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

PUBLIC HEARING

9:39 a.m. to 11:25 a.m.  
Tuesday, October 18, 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 JEFFREY L. HINKLE, Board Member

4 PETER MAY, Zoning Commission

5 CLIFFORD MOY, Board Secretary

6

7

8 Office of Planning:

9 KAREN THOMAS

10 ANNE FOTHERGILL

11 MAXINE BROWN-ROBERTS

12 STEVE COCHRAN

13 BRANDICE ELLIOTT

14

15 Office of Attorney General:

16 MARY NAGELHOUT

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

2 CHAIRPERSON HILL: Good morning. The hearing  
3 will please come to order.

4 Ladies and gentlemen, we're located in the  
5 Jerrily R. Kress Memorial Hearing Room at 441 4th  
6 Street Northwest. This is October 18th, 2016, public  
7 hearing of the Board of Zoning Adjustments of the  
8 District of Columbia.

9 My name is Fred Hill, Chairperson. Joining  
10 me today is Anita Butani-D'Souza, Vice Chairperson,  
11 Jeffrey Hinkle, Board Member, and representing the  
12 Zoning Commission is Peter May.

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

25 All persons planning to testify either in

1 favor or in opposition must have raised his or her  
2 hand and been sworn in by the secretary. Also, each  
3 witness must fill out two witness cards. These  
4 witness cards are located on the table near the door  
5 and on the witness table.

6           Upon coming forward to speak to the Board  
7 please give both cards to the reporter sitting at the  
8 table to the right. If you wish to file written  
9 testimony or additional supporting documents today  
10 please submit one original and 12 copies to the  
11 secretary for distribution. If you do not have the  
12 requisite number of copies you can reproduce copies  
13 at an office printer in the Office of Zoning located  
14 across the hall.

15           With that, Mr. Moy, do we have anything,  
16 preliminary matters?

17           MR. MOY: Yes, I do, very briefly, Mr.  
18 Chairman. Good morning.

19           CHAIRPERSON HILL: Good morning. Oh, that's  
20 right. And also, Mr. Moy, I don't know if you need  
21 to swear in everyone.

22           MR. MOY: I can do that now too.

23           CHAIRPERSON HILL: Okay.

24           MR. MILLER: If people will stand who will  
25 be --

1 CHAIRPERSON HILL: If you're going to be  
2 testifying, if you just stand and get sworn in.

3 [Oath administered to the participants.]

4 MR. MOY: Okay. For the record, Mr.  
5 Chairman, regarding cases on the docket for today, we  
6 have one, two, three, four cases that have been  
7 postponed or withdrawn.

8 Application No. 19282 of Noel, Noel, N-O-E-L,  
9 has been withdrawn by the applicant. We have two  
10 cases that have been postponed, rescheduled to  
11 November 30th, 2016. These two cases are 19309 of  
12 Valor P. Street, LLC., and Application No. 19344 of  
13 1336 H Street Northeast. These two cases, as I said,  
14 rescheduled to November 30th.

15 Application No. -- or rather appeal No. 19337  
16 of Robert Shelton and Mark Flynn has been postponed,  
17 rescheduled to October 25th, 2016, which I believe is  
18 next week.

19 And that's it for me, Mr. Chairman.

20 CHAIRPERSON HOOD: Okay. Great. Thank you.  
21 I guess if we could go ahead and just move to the  
22 meeting cases. And the first one, if we could, Mr.  
23 Moy, just go ahead and do the application No. 19200A,  
24 I guess, and the Vice Chair has started to chair this  
25 the last time and so she's going to go ahead and

1 finish up if that's okay.

2 MR. MOY: Yes, sir. Very good. So we have,  
3 as you said, one case which is on the consent  
4 calendar, and this one case is a request for  
5 modification of significant -- or rather, a  
6 modification of consequence, Application No. 19200A,  
7 as in Alpha, of Jamal's Pappas Tomato's, LLC.

8 This is modification of consequence is  
9 pursuant to Subtitle Y, Section 703, to modify the  
10 plans approved in BZA Order No. 19200, which would  
11 incorporate an existing third-story addition in the  
12 PDR-1 Zone at 1401 Okie, O-K-I-E, Street Northeast,  
13 Square 4093, Lot 832.

14 MS. BUTANI-D'SOUZA: Thank you, Mr. Moy.  
15 Thank you, Chairman Hill.

16 So at the last meeting on this case we set a  
17 deadline for responses to the request for a  
18 modification of significance. We requested that OP  
19 submit a report and that the ANC also submit a  
20 report.

21 It looks like we've received those in the  
22 record, so are there any -- does anyone on the Board  
23 have any concerns about moving forward and keeping  
24 this on the consent calendar?

25 MR. HINKLE: No, Madam Vice Chair. I think I

1 need to state that I did read the record. I was not  
2 here previously, but --

3 MS. BUTANI-D'SOUZA: Okay.

4 MR. HINKLE: -- read it before --

5 MS. BUTANI-D'SOUZA: Thank you, Mr. Hinkle.  
6 So, okay. So seeing that there is no intention to  
7 remove this from the consent calendar and I believe  
8 that there were no parties in opposition to this, the  
9 ANC is automatically a party. Is there anyone from  
10 ANC 5D who wishes to request that this be removed  
11 from the consent calendar?

12 Okay. Seeing none, I will make a motion to  
13 approve the requested relief as captioned. Is there  
14 a second?

15 MR. HINKLE: Second.

16 MS. BUTANI-D'SOUZA: Okay.

17 [Vote taken.]

18 MS. BUTANI-D'SOUZA: And I believe we have an  
19 absentee ballot.

20 MR. MOY: Yes. Before I give final vote, we  
21 do have an absentee ballot from a participant who has  
22 also read -- reviewed the record, and that is Michael  
23 Turnbull. And his absentee ballot is to approve with  
24 any conditions that may be imposed by the Board. So  
25 that would give a final vote in the affirmative as a

1 three to zero to two, on your motion, Ms. Butani  
2 seconding the motion, Mr. Hinkle, and of course Mr.  
3 Turnbull. So the motion carries.

4 MS. BUTANI-D'SOUZA: Thank you, Mr. Moy.

5 MR. MOY: Want a summary order on this?  
6 Okay.

7 CHAIRPERSON HILL: All right. Mr. Moy, now  
8 that Commissioner May has joined us again, if you  
9 could go ahead and I guess call the next meeting  
10 case?

11 MR. MOY: Yes, sir. That would be -- this is  
12 a request for reconsideration to Application No.  
13 19154 of District Design and Development Argonne,  
14 LLC. In the original application it was a request  
15 for a variance from the minimum parking space  
16 dimension requirements of Section 2015.5 to convert  
17 an existing flat into a four-unit apartment house in  
18 the R-5-B District, 1636 Argonne Place Northwest,  
19 Square 2589, Lot 460, and participating on this  
20 request is yourself, Mr. Chair, Mr. Hinkle, and Mr.  
21 Peter May.

22 CHAIRPERSON HILL: Okay. Thank you, Mr. Moy.  
23 So is the Board ready to deliberate?

24 Okay. So, I guess the first thing was that  
25 there was a time deadline that had lapsed in terms of

1 the filing, and so the applicant missed the deadline  
2 by, it looks like three days. The deadline was a 10-  
3 day deadline and it ended up being 13 days. And I'm  
4 a little unclear. I think that the deadline fell on  
5 a Saturday and then the applicant filed on a Tuesday  
6 or a Wednesday thereafter.

7 And so the applicant gave a reason that I  
8 didn't think was particularly strong, but yet, you  
9 know, he basically was honest about the fact that he  
10 had missed the deadline just before, you know, it  
11 lapsing.

12 And you know, from my perspective also, I'm  
13 just more thinking about the fact that it was kind of  
14 a shorter timeframe in terms of how long the deadline  
15 was missed and that the deadline was on a Saturday.  
16 And so, you know, I'd be inclined to waive the  
17 deadline. Does anyone have any questions about that?

18 MR. MAY: I'm not inclined to waive the  
19 deadline. I mean, there wasn't really any good  
20 reason for it. I mean, you know, maybe the deadline  
21 is short and you know, sometimes these things do fall  
22 on weekends. There's not really a basis for it in my  
23 view.

24 CHAIRPERSON HILL: Okay.

25 MR. HINKLE: Yeah, I tend to agree with

1 Commissioner May on this, and the deadline is set for  
2 a reason and even though it might have been a couple  
3 of days missed, certainly I'm not quite sure what the  
4 reason was, that it was missed.

5 CHAIRPERSON HILL: Okay. Ms. Butani, do you  
6 have any thoughts on this?

7 MS. BUTANI-D'SOUZA: I'm not participating in  
8 this case.

9 CHAIRPERSON HILL: Oh, that's right. Okay.  
10 Well, then there you go. Well, I suppose then we  
11 need three, correct, Mr. Moy?

12 I also do think that -- I mean, I have a lot  
13 of things to say about the case, but I do think that  
14 again, the deadline is there for a reason as well and  
15 I think that it wasn't a particular strong reason  
16 that was given, and so I would also be inclined to  
17 then go with my colleagues and not waive the  
18 deadline. Do I make a motion on that?

19 MR. MAY: I would move that we deny  
20 reconsider -- or sorry, deny the waiver of the  
21 regulation regarding deadline for reconsideration of  
22 this particular decision.

23 MS. NAGELHOUT: So, Mr. May, does that mean  
24 you're moving to dismiss the appeal as untimely?

25 MR. MAY: Yeah. Move to dismiss the -- is

1 that the right way to phrase it? You'd think I'd  
2 know that after all these years. Move to dismiss the  
3 appeal on the basis that it is untimely. The motion,  
4 dismiss the motion on the basis that it is untimely.  
5 Thank you.

6 MR. HINKLE: I'll second.

7 CHAIRPERSON HILL: All right. The motion has  
8 been made and seconded.

9 [Vote taken.]

10 CHAIRPERSON HILL: The motion carries.

11 MR. MOY: Staff would record the vote as  
12 three to zero to two. This is on the motion of Mr.  
13 Peter May to dismiss the request, or rather dismiss  
14 the motion based on timeliness. Seconded the motion,  
15 Mr. Hinkle. And of course, the Chairman, Mr. Hill.  
16 No other members participating. Motion carries, sir.

17 CHAIRPERSON HILL: Thank you, Mr. Moy. All  
18 right. Should we go to our first hearing case when  
19 you are ready, Mr. Moy?

20 MR. MOY: Okay. If we're going as scheduled  
21 on the program, Mr. Chair, then that would be  
22 Application No. 19342 of Peter Revocable. Right?  
23 Revocable. Sorry, Revocable. Well, it's one of  
24 those. Trust. And Patrick's Pet Care as advertised  
25 and captioned for special exception relief under the

1 MU Use Group E requirements of Subtitle U, Section  
2 513.1, Sub A, and this would establish an animal  
3 board use in the MU-4 Zone at premises 3303 11th  
4 Street Northwest, Square 2841, Lot 43. And I'm  
5 reading the caption as advertised.

6 CHAIRPERSON HILL: Thank you. Good morning.

7 MR. FLYNN: Good morning.

8 CHAIRPERSON HILL: If you could please  
9 introduce yourself?

10 MR. FLYNN: My name is Patrick Flynn. I'm  
11 the owner of Patrick's Pet Care.

12 CHAIRPERSON HILL: Okay. And, Mr. Flynn, you  
13 know, I've read the record and I'm really, you know,  
14 happy to say about, how to say, pleased to hear about  
15 all the letters of support that you have and the  
16 different things that you've gone through already in  
17 terms of getting the application prepared.

18 What has come to the forefront now is I guess  
19 there is a little bit of confusion in terms of what  
20 it is that you really need to apply for, I suppose.  
21 And so I'd kind of like turn to the Office of  
22 Planning almost to hear a little bit more about what  
23 they have to say. Is there any -- is that alright  
24 with you? Is there anything you'd like to say right  
25 now? Okay.

1           So then, I'm going to turn to the Office of  
2 Planning because I'm a little bit confused as to  
3 where we are with this right now. Could you please  
4 tell me about that? Introduce yourself. Thank you.

5           MS. THOMAS: Yes. Good morning. Karen  
6 Thomas with the Office of Planning. I'm sitting in  
7 for Steven Mordfin who actually worked on this case.  
8 Yeah, confusion is a little bit, you know, with  
9 respect to this.

10           From what I understand the applicant meets  
11 the -- satisfies the criteria as it exists right now.  
12 From what I understand, because it's not appearing in  
13 the regulation, abut was left out, was inadvertently  
14 deleted -- was deleted in March and put back in by,  
15 you know, as part of the zoning rewrite. It got a  
16 little bit confused there.

17           But it satisfies the test if it -- if it were  
18 to be a use variance as I understand that the  
19 discussion between Mr. Mordfin and OAG was taking  
20 place, it would look like it should be a use variance  
21 the way it's written now. But if that were to be the  
22 case, the applicant would have an exceptional zoning  
23 history with respect to this situation because it is  
24 a permitted use by special exception, were it not for  
25 this omission. This mistake on the --

1 MR. MAY: Can you explain better what the  
2 mistake is, because I thought that the language -- I  
3 mean, the language for this use was tweaked in a  
4 separate zoning case in order to clarify the issue of  
5 abutting.

6 MS. THOMAS: Yes.

7 MR. MAY: And so I don't know what wound up  
8 in the regs versus what wound up being changed.

9 MS. THOMAS: I think I'll punt this back to  
10 Mary if she could help explain what the discussion  
11 was, OAG with --

12 MR. MAY: Well, I mean, I'm just asking what  
13 language is in the new regulations versus what  
14 language is proposed to be corrected?

15 MS. THOMAS: When the order was written, was  
16 rewritten in Zoning Commission Order 1410, it said  
17 that abut was deleted in March of 2015 and  
18 inadvertently put back in. That's the notes that I  
19 have, and that the applicant meets all the criteria  
20 intended to protect the public good.

21 The word abut was deleted and in March 2015.

22 MR. MAY: And so abut was deleted and so the  
23 language read that it should not be closer than 25  
24 feet --

25 MS. THOMAS: Yes.

1 MR. MAY: -- to any property line?

2 MS. THOMAS: Uh-huh. Yes.

3 MR. MAY: And if that's the -- if that is the  
4 test, it is not within 25 feet of any property line  
5 of an existing residential use?

6 MS. THOMAS: Yes. I'm confused. Yeah.

7 MR. MAY: Okay. Do you know which case,  
8 which technical correction case this was part of?

9 MS. THOMAS: I have here, Zoning Commission  
10 Order 14-10.

11 MR. MAY: Oh, okay. So that was when the  
12 language was changed with the abut, but the problem  
13 is that in ZR-16 abut got carried over when it  
14 shouldn't have.

15 MS. THOMAS: Yes.

16 MR. MAY: And so there are two pending  
17 technical correction cases right now, 08-06G and 08-  
18 06, I forget if it was F or H, but because we're  
19 doing these in batches of technical corrections. You  
20 don't know which one it's in.

21 MS. THOMAS: No, I'm not sure. Yeah.

22 MR. MAY: Yeah. Okay. What I'm trying to  
23 understand is how quickly that will be corrected  
24 because we set down a -- I think both cases, maybe  
25 last month, and I don't know when any of them will be

1 heard.

2 MS. THOMAS: The 08-0F, 06F and G come up  
3 last night, was that --

4 MR. MAY: It was not last night, no.

5 MS. THOMAS: Okay.

6 MR. MAY: I don't --

7 MS. THOMAS: Remember. Recall.

8 MR. MAY: Well, I mean, I don't think we --  
9 last night we had a technical correction, or we had a  
10 correction, but they were substantive corrections.  
11 And so we'd had hearings on them. They weren't  
12 technical corrections.

13 MS. THOMAS: I'm not sure when that  
14 correction would come back.

15 MR. MAY: Yeah.

16 MS. THOMAS: Come up.

17 MR. MAY: Well, that would be helpful to know  
18 as well because it would be better to decide this  
19 case with that correction having been made as opposed  
20 to saying well, this is probably going to happen.  
21 Thank you.

22 CHAIRPERSON HILL: Ms. Nagelhout, do you have  
23 anything to add to the Office of Planning?

24 MS. NAGELHOUT: Only that I think it would be  
25 an area variance, not a use variance because the use

1 is permitted in the underlying zone, and so you're  
2 talking about a variance of a distance, a distance  
3 requirement. But I'm looking, but so far I don't  
4 know anything more about the schedule of the Zoning  
5 Commission.

6 MS. THOMAS: If it were to be read as an area  
7 variance for the case to proceed today the Office of  
8 Planning would have no objection to that because we  
9 do believe that it satisfies the criteria respecting  
10 the public good.

11 CHAIRPERSON HILL: Okay. So then if that  
12 were the case the only thing we would have to do  
13 again is, I think, try and understand how to waive  
14 the fee. Is that -- you know, because now you could  
15 apply for an area variance. I'm sorry, could you  
16 tell me your name again?

17 MR. FLYNN: Patrick Flynn.

18 CHAIRPERSON HILL: Mr. Flynn. So, Mr. Flynn,  
19 are you aware of all this that's going on?

20 MR. FLYNN: Yes.

21 CHAIRPERSON HILL: Okay. When are you -- so  
22 are you built out? Like I'm trying to -- so you're  
23 done. You're ready to go and so -- okay. Because,  
24 you know, I don't know when the technical correct is  
25 actually going to take place, and so I mean, I would

1 be fine with them obviously moving forward as an area  
2 variance then.

3 Now, Mr. Moy, I don't know how to move  
4 forward with that as an area variance now.

5 MS. NAGELHOUT: I think you could make -- the  
6 applicant could make an oral motion to amend the  
7 application. It's still a special exception under  
8 513, but he would require a waiver of A1, a variance  
9 of A1.

10 CHAIRPERSON HILL: Mr. Flynn.

11 MR. FLYNN: So, I, the applicant, would move  
12 to amend my application to include an area variance  
13 and if you can give me the language, I'll move it.

14 MS. NAGELHOUT: Yeah. An area variance from  
15 513-A1, the abutting requirement.

16 MR. FLYNN: And to move -- to apply for an  
17 area variance from a 513-A1, the --

18 MS. NAGELHOUT: The distance from residential  
19 use.

20 MR. FLYNN: The distance from residential  
21 use.

22 MR. MAY: Can somebody tell me what the  
23 actual distance from the residential use is?

24 MR. FLYNN: That depends, again. So it  
25 depends on how you've actually measured it from the

1 actual use itself under the 2015 final rulemaking,  
2 which is what I initially applied for before all  
3 this, it was said, shall be measured to include any  
4 space on the lot or within the building not used by  
5 the animal boarding use, and any portion of a street  
6 or alley that separates the use from a lot within a  
7 residence district.

8           So, my entire usage is not -- is greater than  
9 25 feet from the closest residential usage. And I  
10 interpreted when I did it, and I am the lay person,  
11 and I am just doing this myself, but I used residence  
12 district, not residential use. And I am not -- the  
13 property that abuts mine is also in M-U-4, so it's  
14 not in a residence district. So I'm nowhere near a  
15 residence district. Certainly not within 25 feet of  
16 a residence district.

17           And even despite that I am also not within 25  
18 feet of a residential use, which was not under  
19 consideration --

20           MR. MAY: So mixed use, I mean --

21           MR. FLYNN: I know. But it's not an R.

22           MR. MAY: -- can include residential, but the  
23 idea was to provide some separation from the actual  
24 residential use.

25           MR. FLYNN: Uh-huh.

1 MR. MAY: Regardless of how it was zoned.

2 MR. FLYNN: Uh-huh.

3 MR. MAY: But you're saying it's more than 25  
4 feet away from your actual use.

5 MR. FLYNN: Correct. From my east-facing  
6 wall, which is an interior wall within the building,  
7 to the closest residential use, is greater than 25  
8 feet. I can't --

9 MR. MAY: How far is it?

10 MR. FLYNN: More than 25 and less than 50.

11 MR. MAY: Okay. All right.

12 MS. BUTANI-D'SOUZA: So I guess I'm a little  
13 bit confused. So, if he is not within 25 feet of a  
14 residential use, I suppose what's the controversy  
15 here?

16 MR. MAY: Because the building -- because the  
17 word, abut, is in the new regulations. It had been  
18 deleted from the old regulations and because the  
19 building, the property abuts a residential use. Even  
20 though that residential use is in a nonresidential  
21 district, so --

22 MS. BUTANI-D'SOUZA: Okay. And then the  
23 technical correction is to remove the word, abut?

24 MR. MAY: Abut.

25 MS. BUTANI-D'SOUZA: I see. So the -- so

1 going forward for cases after the technical  
2 correction is incorporated, the only thing that's  
3 going to matter here is the 25-foot distance, not  
4 whether or not it's just abutting.

5 MR. MAY: I believe that's what we decided in  
6 1410.

7 MS. BUTANI-D'SOUZA: Got it. Thanks.

8 CHAIRPERSON HILL: Okay. So where we are  
9 back again is the applicant has now changed the  
10 application orally and there is a fee requirement.  
11 And we're talking about waiving the fee requirement  
12 because it is a technical correction that he would  
13 not have had to pay had it not been for the technical  
14 correction being needed. And so now I'm asking Mr.  
15 Moy how to go about waiving the fee?

16 MR. MOY: Well, certainly the board can weigh  
17 in on a decision on this aspect, but technically in  
18 the regulations, the applicant should request  
19 waiving -- waiver of the fee to the director of the  
20 office. And the director office would make that  
21 decision.

22 MR. FLYNN: Okay.

23 CHAIRPERSON HILL: And you should write that  
24 letter from what you've just heard today with the  
25 Board's support and I think that would help.

1           MR. FLYNN: That could be included in the, in  
2 the, in the --

3           CHAIRPERSON HILL: In the record. Well,  
4 we're right now saying to -- I mean, I guess I don't  
5 know whether it can be included in the order or not,  
6 but that, you know, we're encouraging the director to  
7 waive the fee.

8           MR. MOY: Yeah, I think that's a matter of  
9 record now but I would still prefer that --

10          MR. FLYNN: I could write the letter.

11          MR. MOY: Thank you.

12          CHAIRPERSON HILL: Okay. So, again, as far  
13 as the actual merits of the case, I mean, we've  
14 actually obviously you know, gone through the record  
15 and the ANC had recommended approval nine to zero to  
16 zero. DDOT had no objection. OP is now in support  
17 of also the area variance, and you had 13 letters of  
18 support and one was a really nice letter from the  
19 Humane Society, I thought. And so, you know, it  
20 sounds like a nice lovely daycare place for small  
21 pets.

22          So, well, so now I'm going to go back to, I  
23 guess, does the applicant have anything else that  
24 they would like to say or --

25          MR. FLYNN: No. I just appreciate that

1 you're working with me and I understand that it's  
2 technically complicated and I'm glad that we can get  
3 this resolved, hopefully before the holidays.

4 CHAIRPERSON HILL: So, with that being said  
5 is anyone here from the ANC wishing to speak in  
6 support or objection? Anyone here from the ANC?

7 Is there anyone here wishing to speak in  
8 support of the applicant?

9 Is anyone here wishing to speak in opposition  
10 of the applicant?

11 Okay. All right. Well, with that I'll just  
12 ask, is the Board ready to deliberate? Okay.

13 Then you know, I mean, I'm happy to make a  
14 motion to approve the case as now amended.

15 MS. BUTANI-D'SOUZA: Second.

16 CHAIRPERSON HILL: The motion has been made  
17 and seconded.

18 [Vote taken.]

19 CHAIRPERSON HILL: There you go. Thank you  
20 so much.

21 MR. FLYNN: Thank you.

22 MR. MOY: Staff would record the vote as four  
23 to zero to one. This is on the motion of Chairman  
24 Hill to approve the applicant, the amended  
25 application. Seconded the motion, Ms. Butani. Vice

1 Chair Butani. Also in support, Mr. Hinkle and Mr.  
2 Peter May. We have a board seat vacant. Motion  
3 carries, sir.

4 CHAIRPERSON HILL: Thank you, Mr. Moy.

5 MR. MOY: Are you waiving the requirements  
6 for a summary order, sir?

7 CHAIRPERSON HILL: Yeah, I'm sorry. Yes,  
8 please.

9 MR. MOY: The next application is see parties  
10 to the table to Application No. 19347 of Calvin  
11 Krishen as captioned and advertised for variance  
12 relief from the nonconforming structure requirements  
13 of Subtitle C, Section 202.2, and the lot occupancy  
14 requirements of Subtitle E, Section 304.1. This  
15 would construct a one-story deck addition to the rear  
16 of an existing one-family dwelling in the RF-1 Zone,  
17 1452 Spring Road, Northwest, Square 2690, Lot 46.  
18 And I believe, Mr. Chairman, there is a letter of  
19 authorization.

20 CHAIRPERSON HILL: Okay, great. Thank you,  
21 Mr. Moy. Good morning.

22 MS. KRISEHN: Good morning.

23 CHAIRPERSON HILL: Could you please introduce  
24 yourself? And if you turn on your microphone there,  
25 just push the button so the green light will come on.

1 MS. KRISEHN: Okay.

2 CHAIRPERSON HILL: Okay.

3 MS. KRISEHN: My name is Tru Krishen  
4 (phonetic). I am representing Calvin Krishen. He  
5 has a little work to do this morning in the office,  
6 and so he did send in a letter, but I also bring 10  
7 copies if you would rather want to see that.

8 CHAIRPERSON HILL: Okay. Thank you. No, I  
9 think we're okay. Right, Mr. Moy?

10 MR. MOY: Yes, it's in the record.

11 MS. KRISEHN: Yeah, he did send it  
12 electronically --

13 CHAIRPERSON HILL: Okay.

14 MS. KRISEHN: -- yesterday.

15 CHAIRPERSON HILL: Okay. Great. Thank you.  
16 I don't have a lot of questions for you for this  
17 particular case. I don't know where my colleagues  
18 are with that.

19 Again, you know, after reading the record and  
20 feeling good about the analysis that the Office of  
21 Planning has given and that again the ANC was in  
22 support, 11 to zero to zero, and DDOT has no  
23 objection, I -- and again, after reading through the  
24 application and understanding the criteria, I don't  
25 have any questions really. Does the Board have any

1 other questions for this application?

2           Okay. Then, at this point it seems like, you  
3 know, you don't have to give a full presentation.  
4 And I would like to, if it's all right, go ahead and  
5 turn to the Office of Planning and hear what they  
6 have to say.

7           MS. KRISEHN: Okay.

8           MS. FOTHERGILL: Good morning. For the  
9 record, I'm Anne Fothergill with the Office of  
10 Planning. They're actually -- the applicant had some  
11 back and forth with DCRA about how to calculate lot  
12 occupancy on this property, and I don't believe that  
13 has been resolved. So at this point it is still a  
14 request for variance relief. There is a chance it  
15 only needs special exception relief, but the Office  
16 of Planning finds that it meets the variance test and  
17 recommends support of the zoning relief.

18           MR. MAY: I'm glad you mentioned that because  
19 I had a question but I saw what was in the  
20 application, that it was 67 or so percent, and then  
21 we see 71 or two by your report, and so I mean, what  
22 is the actual question regarding the lot occupancy?

23           MS. FOTHERGILL: The question is regarding  
24 the front porch. It's open. It's an uncovered front  
25 stoop, but it is a porch, and it's a question of

1 whether or not that accounts the neighboring property  
2 has an exact same lot size and building size and  
3 front porch size. And theirs is actually covered,  
4 and they didn't count it in the calculation, DCRA.  
5 So there was a little bit of confusion for the  
6 applicant and for DCRA.

7 And at this point my understanding is that  
8 DCRA hasn't changed how they're measuring the lot  
9 occupancy and so it is still a request for variance  
10 relief.

11 MR. MAY: And it's not a covered porch?

12 MS. FOTHERGILL: That's right.

13 MR. MAY: And so it's just a stoop or  
14 whatever.

15 MS. FOTHERGILL: Uh-huh.

16 MR. MAY: But it's, how far above the ground  
17 is it?

18 MS. FOTHERGILL: I believe it may be above  
19 four feet, but it is --

20 MR. MAY: Okay.

21 MS. FOTHERGILL: -- and it is, it's not just  
22 a stoop. There is a little extra space.

23 MR. MAY: Okay.

24 MS. FOTHERGILL: I mean, I think it's 70  
25 square feet.

1           MR. MAY: I see. Okay. But if you're  
2 convinced that it meets the variance test then it's  
3 kind of moot.

4           MS. FOTHERGILL: That's right. Thanks.

5           CHAIRPERSON HILL: Oh, great. Thank you.  
6 All right. Is there anyone here from the ANC wishing  
7 to speak?

8           Is there anyone here wishing to speak in  
9 support of the application?

10          Anyone here wishing to speak in opposition of  
11 the application?

12          Okay. Great. Well, with that I'll turn back  
13 to the applicant and, you know, I think that we're  
14 ready to kind of speak and deliberate on this. Is  
15 there anything else you'd like to add or say? You  
16 don't have to.

17          MS. KRISEHN: I just need to tell Calvin, my  
18 son, knowing what to do next. What's the next step  
19 and how long, approximately, until we could start the  
20 building the deck.

21          CHAIRPERSON HILL: First we're going to have  
22 to deliberate and see if it passes. And then after  
23 that I guess maybe you could ask next door, across  
24 the street in the Office of Zoning, a little bit more  
25 of the details as to what would happen next.

1 MS. KRISEHN: Okay.

2 CHAIRPERSON HILL: Okay?

3 MS. KRISEHN: Okay.

4 MR. MAY: Across the hall. Not across the  
5 street.

6 CHAIRPERSON HILL: Sorry. Across the hall.  
7 Across the hall.

8 MS. KRISEHN: Okay.

9 CHAIRPERSON HILL: Thank you.

10 MS. KRISEHN: Uh-huh.

11 CHAIRPERSON HILL: Okay. Is the Board ready  
12 to deliberate? Does somebody want to make a motion?  
13 No? All right.

14 So I'll go ahead and make a motion to approve  
15 Application No. 19347 as advertised.

16 MR. HINKLE: Second.

17 CHAIRPERSON HILL: Motion has been made and  
18 seconded.

19 [Vote taken.]

20 CHAIRPERSON HILL: All right, Mr. Moy, the  
21 motion has passed and I guess we can do a summary  
22 order.

23 MR. MOY: Yes. Staff would record the vote  
24 as three to zero to two. This is on the motion of  
25 Chairman Hill to approve the application for the

1 request for the relief requested. Seconding the  
2 motion, Mr. Hinkle. Also in support, Mr. Peter May.  
3 We have two members not present with the Board and  
4 it's a summary order.

5 CHAIRPERSON HILL: Yes, please. And if you  
6 just go across the hall there, they can give you a  
7 little bit more detail. And your son should probably  
8 buy you dinner. Okay?

9 MS. KRISEHN: Yeah. He will be happy to hear  
10 that.

11 CHAIRPERSON HILL: Okay. All right.

12 MS. KRISEHN: Yeah. Thank you.

13 MR. MOY: Next application, parties to the  
14 table to Application No. 19348 of Gladiola Wood as  
15 amended for a special exception relief under the lot  
16 occupancy requirements of Subtitle F, Section 604.1  
17 and variances from the nonconforming structure  
18 requirements of Subtitle C, Section 202.2, floor  
19 arear ratio requirements of Subtitle F, Section 6,  
20 02.1. This would construct an addition to an  
21 existing three-unit apartment house in the RA-8 Zone,  
22 1717 Corcoran Street Northwest, Square 155, Lot 169.

23 Of course, Mr. Chair, we do have -- I believe  
24 it's the same applicant to another case which are  
25 adjacent properties. Should I read that to you as

1 well, or not?

2 CHAIRPERSON HILL: Yes, please, if you could  
3 that would be great. Thank you.

4 MR. MOY: Thank you. So that would be the  
5 second case. It is Application No. 19349 of 1719  
6 Corcoran, LLC. Again, this is amended for a special  
7 exception relief under lot occupancy requirements  
8 Subtitle F, 604.1 variances for nonconforming  
9 structure requirements, Subtitle C, 202.2, and the  
10 FAR, floor area ratio requirements of Subtitle F,  
11 602.1. This is, again, an addition to an existing  
12 three-unit apartment house in an RA-8 Zone, 1719  
13 Corcoran Street Northwest, Square 155, Lot 168.

14 CHAIRPERSON HILL: Great. Thank you, Mr.  
15 Moy.

16 Good morning, gentlemen. If you could please  
17 introduce yourselves?

18 MR. SULLIVAN: Good morning, Mr. Chairman.  
19 My name is Marty Sullivan with the law firm of  
20 Sullivan and Barros, here on behalf of the applicant.  
21 And I'd just like to add, I was retained after the  
22 application was filed and I have an authorization  
23 letter, and I'll pass it up.

24 MR. THORNTON: Good morning. Justin  
25 Thornton, developer, owner of 1719 Corcoran, LLC.

1 MR. TEASS: Good morning. My name is Will  
2 Teass, a principal with Teass Warren Architects, here  
3 on behalf of the applicant for both 1717 and 1719  
4 Corcoran Street.

5 CHAIRPERSON HILL: All right. Thank you.  
6 Mr. Sullivan, did you get sworn in? Were you here to  
7 get sworn in?

8 MR. SULLIVAN: Well, I'm not going to  
9 testify.

10 CHAIRPERSON HILL: Oh.

11 MR. SULLIVAN: So I usually don't get sworn  
12 in.

13 CHAIRPERSON HILL: Okay. All right. Well,  
14 then in that case the -- you know, I'd be interested  
15 in hearing quite a bit, I suppose, about you know,  
16 really pretty much the FAR relief and what you're  
17 trying to do with the project and the property and  
18 you know that the Office of Planning is in approval  
19 of two of the requests, but in denial of the FAR, and  
20 so that's where I'd be most interested in.

21 I don't know if the Board wants to mention or  
22 focus anything else with the applicant. So then,  
23 that's where I would go ahead and just, you know, go  
24 through the architectural drawings and really kind of  
25 highlight all that.

1           MR. SULLIVAN: Sure. And I will just note  
2 that post-application as well, the -- both properties  
3 are now under the ownership of 1719 Corcoran, LLC.  
4 So the owner applicant name changes for one of the  
5 applications.

6           So, we'll get into that. I'll turn it over  
7 to Justin Thornton. Admittedly, yes, the FAR  
8 variance argument, maybe not the most overwhelming  
9 argument but we think that there are some aspects of  
10 it there that maybe get us over the hump. So we'll  
11 go right to that.

12           MR. THORNTON: Good morning, Mr. Chair,  
13 Members of the Board, Constituents. My name is  
14 Justin Thornton, a native Washingtonian and local  
15 developer.

16           While I am a developer my background has  
17 prepared me for the project that is before you today.  
18 For example, as an urban planner for the National  
19 Capitol Planning Commission I met with Constituents  
20 and listened to their needs while also trying to  
21 reconcile the competing interests that sometimes  
22 exists between residents and developers.

23           I share this glimpse of my life to  
24 demonstrate to the Board and the constituents why my  
25 interest in this project before you is uniquely

1 suited for me. After meeting with neighbors,  
2 concerned citizens, the ANC, and countless other  
3 residents, I believe the plans that are before you  
4 balance the needs of the community and the intent of  
5 the master plan for the city, while protecting the  
6 character of the neighborhood.

7 I listened to the request of the ANC  
8 Commissioners and the surrounding neighbors prior to  
9 presenting our project at the ANC meeting. And as a  
10 result we are reducing the total units from six down  
11 to four.

12 These four units would all be three-bedroom,  
13 three-bath units that the residents believe will  
14 better serve residents who want to start a family and  
15 remain in DuPont Circle. This reduction in units is  
16 one of the main reasons we've received full support  
17 from the ANC.

18 I hope that I can answer any questions you  
19 may have and will now turn it over to my talented  
20 team that has worked diligently with staff,  
21 neighbors, and commissioners to get us to the point  
22 we are at today.

23 MR. TEASS: Good morning. Again, my name is  
24 Will Teass and I'd like to take you through some of  
25 the architectural aspects of the project. Before I

1 begin I wanted to clarify two points. The first is  
2 that the original drawings, as well as the revised  
3 drawings that were submitted showed a rooftop  
4 penthouse structure that provided access to rooftop  
5 deck. This -- the project overall received a  
6 conceptual approval from HPRB pending the results of  
7 a flag test.

8           That flag test happened last week and  
9 unfortunately the structure, while not visible from  
10 Corcoran, has some visibility from 17th Street, and  
11 Camallia (phonetic) at the Office of Planning felt  
12 that HPRB would not be supportive of that rooftop  
13 stair addition so we've removed it for the drawings  
14 that we're going to show you today.

15           The other had to do with a neighbor comment.  
16 There was a neighbor, Nick Manning, who filed I think  
17 on both cases about some concerns he had with the  
18 trash. This had come up prior to the ANC meeting.  
19 We met with him and chatted with him, and made some  
20 revisions to our site plan to provide for a trash  
21 enclosure on the property and I think he's since  
22 submitted a letter of support for the project.

23           So, I think the slide that I've got up before  
24 you is the existing condition site photos, which was  
25 included in what was submitted. And really what I

1 wanted to call your attention to is the structure in  
2 question which you can see in the upper left-hand  
3 corner, both the front and the back. But perhaps  
4 it's the slide on the -- or the image in the upper  
5 right-hand corner that really speaks to an aspect of  
6 our exceptional condition in that we're adjacent to a  
7 Safeway which is located on 17th and Corcoran. That  
8 Safeway occupies about 100 percent of its site. That  
9 Safeway also extends also back to the rear and does  
10 not provide any rear yard.

11           The picture in the lower left-hand corner  
12 really illustrates the condition of the rear yard.  
13 And that condition is certainly hampered by the fact  
14 that you've got an existing commercial structure to  
15 the east that really creates -- does create shadow,  
16 obviously in the morning, but represents what we feel  
17 is an exceptional condition for certainly 1717.

18           The other thing I wanted to call your  
19 attention to on the image on the lower left-hand  
20 corner is the somewhat architecturally bizarre  
21 configuration of decks and stairs for both  
22 properties. There was a series of renovations that  
23 were done in the '80s that constructed some roof  
24 decks and some sunrooms and there is a whole, sort of  
25 list of odd things that they did on the interior.

1 And I think part of the proposal here is there's an  
2 aesthetic to mention to what we're doing in terms of  
3 reworking the rear, taking advantage of a lot of  
4 unused space that counts against our lot occupancy.  
5 Some of that counts against our FAR. But at the end  
6 of the day we're asking for about -- well, we're  
7 asking for .27 FAR relief on 1717 and .28 on 1719.

8           So the aerial photos I think again, speak to  
9 the issue of the adjacency to Safeway. I think it's  
10 a unique condition in that none of the other houses  
11 on Corcoran are -- row structures are -- face this  
12 issue.

13           The site plan here that exists today shows  
14 you the degree to which the exterior decks and stairs  
15 take up, in one case on 1717, almost 74 percent. The  
16 1719 the decks and stairs take up about 70 percent.  
17 And so, we're proposing as we're illustrating in the  
18 proposed site plan on slide 5 here, to really think  
19 about these two projects as a single project in  
20 developing a façade idea that is consistent across  
21 both, and using the 70 percent footprint as a way in  
22 which to develop a more consistent rear façade.

23           So, the space that current exists at the rear  
24 that's in our opinion significantly constrained by  
25 the Safeway to the east, you know, we're basically

1 internalizing some of that space that would otherwise  
2 be available for residents to use.

3           So, here's a early conceptual elevation. The  
4 rear taking on a much more of a modern identity,  
5 still providing some exterior space, still providing  
6 a spiral stair that allows the second floor unit to  
7 get to trash and access to the rear alleyway. And  
8 again, the idea is that we really treat both of these  
9 projects from the rear in a similar fashion. We  
10 would propose to do a roof deck and set the guardrail  
11 back to conform with zoning and extend the parapets  
12 on the east and west.

13           But I think really what the crux of our  
14 discussion centers on the use. So as it stands  
15 today, both properties have a C of O for three units.  
16 What we are proposing to do is something that most  
17 clients don't ask us to do, which is to do less units  
18 on a piece of property with something that we heard  
19 very early on from the preliminary meeting with the  
20 ANC, which is to do a smaller -- a less unit count  
21 but do larger units that are more conducive for  
22 family living.

23           And so what we're showing you here is the  
24 seller plan. And the difference between the  
25 permitted FAR and the proposed FAR translates to

1 about six and a half feet. And so that six and a  
2 half feet, when you look at that in terms of the  
3 interior configuration, you know, obviously we have  
4 space to do a bedroom at the front and the back, but  
5 what it really does is allows us to do a den on that  
6 lowest level, that again the den being more conducive  
7 in a family situation where you might have a primary  
8 living area and you might need a secondary area with  
9 young children.

10 As you move up out of the ground, that six  
11 and a half feet really translates into a larger kind  
12 of living area, again with the idea that you've got a  
13 family here as opposed to roommates or a situation  
14 where you may not need as much living area.

15 So obviously the second floor plan is very  
16 similar to the first in terms of a single bedroom at  
17 the front, and then the living space at the rear.  
18 Again, that additional FAR, in our opinion, is very  
19 necessary to be conducive for family units. And  
20 again on the uppermost floor, the additional FAR  
21 providing that secondary living space, the den that  
22 we're speaking of.

23 And then a plan of the roof deck. This would  
24 just have a large hatch as opposed to a penthouse  
25 structure, so we would be able to provide some

1 outdoor living space for the upper level unit.

2           And then this section I think really  
3 illustrates the circulation. So what we call Unit 1  
4 is in the cellar, in the ground floor, and Unit 2 is  
5 on the second and third floors. And it's really the  
6 increased depth that gives us the opportunity to  
7 provide some internal living space that would  
8 otherwise not be able to be provided under an FAR  
9 compliant solution.

10           In addition, I think that we are -- you know,  
11 we're in a historic district and we are undertaking a  
12 preservation plan to really restore the exterior of  
13 the masonry and slate roof. There's also some  
14 significant spalling on the party wall elevations and  
15 so we're addressing that as well to improve the  
16 overall quality of the building.

17           So with that, I think that that concludes my  
18 portion of the architectural presentation. I'd be  
19 happy to answer any questions at this point.

20           MR. HINKLE: Just real quick. Do you know  
21 the amount of square foot that that extra FAR  
22 translates to for each property?

23           MR. TEASS: If you give me a moment I can  
24 calculate it. I don't trust my own math. It's about  
25 350 square feet over the -- on both the units, so 175

1 square feet per unit.

2 MR. HINKLE: Okay. Thank you.

3 CHAIRPERSON HILL: Mr. Sullivan, I'm just a  
4 little -- I mean, we're going to go to Office of  
5 Planning. I'm still not clear as to what the  
6 argument is for the increased FAR and how it meets  
7 the test.

8 I understand the desire to have a den and,  
9 you know, for the families and stuff, but I don't  
10 really see how you're getting to your argument with  
11 it.

12 MR. SULLIVAN: Right. I think there's a  
13 couple critical aspects that provide a reasonable  
14 argument for variance relief. The first being the  
15 location of the buildings adjacent to the Safeway  
16 wall, and what that does to possible exterior space.  
17 And when that's viewed in conjunction with the fact  
18 that we're dealing with an existing nonconforming  
19 footprint that needs to be scaled back, or that is  
20 being scaled back in order to better comply with the  
21 regulations, we're taking some of the external space  
22 and internalizing it because some of that space that  
23 counted in lot occupancy was non-FAR space.

24 And now, because it's being internalized,  
25 it's becoming FAR. It's counting against FAR now.

1 So we're reducing the footprint, but at the same time  
2 adding to FAR. And I guess the practical difficulty  
3 is, like I said, admittedly not the most overwhelming  
4 argument, but it has to do with the use of the  
5 recreation space outside in the back, and the fact  
6 that it's sort of overwhelmed by the 100 percent  
7 wall, which is very unique.

8 And it is all in the context of trying to  
9 provide that third bedroom. Granted, we're not  
10 required to provide -- to take it down to two units.  
11 It's just what the community wanted. But that does  
12 have an impact on the project and we believe takes it  
13 to the level of unnecessarily burdensome because it  
14 impacts the use of the property in the rear.

15 MR. MAY: So what is the square footage of  
16 the two units in either one of the buildings?

17 MR. TEASS: If you give me a moment I can  
18 provide that to you. So, we're about -- it's about  
19 2,000 square feet.

20 MR. MAY: Each unit is about 2,000 square  
21 feet?

22 MR. TEASS: Correct.

23 MR. MAY: And you're saying that losing 175  
24 square feet out of 2,000, right? Is that what you  
25 said earlier?

1           MR. TEASS: Correct, yes. And that really is  
2 -- I think we could certainly, in a FAR compliant  
3 solution, provide the three-bedrooms. It's really  
4 the den, that additional living space that we feel  
5 that a family really needs that's compromised by not  
6 providing that FAR relief.

7           MR. MAY: Okay. Well, I don't go for the,  
8 you know, what a family needs. You know, we see  
9 quite a range of what families do with, at the BZA.  
10 So, I mean, it really is a question of whether you  
11 can reasonably have a, you know, good units when you  
12 have 2,000 square feet. I mean, is the 2,000 square  
13 feet really necessary, or can you get by with 1,825,  
14 is really what it boils down to.

15           Can you tell me, you put a roof over the exit  
16 stair on the back or the -- you know, I guess I  
17 should say exit stair to the rear yard. How much of  
18 that winds up counting -- does any of that count as  
19 the FAR?

20           MR. TEASS: Yeah, so a portion, because it  
21 projects beyond the six feet, it counts against our  
22 FAR, the deck and the stairs on the subsequent floors  
23 below.

24           MR. MAY: Okay. Does it have to do with  
25 having a roof over it, or does it have to do with the

1 size of the stair and landings?

2 MR. TEASS: The size of the stair and the  
3 landings.

4 MR. MAY: Given the -- I mean, did you look  
5 at other ways to solve the design here, I mean, if  
6 you were to retain the existing footprint of the  
7 building. I guess, then you'd still be increasing  
8 the FAR, right? So you'd have to stay within the  
9 existing four walls or how many ever walls it is, if  
10 you were to avoid that. To avoid that really --

11 MR. TEASS: Correct. And we also, I mean,  
12 the existing building it's depicted as the -- there's  
13 a dash line on the plans that show the sort of  
14 traditional lightwell, dogleg, L, whatever you want  
15 to call it. And so we're -- we basically need to --  
16 we put ourselves into a court issue if we extend on  
17 the third level to -- we would be -- if we stay  
18 within these, I think, footprint, we would be  
19 creating a nonconforming court with the third-story  
20 addition.

21 MR. MAY: Where is the nonconforming court?

22 MR. TEASS: So there's -- both buildings  
23 currently have a court.

24 MR. MAY: Right.

25 MR. TEASS: Or they have a lightwell that's

1 been filled in. You can see it here in the existing  
2 photograph here. In this case the third floor  
3 addition actually went all the way over to the  
4 property line, and then the two floors below were  
5 left unfilled in. So the portion above counts as  
6 FAR. You know, in determining the existing FAR we  
7 didn't include that covered lightwell.

8           And then on the 1719, the property to the  
9 west, we have a stair that was filled in with that  
10 lightwell, and that's putting us -- so both of those,  
11 if you remove the stair and you remove that third-  
12 floor addition we would -- it would trigger a court  
13 issue that would need to be resolved. Or it would  
14 need to get relief for.

15           MR. MAY: What's the width of those courts?  
16 Five -- that's over five feet.

17           MR. TEASS: One is about four and half, the  
18 other one is about five feet.

19           MR. MAY: Well, it says here 5.2 and --  
20 sorry. Yeah, 5.2 and 5.9.

21           MR. TEASS: Correct. Sorry. Yes.

22           MR. MAY: So wouldn't a five-foot court now  
23 be conforming?

24           MR. TEASS: I thought it was six feet.

25           MR. MAY: Under the new regs I think it's

1 five. Well, anyway, I'm not arguing for that as a  
2 solution, I'm just, you know, I'm trying to  
3 understand the totality of what you're trying to  
4 assess here. I mean, clearly there are ways to solve  
5 this that would still yield three-bedroom units that  
6 might be -- you know, might have slightly less room  
7 in some of the bedrooms or in the den space or  
8 another way to tackle it is to treat the top floor  
9 unit a little bit differently and step back the, you  
10 know, the addition and that's what we're struggling  
11 with because you know, the idea behind granting a  
12 variance for FAR would be that there really isn't any  
13 other way to solve this. And that's not apparent.  
14 And the fact that the Safeway is next door doesn't  
15 quite push it over the line for me.

16 So, that's what I'm grappling with.

17 CHAIRPERSON HILL: Commissioner May is trying  
18 to help.

19 So you have any other questions right now,  
20 Commissioner May? Or does anybody, you guys? Okay.

21 I was going to turn to the Office of  
22 Planning. Are you good?

23 MR. SULLIVAN: Yeah, we're fine for now.

24 CHAIRPERSON HILL: Okay.

25 MR. SULLIVAN: I may have a closing.

1 CHAIRPERSON HILL: Oh, I'm sure you will.  
2 Yeah.

3 So the Office of Planning, please?

4 MS. BROWN-ROBERTS: Good morning, Mr.  
5 Chairman and Members of the Board, Maxine Brown-  
6 Roberts for the record.

7 The Office of Planning continues to support  
8 the special exception for the addition to a  
9 nonconforming structure and for the lot occupancy.  
10 However, we continue to recommend denial for the  
11 variance request as we do not think that the  
12 applicant has demonstrated that there is an  
13 exceptional situation which leads to a practical  
14 difficulty.

15 We cannot support the applicant's assertion  
16 about the proximity to the Safeway, and we just can't  
17 find the nexus between that and being a practical  
18 difficulty.

19 And also, the approval by HPRB is also not a  
20 practical difficulty because the HPRB approved what  
21 was shown to them, which was a design that exceeded  
22 the FAR, and the HPRB did not review the zoning  
23 requirements for the proposed addition.

24 And regarding the second building at 1719,  
25 the applicant also uses the same, the same argument

1 concerning the Safeway store, which I think is not  
2 the same thing because the building is separated.

3 In addition to that, with the extension of  
4 that building, I think they're creating a -- the same  
5 issue that they're using that the Safeway is a  
6 problem to them, they're creating for that -- the  
7 adjacent neighbor at -- on the -- adjacent to 1719.  
8 So, I think the applicant still needs to provide  
9 information or an argument for the exceptional  
10 situation for us to review.

11 We are in support of the addition generally,  
12 and the renovation of the building. But we do think  
13 that the variance request is not something that we  
14 can support.

15 Thank you, Mr. Chairman, and I am available  
16 for questions.

17 CHAIRPERSON HILL: Thank you, Ms. Brown-  
18 Roberts. I was curious about something from the  
19 Office of Planning. Like is there an -- so, do you  
20 think that that increase in FAR is de minimis? No.

21 MS. BROWN-ROBERTS: No.

22 CHAIRPERSON HILL: No. Okay.

23 MS. BROWN-ROBERTS: I mean, I think, and the  
24 applicant has not -- as Mr. May said, the applicant  
25 has really not, you know, shown us anything to say,

1 let's say if the stairs was not enclosed, what would  
2 that do to it, you know. So maybe if it was  
3 something a little smaller we could take that in  
4 consideration. But we really haven't see anything,  
5 you know --

6 CHAIRPERSON HILL: Okay.

7 MS. BROWN-ROBERTS: -- except what's  
8 presented here, and the arguments presented which I  
9 don't think is satisfactory.

10 CHAIRPERSON HILL: Okay. And to Commissioner  
11 May's comment again about the closed court. I'm just  
12 again curious as to what it is. There was a five  
13 feet or a six feet. What was, now within the new  
14 regulations, that is acceptable?

15 MS. BROWN-ROBERTS: For the -- it's four  
16 feet. Four feet of height, but not less than 10 feet  
17 minimum. Four feet -- four inches, I'm sorry. Four  
18 inches per foot of height of court, but not less than  
19 10 feet minimum.

20 MR. MAY: This is formally R-5-B, whatever it  
21 is now.

22 MS. BROWN-ROBERTS: Right.

23 MR. MAY: So it's a little different. I was  
24 thinking about the row house neighbors, we reduced it  
25 to five feet. But then again, these are very tall

1 structures, so the four inch rule might have put it  
2 over. Anyway.

3 I don't know that it's really relevant  
4 because I don't think it's really a good design --

5 CHAIRPERSON HILL: I was just curious.

6 MR. MAY: -- solution.

7 I do have a question, though. Looking at the  
8 building, the photos, and this is not for the Office  
9 of Planning, but looking at the building itself, I  
10 can see from the front -- well, first of all let me  
11 ask; in the calculation of the FAR are you counting  
12 all four stories?

13 MR. TEASS: We're not counting the lowest  
14 level because the ground floor is less than six feet  
15 above grade.

16 MR. MAY: Okay. But I could see how low it  
17 was, so that's why I was asking the question. But  
18 that ain't going to get you any help. All right.

19 CHAIRPERSON HILL: Mr. Hinkle, you have  
20 anything? Okay.

21 So we're going to turn back to -- well,  
22 actually, no. I'm going to go see if there's anyone  
23 here from the ANC wishing to speak. Anyone here from  
24 the ANC?

25 Anyone here wishing to speak in support of

1 the application? Support of the application?

2 Anyone here wishing to speak in opposition of  
3 the application? Opposition? Okay.

4 So now -- you would like to speak in  
5 opposition of the application?

6 MS. WILSON: [Speaking off mic.]

7 CHAIRPERSON HILL: Excuse me. I'm sorry,  
8 ma'am. You have to come up and state your name and  
9 speak in the microphone.

10 And, ma'am, were you sworn in before?

11 MS. WILSON: I guess I was not.

12 CHAIRPERSON HILL: You have to speak in the -  
13 - well, first of all, let's swear you in. Let's  
14 swear you in. Mr. Moy. You have to stand there,  
15 ma'am.

16 [Oath administered to the participant.]

17 MR. MOY: Thank you.

18 CHAIRPERSON HILL: All right. If you could  
19 just, you just sit down and then push that little  
20 button there that says, push to talk. And then if  
21 you could state your name?

22 MR. MOY: Name and address.

23 CHAIRPERSON HILL: Name and address please.  
24 Thank you.

25 MS. WILSON: My name is Margaret Wilson. I

1 am the owner of the building adjacent to the two  
2 under discussion; to the two addresses, 1717 and I  
3 guess 1719.

4 CHAIRPERSON HILL: Okay.

5 MS. WILSON: Those that are under discussion.  
6 And I try -- I actually have a question which I've  
7 tried to ask before over the phone but I was unable  
8 to get any kind of a response because --

9 CHAIRPERSON HILL: To whom did you ask the  
10 question over the phone?

11 MS. WILSON: Huh?

12 CHAIRPERSON HILL: To whom did you ask the  
13 question over the phone?

14 MS. WILSON: I have -- the gentleman whose  
15 name is on the document that I received regarding the  
16 whole matter.

17 CHAIRPERSON HILL: Oh, here in the Office of  
18 Zoning, you mean?

19 MS. WILSON: Yes.

20 CHAIRPERSON HILL: Okay. All right.

21 MS. WILSON: That's true.

22 CHAIRPERSON HILL: Go ahead. I'm sorry.

23 MS. WILSON: So my question has to do with  
24 what's projected. I understood that some extension  
25 of the roof was projected as well, and I haven't read

1 or I haven't been here long enough to hear what that  
2 roof extension is meant to be. And further than  
3 that, I simply heard some question about the  
4 restriction of the service road by the projected  
5 extension of property. So I'm afraid I don't fully -  
6 - I'm not fully informed and I'm very sorry to be  
7 late.

8 CHAIRPERSON HILL: That's all right.

9 So, you're not necessarily speaking in  
10 opposition or support, you just are trying to clear  
11 up or understand the design that's going up next to  
12 your house?

13 MS. WILSON: That's true, and I think that  
14 the documents I read projected that we had a common  
15 wall. We had a shared wall, and we do not.

16 CHAIRPERSON HILL: Okay.

17 MS. WILSON: I mean, those two buildings have  
18 been there long, long before the building in which I  
19 reside was constructed. My building is one of maybe  
20 eight or six or something, town houses, condos in a  
21 row, adjacent to that property. And mine is the  
22 first one.

23 CHAIRPERSON HILL: Okay. Okay.

24 MS. WILSON: But that's not a shared or  
25 common wall.

1           CHAIRPERSON HILL: All right, Ms. Wilson,  
2 have you -- Mr. Thornton, have you spoken with Ms.  
3 Wilson? You seem to say hello to each other so I  
4 assume you said hi before.

5           MR. THORNTON: Thank you. Justin Thornton,  
6 for the record.

7           Chairman Hill, we did speak. You may not  
8 remember me but --

9           MS. WILSON: Oh, I do remember we had --

10          MR. THORNTON: Okay. Great. So we hadn't  
11 met in person but --

12          CHAIRPERSON HILL: Okay. Okay.

13          MR. THORNTON: -- we have spoken via phone, I  
14 think once or twice.

15          CHAIRPERSON HILL: Okay.

16          MR. THORNTON: And, you know --

17          CHAIRPERSON HILL: Okay.

18          MR. THORNTON: -- explained what we were  
19 doing, but haven't --

20          CHAIRPERSON HILL: Okay.

21          MR. THORNTON: -- shown her the plans yet.

22          CHAIRPERSON HILL: Mr. Teass, can you answer  
23 the question that Ms. Wilson has?

24          MR. TEASS: Yes. So, I've got a printout of  
25 what I've got up on the screen, and I can show that

1 to you. You probably can see it a little bit better  
2 here. But the two properties in question do predate  
3 the adjacent structures to the west by a substantial  
4 period of time. It's our understanding that the wall  
5 between 1719 and 1721, which is Ms. Wilson's  
6 property, is a face on -- face on lot line wall.  
7 It's not a party wall. So those walls sort of do  
8 touch, but it's not a true party wall.

9 MS. WILSON: It is not all, and I do have  
10 some pictures with me of the roof section which will  
11 show very clearly that those are two separate  
12 structures.

13 MR. TEASS: And so what we're showing here on  
14 the existing site plan is your structure, which  
15 extends from front to back here. The neighbor comes  
16 out another 10 feet or so here, and we're proposing  
17 to extend this another six feet or so. So there's a  
18 wall here and there's an extension of that wall here  
19 as well.

20 MS. WILSON: I don't know about the wall  
21 extension. I know there is a -- there are iron  
22 structures to accommodate parking and such that  
23 extend on down to the service road. I don't know  
24 about a wall extending there.

25 It does -- I'm sorry. It does extend to the

1 patio, my patio.

2 MR. TEASS: So this is your property here.

3 MS. WILSON: That's me. That's right.

4 MR. TEASS: And so that wall gets very close.

5 MS. WILSON: It is about five inches maybe.

6 MR. MAY: Can you do that in a way that we  
7 can see what you're pointing at?

8 MR. TEASS: I'm sorry.

9 MR. MAY: Because otherwise you're just  
10 having a chat and we --

11 MR. TEASS: My apologies. So we're looking  
12 at the existing site photos. The lower left-hand  
13 corner.

14 MR. MAY: Yeah.

15 MR. TEASS: Ms. Wilson's structure is here.

16 MR. MAY: Okay. Yeah.

17 MR. TEASS: She has a face on lot line here.  
18 We have a face on lot line wall here, and she's  
19 telling me that there's a gap of a couple of inches  
20 between the --

21 MR. MAY: That's fine. Okay.

22 MR. TEASS: And so I think what I was trying  
23 to explain to Ms. Wilson is that you've got --  
24 there's an existing wall here. We'll be extending  
25 the wall another six feet closer to the alleyway

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1 here, and extending on the top-most level, removing  
2 that -- there's a sort of a sunroom solarium  
3 structure and extending the third floor. The way  
4 it's proposed today is we extend that full floor out,  
5 just to meet that.

6 MS. WILSON: And should I understand that  
7 that has to do with the building that's adjacent to  
8 the Safeway? The floor extension and the roof  
9 extension have to do with the building adjacent to  
10 the Safeway.

11 MR. TEASS: We're proposing to extend both  
12 the same amount, and that basically is about where  
13 you put the existing staircase on 1719, which you can  
14 see right here, would be the extent of the footprint,  
15 which is what's on here.

16 CHAIRPERSON HILL: Okay. Mr. Teass and Ms.  
17 Wilson, I'm just going to stop you one second just so  
18 -- I mean, I know it's a lot of information, Ms.  
19 Wilson, to take in right now, at this moment. And so  
20 I guess what I'm finding difficulty with is, I don't  
21 know whether you're speaking in support or opposition  
22 because you don't really understand, I suppose.

23 MS. WILSON: That's true.

24 CHAIRPERSON HILL: And so -- but I'm going to  
25 just table that for right now if that's all right

1 because it's going to take a little while for you to  
2 work that out there with the architect. And so I'm  
3 going to turn back over to the applicant, unless you  
4 have anything more to add, Ms. Wilson, that was it,  
5 correct? You didn't understand the design. You  
6 don't know if you're speaking in support or  
7 opposition at this time.

8 MS. WILSON: Neither at this time.

9 CHAIRPERSON HILL: Okay.

10 MS. WILSON: I do have a further question.  
11 That is, is there a common wall with the Safeway.

12 CHAIRPERSON HILL: Okay.

13 MS. WILSON: Of his property. Of this  
14 property under discussion? Does that have a common  
15 wall with the Safeway?

16 CHAIRPERSON HILL: Okay. Would you like to  
17 answer the question?

18 MR. TEASS: Yes, we share -- there's a  
19 property line with a face on lot line wall on both  
20 sides. So we have a shared, a shared wall.

21 CHAIRPERSON HILL: Okay. So, I'll let you  
22 talk together a little later. Okay? Thank you, so  
23 much. So I'm going to turn back to the applicant  
24 because again, the Office of Planning again is  
25 against the increase in FAR, and I suppose your

1 design will change if the FAR doesn't get approved.  
2 You're going to be six feet shorter, correct? Six  
3 and a half feet shorter.

4 MR. TEASS: Correct. I mean, we would modify  
5 if the -- in a scenario where the lot occupancy --

6 CHAIRPERSON HILL: Right.

7 MR. TEASS: -- were approved but the FAR were  
8 not approved --

9 CHAIRPERSON HILL: Right.

10 MR. TEASS: -- we would certainly --

11 CHAIRPERSON HILL: Right.

12 MR. TEASS: -- redesign and conform --

13 CHAIRPERSON HILL: So that would change --

14 MR. TEASS: -- the structure with those  
15 parameters.

16 CHAIRPERSON HILL: -- Mrs. Wilson's, you  
17 know, what happens to her property next door.

18 Right. Okay. Mr. Sullivan.

19 MR. SULLIVAN: It appears maybe we're not  
20 headed in the right direction so we have a proposal  
21 to postpone, continue the hearing and submit a new  
22 plan. The architect has told me that there really is  
23 a point at which it becomes really difficult to  
24 comply with the FAR, but that we could probably -- we  
25 could come up with a plan that would be much less,

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1 where maybe it would be close to a de minimis request  
2 and would also strengthen our variance argument.  
3 Roll that in with the fact that we're now -- we have  
4 the neighbor asking questions and we'd like to meet  
5 with her and get that resolved as well.

6 So if the Board is amenable to that, that's  
7 what we'd like to propose at this point.

8 CHAIRPERSON HILL: I mean, yeah, I'd like to  
9 hear from the other board members. As you said, not  
10 headed down the right road in terms of the argument  
11 with the FAR. I do -- I think the fact that someone  
12 has come forward, and I'm not clear as to whether  
13 they're in support of opposition, that does make me  
14 want to agree to pushing this off to get you, I  
15 guess, another chance at this. But I'd like to hear  
16 what my fellow colleagues have to say.

17 MR. MAY: Mr. Chairman, the, you know, I  
18 think the image on the lower left is quite telling,  
19 and actually is it possible for you to zoom in on  
20 that a little bit so we can see it a little bit  
21 bigger?

22 All right. We'll go with that. So, perfect.  
23 So, the -- you know, what's not apparent in just  
24 looking at the plans is that a lot of the lot  
25 occupancy that you have right now is a result of the

1 stairway structures. And in that incredibly tall  
2 roof deck off the back, right?

3           So, in effect, what we're talking about is  
4 building out on the property that's closest to us  
5 here in this view, the property on the right,  
6 building out to where the -- roughly where the  
7 stairway is coming down, right? So, that's about the  
8 footprint.

9           And then you're talking about going all the  
10 way up to the same height as the third floor of the -  
11 - the third-floor addition of the property next door.  
12 And I think that actually is telling in one of the  
13 reasons why I'm not comfortable with the FAR  
14 variance. It's not just the fact that it doesn't  
15 technically meet, or you're not sort of making the  
16 argument, but that it really is -- I mean, if you  
17 were to show us an image of what this building looks  
18 like from this perspective, once you've done the  
19 addition or whatever, it's going to be quite a lot  
20 bigger and quite a lot taller feeling as it, you  
21 know, abuts the neighbor, the neighboring property.

22           And you know, I'm not -- you know, as it is  
23 right now the property in terms of lot occupancy does  
24 extend past every other property on the block, but  
25 there are a few that have doglegs and that kind of

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1 conditioned, but they all end kind of where your  
2 property line is, right?

3           So, I mean, it just, it would extend quite a  
4 bit farther beyond that. So, I think you should look  
5 carefully at exactly how much footprint is needed to  
6 make this work. But also, you know, one of the  
7 things to do, to give it some relief is to -- would  
8 be to step back on that third floor, and that reduces  
9 the FAR as well.

10           It may not, you know, I mean, maybe on the  
11 top floor unit you don't have that study in the  
12 middle or maybe it's smaller or whatever. But I  
13 think that what we see here is that the property to  
14 the right, even though its wall extends farther out,  
15 it doesn't have as much impact as it would if it were  
16 the full three stories and another six feet out.

17           So, anyway, that's -- I mean, what I'm  
18 talking about is not just sort of the technical  
19 requirement of the FAR limitation, but also what that  
20 impact is. I mean, the reason why we have that FAR  
21 limitation here.

22           And so, to get beyond that I think you have  
23 to either demonstrate that the units are completely  
24 unworkable, without some variance. I mean, I think  
25 that's kind of the only way you can do it.

1           It would help if you know, we were able to  
2 see images from back here, an image of it when you  
3 come back. But I'll leave that up to you, what you  
4 want to present.

5           MR. HINKLE: No, I'd be interested to see if  
6 they could look at a redesign and try to address this  
7 issue.

8           CHAIRPERSON HILL: All right, Mr. Sullivan,  
9 so if you want to come back and show us those things  
10 that the Board had just asked for, again, I'm not at  
11 the FAR place that you're trying to get to. And  
12 really, because the argument isn't there.

13           And so, wherever you might be able to get the  
14 Office of Planning on board in terms of, you know,  
15 whatever they might consider de minimis or however  
16 you're going to kind of work through some of these  
17 things. And again, then, speaking with Ms. Wilson  
18 because now I'd like to see a letter from her or  
19 something in terms of what her thoughts are on the  
20 project. Yeah, so that's it.

21           Mr. Moy, do you want to try to see when would  
22 be a good time, or --

23           MR. MOY: Yes, Mr. Chairman. Well, first  
24 off, I don't know if the applicant needs some more  
25 time or not, but the earliest that I can reschedule

1 with Peter May would be Wednesday, November the 2nd,  
2 if that's doable.

3 CHAIRPERSON HILL: And this would be for a  
4 limited hearing.

5 MR. MOY: Yes, a continued hearing.

6 CHAIRPERSON HILL: Okay. Continued hearing.  
7 Does that work for you guys?

8 MR. SULLIVAN: Yes, that does.

9 CHAIRPERSON HILL: Okay. Great.

10 MR. MOY: So, then if the Board wishes to set  
11 a deadline for filing then I would suggest -- yeah,  
12 today's the 18th. So, if the applicants can submit,  
13 I'm assuming, revised drawings and burden of proof a  
14 week before, perhaps Wednesday the 26th. Or is that  
15 too soon? Or do you need a few more days beyond  
16 October the 26th?

17 MR. SULLIVAN: Yes, that's, that's great.

18 MR. MOY: The 26th of October?

19 MR. SULLIVAN: Yes, that's fine.

20 MR. MOY: Now bear in mind, the November 2nd  
21 is the start of BZA holding Wednesday hearings. I'm  
22 sure you're aware of that.

23 CHAIRPERSON HILL: Ms. Brown-Roberts, is that  
24 okay with the Office of Planning?

25 [No audible response.]

1 CHAIRPERSON HILL: Okay. Same day for a  
2 supplemental from Office of Planning as well?

3 MR. MOY: Hopefully they can work in  
4 conjunction with the applicant.

5 CHAIRPERSON HILL: Good. Thank you. Is that  
6 all of it? Let me just think. Okay. Thank you very  
7 much.

8 MR. SULLIVAN: Thank you.

9 MR. MOY: Also, Ms. Wilson, if you wouldn't  
10 mind completing two witness cards, and if you could  
11 submit that to the recorder? Thank you.

12 CHAIRPERSON HILL: And we're going to take a  
13 quick five-minute break. Thank you.

14 [Recess from 10:58 a.m. to 11:05 a.m.]

15 CHAIRPERSON HILL: If you wouldn't mind  
16 bringing up our next hearing case, please?

17 MR. MOY: Yes, with pleasure, sir. That  
18 would be parties to the table to Application No.  
19 19352 of Jennifer Lesko and Benjamin Cannon as  
20 captioned and advertised for a special exception  
21 relief under Subtitle E, Section 5201 from the lot  
22 occupancy requirements of Subtitle E, Section 304.1.  
23 This would add a two-story rear addition to an  
24 existing one-family dwelling, R-F-1 Zone, 328 12th  
25 Street Southeast, Square 1017, Lot 36.

1 CHAIRPERSON HILL: Okay. Great. Thank you,  
2 Mr. Moy. Good morning. If you could please  
3 introduce yourself.

4 MR. CANNON: Good morning, Mr. Chairman,  
5 Members of the Board. I am Ben Cannon, the property  
6 owner at 328 12th Street Southeast.

7 MS. BRITTINGHAM: Good morning. I'm Lacy  
8 Brittingham. I'm the architect for the project.

9 CHAIRPERSON HILL: Okay. Great. Thank you.  
10 I don't really have a lot of questions concerning  
11 this application. I did find the plans pretty  
12 interesting. And if you wouldn't mind can you kind  
13 of just show me the architectural plans and what you  
14 did for the solution, like for closing that closed  
15 court? Or open court, I should say.

16 MS. BRITTINGHAM: Which floor? Or the  
17 elevation?

18 CHAIRPERSON HILL: Yeah, right there. Right  
19 there. You could just walk me through the plans.

20 MS. BRITTINGHAM: Sure. So, I'm sorry. I'm  
21 not quite sure how to make it bigger. Here we go.  
22 Okay.

23 So, we are -- the two-story portion of the  
24 rear addition is essentially on top of the existing -  
25 - or extending the existing dogleg. And so, that we

1 retained the dogleg at the second floor. So, we're  
2 keeping the internal bedroom as a legal bedroom.

3 CHAIRPERSON HILL: Okay. Okay. I'm sorry.  
4 I just thought it was an interesting design. That's  
5 all. So, does the Board have any questions for the  
6 applicant?

7 Yeah, take your time.

8 [Pause.]

9 CHAIRPERSON HILL: I'm sorry. Okay. So, I  
10 thought that Commissioner May had some questions. It  
11 appears he does not, and so if it's all right then,  
12 with you, I was just going to turn to the Office of  
13 Planning and hear what their comments were.

14 MR. COCHRAN: Sure. Steve Cochran, Office of  
15 Planning. Just wanted to clarify one thing. Under  
16 the new regs it actually is not a nonconforming  
17 structure right now, so it doesn't need relief from  
18 C2-02, which is something we had indicated but I  
19 think I was still stuck in the old regs at that point  
20 when I was writing it.

21 CHAIRPERSON HILL: All right. Thank you, Mr.  
22 Cochran.

23 MR. COCHRAN: Other than that, no comments.

24 CHAIRPERSON HILL: Okay. Well, then, in that  
25 case I'm going to see if there's anyone here from the

1 ANC. Anyone here from the ANC that would like to  
2 speak? Anyone here who would like to speak in  
3 support of the application? Anyone here who would  
4 like to speak in opposition of the application?

5 Seeing none I would then turn back to the  
6 applicant and see if the applicant has anything to  
7 add in conclusion.

8 MS. BRITTINGHAM: No, we just have -- we have  
9 the letter of support, I think, from the ANC, and  
10 from the two abutting neighbors, as well as an  
11 additional neighbor across the street.

12 CHAIRPERSON HILL: Great. So, okay, is the  
13 Board ready to deliberate?

14 Okay. And as the applicant just stated that  
15 the ANC 6B was in support nine to zero. There are  
16 two letters in support from both adjacent properties.  
17 I also would rest on the record of the Office of  
18 Planning and I would, unless the Board has other  
19 things that they'd like to discuss, I would go ahead  
20 and make a motion to approve Application No. 19352 as  
21 advertised.

22 MR. HINKLE: I'll second.

23 CHAIRPERSON HILL: Motion been made and  
24 seconded.

25 [Vote taken.]

1 CHAIRPERSON HILL: Motion passes.

2 MR. MOY: Staff would record the vote as  
3 three to zero to two. This is on the motion of  
4 Chairman Hill to approve the application for the  
5 relief requested. Seconding the motion is Mr.  
6 Hinkle. Also in support, Mr. Peter May. Two members  
7 not present with us today, Mr. Chairman. Motion  
8 carries.

9 CHAIRPERSON HILL: Thank you, Mr. Moy. We  
10 could do a summary order.

11 MR. MOY: Yes, sir.

12 CHAIRPERSON HILL: Thank you.

13 MR. MOY: The next application, if I can have  
14 parties to the table to Application No. 19338 of  
15 Douglass and Stephanie Lett as captioned and  
16 advertised for a special exception relief under  
17 Subtitle E, Section 5201. This is from the lot  
18 occupancy requirements of Subtitle E, Section 304.1  
19 to construct a two-story rear addition to an existing  
20 one-family dwelling, R-F-1 at 543 Tennessee Avenue  
21 Northeast, Square 1053N, Lot 52.

22 CHAIRPERSON HILL: Thank you, Mr. Moy. Good  
23 morning.

24 Good morning.

25 CHAIRPERSON HILL: If you could please

1 introduce yourself?

2 MS. FOWLER: My name is Jennifer Fowler. I'm  
3 the architect.

4 CHAIRPERSON HILL: Okay, Ms. Fowler. We've  
5 all read the record and have gone through the  
6 application, and I don't really have any questions in  
7 particular for this application. Again, the ANC is  
8 in support eight to zero, DDOT is in support, OP, and  
9 we will hear from them, are in support. And then you  
10 also have three letters in support from nearby  
11 residents.

12 Is there anything you'd like to add to the  
13 conversation right now before I turn to the Office of  
14 Planning?

15 MS. FOWLER: Yeah. I was looking through the  
16 record earlier and noticed a discrepancy in the lot  
17 coverage request. I think our plans say it's 61.2  
18 percent, so that's correct. But the Office of  
19 Planning reports a 67 percent. And I think that when  
20 I looked in the ISIS record, somehow the chart was  
21 blank, so it's -- it really isn't in the record. So,  
22 that's probably where the confusion came from.

23 So, I just would request that we could maybe  
24 upload a revised chart later today, or you know, once  
25 I can get back to my computer. But I just wanted to

1 call that to everybody's attention. The correct  
2 percentage is 61.2. So, it's actually less than what  
3 the Office of Planning --

4 CHAIRPERSON HILL: Sure.

5 MS. FOWLER: -- was looking at, so.

6 MR. MOY: I'm sorry, Mr. Chair.

7 CHAIRPERSON HILL: Sure, that's fine.

8 MR. MOY: This is the table that's attached  
9 to the self-certification?

10 MS. FOWLER: Correct.

11 MR. MOY: Okay. Could you also include the  
12 subtitle too, when you redo that --

13 MS. FOWLER: Yes.

14 MR. MOY: -- self-cert? Thank you.

15 MS. FOWLER: Sorry. Thank you. I spoke with  
16 Ms. Thomas about it earlier and --

17 CHAIRPERSON HILL: Okay.

18 MS. FOWLER: -- she's aware of --

19 CHAIRPERSON HILL: Great. No, it's a lower  
20 number.

21 MS. FOWLER: Yes. Yes.

22 CHAIRPERSON HILL: You're better off.

23 MS. FOWLER: Thank goodness. That's all I  
24 have --

25 CHAIRPERSON HILL: Okay. Is there anything

1 else? Okay. Great.

2 MS. FOWLER: Thank you.

3 CHAIRPERSON HILL: Could I hear from the  
4 Office of Planning, please?

5 MS. THOMAS: Yes. Good morning. Karen  
6 Thomas again with the Office of Planning, and we are  
7 in support of this application and I just want for  
8 the record to know that we also got, with our  
9 package, we got a table, probably it was incorrect,  
10 and it did show 67. So, that's where we got that  
11 from.

12 So, it's probably some error in transmission  
13 from the office, but that said, you know, we're still  
14 in support of the application.

15 CHAIRPERSON HILL: Thank you. So, you're  
16 still in support of the 61.2 percent obviously.

17 MS. THOMAS: Absolutely.

18 CHAIRPERSON HILL: Thank you.

19 MS. THOMAS: Yeah.

20 CHAIRPERSON HILL: Does the Board have any  
21 questions for the Office of Planning?

22 I'm going to see if there's anyone here from  
23 the ANC. I don't think there is. Is there anyone  
24 here from the ANC that would like to speak? Is there  
25 anyone here who would like to speak in support of the

1 application? Anyone where who would like to speak in  
2 opposition of the application?

3 With that, I would turn back to the  
4 application and see if there is anything else the  
5 application would like to say.

6 MS. FOWLER: Nothing more to add. Thank you.

7 CHAIRPERSON HILL: Okay. Great. Is the  
8 Board ready to deliberate? Would anyone like to  
9 deliberate?

10 MR. MAY: I don't have anything to say. I  
11 mean, it's pretty straight forward. So, I would make  
12 a motion to approve BZA Case No. -- so I've got to  
13 get the right number -- 19352.

14 MR. MOY: No, 193 --

15 MR. MAY: Sorry. 19338. Sorry about that.  
16 This is why I -- yes, thank you.

17 CHAIRPERSON HILL: Well, you had to work last  
18 night, so --

19 MR. MAY: I did. Well, and I have it all  
20 here. I just got them mixed up. Anyway. So, 19338,  
21 special exception under Subtitle E, Section 5201 from  
22 lot occupancy requirements of Subtitle E, Section  
23 304.1 to construct a two-story rear addition to an  
24 existing one-family dwelling in the R-F-1 Zone.

25 CHAIRPERSON HILL: I second. Motion has been

1 made and seconded.

2 [Vote taken.]

3 CHAIRPERSON HILL: Motion passes. Mr. Moy,  
4 if we could have a summary order.

5 MR. MOY: Yes, sir. Staff would record the  
6 vote as three to zero to two. This is on the motion  
7 of Mr. Peter May to approve the application for the  
8 relief requested. And seconding the motion, Chairman  
9 Hill. Also in support, Mr. Hinkle, two members not -  
10 - actually, one member not present and we have a  
11 board seat vacant.

12 CHAIRPERSON HILL: Great. Thank you. If you  
13 could call our last case, and I assume Ms. Fowler is  
14 part of our last case, but --

15 MR. MOY: Yes. That would be Application No.  
16 19339. This is Chris Caldwell and Kelly Steele as  
17 captioned and advertised for a special exception  
18 relief under Subtitle E, Section 5201 from lot  
19 occupancy requirements, Subtitle E, Section 304.1.  
20 This would construct a two-story accessory building  
21 with a garage and living space in the R-F-1 Zone, 313  
22 11th Street Northeast, Square 986, Lot 805, or 805.

23 CHAIRPERSON HILL: Okay, great. Could you  
24 please introduce yourself?

25 MS. FOWLER: Jennifer Fowler, I'm the

1 architect.

2 MS. STEELE: Kelly Steele. I'm the property  
3 owner, 313 11th Street Northeast.

4 CHAIRPERSON HILL: Okay. Great. I mean, I  
5 don't have a lot of questions also, again about this  
6 one. However, I do have some -- I would like you to  
7 just kind of walk me through, like there was an issue  
8 with the Office of Planning or their concern in terms  
9 of the accessory space. Right? Yeah, the accessory  
10 living space. And it not turning into a separate  
11 unit.

12 And so, could you kind of walk me through  
13 that design? Or I don't know if you have any slides.  
14 Or just kind of tell me about how it's not going to  
15 be --

16 MS. FOWLER: All right. The intent is just  
17 for it to be an extension of the family's house for  
18 guests or for their living space, and we don't have a  
19 kitchen in there. There's no cooking facility.  
20 There is a bathroom, but there's no intent to rent it  
21 out.

22 CHAIRPERSON HILL: Okay.

23 MS. FOWLER: It's just part of the house  
24 basically.

25 CHAIRPERSON HILL: Okay. Okay. I mean,

1 personally also I wanted to hear something on the  
2 record from you that that's the case, and also from  
3 the --

4 MS. FOWLER: Yeah, and we do understand that  
5 we --

6 CHAIRPERSON HILL: -- owner.

7 MS. FOWLER: -- would have had to go through  
8 -- you know, obviously we could have added that as  
9 relief if we had wanted to do -- include the rental  
10 as a special exception. But that wasn't what we were  
11 intending.

12 MS. STEELE: You know, my husband works at  
13 home and we have a very small house and a son, and so  
14 it's intended to provide some office space for him so  
15 he doesn't have to have all of his computers. He  
16 does IT engineering, so he has a lot of computers and  
17 computer monitors, which right now are in our dining  
18 room.

19 CHAIRPERSON HILL: Okay. Okay. Great.  
20 Well, thank you. I just wanted to hear something for  
21 the record as to that concern.

22 And then does the Board have any further  
23 questions of the applicant right now?

24 MR. MAY: I do. So, you know, back on the  
25 same issue. I don't want to keep beating the horse

1 here, but the -- you're describing it as if it's  
2 going to be office space. It certainly makes sense  
3 it would be used that way. Of course, you're not  
4 going to own the house forever and the drawings that  
5 you show us basically make it look like a little  
6 bedroom suite kind of thing.

7           So, I looked at this and I said, oh, this is  
8 an Airbnb suite. Now, maybe that's not your  
9 intention, but you know, whoever follows you may  
10 intend to do that. So, the question I have is, I  
11 mean, that's where the accessory unit question kind  
12 of comes into play in perpetuity.

13           But if I understand it correctly, the only --  
14 I mean, the only way that you can get into this unit  
15 would be through the house or through the garage  
16 vehicle door, right?

17           MS. STEELE: Yeah, that's correct. You have  
18 to --

19           MR. MAY: And you --

20           MS. STEELE: -- be in our house or our back  
21 yard.

22           MR. MAY: Right. And there's no -- and you  
23 don't have a fence or -- I mean, there are those  
24 apartments and with a parking lot to the south, but  
25 there's no access through the fence there or anything

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1 like that?

2 MS. STEELE: No. No, there's not.

3 MR. MAY: No. Okay.

4 MS. FOWLER: I mean, our understanding --

5 MR. MAY: Okay.

6 MS. FOWLER: -- is we would have to go  
7 through special exception to get a rental unit or I  
8 believe now if you wait five years you can convert it  
9 as matter-of-right. So at least for the next five  
10 years it would definitely be a, just a living unit,  
11 as part of -- not an accessory apartment.

12 MR. MAY: Right. But it wouldn't qualify as  
13 a separate unit at this moment if there's not access.

14 MS. FOWLER: Correct.

15 MR. MAY: If there's not a human door to the  
16 alley, right? I mean, it might meet the 20-foot  
17 alley test.

18 MS. FOWLER: That is correct. But you're  
19 right, the access would be a problem for that.

20 MR. MAY: Right. Right. Yeah, okay.  
21 Thanks.

22 CHAIRPERSON HILL: Okay. Great. So, I'm  
23 going to turn to the Office of Planning if the  
24 applicant doesn't have anything else right now.  
25 Great.

1 MS. ELLIOTT: Thank you, Mr. Chair and  
2 Members of the Board. Brandice Elliott with the  
3 Office of Planning.

4 We are in support of this application. We're  
5 recommending approval of the special exceptions that  
6 have been requested. We just wanted to call  
7 attention to the fact that this could be considered a  
8 second dwelling by the time it gets to DCRA.

9 We've been trying to coordinate with DCRA  
10 closely in the interpretation of the new regulations.  
11 So, they actually brought that to our attention and  
12 we would just ask that the applicant continue to work  
13 with them to make sure that it meets all the  
14 requirements of the new regs.

15 Should they interpret it as a secondary -- a  
16 second dwelling on the lot, then we'll see them back  
17 with a request for a special exception. And as noted  
18 there would be some hurdles in doing that. So  
19 notably the access issue, and there's also the matter  
20 of the roof deck.

21 But if there are any other questions, I'm  
22 happy to address them.

23 CHAIRPERSON HILL: Okay, great. Thank you.  
24 Does the Board have any questions for the Office of  
25 Planning?

1 [No audible response.]

2 CHAIRPERSON HILL: Okay. Then in that case  
3 I'll ask if anyone is here from the ANC. I do not  
4 see anyone from the ANC.

5 Is there anyone here wishing to speak in  
6 support of the application? In support of the  
7 application?

8 Anyone here wishing to speak in opposition to  
9 the application? No? All right.

10 With that, then, I will turn back to the  
11 applicant and see if there is anything else the  
12 applicant would like to add.

13 MS. FOWLER: I don't think we have anything  
14 else to add. Thank you.

15 CHAIRPERSON HILL: Okay. Great. Then with  
16 that I'd turn to the Board. Is the Board ready to  
17 deliberate?

18 I again, after walking -- I mean, the main  
19 concern I had was the one that Office of Planning was  
20 speaking of with the dwelling unit turning into a  
21 separate unit, that is. And I'm satisfied in terms  
22 of the Office of Planning's analysis and then also  
23 the four letters of support from nearby residents.  
24 Again, that the ANC was in support eight to zero and  
25 I would be in support of the application.

1 Does the Board have anything to add?

2 [No audible response.]

3 CHAIRPERSON HILL: Then with that, I'd go  
4 ahead and make a motion to approve Application No.  
5 19339 of Chris Caldwell and Kelly Steele, pursuant to  
6 11 DCMR Subtitle X, Chapter 9, for a special  
7 exception under Subtitle E, Chapter 5. Yeah. No,  
8 Chapter -- yeah, 5021 from the lot occupancy  
9 requirements of Subtitle E, Chapter 304.4 to  
10 construct the two-story accessory building with a  
11 garage and living space in the R-F-1 Zone at premises  
12 313 11th Street Northeast.

13 MR. HINKLE: Second.

14 CHAIRPERSON HILL: Motion has been made and  
15 seconded.

16 [Vote taken.]

17 CHAIRPERSON HILL: The motion carries.

18 MR. MOY: Staff would record the vote as  
19 three to zero to two. This is on the motion of  
20 Chairman Hill to approve the application for the  
21 relief requested. Seconding the motion, Mr. Hinkle.  
22 Also in support -- also in support Mr. Peter May. We  
23 have a member not present with us today, and one seat  
24 vacant. Motion still carries, three, zero, two, Mr.  
25 Chairman.

1           CHAIRPERSON HILL: Great. And we can get a  
2 summary order, Mr. Moy.

3           MR. MOY: Yes, sir.

4           CHAIRPERSON HILL: Thank you. Mr. Moy, I  
5 don't know if there is anything else to come before  
6 the Board today.

7           MR. MOY: Not from the staff, sir.

8           CHAIRPERSON HILL: Okay. Well, then with  
9 that we are adjourned. Thank you.

10           [Whereupon, at 11:25 a.m., the Board Hearing  
11 was adjourned.]

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