

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY

OCTOBER 4, 2017

+ + + + +

The Regular Public Hearing convened in the
Jerrily R. Kress Memorial Hearing Room, Room 220 South, 441
4th Street, N.W., Washington, D.C., 20001, pursuant to notice
at 9:39 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chairperson
LESYLLEE M. WHITE, Board Member
CARLTON HART, Board Member (NCPC)

ZONING COMMISSION MEMBER PRESENT:

ROBERT MILLER, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

CHRISTOPHER COHEN, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN COCHRAN
BRYAN GOLDEN
CRYSTAL MYERS
STEPHEN MORDIN

The transcript constitutes the minutes from the Public Hearing held on October 4, 2017.

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10:15 a.m.

CHAIRPERSON HILL: All right, Mr. Moy, let's do our first hearing case whenever you get yourself organized.

MR. MOY: Okay, I believe that would ask for a confirmation from the Chair, but I believe Application Number 19560, right, I got it this time?

All right, Application Number 19560 of Adam Ross and Peng Wu.

As captioned, they advertised for a special exception relief under Subtitle E Section 5201 from the rear yard requirements of Subtitle E Section 205.4 which would construct a two-story rear addition to an existing one-family dwelling, RF-1 zone at 1739 Harvard Street, Northwest, Square 2588, Lot 160.

And, I'm sorry, go ahead. There are party status requests to this application.

CHAIRPERSON HILL: Okay, great, thank you.

Could the applicant come to the table, please?

MR. SAUCIER: My name is Nathan Saucier. I'm with the Studio Crowley Hall. I'm here on Adam Ross and Peng Wu's behalf.

CHAIRPERSON HILL: Okay, okay. Can you say your last name again?

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1 MR. SAUCIER: Saucier, S-A-U-C-I-E-R.

2 CHAIRPERSON HILL: S-A-U?

3 MR. SAUCIER: Yes.

4 CHAIRPERSON HILL: And, how do you spell the
5 rest of it, S-A-U?

6 MR. SAUCIER: It's S-A-U-C-I-E-R.

7 CHAIRPERSON HILL: Vice Chair Hart just told
8 me that it's French. So, he speaks French, so he's really --
9 he's all ready to go.

10 So, Mr. Saucier, there are -- well, first of
11 all, you're aware of this party status opposition to this and
12 that the ANC has requested a postponement.

13 I was kind of interested in going through --
14 well, I was interested in what the Board thought, but I'd
15 like -- kind of like to see if the party status people are
16 here. Are the party status people here?

17 (NO AUDIBLE RESPONSE)

18 CHAIRPERSON HILL: Okay. If you could please
19 introduce yourself for the record when you get a chance?

20 MS. MOLDENHAUER: Good morning, Meredith
21 Moldenhauer from the law firm of Cozen O'Connor. I'm here
22 on behalf of party in opposition individuals, Susan Rinner
23 and Brian Thompson who live on the abutting property at 1737
24 Harvard. Our filing is at Exhibit 37 of the record.

25 CHAIRPERSON HILL: Okay. Is Mr. Roberts here,

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1 Steve Roberts? Oh, okay, if you could please come forward
2 as well? No, that's okay, first, introduce yourself, Mr.
3 Roberts, and then --

4 MR. ROBERTS: My name is Steve Roberts. I
5 live at 1731 Harvard Street.

6 CHAIRPERSON HILL: Okay. And, you started to
7 say something?

8 MR. ROBERTS: Four houses down. I was -- I
9 have -- I was sent a notification about party status on the
10 other Harvard Street case but not on this case. So, that's
11 why I didn't raise my hand earlier.

12 CHAIRPERSON HILL: Okay, but you did file for
13 party status for this case?

14 MR. ROBERTS: Yes, sir, I did.

15 CHAIRPERSON HILL: Okay, all right.

16 All right, so, what I'd first like to do is go
17 ahead and hear from Ms. Moldenhauer and then also Mr. Roberts
18 how you are uniquely qualified so that you should receive
19 party status for this case.

20 Ms. Moldenhauer, I'll start with you.

21 MR. MOLDENHAUER: So, my clients live directly
22 abutting the property to the west, so we are uniquely
23 affected in the fact that we are the neighboring property
24 that would be affected by the addition.

25 I can elaborate, and also we have our written

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1 statements in the record.

2 CHAIRPERSON HILL: That's okay, thank you.

3 And, Mr. Roberts?

4 MR. ROBERTS: I live four houses down. And,
5 while I'm not exactly -- I won't be in the shadow of the
6 house, I just, as a resident of the road for 24 years, I just
7 felt like I needed to provide some historical perspective
8 and, you know, do what I could to have all the facts on the
9 table.

10 CHAIRPERSON HILL: Okay.

11 Does the Board have any -- I mean, Ms.
12 Moldenhauer representing the adjacent property and I don't
13 have any issues with them being someone giving party status.
14 Does anyone have any thoughts about Mr. Roberts?

15 VICE CHAIRPERSON HART: Yes, I mean,
16 typically, I understand that the adjoining neighbors have
17 more of an issue. And, I'm just kind of struggling trying
18 to see what --

19 I mean, I understand that here is -- that you
20 have a -- you may have an historical perspective that the
21 Thompson's may not, but we tend to find things that are --
22 that you bring that someone else could not and that's what
23 I'm trying to kind of struggle with.

24 I understand that, again, the person that
25 lives next door, they can be directly impacted by this. You

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1 might be indirectly impacted by it, but that's just not clear
2 to me.

3 CHAIRPERSON HILL: Okay.

4 MEMBER WHITE: Yes, I have the same questions
5 because party status, you know, usually it's a direct impact.
6 And, neighbors typically, you know, come before the Board or
7 you have the ANC. But, I just wondered if you could provide
8 a little bit more insight on why you're directly impacted by
9 this case.

10 MR. ROBERTS: Right, okay, thanks.

11 You know, in my mind, this is my first
12 opportunity to sit before you, so I appreciate that. But,
13 in my mind, there are two cases before you today, they're
14 both going to cite that they're two existing large bump-outs
15 on our road.

16 It's a unique row of houses. There's some
17 historical perspective on the two existing bump-outs and I
18 felt like the two cases before you in the next three weeks,
19 it's going to set precedent and it's going to make it
20 possible for my adjacent neighbors to do -- to built
21 oversized additions on the back of their houses as well,
22 which deeply concerns me.

23 CHAIRPERSON HILL: Okay.

24 Mr. Miller?

25 MEMBER MILLER: Yes, I would certainly be

1 interested in hearing your testimony. But, I am reluctant
2 to support multiple parties in opposition.

3 If you want to join with the adjacent
4 neighbors, is if you are mutually agreeable to joining
5 together with them, I have no problem with that. But, I
6 don't think we need to have multiple parties in opposition.

7 But, I do want to hear your testimony at some
8 point, which we will hear.

9 MS. MOLDENHAUER: Mr. Miller, I know my
10 clients have been in conversation. We have -- I have not
11 spoken with Mr. Roberts specifically, but I know my clients
12 have been in communication with a lot of the other property
13 owners on the block.

14 MR. ROBERTS: I believe I'm listed as a
15 witness on her party status application as well.

16 CHAIRPERSON HILL: Okay.

17 So, Mr. Roberts, I mean, we do want to hear
18 your testimony, and we want to hear your testimony. So,
19 about the next case that's coming up. But, I think we're
20 going to deny your party status request and ask if you can
21 join the other, you can talk with Ms. Moldenhauer and also
22 the other party status applicants and see if they'd be
23 willing to let you join their party status.

24 Because, there's a whole -- there's a lot of
25 procedural issues that go into party status. So, but, so

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1 that being the case, we're going to go ahead and grant --
2 deny your party status request and then also grant the party
3 status request to -- what's the last name again, Thompson?

4 MS. MOLDENHAUER: Thompson.

5 CHAIRPERSON HILL: And, what was the first
6 one?

7 MS. MOLDENHAUER: Susanne Rinner.

8 CHAIRPERSON HILL: Okay, thank you.

9 And, grant that request. And so, that is --
10 is that fine with the Board?

11 (NO AUDIBLE RESPONSE)

12 CHAIRPERSON HILL: All right.

13 Now, Mr. Saucier, the -- I guess, again, there
14 has been a request from the ANC to postpone this in terms of
15 -- I mean, they want to hear it with something that is going
16 on also on their block of a similar nature.

17 I don't really have -- I think we might end up
18 doing -- because, as of now, you don't have anything from the
19 ANC in terms of a report for us to go off of.

20 The Office of Planning can't even make a
21 recommendation at this time.

22 So, I don't see exactly how we'd be able to
23 move forward with your case without hearing from both the ANC
24 and the Office of Planning.

25 So, you'd have to first go ahead and get that

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1 straightened out before you could come back to us. Do you
2 understand that?

3 MR. SAUCIER: Yes. And, I think it was or
4 it's -- yes, I understand that. Adam and Peng, they don't
5 see any reason why, giving more time to work out any issues
6 with the adjacent neighbors would be an issue. I think
7 they're sort of supporting that.

8 But, yes, I agree with that.

9 CHAIRPERSON HILL: Okay. Well, all I'm just
10 trying to point out is that we don't have a report from the
11 Office of Planning. We don't have a report from the ANC.
12 So, there's no way this is going to get approved.

13 So, you need to kind of work with the Office
14 of Planning. And, have you presented in front of the ANC
15 yet?

16 MR. SAUCIER: We have and I guess I was under
17 the impression that we were working with Mr. Stephen Cochran
18 and it was my impression that we had support there, but maybe
19 I misunderstood.

20 But, we have --

21 CHAIRPERSON HILL: Okay.

22 MR. SAUCIER: -- been before the ANC --

23 CHAIRPERSON HILL: Okay, that's okay.

24 MR. SAUCIER: -- and so --

25 CHAIRPERSON HILL: All right.

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1 So, again, in the record right now, we don't
2 have anything from the Office of Planning. We don't have
3 anything from the ANC. So, you need to go ahead and get
4 something at least from the Office of Planning for us.
5 Right? So, go ahead and continue to work with the Office of
6 Planning.

7 You know how someone who's going to be in
8 party status opposition to you. The ANC has asked us to
9 postpone this to the same date as the -- there's another
10 case, Mr. Moy?

11 MR. MOY: Yes, that would be, yes, there was
12 -- I was going to mention this after this, there was a
13 procedural matter on Application Number 19576 of Skelton
14 where the same ANC is asking for a postponement.

15 That's the case that's scheduled for October 18th.

16 CHAIRPERSON HILL: Okay.

17 Do you think you'd be ready to come back
18 before us on October 18th?

19 MR. SAUCIER: Yes, I believe so.

20 CHAIRPERSON HILL: Okay.

21 So, that's one thing, then.

22 MS. MOLDENHAUER: Commissioner Hill?

23 CHAIRPERSON HILL: Sorry, give me one second.

24 MR. MOY: I was going to suggest a later date
25 because, in that letter from the ANC 1D, they have their

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1 hearing at the end of the month of October which then, in
2 terms of the sequence of time, it'd be most better --

3 CHAIRPERSON HILL: Okay.

4 MR. MOY: -- to hold the hearing possibly
5 November 8th at the earliest.

6 CHAIRPERSON HILL: Okay.

7 Mr. Hart, were you about to say something?

8 VICE CHAIRPERSON HART: Yes, only there -- it
9 seems as though there is a -- I know this is a resident
10 submitted a letter yesterday regarding the shadow studies and
11 I guess there's some issue about somebody living, I guess,
12 between the -- there are two buildings that are being built,
13 constructed, and that the shadow studies don't include the
14 other building -- the other structure that's being built.

15 So, it's -- we're only seeing a portion of
16 what's -- of the shadow -- just of that particular -- just
17 for your particular building. And, it's helpful to
18 understand what the full context is. And, I guess they're
19 looking at having something that is a little bit more
20 information, you know, for this.

21 So, I would actually think it would be helpful
22 to see that as well so that we do understand what we are --

23 You know, and when you're looking at the
24 shadow studies, we want to understand that. And, when
25 buildings will be in the shadow taking into account the kind

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1 of full idea of, again, when these two -- if these two
2 structures are approved that, you know, a neighbor may
3 actually be -- would likely be affected by both of these
4 buildings.

5 So, it is helpful to, when providing the
6 shadow studies, to see the full context.

7 I know that OP asked for a shadow study in
8 their report, which is why they said they really couldn't
9 make a -- one of the reasons why they said they couldn't make
10 a recommendation.

11 Now, they may have a different opinion now,
12 but it's helpful for us to kind of see all this in the
13 fullest context as we can.

14 So, my recommendation would be to have both
15 the building that you're constructing and understanding what,
16 you know, just a massing of what that other building is going
17 to look like so that we have a full understanding of what the
18 shadow impact would be from the building that you're
19 constructing.

20 MR. SAUCIER: Yes, and I do appreciate that
21 point. I guess we focused mainly on the adjacent neighbors,
22 like, as you probably saw in the documents, and we took, you
23 know, the winter and the summer and the Equinox and the
24 shadows that we found really only affected the adjacent
25 neighbors.

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1 And, but, so, it would be no -- I don't think
2 it'd be a problem to zoom out and show the exact -- the
3 extent that you're describing, so yes.

4 CHAIRPERSON HILL: Okay, so you understand Mr.
5 Hart's request?

6 MR. SAUCIER: Yes.

7 CHAIRPERSON HILL: Okay.

8 Ms. Moldenhauer, you had a question or a
9 comment?

10 MS. MOLDENHAUER: So, one comment about timing
11 and then just a follow up first on Commissioner Hart's
12 comments, I appreciate those from the applicant or from the
13 party in opposition.

14 But, we'd also typically, from a contextual
15 perspective, we understand that the Board sometimes looks at
16 matter of right options as well as what's proposed. But,
17 there's no image of what's currently existing from a
18 contextual perspective. And, typically, that's something
19 that the Board requests as well and we would just like to
20 suggest that as something to obviously fully comprehend the
21 context of what the proposal is.

22 In addition to that, there was the ANC meets
23 on October 24th, so November 1st, if that's possible for the
24 Board, I think that that may be an opportunity rather than
25 pushing it off to November 8th, if that's possible.

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1 CHAIRPERSON HILL: Mr. Saucier, I guess you
2 would be willing to come sooner rather than later, meaning
3 the 1st would work for you? November 1st?

4 MR. SAUCIER: Yes, the 1st would work.

5 CHAIRPERSON HILL: Okay. Let's just see if it
6 works for Mr. Moy.

7 MR. MOY: Well, it's not so much whether it
8 works for staff, but whether it works for the Board.

9 CHAIRPERSON HILL: Well, how big's the docket
10 on November 1st?

11 MR. MOY: And the Office of Planning, yes.

12 CHAIRPERSON HILL: Okay, well, all right, I'll
13 do this all around.

14 How big is the docket on November 1st?

15 MR. MOY: We have nine cases, one of which is
16 an appeal case of which involved ANC 1D.

17 CHAIRPERSON HILL: And, how big is the docket
18 on November 8th?

19 MR. MOY: Eight cases with no appeal cases.

20 CHAIRPERSON HILL: Okay.

21 So, my suggestion would be to put it on
22 November 8th because November 1st, there is an appeal and
23 this is going to take a little bit of time it looks like.

24 Then --

25 MR. COCHRAN: Mr. Chair?

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1 CHAIRPERSON HILL: Yes? Of course.

2 MR. COCHRAN: I'm sorry, but if I might?
3 Because there are two OP cases relating to these kinds of
4 questions in this block and because I've already bought a
5 ticket to be out of town on November 8th, I wonder if it
6 might be possible to schedule a date other than the 8th?

7 MR. MOY: The next hearing date, Mr. Chair,
8 would be November the 15th, which we have an appeal of ANC
9 6C. So, prefer to take one or the other?

10 CHAIRPERSON HILL: All right.

11 Does the Board have any kind of issue? We'll
12 just put it on the 1st then if we're going to get an appeal
13 either way. So, okay, all right.

14 Mr. Miler, are you coming back, is that --
15 okay, right. He said yes. I was like, are you in? Were you
16 sitting on the appeal then also, you're going to stay for the
17 whole day?

18 All right, so then, the 1st, we'll come back
19 with you on the 1st.

20 Did the Office of Planning have anything else
21 they wanted to add or ask of the applicant at this point?

22 MR. COCHRAN: No, sir, if you're not
23 proceeding with the case today, we have nothing.

24 CHAIRPERSON HILL: Okay.

25 So, November 1st, we're going to come back.

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1 There was a suggestion from the party status person in terms
2 of further clarification that you might like to provide to
3 the Board. You're welcome to provide that or not, you know,
4 we'll see how the case works out for you.

5 And then, the other was that, Mr. Roberts, so
6 you're here and then, would you be coming back? I mean, I'm
7 -- we're happy to hear your testimony now. And so, that's
8 one thing.

9 I see there's other people here perhaps in the
10 audience and so we might hear everyone's testimony here. Or,
11 would you come back on November 1st? You don't know?

12 MR. ROBERTS: I'll definitely come back.

13 CHAIRPERSON HILL: Okay.

14 MR. ROBERTS: If that's when it is.

15 CHAIRPERSON HILL: Okay.

16 So, then, we'll just wait to hear from you on
17 November 1st.

18 Was there anyone here wishing to speak in
19 support of the application?

20 (NO AUDIBLE RESPONSE)

21 CHAIRPERSON HILL: Was there anyone here who
22 wished to speak in opposition of the application?

23 (NO AUDIBLE RESPONSE)

24 CHAIRPERSON HILL: Okay, you're coming back on
25 the 1st.

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1 Can I -- can you please come forward, sir?
2 And, if you could state your name for the record?

3 MR. KADDEN: Jeremy Kadden, I live at 1743
4 Harvard Street, Northwest.

5 CHAIRPERSON HILL: All right, Mr. Kadden. Are
6 you going to come back on the 1st?

7 MR. KADDEN: I will, I just wanted to clarify
8 on the shadow studies, that was why I raised my hand --

9 CHAIRPERSON HILL: Okay.

10 MR. KADDEN: -- to explain.

11 So, I live in between the two proposed bump-
12 outs, 1739 is the one you're looking at, 1745 is the other
13 one. And, we're deeply concerned that we're going to get
14 shadow from both of them as we've seen on the block.

15 So, we'll get a.m. shadow from this case and
16 p.m. shadow from the other case. And so, our -- what -- I
17 just wanted to clarify that what we're seeking is just the
18 joint effect on the property that we own and 1741 Harvard
19 Street, that's the other one that's in between these two
20 properties.

21 So, just the joint effect of both properties
22 casting a shadow morning and evening.

23 CHAIRPERSON HILL: Okay, okay.

24 MR. KADDEN: That was all I wanted to say and
25 I'll testify more fully on November 1st.

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1 CHAIRPERSON HILL: Okay, great. So, we'll see
2 everybody on November 1st.

3 Mr. Moy, I'm a little confused again. When's
4 the other case being held -- heard?

5 MR. MOY: The other case is scheduled for
6 October 18th, but the issue is that this same ANC 1D is
7 asking for a postponement of that case as well and to, as a
8 favor to schedule it on the same date as this case, which
9 would be November 1st.

10 CHAIRPERSON HILL: Okay. Well, if it's okay
11 with the Board, I assume we heard this on the same day, so
12 we'll move that -- we'll grant that postponement and move it
13 to November 1st as well.

14 MR. MOY: Okay, very good.

15 CHAIRPERSON HILL: And so, November 1st, we're
16 going to have both of these cases and an appeal?

17 MR. MOY: November 1st, there's no appeal on
18 the 1st of November.

19 CHAIRPERSON HILL: I thought that's what you
20 just said.

21 MR. MOY: Is that what I said? Oh, there is.

22 CHAIRPERSON HILL: Okay.

23 MR. MOY: Well, wait a minute, wait a minute,
24 let me check.

25 CHAIRPERSON HILL: So, I would encourage the

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1 Board to pack a lunch on November 1st.

2 (LAUGHTER)

3 CHAIRPERSON HILL: And a snack.

4 Okay.

5 MR. MOY: Yes, that's right, there is.

6 CHAIRPERSON HILL: All right, okay.

7 So, is everyone clear on what's happening?

8 (NO AUDIBLE RESPONSE)

9 CHAIRPERSON HILL: Okay, all right, then we'll
10 see everyone on November 1st. Thank you.

11 We're going to take a three minute break.
12 Okay? Thank you.

13 MR. MOY: Okay, before we do that, Mr. Chair,
14 if I may --

15 CHAIRPERSON HILL: Sorry, Mr. Moy.

16 MR. MOY: -- just for the -- just for clarity
17 for the transcript --

18 CHAIRPERSON HILL: Sure, of course.

19 MR. MOY: -- the other application which is
20 19576 of William Skelton, that was pulled from the expedited
21 review calendar and rescheduled as a hearing on October 18th.
22 The Board is now granting the ANC 1D's request to postpone
23 and that reschedule date will now be the same date of this
24 case, so November 1st.

25 CHAIRPERSON HILL: Okay.

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1 MR. MOY: I just want that clear for the
2 transcript.

3 CHAIRPERSON HILL: No, thank you, thank you.
4 Okay, all right, then we're going to take a
5 quick break. Thank you.

6 (Whereupon, the above-entitled matter went off
7 the record at 10:37 a.m. and resumed at 10:45 a.m.)

8 CHAIRPERSON HILL: All right, Mr. Moy,
9 whenever you are ready.

10 MR. MOY: Thank you, Mr. Chairman.

11 I believe we're back to the top of the order
12 on the hearing session which I suspect that should be
13 Application Number 19558, if I can have parties to the table.

14 This is of 1240 Mount Olivet Road, LLC,
15 caption advertised for special exception under Subtitle C,
16 Section 704 from the minimum parking number requirements, so
17 Subtitle C, Section 701.5 which would construct a self-
18 storage facility in the PDR-1 Zone.

19 This is at 1240 Mount Olivet Road, Northeast,
20 Square 4092, Lot PAR, P-A-R, 141/79.

21 CHAIRPERSON HILL: Great, thank you, Mr. Moy.

22 And, Mr. Moy, just so I'm clear with me, we're
23 kind of jumping around still a little bit. Like, we're doing
24 the 19558, then 19582 and, finally, 19575? Okay, all right.

25 All right, gentlemen, whenever you're ready,

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1 please introduce yourselves from my right to left.

2 MR. KABATT: Hi, I'm Chris Kabatt with Wells
3 and Associates representing the applicant.

4 MR. UTZ: Hi, I'm Jeff Utz with Goulston
5 Storrs, the applicant's land use counsel.

6 MR. BROWN: Kevin Brown with Montage
7 Development, the applicant.

8 MR. WILBERN: Jack Wilbern of Butz Wilbern,
9 architect for the project.

10 CHAIRPERSON HILL: Okay, Mr. Utz, I assume
11 you're going to present to us?

12 MR. UTZ: Please, sure.

13 CHAIRPERSON HILL: Okay, great.

14 So, upon reviewing the record, you know, I
15 would like to hear your presentation. The Board would like
16 to hear your presentation in terms of how, you know, the
17 project itself and how you're meeting the standard for which
18 we can grant the request.

19 The Office of Planning did have some questions
20 concerning C703.3 and so if you can kind of address those a
21 little bit.

22 And then, you can speak to the two DDOT
23 conditions and then just how it went with the ANC is what I'd
24 be most primarily interested in hearing from.

25 Is there anything additional the Board would

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1 like to hear from the applicant?

2 (NO AUDIBLE RESPONSE)

3 CHAIRPERSON HILL: Okay.

4 Then, Mr. Utz, I'm just going to go ahead and
5 put ten minutes on the clock for you and then --

6 MR. UTZ: Okay.

7 CHAIRPERSON HILL: -- Mr. Moy, do we have a
8 clock again? We don't have a clock.

9 MR. MOY: I don't think it's been corrected
10 yet, sir.

11 CHAIRPERSON HILL: All right.

12 Mr. Utz, you had something to say?

13 MR. UTZ: Just the expert witness review, I
14 don't think Mr. Wilbern has been before the BZA before or the
15 Zoning Commission as an expert.

16 CHAIRPERSON HILL: Mr. Kabatt -- well, Kabatt
17 is in the book, right.

18 I'm sorry, sir, your last name again was?

19 MR. WILBERN: Wilbern, W-I-L-B-E-R-N.

20 CHAIRPERSON HILL: Mr. Wilbern, if you can
21 just go ahead and tell us a little bit about your background,
22 please?

23 MR. WILBERN: I'm an architect registered in
24 the District of Columbia since 1987. I'm registered in
25 approximately 12 different states. I have something like 76

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1 million square feet of self-storage experience.

2 CHAIRPERSON HILL: Okay, great. Thank you,
3 Mr. Wilbern. I'm sorry, I just kind of missed that exhibit.

4 Okay, I don't have any issue with Mr. Wilbern
5 being included in our book as an expert witness. Does anyone
6 else have any comments from the Board?

7 (NO RESPONSE)

8 CHAIRPERSON HILL: Okay.

9 Mr. Wilbern, we're going to go ahead and
10 accept you as expert testimony and include you into our
11 books. You don't have to do that again.

12 Okay, all right, Mr. Utz?

13 MR. UTZ: Thank you.

14 I'll try to keep it short and I'll just get
15 out of the way and hand it over to Kevin and Jack. But, I
16 just wanted to caption it really quickly and also thank you
17 for letting us appear before you today.

18 This application relates to special exception
19 relief for the parking requirement under Section C 703 which
20 allows you to deviate from the requirements of Section c 701.

21 Based on the size of the project, it's a self-
22 storage use, so there's a one space for every 3,000 square
23 foot requirement, therefore, it generates a 22 space
24 requirement.

25 We have four legal parking spaces, two tandem,

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1 kind of in board parking spaces and then 2 loading docks,
2 which we believe, as we'll show you, meets the demands of
3 parking and loading for our facility.

4 I'll skip over everything else and just go
5 ahead and hand it over to Kevin Brown of Montage to say a few
6 words.

7 MR. BROWN: Good morning. My name is Kevin
8 Brown, I'm the founder and principle of Montage Development
9 Group. I established my firm a little over two years ago
10 after working in the District in construction and real estate
11 development over the last 20 years.

12 Jeff has mentioned the particulars of the
13 site. What we are planning to build, the 88,000 square foot
14 self-storage facility.

15 We're partnering with one of the nation's
16 second largest operators, ExtraSpace Storage who has 1,500
17 facilities.

18 CHAIRPERSON HILL: Can you move the mic
19 closer, too? I'm sorry, it's just a little hard, I'm
20 realizing that there's a little noise.

21 MR. BROWN: Is that better?

22 CHAIRPERSON HILL: Much better, thanks.

23 MR. BROWN: Partnering with ExtraSpace Storage
24 who has 1,500 facilities in 39 states and the District of
25 Columbia.

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1 I'm going to skip some of the other stuff and
2 I want to jump to straight to sort of the community outreach
3 because that's one of the things you mentioned was where we
4 were with the ANC.

5 You know, I'm a firm believer in community
6 outreach. We began contacting the ANC SMD Chairperson
7 Manning who's the Chairperson and the SMD on this project
8 back in May of 2017. She provided us with some key
9 stakeholders that we needed to reach out to.

10 So, we have met with the Archdiocese of
11 Washington, D.C. They have the Mount Olivet Cemetery.

12 We presented to the Arboretum Neighborhood
13 Association at their September meeting.

14 We also met with the SMD from ANC 5D-02, which
15 is the direct -- directly across the street is that's their
16 SMD, so we met with the SMD and presented at her SMD meeting.

17 We've also met with our neighbors, A&B
18 Transmission Services and Capitol Stainless Steel.

19 Unfortunately, we originally pushed back our
20 original hearing date so that we could present in September
21 to the ANC. However, they did not put us on the calendar.
22 This ANC didn't meet in July, they didn't meet in August.

23 I understand they didn't put us on the
24 calendar because the Chair and SMD -- our SMD wasn't there.
25 And so, now we're slated to go before them on the 18th of

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1 October, I believe it is. But, we've been in contact with
2 them since May.

3 MR. UTZ: We've been trying to get on the
4 September agenda because, initially, those first few days
5 after we filed, we were actually scheduled for September 20th
6 hearing date here. That's the same day that the ANC 5C met.

7 As Kevin mentioned, they didn't meet in July
8 and August, so that was basically the only kind of change we
9 had to meet with them before deferring a bit and actually
10 tying up the data today.

11 And, that didn't work out with the ANC, so
12 hopefully, we'll get on their agenda on the 16th of October.

13 CHAIRPERSON HILL: The 16th of October? So,
14 you haven't presented in front of the ANC yet?

15 MR. UTZ: Not officially.

16 CHAIRPERSON HILL: You talked to the SMD from
17 that in that area, though. The ANC is the only one across
18 the street?

19 MR. BROWN: So, we -- yes, we haven't
20 presented to the fully -- we presented to the SMD from the
21 SMD meeting for the ANC that's directly across the street.

22 And, we also presented at the Arboretum
23 Neighborhood Association and Chairperson Manning was present
24 at that meeting as well.

25 CHAIRPERSON HILL: And, what kind of feedback

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1 did you get from the SMDs?

2 MR. BROWN: Feedback we got, some of the
3 typical issues. They asked us about security, which we said
4 that we were going to have a secure facility. There'll be
5 cameras that will be monitored.

6 They asked us about making sure that we had a
7 well-landscaped frontage of the building and try to have sort
8 of a little buffer between the sidewalk and the parking area.

9 There were some concerns about trash, because
10 they mentioned they'd had some issues with --

11 CHAIRPERSON HILL: Mr. Brown, I'm just going
12 to cut you off a little bit.

13 So, did they say that they would be in
14 support?

15 MR. BROWN: They did not. And so, we -- I
16 mean, our objective today is to present everything we can.
17 I believe we have OP and DDOT reports and sort of leave it --
18 get everything we can from the Board and any other things
19 that may be post-hearing things and hopefully leave this open
20 so that we can go get the ANC support --

21 CHAIRPERSON HILL: Okay.

22 MR. BROWN: -- is what we'd like to accomplish
23 today.

24 CHAIRPERSON HILL: Okay. All right, thanks.
25 You're helping me out, too. So, that's great, okay.

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1 So, go ahead, Mr. Brown, you can continue.

2 MR. BROWN: That is really what I'd like to
3 say. And so, you wanted us to specifically touch on --

4 MR. UTZ: 703.3 items. So, let's turn it over
5 to Jack and he can address the issues that were open from the
6 OP report.

7 VICE CHAIRPERSON HART: Actually, just trying
8 to make sure I understand this also.

9 Mr. Brown, you said that the -- did the
10 Arboretum Civic Association, they didn't support you? They
11 did support you? Or they didn't actually take a vote?

12 And, I was just trying to -- did you ask for
13 a vote?

14 MR. BROWN: They did not take a vote. They
15 did not take a vote. We requested to get a letter from them
16 and have not been able to do it. They didn't oppose it or --

17 VICE CHAIRPERSON HART: Support it?

18 MR. BROWN: -- support it. They just gave us
19 feedback on the items that they thought were critical.

20 VICE CHAIRPERSON HART: Okay, but --

21 MR. BROWN: And --

22 VICE CHAIRPERSON HART: What I was trying to
23 understand was whether or not they were actually purposely
24 not supporting it or opposing it. They were going to remain
25 neutral or if they -- if you just haven't -- they just

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1 haven't followed up and actually give some letter to say,
2 yes, we're generally are okay with it or what.

3 The Arboretum Civic Association is a just a
4 piece of this, but it's the only kind of thing that we have
5 right now because it's the only group that you've actually
6 been in front of.

7 And, I didn't know if you'd actually been in
8 front of the zoning subcommittee for the ANC or if it was
9 just the -- you're just going in front of the ANC or haven't
10 gone in front the ANC yet at all.

11 MR. BROWN: Just the SMD. And so, the plan
12 and the ANC chairperson was there. The plan after that
13 meeting was to address their concerns and so that when we
14 presented to the ANC, we could say here were some of the
15 feedback and comments that we received at this community
16 meeting and this is how --

17 VICE CHAIRPERSON HART: Okay, I got it.

18 MR. BROWN: -- we plan to address it.

19 CHAIRPERSON HILL: Yes, okay.

20 Mr. Utz?

21 MR. UTZ: Sure, and I just wanted to --

22 CHAIRPERSON HILL: I'm sorry, right, right.

23 MR. UTZ: -- they have been to 5D as well. 5D
24 is the ANC just to the south of Mount Olivet Road. So, so
25 far, those discussions are going well. But, we haven't --

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1 CHAIRPERSON HILL: So, you have to present for
2 both?

3 MR. UTZ: Just to do it.

4 CHAIRPERSON HILL: Right, okay.

5 MR. UTZ: Yes.

6 CHAIRPERSON HILL: Okay, all right.

7 MR. UTZ: But, we were actually hoping to get
8 a letter in support that was supposed to be in today from
9 what we were told.

10 CHAIRPERSON HILL: Okay, okay.

11 MR. WILBERN: So, very briefly, the points
12 have come up from OP and DDOT were, one, requesting a short-
13 term bicycle space and for secure long-term onsite. And, we
14 have located and agreed to that condition.

15 Next was to go through a series of how we have
16 looked at adding any addition space, making the point,
17 however, that our spaces as designed right now, we feel, are
18 completely adequate for the need.

19 DDOT had requested specifically that we show
20 that we can maneuver all vehicles onsite, requires nothing
21 backing up into the street, et cetera. So, that's sort of
22 our main issue.

23 This is a very challenging site with only 75
24 feet of frontage. And yet, we have to be able to maneuver
25 completely onsite.

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1 At the same time, we are faced by
2 nonprofessional drivers. So, when you do have box trucks
3 which is usually the largest vehicle that we have onsite, we
4 need to make it fairly simple and clear for nonprofessional
5 drivers.

6 So, we looked at a couple, three alternatives,
7 all of which we felt did not meet that criteria of either
8 being able to maneuver onsite and with nonprofessional
9 drivers.

10 So, we looked at adding parallel spaces, and
11 that doesn't work. We looked at pulling a building forward
12 to cover all the parking and we ended up with a forest of
13 columns that also makes it particularly difficult for any
14 maneuvering by our patrons.

15 And, last, we looked at extending and making
16 an L-shaped parking by putting two more spaces. Again, we
17 have a little bit of a blivet. We have two egress points
18 that we have to get out. We have to have a loading space and
19 we have to have an office to control access.

20 So, we cannot fit all of those spaces in the
21 75 feet of frontage.

22 CHAIRPERSON HILL: Okay.

23 Does the Board have any questions of the
24 applicant?

25 (NO RESPONSE)

1 CHAIRPERSON HILL: Okay.

2 I'm going to turn to the Office of Planning.

3 MR. GOLDMAN: Good morning, Mr. Chair and
4 Members of the Board. Brian Goldman, Office of Planning.

5 I think that the applicant's testimony this
6 morning addresses the points that were raised in our report.
7 And, we are recommending approval.

8 CHAIRPERSON HILL: Okay.

9 Does the Board have any questions for the
10 Office of Planning?

11 (NO RESPONSE)

12 CHAIRPERSON HILL: Okay.

13 Let's see, does the applicant have any
14 questions for the Office of Planning?

15 MR. UTZ: We don't.

16 CHAIRPERSON HILL: All right.

17 Let's see, is there anyone here from the ANC
18 by any chance?

19 (NO RESPONSE)

20 CHAIRPERSON HILL: Is there anyone here
21 wishing to speak in support of the application?

22 (NO RESPONSE)

23 CHAIRPERSON HILL: Is there anyone here
24 wishing to speak in opposition of the application?

25 (NO RESPONSE)

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1 CHAIRPERSON HILL: Okay.

2 So, Mr. Utz, I mean, we're back here in terms
3 of what Mr. Brown just stated. I mean, I think that a lot
4 of your community outreach has taken place. A lot of your
5 work has been done with the Office of Planning.

6 You are in agreement of the conditions that
7 have been imposed -- suggested by DDOT in terms of the
8 applicant shall provide one short-term bicycle parking space.
9 The applicant shall provide a total of four indoor secure
10 long-term bicycle parking spaces, is that correct?

11 MR. UTZ: Correct.

12 CHAIRPERSON HILL: Okay.

13 I don't know how the -- well, Mr. Brown was
14 kind enough to kind of like let us know again how this scene
15 is going to play out a little bit, which is that I don't
16 think that -- I know that I'm not comfortable enough moving
17 forward until I've at least made sure that the ANC has had
18 their say.

19 And even then, I'm not even able to really
20 close the hearing because it's not until after the ANC
21 meeting takes place that we would know the community is
22 actually had an opportunity to at least come forward and
23 voice their opinion as well.

24 So, I mean, I appreciate you coming down and
25 I appreciate you doing the work that you've already done.

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1 It will make it faster the next time we come back here before
2 you, but unless the Board has any other thoughts, I would go
3 ahead and put this off to another hearing date where we can
4 come back and just look at the community outreach.

5 I mean, everyone's going to be here again so
6 we'll be able to ask questions from everyone. But, hear the
7 community outreach in terms of the ANC, if you get a letter
8 from the adjacent ANC, that's great. But, you know, present
9 to that ANC.

10 Do you know when you think you -- not the
11 adjacent ANC, present to the one that you're in? When do you
12 think you might be able to get back to us after that ANC
13 meeting?

14 MR. UTZ: It's basically our timing is just
15 completely premised on the ANC's next meeting and we should
16 be able to get a letter hopefully relatively soon after that.

17 CHAIRPERSON HILL: Okay. When's the next
18 meeting?

19 MR. UTZ: It's the 18th of October.

20 CHAIRPERSON HILL: Eighteenth of October?

21 MR. UTZ: Yes.

22 CHAIRPERSON HILL: And, then, so the 18th of
23 October? I'm only smiling, were you hear earlier with the
24 discussion about --

25 MR. UTZ: Yes.

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1 CHAIRPERSON HILL: -- November 1st?

2 MR. UTZ: Yes.

3 CHAIRPERSON HILL: So, Mr. Moy, November 8th,
4 is that possible?

5 MR. MOY: Yes, sir.

6 CHAIRPERSON HILL: Okay.

7 So, we'll come back on November 8th and
8 hopefully you have everything taken care of and we can have
9 an opportunity to hear from the ANC.

10 MR. UTZ: Sounds good.

11 CHAIRPERSON HILL: Okay?

12 MR. UTZ: Okay.

13 CHAIRPERSON HILL: All right, great.

14 Does anybody have anything else for this
15 applicant?

16 (NO RESPONSE)

17 CHAIRPERSON HILL: All right, then, we'll see
18 on November 8th.

19 MR. UTZ: Thank you so much.

20 CHAIRPERSON HILL: Thank you.

21 MR. UTZ: Thank you.

22 MR. MOY: I believe, Mr. Chairman, the next
23 application before the Board is Application Number 19582.
24 This is of David and Lesly McNitt.

25 The caption advertised for area variances from

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1 the lot occupancy requirements of Subtitle E Section 304.1,
2 nonconforming structure requirements of Subtitle C Section
3 202.2 which would replace an existing balcony and staircase
4 with a second -- with a new second floor balcony on an
5 existing one-family dwelling in the RF-1 zone. This is at
6 1601 8th Street, Northwest, Square 420, Lot 801.

7 So, that you're aware, Mr. Chair, the agency
8 6E filed their letter yesterday, so that should be the last
9 exhibit in the case file.

10 CHAIRPERSON HILL: Great, thank you, Mr. Moy.
11 Where do you need that, Mr. Moy, for the
12 camera?

13 (OFF MICROPHONE COMMENTS)

14 CHAIRPERSON HILL: Okay, great.

15 And also, Mr. Moy, just to be clear here for
16 the audience, there's this case, 19582 and then there's only
17 one more left after that, which is 19575. Okay?

18 MR. MOY: That's correct.

19 CHAIRPERSON HILL: Everything else has been
20 heard today.

21 All right, sir, if you could please introduce
22 yourself?

23 MR. MCNITT: My name is David McNitt. I am
24 the owner of the property along with my wife, Lesly McNitt
25 at 1061 8th Street, Northwest.

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1 CHAIRPERSON HILL: Okay.

2 So, Mr. McNitt, I guess, you know, I'd be
3 interested in hearing, you know, again, as -- and, if the
4 Board has any other specific requests -- I'd be interested
5 in hearing, again, in general, the project and what you're
6 trying to accomplish as well as how you're meeting the
7 standard for us to grant the variance.

8 There does not seem to be, again, any -- oh
9 no, I'm sorry, the report just came from 6E so I'll kind of
10 take a look at that while you're going through your
11 presentation.

12 And so, then, there was only one other comment
13 which was that the proposed deck -- DDOT's comment was the
14 proposed deck does not project into public space.

15 And so, according to their surveyor's plat,
16 it's in public space now. So, we can talk through that as
17 we're going. So, that even something that I needed to
18 clarify.

19 But, I'm going to go ahead and put ten minutes
20 on the clock for you to give us your presentation. And, you
21 can begin whenever you'd like.

22 MR. MCNITT: And, I can address the public
23 space issue, too. We actually pursued a public space permit
24 prior to understanding that we needed to become -- come
25 before this Board. That permit was approved and it's sitting

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1 in the system as approved pending payment.

2 CHAIRPERSON HILL: Okay, go ahead and give us
3 your presentation and we'll see what we do with that issue.
4 Thank you.

5 MR. MCNITT: Okay, so, I'm seeking a zoning
6 variance both from seeking relief from the lot occupancy
7 requirements and prohibition against enlarging nonconforming
8 structure.

9 The project is to replace an existing balcony
10 and staircase with a new balcony. The reason we're running
11 into problems is, most significantly, because this property
12 is located in RF-1 zone where the minimum lot prescribed by
13 that RF-1 zone is 1,800 square feet.

14 And, our property sits on a lot that is only
15 1,000 square feet. So, just over, you know 50 percent the
16 size of what would normally be the minimum size lot in that
17 zone.

18 Subsequently, the current structure, the
19 existing structure already occupies 92.46 of the lot --
20 percentage of the lot.

21 The existing balcony and stairs that we're
22 seeking to replace takes up a total 44.13 square feet of that
23 lot occupancy or about 4.4 percent of the lot.

24 And, we're seeking to replace that balcony and
25 stairs with a deck that is 62 square feet, an increase of

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1 17.87 square feet. And, subsequently, an additional 1.79
2 percent of the lot occupancy.

3 That would bring us to a total of 94.25
4 percent of the lot occupancy, which, of course, triggers the
5 requirement to seek a zoning variance.

6 I think that the most consequential issue, and
7 the burden that is placed on this property is predominantly
8 the size of the lot.

9 The rest of the lots on this block and north
10 of the block, there's eight identical lots that are 1,900
11 square feet, 100 square feet larger than the zone minimum.

12 Apparently, back some time in the 1800s, this
13 lot was divided. So, our lot, despite our house being called
14 the Green Monster, it's anything but a monster. It's
15 actually the second smallest lot other than our neighbor
16 directly to the east on the block.

17 So, I think -- we believe that our property is
18 uniquely affected by an exceptional situation and condition
19 because of both the size of the lot and the existing
20 configuration of the structure on the lot, taking up over 90
21 percent of the lot occupancy.

22 The other condition that we think is an
23 exceptional situation is that we have a second floor door
24 that leads from the bedroom onto the existing
25 platform/balcony.

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1 When we initially proposed renovating our
2 home, we proposed deleting that door, but we could not
3 because it is in a historic district and there was no
4 indication that that was, you know, bricked up or a window
5 before that.

6 So, we have a balcony that is both unuseable
7 because of its size and I think structurally unsound. If we
8 were to remove that entirely, we'd be stuck with an orphan
9 door. So, we have to do something there.

10 Additionally, I think we've found that having
11 access to the staircase leading to that second floor door has
12 caused some security concerns, for whatever reason, because
13 that staircase looks the way it looks and because that is a
14 second floor door, we have people checking to see if that
15 door is unlocked and can gain access to the house.

16 If you're sleeping back there and at 4:00 a.m.
17 somebody starts giggling a door that is directly next to you
18 bed, it's quite unnerving. So, as we've sought for options
19 to replace that balcony, we did not want to continue to have
20 access from the first floor.

21 The larger balcony, I think, is also necessary
22 to make that balcony space usable. Really, the balcony
23 that's there right now is little more than a platform.

24 If we were to shrink that balcony, for
25 example, to not expand the square footage, it, one, wouldn't

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1 be usable; and two, it would also restrict the size of the
2 deck underneath it because those supports would then be moved
3 in significantly and not conform with the overall structure
4 that we're trying to achieve.

5 So, I think that because the strict
6 application of the zoning regulations would present a
7 practical difficulty to attaining that usable deck, deleting
8 the access to the second floor, that does present a practical
9 difficulty to us building a structure that allows for the
10 security of our home and also enjoyment of our limited
11 outdoor space on our small lot.

12 And, finally, the third test is that there's
13 no substantial deterrent to the public good nor substantial
14 impairment to the intent or purpose of the zoning plan.

15 We think that this project serves the public
16 good. The property is located in the Shaw Historic District.
17 Over the past seven or eight years of working on this house,
18 we've had multiple discussions with the HPO staff. They
19 actually are the ones that brought to our attention that it
20 might be a good idea to do something with the stairs on the
21 side of your home.

22 And, we, of course, agreed. It's not -- they
23 are not exactly aesthetically pleasing. Stairs, and
24 certainly, they are not stairs that were original to the
25 structure. It's made out of, you know, stock wood and sort

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1 of stapled together.

2 So, we think that the new deck will be more
3 aesthetically pleasing for the neighborhood. It's modeled
4 after a historic deck that is located at I think it's 10th
5 and O Street that we used as a model for the design of the
6 historic deck.

7 We have received unanimous support from all
8 the neighbors we have spoken with. We presented to ANC, both
9 the zoning subcommittee and the full ANC. In both meetings,
10 we received full support.

11 We also receive positive comments from the
12 public in that meeting.

13 We presented to the Central Shaw Neighborhood
14 Association. They also unanimously supported the project.

15 And, I think we had at least one other
16 neighbor that weighed in in support of the project.

17 And, our immediate neighbor who was -- who
18 owns the home that our lot was subdivided with, he is also
19 in support of the project. And, I think would probably
20 appreciate not having that rickety staircase staring at his
21 house.

22 So, and we think the addition of 17 square
23 feet to this property, particularly given the existing
24 structure and the smaller lot and the existing lot occupancy,
25 that that does not significantly impair the intent of the

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1 zoning laws and that this is a relatively small additional
2 square footage and additional occupancy to request in order
3 to just achieve some structurally practical balcony.

4 CHAIRPERSON HILL: Okay, thanks, Mr. McNitt.

5 Does the Board have any questions for the
6 applicant?

7 (NO RESPONSE)

8 CHAIRPERSON HILL: Okay.

9 I'm going to turn to the Office of Planning.

10 MS. MYERS: Hello, for the record, Crystal
11 Myers for the Office of Planning.

12 The Office of Planning is recommending
13 approval of this case and it stands on the record of the
14 staff report.

15 CHAIRPERSON HILL: Okay.

16 I have a question. In terms of the, and I
17 don't know where or how this might implement to anything, I
18 guess you can just kind of help me. DDOT had mentioned that
19 their concerns about the deck with public space. I mean, the
20 Board -- a suggestion was that the Board may prefer to have
21 the applicant correct in the record the design, I guess.

22 But, now that the design has been approved by
23 DDOT in terms of public space, does the Office of Planning
24 have any thoughts or are you just going to tell me that
25 you're not DDOT?

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1 MS. MYERS: We're not DDOT. But, I will say
2 that the Office of Planning did look at this and also
3 understood that the case would or the site would be approved
4 for -- would be approved by the Public Space Committee.

5 So, our understanding is that they were okay.
6 But, obviously, it would make sense to follow up with DDOT
7 to get assurances.

8 CHAIRPERSON HILL: Okay.

9 Does the Board have any thoughts about the
10 issue with DDOT and Public Space?

11 MEMBER WHITE: I'd like to get something in
12 writing just to, for the record, that gives us some evidence
13 that the permit has been approved.

14 MR. MCNITT: I do have a printout with me,
15 though, it was printed out yesterday showing the tracking
16 number, the approved application dated --

17 CHAIRPERSON HILL: Okay, can you give us a
18 copy of that or maybe can you pass that up the Secretary and
19 he can make copies for us?

20 MR. MCNITT: Yes, yes.

21 CHAIRPERSON HILL: Mr. Moy right there.

22 (OFF MICROPHONE COMMENTS)

23 MR. MCNITT: And, my understanding, which I
24 think was borne out by the Public Space Permit was that it
25 does project one foot into public space. There is a matter

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1 of right that you can go five feet away from your home and
2 be approved for that. That appeared to play out in the
3 approval of the application.

4 There's been no changes whatsoever to the plan
5 between now and --

6 CHAIRPERSON HILL: Okay, okay.

7 MR. MCNITT: -- when we applied. So, I think
8 that it was a fairly straightforward case.

9 CHAIRPERSON HILL: Okay, okay.

10 MR. MCNITT: You know, we did pursue the
11 permit, we just haven't paid for it yet because --

12 CHAIRPERSON HILL: Okay.

13 MR. MCNITT: -- we didn't know if that permit
14 would still be valid by the time we completed this process.

15 CHAIRPERSON HILL: Okay.

16 Do you have any questions for the Office of
17 Planning?

18 MR. MCNITT: I do have a question, just a
19 personal inquiry. What is the smallest square footage that
20 has ever been sought for a zoning variance? And, am I in the
21 running?

22 CHAIRPERSON HILL: I'm going to guess no, but
23 you can go ahead and ask the Office of Planning.

24 MS. MYERS: I do not have that information
25 right at my fingertips. But, this might be one of the

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1 smaller ones.

2 CHAIRPERSON HILL: Okay.

3 MR. MCNITT: And then, my only other question
4 is how would the DDOT consideration impact the approval of
5 this application? I'm mainly looking at timing for --

6 CHAIRPERSON HILL: I think you're moving along
7 pretty well right now. So, let's just kind of like move
8 along.

9 MR. MCNITT: Sure.

10 CHAIRPERSON HILL: Okay.

11 So, Mr. Moy is making copies.

12 So, is there anyone here from the ANC wishing
13 to speak?

14 (NO RESPONSE)

15 CHAIRPERSON HILL: Is there anyone here who
16 wishes to speak in support of the application?

17 (NO RESPONSE)

18 CHAIRPERSON HILL: Is there anyone here
19 wishing to speak in opposition of the application?

20 (NO RESPONSE)

21 CHAIRPERSON HILL: Okay.

22 Does the Board have any further questions from
23 the applicant -- or for the applicant?

24 (NO RESPONSE)

25 CHAIRPERSON HILL: Well, since we're waiting

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1 for copies, right, Mr. Moy? I have a question.

2 MR. MCNITT: Yes, sir?

3 CHAIRPERSON HILL: So, how long have you lived
4 on that property?

5 MR. MCNITT: We -- I moved in on Halloween
6 2009.

7 CHAIRPERSON HILL: 2009? So, in general, just
8 what are your thoughts on outdoor drinking facilities?

9 MR. MCNITT: I am -- my bedroom looks directly
10 into --

11 CHAIRPERSON HILL: Outdoor drinking facility?

12 MR. MCNITT: -- an outdoor drinking facility.

13 CHAIRPERSON HILL: Yes.

14 MR. MCNITT: I also have a wine bar across the
15 street that has outdoor drinking and we are --

16 CHAIRPERSON HILL: So, what are your thoughts
17 there?

18 MR. MCNITT: I think that there are things to
19 consider around the density of people in those drinking
20 establishments and what density can cause in terms of noise.
21 And, I think, overall noise.

22 And, I think overall number of people in
23 drinking establishments can also create noise that really no
24 amount of sound engineering can mitigate.

25 CHAIRPERSON HILL: I see. Do you like outdoor

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1 drinking facilities?

2 MR. MCNITT: I love them. I have actually --
3 I was actually here, but the only other time in front of this
4 Board was testifying for an outdoor drinking facility --

5 CHAIRPERSON HILL: Okay.

6 MR. MCNITT: -- to try to have them approved
7 at a modest occupancy.

8 CHAIRPERSON HILL: Okay, very good. All
9 right, I was just curious because I know where you live, or
10 the area, I should say, where you live. So, okay.

11 MR. MCNITT: I would say that the drinking
12 establishment across the street from us, a wine bar that has
13 some outdoor seating, is a delightful establishment that has
14 only good benefits to the neighborhood.

15 CHAIRPERSON HILL: Okay, all right. Thank you
16 very much.

17 MEMBER WHITE: But, this is going to be an
18 outdoor drinking facility.

19 MR. MCNITT: On occasion, but it will be low
20 density and low occupancy.

21 CHAIRPERSON HILL: All right, very good.

22 MEMBER MILLER: I had one question.

23 CHAIRPERSON HILL: Sure.

24 MEMBER MILLER: I have one question.

25 CHAIRPERSON HILL: Sure.

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1 MEMBER MILLER: While we're waiting.

2 CHAIRPERSON HILL: Sure.

3 MEMBER MILLER: So, you said somebody refers
4 to your house as the Green Monster you said?

5 MR. MCNITT: That is the neighborhood nickname
6 for it.

7 MEMBER MILLER: Characterization?

8 MR. MCNITT: Yes.

9 MEMBER MILLER: And, I would agree with you
10 that's it's not a monster.

11 MR. MCNITT: It is not a monster.

12 MEMBER MILLER: Yes.

13 CHAIRPERSON HILL: Very good.

14 Mr. Moy, I don't know if we can kill anymore
15 time here.

16 MR. MOY: It's going to come out momentarily,
17 but I would like to add one minor note, Mr. Chair.

18 CHAIRPERSON HILL: Sure, please.

19 MR. MOY: On the applicant's presentation,
20 three of the images -- three of the four images are in the
21 record, but one of the images is not, which is the one in the
22 upper right hand corner.

23 CHAIRPERSON HILL: Okay.

24 MR. MOY: And, their proposed deck and
25 balcony, so --

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1 CHAIRPERSON HILL: Okay.

2 MR. MOY: -- typically, you know, we like to
3 have --

4 CHAIRPERSON HILL: Sure.

5 MR. MOY: -- copies of everything that's
6 presented to the Board --

7 CHAIRPERSON HILL: Sure.

8 MR. MOY: -- in the case file.

9 CHAIRPERSON HILL: Sure.

10 Mr. McNitt, could you -- would you be able to
11 provide that to the record?

12 MR. MCNITT: Yes.

13 CHAIRPERSON HILL: Okay, all right. I'll just
14 --

15 MR. MCNITT: I can upload that.

16 CHAIRPERSON HILL: Please do so.

17 Is that good, Mr. Moy? Okay.

18 VICE CHAIRPERSON HART: It's funny, I was
19 actually going to remark that you were changing from the big
20 Green Monster to now a different color because the -- it
21 looks like the plans are to have it to be -- you may not like
22 that moniker, I don't know, or have gotten used to it.

23 MR. MCNITT: I would say the neighborhood is
24 split on the issue whether they want us to keep it green or
25 whether they desperately want us to paint it another color.

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1 Ultimately, I think that the green color is
2 not historic in nature. It was done maybe three years before
3 we moved in. Possibly the only new improvement to the home
4 at the time. But, it's not long for this world.

5 CHAIRPERSON HILL: Oh, so you are painting it?
6 That's what the --

7 MR. MCNITT: That's the -- that is the timing
8 issue that we're running into is that we're running out of
9 the painting season. And, because we're in a historic
10 district, the deck is required to be built with wood. So,
11 we're interested in --

12 CHAIRPERSON HILL: I see.

13 MR. MCNITT: -- having it constructed and
14 painted in -- before we run out of those months. And, we've
15 had a very good contractor that's willing to stay with us and
16 they're ready to go.

17 CHAIRPERSON HILL: All right.

18 Well, Mr. McNitt, if you had brought copies of
19 -- enough copies for us, we wouldn't be waiting for this
20 timing issue right now. But, you know, we're going to just
21 take a ten minute break while I wait for copies.

22 MR. MCNITT: Thank you very much, I appreciate
23 it.

24 (Whereupon, the above-entitled matter went off
25 the record at 11:23 a.m. and resumed at 11:31 a.m.)

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1 CHAIRPERSON HILL: Okay, let's get back to
2 order, please.

3 Yes, oh, sorry.

4 I've had a chance to look at this paperwork
5 from DDOT concerning the public space, does the Board have
6 any questions about it?

7 (NO RESPONSE)

8 CHAIRPERSON HILL: Okay, okay.

9 So, I don't have any questions about it.
10 Thank you for providing that, Mr. McNitt. And, I guess,
11 also, if you could submit that into the record.

12 MR. MCNITT: I will.

13 CHAIRPERSON HILL: Okay.

14 Let's see, so, I did -- did I do -- yes, I did
15 ANC, I did support, I did opposition.

16 Does the Board have anything else for the
17 applicant?

18 (NO RESPONSE)

19 CHAIRPERSON HILL: Okay.

20 All right, I'm going to close the hearing.

21 Do you have anything else you'd like to add?

22 MR. MCNITT: No, thank you. I appreciated the
23 break.

24 CHAIRPERSON HILL: Okay, okay, all right.

25 So, I don't have any further questions for the

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1 applicant. I'm going to go ahead and close the hearing.

2 Is the Board ready to deliberate?

3 (NO AUDIBLE RESPONSE)

4 CHAIRPERSON HILL: Okay, I can go ahead and
5 start.

6 I think that I'm comfortable with the granting
7 the relief after hearing the presentation and reviewing the
8 record.

9 Also, that the support of ANC 6D. I know that
10 the Chair, Mr. Padro, actually is very active in that ANC or
11 it's a very active ANC and so they went ahead and were in
12 approval of this.

13 So, I won't have any issues with approving
14 this application.

15 Does the Board have any thoughts before I make
16 a motion?

17 MEMBER WHITE: NO, I would just concur with
18 your statements. I'm satisfied that he's met the criteria,
19 the variance test, standard for area variance.

20 He's proved that it's an exceptional
21 situation. He's also provided information that it would not
22 be a substantial detriment to the public good, and nor would
23 it harm the zoning regulations.

24 And, I think the facts that he's shared with
25 us in the record support that.

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1 CHAIRPERSON HILL: Okay, great.

2 VICE CHAIRPERSON HART: Yes, and I would also
3 concur with my colleagues. I think that this is definitely
4 a case where I would be able to support, given the
5 information that you provided today as well as the record,
6 the information that's in the record and would support it.

7 CHAIRPERSON HILL: Mr. Miller, do you have any
8 comments?

9 MEMBER MILLER: I concur with my colleagues
10 comments, thank you.

11 CHAIRPERSON HILL: Okay, then, I will make a
12 motion to approve Application Number 19582 as read by the
13 Secretary and ask for a second.

14 VICE CHAIRPERSON HART: Second and would also
15 say that we are leaving the record open for the one image
16 that Mr. Moy stated about the -- what you're showing here on
17 the board in front of us.

18 CHAIRPERSON HILL: Yes, thank you for the
19 clarification.

20 MR. MCNITT: And, I've sent that to my
21 attorneys to include already and they've already responded
22 that they're uploading it.

23 CHAIRPERSON HILL: Okay, all right, great,
24 thank you.

25 Motion been made and seconded. All those in

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1 favor -- did you second it?

2 VICE CHAIRPERSON HART: Yes.

3 CHAIRPERSON HILL: Motion been made and
4 seconded, all those in favor, aye?

5 (CHORUS OF AYES)

6 CHAIRPERSON HILL: All those opposed?

7 (NO RESPONSE)

8 CHAIRPERSON HILL: The motion passes, Mr. Moy.

9 MR. MOY: The staff would record the vote as
10 4-0-1, this on the motion of Chairman Hill to approve the
11 application for the relief being requested. Seconded the
12 motion by Vice Chair Hart, also in support, Ms. White and Mr.
13 Robert Miller, we have a Board seat vacant. The motion
14 carries.

15 CHAIRPERSON HILL: Thank you. Summary Order,
16 Mr. Moy?

17 MR. MOY: Thank you, sir.

18 CHAIRPERSON HILL: Thank you.

19 Thank you.

20 MR. MCNITT: Thank you all for your
21 consideration, I appreciate it.

22 MR. MOY: The next application before the
23 Board is Application Number 19575 of Ruth Fisher, as amended.

24 The special exception under Subtitle E Section
25 5201.1(f) from the nonconforming structure requirements of

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1 Subtitle C Section 202.2 and pursuant to Subtitle X Chapter
2 10 for a variance from the number of stories requirement of
3 Subtitle E Section 303.1 which would construct a partial
4 rooftop addition to an existing flat RF-1 zone at premises
5 104 8th Street, Northeast, Square 896, Lot 34.

6 CHAIRPERSON HILL: All right, great, thank
7 you.

8 Could you please introduce yourselves from my
9 right to left?

10 MR. ARMSTRONG: I'm Charles Armstrong. I'm
11 the partner of the applicant and will be residing in the
12 dwelling after improvement.

13 MS. FISHER: My name's Ruth Fisher and I am
14 the applicant living at 104 8th Street, Northeast, Mr.
15 Chairman.

16 MS. FOWLER: Good morning, I'm Jennifer
17 Fowler. I'm the architect on the project.

18 CHAIRPERSON HILL: Okay. Were you all sworn
19 in this morning?

20 MR. ARMSTRONG: Yes.

21 CHAIRPERSON HILL: Okay, great.

22 So, Ms. Fowler, I guess you're going to
23 present to us?

24 MS. FOWLER: Yes.

25 CHAIRPERSON HILL: Okay. Ms. Fowler,

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1 normally, you come and everything's all nice and tidy and
2 there seems to be a little bit of concerns, obviously, from
3 the Office of Planning in terms of their report to us as well
4 as a little bit of mixed messages that I'm getting in terms
5 of like just kind of the ANC.

6 I mean, I suppose, depending upon what else
7 the Board would like to hear, I'd like to hear, you know,
8 about the project, what you're trying to accomplish, how
9 you're meeting the tests for us to grant the request.

10 And then, feel free to comment on anything
11 that's been brought up by the Office of Planning's report as
12 well as anything from the ANC.

13 Does the Board have anything else they'd like
14 to hear from the applicant during their presentation?

15 MEMBER WHITE: Well, this is the one where
16 there was some controversy or discrepancy between whether or
17 not it's going to be three floors or four floors. So, I'd
18 like to get some clarification on --

19 MS. FOWLER: Okay.

20 MEMBER WHITE: -- how many floors we're
21 actually talking about from the rear.

22 MS. FOWLER: Okay.

23 CHAIRPERSON HILL: Okay.

24 So, Ms. Fowler, you can go ahead and start
25 whenever you'd like. I'm going to put 15 minutes down for

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1 you just so I know where we are. But, begin whenever you
2 like.

3 MS. FOWLER: Okay, thank you.

4 Okay, so this is a variance request for adding
5 a rooftop addition to an existing rear dwelling.

6 Currently, it has -- it's a, I would say, a
7 two-story plus a basement. And, the distinction is that it's
8 not a cellar, it is a basement because the ceiling of the
9 lower level is more than four feet above the ground. We have
10 six feet to the ceiling of the lower level.

11 Because of this, it counts as a story, so I
12 guess it is confusing whether it's called a four-story
13 building or if it's a three-story. I'm calling it a three-
14 story plus a basement. But, a basement does count as a story
15 in zoning regulations. So, that's where that's coming from.

16 The existing house is nonconforming for lot
17 occupancy. It's at 68.2 percent currently with the house and
18 the rear deck. Again, that's two stories with a basement,
19 the height of the ceiling is about four feet above ground,
20 the first -- the front grade.

21 The overall height in this proposal is now at
22 35 feet. We originally filed the plans asking for relief for
23 additional height with 36 feet, two inches. But, based on
24 feedback from the ANC, we did reduce the height so we were
25 within the matter of right height in this zone. So, really,

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1 just whittling it down to the number of stories issues.

2 The proposed rooftop addition will not extend
3 past the rear wall of the existing house. The front wall of
4 the addition's been set back from the front facade by 13
5 feet, 8 inches.

6 Because of the set back and the height of the
7 prepared wall is not visible from the street, and I believe
8 with the dropped height, we will not have any visibility from
9 the side street as well.

10 There's also a roof deck that we've proposed
11 at the front of the addition that is going to be recessed
12 into the attic space, so it will not be visible.

13 The additions proposed will have high quality
14 materials. We're looking at brick facade to match the
15 existing with glazing facing the front with painted wood
16 trim. Again, not visible.

17 We feel the addition will have very -- minimal
18 impact on the adjacent properties in terms of the light and
19 air. And, this is why we chose to go this route in terms --
20 instead of looking at a rear addition.

21 We did consider a rear addition, which would
22 have required a variance as well because of the tight lot and
23 decided to go for the variance for the number of stories.

24 The adjacent neighbors have submitted letters
25 of support. So, we have 102 8th Street, Northeast and 106

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1 8th Street as well as 107 and 16 Street, Northeast.

2 And, the ANC did vote to support the project
3 unanimately in their full meeting.

4 Originally, the committee did not support it,
5 but the full ANC decided to support the project.

6 The house was originally built as a two-family
7 flat. There are four houses that are identical. They all
8 have front entrances that are raised higher than some of the
9 adjacent houses -- the other two houses in the area, but they
10 are all set up with basement rental units and the front
11 entrance being on the second level. And, it's at six feet,
12 nine above the grade.

13 The front yards are all level with the
14 sidewalk in this particular part of the neighborhood in this
15 block. But, if you look at the height of the building with
16 the addition relative to other houses in the neighborhood
17 that do have raised front yards, it is within the same height
18 range as a lot of those buildings.

19 So, really, the issue here is that the yard is
20 not raised, it's at -- right at the sidewalk level.

21 Then, again, we're staying within the 35-foot
22 which will involve kind of lowering the ceiling height on the
23 second floor.

24 So, we looked at other alternatives. We --
25 working with the neighbors, the third floor addition was the

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1 more appropriate solution, the least impactful solution
2 rather than extending towards the rear. And, it also
3 accommodates the program needs of the homeowner.

4 Thank you.

5 CHAIRPERSON HILL: Okay.

6 Does the Board have any questions for the
7 architect?

8 VICE CHAIRPERSON HART: Yes, Mr. Chairman.

9 Ms. Fowler, can you describe exactly what the
10 practical difficulty is? I'm just -- I'm missing that part
11 of it. And, I know that you just presented, I just -- maybe
12 I just missed it, so if you could, let me know that.

13 MS. FOWLER: I think, well, part of it is that
14 the house being set up as a two-unit, there's no internal
15 stair connection. So, essentially, the living space is for
16 the main unit or on the second floor and the upper floor.

17 And, the height of the ceiling of the basement
18 being high relative to the sidewalk. The fact that the yard
19 is not raised counts against us in that that triggers the
20 fourth floor requirement. However, we are within the 35 feet
21 allowed by matter of right.

22 So, it's really, in our minds, kind of a
23 technicality that we're triggering this additional floor when
24 our overall height is within the allowed.

25 VICE CHAIRPERSON HART: And, are you saying

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1 that the next door neighbors actually have elevated -- are
2 you saying that they -- that the floor on the next door
3 neighbors actually -- not the floor, the ground of the next
4 door neighbors is higher than this?

5 MS. FOWLER: No, the four houses that were
6 built at the same time all have yards at the sidewalk level
7 and they all have front entrances that are six feet, nine
8 inches above the yard, the grade.

9 VICE CHAIRPERSON HART: Okay, so that's the
10 part that --

11 MS. FOWLER: Okay.

12 VICE CHAIRPERSON HART: -- I'm trying to get.
13 It's -- all of these units have the same issue?

14 MS. FOWLER: Correct.

15 VICE CHAIRPERSON HART: And so, I'm trying to
16 get the exceptional situation that's here as opposed to some
17 other place. And, this has to, to me, you have to kind of
18 get to that point. And, I just haven't gotten there yet and
19 I'm trying to understand that aspect of it.

20 So, as you know, the variance test is fairly
21 -- it's a fairly high bar which, you know, means that it's --
22 you have to get to a, oh, like, I can kind of see why this
23 one, we should be granting this and, you know, this is -- the
24 lot is, you know, trapezoidal and so it causes some issue.
25 There's some strange topography that's here that's not on

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1 other sites. And, that's the part that I'm trying to grapple
2 with.

3 MS. FOWLER: Okay, I understand. I don't
4 think I have anything else to add that would add to that.

5 CHAIRPERSON HILL: Okay.

6 Does -- so, you've been here a little bit for
7 the day, so you know that I turn to the Office of Planning
8 in a minute and hear from them. And, you have probably at
9 least the architect has told you a little bit about it, the
10 report, or at least their report.

11 Before I do that, would you guys like to
12 provide some testimony since you came down here?

13 MS. FISHER: Thanks for the opportunity to
14 speak.

15 So, Charlie and I have been residents of The
16 Hill for almost 30 years and we love the neighborhood. We
17 would really like to be able to stay in our neighborhood and
18 move into a place that accommodates us as a family in the
19 most respectful way that we can for both the character of our
20 neighborhood and to our neighbors.

21 And, would also give us the space to -- I work
22 from home a lot, so accommodating both the family and a work
23 style and keep the rental unit intact.

24 So, thank you.

25 MR. ARMSTRONG: I concur with Ruth's comments

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1 and don't have anything to add to that except that the whole
2 idea of the project is to try and permit us to make the
3 living space as usable as we can within the context of
4 Capitol Hill as we know and like it and to preserve the
5 rental space so that we can continue that as a more housing
6 on Capitol Hill and whatnot.

7 CHAIRPERSON HILL: Okay, great, thank you.

8 Yes, okay, so I'm going to go ahead and turn
9 to the Office of Planning.

10 MR. MORDIN: Good morning, for the record, I'm
11 Stephen Mordin and the Office of Planning does not recommend
12 approval of this application and that it finds that it does
13 not meet the test for a variance.

14 For a variance, you must document that somehow
15 this property has an exceptional situation that results in
16 a practical difficulty.

17 And, from what we've heard today, and from
18 what we've seen included in the application, this property
19 is similar or almost identical to the ones around it. And,
20 the test is to look at what the properties around it and see
21 what is different about this that results in a practical
22 difficulty.

23 And, in this case, the Office of Planning is
24 unable to find anything that is different about this property
25 that would cause it to be unique.

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1 So, because it doesn't meet the test, the
2 Office of Planning recommends denial of the application.

3 Thank you.

4 CHAIRPERSON HILL: Does the Board have any
5 questions for the Office of Planning?

6 (NO RESPONSE)

7 CHAIRPERSON HILL: Okay, I got a question.
8 So, there's been a lot of discussion over while I've been on
9 the Board, at least as far as like cellars versus basements
10 and how, you know, that always kind of comes into play.

11 And, as I recall, there was a -- it's four
12 feet above finished grade was then going to be a basement,
13 and under four feet, was a cellar, is that correct?

14 MR. MORDIN: That is correct.

15 CHAIRPERSON HILL: Okay. So, and this is
16 where I, just again, am trying to understanding and getting
17 a little confused, if there were a burn or a knoll there in
18 front of the window, how does that work again in terms of
19 whether that would be considered a cellar or a basement?

20 MR. MORDIN: In front of the property, if the
21 --

22 CHAIRPERSON HILL: Yes.

23 MR. MORDIN: -- property were set up?

24 CHAIRPERSON HILL: Yes. No, not set up, and
25 maybe I'm -- if there was like land in front of the -- land

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1 in front of that cellar, in front of the basement window,
2 would that then make it a cellar?

3 MR. MORDIN: It would be below -- if it's less
4 than four feet out of the ground at the front of the
5 property, then it's a cellar and does not count as a floor.
6 If it's more than four feet out of the ground, then it
7 becomes a basement and a basement counts as a floor.

8 CHAIRPERSON HILL: So, they have added -- if
9 they add a bunch of dirt in front of the window there, it
10 wouldn't necessarily make it a cellar?

11 MR. MORDIN: Well, also with the definition is
12 written, you know, the natural grade. So, they would --

13 CHAIRPERSON HILL: No, this is -- I mean, this
14 has come up before, that's why. And, there's been appeals
15 about it and all these things. That's why I always get a
16 little confused. But, I do understand now as you've just
17 said, the natural grade.

18 MR. MORDIN: Right. We have a natural grade,
19 but there has been construction there in the past when they
20 built the houses, but it's supposed to be from the natural
21 grade.

22 So, they're not supposed to be able to moving
23 the grade around to either add or remove a floor.

24 CHAIRPERSON HILL: Right, sure. Okay.

25 All right, right, so the height's not an

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1 issue, it's the four floors.

2 MR. MORDIN: Correct, the application conforms
3 with the maximum height of 35 feet.

4 CHAIRPERSON HILL: Okay.

5 Does the Board, again, have any questions for
6 the Office of Planning?

7 (NO RESPONSE)

8 CHAIRPERSON HILL: Does the applicant have any
9 questions for the Office of Planning?

10 MS. FOWLER: So, would they have been able to
11 like, you're saying, they can't go in and get a permit for
12 a retaining wall and build up the yard and then go in and do
13 an addition later? I mean, I don't think that was an option
14 here because of historic constraints, but is that something
15 that developers do or other people do?

16 MR. MORDIN: No, you're not supposed to be
17 able to do that.

18 MS. FOWLER: Okay.

19 MR. MORDIN: And also, I think -- well, I
20 don't recall, if this property goes all the way to the front
21 property line also, it's public space.

22 MS. FOWLER: It's public space, correct.

23 MR. MORDIN: So --

24 MS. FOWLER: Yes.

25 MR. ARMSTRONG: Actually, I have a question.

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1 You say that the fact that the -- this particular
2 characteristic is shared by other houses on the street, the
3 adjacent houses on the street. Is -- can you explain why
4 that means that there would not be something sort of
5 exceptional or unusual about all four of those lots as
6 opposed to just why we need it to be established just for
7 this one particular lot and wouldn't be applicable to all
8 four of the lots?

9 MR. MORDIN: Well, as the Office of Planning
10 has been directed by OAG, the Office of the Attorney General,
11 when we look at what's unique about a specific property, we
12 look at the properties around it.

13 So, we don't look at a group of properties or
14 a whole street or a block, we look at the one specific
15 property that is the subject of the application and we look
16 at what's around that specific property.

17 MR. ARMSTRONG: I see. So, it couldn't -- it
18 wouldn't -- it couldn't be in this circumstance that each
19 four of them have an exceptional circumstance? They just all
20 happen to share the same exceptional circumstance?

21 MR. MORDIN: That is correct.

22 MR. ARMSTRONG: I shouldn't have asked that
23 question.

24 CHAIRPERSON HILL: No, that's all right. I
25 didn't mean to put Mr. Mordin on the spot also. I was like,

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1 so if you dug a hole and then filled it with dirt --

2 So, but, okay. So, do you have any further
3 questions for the Office of Planning?

4 MS. FOWLER: I guess the other question would
5 be whether there -- you have -- we're -- sympathetic at all
6 to the fact that it was -- that we are within the 35 feet?
7 And then, it's really more of a technicality that this is a
8 separate floor? Or, is it -- does that not come into play
9 at all here?

10 MR. MORDIN: Well, the two separate
11 regulations that just you need to comply with. One is the
12 number of floors; two is the number of feet. You are in
13 compliance with the number of feet, but you still need a
14 variance for the number of floors. And, that still must be
15 justified through the three part test for a variance.

16 CHAIRPERSON HILL: Sure, Ms. White?

17 MEMBER WHITE: My question is, I mean,
18 obviously, Office of Planning's position is that the variance
19 standard hasn't been met in this particular case.

20 So, my question is whether or not there are
21 some alternative solutions that you considered presenting to
22 the Office of Planning that would work for you? Just a
23 thought.

24 MS. FOWLER: Yes, we did -- we considered
25 doing a rear addition. The issue is to go to 70 percent,

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1 it's only a six-foot addition more or less, which doesn't
2 allow us to really add another bedroom which is one of the
3 needs.

4 So, really, to get the rear addition that
5 would have solved the problem for them would have required
6 a variance for the -- for being over 70 percent.

7 So, we kind of -- we were kind of locked in
8 with mostly variance solutions which is why we opted for the
9 least impactful proposal that we moved forward with, knowing
10 it was a difficult process.

11 MEMBER WHITE: Sorry.

12 CHAIRPERSON HILL: No, that's great.

13 Mr. Armstrong, you were starting to say
14 something?

15 MR. ARMSTRONG: No, I have nothing further to
16 add.

17 CHAIRPERSON HILL: Okay.

18 Yes, I guess, you know, Ms. Fowler, and I'm
19 kind of at a loss exactly. I don't know what could possibly
20 be more helpful for you and your client here, whether more
21 time with the Office of Planning would necessarily do
22 anything or not.

23 I mean, you're all, you know, even though my
24 question to the Office of Planning has been clarified and
25 also provided by further clarification by my colleague, which

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1 is your property line goes all the way up to the public
2 space.

3 And so, you know, that is the finished grade.
4 And, that's not going to change. I don't necessarily see
5 what further -- I'm trying to see if there's anything that,
6 you know, you -- often times when we get in this situation,
7 we see whether or not the applicant would like to work with
8 the Office of Planning to see if there are any further
9 possibilities in terms of design.

10 I mean, the variance standard is a high bar
11 for us to pass and there's, you know, the three-part test and
12 it's very clear as to whether it's one way or -- I shouldn't
13 say it's very clear, often times it is.

14 And so, I don't know if you or your applicant
15 wanted to spend more time with the Office of Planning or you
16 just want to continue on with this hearing the way it's going
17 now.

18 MS. FOWLER: I think that that probably
19 wouldn't be productive. I mean, I'm not sure that there's
20 going to be much more that we can add to the record or, you
21 know, really do to influence Office of Planning that would
22 make it worthwhile pushing things back.

23 CHAIRPERSON HILL: Okay, okay. I'm just
24 trying to think as far as timing goes. Right, because now
25 I'm just asking in general about things.

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1 Like, for the OAG, I always forget like if an
2 application is denied, you can't come back again before us
3 for a year with the same application, correct?

4 MR. COHEN: They could submit the same
5 application, but it would have to be after a year.

6 CHAIRPERSON HILL: After a year?

7 MR. COHEN: Yes.

8 CHAIRPERSON HILL: Right, you can come back
9 after a year if you're denied for the same application.

10 MS. FOWLER: But, for a rear addition or
11 something, they could, right? A separate -- a different
12 project?

13 CHAIRPERSON HILL: Right, a different project,
14 you could.

15 MS. FOWLER: Okay, okay.

16 CHAIRPERSON HILL: Correct?

17 MR. COHEN: Yes, that's correct.

18 CHAIRPERSON HILL: Okay. I'm just trying to
19 make sure I'm doing the best I can.

20 So, all right, okay with that then, is there
21 anybody here from the ANC?

22 (NO RESPONSE)

23 CHAIRPERSON HILL: Is there anybody here
24 wishing to speak in support of the application?

25 MR. COHEN: Mr. Chair?

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1 CHAIRPERSON HILL: Yes? Sure, of course.

2 MR. COHEN: I'd just like to clarify that that
3 back and forth, so everyone's on the same page, under 604.13,
4 the one year time frame is the requirement, but the
5 application can't be based on the same facts.

6 So, presumably, if the applicant proceeds to
7 request relief that's a little bit different, it would
8 involve or it should involve different facts, different set
9 of facts.

10 CHAIRPERSON HILL: All right. So, the one
11 year thing doesn't come into play if they change the
12 application?

13 MR. COHEN: Correct.

14 CHAIRPERSON HILL: Okay.

15 MR. COHEN: And, it's based on a separate set
16 of facts.

17 CHAIRPERSON HILL: Okay.

18 MR. ARMSTRONG: Excuse me.

19 CHAIRPERSON HILL: Yes?

20 MR. ARMSTRONG: Mr. Chair?

21 CHAIRPERSON HILL: Sure.

22 MR. ARMSTRONG: Could you clarify what you
23 mean be a separate statement -- by a separate set of facts?

24 CHAIRPERSON HILL: Separate set of facts?

25 MR. ARMSTRONG: I'm not sure if I understand

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1 that.

2 MR. COHEN: I'm just reading the rule as it's
3 written. I'm sorry --

4 CHAIRPERSON HILL: That's okay, separate set
5 of facts would be if you came back with a rear addition, it
6 would be different than the current application. And, I'm --
7 maybe I should have just stayed quiet, but I'm just trying
8 to make sure I understand that that would not count for the
9 one year, now I'm looking at the Office of Planning, that
10 would not count for the one year.

11 You could come back with another application
12 for a rear addition and it wouldn't harm the applicant that
13 this application was denied because it would be a different
14 set of facts.

15 MR. COHEN: That would be the determined at
16 the time that the applicant applies. I don't think it's --
17 we can determine that right now. It would depend on what's
18 in the application when it's submitted.

19 VICE CHAIRPERSON HART: Mr. Chairman, I think
20 what you --

21 CHAIRPERSON HILL: Wait, wait, wait, wait.

22 VICE CHAIRPERSON HART: I think that what you
23 should be doing is actually having a conversation with the
24 Office of Planning and DCRA, I guess, in the future to kind
25 of understand what that is.

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1 I don't want to give you any advice right now
2 because I think that it's -- it would be, you know, I don't
3 think it would be that helpful for you. I think that it may
4 be helpful for you to understand and to look at the specifics
5 -- the specificity of what it is that you'd be proposing if
6 we do not approve this now.

7 But, what you'd be proposing in the future and
8 understand what those facts are and understand what the --
9 what you've brought forward and then make a determination
10 once you see, you know, you're able to see all of that.

11 I think it would just be a disservice to you
12 to kind of speculate what that might be because there could
13 be a lot of different things that are involved.

14 CHAIRPERSON HILL: I understand.

15 VICE CHAIRPERSON HART: So, I wouldn't want to
16 give you that, you know, impression that, oh well, it's fine
17 now that you're doing this. And, it may not be fine.

18 CHAIRPERSON HILL: No, no, no.

19 VICE CHAIRPERSON HART: You should just check
20 it out.

21 CHAIRPERSON HILL: Thank you.

22 MEMBER WHITE: Well, what about the issue of
23 just going back and potentially modifying the existing
24 application or is that -- so that you don't run into the one
25 year restriction? But, I don't know if that's going to be

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1 helpful for them. I'm just thinking hypothetically, if
2 they're really --

3 MEMBER MILLER: I was thinking the same thing,
4 Mr. Chairman, that given where we are in this case, it would
5 be -- it probably would be useful for the applicant to meet
6 with the Office of Planning and see if they -- if a modified
7 application to do a rear addition wouldn't -- would they be
8 able to meet the variance criteria any better than this one
9 has or has not.

10 And so, that's, I think, rather -- unless the
11 applicant wants a denial today or not an approval today, I
12 would suggest that they work with the Office of Planning and
13 see if there's a way they can accommodate this addition, the
14 space, which I'm sympathetic to, but I don't think the
15 variance -- I don't want to get too much into deliberations,
16 but we've kind of gotten there -- that they see if a modified
17 application would pass muster with the Office of Planning,
18 because I think that's an important great weight that we have
19 to be given there. And so, that's my own advice.

20 CHAIRPERSON HILL: Okay.

21 I'm not sure whether any of this, in the end,
22 was beneficial to the applicant. I will again ask the
23 applicant, do you want to talk with the Office of Planning
24 or -- and postpone the hearing or would you like us to
25 proceed now?

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1 MR. ARMSTRONG: We'll proceed.

2 CHAIRPERSON HILL: Okay.

3 MR. ARMSTRONG: We'd ask you to proceed.

4 CHAIRPERSON HILL: Okay, great, thank you.

5 So, all right, so I did ANC in support of the
6 application, and did not -- and opposition of the
7 application.

8 Does the applicant have anything else they'd
9 like to add?

10 MS. FOWLER: No, thank you.

11 CHAIRPERSON HILL: Okay, all right.

12 Then, is the Board -- I'm going to close the
13 hearing. Is the Board ready to deliberate?

14 (NO AUDIBLE RESPONSE)

15 CHAIRPERSON HILL: Okay, I think we basically
16 have started to deliberate, sorry, not deliberate. But, I
17 think that it is, while I am sympathetic to the applicant,
18 and I don't think of it as a technicality, I think of it as
19 being what the regulations state and that bottom level does
20 count as a basement, and therefore, a story. And so,
21 therefore, it's a four-story building, even though they meet
22 the 35-foot requirement, which I'm glad they were able to do
23 that as well and work with the ANC. I wouldn't be able to
24 be in support of this application and would agree with the
25 Office of Planning's analysis that it does not meet the

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1 variance test.

2 Does the Board have anything else they'd like
3 to add?

4 MEMBER WHITE: No, I concur with your
5 assessment.

6 CHAIRPERSON HILL: Okay.

7 Then, I will go ahead and make motion to deny
8 Application 19575 as read by the Secretary and ask for a
9 second.

10 MEMBER WHITE: Second.

11 CHAIRPERSON HILL: The motion has been made
12 and seconded. All those in favor?

13 (CHORUS OF AYES)

14 CHAIRPERSON HILL: All those opposed?

15 (NO RESPONSE)

16 CHAIRPERSON HILL: The motion passes, Mr. Moy.

17 MR. MOY: The staff would record the vote as
18 4-0-1. This is on the motion of Chairman Hill to deny the
19 application for the relief being requested. Seconding the
20 motion, Ms. White. Also in support of the motion, Vice Chair
21 Hart and Mr. Robert Miller. We have a Board seat vacant.

22 CHAIRPERSON HILL: Thank you, summary order?

23 MR. MOY: This will be a full order now.

24 CHAIRPERSON HILL: Full order, thank you.

25 All right, thank y'all, good luck.

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1 Mr. Moy, do we have anything else?

2 MR. MOY: No, that completes your hearing for
3 today.

4 CHAIRPERSON HILL: Okay, right at 12:00.

5 We stand adjourned.

6 (Whereupon, the above-entitled matter went off
7 the record at 12:04 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: DC BZA

Date: 10-04-17

Place: Washington, DC

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