considered the condition of a building that improves
18 the land as a unique condition?

19 MR. JESICK: Well, uniqueness or exceptional
20 circumstances get to both the land and the building,
21 if that's what you're asking.

22 MS. AGBOOLA: Yes.

23 MS. MOLDENHAUER: And then just one last
24 question. There was a lot of questions about the 900
25 square foot rule, and you said that as a policy OP

1 never supports that. But, the Board has the
2 authority to grant relief from that 900 square foot
3 requirement.

4 MR. JESICK: Certainly, and they have in many
5 instances.

6 MS. MOLDENHAUER: Thank you.

7 CHAIRMAN HILL: Okay. Mr. Jesick, do you
8 play poker?

9 MR. JESICK: Not in a long time.

10 CHAIRMAN HILL: Okay. You'd probably be very
11 good at it.

12 Let's see, so I do have some questions for
13 the applicant and I mean, I'm also stuck kind of with
14 the 900 square feet. I mean, I appreciate what you
15 guys are trying to do, and really kind of, I'm just
16 asking a question like, you obviously have done the
17 numbers and looked at what you would get if you just
18 did two flats, right? So, you would live in one and
19 you would rent one out. Have you looked more into
20 that and how that would work out, either, you know,
21 either one of you can answer. Like, either
22 economically or why, you know, the two flats don't
23 work.

24 MR. SMITH: Well, I mean, we have. I mean,
25 we've taken a look at it and we've tried to make the

1 numbers work. I mean, we've got -- what you have
2 now, right is two small units which we're keeping,
3 but we're trying to add to the neighborhood,
4 essentially, a family sized unit, you know, that we
5 could live in and afford the place.

6 I mean, we could try to, you know, have a big
7 unit and have house mates. I mean, have a group
8 house or something like that as some extra income.
9 But to make the numbers work for us it, you know,
10 will work for us if we can have the two rental units.

11 I think probably it isn't even so much about
12 us. I mean, I think anybody coming in to this
13 particular house, given the kind of condition that
14 it's in, I mean, it's shot. I mean, I was lucky to
15 get in there but it was because it was cheaper. I
16 think probably anybody would be asking for the same
17 kind of relief because it's just a lot of work that
18 needs to be done, not just sprucing the place up.

19 But it's been -- when I had to get my new C
20 of O, I pulled the old one, it's been a rental since
21 at least the 1950s, and none of those people were
22 ever invested in doing anything to keep the place up.
23 So it's had decades, and decades, and decades of
24 essentially neglect.

25 CHAIRMAN HILL: No, and I appreciate it. I

1 mean, I really appreciate what you're trying to do,
2 and I guess when you say family also, and I've read
3 the record, we've read the whole case, you know, I'm
4 just thinking now you would have your family unit,
5 then you would have a larger unit for a family is
6 kind of what I was thinking in terms of the two
7 units. It was if the economics didn't work, meaning
8 the whole thing wouldn't work. It wouldn't work for
9 anyone. That's where kind of the, I suppose, and I
10 don't even know if you can get me there or not, but
11 that's where there could be potential, I suppose, of
12 getting -- I mean, you've been with your attorneys.
13 You understand the three-prong test, you understand
14 what we have to evaluate.

15 MR. SMITH: Well, maybe it's something Eric
16 can look at. I mean, what we had looked at as an
17 alternate design is essentially, yeah, having a
18 normal sort of English basement, and then you know,
19 having essentially the extra space that we would be
20 able to have housemates.

21 I think if you start having the two units
22 then you're losing space to like having connecting
23 stairways and I don't know what else.

24 MR. GRONNING: Yeah. As I mentioned, I live
25 in the neighborhood and we have all kinds of

1 different configurations in these row houses over the
2 years. And, you know, you see three units, you see
3 two duplexes.

4 One thing that I was concerned with when
5 talking with them, and going through this process, we
6 could do -- it's possible to do a duplex, you know,
7 as the rental. I think that what would end up
8 happening is we'd end up with five bedrooms, you
9 know, four or five bedrooms in that duplex, and you
10 know, it would be more of a boarding house type of
11 scenario because you know, they need to supplement
12 this project.

13 So, in my opinion, if we have two separate
14 rentable units, we end up with one person in each,
15 maybe two in each at most, where as if we did a
16 duplex you know, that they would use for income,
17 they'd end up with more bedrooms. It would be hard
18 to rent. You would end up, you know, renting to four
19 or five different people, and that happens in the
20 neighborhood all the time.

21 And in my opinion, this is a much better
22 scenario. It's just a more stable type of
23 arrangement and it gives them the necessary
24 supplement to do the project.

25 CHAIRMAN HILL: Okay.

1 MS. MOLDENHAUER: To that point I just want
2 to add that in the Court of Appeals, *ALW*, they talk
3 about the fact that if alternatives are proposed and
4 discussed, as we just heard today, would still
5 require other areas of relief that the Board can
6 consider that as part of the practical difficulty,
7 that no matter what an applicant would need relief in
8 order to move forward with his project.

9 And as you just heard, it would need to be
10 some sort of rooming house or boarding house with
11 multiple beds. In the R-F zone the permitted use for
12 either a boarding house is limited to eight persons,
13 or it's limited to a flat, but it has also limited
14 requirements for two roomers are permitted as a
15 maximum. I'm sorry, three roomers are permitted as a
16 maximum. Two roomers are permitted as a maximum.
17 And this is found under Section U of the regulations.

18 So, no matter what, given these alternative
19 scenarios, the applicant would need relief. And in
20 those situations would need a use variance from that
21 number of roomers or boarders, which would obviously
22 be a higher degree of relief that would be required,
23 which again specifically is the nexus and leads to
24 the practical difficulty that, you know, the
25 applicant or any other owner would have in this

1 situation if they were to create either a larger
2 style project or a rooming house, or something to
3 that affect.

4 CHAIRMAN HILL: Okay. Does anyone have any
5 more questions for the applicant?

6 MS. AGBOOLA: I just wanted to reference the
7 section that --

8 CHAIRMAN HILL: Sure.

9 MS. AGBOOLA: The section of the Zoning
10 Regulations that Meredith was talking about. It's
11 the one that talks about having a maximum of two
12 boarders is U250.1A, and U310.1A provides relief from
13 that. And then --

14 CHAIRMAN HILL: Say that last one again.

15 MS. AGBOOLA: U310.1A provides relief from
16 the two-boarder requirement of U250.1A.

17 And then the boarding house provision is
18 subtitle U301.1H1. And you don't need a cite for the
19 case law.

20 CHAIRMAN HILL: No, it's okay. Thanks. Mr.
21 Jesick, you don't have any comments on that, do you?

22 MR. JESICK: In this square there have been
23 at least three other board cases that have come
24 before the BZA where an applicant was seeking the
25 same relief for the 900 square foot rule. And on

1 those three cases the Board granted the relief.

2 I would point out, however, that also on the
3 same square there was a board case for a 223, for a
4 flat, two units. It's at the opposite corner of the
5 square, that underwent extensive renovation. They
6 added a floor and it apparently was, you know,
7 financial feasible to do that project. So, in our
8 view we still haven't seen evidence that it's -- that
9 a larger family sized unit is not feasible here. I'm
10 not sure I understood the argument about the rooming
11 house but I'll leave it at that. Thank you.

12 CHAIRMAN HILL: Okay. I'm sorry. You said
13 that there's three other -- we've approved three
14 other buildings in this with the area variance?

15 MR. JESICK: That's correct.

16 MS. MOLDENHAUER: Could I ask Mr. Jesick a
17 question?

18 CHAIRMAN HILL: Sure. Go ahead.

19 MS. MOLDENHAUER: You just referenced another
20 project that had a -- was seeking 223 relief, and you
21 said that it was a conversion to a flat. So, that
22 would mean that that would actually be uniquely
23 different than this project which has been a flat for
24 the last, what, three decades at least? Since the
25 50s. Would that be true, that that would then

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1 distinguish this case from that?

2 MR. JESICK: My only point in referencing
3 that was that a flat is a viable option in this
4 neighborhood.

5 MS. MOLDENHAUER: And my question though, is,
6 but it's a viable option if maybe a house had been a
7 single family home and had been maintained by
8 somebody. But this is a distinction in this case.
9 Is that something that you considered when you made
10 that comment?

11 MR. JESICK: Actually, I'm not sure if it was
12 converted to a flat or if it was already a flat.

13 MS. MOLDENHAUER: Okay.

14 CHAIRMAN HILL: Okay. Thank you. Does the
15 Board have any more questions of the applicant?

16 MR. TURNBULL: Yeah, I just had one. I guess
17 I'm confused about the other duplex unit having
18 bigger -- I mean, to me, wouldn't it simply mirror
19 the second and third floorplan? If you develop the
20 first and second floor, or if you develop the cellar
21 and the first floor, similar to the second and third
22 it would simply be a two to three-bedroom unit.

23 MR. GRONNING: I think I was trying to allude
24 to having enough income that would equal having the
25 additional unit. So, I think if we only had one

1 unit, and I'm speaking for Graham here, but you know,
2 if there was only one unit it wouldn't be as, I
3 guess, marketable, and he wouldn't be able to
4 generate the income necessary for the project. And
5 if he was limited to solely providing one additional
6 rental unit it would be in his best interest to
7 maximum out the number of bedrooms and try to get as
8 much rent as he could. In my opinion, and I live in
9 this neighborhood, that's not something I would want
10 to live nearby. I think, you know, there would end
11 up being more people in this type of scenario than
12 otherwise with it just being two separate rental
13 units.

14 MR. TURNBULL: Well, I was just trying to get
15 back to -- I mean, part of the the Office of
16 Planning's review of this is looking at the zone plan
17 and the R-F-1 and what it was developed for. And
18 even when we redid the zoning rewrite, we made
19 certain provisions to try to retain the character of
20 the R-F-1 area.

21 And as Mr. Jesick had said, units with larger
22 sized units with two to three bedrooms was the goal
23 of trying to integrate into this neighborhood to keep
24 it.

25 So, I guess I'm just curious why that

1 wouldn't be an option, I guess, as to why a two to
2 three-bedroom unit would not be a viable option here.

3 MR. SMITH: Board Member Turnbull, can I jump
4 in there?

5 MR. TURNBULL: Sure.

6 MR. SMITH: And maybe it's to answer your
7 question as well, Chairman Hill. You know, I have
8 looked at, you know, how much you would get from
9 rental income from two, you know, one-bedroom spaces
10 like that versus a sort of two, large two-bedroom
11 bedroom space like that. And it would be, you know,
12 \$1,500 or more difference, every month. It would be
13 quite a lot. I mean, to the point where it would be
14 quite tough. Unless, as Eric says, you essentially
15 turn it into a group house and try to, you know, just
16 get the maximum number of people in there that you
17 can.

18 And honestly, I mean, you know, living there
19 as a family, I don't think that's the kind of
20 situation we necessarily want. But also, you know,
21 we're adding into the neighborhood, a family sized
22 unit by doing this project which I think is a real
23 benefit, you know, to the neighborhood.

24 MS. MOLDENHAUER: And I think, Commissioner
25 Turnbull, as you just said about the third prong with

1 the zone plan to that point, the property already has
2 two rental units, and so from a zoning plan
3 perspective it's our position that permitting this
4 relief actually then allows for this to be more in
5 line with the overall intent of the zone plan to
6 allow for a bigger family sized unit, and to maintain
7 the existing two units that have already existed and
8 have existed in this neighborhood for quite some
9 time.

10 CHAIRMAN HILL: Okay. All right. So, does
11 the Board have any other questions? All right. So,
12 does the applicant have anything else they'd like to
13 add in conclusion? Well, actually, sorry. I'm
14 sorry. I'm going to go around real quick and see if
15 there's anybody here. Let me do that first.

16 MS. AGBOOLA: Just, was there any time for a
17 closing statement?

18 CHAIRMAN HILL: Got it. Okay. Is there
19 anybody here from the ANC that would like to speak?
20 Is there anyone here who would like to speak in
21 support of the application? Oh, please come forward.

22 You can both come up, there's two mics. If
23 you could please just state your name and you'll each
24 have three minutes to make your comment. And then
25 also, did you fill out your witness cards and give

1 them to -- okay, great. And also, if you could tell
2 me where you live? You can give that to the
3 transcriber there.

4 Just tell me your name and address, and then
5 you have three minutes. You have to push the green
6 button, the button there until the green light comes
7 on.

8 MR. DIDRIKSEN: My name is Joel Didriksen. I
9 live at 1200 Fairmont Street Northwest. I've lived
10 in Columbia Heights for about 20 years, and I've seen
11 a lot of change in the neighborhood. I've seen a lot
12 of renovations, a lot of pop-ups that don't fit the
13 plan or just look out of place. I've seen places
14 change from, you know, single units to multi units.
15 Just next door to me a place turned into three units
16 and it's very agreeable and they added parking. And
17 it's pretty seamless into the neighborhood.

18 I've also seen other renovations just up the
19 block from me. They turned a single-family home into
20 five units of which three are three-bedroom and two
21 are two-bedroom, and they've only added two parking
22 spaces, and it just sticks out. It doesn't seem to
23 work.

24 I feel like Graham and Lexi have really gone
25 out of their way to accommodate the feel of the

1 neighborhood and take into consideration their
2 neighbors and their neighbors' opinion. They've
3 certainly reached out to the neighborhood in trying
4 to make this as seamless as possible, I think.

5 I have seen their house. The condition is
6 pretty, pretty rough, and it does require major
7 rehabilitation, and I think they've gone about it in
8 a pretty, pretty healthy way as far as the
9 neighborhood is concerned and the neighbors -- in
10 integrating their neighbors' concerns. So.

11 CHAIRMAN HILL: Okay. Great. Thank you.

12 MR. ACHERMAN: My name is Nathan Acherman.
13 I've lived in Columbia Heights for -- I'm at 2313
14 15th Street Northwest. I've lived in Columbia
15 Heights for almost 20 years now, as well, and I have
16 had a chance to see that property through community
17 pot luck dinners that they've had for years and
18 years, and I think that I can tell you that there's
19 no exaggeration here about the condition of the
20 house. Very rough, very, very rough place. I have -
21 - I'm also an ANC commissioner. I don't represent
22 that particular district but I've had a chance to
23 hear from property owners and see a lot of different
24 plans come through.

25 And I respect the Office of Planning's

1 perspective here, but I think that when you weigh the
2 community benefit here, the bigger picture is that
3 this is a property that a lot of developers would
4 come in and they'd just want to do a tear down,
5 they'd want to -- you know, I've seen it. You know,
6 they want to maximize whatever they can do to a
7 property like this. So, when you have a situation
8 where there's a family that has a stake in the
9 neighborhood that wants to stay in the neighborhood,
10 and the economics of the neighborhood have kind of
11 run away from them, I would ask the Board to please
12 consider that, you know, this is a situation where,
13 you know, the economics of it are really important
14 because it allows them to stay here in the community.

15 I know Lexi has been involved in, you know,
16 in schools in the neighborhood, and after school
17 programs, you know, these are people that you want in
18 the neighborhood, that we want to have stay if they
19 can. And I will say something really critical about
20 this issue about the difference between taking this
21 building and turning it into two units versus the
22 three units.

23 Things I didn't hear that came up, and I have
24 had a chance to get my real estate license and you
25 know, and I practiced a little while and what I've

1 learned was that there is unfortunately, there is the
2 greater demand in this city for the smaller units.
3 So, if you're someone who is looking at the kind of
4 contracting fees it takes to do the renovation right,
5 which is what they've done here, and I think it's
6 harmonious in terms of the design, you do take some
7 solace in knowing that you have created a design in
8 which you have -- you know that you have two units
9 that have a higher demand as individual stand-alone
10 units, than the one bigger unit which frankly is
11 harder to fill.

12 And you also have the benefit of knowing that
13 if something goes wrong with one unit, there's an
14 issue with the tenant, or it goes vacant, which does
15 happen, that you have that other unit that is an
16 income producing unit. It's a very big deal to know
17 that you have a second unit that you can rely on for
18 that income because if you need that income to pay
19 the bills with after this renovation is done, you
20 don't have all your eggs in that one other unit, you
21 actually have two units to rely on. So, I just would
22 bring that up as something that's a critical decision
23 when you're someone in their position.

24 Last thing I would say is that we all know
25 that the pressure for development in this

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1 neighborhood is huge. This property will be altered
2 at some point and when you have a chance to have a
3 party that is willing to be -- you know, take pains
4 to create a design that looks -- that really does
5 consider their neighbors' concerns and has the
6 support of so many of their neighbors, that's a
7 different scenario than a developer who is going to
8 come in, and maybe their priorities won't be exactly
9 the same.

10 So, I would just ask that, you know, please
11 you know, please take that into consideration. This
12 is a pretty good scenario for the redevelopment of
13 this property. Thank you for your time.

14 CHAIRMAN HILL: Okay. Great. Thank you.
15 Does anyone have any questions for the witness or the
16 Commissioner? Okay. All right.

17 So is anyone here wishing to speak -- thank
18 you, gentlemen, very much. Is there anyone here
19 wishing to speak in opposition? Oh, okay. Please,
20 if you could come forward.

21 MS. AGBOOLA: Can we get a copy of that? We
22 haven't seen it. Thank you.

23 CHAIRMAN HILL: If you could just go ahead,
24 introduce yourself, and you just push the little
25 button until the green light comes on and then if you

1 give me your name and your address, please? Thank
2 you.

3 MS. FARMER: My name is Sharon Farmer. I
4 live at 3601 11th Street Northwest, since 1987. And
5 we've had the joy of watching change come through our
6 neighborhood. A lot of it good, some of it not so
7 good depending on who owns the property and the
8 landlord.

9 But we like the character of the
10 neighborhood. We like the characteristics of what it
11 looks like. We went through a lot of gyrations and
12 meetings and hoops about the idea that we could
13 finally get to a height limitation so that the ugly
14 pop-ups that have started appearing in our
15 neighborhood, they may not go away, but they could
16 stop. Now, I'm not saying what Lexi and Graham are
17 trying to do is ugly, but there's a zoning line for
18 height limitation and we'd like to see that kept
19 intact.

20 The second thing is because it is a two-flat
21 family residence, we'd like to see that kept intact
22 too, because there are people coming into our
23 neighborhood who do subdivide places up into even
24 smaller places than the 900 square feet. But it's
25 not conducive to making more people able to be in the

1 neighborhood when we're already congested in our
2 neighborhood. So, for whatever the reason that the
3 Office of Planning isn't in agreement, same reason
4 I'm not either. They came to us asking us to sign a
5 letter saying we supported what they wanted to do.

6 Well, we support them but we don't support
7 what they want to do. Then they said, well, sign a
8 letter of support saying that we're good neighbors.
9 Well, I know how good neighborhood letters get turned
10 into other things too, so we declined. Other
11 neighbors that I canvased don't want to get involved
12 because basically everybody has got a busy life and
13 they don't want to fight about anything.

14 I don't want to fight either, but I love the
15 neighborhood. I love the look of the neighborhood.
16 And I'm quite aware that things have changed and will
17 continue to change. But the fun about the Board of
18 Zoning Adjustment is that you guys made a decision
19 about what the height limit was going to be based on
20 what we had already gone through. I mean, not only
21 in Columbia Heights, but other parts of the city.

22 I dig Nathan and Joe, but neither one of them
23 live on 11th Street and it was asked at the ANC
24 meeting of Graham and Lexi, did you get letters from
25 either side of your neighbors that go along with this

1 project. And both of them have not done it. Maybe
2 one gave a, you're a good neighbor letter, but this
3 is a little bit more than just being a good
4 neighborhood. It's about the character of the
5 neighborhood, the fact that we're so effected by the
6 amenities that go on up above us in the other block,
7 so I say south of us with the restaurants and things
8 going on. But we're concerned that you change the
9 rules. The rules just got in place. Can the rules a
10 live a little while? Can they breathe a little
11 while? Can we have the rules so we can go, go on.

12 I don't want to lose them as neighborhoods,
13 but I also don't want the rules changes after I
14 watched the turmoil from the housing that's occurred
15 because there were no limitations that were enforced.
16 And that's about what all I got to say, and thank you
17 for listening.

18 CHAIRMAN HILL: Thank you. Does anyone have
19 any questions for the witness?

20 MR. TURNBULL: Well, thank you, Ms. Farmer,
21 for coming down. You're not even getting in to
22 whether it's two units or three units. You're stuck
23 at the height.

24 MS. FARMER: I'm stuck at the height. I'm
25 stuck at the height. I'm stuck at the look. Nine

1 hundred square feet was a rule too. People bust it
2 depending on who tells on them, or doesn't tell on
3 them. I would like things to stay, you know, rather
4 fluid. I like 900 feet, but I don't want to lose my
5 neighbors either. But I wasn't willing to sign a
6 letter saying I support the project because that
7 means we have more congestion added to the
8 neighborhood. We already have to deal with what
9 happens with the Hebrew home down the street on
10 Spring Road, and we don't know what's going to come
11 of that. So, that's more.

12 But we're a family district. I want to keep
13 it. I would like to keep it as a family district
14 because we all do know each other and we do have
15 block parties together. It's fun. You ought to
16 check us out. But clearly, don't want to lose them,
17 but I don't want things to change because the rules
18 just got put into place. So, who's going to squeeze
19 it next to do what you came to do?

20 Why have a meeting if you're not going to
21 adhere to the regulations and see how they work out.
22 It hasn't been that long since the limit got put in.
23 The flat thing, the two-family flat thing. Well,
24 that's economic kind of thing.

25 Like I said, I don't want to lose Lexi and

1 Graham, but I also don't want more congestion brought
2 to the neighborhood. So, if it's zoned R-F, or
3 whatever that is, one, I feel like it ought to stay
4 like that. But I'm also flexible in life about the
5 reality that other people disagree. Thank you.

6 MR. TURNBULL: Okay. Thank you.

7 CHAIRMAN HILL: Okay. Thanks, Ms. Farmer for
8 -- Ms. Farmer?

9 MS. FARMER: Yes, sir.

10 CHAIRMAN HILL: Thanks for coming down. And
11 I know that it's difficult to speak against a
12 project, and so I appreciate that and it sounds like
13 you guys are great neighbors. Everybody thinks you
14 all are great neighbors and so you must be great
15 neighbors because if you're not great neighbors many
16 people show up and tell you you're not great
17 neighbors.

18 Just to clarify for me, like again, you
19 realize that -- did you go to the ANC meeting where
20 they voted on this?

21 MS. FARMER: Yes. And the ANC people who
22 voted don't even live on our street.

23 CHAIRMAN HILL: Okay. That's all right.
24 That's all right. I was just asking. That's okay.

25 And so like, the -- oh, the height, you know

1 that the Office of Planning is in approval of the
2 height, they're just not in approval of the three
3 flats. Or sorry, the three units. Okay. So just, I
4 mean, the height is an issue, obviously.

5 MS. FARMER: It's an issue because it changes
6 the line.

7 CHAIRMAN HILL: Right.

8 MS. FARMER: Of the housing that goes along.

9 CHAIRMAN HILL: Right.

10 MS. FARMER: Obviously to me it was planned
11 out how the turrets are.

12 CHAIRMAN HILL: Right.

13 MS. FARMER: And in that block. And lord
14 knows, on my side of the street what they allowed in
15 there is a crime.

16 CHAIRMAN HILL: Right.

17 MS. FARMER: But it's built now. Wish you
18 all would tell them to tear it down, but it's a
19 crime.

20 CHAIRMAN HILL: Okay.

21 MS. FARMER: So, the idea that these things
22 occur, that's why I'm down here.

23 CHAIRMAN HILL: Okay. Okay. Well, I
24 appreciate it. Okay. Thank you so much.

25 CHAIRMAN HILL: All right. Thanks.

1 MS. FARMER: Thank you.

2 CHAIRMAN HILL: Let's see. So, is there
3 anyone else here in opposition? No? Okay.

4 Does the Board have any other questions for
5 anybody?

6 Okay. Then, I'm going to turn to the
7 applicant and let you guys go ahead and close.

8 MS. AGBOOLA: Thank you. So, as you've heard
9 today, this is a property, and let me just make sure
10 you can see, in need of extensive rehabilitation.
11 The lally columns that you see here are supposed to
12 be a temporary solution. They have been at the
13 property since Graham moved to Columbia Heights back
14 in 2003. So that's over a decade ago. They are
15 certainly not designed or meant to be kept for that
16 long.

17 The property needs to be gutted. It is
18 structurally unsound and that is something that is a
19 factor when you consider all the things that we've
20 talked about in this application, the size of the
21 property, its location, the unique unit configuration
22 that is currently existing and the fact that it
23 doesn't currently have a family sized unit.

24 When you consider all of those things it's a
25 confluence of factors, and importantly the

1 deterioration of a property is something that the
2 Board can consider. It's something that the Court of
3 Appeals has said is a factor that can be shown to
4 make a property unique and exceptional. And we would
5 posit that this property is unlike its neighbors. It
6 was a rental for decades. It was left as an -- it
7 was left and people did not take care of it, did not
8 care about it, and it was left to deteriorate to this
9 point and now there's a family that seeks to improve
10 it. There's a family that wants to love this
11 building and make it better and have a family sized
12 unit in this building.

13 So, I know that there was a question of
14 whether this property is unique. Is there an
15 exceptional condition here? And we would argue that
16 there is; that the state of the structure is in such
17 disarray that it is exceptional. It is unlike its
18 other neighbors in that because of that exceptional
19 condition the applicant and the property is facing a
20 practical difficulty.

21 In order to rehabilitate this building it
22 requires significant funds. This is not putting in a
23 kitchen or redoing a bathroom. There's structural
24 issues here that have to be resolved in order to make
25 it safe and bring it up to code.

1 So, those exceptional conditions have
2 resulted in a practical difficulty for the applicant,
3 and we would posit that putting in a family size unit
4 and having two rental units at this property is in
5 line with the zone plan because there will be two
6 parking spaces here where there currently aren't any.
7 The community is in support and the design, which is
8 -- Ms. Farmer brought up the fact that the rules just
9 came into place. And one of the great things about
10 those rules is that it forced people like Alexis and
11 Graham to go to their neighbors, to talk to them
12 about the design, to talk to them about the look and
13 how this would have an impact on their block face.
14 And they have gained the support of their neighbors,
15 and this project will hopefully fit in seamlessly
16 with the other buildings that are there.

17 And it has received the support of the ANC,
18 and had the support of its SMD. So, we would just
19 argue that the Board has the authority and the
20 flexibility to grant relief for the lot area
21 provision, that they have found in other cases that a
22 deteriorated state of a property is an exceptional
23 condition and have found in other cases that it does
24 justify lot area relief, and we would ask the Board
25 to find so again in this case. Especially

1 considering the fact that the Court of Appeals allows
2 the Board to consider the severity of the relief
3 being requested, in *Gill Martin*, and in this case
4 it's 852. We're only asking for 144 square feet, and
5 that only results in 48 square feet short per unit.
6 So, the severity of the relief, when you consider the
7 confluence of factors, the severity of the relief,
8 the support of the neighbors, when you consider the
9 entire application in total and consider the record,
10 we believe that we have satisfied the standard and we
11 would ask the Board to approve not just the
12 conditions that the Office of Planning is in support
13 of, but also the lot area relief that we have
14 requested.

15 CHAIRMAN HILL: Okay. Great. Thank you.
16 Does the Board have any more questions?

17 Okay, then I'm going to go ahead and close
18 the hearing. Is the Board ready to deliberate?

19 Okay. I'll start, and I'll leave it even
20 kind of open to a certain extent. I do appreciate
21 what you're trying to do and I really do think that
22 you know, you having your neighbors come out, and the
23 ANC chair -- or not the ANC chair, but someone from a
24 neighboring ANC and a commissioner able to speak, is
25 very helpful. And also, you know, the attorneys that

1 you've hired have done a good job in trying to at
2 least get me to the point where I think that the
3 standard has been met.

4 Unfortunately, I can't get past the 900
5 square feet for me. And with the Office of Planning
6 and their recommendations, I'm kind of like -- and I
7 don't normally actually look at the applicant to be
8 quite honest, I'm saying this because I wish I could
9 get there for you. But now I'm going to turn to my
10 board members. Like, I am just not -- you know, as
11 far as like I was again kind of back to the two
12 units, one being a unit for themselves, one being a
13 larger unit that they can then get rental income
14 from, I definitely understand and empathize with the
15 opportunity that could have been there if the square
16 footage was there to do the -- what they're trying to
17 accomplish.

18 So, if -- the only other thing that I'll kind
19 of keep open, depending upon what my board members
20 think, it's just like, you know, I don't even know if
21 I could get to the economics of it. So that was kind
22 of, you know, if the property just couldn't function
23 as two units, I suppose I could look at that a little
24 bit more. But I don't -- I would have a really hard
25 time still getting past the recommendation of the

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1 Office of Planning in this particular instance.

2 MR. HART: Yeah, I also have an issue with
3 the 900 square feet per dwelling unit.

4 I started kind of looking at and trying to
5 understand the whole idea about this kind of
6 uniqueness, and the kind of the question that I was
7 trying to get to was really around all of the lots in
8 this neighborhood have a certain size. And I started
9 looking at, I think it was one of your earlier
10 slides, actually slide two on your PowerPoint. And I
11 was looking at all of the lots and I realized that
12 just about all of them are less than 2,700 square
13 feet. If you're trying to do three units.

14 And I looked at the images showing the number
15 of -- the types of units that were -- the types of
16 buildings that were on the site. It seems as though
17 you could actually probably look at three units for
18 just about all of the buildings on this site. And
19 that starts kind of getting to a uniqueness issue. I
20 understand that the deterioration is such that it's -
21 - you know, that's an issue in this building. I
22 don't know the condition of any other buildings. I'm
23 not going to speculate on them. But it is -- I have
24 a hard time kind of getting around this being a
25 unique condition for you know, for this site. I do

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1 empathize with you and I understand that you know,
2 having a family you have to start planning for, you
3 know, things in the future and how are you going to
4 deal with that. I just don't know how to get around
5 the rules that we have in place.

6 I understand that, you know, as a board
7 member we can grant that relief to do that, but it's
8 a fairly high, you know, hurdle that you'd have to
9 kind of get over, and I'm not sure that we've
10 actually gotten there.

11 MR. TURNBULL: Thank you, Mr. Chair. Yeah, I
12 appreciate a lot of the things that you're trying to
13 accomplish, but I do have some angst with the 900
14 square feet also. And I don't know how we can
15 alleviate that. I don't know how you can try to --
16 I've looked at -- I just don't know how you get
17 around that. I think architecturally they've tried
18 to make a sympathetic statement here to blend in with
19 the neighborhood. The only other thing is that Ms.
20 Farmer brought out a larger perspective that showed
21 the whole street line going down the street with the
22 consistent -- the cornice level and the drawings that
23 the applicant submitted only shows two or three
24 houses in a row that -- in one way from that
25 standpoint it doesn't look too bad. But I don't know

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1 what it would look like further down the street, and
2 the impact.

3 So, but I would agree with the two of you.
4 I'm still at an impasse at the 900 square feet.

5 CHAIRMAN HILL: So, Mr. Turnbull, and I
6 guess, where are you guys with the 40 feet in height
7 or the other -- the modification to tear it -- I
8 mean, the conversion of the three-unit building, I
9 don't think that that helps them at all.

10 MR. TURNBULL: Yeah, that's hard too. And
11 again, the height is -- I think they've tried.
12 They've attempted to try to minimize that. What I
13 can't tell, again, without seeing a better view of
14 the whole rendering of the building as it compares,
15 it looks like it -- in one way it doesn't stick out,
16 but in another way it does. It changes the whole
17 character of the street there. I mean, you'd almost
18 have to see a better view of the streetscape, what it
19 would really do to the character of it.

20 You see, right there it looks like at turret
21 on the building in the white, the rowhouse in the
22 white, it looks like you can see only sky. But I
23 think it goes straight back; the other building goes
24 straight back. I think the addition is not shown on
25 the back, but I'm not sure.

1 CHAIRMAN HILL: Yeah, and the one at the end
2 of the row, though, it seems also is up at the higher
3 --

4 MR. TURNBULL: That one looks higher too, so
5 it's hard to tell right now. I'm still -- I'm
6 undecided about the height. I would need more
7 convincing information to really go along with that.
8 I mean, I think they're at a point the attempt is
9 well made. I think it needs refinements. I would
10 like -- I mean, that would need to be better shown.

11 CHAIRMAN HILL: Okay. Because I don't have
12 an issue with the height and so, you know, but that
13 would mean if they wanted to go back and clear that
14 up for us, I can ask the applicant, I suppose. And I
15 also don't have an issue with the waiver for the
16 modification of the turret.

17 MR. TURNBULL: Yeah, I just think that
18 architecturally they need some refinements, they need
19 to show some better street views of what this thing
20 really looks like. Maybe further back looking at it.
21 And we talked about the coping. We talked whether
22 it's going to slope a little bit more. I mean,
23 architecturally it needs a little -- it would need a
24 little tweaking for me on the front.

25 But still there is the 900 square feet issue.

1 CHAIRMAN HILL: Okay.

2 MR. TURNBULL: I mean, I could get to the
3 height with maybe some tweaking on that. But I'd
4 like to --

5 CHAIRMAN HILL: Okay.

6 MR. TURNBULL: I would need to see more.

7 CHAIRMAN HILL: Okay. All right. So, let's
8 see. So then I would do -- I'm actually going to ask
9 the applicant if they -- and I'm going to open this
10 back up if that's all right with the Board. Just ask
11 a question if the applicant would like to submit
12 something to the record in terms of the height and
13 how we could maybe get Mr. Turnbull to that --

14 MS. AGBOOLA: Yes. Yes, we will submit
15 revised plans, updated plans. I don't know how long
16 that would take.

17 MS. MOLDENHAUER: We'd be more than happy to
18 supplement the record to review some of the points
19 that Mr. Turnbull has identified and to provide at
20 least some more detailed site understanding of kind
21 of exactly what's happening on this street to clarify
22 I believe some of the documents that Ms. Parker had
23 provided, Ms. Farmer had provided, not of the
24 specific streets, but we can provide specific
25 contextual images as well.

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1 And then the question would be, would the
2 Board provide us an opportunity to see if we can't
3 address some of the questions on the 900 square foot
4 element as well, and provide some documentation that
5 has been supported or has been reviewed by other
6 boards in the past that has gotten them over that
7 hurdle for the 900 square feet requirement.

8 CHAIRMAN HILL: Okay. I know what I would
9 suggest, then, and I'm going to ask what the Board
10 thinks. I am -- well, first of all, I would like to
11 see something that provides some architectural
12 drawings to Mr. Turnbull's comments in terms of the
13 height. Okay? And so that would at least allow you
14 to get the height out of that if you could. Again,
15 I'm on board with the height. It seems like, you
16 know, you have two here and you need three.

17 So, in terms of trying to get past the 900
18 square feet again, you know, if you wanted to provide
19 a little bit more background on, for me that case
20 19057, that you had referenced, and then also I
21 suppose you can try to do an economics argument in
22 terms of trying to get to a confluence fact -- I'm
23 just trying to say how I could get there. But now
24 I'm turning to the applicant to let you know, I am
25 very much not there. Okay? So it's really kind of

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1 like, if you want to spend the attorney fees, in my
2 opinion. Okay?

3 So, you know, that's up to you guys. Okay?
4 I don't know how strongly the board feels about the
5 900 square foot, but you have heard their comments.
6 So, I would leave the record open to if you want to
7 submit for the height, if you want to submit for --
8 you know, if you want to submit further for the 900
9 square feet knowing that I don't think you're going
10 to get me there, but you know, if you get a couple
11 people here then maybe that might, in the terms of
12 deliberation, get us all there. But that, I'll leave
13 up to the applicant.

14 So then, in that case I would ask for Mr. Moy
15 to kind of read us through when we want everything to
16 be submitted, and I see that Mr. Turnbull does want
17 to say something.

18 MR. TURNBULL: I just wanted to add on to
19 your -- right now I think there's three of us that
20 are not at the 900-square foot mark yet. So, we
21 would really need some really good explanation to the
22 overall intent of the zone and how -- what the Office
23 of Planning has already said. I mean, I think we
24 have to provide some kind of an explanation or
25 argument that you -- that what you're providing does

1 meet the overall intent of the zone and that somehow
2 you can convince the Office of Planning that the --
3 that what you're trying to do, which I don't think
4 you're going to do, but I think you'd really need
5 some good documentation, whether it's -- I mean, you
6 could provide the cost, but as the Office of Planning
7 has already said, they really don't look at the
8 financials on that.

9 I think you also have got to get documents
10 from your neighbors on either side to either back you
11 or not. But, you have to put something in the record
12 on that. But, right now there's only -- there's
13 three that haven't -- that can't get to the 900
14 square feet yet, and even if you get two of us there
15 that's not going to be enough to pass. You really
16 need all three of us to vote, otherwise, we're at an
17 impasse.

18 CHAIRMAN HILL: Yeah. So --

19 MR. TURNBULL: Until we get a new member.

20 CHAIRMAN HILL: So, anyway, that's what I
21 would suggest. You know, I have been through some
22 similar things, and again, attorney fees are attorney
23 fees, and you can discuss with your attorney what you
24 think your options are. You've presented a whole
25 case already so, you know, the added items, and

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1 really it's kind of getting the Office of Planning.
2 I mean, if you can get them somehow to also help with
3 that, I'll give you -- give me one second -- is just
4 where I would state it.

5 And so, before I allow -- since I've opened
6 this back up, your attorney to say something else, I
7 would have Mr. Moy at some point tell us when to
8 submit. And then we'll probably -- I mean, Mr.
9 Turnbull, do you want a continued hearing at all in
10 terms of discussing the architects of the height?

11 MR. TURNBULL: I think we -- I don't think we
12 need a continued hearing.

13 CHAIRMAN HILL: Okay. Okay.

14 MR. TURNBULL: I think we just --

15 CHAIRMAN HILL: So, just a meeting.

16 MR. TURNBULL: Just a meeting.

17 CHAIRMAN HILL: Okay. All right. So now,
18 hold on one second. The applicant, you had something
19 to say?

20 MR. SMITH: The only thing I wanted to say in
21 terms of Board Member Turnbull, when you're looking
22 at those picture that Ms. Farmer brought, those
23 pictures where you see the whole block of sort of
24 uninterrupted buildings is the next block up from us.
25 That's not our block. This is our block, and as you

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1 can see, those buildings at the end are at 40 feet,
2 and there's actually a building directly across the
3 street from us, which is also at 40 feet. So, just
4 so you know, when you look at that picture of the
5 massive, uninterrupted buildings, that's a different
6 block than ours.

7 MR. TURNBULL: Well, I guess what I would
8 like to see is maybe a little bit better perspective
9 view. I mean, we've talked about some architectural
10 refinements. But I would think that behind that
11 first turret of the building in white, there is still
12 a building that you would see of your house, of your
13 addition.

14 MS. MOLDENHAUER: We will supplement this
15 information, and also just, we'll supplement the fact
16 that to the right of that red house on the end of
17 this image, there's an apartment building. And it
18 just breaks up the overall faces of the different
19 projects. But we will supplement that information.

20 CHAIRMAN HILL: Okay. Okay. I'll leave the
21 record open, then, for those requested items.

22 MS. MOLDENHAUER: Yes.

23 CHAIRMAN HILL: And again, leave it open for
24 you if you want to add any further information for
25 the 900-square feet. And you were going to say

1 something?

2 MS. MOLDENHAUER: And I was just going to say
3 that what we'll do is, I mean, in OP from a policy
4 perspective has never evaluated financial hardship,
5 even though the court has -- this board and the
6 court --

7 CHAIRMAN HILL: We have. We have. No, I
8 know we have.

9 MS. MOLDENHAUER: And this board has. And
10 so, I would just say that if the Board is looking for
11 OP to support, or for us to be able to get OP over
12 the threshold, that this 900-square foot requirement
13 and any arguments that we would present or supplement
14 are typically financial. And so, the likelihood of
15 OP changing that policy perspective, I think, is very
16 unlikely. But we will supplement that information
17 for the Board and provide additional information on
18 that element if obviously our clients wish to pursue
19 that.

20 CHAIRMAN HILL: Okay. Thank you. And I
21 know, right, that I guess I was just hopeful that
22 somehow OP would come on because they seem like very
23 nice people, okay, right?

24 MS. MOLDENHAUER: We would love if OP would
25 evaluate those issues.

1 CHAIRMAN HILL: So that would be great.
2 Okay? Okay? But obviously that's not the case and I
3 do appreciate the fact that bringing the financials
4 here, and I guess I'm just reiterating how far away I
5 am, you know, from just how, you know, we're not
6 supposed to be here, or we're not here to make
7 projects feasible. You know, like if the property
8 costs whatever the property costs, and all those
9 things.

10 So, in any case, I'm going to leave it at
11 that. And, Mr. Moy, when can we do things? And, do
12 we need Mr. Turnbull back here, or Mr. Turnbull, can
13 you just put an absentee? Okay. So, an absentee.
14 So, I'll work with the applicant here in terms of the
15 time.

16 MR. MOY: Okay. So --

17 CHAIRMAN HILL: When do you guys think you
18 can get the stuff to us?

19 MR. MOY: Well, the Board's next --

20 CHAIRMAN HILL: Sorry. Go ahead.

21 MR. MOY: --hearing is, of course, as we all
22 know, is next Wednesday the 21st. So, if the
23 applicants were to make a filing, this Friday would
24 be better, but we could do Monday but it would
25 require the Board to read up very quickly.

1 CHAIRMAN HILL: Yeah, but can we --

2 MR. MOY: This Friday would be better.

3 CHAIRMAN HILL: I mean, what's the first
4 thing in January, because I know that next week is
5 just slammed.

6 MR. MOY: Next meeting, well, in the new year
7 would be January the 11th, and yeah, January 11th
8 could be a decision meeting on this case.

9 Then, if we do that then I would ask that the
10 applicants file by --

11 MS. MOLDENHAUER: The 4th?

12 MR. MOY: By January the 6th, but if you can
13 do the 4th that would be better, which is Wednesday,
14 January the 4th.

15 CHAIRMAN HILL: And then could we get a
16 supplemental from Office of Planning?

17 MR. MOY: The same date? Or would you want
18 by Friday?

19 CHAIRMAN HILL: You would need to look at
20 stuff, right? Yeah.

21 MR. MOY: Friday of the 6th?

22 CHAIRMAN HILL: Yeah.

23 MR. MOY: Okay. So applicants file
24 Wednesday, January 4th, Office of Planning files
25 by -- in 3 days, Friday, January 6th, Decision

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1 meeting on January 11th.

2 MS. MOLDENHAUER: And OP's supplemental would
3 be only focused on the 900 square foot.

4 CHAIRMAN HILL: Yes.

5 MR. MOY: Depending on what the applicant
6 files, I would think. If there are any changes.

7 CHAIRMAN HILL: I guess the Office of
8 Planning can comment on whatever is in the record,
9 but you're not going to change your mind on the
10 height.

11 MR. JESICK: Yes, that's correct. We would
12 not change our height. Not change our mind on the
13 height.

14 CHAIRMAN HILL: Okay. So, I wouldn't need
15 anything from the Office of Planning then, if you
16 don't submit anything in terms of the 900-square
17 feet. Okay? Okay, great. Thank you.

18 MR. SMITH: Thank you so much for your time.
19 Appreciate it.

20 CHAIRMAN HILL: Now, Mr. Moy, I'm going to
21 let them kind of clear out, but then there's an issue
22 that we have to work through?

23 MR. MOY: Yes. What I would like to do, Mr.
24 Chairman, is to tee up a case that was previously on
25 the docket that -- where the applicant's request for

1 a postponement was granted to a future date, and this
2 particular application was to February the 1st.
3 However, there is a resident who has appeared and
4 wanted to give testimony on that application.

5 As the Board knows, there has been precedent
6 where the Board has allowed testimony and I'm going
7 to -- although I don't know for sure but, surmise
8 that this person may not be able to attend on
9 February the 1st, 2017, where the Board has in the
10 past and other cases have allowed their oral
11 testimony. And that would be to Application No.
12 19355.

13 CHAIRMAN HILL: Okay. Great. If you could
14 just please come forward? And just -- oh, sorry.

15 Hi. Good afternoon. And before you state
16 your name I just want to clear this up with the Board
17 also. So, Mr. Moy, this was an application that was
18 postponed from today, but also was postponed earlier?

19 MR. MOY: Yes, from December 7th.

20 CHAIRMAN HILL: Okay.

21 MR. MOY: And just to remind the Board, none
22 of the parties are here for this application.

23 CHAIRMAN HILL: Right. Okay. If you could
24 please go ahead and state your name and address?
25 Just push the green, the button there, until the

1 green light comes on. There you go.

2 MS. MEEHAN: Oh. First of all, thank you
3 Chairperson Hill and fellow members of the board and
4 your attendant staff. I appreciate your time. I was
5 here last week and again today.

6 And my --

7 CHAIRMAN HILL: Could you tell me your name?
8 I'm sorry.

9 MS. MECHAN: Sure. I'm so sorry, Anna
10 Michaela Meehan, and I'm a resident of 625 Pickford
11 Place Northeast.

12 CHAIRMAN HILL: Okay. Ms. McNeelan (sic).
13 Can you it again, the last name?

14 MS. MEEHAN: Meehan.

15 CHAIRMAN HILL: Meehan? Meehan.

16 MS. MEEHAN: Correct.

17 CHAIRMAN HILL: So, Ms. Meehan. So, they did
18 fill me in a little bit on what had happened, and I
19 do want to let you know first of all that I apologize
20 in terms of the way things have gone about it. And I
21 know that, you know, as someone who again really
22 wants things to be fair for everyone, and have an
23 opportunity to speak, sometimes scheduling gets out
24 of hand and when you don't really know where people
25 are or who is going to come forward to testify,

1 unfortunately some things do fall through the cracks.

2 Normally we let people have three minutes to
3 speak, and so I'm going to go ahead and let you do
4 that. This is something that is coming up in the
5 future, and I -- meaning the case is going to be held
6 in February. And so, as I understand it, you may or
7 may not be able to come back in February in terms of
8 when the case is actually going to be before us. At
9 least that's what I understood. Is that correct?

10 MS. MEEHAN: I actually don't know. In fact
11 it was very inconvenient for me to be here today.
12 According to the website yesterday, this case was
13 going to be heard today, so I should have been down
14 at Marine Base Quantico for my son's graduation
15 today. So --

16 CHAIRMAN HILL: No, I appreciate -- no, no,
17 I'm just going to give you an extra minute is what
18 I'm trying to get to you. So, I'm going to give you
19 the --

20 MS. MEEHAN: I won't take three minutes of
21 your time, sir.

22 CHAIRMAN HILL: No, that's okay.

23 MS. MEEHAN: I have presented Mr. Moy with
24 copies of two letters that I sent. If you and your
25 board members don't have copies, I have additional

1 ones to provide to you. My position is not so much
2 in opposition to the variance request that's before
3 you. It's more of a procedural request for avoiding
4 additional citizens from the frustration that I've
5 had to endure in this process.

6 So, first and foremost --

7 CHAIRMAN HILL: Sorry, I'm just going to
8 interrupt you. What I was going to say is like, I
9 was going to give you one minute prior to tell me
10 about like kind of the procedural elements if you'd
11 like to talk about that. And then go ahead and take
12 three minutes to talk about the case, if that's good.

13 MS. MEEHAN: You're being very kind in giving
14 me additional time. I would like to take less --

15 CHAIRMAN HILL: Let's suggest that --

16 MS. MEEHAN: -- of your time.

17 CHAIRMAN HILL: That's okay. I want to know
18 about the procedures too. Like, let's do that first
19 and then go to the case, okay?

20 MS. MEEHAN: First and foremost, the reason I
21 was originally coming here today was because I was
22 notified of a request for a variance, because I live
23 within 200 feet of the property. So, I received a
24 letter via USPS letting me know.

25 So, I showed up last week. I didn't know

1 that I should have checked the website. So, my first
2 thing was to say, and I sent a letter to Mr. Varga
3 and I've already spoken with Ms. Barden about, you
4 know, maybe it would be helpful when people receive
5 such a letter to include an additional paragraph
6 saying, these things do get rescheduled, check our
7 website within 24 hours. She, and he were both very
8 gracious and have said that they are going to make
9 such a change to the form letter. End of story.

10 However, I did check the website yesterday
11 morning to make sure that this hearing was still
12 going to occur today. It was not updated on the
13 website. So, I'm here today and if you look at your
14 schedule for today, and if you look at page 3, you
15 will see under Ward 6 it says, this case has been
16 rescheduled from December 7th to the public hearing
17 of December 14th. So, it's still listed as being on
18 the schedule for today.

19 My next point, however, is that I knew about
20 this hearing as I said, because I received a letter
21 to that affect. In walking by the property, which I
22 do so several times a day, the placards that are
23 posted are at such a distance from public property
24 that you could not possibly read them.

25 According to the Office of Zoning, they are

1 visible because they're bright orange. Therefore,
2 that meets the requirement.

3 Well, if I can't read them, and I only know
4 about it because presumably it says the same thing as
5 in my written letter, it's kind of useless,
6 ineffective. I know other placards in my
7 neighborhood have been posted on fences right at the
8 edge of the sidewalk, where you can read them.
9 Visible and legible are not the same thing, sir.

10 Furthermore, it seems to me that if such
11 placards are to be effective and they are to
12 communicate to the public, then it should be
13 incumbent upon the applicant who posts such placards,
14 that if there is a change of date it should be put on
15 the placard as well.

16 CHAIRMAN HILL: No, no, I'm listening. I'm
17 trying to figure it out also. Yeah. I don't want
18 people to show up and then, it's a scheduling issue.

19 MS. MEEHAN: I've lost 10 hours of work time.

20 CHAIRMAN HILL: Yeah. No, I understand.

21 MS. MEEHAN: I'm out over \$700 right now.

22 CHAIRMAN HILL: No, I understand. I
23 understand.

24 MS. MEEHAN: My third point is, again, I'm
25 not sitting here in objection to the variance in and

1 of itself, but the variance was violated over a year
2 ago. The property structure has already been built.
3 So, it's retroactive. That, to me, also seems in
4 violation of a notification process.

5 CHAIRMAN HILL: Okay. Okay. So, you're here
6 mainly due to the process, I suppose. Right? You're
7 not necessarily opposed to --

8 MS. MEEHAN: That is correct, sir.

9 CHAIRMAN HILL: -- the variance itself.

10 MS. MEEHAN: That is correct, sir.

11 CHAIRMAN HILL: Okay. Okay. Well, I
12 appreciate that and I'll talk to, you know, the
13 secretary and the director again. I mean, I think
14 that the added paragraph is obviously something that
15 seems to clarify the letter, you know, so that --

16 MS. MEEHAN: If I could just add, the letter
17 as it exists now, is a page and a half so it's just
18 double-sided. It wouldn't add any additional cost,
19 you know, to the postage or an additional page of
20 paper. It's within the existing boundaries.

21 CHAIRMAN HILL: No, I appreciate that. Now,
22 I'm going to ask again, I mean, again, I don't know
23 the technicalities to everything and how things
24 change. And so, but I will take all this back to the
25 people whom I work with and make sure that this

1 doesn't happen again for people in the future.

2 As far as your comment towards the variance
3 already being approved, I would have to kind of --
4 it's when the case comes forward --

5 MS. MEEHAN: Well, and that's --

6 CHAIRMAN HILL: It's when the case comes
7 forward that I'd have an opportunity to kind of look
8 at that. But also, I'm taking that into
9 consideration and now it will be in the record when
10 that case does come forward.

11 MS. MEEHAN: But, just a point of
12 clarification, sir. I'm not saying that the variance
13 was approved. What I'm saying is that the
14 petitioners, the applicants, are seeking a variance
15 subsequent to the action already have been taken,
16 which to me seems to violate the, you know, good
17 cause -- I mean, good something, whatever. I'm at a
18 loss for the words, but it seems to violate the
19 process where you should seek a variance before you
20 violate the variance.

21 CHAIRMAN HILL: No, I agree. And I misspoke.
22 No, no, I --

23 MS. MEEHAN: I'm not trying to place blame,
24 sir. I just want clarification.

25 CHAIRMAN HILL: Thank you. I misspoke. I

1 wasn't saying that the variance had already approved.
2 I was saying what you had stated, which was that it's
3 already built and done, and now they're coming to ask
4 for it. So, I will take that into consideration when
5 we actually hear the case.

6 MS. MEEHAN: Thank you, sir.

7 CHAIRMAN HILL: Does anyone have any
8 questions for the witness?

9 MR. HART: No question, but I understand the
10 frustration. I mean, it's --

11 MS. MEEHAN: Thank you.

12 MR. HART: I have been doing planning for 20
13 years as a planner, and I know that every time you
14 put a placard on in my neighborhood, we always have
15 the problem of the placards not being able to be read
16 because they are so tiny and I'm driving by it and
17 I'm like, well, how is that helping, you know, for
18 letting anybody know that this is actually going on.
19 You'd actually have to stop and, you know, kind of
20 take a picture of it or something so you could
21 actually understand what's happening.

22 So, it's an issue that is not just, you know,
23 in your neighborhood. I think it's a --

24 MS. MEEHAN: Sir, if I may?

25 MR. HART: It's a (simultaneous speech)

1 issue.

2 MS. MEEHAN: I'm not talking about driving
3 by.

4 MR. HART: No, no, no. Oh, no I --

5 MS. MEEHAN: I walk my dog by here.

6 MR. HART: Yes.

7 MS. MEEHAN: At least four times a day.

8 MR. HART: Yes.

9 MS. MEEHAN: So, it's not a matter of driving
10 by. Walking by --

11 MR. HART: Yes.

12 MS. MEEHAN: -- it is at such a distance that
13 it's not possible to even know that it even says
14 public hearing.

15 MR. HART: Yeah.

16 MS. MEEHAN: I only know it because I've
17 seen --

18 MR. HART: The signs.

19 MS. MEEHAN: -- those types of signs before.

20 MR. HART: Yeah, I was just raising that it's
21 an issue of --

22 MS. MEEHAN: Thank you, sir.

23 MR. HART: -- of not just here. It's an
24 issue, I think, that we're just going to have to deal
25 with. But I appreciate you coming down and talking.

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1 MR. HART: I hope that you will deal with it,
2 sir.

3 MR. TURNBULL: Yeah, I think not getting into
4 the case itself, but I think the issue for the -- I
5 think it's a special exception that's coming up, it's
6 for decks that are already built. That they're
7 there. I think that there's a new owner who is now
8 coming in and finds himself stuck with decks that
9 were built without a permit; without authority.

10 So, you've got a new owner coming in and
11 dealing with a situation that he's not looking to do
12 anything. He's trying to find a solution to what was
13 already built that shouldn't have been built.

14 MS. MEEHAN: In which case I would stand
15 corrected --

16 MR. TURNBULL: Yeah.

17 MS. MEEHAN: -- but to my knowledge the
18 property hadn't changed hands. I will obviously have
19 to research that myself, sir.

20 MR. TURNBULL: Yeah. I'm just --

21 MS. MEEHAN: But that was -- there have been
22 no for sale signs and it's the same people --

23 MR. TURNBULL: Yeah, I just did it --

24 MS. MEEHAN: -- in the same car --

25 MR. TURNBULL: I wasn't familiar with -- oh,

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1 okay. Well --

2 MS. MEEHAN: The same Volvo.

3 MR. TURNBULL: Yeah, I just looked at the
4 Office of Planning report and it looks like that's
5 the issue that was there.

6 CHAIRMAN HILL: Okay. So, anyway, I just
7 wanted to make sure that you had an opportunity and
8 again --

9 MS. MEEHAN: And I appreciate that.

10 CHAIRMAN HILL: -- we are sorry for the
11 confusion that happened, and we will take all the
12 things that you noted into consideration, moving
13 forward in terms of procedurally, as well as for this
14 particular case. We now have your testimony in the
15 record.

16 MS. MEEHAN: And I thank you all, all of you,
17 for your time. Thank you so very much.

18 CHAIRMAN HILL: Thank you.

19 MS. MEEHAN: And thank you for your service.

20 CHAIRMAN HILL: Thank you. Bye, bye.

21 MR. MOY: I don't want to prolong this, Mr.
22 Chairman, but thank you and the Board apologize for
23 any inconvenience, and the Board will move on making
24 the proper corrections. But I do want to note that
25 on our revised public hearing notice, we do have the

1 page 2 where we list cases that will not be heard
2 today. So that is reflected on the written document.

3 That's all I have, Mr. Chairman.

4 CHAIRMAN HILL: All right, Mr. Moy, we can
5 take a look at all that later as well and see if we
6 can do a better job at that.

7 MR. MOY: That's fine.

8 CHAIRMAN HILL: So, all right. We'll go
9 ahead and go with the last case I think today, if
10 that's all right with you.

11 MR. MOY: That's fine. Okay, that's good.
12 Thank you. That would be parties to the table, I
13 say, the remaining parties to the table to
14 Application 19363 of Zachary and Robert Bernstein and
15 as amended, and if the applicants correct me if I'm
16 wrong, amended for special exception relief under the
17 penthouse requirements of Subtitle C, Section 1500.4,
18 enclosing walls of equal heights requirement,
19 Subtitle C, 1500.9, and the penthouse setback
20 requirements of Subtitle C, 1502.1. This would add a
21 roof deck addition to an existing one-family
22 dwelling, R-3 zone, 35 Franklin Street Northeast,
23 Square 3501, Lot 31.

24 CHAIRMAN HILL: Good afternoon. If you could
25 just please do me a favor and introduce yourselves

1 from left to right, right to left, whatever you feel
2 like doing.

3 MR. BERNSTEIN: I'm Rob Bernstein. I am the
4 homeowner at 35 Franklin Street Northeast.

5 MR. MANION: Tom Manion. I'm architect for
6 the project.

7 CHAIRMAN HILL: Could you pronounce your last
8 name again for me? I'm sorry.

9 MR. MANION: M-A-N-I-O-N, Manion, like canyon
10 with an M.

11 MS. MANION: Tiffany Manion and I also work
12 for the architect's office.

13 CHAIRMAN HILL: Okay. Great. Thank you.
14 So, you guys were here before in terms of what we
15 were interested in looking at, and I know that there
16 was some concern or discussion about kind of taking a
17 look at the hatch and the different options with
18 that. And I think you did a pretty good job in my
19 opinion in terms of what types of things you looked
20 at. However, I know that some people might have more
21 questions here on the Board. So, what I would advise
22 you or would like to hear, I guess, is just really
23 wanting to hear about those options, and why those
24 options are not feasible.

25 MR. MANION: Okay. We did look at a number

1 of options, most of which we had done before, before
2 that hearing. And we listed them out on the letter
3 of the memo that came along with this. We had looked
4 at the sure span, the sliding archway, the
5 rectangular roof hatch that was one of the options we
6 earlier looked at. We had a number of problems --

7 CHAIRMAN HILL: Mr. Manion.

8 MR. MANION: Yes.

9 CHAIRMAN HILL: I'm sorry, which -- are you
10 looking at something by any chance, or can you point
11 me? I know you put new stuff in the record. Okay.

12 MR. MANION: We --

13 MS. MANION: We're looking at the different
14 schemes and the corresponding memo that said why each
15 scheme wasn't a viable option.

16 CHAIRMAN HILL: Got it. Got it. Okay,
17 great. Thank you.

18 MR. MANION: So, just quickly to go in to the
19 schemes. First one was the roof hatch, the sliding
20 roof hatch. And we're working with a budget of under
21 \$30,000 on this project. And the roof hatch was
22 almost \$11,000 of that. We did do a scheme for it,
23 but we also found out during the time that because of
24 the -- some of the requirements of this and the head
25 height, you'll see on one of the attachments in there

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1 that they actually list the access, the ladders and
2 they have what they consider an acceptable and sort
3 of a more dangerous zone or zones to be avoided. So,
4 we took that into consideration because there's more
5 children and pets in the family.

6 The other part that was that, the insulation
7 on this and the other hatches that we looked at,
8 although insulated, is relatively minimal compared to
9 what we could do with foam and building a true
10 structure. So, this one was dropped from
11 consideration.

12 Then, we went on to Scheme B, and this was
13 placing the hatch over the existing stairs. And we
14 are doing a reverse scissor stair. It increased the
15 size of what we needed to build up above in order to
16 meet the head height. We moved the washer and dryer,
17 and we had the closets in the space that we were
18 leaving on the right side was minimized.

19 This one, in terms of -- and we did have
20 contractors placing these. This one came in a little
21 over their budget, and there was a fair amount of
22 disruption on the second floor. So, we had not
23 proceeded with this one. They were preferring not to
24 affect the stairway as dramatically, and not to move
25 the washer/dryer.

1 On Scheme C, we actually looked at a spiral
2 stair, which worked in a slightly smaller space up
3 above. And this one, although the prices worked, et
4 cetera, and it gave us a little more room in that
5 central section, we thought was an unsafe situation
6 for this particular family. So, we dismissed the
7 spiral stair.

8 And then we had a little more, I'm going to
9 say aggressive scheme that had a fairly large upper
10 level. And we used a very gradual U-shaped stair
11 that wrapped that whole space. This one was dropped
12 because we literally lost any kind of potential use
13 of that central space. And what we were trying to do
14 was have a temporary space in there that they use as
15 an office or emergency, throw a guest in there.

16 So, we were trying to leave some usable space
17 in the middle without disrupting the rest of the
18 floor. So, these were the pieces that we had looked
19 at and we had dropped from consideration. So, what
20 we submitted or what we would like the Board to look
21 at again was, the original one which put it to the
22 side over the stair. It gave us a fairly simple
23 stair and we can -- we're putting storage and beds,
24 potentially, under the stair on the upper level. The
25 unequal roofs is because we pulled it down, literally

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1 almost to the height of the roof to minimize its
2 visual impact from -- you can't see it from the front
3 at all.

4 And we located it at the side, so that caused
5 us a very variance. We also did that because
6 structurally it just worked well to be able to use
7 the party wall as one of the supporting structures.
8 The most expensive was to locate everything in the
9 center, so we kept always designing to one side or
10 the other.

11 CHAIRMAN HILL: And, Mr. Manion, just to be
12 clear for me, the architectural plans that you're
13 still -- they haven't changed any. You're still
14 proposing the ones that are in Exhibit 4?

15 MS. MANION: Correct.

16 CHAIRMAN HILL: Okay. Great. Thank you.
17 Okay. All right. I am going to turn to the Office
18 of Planning in a moment just for some clarification.
19 But however, before I do that does the Board have any
20 questions for the application?

21 MR. TURNBULL: Oh, thank you, Mr. Chair. I
22 think the one option, or the one plan that I haven't
23 seen, which I think would have solved some issues is
24 that going back to the original plan where the stair
25 goes up and goes to a landing and then goes straight

1 up to the wall, goes straight up to the roof, I
2 should say, if there had been a landing, a full
3 landing up there that instead of going, as you turn
4 to the right, the landing continued and then went up,
5 straight up into the middle of the roof from there,
6 and if they had moved the bathroom to the other side,
7 where there already is another plumbing wall, it
8 would have freed up space and would have allowed them
9 then to had only about a three-foot bump up by the
10 parapet roof, and then the entrance, the higher part
11 of the stair would have been in the center of the
12 roof, which would have then met the zoning
13 regulations.

14 I think that would have been an easier
15 solution, plumbing would have lined up and I think
16 they would have -- they could have done exactly what
17 they wanted, kept it to the side, gone up and turned
18 around and gone straight up, and met the zoning
19 requirements. And by just moving -- and I think
20 they'd still have room.

21 So, I didn't see that and I was hoping I
22 would have saw that, but.

23 MR. MANION: Mr. Turnbull, I'm sorry. I did
24 not understand what you were looking at for the last
25 time, but that would be for us to -- well, to

1 relocate the bathroom, et cetera, would be a fairly
2 substantial investment into the situation. And if
3 the stair came back and did return, I would be lower
4 at the party wall. That is correct. I am low at the
5 front and we would be low at the side, and then we
6 would be high on the interior face.

7 MR. TURNBULL: But there's already plumbing
8 at the other bathroom wall on the other side. It's
9 simply tying into existing plumbing. I mean --

10 MR. MANION: Okay. But we're not creating
11 new bathrooms. We were leaving what was there.

12 MR. TURNBULL: Well, I'm trying to have you -
13 - I'm trying to help you --

14 MR. MANION: Okay.

15 MR. TURNBULL: -- satisfy the zoning regs.

16 MR. MANION: Okay.

17 MR. TURNBULL: That's all I'm trying to do.

18 MR. MANION: I understand. I think that -- I
19 appreciate the design and I think that the main
20 difference is that we wanted to kind of keep this off
21 to one side. And it seemed to us to be the most cost
22 effective of the proposals that we came up with.

23 CHAIRMAN HILL: So, Mr. Manion, just to be
24 clear, you are understanding what Mr. Turnbull is
25 speaking about, though, right?

1 MR. MANION: I do.

2 CHAIRMAN HILL: Okay.

3 MR. MANION: He's talking about turning the
4 stairs 90 degrees, and what we have on scheme D was
5 essentially the same type of upper parapet. We did a
6 -- he's basically doing a variant on Scheme D and
7 tightening up the stair and turning it back.

8 When we do that, we lose about two-thirds of
9 that room and he's suggesting that we can move the
10 bathroom over to that area. It's just, I think it
11 does solve his concerns for the zoning, but it would
12 cost us substantially more money for the project.

13 CHAIRMAN HILL: I see. Okay.

14 MR. MANION: So, I do understand.

15 MR. BERNSTEIN: And we would lose the use of
16 that middle room, which is extremely important to us
17 as a family.

18 MR. TURNBULL: Well, what I'm suggesting is
19 that as you make a u-shaped turn, go up to the roof,
20 you move the bathroom over to the other side, you
21 create, then, an open space at the top of the other
22 stairs, which can be either desk, cupboards, or I
23 mean, you've got to think about your program, what
24 the zoning regulations are, and what you can do. I
25 think you have to really rethink, go back and look

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1 hard and fast at what you wanted to accomplish.

2 MR. MANION: I think that we're here because
3 we understood that we couldn't meet the zoning
4 regulations with what we were trying to do. But what
5 we were trying to do and the spiral stair scheme is
6 probably as close to our final scheme, we're not
7 looking for an open space at the top of the stairs.
8 We're looking for a space that they can, with
9 different options, close it off at different times
10 when they're not using the roof deck. And it would
11 literally function as another room, but had some
12 sense of privacy.

13 And to do that on the other side with the
14 stair there, and moving the -- it would be a very
15 small space and would be in the middle of my
16 circulation.

17 CHAIRMAN HILL: Okay. And again, just --

18 MR. MANION: So, I understand in another
19 project that might have been a wonderful thing, and
20 we have done condominiums where we've done similar
21 stairs. But the circulation in this and everything
22 works against us.

23 CHAIRMAN HILL: Okay. Just I very much
24 appreciate Mr. Turnbull and his questions, and we
25 will see where we get with this. But for

1 clarification on mine, just as far as the owner, this
2 is the design that you think functions better for
3 your program, given the suggestions that have been
4 laid out.

5 MR. BERNSTEIN: Yes, absolutely. So, the
6 whole point of this is to have an outdoor space that
7 we can use as a whole family. We have a young child,
8 we have a dog, and we have elderly relatives. We'd
9 like to be able to get up there in a way that's safe,
10 first and foremost, and as minimally impactful to the
11 architectural integrity of the neighborhood.

12 We also are on a budget. I can't move a
13 bathroom and lose what is my grandparent's coming to
14 stay guest bedroom. That's just not possible for us
15 as a family. So, we're trying to work within the
16 system and do what we can. We've been very engaged
17 with the community. We had unanimous support from
18 our neighborhood civic association, and from our ANC
19 board. And so, it seems like what's left here to do
20 is ask for your help for the variance.

21 CHAIRMAN HILL: Okay. Great. Thank you. I
22 was going to turn to the Office of Planning but, Mr.
23 Turnbull, do you have any more questions for the
24 applicant? Okay. All right.

25 I guess, I'm turning to the Office of

1 Planning just in terms of the different schemes that
2 have been put forward, and if you have any comments
3 upon those schemes, and are you sticking with your
4 original report?

5 MR. JESICK: Yes, we definitely stand by our
6 initial recommendation of approval. Just looking at
7 the alternate schemes that have been provided, I
8 mean, any stair that you add will cause some
9 disruption to the floorplan below. But it seems like
10 the one that was proposed in Exhibit 4 is the least
11 disruptive of all the ones that have been put
12 forward.

13 CHAIRMAN HILL: Okay. Great. Does anyone
14 have any questions for the Office of Planning?

15 MR. TURNBULL: Yeah, I do.

16 CHAIRMAN HILL: Okay.

17 MR. TURNBULL: So, Mr. Jesick, are you going
18 to approve all of these when they come before the OP?

19 MR. JESICK: Well, we would look at, of
20 course, the potential --

21 MR. TURNBULL: They're all going to be the
22 same. So, we might as well rewrite the zoning regs.
23 I'm just saying, you're going to get this a lot.
24 He's going to come before you, oh, I don't have the
25 budget, I don't have the money, I don't want to do

1 this, I don't want to do that, and I don't want to
2 meet the zoning regs, so I'm going to put my stair as
3 a bump up on the far side of the parapet, and I don't
4 care about the zoning regs or my neighbors, or anyone
5 else. I'm going to do what I want to do, and that's
6 what you're going to get.

7 MS. MANION: If I may say something. We did
8 just supply support letters from the neighbors.

9 MR. TURNBULL: I see some letters that just
10 came in. I haven't looked at them. We just got
11 them. But I'm just saying, the zoning regs are there
12 for a certain purpose. They're there to preserve the
13 integrity of the neighborhood. They're there to be a
14 consistency within the neighbors. If you do it,
15 everyone in the block can do it, right?

16 MR. MANION: I don't know if that's the case
17 or not, but --

18 CHAIRMAN HILL: It's okay. You want to let
19 the --

20 MR. TURNBULL: It's a rhetorical question.

21 CHAIRMAN HILL: You want to let the Office of
22 Planning respond. You don't have to worry.

23 MR. TURNBULL: And that was a rhetorical
24 question.

25 CHAIRMAN HILL: Actually, I do think there

1 was a question, which was, are you going to -- so,
2 this is the way -- this is the way we may be seeing
3 these coming forward, and the Office of Planning will
4 be in support of those, or -- well, I'll let you
5 respond.

6 MR. JESICK: We will evaluate each case
7 against the criteria of the regulations.

8 MR. TURNBULL: That means you'll be
9 supporting whatever comes before you.

10 MR. JESICK: Not necessarily.

11 MR. TURNBULL: Well, then how can you support
12 this?

13 MR. JESICK: We looked at the criteria. Is
14 it unduly restrictive, prohibitively costly, or
15 unreasonable, the strict application of the
16 requirements. Would it result in a better design of
17 the roof structure without appearing to be an
18 extension of the building wall? Would it be less
19 visually intrusive?

20 I mean, we went through all the requirements
21 as stated in our report, and we found that the
22 applicant had met those requirements.

23 MR. TURNBULL: I have no comment.

24 CHAIRMAN HILL: Okay. Board Member Hart, do
25 you have anything you'd like to add? Questions for

1 Office of Planning, I should say?

2 MR. HART: No, I don't think so, thank you.

3 CHAIRMAN HILL: Okay. Okay. Does the
4 applicant have any questions for the Office of
5 Planning?

6 MS. MANION: No.

7 CHAIRMAN HILL: Okay. I'm going to just -- I
8 don't know whether I went through this or not, the
9 beginning of the first hearing, but I'm going to ask
10 if there's anybody here from the ANC. Is there
11 anyone here wishing to speak in support of the
12 application? Is there anyone here wishing to speak
13 in opposition to the application?

14 Okay, then I'm going to turn back to the
15 applicant. Is there anything else you'd like to add
16 in conclusion?

17 MR. BERNSTEIN: Well, I'd like to oppose your
18 statement that I have not cared about the opinions of
19 the neighborhood. I have talked to the neighborhood.
20 Stronghold is very different than other
21 neighborhoods. There's only six blocks that people
22 live on it, and we are very close to the neighbors,
23 and everyone is in full support of this. And I have
24 tried to do this in a way that I'm not sticking some
25 structure, some massive structure or apartment on the

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1 top of my building. I'm simply trying to get out of
2 the house on to the roof for an outdoor space for my
3 family, in a safe way.

4 MR. TURNBULL: Yes, but you haven't looked at
5 the solution -- a lot of the solutions that would
6 come up with the stair would somehow come up in the
7 middle. They've all been at the end of the row, at
8 the end of the parapet, right, bordering on it.

9 MR. BERNSTEIN: I have looked at that, and
10 I'm not losing my grandparent's room to come stay and
11 visit the child.

12 CHAIRMAN HILL: Okay. All right. So, that's
13 the closing statement?

14 MR. MANION: I've done a number of roof decks
15 in Capitol Hill, Georgetown, DuPont Circle, various
16 places, and very similar things, and I know that the
17 regs have changed over time. This is probably the
18 smallest roof access I've ever done. And if we
19 turned it the other way and we used the kickback
20 stairs it would have been bigger, it would have been
21 wider, because I couldn't have made the head height
22 room at the turn, and it would have been just like
23 the one that's over the existing stairs, but it would
24 be turned. So, it would be, in fact, a larger
25 structure.

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1 We've tried to do the best we could and sorry
2 if we didn't fulfill everybody's requirements.

3 CHAIRMAN HILL: Okay. All right. Anybody
4 got any more questions for the applicant?

5 All right. Then, with that I'm going to
6 close the hearing. Is the board ready to deliberate?
7 Is the board -- sorry, is the board ready to
8 deliberate? Okay.

9 MR. TURNBULL: Always.

10 CHAIRMAN HILL: Okay. So, I'll go first and
11 then -- well, let's see. How shall I do this? I am
12 understanding of the different architectural elements
13 and possibilities that this might come forward on
14 different cases. I am really just kind of judging my
15 opinion based upon the testimony of the applicant as
16 well as that of the Office of Planning.

17 I would be in support of this based upon the
18 record where the Office of Planning -- you know, the
19 report the Office of Planning has given. I preface
20 that by also saying now that I'm not an architect.
21 And I am, however, taking into consideration, also,
22 that we have asked for a few different kinds of
23 schemes. The applicant has come back with some. The
24 applicant themselves, the people what live in the
25 family, I guess they have some programmatic needs

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1 that they're trying to retain. And that was a big
2 architectural word there, programmatic.

3 And so, but in any case, so I'm in support of
4 the application. But I'd like to hear what my
5 colleagues have to say.

6 MR. HART: I appreciate you all coming in and
7 also providing the -- well, actually first I'd just
8 want to say I have, actually reviewed the record for
9 the entire case, and I have understood that there are
10 a number of issues that you're trying to deal with
11 and I sympathize with having to kind of deal with
12 them in a fairly constrained location.

13 I appreciate the information that you
14 provided, the additional information that you've
15 provided. I also feel that I would be supportive of
16 your application. I know that there are difficulties
17 that you would have to deal with in terms of you
18 know, moving the interior, the existing interior and
19 trying to keep from doing as much of that as
20 possible.

21 And I think that's about it. We have the
22 last board member to --

23 CHAIRMAN HILL: Commissioner Turnbull.

24 MR. TURNBULL: You need three votes.

25 CHAIRMAN HILL: I need three votes.

1 MR. TURNBULL: Yeah. Think you're going to
2 get it?

3 Well, I'm frustrated. I always feel when an
4 applicant comes they should come prepared. They need
5 to come having fully vetted the solutions to try to
6 meet the zoning regulations. I don't know if we got
7 it. We had to pull it out of, on this applicant, to
8 get other schemes to show this Board why or what
9 couldn't work.

10 I'm not -- from a program family standpoint,
11 I get what they're talking about, and I appreciate
12 all of that. I just wish that their architect had
13 been a little bit more thorough in looking at the
14 solutions and coming and meeting with them to develop
15 something that would try to meet the intent of the
16 zoning regs. We went through a lot of -- eight years
17 redoing these zoning regs to try to get it to work so
18 that we were a least impact on the neighborhood. And
19 I understand we've got letters up the kazoo.

20 I'm frustrated. I understand their angst and
21 after looking at this, it's not because I think it's
22 the greatest solution. It's not because I think it
23 couldn't be done differently, but I will go along and
24 approve this. This is dragging out way too long and
25 I think there needs to be a -- they need to

1 understand that they had more work to do, and I think
2 they could have done it, and I think the cost would
3 not have been what we're hearing. That's just my own
4 input.

5 So, but I will vote to go along with this.
6 But I still think that -- and I want the Office of
7 Planning to carefully look at this as we go forward,
8 because I think this is going to reoccur, and I think
9 we need to have applicants who come and offer a
10 better solution to how you get to the roof. I think
11 they really have to think from an architectural plan
12 and how you move and how people go up, and I think it
13 can be done. You know, so but, that's just -- you
14 know, I'm just, I'm rambling on here about the zoning
15 regulations and what we've gone through to try to
16 make this work.

17 And I don't think this -- I guess if you look
18 at this you could say, yes, this is -- the other
19 plans they show were ridiculous. The bigger plans,
20 you know, it was almost like, let me show you what
21 the worst -- let me show you how bad I can really
22 make this thing going up to the roof, instead of
23 trying to make it de minimis.

24 So, that's the frustrating part is that we've
25 got a lot of plans that show, you know what? I can

1 make it even worse than what I'm showing you. So,
2 that's the frustration on my part, that the architect
3 really didn't do his homework. But that's -- but,
4 I'll go along with this.

5 CHAIRMAN HILL: Well, I appreciate it, and I
6 appreciate that we have -- there's three of us here
7 and that it is frustrating. And I understand what
8 your points are. And to your comments with the
9 Office of Planning, I mean, I still will get to serve
10 a little bit longer here and I imagine this will
11 happen again, or come forward, and I will remember it
12 and I will remember how the Office of Planning got to
13 where we got to now, and we'll see how that next case
14 works forward.

15 So, but I do appreciate all your comments,
16 Mr. Turnbull, and if you aren't here when that time
17 happens, I will remember your comments. And I mean
18 that.

19 MR. TURNBULL: Give me a call.

20 CHAIRMAN HILL: Yeah. No, I've stopped using
21 phone calls and things -- so, I would go ahead and
22 make a motion to approve Application No. 19363 as
23 captioned by the secretary.

24 MR. HART: Seconded.

25 CHAIRMAN HILL: And I'm not going to get the

1 second over here to my left.

2 And the motion has been made and seconded.

3 [Vote taken.]

4 CHAIRMAN HILL: All those opposed. The
5 motion passes.

6 MR. MOY: Staff would record the vote as
7 three, to zero, to two. This is on the motion of
8 Chairman Hood to approve -- Chairman Hill to approve
9 the application for the relief requested. I'm
10 assuming this is as to the plans noted on Exhibit 4.
11 These are the original plans and drawings. Seconded
12 the motion, Mr. Hart. Also in support, Mr. Turnbull.
13 And we have a member not present today, and a board
14 seat vacant. Motion carries, sir.

15 CHAIRMAN HILL: Thank you. Summary order,
16 Mr. Moy.

17 MR. MOY: Yes. Thank you.

18 CHAIRMAN HILL: And there might be one more
19 thing coming up. Let me just chat with you for a
20 moment.

21 MR. MOY: While you do that I do have one
22 other thing I'd like to add to the transcript that I
23 neglected to mention earlier at 9:30 this morning.
24 We did have a case that was withdrawn by the
25 applicant, and that was Case No. 19375 of Todd and

1 Shephard Partners, LLC. And that's it for me, Mr.
2 Chairman.

3 CHAIRMAN HILL: Okay. Great. Thank you.
4 Thank you, guys.

5 MR. BERNSTEIN: Thank you for your time.

6 CHAIRMAN HILL: Okay, Mr. Moy. You had some
7 issues that somebody wanted to come forward and
8 address?

9 MR. MOY: Yes. Not so much issues as it is
10 to continue on a post -- well, I was going to say
11 post-hearing, but not really. This hearing hasn't
12 been completed but to complete the testimony from the
13 applicant as to the relief and drawings to
14 Application No. 19387 of Smith and Diao, D-I-A-O.

15 CHAIRMAN HILL: Okay. Great. Could the
16 applicant please come to the table?

17 MS. MOLDENHAUER: Thank you so much for
18 recalling this case for a very brief moment.

19 CHAIRMAN HILL: That's okay. Could you
20 please introduce yourself?

21 MS. MOLDENHAUER: Sure.

22 CHAIRMAN HILL: Thank you.

23 MS. MOLDENHAUER: Meredith Moldenhauer, land
24 use counsel for the applicant.

25 MS. AGBOOLA: Ajoke Agboola, land use counsel

1 for the applicant.

2 MS. MOLDENHAUER: We had a brief discussion
3 with our clients at the end of the hearing and our
4 client would like to withdraw the request for the
5 three units and ask that the board, if we can
6 supplement the images that were requested by Mr.
7 Turnbull by this Friday, if the Board could then
8 allow this case to go to decision on the 21st, they
9 would greatly appreciate it. That way they can move
10 forward possibly, with this project.

11 So, it's just reducing -- indicating that
12 they have agreed to withdraw the 900-square foot
13 request for relief, and simply modify the images
14 requested by Mr. Turnbull. Their architect indicated
15 that we can get that file by Friday, and would ask if
16 the Board could put it on their agenda for the 21st
17 of December.

18 CHAIRMAN HILL: Okay. Yeah. The Board, is
19 that fine -- is that fine with the board members?

20 Mr. Moy, would I need to get something from
21 the Office of Planning? No, because they're not
22 interested in the height, they're only interested in
23 the 900 square feet. I don't need anything from the
24 Office of Planning.

25 MR. MOY: No, but I would leave -- that's

1 correct, but I would leave that option open.

2 CHAIRMAN HILL: Open to Office of Planning.

3 MR. MOY: OP, in case they wanted to.

4 CHAIRMAN HILL: Okay.

5 MR. MOY: Maybe they'll have a -- that way
6 we'll have officially a full agreement from OP if
7 that's needed. It may not be moot.

8 CHAIRMAN HILL: Okay.

9 MR. MOY: So, I'm guessing then the filings
10 could be submitted by -- if we're going to decide
11 this on Wednesday --

12 MS. MOLDENHAUER: By Friday.

13 MR. MOY: By this Friday. Okay.

14 MS. MOLDENHAUER: And then just procedurally,
15 because we're no longer asking for a conversion, it
16 just changes the section of the regs that we're
17 asking for relief under. It's the exact same relief,
18 but because it's not the height and the turret
19 language in the conversion section, but rather the
20 height and the special exception language and the
21 turret language under Section E, we would just be
22 modifying, just so the Board doesn't -- is aware of
23 that when we file it. We would be modifying the
24 relief for E 5203.3 under 206, and E 5303 under
25 303.3. Those are the two special exception languages

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1 for both the height and the turret. Just --

2 CHAIRMAN HILL: Is OAG okay with that? Does
3 that make sense?

4 MS. NAGELHOUT: Yes, it does.

5 CHAIRMAN HILL: Okay. All right. Fine.

6 MR. MOY: My request, Mr. Chair is that the
7 applicant put all that good information in a cover
8 letter for the record.

9 CHAIRMAN HILL: Okay.

10 MS. MOLDENHAUER: We will absolutely do that,
11 yes. To make sure that the relief is clear there.

12 MR. MOY: And with all the new attachments.

13 MS. MOLDENHAUER: Yes.

14 CHAIRMAN HILL: Okay. Self certs. Self
15 certs.

16 MS. MOLDENHAUER: And then we'll just have
17 attachments regarding -- and self-certifications.
18 Thank you, Secretary Moy, that is appreciated. So,
19 we'll just have images of the exterior of the
20 building since the two-unit flat would be a matter of
21 right.

22 CHAIRMAN HILL: Mr. Turnbull, is that good
23 with you?

24 MR. TURNBULL: Yeah.

25 CHAIRMAN HILL: Okay. Does anybody have any

1 questions for the applicant? Mr. Moy, are we good?

2 MR. MOY: I believe so.

3 CHAIRMAN HILL: Okay. I hope I didn't cost
4 you guys any money. Like, you know, right? Okay.

5 MS. MOLDENHAUER: We'll see you next week.

6 CHAIRMAN HILL: Okay. All right. Mr. Moy,
7 is there anything else?

8 MR. MOY: I think that's it for me for sure.

9 CHAIRMAN HILL: Okay. All right. Then we're
10 adjourned. Thank you all.

11 [Whereupon, at 1:04 p.m., the Board Hearing
12 was adjourned.]

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