

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY, NOVEMBER 1, 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 9:30 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

FREDERICK L. HILL, Chair
CARLTON HART, Vice Chair
LESYLLEÉ M. WHITE, Board Member

ZONING COMMISSION MEMBERS PRESENT:

PETER MAY, Commissioner (NPS)

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

MARY NAGELHOUT, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEVE COCHRAN
STEPHEN MORDFIN
CRYSTAL MYERS

The transcript constitutes the minutes from the Public Hearing held on November 1, 2017.

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Road, LLC 7

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and Peng Wu 75

Adjourn 228

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

10:06 a.m.

1
2
3 CHAIRPERSON HILL: All right, good morning,
4 everyone. We're actually going to now start the hearing
5 session. Please come to order. We're located in the Jerrily
6 R. Kress Memorial Hearing Room at 441 Fourth Street, NW.
7 This is the November 1 public hearing of the Board of Zoning
8 Adjustment, District of Columbia.

9 My name is Fred Hill, Chairperson. Joining me is
10 Lesyllee White, Board member. Representing the Commission,
11 Zoning Commission, is Peter May, and then also Carlton Hart,
12 Vice Chair.

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

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

24 All persons planning to testify either in favor
25 or in opposition must have raised their hand and been sworn

1 in by the Secretary. Also, each witness must fill out two
2 witness cards. These cards are located on the table near the
3 door and on the witness table. Upon coming forward to meet
4 with the Board, please give both cards to the reporter
5 sitting at the table to my right.

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

12 The order of procedures for special exceptions
13 variances and appeals are also listed on the material as you
14 walk into the room here. The record shall be closed at the
15 conclusion of each case, except for materials specifically
16 requested by the Board. The Board and the staff will specify
17 at the end of the hearing exactly what is expected and the
18 date when the persons must submit the evidence to the Office
19 of Zoning.

20 After the record is closed, no other information
21 shall be accepted by the Board. The District of Columbia
22 Administrative Procedures Act requires that the public
23 hearing on each case be held in the open before the public,
24 pursuant to Section 405(b) and 406 of that act.

25 The Board may, consistent with its rules or

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

8 The decision of the Board in cases must be based
9 exclusively on the public record to avoid any appearance to
10 the contrary. The Board requests that persons present not
11 engage the members of the Board in conversation. Please turn
12 off beepers and cellphones at this time so as not to disrupt
13 the proceedings.

14 Preliminary matters are those which relate to
15 whether a case will or should be heard today, such as
16 requests for postponement, continuance, or withdrawal, or
17 whether proper and adequate notice of the hearing has been
18 given. If you're not prepared to go forward with a case
19 today or if you believe that the Board should not proceed,
20 now is the time to raise such a matter.

21 Mr. Secretary, do we have any preliminary matters?

22 MR. MOY: Good morning, Mr. Chairman. We do, but
23 on those cases, I would suggest that we address when I call
24 the case. Other than that, I'd like to make an announcement
25 for the record with regards to today's docket. And if you

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1 can bear with me, Mr. Chairman, we have two case applications
2 that have been withdrawn by the applicant. This is
3 Application No. 19536 of Brian and Carolyn Wise. The second
4 withdrawn case is 19492 of Henry Hunt.

5 There are four cases that have been rescheduled
6 to November 15, 2017. These cases are, is the Appeal No.
7 19573, Nefretiti Makenta. Application No. 19589 of Thad
8 Hunkins. Application No. 19605 of 1331 Taylor Street, LLC.
9 And Application No. 19606 of St. Alban's School. These four
10 cases rescheduled to November 15.

11 We also have four cases that have been rescheduled
12 to November 29, 2017. These are Application No. 19607 of
13 Great American Bistro, LLC. Application No. 19611 of 909
14 Webster Street Partners, LLC. Appeal No. 19613 of B Monroe
15 Ventures, LLC. And Application No. 19614 of B Monroe
16 Ventures, LLC.

17 Finally, there's one case that has been
18 rescheduled to December 13, 2017, and that is Application No.
19 19593 of Edward and Naomi Griffin. And that's it from the
20 staff, Mr. Chairman.

21 CHAIRPERSON HILL: All right, great, thank you,
22 Mr. Moy. If anyone's here wishing to testify, if you could
23 please stand and take the oath administered by the Secretary,
24 to my left.

25 (Whereupon, the witnesses were duly sworn in.)

1 CHAIRPERSON HILL: Okay. All right, well, that's
2 a lot of people. Would all those not testifying raise your
3 hand so I can see how many people are still in the room that
4 aren't testifying? Thank you for participating.

5 All right, so just to let everyone know, we are
6 going to follow the agenda that is in the door there as you
7 came in to your left. And with that, one second. All right,
8 with that, Mr. Moy, if you want to go ahead and call our
9 first case, thank you.

10 MR. MOY: Yes, thank you, Mr. Chairman. I believe
11 there was just a slight adjustment where you wanted to call
12 19603. Okay.

13 So if I have parties to the table to Application
14 No. 19603 of MDG 435 Park Road, LLC. Captioned and
15 advertised for special exception relief under Subtitle E,
16 Section 5203.3, from the rooftop architectural element
17 restriction, Subtitle E, Section 206.1. This would remove
18 an existing bay window, and it is in an existing one-family
19 dwelling RF-1 zone 435 Park Road, NW, Square 3036, Lot 17.

20 CHAIRPERSON HILL: Good morning, everyone. If you
21 could just please introduce yourselves from my right to left.

22 MR. SULLIVAN: Good morning, Mr. Chair and members
23 of the Board. My name is Marty Sullivan of the law firm of
24 Sullivan & Barros on behalf of the applicant.

25 MR. BROER-HELLERMAN: Good morning, my name is

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1 Django Broer-Hellerman. I work for Montage Development
2 Group.

3 MR. BROWN: Good morning, my name is Kevin Brown,
4 with Montage Development, the applicant.

5 MS. WILSON: Good morning, Alexandra Wilson from
6 Sullivan & Barros on behalf of the applicant.

7 CHAIRPERSON HILL: Okay, right, thank you. Mr.
8 Brown, you were here for a recent case, weren't you? It was
9 a different project. Okay, not on the same street. Okay.

10 Mr. Sullivan, I guess you're going to present to
11 us, is that correct?

12 MR. SULLIVAN: That's correct, to the extent the
13 Boards needs a full presentation.

14 CHAIRPERSON HILL: Sure.

15 MR. SULLIVAN: It's a fairly straightforward case.

16 CHAIRPERSON HILL: Sure. So we're going to have
17 a lot of time with you, Mr. Sullivan, today anyway it seems
18 like.

19 So, but nonetheless, if you wouldn't mind, I
20 guess, I don't know what other specifics the Board might like
21 to hear, but I would like to hear I guess a little bit about,
22 again, the project and the relief you're requesting and how
23 you're meeting the standard for us to grant that relief. And
24 I will put ten minutes on the clock just so I know where we
25 are, and you can begin whenever you like.

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1 MR. SULLIVAN: Thank you, Mr. Chairman, members
2 of the Board. The relief we're requesting is from Section
3 E, 206.1, the architectural element provision. It's special
4 exception relief. And what's taking place here is the house,
5 the subject house is currently on a corner, or it's visible
6 to the corner, and there's a bay window on the side of the
7 house facing the corner.

8 The applicant is proposing to construct a new
9 building on the corner lot, and the construction of that
10 building, of course, would be in front of the bay, so we're
11 required to get relief to remove that bay. It's actually
12 over that property line. Once the bay's removed, then that
13 lot will be a completely vacant lot and the new building will
14 be up.

15 So there's nothing actually on the front of the
16 building being impacted. It's just a bay on the side. And
17 it was a corner lot, it's no longer a corner lot, and it
18 won't be visible as a corner lot because there'll be a house
19 in front of it.

20 The alternative to this was to raze the existing
21 building altogether, in which case then no relief would be
22 needed. The applicant didn't want to do that and they wanted
23 to preserve the building, and the ANC appreciated that. And
24 that's why we got the unanimous support of the ANC, along
25 with the Office of Planning.

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1 Do you want to show some of the, this is the --
2 is that the front of the house or the side? That's the side
3 showing the bay. And so the standard of relief, of course,
4 is the light and air test, which obviously is not impacted
5 here. And then it's also in harmony with the general purpose
6 and intent of the zoning regulations.

7 If the Board has any specific questions. I mean,
8 there's not much really to testify about, it's pretty
9 straightforward. There's the bay and it's no longer going
10 to be there, and it'll be replaced with another house.

11 CHAIRPERSON HILL: Okay, does anyone have any
12 questions for the applicant? All right.

13 MEMBER WHITE: One question.

14 CHAIRPERSON HILL: Sure, of course.

15 MEMBER WHITE: Can you talk a little bit about
16 your interaction with the ANC. I see that they voted seven
17 zero to zero, but were there any concerns raised to the point
18 where you had to respond or make some modifications? Was
19 there any specific neighbor pushback on the project at all?
20 I'm just trying to get a sense of whether or not you had to
21 make any adjustments.

22 MR. BROWN: We met with the SMD, had a SMD meeting
23 that we attended. And we attended two ANC meetings. During
24 that process, they asked us to make some revisions to the
25 design of the new building that was going to be there. We

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1 added some brick along the east wall, we reduced some parapet
2 height. We added some slope at the entry, we switched to a
3 traditional windows.

4 It was like a back, it was a back and forth
5 process with the ANC. And we incorporated some accents to
6 the long facade, so we did work with them to come, you know,
7 to come up with something that they were happy with. So yes,
8 we did reach out, we canvassed some of the neighbors, we
9 talked to some of the neighbors.

10 The immediate neighbor's only concern was that
11 make sure what we did did not cause any damage to their
12 property. And that's basically it.

13 CHAIRPERSON HILL: Okay, great. I'm going to turn
14 to the Office of Planning.

15 MR. MORDFIN: Good morning, I'm Stephen Mordfin.
16 And the Office of Planning finds this application to be in
17 conformance with the criteria, and therefore supports the
18 application and recommends approval. Thank you.

19 CHAIRPERSON HILL: Okay, great, thank you. Does
20 anyone have any questions for the Office of Planning? Nay?
21 Does the applicant have any questions for the Office of
22 Planning?

23 MR. SULLIVAN: No, thank you.

24 CHAIRPERSON HILL: Okay. Is there anyone here
25 from the ANC wishing to speak? Is there anyone here wishing

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1 to speak in support of the application? Is there anyone here
2 wishing to speak in opposition to the application?

3 All right, with that, I'm going to go ahead and
4 turn back to you, Mr. Sullivan. Is there anything else you'd
5 like to add?

6 MR. SULLIVAN: No, thank you Mr. Chair.

7 CHAIRPERSON HILL: Okay. Is there anything the
8 Board would like to add? All right, then I'm going to go
9 ahead and close the hearing. Is the board ready to
10 deliberate? All right.

11 Again, I, after reviewing the record and in
12 particular the report from the Office of Planning and hearing
13 the testimony from the applicant, I don't have any concerns
14 as to how this is meeting the test for us to approve. Does
15 anyone have any other thoughts?

16 Okay, then I'll go ahead to make a motion to
17 approve Application No. 19603, as read by the Secretary, and
18 ask for a second.

19 VICE CHAIRPERSON HART: Second.

20 CHAIRPERSON HILL: Motion made and seconded. All
21 those in favor, aye.

22 (Chorus of ayes.)

23 CHAIRPERSON HILL: All those opposed.

24 The motion passes, Mr. Moy.

25 MR. MOY: The staff would record the vote as four

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1 to zero to one. This is on the motion of Chairman Hill to
2 approve the application for the relief requested. Second the
3 motion, Vice-Chair Hart, also in support. Mr. Peter May, Ms.
4 White, we have a Board seat vacant. The motion carries, sir.

5 CHAIRPERSON HILL: Thank you, Mr. Moy. Summary
6 order?

7 MR. MOY: Yes, sir.

8 CHAIRPERSON HILL: Thank you, sir. Mr. Brown,
9 where was the other project again?

10 (Off-microphone comment.)

11 CHAIRPERSON HILL: Okay, all right, thanks. Just
12 curious. Thank you.

13 MR. MOY: All right, Mr. Chairman, I'm sorry. I
14 lost my spot momentarily. So if we could have parties to
15 Application No. 19602 of Max Salas.

16 As captioned and advertised for variances from the
17 floor area, racial requirements of Subtitle F, Section 602.1
18 from the lot occupancy requirements, Subtitle F, Section
19 604.1 to construct a rear, three-story egress stair in an
20 existing one-family dwelling. RA-8 zone at premises 1610
21 Riggs Place, NW, Square 178, Lot 30.

22 Mr. Chairman, there is a party status request, as
23 well as a request to postpone and continue the, and
24 reschedule the hearing as preliminary matters.

25 CHAIRPERSON HILL: Okay, great. Thank you, Mr.

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1 Moy.

2 Okay, good morning, if you could please introduce
3 yourselves from my right to left.

4 MR. SULLIVAN: Good morning, Mr. Chairman, my name
5 is Marty Sullivan with the law firm of Sullivan & Barros, on
6 behalf of the applicant.

7 MR. SALAS: Good morning, Mr. Chairman, my name
8 is Max Salas, members of the Board, Max Salas, owner of 1610
9 Riggs Place, NW.

10 CHAIRPERSON HILL: Okay, great, thank you. So Mr.
11 Sullivan, I guess Mr. Salas has just hired you at the last
12 minute here more or less, I guess. And so you're asking for
13 a postponement, is that correct?

14 MR. SULLIVAN: That's correct, Mr. Chair. We were
15 retained last week, and the first thing I noticed that the
16 Office of Planning is mentioning that a code modification may
17 be needed for this, structurally. So we have a structural
18 issue to work out with DCRA.

19 And also, I'm not, after my review, I don't
20 believe that we're asking for the appropriate relief. So I
21 need to look at that issue too. So I would like the time to
22 settle and straighten the case out with DCRA before we waste
23 the Board's time hearing something that may not be
24 appropriate and we may need to come back for anyway.

25 Also, I'd like the time to reach out to the

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1 neighbor as well and to look at other alternatives.

2 CHAIRPERSON HILL: Okay. And how much time do you
3 think you need for that?

4 MR. SULLIVAN: I believe we requested December 13
5 or the nearest date after that. I wanted to leave enough
6 time to get a good answer from DCRA.

7 CHAIRPERSON HILL: Okay.

8 MR. SULLIVAN: And I'm hoping six weeks is enough.

9 CHAIRPERSON HILL: Okay, December 13. All right,
10 Mr. Moy, how does that look for us?

11 MR. MOY: It looks good for the Board. I mean,
12 the Board, this is a very competent board, so it fits within
13 the docket.

14 CHAIRPERSON HILL: Okay, thanks. Well, Mr.
15 Sullivan, I guess my question, and this also to Mr. Salas.
16 I mean, Mr. Salas now, this is technically your second
17 postponement for us, okay. And so you were going to be heard
18 on the 25th. You're back here now, you were going to be
19 heard today.

20 And so my question I suppose, really it's kind of
21 to Mr. Sullivan, you know, is that going to be enough time,
22 you think, or are you going to be back here on the 13th
23 asking for another postponement? Because it seems like
24 there's a lot of things going on, and I don't know whether
25 you're going to get, you know, back to the ANC.

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1 I mean I'm just, to be quite honest, and I'm even
2 letting your client know that there's a lot of things I think
3 perhaps that you weren't aware of when you started to go
4 through this process. And you're going to have to, you might
5 be changing this application in a variety of ways. And then
6 you're going to be going back to the ANC again.

7 This is now the beginning of November. I would
8 think that maybe January would probably be a better bet for
9 you guys. But if you want to, we can try to get you on the
10 13th. However, then you're really going to be in, let's see,
11 unlikely to get, you might not get a postponement from us
12 again and burning all of your cards at once.

13 MR. SULLIVAN: All right, thank you, Mr. Chair.
14 Yeah, the response times from DCRA on issues that I deal with
15 the are difficult to predict. So we're happy to go to
16 January.

17 CHAIRPERSON HILL: Okay, okay. So Mr. Moy, are
18 you --

19 MR. SULLIVAN: I don't want to have to come back
20 and ask for another postponement.

21 CHAIRPERSON HILL: Sure, no, you might not get it.

22 MR. SULLIVAN: Exactly, right.

23 CHAIRPERSON HILL: And so are you scheduling
24 January yet?

25 MR. MOY: Oh, yes. Yeah, we already have, Mr.

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1 Chair, yeah, that would be the first hearing of January would
2 be January the 10th.

3 CHAIRPERSON HILL: Okay, why don't we do the last
4 hearing in January. We're going to do the last hearing in
5 January.

6 MR. MOY: Oh, the last.

7 CHAIRPERSON HILL: Then you'll get to go the ANC.
8 Or do you want the first hearing in January? It doesn't
9 really matter to me.

10 MR. SULLIVAN: It's up to the Board, that's fine.

11 CHAIRPERSON HILL: Well, it's up to whether or not
12 you think you can get all your ducks in a row.

13 MR. SULLIVAN: Plenty of time, I think by the
14 tenth.

15 CHAIRPERSON HILL: Okay, so tenth is fine.

16 MR. SULLIVAN: With the holidays.

17 CHAIRPERSON HILL: That's fine, I don't mind the
18 tenth. The tenth's fine. So the tenth, Mr. Moy, is still
19 available. Now before we get too far along, I am curious of
20 a couple of things. Is the party who is in opposition here?
21 Okay, all right. Are witnesses here? Okay, all right, okay.

22 Can I ask the party in opposition to come forward
23 please. The party who's requesting party status to come
24 forward. Sure, yeah, please come on up. No, sit down in the
25 chairs there, and then you just have to speak into the

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1 microphone and identify yourself for us. And we're going to
2 slowly try to work through some of this. Yeah, just
3 introduce yourselves there. Push the button in.

4 MS. MOORE VON OEHSSEN: I'm Helen Moore Von Oehsen.
5 My husband.

6 MR. VON OEHSSEN: William Von Oehsen, and we reside
7 at 1612, which is the immediate next door neighbors to the
8 subject property.

9 CHAIRPERSON HILL: Okay, could you say your last
10 name again?

11 MR. VON OEHSSEN: Von Oehsen, it's two words. V-O-
12 N is the first word, Oehsen, O-E-H-S-E-N.

13 CHAIRPERSON HILL: Okay great, thank you. So I
14 guess, Mr. and Mrs. Von Oehsen, I'm trying to, we as a Board,
15 I'm trying to figure out how to do this, I suppose. Like the
16 applicant is here, the applicant has requested for a
17 postponement. The applicant is going to be changing their
18 application.

19 And so it's difficult for, I think, us to hear
20 what exactly they're going to be asking to do until we know
21 what they're going to be asking to do exactly, so that you
22 would then be able to oppose or not. I would assume,
23 depending upon what does happen moving forward, you will
24 probably still be in opposition to it.

25 But rather than go through the mechanics of this

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1 now, because we don't know what the application is actually
2 going to look like, I would suggest you come back again at
3 the time of the hearing, which is now going to be January 10.

4 And at that time, you will have had an opportunity
5 to hear from the attorney, participate in your ANC meeting,
6 because they're probably going to have to go back before the
7 ANC again, depending upon what it is they are going to try
8 to be asking for. And so that would be kind of my suggestion
9 at this point.

10 And I don't think, I think that's kind of where
11 we are with the Board. I know that, and this is where, I
12 guess I'm also trying to speak to the people that have come
13 down here from you know, to speak as witnesses.

14 We've read your filing, and I would imagine that,
15 depending upon what your thoughts are of the project moving
16 forward, once you hear what the project might be again, if
17 again you are in opposition and want party status, you being
18 the adjacent neighbor, you do have a unique perspective that
19 probably the Board, I mean, I can't say for sure, but
20 probably the Board would grant party status for you.

21 So that's where I kind of, you know, that's where
22 I'm, that's where I think we are right now. And I guess I'm
23 speaking to the witnesses that are coming back. We don't
24 know what the applicant is now going to do, so it's difficult
25 to hear anything about it, and it's difficult to us then take

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1 testimony about something that we don't know what they're
2 doing yet, if that makes sense. Do you have any thoughts or
3 anything you'd like to say?

4 MR. VON OEHSEN: Yes. So everyone, you know, took
5 off time from work to be here. It's not easy for them to be
6 here. And I don't think there'd be any scenario in which an
7 exterior staircase would not elicit the opposition of the
8 neighbors. I think their testimony will be the same,
9 regardless of where it is, how it's designed.

10 So I think to avoid having them come back a second
11 time, can we take their testimony now? Because I think it
12 would be relevant to whatever design, whatever request,
13 variance request, the applicant makes.

14 CHAIRPERSON HILL: And I'm kind of just looking
15 at the Board here. I guess the problem that we as a Board
16 have, again, is it's difficult for us to take testimony about
17 something we don't know exactly what they are or aren't going
18 to do. And so --

19 MEMBER WHITE: I can.

20 CHAIRPERSON HILL: Sure.

21 MEMBER WHITE: I mean, I guess the point is that
22 technically we don't know whether or not it's going to end
23 up being a variance request or a special exception request.
24 So for purposes of taking in your testimony to apply it to
25 the criteria that they have to meet under a special exception

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1 or a variance, it might not be relevant to what the case ends
2 up being once they do their amended filings.

3 But I can appreciate why it takes a lot of time
4 to come up here and deal with traffic and take off time from
5 work. So I'm very sensitive to that too. But it sounds like
6 there's a really big possibility that you may end up having
7 to submit testimony that's going to be different than what
8 you may have planned on saying today. So those are my
9 comments.

10 MS. MOORE VON OEHSEN: So are you saying that
11 there, you don't think there's going to be a request to
12 construct a rear three-story egress stair in an existing one-
13 family dwelling, that that's not what's going to be what's
14 on the table in January?

15 CHAIRPERSON HILL: I guess what we're saying is
16 we don't know exactly what they're going to be doing.
17 They've asked for a postponement. The applicant has just
18 hired counsel that has come on only a week ago, and they are
19 probably going to be making changes to their application.

20 I know, and I'll let Vice-Chair Hart speak again,
21 could people that are here to testify as witnesses again,
22 just raise your hand for me. Okay, so there are four people
23 that are here, and I'm just turning now to the applicant and
24 Mr. Sullivan.

25 So there are four, there are five people here that

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1 have come down for, there are a variety of people that have
2 come down here to testify. And if there were a way that I
3 could figure out how to do it cleanly, then we would take
4 your testimony. I can't figure out how to do it cleanly.

5 And so what I'm turning to the applicant for is
6 that, and I know Mr. Sullivan you just got on board here, you
7 know, a week ago and we do see you often. But you can see
8 that there is, I mean, to begin with, in terms of just on the
9 record what we've seen, and we've seen this application now
10 a few times, because it was postponed already once.

11 But again, you know, the Office of Planning has
12 submitted a report in denial. You've gone to the ANC and
13 they have denied your project by a seven to zero. And so at
14 this point, there's not really a whole lot that we'd be, you
15 know, it'd be very difficult, obviously, to be successful at
16 all. And so I know that you're going to have to go back and
17 take a look at just what you have and what the applicant has,
18 and there is going to be some changes.

19 And due to those changes is why I'm saying we're
20 going to have to postpone this, so that when the opposition
21 does come back forward, they know what they're opposing
22 exactly. And so that's my thoughts.

23 VICE CHAIRPERSON HART: The only part that I'd add
24 is that as you're well aware, all of the witnesses that you
25 have are willing and able to submit testimony, written form,

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1 and they will become exhibits on the case record. And so
2 that they can provide information without necessarily being
3 here.

4 I understand that sometimes there are questions
5 that kind of come up and it's helpful to be able to ask the
6 witness as they are here, as they're present. But I just was
7 just reminding you that there are other ways to be able to
8 submit that. And, you know, as you move forward, it'd be
9 helpful to kind of talk about what those changes are, and
10 changes to the design.

11 And the applicant, you know, they made so
12 something that is, oh, okay, their counsel may suggest
13 something to the applicant to, that will be something that
14 you're in favor of. And we don't know what that is, and
15 that's the hard part about it.

16 We just wouldn't want to take something, the
17 testimony now and then find out that, well, that's kind of
18 not really appropriate now because it's a different you know,
19 design. I'm not saying it's going to be totally different,
20 but there may be some changes that they may be talking to
21 that are no longer there.

22 MR. VON OEHSEN: So would it be possible, in fact
23 we would like to request that the Board dismiss the case.
24 And then they can reapply at a later date? It seems like
25 that would be an appropriate next step.

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1 I mean, this application was filed in early
2 August. Mr. Salas had three months to hire a counsel. He
3 at first insisted on the hearing on the 25th. I think we
4 already have a record of him not operating in good faith
5 here. And it's just not fair to the neighbors. We would ask
6 that it be dismissed.

7 CHAIRPERSON HILL: I understand. You can ask, but
8 so a couple of things. So just as far as how party status
9 works. I mean if you were to come back here and get party
10 status, which again, I would imagine you would, given that
11 you're an adjacent neighbor. But again, I don't know for
12 sure, it depends on what happens once this comes back before
13 us.

14 You would get an opportunity, the applicant would
15 get an opportunity to present their, do their presentation.
16 You then have an opportunity to cross-examine anything that's
17 in that presentation. You then have an opportunity to
18 present at the same amount of, you have the equal amount of
19 time. And so then you'd have an opportunity to again, ask
20 questions of the applicant, ask questions of the Office of
21 Planning, bring your witnesses if any.

22 Your witnesses can also submit written testimony
23 if they can't come back down here again. But we're kind of
24 stuck. I mean, I'm just being, I'm just telling you, you
25 know, honestly where we are. And so, you know, I think we

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1 are going to, you know, as far as I can tell from the Board,
2 we are going to grant the postponement.

3 And I think that we're well aware of people coming
4 down here and how difficult the time it is. I mean, we all
5 have jobs ourselves, and so we come down. I mean, it is an
6 inconvenience, it is an extreme inconvenience, and we are
7 very well aware of that. And if there was a way I could have
8 done this, we could have done this now, we would have. But
9 there's just not a way to cleanly do it, so.

10 Just to let you know, you can submit your written
11 testimony if you can't come back down here again. We're
12 going to postpone this to January 10. And at that time then
13 we'll also, if you're still opposed and would like party
14 status, again, we'll hear that at that time as well. Okay.

15 Does the Board have any other thoughts or
16 questions? Okay, all right. So Mr. Moy, we're going to
17 postpone this to January 10.

18 MR. MOY: Yes, sir.

19 CHAIRPERSON HILL: Okay, all right. Thank you all
20 very much.

21 MR. MOY: All right, I believe, Mr. Chairman, the
22 next application before the Board is Application No. 19608
23 of Jonathan Meyer and Phillip Lawrence, captioned and
24 advertised for variances from the minimum court requirements
25 of Subtitle F, Section 202.1, and from the non-conforming

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1 structure requirements, Subtitle C, Section 202.2.

2 This would construct a side addition to an
3 existing one-family dwelling and convert it to a nine-unit
4 apartment house in a RA-2 zone. This is at 1310 Vermont
5 Avenue, NW, Square 242, Lots 86 and 59.

6 CHAIRPERSON HILL: Okay. All right, if you could
7 please introduce yourselves from my right to left.

8 MR. SULLIVAN: Thank you, Mr. Chair. My name is
9 Marty Sullivan with the law firm of Sullivan & Barros, on
10 behalf of the applicant.

11 MR. FOSTER: And my name is Jim Foster from
12 Arcadia Design for the applicant.

13 MS. WILSON: Alexandra Wilson from Sullivan &
14 Barros on behalf of the applicant.

15 MR. CASEY: John Casey, owner of the property at
16 1310 Vermont Avenue.

17 CHAIRPERSON HILL: Could you say your last name
18 again, please.

19 MR. CASEY: John Casey.

20 CHAIRPERSON HILL: Okay. All right, Mr. Sullivan,
21 do you need a plaque? We could maybe get you a plaque and
22 you can like put it right down there. I think it might be
23 helpful for all of us.

24 Let's see. Okay, I'm going to assume that you're
25 going to be presenting to us and this is going to be a little

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1 bit more complicated, I think. So I'm going to put 15
2 minutes on the clock, just so, again, we know where we are.
3 We all up here have reviewed the record.

4 However, there are some obvious things in terms
5 of, unless -- I haven't seen anything new from the Office of
6 Planning. The Office of Planning is still where the Office
7 of Planning was. And there are still all the comments that
8 are in the record, as well as the, you know, how we're going
9 to kind of work through this.

10 So as always, Mr. Sullivan, if you could go ahead
11 and kind of like walk through your case for us, letting us
12 know what you're proposing, and also how you're meeting the
13 standards for us to grant or deny. Thank you.

14 MR. SULLIVAN: Thank you. As you can see from the
15 first page of our PowerPoint here, we're proposing an
16 addition. And on the south side of the property in the back,
17 the addition will extend to the property line. And the
18 current, existing side yard there is two feet, three inches.

19 So we are not permitted to extend that side yard
20 back at the two feet three inches. And in fact, we would
21 have to provide an eight-foot side yard at that point. So
22 the addition would be limited to the, would be scaled back
23 eight feet at that point.

24 So underlying this request is what I believe is
25 an apparent error in the zoning regulations. And this should

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1 be special exception relief. This minimum court relief and
2 the expansion of a nonconforming structure is special
3 exception relief in both the zone below this and the zone
4 above it. And for some reason, the expansion of
5 nonconforming structures and court width were left out of the
6 list of special exception available elements in the RA zone.

7 We've talked to the Office of Planning about this,
8 and as long as six or seven months ago, it was acknowledged
9 that yes, there are some inconsistencies and we're working
10 on correcting them. I thought that that was going to come
11 out in revisions and corrections that I was told were coming
12 out Monday. I don't think they've come out yet, and they're
13 coming out next month.

14 So underlying this whole thing, if we don't, if
15 we're not able to persuade the Board of meeting the variance
16 test, we would at that point ask for a postponement and then
17 apply under special exception. Because we believe this is
18 going to be corrected.

19 But I'd also like the Board to consider that well
20 is possibly one of the exceptional conditions in this.
21 There's no way in my mind that for the RA zone it was meant
22 that, hey, we're going to leave out courts and nonconforming
23 structure expansion, and we'll make those variances,
24 meanwhile GAR and lot occupancy and yards do get special
25 exception relief.

1 So maybe the Office of Planning can talk a little
2 more about that part of it. But beyond that, our exceptional
3 condition is the existing side yard. It's unusual to have
4 an existing side yard that's two feet, three inches.

5 And we're precluded from closing that side yard
6 and just making it a row structure because of HPRB
7 restrictions. And in addition to being precluded from
8 closing that side yard, we're not permitted to go back at the
9 two foot, three inch side width, and we have to go back to
10 eight for a couple reasons.

11 One, because we're semidetached. Because we can't
12 close the side yard, we're still semidetached. And a
13 semidetached has an eight foot side yard as opposed to a five
14 foot side yard requirement. So we're very much impacted by
15 the exceptional existing condition of the two foot, three
16 inch side yard that cannot be corrected because of HPRB
17 restrictions.

18 Regarding the practical difficulty impact of that
19 unique condition, well, first of all, I would also like to
20 say this is a de minimis request. Now de minimis can be,
21 when it comes to lot occupancy, it can come down to a number.
22 But when it comes to court width, I think it applies to the
23 impact or the type of relief you're asking for.

24 CHAIRPERSON HILL: Mr. Sullivan, could you just
25 hold on for one second.

1 MR. SULLIVAN: Sure.

2 CHAIRPERSON HILL: All right, Mr. Sullivan, please
3 continue. You were at de minimis.

4 MR. SULLIVAN: Yes. And of course de minimis,
5 it's a judgment call and a matter of degree, so it's not a
6 switch that turns off or on. But I would just, it's part of
7 our argument that the relief we're requesting is rather
8 minor, because we're creating a nonconforming court in an
9 area that already exists as a nonconforming side yard. So
10 we're actually reducing the area that's open, and courts
11 aren't required in that zone anyway, so.

12 So regarding, so those are the unique conditions.
13 The practical difficulty, I'd like to turn it over to the
14 architect, Mr. Foster, to talk about some of the impacts of
15 having to scale back to the eight-foot side yard on the
16 design and interior layout of the building.

17 MR. FOSTER: Thanks. Hi, Jim Foster speaking.
18 I wanted to mention that when this process started, we
19 approached HPRB with the idea of filling in the existing non-
20 conforming side yard.

21 We had several, if not four or five, suggestions
22 on how we could do that and they were rejected, every single
23 one of them. Either enclosing it or roofing it over or
24 adding a wall at the front that in some way would make it not
25 a side yard any longer.

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1 But the staff at HPRB said that they did not want
2 the face of this building to be altered even on that little
3 sliver where the side yard is. There are some little tiny
4 bays in there that you can kind of see from the street. And
5 so they were adamant that we couldn't do anything to the face
6 of the building to enclose the side yard.

7 So in order to fill in the area beside the dogleg
8 on the back of 1310, that is what puts us in this situation
9 where we're creating the non-conforming open court in the
10 front and so that's why we're here.

11 If I can't fill in the area beside the dogleg I
12 have to add, if I want to do an addition to this building,
13 other than on the new structure in between, I have to extend
14 the existing dogleg back even further.

15 The problem with that is, the existing space
16 between the dogleg and the property line is only seven feet
17 so my setback would have to be eight feet. So my addition
18 would get narrower as it got deeper, and I probably am going
19 to run into rear yard setback issues and probably parking
20 issues.

21 We don't show a thorough parking plan yet but
22 we're in the process of developing a parking program in the
23 back. And by adding another 15 to 18 or 20 feet to the rear
24 of the existing L, is going to both create an issue with
25 historic because right now the rear is mostly straight across

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1 and is in context in proportion with the other rears.

2 But when we extend this back as a skinny addition
3 it changes the proportions of that and may affect our view
4 with HPRB and have light and air issues, because right now
5 we're filling in the space between the dogleg which doesn't
6 have any effect on any neighbors but by extending the dogleg
7 back, it actually is going to have more light and air issues.

8 Furthermore, we are not only filling in the dogleg
9 on the first two levels that exists but we're adding a third
10 floor on top of that. If when I go to add a third floor, it
11 can only be a, it has to be a foot narrower than the existing
12 dogleg as well.

13 So it's going to really create a challenging
14 design situation to have this addition appear in balance with
15 the rest of the house because not only is it going to be long
16 and skinny and sticking further into the back yard, but as
17 it goes up it's also going to get skinnier than the existing
18 structure as well.

19 And there will be structural issues with that and
20 design issues to make that look contextual with the historic
21 structure that it sits on.

22 So those are all the reasons why adding the
23 addition to the rear of the existing dogleg, rather than
24 infilling the space between it, causes significant issues and
25 problems for us in design-wise.

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1 MR. SULLIVAN: So I think to summarize, the
2 practical difficulty relates to an allocation of what is
3 otherwise permitted space within a footprint and within FAR.

4 And it's unnecessarily burdensome to, as a result
5 of this existing pre-1958 condition of this very small side
6 yard and the restrictions of HPRB, it's difficult to approach
7 our permitted lot occupancy and FAR without impacting the
8 design and impacting other potential areas of the development
9 which would make it a better development, both for the
10 neighbors and for the applicant, including potentially more
11 parking and a shorter building. So if the Board has
12 questions?

13 CHAIRPERSON HILL: Does the Board have any
14 questions? Go on, please, Mr. May.

15 COMMISSIONER MAY: Okay. So how far back would
16 you have to extend? I mean, did you study the design to know
17 how much further back you would have to extend?

18 MR. FOSTER: 18 to 20 --

19 COMMISSIONER MAY: Can you turn your mic on?

20 MR. FOSTER: Sorry. It's about 18 to 20 feet.

21 COMMISSIONER MAY: You got 56.

22 MR. FOSTER: Right.

23 COMMISSIONER MAY: Or 58, depending on what you're
24 starting from. I'm sorry, so how many? 18?

25 MR. FOSTER: I think it's, I don't have, I never

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1 wrote down the exact calculation but I'd say approximately
2 20 feet.

3 COMMISSIONER MAY: 20 feet. So that wouldn't
4 cause a rear yard problem?

5 MR. FOSTER: It's not, it may not be a rear yard
6 setback problem but because we have an offset property line,
7 in order to separate these two properties and create a new
8 subdivision, it does create a space where the rear addition
9 is very close to the property line on the north side.

10 I'm not exactly sure how that's going to get
11 resolved with the zoning technical review.

12 COMMISSIONER MAY: So you could wind up with a
13 side yard or a court problem on the other side?

14 MR. FOSTER: Correct.

15 COMMISSIONER MAY: Okay.

16 MR. FOSTER: Also like I said earlier, because we
17 don't indicate it on the site plan, but we are as part of the
18 development of the building plans, developing a parking
19 program in the back and --

20 COMMISSIONER MAY: So what is a parking program?

21 MR. FOSTER: Oh, I'm sorry. Just weighing out how
22 I'm going to provide parking on the site rather than just
23 have two spaces off the alley.

24 COMMISSIONER MAY: So you're trying to increase
25 the number of parking spaces?

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1 MR. FOSTER: Partly from, it was a request from
2 the ANC and we just think it's best to have additional
3 parking.

4 COMMISSIONER MAY: Right.

5 MR. FOSTER: So we're trying to figure out a way
6 to still have two spaces on the alley but then also have a
7 drive aisle that'll come in and have anywhere from four or
8 more additional spaces between the parking and the back of
9 the existing --

10 COMMISSIONER MAY: Right, but you're really
11 required to have two.

12 MR. FOSTER: I don't know the answer to that.
13 yes, probably two.

14 COMMISSIONER MAY: Well, I mean, according to what
15 I saw in the application --

16 MR. FOSTER: Yes, yes.

17 COMMISSIONER MAY: -- and all of the material from
18 the pile, it's only required to be two. So I mean, the fact
19 that you only want to add more isn't really a factor. I
20 mean, I think the strongest, the issue of potential
21 complications with court or a side yard on the north side of
22 the property is a real issue and certainly light and air
23 impacts are a real issue.

24 I mean, right now is the back of your addition,
25 does it align with the abutting property to the south?

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1 MR. FOSTER: I think it, the abutting property to
2 the south is slightly deeper but --

3 COMMISSIONER MAY: Okay. So no, just a point of
4 --

5 MR. FOSTER: -- if we just added an addition, it
6 would be deeper than their addition.

7 COMMISSIONER MAY: Say that again? If they did --

8 MR. FOSTER: If, I think the rear of our addition
9 is not the existing dogleg on the back of 1310, is not as
10 deep as the rear of 1308.

11 COMMISSIONER MAY: Okay. Is there anything in the
12 record that shows that?

13 MR. FOSTER: I don't know.

14 COMMISSIONER MAY: Okay. So I mean, the purpose
15 that I'm asking some of these questions is that the drawing
16 set itself is fairly minimal for what we would want to see.
17 It's hard to evaluate some of these circumstances. And one
18 of the most helpful things when considering relief that
19 relies on the potential, I mean on the practical difficulty
20 aspect of it, would be to actually have a drawing that shows
21 how if you did a rear addition sticking further out, it would
22 be worse for the neighborhood.

23 It's easy enough for me to imagine, but it's also
24 best for the Board not to rely on my imagination but to
25 actually have drawings in the record that show that.

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1 So if you can find something that shows the rest
2 of the context, I think that might be helpful. Otherwise,
3 I don't know, depending on how we go we may want you to
4 submit that. Is it in that aerial photo? Maybe you want to
5 show that.

6 VICE CHAIRPERSON HART: Mr. May?

7 COMMISSIONER MAY: Yes?

8 VICE CHAIRPERSON HART: You may want to look at
9 the, Office of Planning report on Page, which is Exhibit 84.

10 COMMISSIONER MAY: Yes.

11 VICE CHAIRPERSON HART: On Page 5, I guess, 4.
12 It does show a little bit more of the context. I actually
13 thought that, I mean, it's not great, don't get me wrong.

14 COMMISSIONER MAY: Yes.

15 VICE CHAIRPERSON HART: I actually thought that
16 this was a street that was on the south of the --

17 COMMISSIONER MAY: Yes, well, right.

18 VICE CHAIRPERSON HART: Because it looks like from
19 the image, it looks like there's an alley on the west and
20 there's Vermont Avenue on the east and then the street on
21 the, and I thought it was the corner lot. Then I realized
22 later that it actually is not a corner lot, that it's, you
23 know, that there is a building that is next to it. So it
24 would be helpful, you're right, to have the context.

25 COMMISSIONER MAY: Yes, I mean it's hard to say

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1 for the Office of Planning. I mean, when you see more of the
2 context but we can't see how this addition necessarily
3 compares. It does look like it's probably farther back than
4 the existing.

5 Sorry, you were going to say?

6 MR. FOSTER: Only that I have a picture that I
7 took of the back of the building that's not super clear, but
8 you can see the edge of the rear of the addition on 1308 and
9 it's about three feet deeper than 1310, approximately.

10 COMMISSIONER MAY: Oh, okay.

11 MR. FOSTER: It's not in your exhibits. It's just
12 some pictures I happen to have in my file.

13 COMMISSIONER MAY: Yes. I mean, you can sort of
14 see it from the aerial photo. It looks kind of like it goes
15 further back. All right. So then my next question is, do
16 you have the number of units that have landlocked bedrooms?
17 No windows, that are in the proposed addition on the north
18 side? And I'm just curious about that. I mean, are you
19 actually able to sell or rent apartments with no windows?

20 MR. FOSTER: We actually don't have any inboard
21 or interior bedrooms.

22 COMMISSIONER MAY: Okay. So why are your, then
23 your plans are wrong. So if I look at, well, let's see. The
24 first page of your designs, on the first one I guess you have
25 what they'd call a junior one-bedroom now which has French

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1 doors to the living room, so I'm not concerned about that
2 one.

3 It's the bedrooms above that on the first level,
4 second level, and third level.

5 MR. FOSTER: In, if you're looking at the bedrooms
6 on the center infill part?

7 COMMISSIONER MAY: Yes.

8 MR. FOSTER: That's, my apologies because these
9 plans were revised for the last ANC meeting and there are
10 actually windows in that.

11 COMMISSIONER MAY: That look out onto the
12 neighboring property?

13 MR. FOSTER: Yes. We're going to, yes.

14 COMMISSIONER MAY: So you're going to have some
15 sort of easement recorded on 1314, so that you can retain
16 those windows forever?

17 MR. FOSTER: Correct.

18 COMMISSIONER MAY: Okay. So I mean, it's a minor
19 point but and it doesn't really relate specifically to your
20 relief but as an architect it's hard for me to --

21 MR. FOSTER: Right.

22 COMMISSIONER MAY: -- see a lousy bedroom and not
23 say that's a lousy bedroom.

24 MR. FOSTER: All of the bedrooms in the infill
25 part of the building --

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1 COMMISSIONER MAY: Yes.

2 MR. FOSTER: -- will actually not only have
3 windows in that bedroom but also windows along the sidewall
4 in some areas, because we have to maintain it for 1314, has
5 to have a certain width court as well.

6 COMMISSIONER MAY: Yes?

7 MR. FOSTER: And so that's why the jog in our
8 building there in order to give the required court for 1314.

9 COMMISSIONER MAY: Yes. I figured that was
10 probably what was driving that.

11 MR. FOSTER: So that court has to be there by
12 zoning so it can never be filled in and so therefore we can
13 have windows in perpetuity in the side of --

14 COMMISSIONER MAY: It can never be filled in?

15 MR. FOSTER: Well --

16 COMMISSIONER MAY: Well, they could do the same
17 thing that you're trying to do in the south, right?

18 MR. FOSTER: Right. That's true.

19 COMMISSIONER MAY: Yes. So I think you need to
20 have something recorded in the land records for 1314, to
21 prevent that, otherwise somebody's going to be coming in here
22 complaining about a future edition, somebody's going to close
23 off our window.

24 MR. FOSTER: That is the intention, to have an
25 easement written into the language.

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1 COMMISSIONER MAY: Okay. All right.

2 MR. FOSTER: It should be done, part of the permit
3 process so we just hadn't gotten to that yet.

4 COMMISSIONER MAY: Yes, okay. I just, you know,
5 I'm thinking far into the future, future BZA cases, I guess.
6 I don't know.

7 And then the last question I have is, the addition
8 on the third floor? I mean, you're really just taking
9 advantage of the slope of the roof from the front and putting
10 a mezzanine on it?

11 MR. FOSTER: You mean the mezzanine level that we
12 build?

13 COMMISSIONER MAY: The top floor addition?

14 MR. FOSTER: Correct. There's a mezzanine there
15 now.

16 COMMISSIONER MAY: Yes?

17 MR. FOSTER: But the roof slopes down to the front
18 and it slopes down to the back.

19 COMMISSIONER MAY: Okay.

20 MR. FOSTER: So what we're proposing is basically
21 to take the rear slope and raise it up to create head room,
22 just enough head room to get a loft area on that level.

23 COMMISSIONER MAY: Okay.

24 MR. FOSTER: It's not visible from the street.

25 COMMISSIONER MAY: Right. So is that a mezzanine

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1 in zoning terms?

2 MR. FOSTER: I'm designing it as a mezzanine, yes,
3 in terms of the area.

4 COMMISSIONER MAY: So it'll be one-third of the
5 space below it?

6 MR. FOSTER: Correct. One-third of the open space
7 below it.

8 COMMISSIONER MAY: No one-third of the entire
9 space below it, not just the open space, right?

10 MR. FOSTER: Well, what happens is I think there's
11 a, I think zoning only requires it to be one-third of the
12 square footage of the floor, open to the floor below.

13 COMMISSIONER MAY: Right.

14 MR. FOSTER: But DCRA actually has an additional
15 requirement that they only let you count the square footage
16 of open space. In other words, a bathroom or a closet that
17 has a door and encloses it cannot count to the open area.
18 So it's two separate matters but, yes, it'll be at most one-
19 third of the space below.

20 COMMISSIONER MAY: Right, exactly. Okay. Because
21 it looks like it's more than that.

22 MR. FOSTER: It's actually slightly less.

23 COMMISSIONER MAY: Because of the stairway? Oh,
24 is it because you have a bathroom in the loft that it doesn't
25 count as, well, I mean, I guess my question is does it have

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1 to be a mezzanine in zoning terms? Is it, or are you allowed
2 to have another floor?

3 MR. FOSTER: If --

4 COMMISSIONER MAY: Mr. Sullivan, do you want to
5 answer that?

6 MR. SULLIVAN: Yes, there's no limit on floors in
7 the ordinance.

8 COMMISSIONER MAY: Okay. So then it doesn't
9 really matter how you define it?

10 MR. SULLIVAN: Right.

11 COMMISSIONER MAY: It's a non-issue from the
12 zoning perspective.

13 MR. FOSTER: Correct. It becomes more an issue
14 with building review for you guys.

15 COMMISSIONER MAY: Yes. Okay. That's fine. And
16 I don't, I'm not concerned about that. I was just concerned
17 about the zoning aspect of it. That's it for my questions.
18 Thank you.

19 VICE CHAIRPERSON HART: Yes, I also agree with Mr.
20 May about the kind of context issue. It was a little bit
21 hard trying to figure out what was happening to the south of
22 this. So it would be helpful to actually have that in the
23 record what, you know, the context would be something I think
24 you should add to it.

25 And so you, Mr. Foster, I think you were the one

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1 that said that there is a window that is on the bedroom?

2 MR. FOSTER: On our plan, on the four plans of the
3 infill in between the two buildings --

4 VICE CHAIRPERSON HART: Yes.

5 MR. FOSTER: That center bedroom will have a
6 window into the court that's between 1314, and 13, let's call
7 it 1312.

8 VICE CHAIRPERSON HART: Okay. So those are just
9 not being shown in this, in --

10 MR. FOSTER: Yes. At one point this plan was
11 produced and left the window out and I forget now why, but
12 then it was revised and has the window shown now but I think
13 we neglected to send it to them to include in the package
14 today.

15 VICE CHAIRPERSON HART: Yes. No, I --

16 MR. FOSTER: So my knowledge is that.

17 VICE CHAIRPERSON HART: It's fine. It's hard when
18 we're kind of looking at plans that have dates then you kind
19 of start getting a little bit confused as to where we are
20 with all of that, so.

21 MR. FOSTER: These plans have changed about six,
22 seven times over the last six weeks --

23 VICE CHAIRPERSON HART: No, no, I understand. And
24 that --

25 MR. FOSTER: -- because of historic review, so,

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1 yes.

2 VICE CHAIRPERSON HART: That I can understand.
3 It's, again it's just, you know, as we're going through and
4 looking at this, if we have to go back and look at something,
5 then it becomes a little bit confusing as to where we, what
6 we were looking at that particular time because, you know,
7 anyhow.

8 MR. FOSTER: My apologies for that.

9 VICE CHAIRPERSON HART: And do you all have any
10 elevations or?

11 MR. FOSTER: We do. I don't think they were put
12 into the packet, but.

13 VICE CHAIRPERSON HART: Can you add those too?

14 MR. FOSTER: Yes.

15 VICE CHAIRPERSON HART: Just because I'm just
16 curious to, you know, to see that. And I don't know if the
17 elevations include the, so they actually include context.
18 Your building's on the left on that image shown?

19 MR. FOSTER: 1310 is this red one and this is the
20 infill piece.

21 VICE CHAIRPERSON HART: Okay.

22 MR. FOSTER: And that --

23 VICE CHAIRPERSON HART: Yes, that would be helpful
24 to have too but I think we should probably have -- because
25 I don't want to refer to something that we don't --

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1 COMMISSIONER MAY: Well, now that he's shown us,
2 he's got to put it in the record.

3 VICE CHAIRPERSON HART: Yes, well, exactly.

4 MR. FOSTER: Yes. We have re-elevations and --

5 VICE CHAIRPERSON HART: I mean, I just think we
6 should have that so if you could give that to the secretary
7 that would be helpful for us, because I don't want to talk
8 about images that only we can see. There are folks that are
9 online and I think it's helpful to have those in the record.

10 And can you talk a little bit again about the
11 announcement that you did for the extending onto the back as
12 opposed to the, what you're proposing?

13 And really what I'm looking at is do you have any
14 drawings that actually show this is -- you've said that there
15 might be the court issue on the north side if you extended
16 on the, if you added the 20-foot, you know, extension onto
17 the rear of the building.

18 But it would be helpful to actually have drawings
19 that actually show this, we did look at this and this is what
20 the, you know, the other impact is. I just think it would,
21 if you, it would help your case because I think that that's
22 still a little bit weak to me.

23 MR. FOSTER: Okay.

24 VICE CHAIRPERSON HART: Because I think that there
25 needs to be some, you know, this is what we have to do

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1 because of this.

2 I mean, you don't have to have a, you know, four
3 bedrooms. You don't have to have, I mean, you know, three
4 bedrooms. You don't have to have some of these things.
5 You're asking for this. And so we have to understand where,
6 how you've gotten to that point and I don't think that we
7 have sufficient information to be able to make that
8 determination. At least I don't, let's just say that. I'm
9 done.

10 MEMBER WHITE: Mr. Sullivan, can you state for me
11 again how you believe you meet the first prong of the area
12 of variance test?

13 MR. SULLIVAN: Sure. It's based primarily on the
14 preexisting condition of the building, the pre-1958 condition
15 that it's a side yard that's only two-feet three inches wide,
16 which we think is exceptional and the fact that because it's
17 in the historic district, HPRB will not allow us to enclose
18 that which would resolve the relief.

19 And we're not permitted to expand it back at the
20 two feet, three inches. In fact, we'd have to go to the
21 eight. And that's just a result of the unique condition.
22 It's basically what I would call a textbook pre-existing '58
23 condition of a non-conforming side yard.

24 MEMBER WHITE: Yes. But would it be easier to
25 meet that standard if you had fewer units?

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1 MR. SULLIVAN: The side yard is still there and
2 I don't -- sure. I mean, in any, if we did nothing to the
3 building, that would be the same in every case. You always
4 have the option of not doing anything to increase the size
5 of building.

6 But we're trying to, we're well within the FAR in
7 the occupancy and within those permitted numbers. We're
8 trying to design the best and most efficient and most
9 beneficial addition and the court.

10 And I don't think the test is that whether we have
11 to be able to have nine-bedroom, or nine units or whether we
12 have to do the addition. Nobody ever has to do an addition,
13 right?

14 MEMBER WHITE: Yes.

15 MR. SULLIVAN: But the fact is that existing
16 condition makes it unnecessarily burdensome to do a
17 reasonable addition.

18 MEMBER WHITE: Yes. That's the prong that I'm
19 having the most trouble with. But I'm still listening to the
20 testimony and I'll hear what the ANC and the Office of
21 Planning have to say as well.

22 MR. SULLIVAN: And I initially, I'll leave this
23 to the Board but I would submit that the situation with the
24 regulations which has been acknowledged to be a likely error,
25 even from the Office of Planning staff that we've talked to

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1 about this, that that is an exceptional condition that
2 relates to this property. I don't, yes?

3 COMMISSIONER MAY: Okay. I'm going to disagree
4 with that.

5 MR. SULLIVAN: Okay.

6 COMMISSIONER MAY: You know, the regulations are
7 what they are.

8 MR. SULLIVAN: Yes.

9 COMMISSIONER MAY: And, you know, but I think that
10 your, there are other aspects of your case that you can make
11 --

12 MR. SULLIVAN: Right.

13 COMMISSIONER MAY: -- to get it over the
14 threshold. And I would rely more on those rather than
15 pointing at a supposed error on the zoning regulations. I
16 just don't, because they are what they are.

17 We can't kind of, this Board is not really
18 empowered to make judgements about whether there's an error
19 in the zoning regulations or whether that's a factor here,
20 so.

21 MR. SULLIVAN: Yes. I thought I'd try.

22 COMMISSIONER MAY: Thanks. I appreciate the
23 creativity but I don't agree with it, so.

24 MR. SULLIVAN: Understood.

25 COMMISSIONER MAY: Yes.

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1 CHAIRPERSON HILL: Okay. So I'm trying to work
2 through something else here now. So there is someone who has
3 put something into the record concerning posting. And I
4 believe that person is here. Could you step forward, please?
5 Maybe if you want to sit over here to the far right?

6 (Off-microphone comment.)

7 CHAIRPERSON HILL: Sure, you can sit there. If
8 you could just introduce yourself and I have a question
9 before you get started.

10 MR. ROBINSON: I'm Bernie Robinson. I live at
11 1332 Vermont Ave Northwest and I've been victimized by the
12 development team previously.

13 CHAIRPERSON HILL: Okay. Well, I don't know what
14 that means exactly. But so you have put something into the
15 record concerning posting and I'm not exactly sure what it
16 is that you're requesting.

17 So first of all, go ahead. I mean, I see
18 everything in the record concerning posting. I saw you
19 speaking with the secretary so, and he brought over a note
20 to me that, you know, to point out again your concern about
21 the posting.

22 So I see what your concerns are, the posting, and
23 you're welcome to repeat those two but again, I'm not really
24 sure what you're asking for in terms of the posting so go
25 ahead and tell us.

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1 MR. ROBINSON: As indicated on the bottom line,
2 I'm asking that the hearing be rescheduled until proper
3 notice is made to the public.

4 CHAIRPERSON HILL: Okay. And Mr. Moy, you believe
5 that proper notice has been made to the public, right?

6 MR. MOY: Ultimately, yes, sir. If you recall,
7 some weeks back there was a miscalculation on the staff part
8 in terms of OZ issuing letters as to public notice which
9 affects the number of days prior to scheduled hearing over
10 a period of four scheduled hearing dates.

11 And this particular application was originally
12 posted, scheduled for October 25th but of course, for the
13 reasons that I've just stated, to meet the number of days,
14 required number of days posting, they had to go to November
15 1st, okay? So that's the background in short.

16 So in terms of the staff work, the staff of course
17 revised the dockets for those hearing dates on the BZA
18 calendar, as well as re-sending letters of the corrected
19 dates to neighbors within 200 feet.

20 CHAIRPERSON HILL: Okay, okay. So Mr. Robinson,
21 I guess since the date was, you know, if this was something
22 where the, we were having, if this was something where the
23 posting would have been, you know, a month later than now and
24 we were having this hearing now, I would maybe agree with you
25 that the posting was a problem.

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1 But the office, the secretary is letting me know,
2 letting the Board know that the posting has been
3 appropriately done. So I don't have an issue unless the
4 Board does, with the posting.

5 However, you will have an opportunity, I guess,
6 to present your testimony and opposition to the project when
7 we get to the point where we're taking opposition to the
8 project.

9 MR. ROBINSON: I don't understand your comment
10 that the secretary has said that the posting was proper. I
11 was here last week for the hearing.

12 CHAIRPERSON HILL: Okay.

13 MR. ROBINSON: Because the hearing --

14 CHAIRPERSON HILL: And you're here this week for
15 the hearing.

16 MR. ROBINSON: Yes. At great inconvenience and
17 many other things.

18 CHAIRPERSON HILL: Okay. So I don't understand
19 what you want us to do.

20 MR. ROBINSON: Okay.

21 CHAIRPERSON HILL: You want us to postpone, I
22 mean, I understand you're opposed to the project. So that,
23 we'll get to that part of it, okay.

24 MR. ROBINSON: Right.

25 CHAIRPERSON HILL: So but you're concerned with

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1 the posting and what I'm letting you know is that my office,
2 the secretary here, has told me that the posting has been
3 appropriately posted. So therefore, I'm moving forward off
4 of that issue.

5 MR. ROBINSON: And I'm saying I would like Mr. Moy
6 to explain how a notice that was up last Wednesday saying the
7 hearing date was October 25th is adequate notice for this
8 hearing.

9 CHAIRPERSON HILL: Okay. And Mr. Moy just did
10 explain it to us and he explained it to all of us. So I'm
11 comfortable with his explanation. You can disagree with it,
12 but also nonetheless, I don't have, I mean, does the Board
13 have any issues? Am I losing anything here? Does the Board
14 have anything they'd like to say? Okay.

15 So we're going to go ahead and continue with the
16 hearing and we'll take your testimony in opposition which we
17 definitely want to hear when we get to that point in the
18 hearing.

19 All right. So let's see. Going to go ahead and
20 turn to the Office of Planning.

21 MR. MORDFIN: Good morning, Chair and members of
22 the Board. I'm Stephen Mordfin. And the Office of Planning
23 opposes this application and finds that it does not in
24 conformance with the criteria necessary for the approval of
25 a variance.

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1 The first test, the exceptional situation
2 resulting in a practical difficulty, Office of Planning does
3 not find that there is an exceptional situation. Granted,
4 there is an existing 2.3-foot wide yard but to convert that
5 into an open court, OP does not find that there's a practical
6 difficulty in not being able to convert an existing side yard
7 into an open court.

8 The applicant has indicated that members of the
9 Office of Planning have indicated that a proposal would be
10 forthcoming that would convert this into a special exception.
11 However, that has not yet happened and even if that did,
12 there's no guarantee that the zoning commission would adopt
13 that proposal converting it.

14 So therefore, right now it is a variance request
15 and until and unless that changes, it will remain a variance
16 request and not become a special exception.

17 The detriment to the public good, the Office of
18 Planning finds that by converting this into a court, what
19 you're doing is, it is narrow now and it may stay that way
20 because it's a preexisting condition.

21 But by cutting off any light and air coming in
22 from the west, that it's creating a dark open court which is
23 not the intent of the zoning regulations to create a dead
24 ended area, and that as the applicant is also at the same
25 time increasing the size of the property by 50 percent, that

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1 does increase the options available to the applicant for the
2 development of this piece of property.

3 So therefore, the Office of Planning recommends
4 denial of this application.

5 CHAIRPERSON HILL: All right. Does anyone, does
6 the Board have any questions for the Office of Planning?

7 VICE CHAIRPERSON HART: Yes, Mr. Chairman. Mr.
8 Mordfin, with regard to the, the applicant has brought up an
9 issue with the, has brought up that the Historic Preservation
10 Review Board has reviewed the project and has, or maybe it's
11 just the staff, but have given them indications that they
12 don't want, that they should not fill in that aspect, that
13 two-foot, three-inch, you know, area.

14 Do you find that the, in your report you don't
15 talk about the HPRB, you know, kind of discussion. Can you
16 give us your thoughts on what HPRB has decided or their
17 guidance on this?

18 MR. MORDFIN: Not filling in that court, also we
19 don't find that that's a hardship in not being able to fill
20 in that court. The applicant could although they don't want
21 to, you know, continue a side yard into the rear of the
22 property. There is the seven-foot rear yard beyond that 2.3.
23 They could continue that seven-foot for the length of the
24 existing building and then perhaps provide an eight-foot
25 court, side yard, beyond that.

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1 They have not submitted why that is not possible.
2 It does limit what options they have available to them in
3 developing this piece of property but I don't understand why
4 that is not possible or why that is not, what that results
5 in a practical difficulty to not be able to build up to the
6 side yard on the south side of the property.

7 VICE CHAIRPERSON HART: The, Office of Planning --
8 I mean the applicant has also indicated that their property
9 is oddly shaped because on the northern side it has kind of
10 like a, I don't know, it jags or steps, I guess.

11 And that's causing some issues with the side yard
12 to the north, possible issues with the side yard to the north
13 if they go back, you know, go back, extend the building to
14 the rear more.

15 Do you have any thoughts on that? They haven't
16 provided anything but do you have any thoughts on if they
17 should be doing that?

18 MR. MORDFIN: Well, they haven't submitted that
19 and so therefore that is not something that was reviewed by
20 the Office of Planning and I can't comment on what the
21 applicant did not propose.

22 VICE CHAIRPERSON HART: That's fine, thank you.

23 CHAIRPERSON HILL: All right. Mr. Mordfin, just
24 again for me again, can you review how they're not meeting
25 the variance standard again for me?

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1 MR. MORDFIN: Excuse me. With respect to the
2 practical difficulty, what the applicant is proposing is, you
3 know, they maintain that 2.3-inch side yard and they are,
4 without making that have to conform.

5 However, what is unique about this property, that
6 they have to create that or convert that into a court and
7 that is what I don't see that they've, I don't see what this
8 exceptional situation is that they have to make that into a
9 closed court.

10 And it's a narrow, closed court. And as a result
11 of that, you know, it creates a now dead-ended space and I
12 don't see how that also does not create harm to the zoning
13 regulations by creating such a small, dark space on the south
14 side of the property by cutting off any light that comes in
15 from the west.

16 And that is where, you know, which would then be
17 a detriment to the public good. So that is the issue that
18 I have with this application.

19 CHAIRPERSON HILL: Okay, great. Thanks. That's
20 clear to me. All right. Okay. Does the applicant have any
21 questions for the Office of Planning?

22 MR. SULLIVAN: No, thank you.

23 CHAIRPERSON HILL: Okay. Let's see, does the
24 applicant have any questions for the Office of Planning? I
25 do have one question for the applicant here.

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1 Mr. Sullivan, you keep talking about how this
2 might change in a month and so I'm a little bit confused as
3 to, you know, how is this maybe going to change in a month
4 again?

5 MR. SULLIVAN: We've been told that there is a
6 comprehensive revision of technical amendments to the zoning
7 regulations that we thought were coming out this week.

8 And we're not sure exactly when they're coming out
9 but we know it's imminent and we've been, it's been implied
10 that this relief would, after that revision, be a special
11 exception request where we would be arguing that the minimum
12 width of this court does not impact light and air and
13 privacy, as opposed to arguing the variance test.

14 CHAIRPERSON HILL: Right.

15 MR. SULLIVAN: So procedurally, what I would like
16 to make clear is as first as a matter of timing and
17 efficiency, that if we meet the variance test the Board
18 approves that, but if the Board is not willing to approve the
19 variance test, that we have the opportunity to ask for a
20 postponement pending that change.

21 We didn't want to ask for the postpone yet because
22 of timing issues and because we believe we meet the variance
23 test and I don't think it's that difficult a request.

24 CHAIRPERSON HILL: Oh, that's all right. I just
25 thought, you answered my question, you answered my question.

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1 MR. SULLIVAN: Yes, but I just wanted to clear
2 that up and in case you schedule, a decision --

3 CHAIRPERSON HILL: I mean, the only problem, I
4 don't know how to feel about the whole trying and then trying
5 again but, I mean that's, I mean, just because I don't know
6 how to feel about it.

7 MR. SULLIVAN: It would just be a completely
8 different standard here, so, yes.

9 CHAIRPERSON HILL: No, I got you. I understand.
10 I've figured that part of it out, yes.

11 So is there anyone here from the ANC wishing to
12 speak? Is there anyone here wishing to speak in support?
13 Is there anyone here wishing to speak in opposition?

14 Oh, please. Come forward. There's two of you
15 there. It doesn't matter. You can split it up if you want.

16 Sir, I'm going to start over here with you. If
17 you could just go ahead and introduce yourself and also for
18 opposition, you get three minutes so I'm going to put three
19 minutes on the clock for you and you can begin whenever you
20 like.

21 MR. DENNIS: Okay. Thank you, sir. And to the
22 Board, my name is Ron Dennis and I am an elder and director
23 of communications at Mt. Olivet Lutheran Church, which is the
24 property adjacent to 1310.

25 And at this time we have not been fully apprised

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1 of all the information that we should, not only as the
2 property owner, but as a community person.

3 Now we were told by Mr. Casey ten days ago who's
4 sitting next to me, that it was going to be a five-unit condo
5 and that they were going to have five parking spaces in the
6 back.

7 And when I arrived today and see the permit talks
8 about a nine-unit apartment, that's just part of the problem
9 in the communication that's been given to the church.

10 He also requested a meeting with our church
11 members and some of the community through our congregational
12 president a week ago and he, our congregational president
13 asked for some dates. And as a week ago we have not received
14 any communication from here. But we're here today because
15 this application is moving forward and the community has not
16 been fully contacted or involved.

17 We have had a problem with another piece of
18 property on 14th Street. I know this is not the same but
19 it's the Popeye's on 14th Street. They made it into a condo
20 and the backhoe backed into our reception hall which was over
21 60 years old and damaged the property.

22 And so we went through two years with improper
23 heat and just a sundry of things, not being able to use our
24 property to its fullest extent. So we are very concerned.
25 Mr. Casey also said that they wanted to build, drill down six

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1 feet adjacent to our property.

2 And we're very concerned about something happening
3 to that process because he assured us about lawyers and
4 insurance. But we already went through that about 18 months
5 ago with our church hall where we could not use the facility.
6 So we're very concerned and so this project seems to be
7 moving very fast without total community input.

8 He also showed us a rendering and he said that the
9 rendering would change because the ANC disagreed with the
10 fitting in with the community.

11 And we have not seen a new rendering. But his
12 architect today said that it's changed several times so the
13 community needs to see the rendering each time it's changed
14 in order to be able to fully engage in this process. Thank
15 you for your time.

16 CHAIRPERSON HILL: Thank you, Mr. Dennis.

17 Does anybody have any questions for Mr. Dennis?
18 Sure.

19 COMMISSIONER MAY: I just want to clarify. The
20 church building itself is two properties down but do you,
21 there's a 10,000 --

22 MR. DENNIS: No, it's one property down. That's
23 our property.

24 COMMISSIONER MAY: Okay. Sorry.

25 MR. DENNIS: And it's, our church is next to that.

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1 COMMISSIONER MAY: Sanctuary is two properties.
2 Got it.

3 MR. DENNIS: Yes, we have five lots on that block.

4 COMMISSIONER MAY: But you own that townhouse --

5 MR. DENNIS: Yes.

6 COMMISSIONER MAY: That's immediately adjacent.

7 MR. DENNIS: Yes, sir.

8 COMMISSIONER MAY: Okay.

9 CHAIRPERSON HILL: Okay. So Mr. Dennis, you guys
10 are just, I mean, obviously this isn't going to be I don't
11 think cleaned up today exactly, so there will be some time
12 to do some things.

13 But you're here speaking in opposition to the
14 project itself or you're also just, at this point you're in
15 opposition because you haven't had full discussions yet?

16 MR. DENNIS: No, opposition, well, opposition to
17 the project that has been presented. This is the first time
18 hearing the fullness to this extent of the property.

19 CHAIRPERSON HILL: I see.

20 MR. DENNIS: The conversation with Mr. Casey was,
21 you know, five minutes and on the fly. It was not a
22 structured meeting for that purpose.

23 So the concern is the communication but also the
24 concern is the size of the property. A five-condo unit and
25 a nine-unit apartment building are two different. So what

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1 was presented verbally is not what was on the application.

2 CHAIRPERSON HILL: Okay.

3 MR. DENNIS: So there's a great concern for that.

4 CHAIRPERSON HILL: Okay. And Mr. Dennis, did you
5 happen to go the ANC meeting when they presented this or did
6 anyone from your community go to that?

7 MR. DENNIS: No, we were not knowledgeable of that
8 particular --

9 CHAIRPERSON HILL: You didn't know. Okay.

10 MR. DENNIS: But we will be going now that we know
11 this is on the table.

12 CHAIRPERSON HILL: Okay. Okay. All right.
13 Great.

14 MR. DENNIS: Yes, sir.

15 CHAIRPERSON HILL: Okay. Thank you. All right.
16 Sir, I'm going to turn to you now. If you could again give
17 us your name one more time and again I'll put three minutes
18 on the clock for you.

19 MR. ROBINSON: Bernard Robinson, 1332 Vermont
20 Avenue Northwest.

21 COMMISSIONER MAY: Can you pull the microphone a
22 little closer to you?

23 MR. ROBINSON: Is this close enough?

24 COMMISSIONER MAY: Yes.

25 MR. ROBINSON: Okay. This same development team

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1 developed 1330 Vermont Avenue adjacent to my property and I
2 have immense concerns about the development of the lower end
3 of Vermont Avenue based on my disastrous experiences with
4 this development team, which intentionally misrepresents and
5 obfuscates their plans to confuse the community and to not
6 get any action taken to correct issues that are arising.

7 Mr. May today clearly indicated concern about the
8 lack of context in the drawings. There are no elevations in
9 the drawings contrary to the title or caption in the
10 exhibits.

11 The context doesn't, the plans don't show the
12 south side of the property which is the church property. And
13 in my case, they didn't show any of the adjacent property so
14 I lost a party wall that I'm now in battle with DCRA about
15 and they've gotten two interpretations so far and now they're
16 going to have to come back with a third.

17 My chimneys were blocked on the north side of the
18 property that was being developed. So the context is
19 important.

20 And the ANC, when they had their hearing, the
21 panel noted, the committee noted that the, and some of the
22 witnesses noted that the renderings did not match the actual
23 photographs that were being shown of the property and that's
24 much to the detriment of historic preservation for this
25 building.

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1 If you look at the renderings, it looks like a
2 1950s colonial imitation sitting next door to it when it's
3 actually an elaborate Victorian facade that isn't squatted
4 down on the street but which is higher than represented in
5 the renderings.

6 And the renderings are intentionally
7 misrepresenting the elevations, the heights, the character
8 of the property.

9 The plans change at a whim and you don't know what
10 plans you're looking at. The point was made earlier that the
11 plans aren't dated so you have no idea what you're talking
12 about two months afterwards.

13 And so I think this is a continuation of a process
14 that I'm too painfully aware of already because I've been
15 damaged in many ways. Property's been damaged in many ways
16 by this development team.

17 So I would ask the Board to postpone any decision
18 on this to ask for clarification of all these points to get
19 proper community input from the church that is adjacent to
20 the proposed development.

21 And I also hope that the Board realizes that the
22 same development team owns 1314 to the north of the
23 properties that are the subject of this hearing and we can
24 expect some flexibility in what happens with the development
25 if a variance is offered.

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1 CHAIRPERSON HILL: Okay. Thank you, Mr. Robinson.
2 Does the Board have any questions for the witness?
3 Okay. Great, thank you.

4 (Off-microphone comment.)

5 CHAIRPERSON HILL: No, Mr. Robinson, I'm sorry.
6 So let's see, I did opposition. And does the
7 Board have any questions for the applicant? Okay. I have
8 some stuff we're going to I guess try to work through.

9 Mr. Sullivan, I guess -- I'm sorry? Did you have
10 something? No? So there's a variety of things I guess the
11 Board has kind of asked for now that we'd like to take a look
12 at. I don't know exactly how to move forward with this.

13 COMMISSIONER MAY: Mr. Chairman?

14 CHAIRPERSON HILL: Yes, sure.

15 COMMISSIONER MAY: If you don't mind, I mean, I
16 have some immediate thoughts on moving forward.

17 CHAIRPERSON HILL: Sure, please go ahead.

18 COMMISSIONER MAY: So it seems to me that there
19 is some documentation that's missing and I think in
20 particular in the drawings there are gaps. There are ways
21 in which you can try to make the case that you deserve the
22 relief that you're requesting. And I think you need to do
23 a thorough job in that regard.

24 I also think that it is apparent that some
25 additional outreach to the abutting neighbor in the church

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1 is appropriate. I mean, they have concerns. They may not
2 relate specifically to the requested relief but it certainly
3 doesn't help your case to have them come complaining that you
4 haven't communicated well and so on.

5 Similarly with, I'm sorry, Mr. Robinson, thank
6 you. I mean, if he claims to have significant reason to
7 doubt whether this developer is being a good neighbor in
8 their projects, again, not that that's really a zoning
9 concern, but it is a concern about, you know, some of the
10 things that he said with regard to what's in the drawings and
11 what's being represented and how that's being represented to
12 the ANC and then of course, to us.

13 So I think some further outreach there is probably
14 in order as well. Certainly at the very least, you have to
15 fix the drawings and show the stuff that you haven't shown
16 and show us some of the things that he was concerned about.

17 Mr. Robinson, I think, struck a very reasonable
18 tone here. He was not saying outright that this relief
19 should never be approved but that, you know, you just need
20 to do a little bit better job.

21 And I think that that's what is called for here.
22 if you can present some additional drawings and make the
23 case, we may be able to make a decision in favor. But
24 without that further information, then, you know, your
25 chances are not very good.

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1 I also think that you could do more to try to
2 convince the Office of Planning to support the relief. If
3 you can demonstrate that it truly is a practical difficulty
4 to build this as a matter of right project, you know, you're
5 entitled to, you know, this level of density, this amount of
6 building but how you fit it on the lot is a real concern.

7 And I think if you can explain how fitting it on
8 the lot in these other ways is a real problem, then I think
9 you have a better chance of making your case and you might
10 be able to persuade Mr. Mordfin that the Office of Planning
11 can support it. So I think all of those steps are necessary.
12 So I don't know if you have anything to add, Mr. Chairman,
13 or if you want to change a new direction.

14 CHAIRPERSON HILL: No, no, that's great. No, no.
15 I mean, I appreciate your methodical process. And I think
16 that, I just want before, we're going to keep moving along
17 here. But like if there's anything that Mr. May mentioned
18 that did not get something that any other Board member here
19 was interested in getting from them.

20 I didn't, well, because as far as the applicant,
21 in terms of what you guys presented to the ANC, you presented
22 this project, right. This many units, this many parking
23 spaces, this is what you presented in front of the ANC?

24 MR. CASEY: Yes, this was what was presented in
25 front of the ANC. And with regards to the church, they have

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1 a full set of the drawings.

2 And I think what the misunderstanding may be
3 regarding the five-unit count to the nine-unit count was,
4 there was another gentleman that was in the meeting when I
5 met with the church and they asked about the existing
6 structure, how many units were going to be in there and I
7 mentioned to them five. But the proposed addition was where
8 there is an additional four units. So but I am definitely
9 going to be reaching out to the church and sitting down with
10 them and going over it in much more detail.

11 CHAIRPERSON HILL: Okay. So I guess, Mr. Casey,
12 you know, I mean, I don't know when, well, I don't know when
13 we're going to talk about this. I don't know when you're
14 going to be coming back to us.

15 And I'm actually a little bit stuck still on the
16 variance issue. I mean, Mr. Sullivan, you seem to think that
17 in a month this is going to be a special exception. You
18 don't know what it is, I understand.

19 But what I'm saying is that a month to me, I
20 would've waited a month, right. And so that doesn't make any
21 sense to me, right, in terms of in trying to do this.

22 So when you do come back to us, right, getting
23 something from the church, whatever it is, I'd like to see
24 that you guys had a conversation. You know, because it
25 seems, you know, discrepancy between five and four that was

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1 first presented. But at the ANC this is what was presented
2 to us, okay. So and you're testifying to that fact.

3 So I guess that the drawings, you know, so what
4 should be submitted again to us are all the information that,
5 and Mr. Sullivan, if you've kept track of all of this, you're
6 welcome to repeat it all back to us so that we know for sure
7 what we have asked of you and you know what we've asked of
8 you but, you know, the elevations, the correct drawings of
9 what we have here. And please, if you wouldn't mind just
10 kind of reading back what you think we've asked of you?

11 MR. SULLIVAN: Sure. Thank you. The Board is
12 asking for drawings that show the context of the addition to
13 the building to the south, for one thing.

14 And I think also what the Board is looking for is
15 drawings that show the potential other matter of right
16 options in comparison to what we're asking for with the
17 relief and obviously evidencing the difficulty of those
18 matter or right options or the potential impact otherwise.

19 Elevations, front elevations, which we just didn't
20 think it was applicable to the court relief but we'll submit
21 the elevations.

22 And then drawings that show the potential court
23 issue on the north side as a result of adjusting for the
24 court issue.

25 And of course, reaching out to the church and

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1 confirming with the Advisory Neighborhood Commission that the
2 plans before the Board are the plans that the Advisory
3 Neighborhood Commission approved.

4 MEMBER WHITE: I think there was one more, to also
5 maybe interface with the Office of Planning as well.

6 MR. SULLIVAN: Absolutely, yes.

7 CHAIRPERSON HILL: Okay. And you might as well
8 try to, you know, reach out to Mr. Robinson again just to
9 make sure he has the, you know, just give him the information
10 and it doesn't sound like there's a whole lot of repair you
11 can do there but try to reach out to Mr. Robinson. And I'd
12 like to see something in the record for Mr. Robinson.

13 MR. SULLIVAN: I would just note he lives 230 feet
14 away or more so I'm not really sure how this, on the other
15 side of it, can't see it, doesn't impact him, has no impact
16 on him whatsoever.

17 He has a personal dispute with my client on a
18 completely different matter. And so I'm not sure how we
19 satisfy that. But I don't think it's relevant around --

20 CHAIRPERSON HILL: Okay. I understand. I
21 understand. I'm not actually saying that it is relevant to
22 the, I'm not saying you're going into negotiations or
23 anything with him. If you just send an email exchange maybe,
24 just see if there's -- you talked me into a circle, Mr.
25 Sullivan.

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1 So just reach out to Mr. Robinson and just see,
2 you know, what kind of response you get from him. That's all
3 I'm looking for.

4 All right. Let's see. There's a, let's see, does
5 the Board have anything else?

6 VICE CHAIRPERSON HART: Just one.

7 CHAIRPERSON HILL: Okay. Sure.

8 VICE CHAIRPERSON HART: Just one question. The,
9 I'm not sure who actually said this but the property to the
10 north, 1314?

11 CHAIRPERSON HILL: Yes.

12 VICE CHAIRPERSON HART: Is also owned by the
13 applicant, Mister?

14 MR. CASEY: It's under contract.

15 VICE CHAIRPERSON HART: So and the reason I'm
16 bringing it up is because there was a discussion about
17 whether or not there would be a court issue on the north and
18 that's because of the kind of stepping of the property line.

19 But if you own both properties or about to own
20 both properties, there may be a way to actually move that
21 property line. I'm not saying it's going to be easy but
22 that's something that is out there.

23 And I don't know if that could change some of the
24 calculus that you're talking about. I don't know if anybody
25 else has a --

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1 COMMISSIONER MAY: Well, aren't you already moving
2 the property line to create this request?

3 MR. FOSTER: Yes. The current property line is
4 along the existing north wall of 1310.

5 VICE CHAIRPERSON HART: Yes.

6 MR. FOSTER: So all of the space that has the
7 proposed addition is currently part of 1314. In order to
8 split the lot differently and take the space that's where the
9 proposed addition is and add it to 1310, we have to have that
10 jagged, or jagged, property line in order to maintain a legal
11 court on the back of 1314.

12 VICE CHAIRPERSON HART: That's fine.

13 MR. FOSTER: That line is almost essentially
14 required.

15 VICE CHAIRPERSON HART: That's fine. I just
16 wanted to make sure that we were all clear with that, that's
17 all. Thanks.

18 CHAIRPERSON HILL: Okay. And then also we're just
19 going to make this a, unless the Board has any objection,
20 we're going to continue this.

21 And so therefore I can continue, we can continue
22 to take testimony after people have had a chance to take a
23 look at the record. So those that have been here before to
24 take testimony, we will again have an opportunity to hear
25 from them.

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1 Let's see. Yes. So then, Mr. Moy, when might be
2 a good time I think when Mr. May might be back?

3 MR. MOY: Staff would suggest December 13th, Mr.
4 Chairman. Also, while I have the microphone, and I'm sure
5 the applicant will do this but, with these drawings, it would
6 help this staff and the record if when they submit the
7 updated drawings that it's a complete set, rather than
8 individual sheets.

9 CHAIRPERSON HILL: Okay.

10 MR. MOY: Just a complete one so we know what
11 we're looking at. All right. Thank you.

12 CHAIRPERSON HILL: Okay. All right. All right.
13 So Mr. Sullivan, is that good with you? December 12th, I
14 mean, the 13th?

15 MR. SULLIVAN: Yes.

16 CHAIRPERSON HILL: Okay. Will that be just before
17 the holiday? Is that our last one?

18 MR. MOY: No.

19 CHAIRPERSON HILL: Somebody's like no, there's one
20 more before that. All right. Okay. We're going to take a
21 quick break here.

22 MR. MOY: Mr. Chair, I'm sorry. Do you want to
23 set a deadline for submission?

24 CHAIRPERSON HILL: Yes, please.

25 MR. MOY: A week prior would be December, would

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1 be Wednesday, December 6.

2 CHAIRPERSON HILL: Okay. All right. Okay, well,
3 we're going to take a quick five-minute break. Thank you.

4 (Whereupon, the above-entitled matter went off the
5 record at 11:43 a.m. and resumed at 11:57 a.m.)

6 CHAIRPERSON HILL: All right, Mr. Moy, let's go
7 ahead and get started here, if you would like to call our
8 next case whenever you have an opportunity.

9 MR. MOY: Thank you, Mr. Chairman. Okay, we're
10 back in session and I believe the next case application
11 before the Board is -- if I can have parties to the table to
12 Application Number 19560 of Adam Ross and Peng Wu, caption
13 advertised for a special exception under Subtitle E, Section
14 5201 from the rear yard requirements of Subtitle E, Section
15 20514. This would construct a two-story rear addition to an
16 existing one-family dwelling, RF-1, Zone at premises 1739
17 Harvard Street NW Square 2588, Lot 160.

18 And I believe, if you will recall, Mr. Chairman,
19 at the last hearing, which I believe was October the 4th, the
20 Board granted party status to a Bryan Thompson and Susanne
21 Rinner.

22 CHAIRPERSON HILL: Okay, great. Good afternoon
23 or good morning or whatever. If you could introduce
24 yourselves, please, from my left to right.

25 MR. HALL: I'm Michael Hall, with Studio Crowley

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1 Hall Architects, here on behalf of the owner.

2 CHAIRPERSON HILL: Hall?

3 MR. HALL: Hall, yes, H-A-L-L.

4 CHAIRPERSON HILL: Thank you.

5 MS. WU: My name is Peng Wu. I'm the homeowner
6 at 1739. I'm the applicant.

7 MR. SAUCIER: My name is Nathan Saucier. I'm with
8 Studio Crowley Hall, here on behalf of the applicant.

9 MS. BIGLEY: Alyssa Bigley of Cozen O'Connor,
10 counsel for the party in opposition.

11 MS. MOLDENHAUER: Meredith Moldenhauer from the
12 law firm of Cozen O'Connor, representing Bryan Thompson and
13 Susanne Rinner.

14 MR. RUEDA: Guillermo Rueda with -- in opposition
15 to the architect, in opposition of the property adjacent to
16 the applicant.

17 CHAIRPERSON HILL: I'm sorry, could you say your
18 last name again?

19 MR. RUEDA: Rueda.

20 CHAIRPERSON HILL: Rueda?

21 MR. RUEDA: R-U-E-D-A.

22 CHAIRPERSON HILL: And, Mr. Rueda, you're an
23 architect for the --

24 MS. MOLDENHAUER: He'll be a witness for the
25 opposition.

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1 CHAIRPERSON HILL: I see. Okay. So the person
2 in opposition is here or you're just representing them?

3 MS. MOLDENHAUER: We are representing them. They
4 currently live in Seattle but they still own the property and
5 are very much interested in, you know, obviously what happens
6 at their property and their abutting property owners.

7 CHAIRPERSON HILL: Okay. Thank you. All right,
8 let's see -- So, Mr. Hall, are you going to be presenting or
9 who is going to be presenting for us?

10 MR. HALL: Yes, we thought that Ms. Wu could start
11 with just a statement of her perspective --

12 CHAIRPERSON HILL: Okay.

13 MR. HALL: -- of why they approached this part of
14 the project, then we could talk about the architecture. And
15 I assume that you guys would like us to walk you through the
16 Sun Study.

17 CHAIRPERSON HILL: Yes. Let me just say how we're
18 going to move through this. So you can go ahead and present
19 your case, and you'll have time to do that. Just in terms
20 of us kind of moving through time, I'm going to go ahead and
21 start you off with 10 minutes and move through, you know, the
22 project, what you're trying to do and, in particular, how you
23 meet the criteria for us to grant the relief that you're
24 asking for.

25 And then the opposition will have a chance to

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1 cross-examine anything that you present. And then they will
2 have a chance to present also in the same amount of time that
3 you've had and so, you know, we'll again start everyone off
4 in 10 minutes. You'll have an opportunity to cross-examine
5 them and then we'll hear from the Office of Planning and
6 everybody will have a chance to ask questions of everyone and
7 at the very end, we'll end up back with you. Okay?

8 So if you want to go ahead and start. Again, tell
9 us about the project and how -- what you're asking for, as
10 well as how you believe you meet the criteria for us to grant
11 the relief.

12 CASE IN CHIEF - APPLICANT

13 MS. WU: Thank you, Mr. Chairman and members of
14 the Board. Thank you for your time today. So my name is
15 Peng Wu. I live at 1739 Harvard Street with my family.
16 We've lived there for four years. You know, I want to point
17 out with this project -- is my -- okay.

18 With this project, we are not converting this
19 house into condo units. We're not even adding a rental unit.
20 We are just adding another bedroom and a family room. That's
21 it. We're a young family. I have a young son. This house
22 will remain a single-family dwelling.

23 Now, as for the special exception, we have the
24 right to go back 10 feet on both levels, top and bottom. We
25 are asking for an extra two feet on top and four feet on the

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1 bottom.

2 You know, I have to admit, I am not an expert in
3 this area of law but I consulted the regulations and it seems
4 the operative word under the regulations is unduly affects.
5 What does that really mean? You know, undue -- I looked at
6 a dictionary. Undue means extreme -- is my microphone --

7 CHAIRPERSON HILL: You're fine.

8 MS. WU: Okay. You know, I looked at a dictionary
9 and undue means extreme, excessive, immoderate,
10 disproportionate. This is supported by the legislative
11 history I've found. It seems that when this regulation was
12 first proposed in 2016, the original intent was to guard
13 against excessively disproportionate rear additions.

14 Again, our application is requesting two feet on
15 top, four feet on the bottom. If you grant this special
16 exception, the project will only occupy 34.4 percent of the
17 entire lot, 34.4 percent. This is less than half of the max
18 under the regulations. I really -- it's very difficult for
19 me to see how this is excessive or immoderate or
20 disproportionate.

21 I want to take time to address the opposition from
22 our neighbors. Look, as a homeowner, I've lived here for
23 four years. I'm disappointed that we were not able to get
24 the support from our adjacent neighbors. I would argue that
25 the record is mixed. We have some letters of support. We

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1 have some letters in opposition.

2 As for the adjacent neighbors, before this
3 hearing, about a week before, we made a compromise offer.
4 We offered to pull back to 11 on top and 13 on the bottom.
5 Again, I feel that our initial plans were pretty modest to
6 begin with, so there's not very much room for compromise
7 between 10 and 12. We've offered 11. This was contingent
8 upon them dropping their opposition at the BZA hearing today.
9 They have not taken us up on that offer of compromise.

10 Looking back, I'm not sure what we could have done
11 differently to try to win the support of our neighbors. My
12 statement of outreach, Exhibit 63 describes our efforts which
13 began in early June of this year.

14 We sent emails in early June to four neighbors,
15 two on each side. We described kind of, the general plan we
16 were thinking. It was pretty early on. I mean, at that
17 time, we hadn't even finalized the plans with our architects.
18 We wanted to kind of loop them in pretty early on.

19 We invited them to talk to us or contact us if
20 they had questions. I'm going to be totally honest with you,
21 of the four neighbors we sent that email to, three of them
22 never responded or replied to that email.

23 So in late June, we invited our neighbor, Eric,
24 at 1741 to come over to our house to talk about the project.
25 You know, we sat down, we had tea, we were on the patio. We

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1 showed him the plans. We explained why we were interested
2 in doing it, getting more space for our family.

3 We understood that he had some concerns that he
4 was probably going to oppose. We promised to continue the
5 conversation. My husband went to both ANC hearings to hear
6 the neighbors' concerns and to try to engage with them in
7 conversation.

8 Now our other neighbors at 1737, they have hired
9 attorneys and they've made this a contested hearing. They're
10 absentee landlords. In the four years that I've lived in our
11 home, they have rented the property next to us to three
12 different sets of tenants.

13 We communicated with the owners extensively by
14 email. In August, we even scheduled a long conference call
15 with them and our contractors and architects to try to walk
16 through their concerns about the design and construction.
17 I'm going to be honest, they had a lot of very specific
18 assurances and requests that they wanted from us about the
19 construction process, but it was hard for us to give them
20 that because we weren't even sure what the scope of our
21 project was going to be because we're going through this
22 process.

23 I think -- I recognize that the opposition of the
24 neighbors is one factor. It's an important factor. I don't
25 want to discount it, but it is not "the" deciding factor.

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1 I can sympathize with the neighbors emotions but their
2 passions and emotions and strong opinions, they need to be
3 supported by the evidence that's in the record. So there are
4 a few key pieces of evidence that I want to draw the Board's
5 attention to.

6 First, as I said, the lot occupancy for our
7 project is really very low. It's 34.4 percent. Several Sun
8 Studies have been done in this case. I'm not an expert.
9 I'll let my architects talk about it. To my eye, they show
10 very minimal difference between a project that is 10 feet on
11 top and a project that's 12 feet on top.

12 You know, and then there's been some discussion
13 for the fact that our project is going on at the same time
14 with another project at 1745, so that the two neighbors in-
15 between these two projects will be, you know, "boxed in" by
16 our two projects.

17 I want to point out that -- and I think the Office
18 of Planning also pointed this out in their report at Exhibit
19 39, that the houses on Harvard Hill are actually staggered,
20 so that our neighbor at 1741, his house is actually staggered
21 to the north by about two feet.

22 So that relative to him, our project is only ten
23 feet on top and twelve feet on the bottom. Now the neighbor
24 next to him, his house is also staggered to the north by a
25 few feet. So the impact of our project relative to him will

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1 be even less. We've tried to show this is in Exhibit 70.

2 I think the ANC resolution here -- we have the
3 support from the Office of Planning. The ANC resolution, I
4 think they failed to consider the low percentage of the lot
5 occupancy in this case. They didn't consider the setback of
6 the houses at 1741 and 1743, which decreases the impact of
7 our project to them. And then the ANC's resolution didn't
8 analyze the numerous Sun Studies that have been done in our
9 case.

10 You know, I want to conclude by saying, we're
11 willing to accept the Board's decision today and we want to
12 kind of, you know, turn a new page with our neighbors.
13 Again, I've lived here for four years. I know them. They
14 know me. Before this process started, I would say we were
15 all pretty friendly and, you know, I would be lying if I
16 didn't acknowledge that this process has changed the
17 atmosphere of the neighbors on the row.

18 Our intent behind this renovation was to stay for
19 the long-term as a young and growing family. That's no
20 longer, you know, a very attractive proposition if our
21 neighbors hate us at the end of this process. And we're --
22 you know, my husband and I, we're really, really aware of
23 that and, you know, I hope the neighbors here today also see
24 where we're coming from and we don't really have any
25 malicious intent. We really want to continue to work with

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1 them as the process moves forward. I will now turn to the
2 architects to present some parts about the project.

3 MR. HALL: Thank you. So, yes, Nathan, let's look
4 at the architectural plans. We'll start with those. Excuse
5 me. So when Adam and Peng, the owners, had approached Studio
6 Crowley Hall, my wife and I are the partners of that firm,
7 one of the things that they identified initially was when we
8 looked at options of -- at that time, it was before the Ten-
9 foot Rule was implemented, so we were looking at other
10 options.

11 And then we talked about lot occupancy and those
12 types of things. And, honestly, the addition that we see
13 here is not wildly different than the one that they wanted
14 to pursue. They were very focused from the outset of not
15 building more than what they thought that they needed.

16 And even on the second floor, which, instead of
17 pushing it out, pulling it back to create some relief and to
18 not, you know, for a growing family, not to add a second
19 bathroom up there, which, for an architect, we're like, this
20 is an opportunity to do that -- again, not knowing about the
21 Ten-foot Rule at the time because it wasn't out yet -- they
22 were very focused on that.

23 So we've then taken this design and massaged it
24 there, but the initial design itself was laid, started off,
25 on the second floor, working from the inside, laying down a

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1 queen-size bed with side tables with a little bit of space
2 in the closet on the end and sizing the addition based on
3 that rather than including -- again including a bathroom or
4 something like that -- on the first floor, to create a family
5 room that was comfortable enough for a sofa, chairs, and to
6 flow to the back yard.

7 And that was the basis of how the footprint of the
8 design was set up. We also looked at this design, that
9 setback between the upper and lower, to try to create a
10 relief so this doesn't feel like a box in the back of the
11 house and to use that relief also to -- our plan is to add
12 for that overhang piece that we have, make that into a green
13 roof to help break it down.

14 On the elevations -- Nathan, can you switch to
15 those please? And could you give me one of the perspective
16 views?

17 CHAIRPERSON HILL: And, Mr. Hall, while you're
18 talking, you know, just to let you know, you're at ten
19 minutes now, so I just want to kind of keep us moving along.

20 MR. HALL: Okay. I'll wrap up this architecture
21 conversation and then I'll trust that the Board will ask more
22 in-depth questions.

23 CHAIRPERSON HILL: Yes. We'll ask questions, I
24 would think.

25 MR. HALL: The main thing that shows up here,

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1 that's different than when we first started, when Peng and
2 Adam started working closely with the neighbors and then,
3 particularly, at the adjacent neighbor that was concerned
4 about how the mass would break up between the top and the
5 bottom -- on the conference call that she was referring to
6 that we had in August, I think, with the neighbor, was
7 interested in having brick at the lower level to help create
8 continuity.

9 So we integrated that and then we took -- we tried
10 to create a break between the lower and the upper using, you
11 know, fascia board, gutter, things like that to sort of
12 create that just to sort of soften the overall form.

13 So it was a combination of those different factors
14 of how we laid it out from the interior with the furniture
15 that, to me, that work, ten feet being a fairly tight thing
16 to design with. I'll stop there for you.

17 CHAIRPERSON HILL: Okay, great. Thanks, Mr. Hall.

18 MR. HALL: Yes.

19 CHAIRPERSON HILL: All right, does the Board have
20 any questions for the architect or the applicant?

21 VICE CHAIRPERSON HART: Just one and that's -- Ms.
22 Wu, you said that there was -- that you proposed a 11- and
23 13-foot, if I got that right, expansion instead of what your
24 -- instead of what we have as our Exhibits, but you only
25 proposed that to the neighbors. You're not suggesting that

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1 --

2 MS. WU: That was an effort to settle before the
3 neighbors. So I think you can see the communications on
4 Exhibits 60 and 61.

5 And, you know, the intent of that was again, to
6 try to be reasonable and also frankly, to avoid this kind of
7 adversarial hearing with our neighbors in opposition. We
8 understood there was strong opposition. So we said the offer
9 was contingent upon them dropping their opposition at the BZA
10 hearing. I guess I felt 12 -- you know, it's really two
11 feet. What's less than two feet? One. We offered 11. I
12 thought it was reasonable.

13 VICE CHAIRPERSON HART: Thank you.

14 CHAIRPERSON HILL: Okay. All right, let's see now
15 -- so, Ms. Wu, are you an attorney?

16 MS. WU: I don't like to --

17 CHAIRPERSON HILL: No, I'm just asking if you're
18 at attorney.

19 MS. WU: Yes, I am.

20 CHAIRPERSON HILL: Okay. There's plenty of
21 attorneys in the room. You don't have to be ashamed of it.
22 And so, you know, you're an attorney, because I'm just
23 letting you know, you sound very good. You've done a lovely
24 job. I understand you're not a zoning attorney. We see a
25 lot of people that are really, you know, completely confused,

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1 and so at least, you kind of sound pretty good, which is
2 great. I'm being complimentary.

3 So now I'm going to turn to the opposition, who
4 I know is an attorney --

5 MS. WU: Okay.

6 COMMISSIONER MAY: Mr. Chairman --

7 CHAIRPERSON HILL: Oh sure, of course.

8 COMMISSIONER MAY: I do have one question. Did
9 you actually look at doing an addition that was compliant
10 with existing zoning, I mean a ten-foot addition?

11 MR. HALL: Once that rule came out and I informed
12 -- we talked to the clients about that. We did go back and
13 look at the layout- of what we did at ten feet, how the
14 second floor got a little tighter. We then consulted with
15 Office of Planning to try and find out what the intent of the
16 rule was and they talked about the special exception process
17 we've been through before.

18 At that point, we felt that the ten feet,
19 especially on the ground floor family room level was just
20 tight enough that asking for relief of the special exception
21 seemed reasonable. So we did look at it.

22 The tightness of the first floor in terms of just
23 creating a family room that was worthwhile, as an architect,
24 you might appreciate this but you know, a family room
25 addition, especially for a narrow row house, the difference

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1 between 10 and 14 with furniture and moving people through,
2 it's a subtle thing but it is --

3 COMMISSIONER MAY: Yes, I appreciate that. I mean,
4 actually, it might have --

5 MR. HALL: I'm sorry.

6 COMMISSIONER MAY: It might have been worth seeing
7 the difference on that to understand the need for the relief
8 and, I mean, you know, I live in a town house and I have some
9 very narrow rooms, so I can -- you're not going to win an
10 argument with me that you can't have a 9 by 16 family room
11 because I have one, you know, so --

12 MR. HALL: You can have --

13 COMMISSIONER MAY: -- but it's driven by the
14 individual circumstances of the house and I understand that
15 --

16 MR. HALL: Yes.

17 COMMISSIONER MAY: -- so that's why it's --

18 MR. HALL: So the idea was to create enough
19 breathing room for --

20 COMMISSIONER MAY: Yes.

21 MR. HALL: -- the layout and for what -- well, how
22 do you make it fit and then just add that small three to five
23 percent to add it, give it.

24 COMMISSIONER MAY: Yes.

25 MR. HALL: So it's not too much. You're just

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1 trying to make it just comfortable enough.

2 COMMISSIONER MAY: Are you actually removing the
3 back wall or are you --

4 MR. HALL: No.

5 COMMISSIONER MAY: -- or are you keeping it more
6 or less intact and just stays the same on the outside?

7 MR. HALL: The back wall pretty much stays intact
8 as their main structure and this goes on the back. So, for
9 example, the first floor you can see --

10 COMMISSIONER MAY: Yes.

11 MR. HALL: -- that there's two existing doors that
12 create passageways to the rear and then the --

13 COMMISSIONER MAY: Right. And then is that
14 actually a bearing wall on that house?

15 MR. HALL: For the roof structure only, but not
16 for the floor structure.

17 COMMISSIONER MAY: All right.

18 MR. HALL: So if you did want to head it off, we
19 could. It's not particularly difficult to do.

20 COMMISSIONER MAY: No.

21 MR. HALL: The only thing you have to watch out
22 for is bracing.

23 COMMISSIONER MAY: Right.

24 MR. HALL: Yes.

25 COMMISSIONER MAY: Okay. Thank you.

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1 CHAIRPERSON HILL: Okay, thank you. I'm just kind
2 of making some comments, I suppose, in hearing the testimony,
3 which is that we hear a lot of people -- this is what comes
4 before us, often, with neighbors opposed to each other and
5 neighbors opposed to things that are going on.

6 And so I would like to, again, just kind of make
7 a comment to the people that are going to testify, you're
8 also the applicant. You know, we're trying to be as civil
9 and as relaxed and as cordial as possible and we're just here
10 to hear the evidence and how it applies to the standards to
11 grant the relief.

12 And so I'm just kind of throwing that out, that
13 we're all just going to try to calmly go through this. I
14 know you finally got to this point but I'm going to make this
15 as drama-free as possible, is what I'm trying to get at.

16 So with that, as I turn over to the party in
17 opposition, do you have any questions for cross in terms of
18 what was presented?

19 MS. MOLDENHAUER: Yes, thank you. Just a few
20 minor questions. We can either go to the Exhibit that's on
21 the screen or we can, then, just simply go to Exhibit 32 in
22 the record. These are questions for either Mr. Hall or the
23 other architect.

24 CHAIRPERSON HILL: Ms. Moldenhauer, you might want
25 to lean in just a little bit there to the --

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1 MS. MOLDENHAUER: Sorry. I don't know if these
2 new microphones --

3 CHAIRPERSON HILL: Yes, they're really -- I know.
4 They're difficult to understand and I hate to use the word
5 lean in again but --

6 MS. WU: 32 says to --

7 MS. MOLDENHAUER: So Exhibit 32, and if Mr. Hall,
8 the architect, can just confirm that there are no dimensions
9 shown on Sheet A006 for the actual depth of the protruding
10 garden patio roof deck.

11 MR. HALL: I don't see dimensions in this drawing.
12 No. That is correct.

13 MS. MOLDENHAUER: And then on your newer Exhibit
14 70, which I think was one of the -- we just had up a second
15 ago.

16 Can you also confirm that there's no dimensions
17 shown providing the actual full depth of that patio, roof
18 green area?

19 MR. HALL: So you're asking if it's on this
20 drawing, that dimension on there? I don't see a dimension
21 on this particular drawing. No.

22 COMMISSIONER MAY: Can I cut to the chase? What's
23 the dimension of that?

24 MR. HALL: Four feet.

25 COMMISSIONER MAY: Thank you.

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1 MR. HALL: It's on one of the other drawings.

2 COMMISSIONER MAY: Is there any reason why it's
3 meaningful that it's not on the drawing?

4 MS. MOLDENHAUER: There are some questions as to
5 whether it's then shown as -- we'll have testimony from our
6 architects about the --

7 COMMISSIONER MAY: All right, well that's fine.

8 MS. MOLDENHAUER: -- Sun Studies -- well, I mean
9 --

10 COMMISSIONER MAY: But, I mean it's a little
11 faster if you just ask them what the dimension is if it's not
12 shown.

MS. MOLDENHAUER: We will continue with cross
13 and so, let's see here. The depth -- can you provide the
14 dimensions of the windows that go onto that green space?

15 MR. HALL: Let me make sure I understand your
16 questions. You're asking me do I know the --

17 MS. MOLDENHAUER: You have windows -- the large
18 windows that are shown on the third floor --

19 MR. HALL: Correct.

20 MS. MOLDENHAUER: -- that then go out towards --
21 that lookout towards that green space.

22 MR. HALL: Yes. There's two windows up there in
23 the bedroom.

24 MS. MOLDENHAUER: Can you confirm the dimensions
25 of those?

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1 MR. HALL: Nathan you drew those. Can you give
2 a basic dimension on those windows? I'm guessing those are
3 three by -- like three by six windows, two sets of three by
4 six windows. We can verify dimension for you if you'd like.

5 MS. MOLDENHAUER: And then the last question I
6 have just is for Ms. Wu, you indicated that, sorry, that you
7 offered a settlement but you never provided plans that showed
8 a reduced dimension?

9 MS. WU: I think it's correct. I think it's not
10 difficult to imagine a room that's one foot less.

11 MS. MOLDENHAUER: I'm just confirming that you
12 didn't provide plans.

13 COMMISSIONER MAY: You know, for a lawyer, you
14 should understand you only answer the question that's asked.

15 MS. WU: I'm sorry. I'm not a very good lawyer.

16 MS. MOLDENHAUER: And then another question, you
17 indicated that my clients had engaged you in the process very
18 early on, talking about issues about construction management.
19 Did you re-engage that conversation when you proffered this
20 reduction?

21 MS. WU: Actually, yes, I think I did. If you look
22 at Exhibit 60, we sent an email to them. We offered the
23 reduction and we offered then to set up more conference calls
24 with our architects to discuss some things about the
25 construction and then moving forward, they want something in

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1 writing about the construction process. I think you can see
2 that in the email.

3 CHAIRPERSON HILL: Okay, okay. All right. Okay.

4 MS. MOLDENHAUER: No other questions.

5 CHAIRPERSON HILL: Okay, okay, great. Thanks.

6 All right, so Ms. Moldenhauer, we're going to go do the same
7 thing with you. They had eleven and a half minutes. We're
8 going to go with eleven and a half minutes, and please begin
9 whenever you like.

10 MS. MOLDENHAUER: I've got a copy of this I can
11 provide to the Board as well. My name is Meredith
12 Moldenhauer from the law firm of Cozen O'Connor. The
13 applicant is seeking a special exception to prevent the
14 construction of a two-story rear addition to an existing one-
15 family dwelling.

16 The proposed project would extend four more feet
17 from the permitted ten feet beyond the far rear wall of the
18 client's dwelling, plus an extra potentially four feet eight
19 inches or more for the roof garden or balcony.

20 The requested relief therefore is 40 percent in
21 excess of what is permitted as a matter of right. The
22 proposed addition will be 16 feet wide by 11 feet long, which
23 will be adding more than 53 percent to the property.

24 As such, we contend that given the properties
25 specific conditions, the applicant cannot meet its burden of

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1 proof to overcome a presumption of inconsistency with the
2 intent of the purpose of the zoning regulations. It does not
3 meet the test or a test of undue impact on the adjacent
4 property owners, my client, Mr. Thompson and Ms. Rinner.

5 For the context, most of the home owners in this
6 neighborhood live in modest sized homes on modest sized lots.
7 Nearly all the homes on Harvard Street, specifically within
8 the 200-foot radius of this application, are the same exact
9 width. And I think that, that's very important
10 distinguishing it from other cases. They are all 16 feet
11 wide and nearly all about the approximate, the same length
12 of 120 feet long.

13 Many of these homes are subject to square,
14 rectangular rear gardens, which are private in nature and
15 help to offset the fact that there is a 20-foot rear parking
16 pad and a well-utilized alley in the rear. And despite the
17 significant setback on the Harvard row homes, the front
18 property line, that portion of the lot has an extreme
19 topography limiting the ability to obviously utilize some of
20 that front portion of the lot, which I think goes to Ms. Wu's
21 comment about the lot occupancy. This is a unique condition.

22 Therefore, the rear garden serves as the only area
23 for many families on this square to utilize and enjoy the
24 outdoor space. The patios are also a feature of amenities
25 of the residents and which will have to deal with traffic and

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1 other aspects of Harvard Street. My clients particularly
2 enjoy the view in the patio and, in this function, as outdoor
3 rooms during the warm weather months when they owned and
4 lived in the property and continue to own it.

5 Directly quoting from an Order 18830, the Board
6 is required to evaluate each project on its own merits to
7 determine compliance of the applicable standard of the zoning
8 regulations. Although the Board must apply the same special
9 exception standard, the standard is specifically evaluated
10 based on the relief on each property as different and as a
11 unique condition and must be considered when evaluating the
12 applicant when the applicant meets the burden. Each case
13 must stand on its own merits and each application must
14 satisfy all of the elements of relief.

15 Here, the applicant requests a 14-foot extension
16 into the rear yard. In evaluating whether this proposed
17 projection would have an undue impact on neighboring property
18 owners, the Board should consider the applicant's rear yard
19 and green space, and that of the neighbors in fact are quite
20 small. The parking pad that line the alley further reduce
21 the remaining green space that are available to these homes.
22 After the proposed addition, only 17 feet of green space
23 would remain on the applicant's property.

24 The Board should evaluate this case in the unique
25 context because the other cases in which this is the same

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1 area of relief was requested, had a relatively low impact on
2 abutting property owners. For example, Ms. Wu, in their
3 recent filing, referenced other cases similar to Case 18548
4 in which the Board decided last week.

5 In that instance the neighboring properties were
6 all of varying widths and varying depths of rear yard,
7 reaching an excess in those instances of 50 feet, which is
8 very different than this area and this property. In
9 comparison, my clients' rear would be unduly impacted by the
10 shadow imposed by the proposed addition, particularly because
11 of the green space that's already at a premium and is very
12 limited.

13 As I previously stated, all but one of the lots
14 on Harvard within the 200 feet have -- the applicant's
15 property are physically similar. They have similar
16 dimensions, creating the same concerns. This is an extremely
17 unique condition, one which is a factor with which the Board
18 should evaluate this case. As such, the applicant's house
19 currently has the same rear wall and depth as my client's
20 house.

21 The applicant seeks to replace my clients' view
22 of the sky with a large 14-foot long addition that is two
23 stories of an expansive wall with no additional design
24 elements other than single strip. The impact of that is
25 irrefutable and is, in this fact, permitted as such an

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1 exception is not consistent with the intent and purpose of
2 the zoning regulations.

3 The purpose of extension does not meet the
4 regulations for special exception. Special exceptions may
5 be appropriate in some instances. In this case, which is
6 evaluated on its merits, we believe it is not warranted.

7 The key zoning regulation here is 205(e), 205.4,
8 which limits the rear yard. Again, this is a 40 percent
9 increase beyond what is permitted as a matter of right. It
10 is difficult in this context to prove no undue adverse impact
11 on my clients' property as required by the zoning
12 regulations. These negative impacts include view from the
13 indoor and the outdoor living areas, which we'll have
14 testimony in advance, as well as light and air and privacy.

15 Moreover, I draw the Board's attention to the
16 proposed canopy or green roof, which I had questions about
17 earlier. On the contrary, this canopy is, in fact, regarded
18 as a green roof and nothing more would require consistent
19 attention to this by the applicant, which would result in an
20 impact of privacy by my client and the current use.

21 They are also -- my clients are also concerned
22 that these large wide windows of the proposed rear wall of
23 the addition will serve as access to this canopy and will
24 likely become a de facto balcony. Should this be the case,
25 my clients' privacy will be disproportionately and unduly

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1 impacted. Consequently the impact of the proposed additions
2 are clearly undue.

3 Although the applicant has filed numerous updates
4 of the Sun Study in the record, my client commissioned its
5 own architect to review and analyze both the plans and the
6 Sun Study.

7 I will now turn to provide additional testimony.

8 MR. RUEDA: Thank you. So I do need to have
9 access to the laptop at some point so either I can do it
10 midway through or --

11 MS. MOLDENHAUER: Can we pause the timer and kind
12 of relocate?

13 CHAIRPERSON HILL: Mr. Moy, could you pause the
14 time for a second? You guys can take the -- help -- I don't
15 know. Actually sir, you can just sit there and if you guys
16 wouldn't mind just switching places or just sit right next
17 to him there and maybe plug it in. I'm not really sure. I
18 am not particularly tech savvy. Okay, before we start the
19 timer again, is all this in the record?

20 MS. MOLDENHAUER: This is rebuttal testimony so
21 we'll file it into the record.

22 CHAIRPERSON HILL: Okay. Sir, go ahead please.
23 Mr. Moy, if you could start the clock again.

24 MR. RUEDA: Good afternoon. My name is Guillermo
25 Rueda and, as I stated, I'm an architect. And I was asked

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1 to review the BZA application for the rear addition at 1739
2 Harvard Street, which projects beyond the 10 foot that's
3 allowed. We were asked also to prepare additional shadow
4 studies and our conclusions were made using those studies.
5 The applicant's exhibits, review of the OP reports and --

6 CHAIRPERSON HILL: Are you plugged in? Are you
7 showing us anything? I don't see anything.

8 MR. RUEDA: I'm not showing you anything yet --

9 CHAIRPERSON HILL: Oh, okay.

10 MR. RUEDA: Is that okay?

11 CHAIRPERSON HILL: Sure, yes. I don't know. You
12 are plugged in so I didn't understand.

13 MR. RUEDA: Well I -- so my analysis I want to
14 give a --

15 CHAIRPERSON HILL: Okay, okay, sure, sure.

16 MR. RUEDA: Do I get 30 more seconds now?

17 CHAIRPERSON HILL: Yes. Don't worry. We'll all
18 -- it will all work out in the end, but I appreciate it. I'm
19 not completely that anal but thanks.

20 MR. RUEDA: Sorry. So went to the site, reviewed
21 all the reports and things that we were given. So what we
22 did was we sought to isolate the effect of the addition, more
23 specifically in relation to the property adjacent at 1737 to
24 the east. But this effect can be seen and extrapolated up
25 and down the row.

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1 The Exhibits for this proposal, in my opinion, are
2 not clear in their full intent with regards to the projecting
3 green roof. This feature overhangs beyond the addition at
4 least four feet, depending on how you scale the drawing
5 because there isn't a dimension that I found on the drawings.
6 And this overhangs at the second story so a full story above
7 the grade.

8 This gives the application a total projection of
9 18 feet from the rear existing wall, thereabouts. The plans
10 and elevations differ in their representation on this feature
11 that will cast additional shadows.

12 And to the point of clarity, the newly submitted
13 plans add confusion by dimensioning the stated maximum
14 projection of the addition of the second and third floors to
15 the inside face of the exterior wall.

16 This confusion becomes evident in review of OP's
17 1030 report that refers to a two-foot planting shelf, the
18 second floor. Adding this two feet to the 12-foot projected
19 addition of the third floor, adds up to 14 feet, which is the
20 only maximum that they state -- the only maximum that the
21 applicant states in their drawings. They never refer to the
22 canopy by dimension.

23 So, in other words, the OP report does not take
24 into full account the effect of the proposed 14-foot
25 addition, which actually has a four to five foot planting

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1 shelf, depending on how you scale the drawings.

2 Therefore, this report could not fully explore the
3 additions' total effect on light and air on a northern
4 exposure, which is especially precious given that it's
5 predominantly indirect light in nature and only subject to
6 direct exposure at the extremes of the summer solstice.

7 The OP report is therefore correct in stating that
8 the effect of the proposed addition is predominantly felt
9 from March to September. But I would actually disagree with
10 the statement that the report makes. And I quote, "At no
11 time of the year would either a by-right addition or the
12 proposed addition cast any new shadows on the face of the
13 houses to the east or the west or those nearby because the
14 north-facing rear walls are already in shadow under existing
15 conditions.

16 To the contrary, the videos that I prepared that
17 show the shadows, which I'm going to show forthright here,
18 shows you how the additions unduly affect their neighbors.
19 Also, the effects of the proposed addition on the alley
20 should not be minimized in the winter when shadows are
21 extended. The amount of sun, shade is critical for melting
22 snow after ice storms.

23 So we reviewed their analysis and found that the
24 actual occupancy is about 40 percent. They didn't calculate
25 the roof areas at the front or the back of the house. The

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1 calculations were also a little bit shy on the existing shed,
2 so our actual calculation for lot occupancy was 40 percent.
3 It's a small difference but it's a difference.

4 The elevations and perspectives don't seem to take
5 in the fact that there's topography change on this row, which
6 is referred to as Harvard Hill. And there's an actually a
7 difference in elevation of about two feet between 1739 and
8 1741. And as I stated before, there are some graphic
9 discrepancies in the elevations of the roof that, depending
10 on how you measures its projection from the existing rear
11 wall vary, between 18 feet and 19 foot.

12 VICE CHAIRPERSON HART: Okay. Mr. Rueda, I'm
13 sorry. I'm being a little bit a parent of time, like I don't
14 want you to get too far over, so --

15 MR. RUEDA: No.

16 VICE CHAIRPERSON HART: -- you want to go ahead
17 and start the items that you wanted to show us?

18 MR. RUEDA: So we looked at spring, summer, and
19 winter. I can go over spring and summer really quickly. We
20 looked at these in plan. We isolated the addition. And in
21 this slide, you can see that at about 2:45, the 10-foot
22 addition starts clearing the property, and the proposed
23 canopy and addition added about two hours of shade to the
24 neighboring property to the east in the afternoon.

25 VICE CHAIRPERSON HART: And what size is the

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1 canopy that you've included?

2 MR. RUEDA: So I included the two-foot addition
3 at the top. And we've modeled the two-foot addition at the
4 top, the four-foot addition at the bottom, plus the
5 projecting four-foot canopy.

6 VICE CHAIRPERSON HART: With a total of?

7 MR. RUEDA: Eighteen feet total.

8 VICE CHAIRPERSON HART: Yes, it's actually 16 feet
9 but that's why we're -- I'm looking at the drawings and they
10 actually say that it's 16 feet.

11 MR. RUEDA: In the plan. Is this the new plan?

12 VICE CHAIRPERSON HART: In the plan that they
13 provided on --

14 MR. RUEDA: Exactly. So when I reviewed this last
15 week --

16 VICE CHAIRPERSON HART: -- it's the same.

17 MR. RUEDA: -- it was not there, and --

18 VICE CHAIRPERSON HART: That's okay.

19 MR. RUEDA: Okay. So, yes, I reviewed it at 18
20 feet.

21 CHAIRPERSON HILL: Do you have a video?

22 MR. RUEDA: I do.

23 CHAIRPERSON HILL: Okay, let's go to the video.

24 MR. RUEDA: So the video pauses at 12 o'clock.

25 It shows the impact of the addition. It starts to actually

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1 have quite a bit of effect on the 1737 property. And even
2 at 4 o'clock, the canopy is still on the property and only
3 clears the property about 6 o'clock, about two hours beyond
4 the time that the 10-foot addition would have cleared.

5 CHAIRPERSON HILL: Okay, okay. Is there anything
6 else?

7 MR. RUEDA: I can submit the other Exhibits to the
8 record. If I can submit them to the record then --

9 CHAIRPERSON HILL: Yes, sure.

10 MR. RUEDA: -- you can basically --

11 CHAIRPERSON HILL: We're going to have questions
12 for everybody but, I mean, you can play the video again
13 actually, if you wouldn't mind, real quick.

14 MR. RUEDA: I'll show summer. So you can see the
15 sun's higher in the sky. The shadows are obviously not as
16 projected but is -- as you can also determine in March and
17 in September --

18 CHAIRPERSON HILL: Got it. Okay.

19 MR. RUEDA: -- the additional canopy does extend
20 the shadow about two hours.

21 CHAIRPERSON HILL: I think we'll have some
22 questions about the canopy so --

23 MR. RUEDA: If you pull back the canopy, it's
24 about an hour's worth of gain.

25 CHAIRPERSON HILL: Okay. All right, let's see.

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1 Yes, if you can submit all that into the record please.

2 MR. RUEDA: Yes.

3 CHAIRPERSON HILL: Ms. Moldenhauer, do you have
4 anything else?

5 MS. MOLDENHAUER: I do. I have additional
6 testimony regarding concerns of alternative design that I
7 think was mentioned by Commissioner White and by Commissioner
8 May but I also have a written copy in my testimony that,
9 given the time, I can also submit because I'd like to have
10 time.

11 My client, who is not able to be here, I don't
12 believe that they are absentee landlords. They are people
13 that obviously care about their property and took the time
14 to hire and retain counsel. They had provided a written
15 testimony that I'd like my associate to read into the record.
16 That won't take more than just about two -- a minute maybe.

17 CHAIRPERSON HILL: Okay.

18 MS. MOLDENHAUER: And then we can provide that.
19 Thank you.

20 CHAIRPERSON HILL: Okay.

21 MS. BIGLEY: This was prepared by the -- by
22 Susanne and Bryan themselves. So, to the Board of Zoning
23 Adjustment. Our property at 1737 belongs to a unique row of
24 homes on Harvard Street Northwest.

25 These houses were designed by award-winning

1 architect, Joseph Abel, who was both prolific and revered for
2 his international style. His architecture can be seen
3 throughout the D.C. area, notably the historic Broadmoor
4 Cooperative and the Omni Shoreham in Woodley Park.

5 These houses face into a beautiful wooded area
6 overlooking Harvard Street and descending to Rock Creek Park
7 and the National Zoo. These houses offer a rare mix of
8 modern urban living, wooded views and access to the park.
9 They are centrally located with fast and easy access to
10 transport, dining and shopping including two nearby farmers
11 markets.

12 The front of the houses on Harvard Street provides
13 direct walk out access to Adams Morgan. The rest of the
14 houses have off street parking and direct walk-out access to
15 Mount Pleasant. Major bus lines, Metro and Rock Creek,
16 provide convenient access to other parts of the city, and
17 Maryland and Virginia.

18 As originally designed and developed, there is
19 ample light and air in the rears of these properties.
20 However, these homes have a relatively narrow lot size.
21 Access to light and air is threatened by multi-story
22 extensions. The images below illustrate the views before and
23 after such extensions and may help to clarify the
24 significance of deep multi-story extensions.

25 In contrast, a number of one-story extensions and

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1 even one-up/one-down extensions have been made. Such a
2 design is possible here and would produce a similar net gain
3 and space while being more considerate of the impact to
4 abutting property owners. These designs of one-up/one-down
5 blend in without causing undue impact and harm to their
6 neighbors.

7 Our goal was never to prevent Peng and Adam to
8 exercise their rights as owners of their property. However,
9 as adjacent neighbors, we feel we have rights too.
10 Additionally, we would like to emphasize that we remain very
11 active and connected to the block. Although we do not live
12 there now, we hope to be able to move back to Harvard Street
13 at some time in the future should our lives and jobs permit.

14 We remain in close contact with the other home
15 owners and residents and care deeply about our property. We,
16 therefore, request that the Board consider our concerns and
17 find that the applicants do not meet the standard for relief.

18 And I'd be happy to walk through the remaining
19 photographs.

20 CHAIRPERSON HILL: No. That's okay.

21 MS. BIGLEY: Okay.

22 CHAIRPERSON HILL: We're good. That's in the
23 record. Okay.

24 MS. MOLDENHAUER: So we'd just like to end then
25 by indicating that, based on the concerns raised by Mr.

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1 Rueda, as well as in regards to the plan design, the
2 dimensional limitations, and then the concerns about the
3 impact on the Sun Study, if you actually show the additional
4 canopy and roof garden, we believe that the applicant does
5 not satisfy the standard.

6 We also obviously would like the Board, as the
7 Board is aware in the record, there is an ANC resolution.
8 The applicant tried to question the ANC's resolution as to
9 what was considered. The ANC heard the case twice, and we
10 believe the Board should consider that as communities are
11 evaluating this new standard and trying to wrestle with it.
12 I think that the ANC did consider it and evaluated all the
13 factors that they had in the record and provided great
14 weight.

15 That being said, we will be available for
16 questions.

17 CHAIRPERSON HILL: Okay. All right. I'm going
18 to go to questions now. I'm just letting, you know, letting
19 the opposition -- you guys got a full six and a half minutes
20 more than the applicant so just kind of throwing that out in
21 case it comes up later.

22 So let's see, does anybody have -- does the Board
23 have any questions of the opposition at this point?
24 And a dead calm falls over the Board.

25 COMMISSIONER MAY: So, I'm sorry. The architect,

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1 Mr. Rueda.

2 MR. RUEDA: Yes, sir?

3 COMMISSIONER MAY: I'm sorry. Maybe it wasn't --
4 maybe it was Ms. Moldenhauer. Somebody called the extended
5 little bit of roof, a de facto balcony and that is based on
6 your extensive understanding of how people regard green
7 roofs? I mean, explain to me why you think it's going to
8 become a balcony.

9 MS. MOLDENHAUER: In working with other property
10 owners and with working with the zoning administrator, I
11 think that there are a lot of times where once you build
12 something, the ability potentially if there is not a
13 condition on it or other type of restrictions, to then
14 potentially utilize something in a way that it wasn't
15 initially intended.

16 For instance, I'll give you an analogy,
17 Commissioner May. You know, there has been recent discussion
18 with the zoning administrator about the ability to kind of
19 put in a wet bar and too many kitchens and how easy it for
20 someone to simply kind of plug in an additional, you know,
21 element and then utilize something inappropriately.

22 I think that, you know, given the depth and the
23 size of this and the fact that the windows are quite large,
24 one, you need to maintain that to maintain a green roof and
25 to maintain planting.

1 COMMISSIONER MAY: How much do you know about --
2 what do you know about maintaining green roofs?

3 MS. MOLDENHAUER: That they do take extensive
4 time. It depends on how they are built, and obviously, it --

5 COMMISSIONER MAY: I'm not sure that they do take
6 extensive time. I mean, everyone that we review in the
7 zoning commission, they were always telling us that they
8 don't require that much maintenance, that they put in stuff
9 that is -- does not have to be weeded constantly and things
10 like that.

11 MS. MOLDENHAUER: And I think that there's a
12 difference between zoning commission cases and a private
13 owner.

14 COMMISSIONER MAY: It's still the same stuff.
15 You're still planting the same sedum and everything else.
16 Right?

17 MS. MOLDENHAUER: I'll let also my architect
18 respond to this specifically. Do you want to add something?

19 MR. HALL: I mean, there's no description of
20 whether it's, you know, deep soil or shallow soil conditions.

21 COMMISSIONER MAY: I'm pretty sure it's shallow
22 soil.

23 MR. HALL: Well, so if it is, then you're right.
24 They sedum, and that doesn't require a lot of maintenance.

25 COMMISSIONER MAY: Right. Thank you. I mean, I

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1 guess it's a valid point that there is always that risk that
2 they could go out and try to put handrails and try to make
3 it into a small balcony. It would be a very small balcony,
4 not that worthwhile, but wouldn't the -- if it were approved,
5 it would be approved consistent with the plan. And that BZA-
6 approved plan would apply to the property in perpetuity, so
7 they couldn't go to DCRA and just change it. Right?

8 MS. MOLDENHAUER: I think --

9 COMMISSIONER MAY: Or would there have to be an
10 explicit condition in the order?

11 MS. MOLDENHAUER: I think there would have to be
12 an explicit condition in the order. I also think that, you
13 know, this is not a small -- it's six feet and --

14 COMMISSIONER MAY: Well they said it's four feet.
15 It's four feet of surface. Right?

16 MR. HALL: That's correct. In the application
17 right now, because it overlaps the building below, so the
18 canopy right now is only two feet.

19 COMMISSIONER MAY: Two feet beyond the lower level
20 --

21 MR. HALL: Correct.

22 COMMISSIONER MAY: -- four feet beyond the upper
23 level.

24 MR. HALL: That's correct.

25 COMMISSIONER MAY: So it's not six feet.

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1 MS. MOLDENHAUER: All right, so four feet and
2 there's no dimension that --

3 MR. HALL: But that was revised. Sorry.

4 COMMISSIONER MAY: Okay. It's been clarified.
5 It's four feet total.

6 MS. MOLDENHAUER: So four feet. I think that
7 there are instances in the city where you see people -- and
8 obviously, you know, if it's not part of a condition or if
9 it's not removed completely, I think, one, we have presented
10 evidence that the shadow is greatly increased by it. And
11 then, two, I think that --

12 COMMISSIONER MAY: Okay, I'm not asking about
13 that. I just have questions about the green roof.

14 MS. MOLDENHAUER: And so let me go to this, Point
15 2.

16 COMMISSIONER MAY: So I would ask the applicant,
17 you should consider whether you're willing to make an
18 explicit condition that there would never been a rail or
19 balcony or anything and that it would always be a green roof.
20 Now, you know, whether you're going to be able to get the
21 green roof to grow on the north side of the building like
22 that, I mean, you're going to have be very careful about the
23 plantings, but that's your problem. Anyway, that was my only
24 real question. Thank you.

25 CHAIRPERSON HILL: Okay, thank you. All right so

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1 now, as we did before, you guys can have any questions out
2 of the presentation in terms of just any cross you might have
3 that was presented. Sure. You have one question?

4 MS. WU: It's very short.

5 CHAIRPERSON HILL: Sure, please.

6 MS. WU: Who lives at the property now at 1737?

7 MS. MOLDENHAUER: As I've indicated, the owner
8 does not live there. They live in Seattle and they are
9 currently renting.

10 MS. WU: Have the tenants there filed into the
11 record, a letter opposing our renovation?

12 MS. MOLDENHAUER: I didn't mention that at all in
13 my initial testimony.

14 MS. WU: Thank you.

15 CHAIRPERSON HILL: Okay.

16 MR. HALL: I have a --

17 CHAIRPERSON HILL: Sure, yes please.

18 MR. HALL: I have two quick questions on the Sun
19 Study I want clarified.

20 CHAIRPERSON HILL: Sure.

21 MR. HALL: On the -- we talked a little bit about
22 what's in the application right now, which is -- which we
23 uploaded last week, pulling the four foot canopy back to two
24 feet. The question I had for --

25 CHAIRPERSON HILL: The green roof? Is that what

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1 you're speaking of? Sorry.

2 MR. HALL: The green roof canopy, correct.

3 CHAIRPERSON HILL: Okay.

4 MR. HALL: On the early application we have two
5 feet just like Commissioner May mentioned. On the Sun Study
6 that you guys have in front of us here, what you're showing
7 there is, I see the gray part is the addition, correct? And
8 then I saw a purple line down below, which I assume is the
9 two-foot first floor addition. Is that correct?

10 MR. RUEDA: So, maybe you can't see it on the
11 screen but there's a line showing the two-foot addition --

12 MR. HALL: Right.

13 MR. RUEDA: -- and then there's --

14 MR. HALL: The first floor.

15 MR. RUEDA: -- we show six feet, which is what was
16 on the 09-15 studies that you submitted.

17 MR. HALL: Okay. No, we never had -- I want to
18 clarify, there was never six feet on our drawings.

19 MR. RUEDA: There wasn't anything on your -- but
20 there was --

21 MR. HALL: No, there was a four-foot dimension on
22 there, and we would have been happy to provide that
23 clarification. But here's my question, I'm sorry. I don't
24 mean to --

25 MR. RUEDA: Graphically, we don't show it that

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1 way, though.

2 MR. HALL: Well, graphically, it's four feet --

3 CHAIRPERSON HILL: Ask your question.

4 MR. HALL: Now my question is, and I apologize,
5 I don't mean to get testy. My question is the proportion,
6 if that's a two-foot -- well you answered my question, which
7 is that the canopy you're showing is six feet on there, in
8 addition to what's below.

9 MR. RUEDA: No, no. It's four feet below. Four
10 feet from -- it's four feet from the face of the lower level.

11 MR. HALL: So when I look at the proportion -- I'm
12 just looking proportionally here.

13 MR. RUEDA: Yes, I go you.

14 MR. HALL: When I look at the two-foot section
15 between the first floor addition and the addition above, and
16 I imagine that taking that -- so you're saying that --
17 because the canopy looks like it's like five or six feet, in
18 addition to the addition on the first floor.

19 MR. RUEDA: It's an addition -- what you're seeing
20 -- the proportion that you're describing is from the second
21 -- from the third floor, right? The top floor, which is only
22 a 12-foot addition. Right?

23 MR. HALL: Right.

24 MR. RUEDA: And then at 12 feet, you look down on
25 a surface at six feet from what the drawings, that I looked

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1 at, represented.

2 MR. HALL: Right. So my question is the second
3 line that's on there on the purple, I assume that's the line
4 of the addition on the first floor?

5 MR. RUEDA: So if you look at the gray block,
6 that's your 10-foot allowed. The next line --

7 MR. HALL: Okay.

8 MR. RUEDA: -- shows the two-foot addition and we
9 don't show the four-foot dotted line below --

10 MR. HALL: Okay, that helps. Okay. All right.

11 MR. RUEDA: You can see in this shade where the
12 canopy and the second story overlap.

13 MR. HALL: Right. All right and then the scale of
14 this drawing is what?

15 MR. RUEDA: There's no scale. This is just a
16 snapshot from the video.

17 MR. HALL: Well, the model that you would have
18 done originally?

19 MR. RUEDA: The model was done in Google Earth.
20 So I'm not sure what your question is.

21 MR. HALL: I'm just trying to understand what the
22 scale of this model is compared to the model that we did,
23 which was done 1 to 1. That's all.

24 MR. RUEDA: It is 1 to 1, absolutely.

25 MR. HALL: Okay. Well we can talk about the

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1 semantics of that. It's not appropriate. Go ahead. Thank
2 you.

3 CHAIRPERSON HILL: Okay, well actually I've got
4 a question now. So the purple thing, right, so that's the
5 six feet, and that's supposed to be four feet?

6 MR. RUEDA: Say that again, Steve?

7 CHAIRPERSON HILL: Sorry, I'm sorry. So I see the
8 -- oh, thanks. That's great. So this, the canopy is six
9 feet in this drawing as opposed to being four feet.

10 MR. RUEDA: The total projection that I modeled
11 was 18 feet, so it's four plus a four-foot canopy.

12 CHAIRPERSON HILL: Okay.

13 MR. RUEDA: So the six-foot is because there is
14 an additional -- so if you look at the OP report, they only
15 describe a two-foot planting area, not a four-foot or a six-
16 foot planting area.

17 CHAIRPERSON HILL: Okay.

18 MR. RUEDA: So the discrepancy, we have three.
19 We have OP's two feet. We have -- their stated four feet
20 now, which was appraised yesterday --

21 CHAIRPERSON HILL: Okay, okay.

22 MR. RUEDA: What I drew was six feet --

23 CHAIRPERSON HILL: Okay. All right, I understand.
24 I got it. Okay, I'm good. All right, so --

25 VICE CHAIRPERSON HART: Actually I have a

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1 question. Mr. Rueda, you've -- well I'm not sure who
2 actually provided these so I think it's the opposing party
3 provided the document that was submitted to us?

4 MS. BIGLEY: Yes.

5 VICE CHAIRPERSON HART: And the reason I'm asking,
6 Mr. Rueda, this is, is there a fence that separates the two
7 properties now?

8 MR. RUEDA: There are fences that separate most
9 of the properties and that was taken out of the view to show
10 the effect of the addition. In other words --

11 VICE CHAIRPERSON HART: But, what -- no, what I'm
12 saying is that there is a six-foot -- I'm assuming it's a --
13 I don't know exactly what the height of the fence is but I'm
14 assuming it's some height so that, even in the image that
15 you're showing on the screen here --

16 MR. RUEDA: Yes.

17 VICE CHAIRPERSON HART: -- there is a fence that
18 actually shows that there is a portion of this image, the
19 darker gray area on the clients property, that actually
20 includes the fence?

21 MR. RUEDA: The fenced area is below the canopy.
22 So the canopy actually influences above the level of the
23 fences so it was --

24 VICE CHAIRPERSON HART: I understand that. What
25 I'm saying is that --

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1 CHAIRPERSON HILL: -- shadow of the fence.

2 VICE CHAIRPERSON HART: Yes, there should be a
3 shadow of the fence as well. If this were -- if there were
4 no canopy here, there would still be a fence there.

5 MR. RUEDA: I only am showing the addition and how
6 it is --

7 VICE CHAIRPERSON HART: I understand that. What
8 I'm saying is that there is a piece of this that is not
9 actually included in the -- if there were no addition at all,
10 there would be a fence that is actually shown here. So the
11 portion of the canopy that's above that is just a portion of
12 what you're showing here. What you're trying to show is the
13 addition of the canopy to the shadow that's already existing.

14 MR. RUEDA: So I modeled, actually, both the 10-
15 foot addition and the 14, 12-addition.

16 VICE CHAIRPERSON HART: Yes.

17 MR. RUEDA: You've only seen, essentially, the
18 stills and you know, a couple of quick passes of the video.
19 So I actually have three videos that show the full day on all
20 three seasons at the solstice, and I have models for both.
21 So as far as your question about the fence, I'm still not
22 understanding.

23 COMMISSIONER MAY: Do you have a model that shows
24 the fence?

25 MR. RUEDA: No.

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1 COMMISSIONER MAY: Because the fence casts shadows
2 on those yards as well.

3 MR. RUEDA: Understood.

4 COMMISSIONER MAY: So the differential has to be
5 understood within the total context.

6 VICE CHAIRPERSON HART: Yes, that's what he's
7 asking for. MR. RUEDA: Right but this -- okay
8 so this is just about --

9 COMMISSIONER MAY: So the answer is, no, you don't
10 have a model that shows the whole fence because that would
11 have been helpful.

12 MR. RUEDA: We don't show the fence. No.

13 VICE CHAIRPERSON HART: The reason that I say that
14 is that because what you're showing is, while there is an
15 area that you're showing that is the canopy, there's also an
16 area that is included that actually is the existing fence
17 that is, kind of should be, kind of taken out of this because
18 it is already going to be casting a shadow.

19 And so that portion of the property is already --
20 of the neighbored property is already shadowed in shadow.
21 And I understand what you're showing. I'm just saying that
22 there is -- you're showing an aspect that is -- should have
23 went with this particular project is.

24 I'm just saying that the existing conditions is
25 always helpful for us to kind of then say, okay, so what is

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1 changing? What is the -- as Mr. May said, what is the delta?
2 What is the difference that we're talking about here? And
3 right now, it's hard to tell with this because there is no
4 shadow cast for the fence that is existing. I understand
5 that you don't have it. I'm just saying that it would have
6 been helpful to see that.

7 MR. RUEDA: Well, I actually thought that the way
8 that it was modeled was to truly understand, you know, where
9 there was a difference between 10, 12 and 14 and 18 feet.

10 MR. HART: No, I understand the -- and I guess I'm
11 just looking at the -- the applicant has submitted images
12 that actually show the fences in the -- that are proposed for
13 this.

14 MR. RUEDA: We can supplement.

15 MR. HART: And so it's just helpful for us to kind
16 of understand, you know, so we're actually looking at apples
17 to apples.

18 MR. RUEDA: That's no problem.

19 CHAIRPERSON HILL: Okay all right. Let's see, I'm
20 going to turn it to the Office of Planning.

21 OFFICE OF PLANNING ON BEHALF OF APPLICANT

22 MR. COCHRAN: Thank you, Mr. Chair. Steve Cochran
23 from Office of Planning for the record. OP submitted two
24 reports on this. One of them was submitted September 22nd,
25 and that's Exhibit Number 39. We submitted another report

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1 on October 30th, and that's Exhibit 70.

2 We did this because we -- while we -- our earlier
3 report analyzed some of the criteria, we felt that there
4 wasn't sufficient information in the record to actually make
5 a final recommendation on whether they met all of the
6 criteria.

7 We think that they have now submitted sufficient
8 information for us to make a recommendation, which is that
9 you approve the requested special exception to provide for
10 a 14-foot deep addition on the first floor and a 12-foot deep
11 addition on the second floor.

12 There also happens to be a planting shelf that
13 extends between the first -- we have to get clear on levels
14 versus stories. These are three-story buildings. There are
15 three stories in the front. There are two stories in the
16 back.

17 So I'm going to be referring to the first level
18 and the second level, which is to say the first level of the
19 addition and the second level of the addition, which are in
20 the back. The shelf extends two feet past right where the
21 first level and the second level of the addition join. It
22 is four feet beyond the windows on the second floor and two
23 feet beyond the wall of the 14-foot first level of that
24 addition.

25 Oddly, Section 5201 doesn't even refer to

1 something like a planting shelf. It refers only to the walls
2 of the building, which are 14 feet on the first level and 12
3 feet on the second level. So there's been considerable
4 discussion about something that's not even included in the
5 zoning regulations.

6 Okay, we've already, in our earlier report, we
7 looked at whether there would be air impact. And there's no
8 enclosure. There's no creation of a closed court. This is
9 clearly a case where there would no impact on the air
10 available to the adjacent neighbors.

11 For privacy, again in our September 22nd report,
12 we looked at the extension, pointing out that, because there
13 is an extension, there would be even less of an opportunity
14 to look into neighboring rear yards because you would be --
15 or into the houses next door, because you'd be between 14
16 feet on the first floor and 12 feet on the second floor,
17 further into the rear yard of the applicants, which would
18 give you less of a view of the adjacent properties
19 notwithstanding the occasional days when you may have to go
20 out and deal with the green roof on the two-foot shelf -- on
21 the shelf that extends from the first floor.

22 I'll point out on that there are no windows that
23 go under that shelf. You would have to climb over a
24 windowsill from the bedroom to get out onto that shelf.

25 Okay, so that covers A and B. D, graphical

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1 representations, I think we just addressed.

2 Let's look at 5201.3(a) dealing with light. The
3 applicant has submitted shadow studies that demonstrate. We
4 believe that there would be very little impact and no undue
5 impact from -- not from 10 feet, not from 14 feet, but from
6 the additional four feet on the first floor and the
7 additional two feet on the second floor.

8 This is a special exception case that acknowledges
9 that you can go, by right, ten feet on each level. So we're
10 looking only at the impact of the additional four feet on the
11 first floor and two feet on the second floor have. The
12 applicant's graphical studies make a clear distinction
13 between the shadow cast by a 10-foot addition and the shadow
14 cast by the addition that that applicant is proposing.

15 We've looked at those considerably and we feel
16 that there is no undue impact from the additional four feet
17 on the first floor and two feet on the second floor, even
18 with that two-foot extension of that planting shelf above the
19 first level of the addition.

20 When you get to 5201.3(b), where you're dealing
21 with the enjoyment of the neighboring properties, this is
22 where it gets difficult. There are inevitably going to be
23 differences of opinion on how much shadow, how much light is
24 going to -- or diminution is going to impact the enjoyment
25 of neighboring properties.

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1 In OP's opinion, having looked at the shadow
2 studies, we just don't believe that the additional shadowing
3 is an undue impact on those backyards. It's -- but again,
4 people can differ in their opinions, and every one of those
5 neighbors that has concerns about this is absolutely entitled
6 to those opinions.

7 OP does not believe that it -- OP believes that
8 the applicant has demonstrated that they do meet that
9 criteria of no undue impact.

10 I wanted to look also at some of the Exhibits that
11 were -- have been submitted. Exhibit 73, for instance, just
12 from the standpoint of graphical representations, there were
13 several people in the block that have expressed opposition
14 to this. About five of the people that have expressed
15 opposition already have one-story additions on their house
16 and one actually has the two-story addition on their house.

17 The opposition handed out something today that
18 shows a two-story high brick wall. Just from the standpoint
19 of graphical representations, I feel I need to point out that
20 this addition is 15 feet deep. That second story would be
21 pulled back by three feet from what is shown in this Exhibit.
22 This does not actually represent what the applicant is
23 proposing to build.

24 So that concludes OP's report. We recommend that
25 you do approve the special exception request.

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1 CHAIRPERSON HILL: Okay, thank you. Does anyone
2 have any questions for the Office of Planning? Please.

3 QUESTIONS FOR OFFICE OF PLANNING

4 COMMISSIONER MAY: Mr. Cochran, so you know, I
5 guess it's easy to sort of get distracted in the discussion
6 of the shadow impacts on the question of whether that little
7 extension of roof, the green roof area is actually something
8 that we have to consider in the zoning relief. And I am --
9 you know, and I understand you're saying not really because
10 it's not built space. It's more like a roof cornice or
11 something like that. Right?

12 MR. COCHRAN: Not exactly. I would simply point
13 out that the zoning regulations don't address that. Maybe
14 that's fortunate, maybe that's unfortunate, but they don't
15 address it. But OP's analysis looked at the shadow studies,
16 and there is a shadow. Those shadow studies include the
17 impact of that shelf, so our analysis is based on the impact
18 with that shelf.

19 COMMISSIONER MAY: Right. You know, I guess I'm
20 curious about this from the issue of the broader impact
21 because, at a certain point -- I mean, you know, it's not --
22 we're not looking at an extension of 14 feet plus two feet
23 because of that little extra roof, right? We're looking at
24 an extension of 14 feet on the ground floor.

25 MR. COCHRAN: The case is actually -- should be

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1 looking at -- look, OP would have no problem if the applicant
2 got rid of that two foot shelf. It would certainly make
3 discussion today a lot easier but what we're really looking
4 at in the special exception is not 14 feet. We're looking
5 at four feet on the first floor.

6 COMMISSIONER MAY: No, I understand. I
7 understand. But the whole point that it's -- all right, so
8 it's four feet but it's four feet plus two feet. I mean, I'm
9 just curious, at a certain point, you know, I mean, they
10 could have theoretically extended that out six or eight feet.
11 Right?

12 MR. COCHRAN: If they had extended it out six or
13 eight feet, OP would look at the shadow study based on an
14 additional six or eight feet, not an additional two feet.

15 COMMISSIONER MAY: Right.

16 MR. COCHRAN: And we may well have had a different
17 opinion on the impact.

18 COMMISSIONER MAY: Right, right but it would
19 still, from a straight up zoning perspective, it still would
20 have been just a four-foot addition, even with a six-foot
21 cantilevered --

22 MR. COCHRAN: No question. It's just the way that
23 the zoning regulations are written, and perhaps I wish I
24 hadn't even pointed out that discrepancy in the zoning
25 regulations.

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1 COMMISSIONER MAY: Because that's what got me
2 interested in this.

3 MR. COCHRAN: We're looking at the impact for the
4 whole thing, including that shelf.

5 COMMISSIONER MAY: Well, I mean, I'm interested
6 in it because of the fact that it was not something that's
7 covered in the zoning regulations, because it might be
8 something that we need to cover in the zoning regulation.
9 Because that potential that you could do like a six-foot roof
10 extension -- and it's a de facto porch, not a de facto green
11 roof, a de facto porch, which -- because, you know, it's
12 covered space outside and -- I mean, it fits into a very
13 strange gray area.

14 MR. COCHRAN: Excuse me, Commissioner, today I
15 guess, Commissioner --

16 COMMISSIONER MAY: You can call me whatever you
17 want.

18 MR. COCHRAN: I'm not sure that's it's a porch.
19 Just as a lay person, I'd say that you can't have a porch if
20 you don't have a door to it. It's a roof.

21 COMMISSIONER MAY: Right.

22 MR. COCHRAN: Or it's a shelf.

23 COMMISSIONER MAY: Yes but I mean at some point,
24 it has impact from a zoning perspective, right, because
25 that's what you're looking at. You're looking at the --

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1 MR. COCHRAN: Absolutely. As I said, we
2 absolutely based our evaluation on what the applicant showed
3 us for the addition with the planting shelf. And perhaps
4 someone would need to do some sort of a correction to the
5 language in 5201 to account for what you've just noted.

6 COMMISSIONER MAY: Well, it seems like it could
7 be a broader issue, too, so I think it's something we'll have
8 to think about. And that's really what it's -- I mean it's
9 really tangential to the essence of this case. I mean, I
10 appreciate the fact that you looked at it in its entirety
11 including that, you know, the shadow studies of the addition
12 plus that small extension of roof, and that's really the
13 bottom line.

14 MR. COCHRAN: Yes, sir.

15 COMMISSIONER MAY: Okay, thank you.

16 CHAIRPERSON HILL: Okay, is the baby here for this
17 case or the next case? The next case? Then, okay, never
18 mind, never mind. Sorry, I shouldn't have said it out loud.
19 So then I can't help anything. I was going to try to speed
20 it all up, but we're all here together then. Okay. So no,
21 sure, yes. Okay, does the party in opposition have any
22 questions for the Office of Planning? Please, go right
23 ahead. I'm going with you guys first.

24 QUESTIONS FOR OFFICE OF PLANNING - BY OPPOSITION

25 MS. MOLDENHAUER: I was thinking you were going

1 to go with the --

2 CHAIRPERSON HILL: Yes, I'm going with you first.

3 MS. MOLDENHAUER: Sure. Since we've been having
4 so many questions about this de facto balcony, would -- Mr.
5 Cochran, would you agree that if, without having a
6 restrictive condition, that this could be used as a balcony
7 and that would specifically impact the third, the prong of
8 privacy onto an abutting property owner?

9 MR. COCHRAN: First, I would not consider it a de
10 facto balcony. But if someone were to put a chair out on
11 that planting shelf and climb out the window, yes, especially
12 that they put the chair near the edge of the planting shelf
13 so that they could look into one of the neighboring
14 properties. Yes, that would have an impact on privacy and
15 OP would have no problem if they were -- if the applicant
16 were to agree to a restriction on the use of that planting
17 shelf for nothing more than a planting shelf.

18 MS. MOLDENHAUER: Or eliminating it completely?

19 MR. COCHRAN: Correct.

20 MS. MOLDENHAUER: And when you reviewed the issue
21 of light and air, did you review this with the four-foot --
22 I guess one of my questions is, we've been saying four feet
23 but I think the plans say four feet eight inches. One of the
24 plans if four feet eight inches. I guess, again, it's goes
25 back to the -- it was confirmed -- was it four-foot, eight-

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1 inch addition to the shadow or were you looking at it as two
2 foot.

3 MR. COCHRAN: We looked -- our final
4 recommendation, actually our only recommendation is the one
5 that came in on the 30th is based on that planting shelf
6 extending two feet beyond the first level addition.

7 MS. MOLDENHAUER: Beyond the first level, thank
8 you.

9 CHAIRPERSON HILL: Okay, all right. Does the
10 applicant have any questions of the Office of Planning?
11 Okay. Okay. Now this -- I've got to take a deep breath
12 here. Can you show me the planting shelf, where this is
13 again in the drawings or do you need to get on the computer
14 again?

15 MR. HALL: Yes.

16 CHAIRPERSON HILL: No, no. Do you need to get on
17 the computer?

18 MR. HALL: Yes, we should switch over.

19 CHAIRPERSON HILL: Okay. I just want to see where
20 the two feet is. I'm a little lost.

21 MR. HALL: All right and let me give you a little
22 background while Nathan's loading that up. The purpose of
23 the planting shelf was to create some architecture relief to
24 the exterior. When we were working with Office of Planning
25 and talking about the dimension and pulling back the two feet

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1 -- or the four feet, which was to protect the doors and
2 create a little -- for the rain, out of the pane, we're
3 perfectly happy to do that. We're happy to pull --

4 CHAIRPERSON HILL: You're perfectly happy to do
5 what? I'm sorry.

6 MR. HALL: Pull back to the two feet that's in the
7 application right now. So the application that we would have
8 had at the pre-hearing or whatever we had previously or at
9 the first ANC meeting, they had a four-foot canopy. That's
10 from architectural -- you know, four feet beyond the first
11 floor addition. We had pulled back -- in the current
12 application, it's only two-feet deep, which we are fine
13 doing. We're not -- if this is something that the Board --

14 CHAIRPERSON HILL: We're just trying to get
15 through this. I'm just trying to understand the two feet --

16 MR. HALL: No, I want to --

17 CHAIRPERSON HILL: Can you show me where the two
18 feet is?

19 MR. HALL: Yes, so, Nathan -- the perspectives by
20 you. Well, on the plan here he's showing the dotted line,
21 which indicates the line of the overhang above and then,
22 Nathan, go to the perspective if you don't mind because
23 that's where you can see these here -- because that was
24 updated also. Yes?

25 CHAIRPERSON HILL: Okay, all right. So the two

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1 feet --

2 MR. HALL: So that's the for overlap between the
3 upper and the lower.

4 CHAIRPERSON HILL: Okay the two feet planting
5 thing is -- right, okay. Got you. Two feet. It looks
6 bigger than two feet to me.

7 MR. HALL: I think it's just --

8 CHAIRPERSON HILL: All right, two feet beyond that
9 wall.

10 MR. HALL: Right so two feet overlaps the first-
11 floor addition.

12 CHAIRPERSON HILL: Okay. All right, okay, all
13 right. That's all I've got. Okay, thanks. Okay, so now
14 we're going to throw it out to the audience -- almost. Is
15 anybody here from the ANC? No? Okay is there anybody here
16 wishing to speak in support? Oh, okay great. Please, come
17 on up. Brave man. Please give us your name when you get a
18 chance.

19 MR. MCREYNOLDS: Hi, my name is Joe McReynolds.

20 CHAIRPERSON HILL: Okay, Mr. McReynolds I'm just
21 going to let you get three minutes on the clock.

22 MR. MCREYNOLDS: Okay.

23 CHAIRPERSON HILL: I'm sorry. Oh, yes, were you
24 sworn in this morning?

25 MR. MCREYNOLDS: Yes, I was.

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1 CHAIRPERSON HILL: Okay, great. All right, please
2 go ahead.

3 MR. MCREYNOLDS: All right. So just for
4 reference, I live on the row and, specifically, I live in the
5 house immediately adjacent to the largest pop-back on the
6 row, way deeper of a pop-back than either of the two that are
7 under consideration today. My house has no pop-back. I have
8 no plans for a pop-back so I feel like I can offer some
9 direct perspective. It's honestly really not an issue at
10 all.

11 We spend tons of time in our backyard. We get
12 plenty of light, plenty of sun all throughout the year. Just
13 really have had no issues whatsoever with it. And so I'm
14 really, I would be concerned if this were to come down to a
15 process of saying, well, can't you guys work out some sort
16 of compromise in all these cases because I know you guys are
17 dealing with a lot of cases across the city right now, trying
18 to interpret this ambiguous standard.

19 And I would just say, from the perspective, as a
20 neighbor, the worst thing for our row, just generally getting
21 along in the row has been this uncertainly where we're all
22 kind of expected to sort of make up rules as we go along with
23 each other about what sort of compromise would be accepted
24 and things like that.

25 I'm hoping, through cases like this, that you guys

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1 will provide some sort of consistent process that can be used
2 across cases because at the ANC a lot of the questions were
3 just, well how many neighbors are in support? How many are
4 opposed?

5 I will also say that the idea that there could be
6 a compromise to go down to like the one floor below ground
7 and then the first level/second story pop-back but not the
8 final story, that would not work for a lot of houses on our
9 row due to the layouts of the houses.

10 A lot of the -- some of the houses have in that
11 very first floor, some of them have living spaces that can
12 be extended but others have kitchens and dining rooms where
13 it would be virtually impossible to pop-back and would also
14 be many, many tens of thousands of dollars additional to dig
15 down versus just building out the first and second levels
16 that are above ground.

17 So, yes, in conclusion, I'll just say my personal
18 experience of living in the shadow of a much larger pop-back
19 than what Peng is planning is that there's very minimal
20 impacts to light, shadow. Nothing I would describe in a
21 million years as undue.

22 I never even met Peng or Adam before they started
23 this process so I have no pre-existing relationship with them
24 or reason to you know, tilt in their favor. I'm not popping
25 back myself. I just -- if you would rule this as undue,

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1 pretty much anything beyond 10 feet could count as undue,
2 would be my read on it. Thanks.

3 QUESTIONS OF WITNESS - JOE MCREYNOLDS

4 CHAIRPERSON HILL: Okay, does the Board have any
5 questions of the witness or persons providing testimony? No?
6 I've got a quick one just because -- where did he go? Oh,
7 that's all right. That's all right. Oh yes -- no, you're
8 not done. Mr. McReynolds?

9 MR. MCREYNOLDS: Yes.

10 CHAIRPERSON HILL: McReynolds. So this is more
11 actually just curiosity because we do a lot of the pop-back
12 stuff. So, you're next to one -- you were not supposed to
13 use the word pop-backs, but you live next to someone who has
14 developed beyond 10 feet?

15 MR. MCREYNOLDS: Yes. Theirs is -- it goes back
16 a few years.

17 CHAIRPERSON HILL: Okay, how far back do you think
18 it goes? Just give me a --

19 MR. MCREYNOLDS: I would guess something like,
20 it's got to be 20-something feet.

21 CHAIRPERSON HILL: All right.

22 MR. MCREYNOLDS: They took out their entire
23 backyard and --

24 CHAIRPERSON HILL: Okay.

25 MR. MCREYNOLDS: -- in order to do it. It was --

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1 they had a lawyer who was very well connected with the city
2 and got -- a lot of things got done.

3 CHAIRPERSON HILL: That's okay, that's okay,
4 that's okay. I was just -- I'm just curious, again, on
5 personal perspective.

6 MR. MCREYNOLDS: It's got to be like 20 feet.

7 CHAIRPERSON HILL: All right and so -- really?
8 Come on. And so, the -- so the 20 feet -- so again, this is
9 just my curiosity because this does come up before us quite
10 a bit. MR. MCREYNOLDS: My back deck goes back though.

11 CHAIRPERSON HILL: It's okay, it's okay. This is
12 my question to you. You don't find that bothersome to you
13 personally? Like why?

14 MR. MCREYNOLDS: Not at -- I'm in my backyard
15 plenty. I get plenty of light and sun.

16 CHAIRPERSON HILL: Okay, all right. Just -- okay,
17 great. All right, okay. Does the opposition have any
18 questions for the witness or person providing testimony?

19 MS. MOLDENHAUER: Your estimate of 20 feet, is
20 that based on any measurements that you've done?

21 MR. MCREYNOLDS: It's based on the rough size of
22 our back deck, which is about 10 feet, and then it's got be
23 about -- it's about double that. I would say it extends
24 almost to the bamboo grove at the very end of our lot.

25 CHAIRPERSON HILL: Okay, that was the answer.

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1 MR. MCREYNOLDS: I can pull up photos on my phone

2 --

3 CHAIRPERSON HILL: Okay, that's all right. I just
4 had a question of my own curiosity. I wasn't talking about
5 your, you know, your -- so okay. Does the applicant have any
6 questions of the witness or testimony? All right, okay.
7 Thank you, sir.

8 MR. MCREYNOLDS: Thanks.

9 CHAIRPERSON HILL: All right, was there anyone who
10 would like to speak in opposition? Okay, please will you
11 come forward? You know what, let's see how we can do this.
12 I guess two -- oh, there's only two of you. Okay. Is there
13 -- okay, all right. Well I've been so looking forward to
14 hearing from the baby. Okay, all right. If you would go
15 ahead and just give us your name, please.

16 MR. ROBERTS: My name is Steve Roberts.

17 CHAIRPERSON HILL: Roberts?

18 MR. ROBERTS: I live at 1731 Harvard Street.

19 CHAIRPERSON HILL: Oh, Mr. Roberts. I recognize
20 you, that's right. And sir, your name?

21 MR. KADDEN: Jeremy Kadden, 1743 Harvard Street.

22 CHAIRPERSON HILL: Okay. Mr. Roberts, I'll give
23 you three minutes and Mr. Kadden, you as well. So Mr.
24 Roberts, you can begin whenever you like.

25 MR. ROBERTS: All right, my name is Steve Roberts.

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1 I've lived in Mount Pleasant since 1978 and I've lived in
2 1731 Harvard Street since 1992. And these houses are small,
3 just to flush out a little bit more, the exterior dimension
4 of these houses is 16 by 25.

5 So the additions that the neighbors are asking for
6 amount to about 50 percent of the size of the present house
7 attached to the back. Now the houses were designed --
8 there's a significant amount of glass on the front of the
9 house and on the back of the house. And the houses make up
10 for their small stature with implied space -- the view of the
11 woods out the front and, for most of us, gardens out the
12 back.

13 My house has no structure on the back at all. So
14 when I sit at my dining room table, I can see quite a bit
15 past the 16-foot wide space. So based on the two large
16 extensions of two-story extensions that are there now and I
17 would -- I think that in the plans for the house that Mr.
18 McReynolds was referencing, it's a 15-foot deep extension.
19 I believe that's what in the record as the plan. It's not
20 20 feet, but.

21 So when I'm sitting at my dining room table
22 looking out my back window, if there was a two-story wall on
23 either side, it would -- instead of looking at my garden, I'd
24 be looking in a narrow walkway-like area.

25 And so my concern, the reason I'm here testifying

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1 for this project, as well as the next project coming up is
2 that, unlike many other situations where they're putting up
3 a two-story extension off the back of the house might not be
4 a big deal to the adjacent neighbors, in my opinion, and
5 again, this is an opinion-related thing, the unduly
6 compromised or, specifically, the -- where it says to not
7 have it substantially adversely affect the user enjoyment of
8 the abutting property, in the case of these extensions, I
9 feel that it would.

10 The shadow studies that have been done -- you
11 know, I appreciate the advances in computer generation, but
12 we have two of these large additions on the back. Of the 31
13 houses, there are two large additions. They were put in, one
14 in 2006, one over an extended period, from 2005 to 2013, I
15 think it took him to build the big extension down on the
16 other end.

17 So we have -- we know what it looks like. We know
18 what it -- we know that it causes, there are moss problems
19 on the house to the west of the largest -- the brick wall
20 that is pictured in the handout that you got earlier today.
21 So we know that the -- whether the shadow studies show it or
22 not, there are consequences and there not just -- I mean, I'm
23 new to this.

24 I've lived in D.C. since '78. This is my first
25 time here at the Zoning Board and it's -- I'm here because

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1 I'm critically concerned with how my living in my house can
2 be affected by my neighbors making their houses larger. You
3 know, this is a situation where, you know, I feel like the
4 addition benefits solely the person building it and adversely
5 affects the people on either side, specifically. Thanks.

6 CHAIRPERSON HILL: Okay, thank you Mr. Roberts.
7 Mr. Kadden?

8 MR. KADDEN: Thank you, sir. Kadden.

9 CHAIRPERSON HILL: How do you say it? I'm sorry.

10 MR. KADDEN: Kadden.

11 CHAIRPERSON HILL: Kadden, Kadden.

12 MR. KADDEN: It rhymes with Madden. So I actually
13 want to just present a couple of very quick testimonies on
14 behalf of neighbors who had to leave who were here earlier.

15 CHAIRPERSON HILL: Actually, I think -- did they
16 put those in the record or did they submit them in actual
17 writing?

18 MR. KADDEN: I know that one of them did not, for
19 sure.

20 CHAIRPERSON HILL: Okay, we got one from him in
21 the record.

22 MR. KADDEN: Was it Eric Picard from 1741 --

23 CHAIRPERSON HILL: Yes.

24 MR. KADDEN: -- Harvard Street. Okay and then
25 Michelle Lackey and Jonathan Manheim from 1761 Harvard

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1 Street?

2 CHAIRPERSON HILL: I don't have that one.

3 MR. KADDEN: Okay so I'll read that one then.

4 CHAIRPERSON HILL: Okay, well I'm just -- you,
5 yourself only have three minutes so you can't -- okay, sure.

6 MR. KADDEN: No and I'm requesting party status
7 on the other case and so I'm going to present my remarks --

8 CHAIRPERSON HILL: Right, no, no, well let's not
9 -- I'm going to give you three minutes, okay, because you
10 kind of lost me. So there is -- there's some -- we got --
11 what's that -- so the people that are submitting testimony,
12 that's fine. They can submit the testimony. I'm just here
13 to hear your testimony.

14 MR. KADDEN: Right but I think that Ms. Lackey did
15 not submit her testimony so I just want to make sure that's
16 in the record.

17 CHAIRPERSON HILL: So it is in the record.

18 MR. KADDEN: Ms. Lackey, 1761 Harvard Street?

19 VICE CHAIRPERSON HART: All we're saying is that
20 if you have it written that you submit it to the secretary
21 and then you can give your own testimony.

22 MR. KADDEN: Okay.

23 VICE CHAIRPERSON HART: So that's all we're
24 saying.

25 MR. KADDEN: So I would just like to, in that

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1 case, say, on my own behalf that, you know, I just would want
2 to remind the Commission that there were 26 members of the
3 community who signed a letter in opposition to this. So what
4 you're seeing between the two of us and our baby --

5 CHAIRPERSON HILL: Sure.

6 MR. KADDEN: -- is a very small sample of that.

7 CHAIRPERSON HILL: All I'm trying to get at, Mr.
8 Kadden, is that you have three minutes for your testimony.
9 I just want to make sure you get your fair time because
10 you've been here --

11 MR. KADDEN: I --

12 CHAIRPERSON HILL: -- so everything else got
13 submitted into the record that we're going to look at --

14 MR. KADDEN: Right, and I'm going to continue to
15 be here for the next case, so.

16 CHAIRPERSON HILL: Okay, that's fine. Okay, so
17 that's good. So I'm going to give you three minutes now for
18 your testimony and I'm going to start the clock again.

19 MR. KADDEN: Okay.

20 CHAIRPERSON HILL: So go ahead and give us your
21 testimony in opposition to this case.

22 MR. KADDEN: That's fine and I --

23 CHAIRPERSON HILL: Okay.

24 MR. KADDEN: -- my -- I just want to make two very
25 quick points in that case.

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1 CHAIRPERSON HILL: Sure. You've got three
2 minutes.

3 MR. KADDEN: Thank you. One is to just remind the
4 commission as I said that we have the letter of opposition
5 and 26 members of the community who oppose this project, 20
6 of the 31 homes on Harvard Hill.

7 So I don't think it could be any clearer that you
8 have strong opposition from those who live in the community
9 that they do not want these pop-backs and that it is going
10 to detrimentally impact our experience of living there. And
11 I think that's pretty close to unanimous when you have that
12 many signing in opposition and pretty unique, I imagine, in
13 a circumstance like this.

14 The other thing is I do want to address points on
15 outreach that Ms. Wu said earlier, that she had reached out
16 to the four neighbors. We are one of those four neighbors,
17 and I don't know what she means when says that only one of
18 the four responded because, you know, we know that 1737
19 responded, we responded.

20 She said they sat down with Mr. Picard, so I'm not
21 sure what that means. But I would also want to point out
22 that we reached out to Ms. Wu and her husband and also Mr.
23 Skelton at 1745 to hold a meeting with the neighbors a couple
24 Sunday nights ago and -- to try to talk through some of this
25 and Mr. Ross actually cancelled that at the last minute

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1 because of a work obligation that he had to see to.

2 And I said, okay, you know, I'm sorry we can't
3 meet tonight but if you would like to go ahead and schedule
4 a meeting with the neighbors, please go ahead and do so and
5 there was no follow-up from anybody, either 1739 or 1745.

6 So I think that the outreach to the neighbors has
7 not been as robust as she would like to characterize it.

8 CHAIRPERSON HILL: Okay.

9 MR. KADDEN: That's all I want to say on this
10 case.

11 CHAIRPERSON HILL: Okay, all right. Does anybody
12 have any questions for the witness, testimony? Testimony?
13 Witness? It's witness. Neither witness? Okay, all right.
14 Does the party in opposition have any questions for the
15 witnesses?

16 MS. MOLDENHAUER: Yes, just a few. Mr. Roberts,
17 you mentioned that there was going to be impact in your
18 opinion in regards to additional growth or mold or moss. Can
19 you elaborate on that? I didn't understand that.

20 MR. ROBERTS: The -- so one of the largest --
21 there are two -- there are only two-story additions on the
22 row and one -- I'm sorry, I was trying to find the address.

23 1725 is one of the two deep ones at fifteen feet
24 and the house at 1723, adjacent, after the addition was
25 built, there is moss on the thresholds of her doors -- of her

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1 back doors. And that's a problem that was new after the
2 addition was built.

3 MS. MOLDENHAUER: And can you elaborate -- I think
4 one of the biggest points here, I think you guys at OP
5 indicated, is the aspect of enjoyment. And can you elaborate
6 on either any experiences that you understand from living on
7 the block for so long -- in other words, how this additional
8 depth would impact the enjoyment of abutting property owners
9 or other property owners?

10 MR. ROBERTS: Yes, I mean I'm a visual person.
11 I'm an artist by training and all I know is that, when I sit
12 on my back patio, I'm enjoying my garden with nothing on
13 either side. And the idea and we went out and marked on our
14 fence at ten feet. We marked on our fence at fourteen feet.
15 We marked on our fence at fifteen feet and imagining what
16 would happen if, instead of a six-foot tall stockade fence,
17 I had a 20-foot tall brick or clapboard or whatever the wall
18 was meant to be, that dramatically changes the experience on
19 the outside.

20 And it's not just sitting outside where I see
21 that. I see that because the back of my house is glass. In
22 the upstairs bedroom, it would be a brick wall instead of the
23 sky and the downstairs, where the back of my house is the
24 kitchen and the eating area, it would be -- instead of my
25 garden, it would be a brick wall, and a brick wall on both

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1 sides.

2 MS. MOLDENHAUER: Thank you. One quick question
3 to kind of follow up with Mr. Kadden's -- your comment about
4 outreach. Did you -- what was your, I guess, feeling or kind
5 of understanding of the outreach of the offer that was
6 presented by Ms. Wu?

7 MR. KADDEN: I was only made aware of that offer
8 secondhand.

9 MS. MOLDENHAUER: And can you provide any
10 statement as to concerns about privacy that may occur from
11 any use of the additional garden area or the additional kind
12 of platform?

13 MR. KADDEN: I'm not sure what you mean by privacy
14 exactly. Can you explain?

15 MS. MOLDENHAUER: You know, any concerns you might
16 have from someone utilizing that or looking out and down onto
17 your property.

18 MR. KADDEN: Oh yes, absolutely. I mean, I think
19 that, that is one of the things that we are concerned about
20 that was have -- you know, we have our children playing in
21 the backyard and you know, obviously we trust Adam and Peng
22 but who knows what could happen in the future and who might
23 live there and, you know, what -- I think that would impact
24 on our privacy quite a bit. Yes.

25 CHAIRPERSON HILL: Okay. All right, great. All

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1 right, I have a quick question for the witness. You do know
2 that everyone is able to go back ten feet by right, correct?

3 MR. ROBERTS: Yes, sir. And, in fact, I wanted
4 to make that -- you know, I don't -- my neighbors having a
5 right to build on their house, I support that.

6 CHAIRPERSON HILL: Sure.

7 MR. ROBERT: What I'm, you know, since the hearing
8 specifically addresses the special exception that, you know,
9 less is better.

10 CHAIRPERSON HILL: Sure.

11 MR. ROBERTS: That's really the point I was trying
12 to make.

13 CHAIRPERSON HILL: Okay. Okay, thank you. All
14 right, let's see. Does the applicant have any questions of
15 the witnesses?

16 MS. WU: No, I don't.

17 CHAIRPERSON HILL: Can you just speak into the
18 microphone. Sorry.

19 MS. WU: No, I don't. Thank you.

20 CHAIRPERSON HILL: Okay, thank you. All right,
21 thank you all very much.

22 I even can't remember we're in the process is.
23 So I'm going to allow the opposition to provide a summary and
24 then I'm going to allow -- well, not allow, but the applicant
25 will have rebuttal. So you're able to also provide a

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1 summary. Would you like to provide any summary, Ms.
2 Moldenhauer?

3 MS. MOLDENHAUER: I guess one point of
4 clarification. It seemed that there were some questions
5 about the sun study, and the architect that was our witness
6 indicated that he could supplement the record with that.
7 Would the board like us to be able to file that and then
8 provide a written response to the board?

9 CHAIRPERSON HILL: We'll see how it goes, but I
10 don't think we're -- there are some things now that we are
11 going to need to hear from people and so would you like to
12 provide a closing?

13 MS. MOLDENHAUER: Yes, I will.

14 CHAIRPERSON HILL: Okay.

15 MS. MOLDENHAUER: I'll provide a very --

16 CHAIRPERSON HILL: Can I throw three minutes up
17 there for you?

18 MS. MOLDENHAUER: Thank you.

19 CHAIRPERSON HILL: Okay. Thank you.

20 SUMMARY - OPPOSITION

21 MS. MOLDENHAUER: So we believe that as the
22 individuals in opposition as also with the record that it is
23 clear from both the unanimous vote from the ANC, as well as
24 the voluminous number of individuals in opposition, as well
25 as the petitions that are signed by many of the neighbors

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1 that there is an undue impact on this project.

2 And I think that it really, it stems from a
3 question of, you know, what is this project specific and
4 evaluating this on this property. This is a unique portion
5 of the city where you have a very high topography on the
6 front of the property, and it is in a historic district.

7 So there is a lot of part of the land that we
8 heard testimony about the lot occupancy. There's a lot of
9 portions of these lots that are obviously kind of in the
10 front. That is obviously what individuals purchased on this
11 block.

12 That then creates more of an undue impact on that
13 smaller portion of the rear. And I think that when we're
14 talking about that, I think that impacts the degree of relief
15 that is being sought here and the fact that this is going
16 beyond the ten feet.

17 We understand that obviously ten feet can be
18 provided. We understand that the board does grant different
19 factors in regards to special exceptions in other cases. But
20 we think that in this instance where there is a limited
21 number of open area and then there is simply parking pads,
22 which are not obviously being able to be utilized and enjoyed
23 going back to kind of that one factor that OP indicated is
24 very challenging of privacy and enjoyment.

25 Given the fact that with this addition, it would

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1 limit that then to 17 feet, which we believe is very, very
2 minimal and then based on the testimony and the images that
3 we've presented that that 17 feet would then be impacted by
4 excessive shadows, especially increasing those shadows by
5 over two hours with the canopy, we feel as though the
6 applicant has not met its burden.

7 This board in instances back in 2001 in a case
8 where they were discussing a rear addition under a special
9 exceptions standard in Case 16780 also found that this was
10 a two-story 8 by 11, I'm sorry, is that right? Let me read
11 this properly, 8 by 11, 92 square foot deck.

12 The board found that was unduly impacted and found
13 that the light and air of the adjacent property was
14 substantially adversely impacted, and that the deck proposed
15 would unduly compromise the privacy and use and enjoyment.
16 In that case, the board voted to deny special exception
17 relief.

18 Also in another instance, 17349 in 2005, another
19 rear addition under the special exception 223, the board
20 found in that case that the properties along the block in the
21 vicinity are comparatively small and that was a 3.7 percent
22 lot occupancy relief. And in that case, the board voted to
23 deny the special exception relief.

24 I think that, yes, they can provide a ten-foot
25 addition. I think that, you know, if they were to do that

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1 or they were to build on the lower level as was proposed as
2 an alternative, I think that there may be other compromises
3 or alternatives here or even getting rid of the entire second
4 portion of the addition in the one story.

5 But, I think that as proposed with the dimensions
6 that are shown, that it does create an undue impact on
7 abutting property owners and that there would be a privacy
8 and a use and enjoyment that would not meet the standard of
9 relief in this instance on this block, on this portion of the
10 block, especially within the 200 feet as been shown.

11 CHAIRPERSON HILL: Okay. So I'm going to turn to
12 the applicant for a rebuttal and closing.

13 MR. HALL: I'll start quickly. I was just going
14 to reiterate, architecturally the challenge that Peng and
15 Adam were trying to solve was to create enough space and not
16 too much. That was back under this, when we just had the 60
17 percent rule. And we really did work on trying to design
18 from that perspective.

19 And I think that the design, as we had was trying
20 to look at, once the ten-foot rule did come out, look at what
21 do we think is reasonable trying to take into consideration
22 the neighbors and the ten feet, and what's more than that to
23 make the space feel and work better from the inside and
24 respond and balance the outside at the same time.

25 I appreciate Mr. May's point about, you know, how

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1 do you make a plan work. We did look at that. We can
2 certainly provide more information on what we looked at the
3 time. And if there's a question about whether the canopy in
4 particular, which we spent a lot of time talking about is a
5 particular issue. It's not something that we want to, we're
6 not interested in going over Niagara Falls holding on to.

7 It was meant to create architectural relief, but
8 if the board feels strongly that pulling back further from
9 the two feet we have is important, that is something we can
10 also consider.

11 MS. WU: Sure, let me just follow up about this,
12 whatever, canopy, potential future balcony. You know, I have
13 a young toddler. He's two-and-a-half. The idea of him
14 crawling out a large window and then settling on this
15 balcony, that's a nightmare scenario for me. That's not
16 something I have planned for the future.

17 So you know, let me just focus again on where we
18 are right now. My husband and I, we're lawyers. This is not
19 fun for us. We didn't start this project to go into
20 litigation with our neighbors. This is not our intent.

21 What we really want from the board today is a
22 decision so we can move forward. Rule against us, it's two
23 feet, fine, we'll move on, you know. At the same time, I
24 think what we are proposing is very modest, two, two feet on
25 top. We've offered one. They were not interested in this

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1 compromise.

2 So you know, frankly, I think let's just focus on
3 the evidence that's in the record. I think the sun studies
4 support granting this special exception. I think the low lot
5 occupancy, whether it's 34.4 percent or 40 percent, that's
6 still pretty low.

7 Ms. Moldenhauer cited some cases. They sounded
8 pretty old to me from 2005 or 2001. I would just point the
9 board to one case that you recently decided a few weeks ago.
10 I believe that was the Jimenez-Turner case on Tennessee
11 Avenue, case number 19566, in which you granted a three-story
12 rear addition under this regulation. And I believe the total
13 lot occupancy for that project was 48 percent.

14 So again, you know, we're also open to compromise.
15 If you want to make your decision with some conditions or you
16 have any suggestions, we really kind of just want to -- look,
17 I know all of the neighbors who are here today, and I really
18 respect that they're here to exercise their rights. I see
19 where they're coming from.

20 I don't want to litigate with these neighbors
21 anymore because, you know, we know each other and I like them
22 and maybe before this they liked us, maybe previously in the
23 distant past. So we kind of just, you know, want to move on,
24 and we're open to whatever suggestions you have.

25 CHAIRPERSON HILL: Okay, great. All right. So

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1 to Mr. McReynolds, when he came forward a while ago, this is
2 the cleanest process. This is the process. This is as clean
3 as it gets. To, let's see, your thoughts, Ms. Wu, I mean,
4 and I'm just -- we've been up here a long time without lunch,
5 you seem like a better lawyer than you probably are letting
6 on, just to let you know.

7 But, I think that the board is going to have to
8 get some more information before we're able to make a
9 decision. I know that what I'd like to see, I guess, is
10 drawings in terms of what the by right would be, because I'm
11 just kind of curious now, okay, as to what the actual ten
12 foot would be.

13 Because again, the criteria has been over again
14 pointed out is what is in the report from the Office of
15 Planning in terms of light and air. And, you know, what I
16 want to take a look -- and so you know, four feet on the
17 bottom and two feet on the top going beyond the ten feet is
18 what we're now primarily looking at.

19 But if you could just show the board, if the board
20 has any other thoughts, but I'd like to see what the by right
21 would be with the ten feet. And if you could do even a
22 shadow study of what the ten feet would do to the neighboring
23 property and maybe that's in the record. And if it's in the
24 record, you could just point it out again to me in your
25 submittal. Does the board want anything else?

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1 VICE CHAIRPERSON HART: Go ahead.

2 COMMISSIONER MAY: So you know, you've made a few
3 statements about not wanting to continue litigating with the
4 neighbors, and you've also mentioned this compromise or this
5 settlement offer. It's not really a settlement offer because
6 you're not, I mean, you're trying to resolve the dispute, but
7 you're not really giving them anything. You're just cutting
8 back on your addition a little bit.

9 I think you should actually think about whether
10 you're willing to live with that on its own regardless of the
11 neighbor's reactions to it, because saying it to them,
12 saying, well, we're willing to do this but only if you drop
13 your opposition. I mean, you know, that's okay at a
14 negotiating table. In the context of trying to create peace
15 in the neighborhood, it may not be the best strategy.

16 So I think you should think about that and with
17 your final submission, think about whether you want to push
18 back a little bit and whether you want to push back the green
19 roof section a little bit as well. Because I think those
20 gestures, you know, might be helpful in, if not winning
21 support, at least, you know, softening it a bit to them.

22 And I think that we all need to, you know, we will
23 all keep in mind that really the question here is the
24 difference between, you know, a ten-foot addition and what
25 you are proposing and what the relative impact of that is.

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1 And of course not an undue impact is what we're looking for.

2 And so the smaller that impact is, I think the
3 easier it can be to make a decision. I mean, just as what
4 you are proposing now is easier than if you were proposing
5 a 20-foot addition, right, which you know, before we put in
6 this rule, you could have done.

7 But we did it for good reasons. And I will also
8 point out that we did that in response to other, I think, far
9 more egregious cases. So you happen to have gotten caught
10 in that, but actually in this circumstance, you know, we're
11 talking about a pretty remarkable row of houses, you know,
12 designed by a single architect.

13 And they've maintained their integrity over the
14 years largely, and they're really very modest and, you know,
15 they're not in danger of getting, you know, blown up into
16 huge buildings the way some other blocks are.

17 So it's important to try to maintain some of that
18 integrity, and I think that, you know, that's part of what
19 makes Washington a really great city to live in is that
20 there's this variety of housing types, and there are these
21 small houses.

22 I mean, I lived in a 14 foot by 30 foot house the
23 first time I bought a house and I mean, you know, it barely
24 was a two bedroom. But those, you know, small houses are an
25 important part of the housing stock, so preserving them I

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1 think is important, so whatever you can do.

2 MS. WU: I really respect your comments and again
3 we are just talking about a couple of feet.

4 COMMISSIONER MAY: Right.

5 MS. WU: If we were willing say, all right, can
6 you consider our application at 11 and 13, do you think the
7 board would be more amenable to make a decision today?

8 COMMISSIONER MAY: I think you've already heard
9 from the board that we'd like to hear more information, so
10 I mean I appreciate the desire --

11 MS. WU: Okay.

12 COMMISSIONER MAY: But we're not talking about
13 running it on for six weeks. I mean we're talking about a
14 couple of weeks. Right?

15 CHAIRPERSON HILL: Yes, no, I'm just trying to
16 clear up, Commissioner May, what you're looking for. So --

17 COMMISSIONER MAY: Well, I was just suggesting
18 that they might consider pushing back.

19 CHAIRPERSON HILL: Okay.

20 COMMISSIONER MAY: I'm not suggesting that if they
21 push back now we would decide.

22 CHAIRPERSON HILL: Yes, unfortunately, to the
23 applicant, we can't do anything until we see plans and so,
24 you know we wouldn't be able to do anything anyway. So what
25 I guess Commissioner May is asking for is to see whatever it

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1 was that you had at one time thought that you might be able
2 to live with in terms of design if that's something you want
3 to do with the one foot less on the bottom and the top and
4 pulling back the green roof a little bit.

5 But again, that was if -- because we're not here
6 to negotiate, like that's not what we do, and so if you want
7 to submit that, fine, and if you don't, then submit what you
8 have, because all I wanted to see was again what the by right
9 was with the ten feet.

10 And so you can please submit with what the by
11 right is with the ten feet. If you want to submit whatever
12 Commissioner May was kind of interested in seeing, great.
13 If not, submit whatever your final plans are. Okay? Is that
14 correct, Commissioner May?

15 COMMISSIONER MAY: Well, I just want to be clear.
16 I'm not interested in seeing that for the sake of seeing it.
17 Right? I mean, seeing it in the matter of right version I
18 think would be helpful, but I think that you should just
19 consider carefully exactly how much relief you want to
20 request.

21 And if you want to alter that consistent with the
22 offer that you made to your neighbors, then you know, that
23 might be a good thing. That's all I'm saying.

24 CHAIRPERSON HILL: Right. Okay.

25 COMMISSIONER MAY: But it's up to you what relief

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1 you're seeking.

2 CHAIRPERSON HILL: It's up to you, okay. All
3 right. Anybody else?

4 MEMBER WHITE: No, I think you guys have covered
5 it, you know. Again, we're not negotiating here, so it's
6 your submission, not the BZA trying to mediate the case for
7 you.

8 CHAIRPERSON HILL: Yes, because you don't know
9 who's saying yes, who's saying no already, right? You don't
10 know. So let's see, okay, so dates. When, how fast? I
11 mean, I know you wanted this today and everybody would like
12 this to go away today, including me.

13 So let's see, dates. When can you get us
14 something probably? And now you're looking at the architect.
15 I'm asking the architect.

16 MR. HALL: We can do that within a week.

17 CHAIRPERSON HILL: Within a week. So today is
18 Wednesday. So next week again is Wednesday, so next
19 Wednesday? And then that'll give responses for a week and
20 we can come back again?

21 MR. HALL: We can commit to next Tuesday.

22 CHAIRPERSON HILL: Okay. I still have to give
23 seven days for any kind of response.

24 MR. HALL: I was trying to think about that in
25 terms of your Wednesdays.

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1 CHAIRPERSON HILL: Oh, no, no. Thanks. I have
2 to then give seven days for anyone to respond. So the
3 soonest we'd be able to come back here for a decision is the
4 Wednesday after next Wednesday, which is Thanksgiving and
5 we're off?

6 PARTICIPANT: The 15th.

7 CHAIRPERSON HILL: The 15th, which is loaded right
8 now. Right, Mr. Moy?

9 MR. MOY: It's, well, we have two appeals on that
10 day. If not for that, we're okay with regular type --

11 CHAIRPERSON HILL: Okay. So the meeting docket
12 is fine-ish. Okay. All right. So let's do that then, okay?
13 So if you guys can give us what we've asked for by the
14 Tuesday, whatever this next Tuesday coming up is.

15 MR. MOY: Yes, let's say next week is November
16 8th. If you could submit by November 8th and parties can
17 respond by the 15th?

18 CHAIRPERSON HILL: So if you can do, actually
19 right. So if you can do the Tuesdays, what's the Tuesday?
20 Is that the 7th?

21 MR. MOY: So actually we'd be looking at --

22 CHAIRPERSON HILL: If they submit everything by
23 the 7th, then everybody else gets until the following Tuesday
24 again, right? And then we can --

25 MR. MOY: Okay. I see where you're going. Okay.

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1 Tuesday 7th, responses by the 14th November and then --

2 CHAIRPERSON HILL: And then decision on the 15th
3 of November.

4 MR. MOY: Which is the next day on the 15th.

5 CHAIRPERSON HILL: Okay?

6 MS. MOLDENHAUER: Yes, we will file responses by
7 November 14th, yes.

8 CHAIRPERSON HILL: All right, did everybody
9 understand? Okay.

10 MS. WU: I just want to clarify so I know exactly
11 what we're submitting.

12 CHAIRPERSON HILL: Sure.

13 MS. WU: You're requesting plans that show the
14 design ten feet by right? That's what you're requesting?

15 CHAIRPERSON HILL: What I was interested in was
16 seeing what the ten feet by right would do.

17 MS. WU: Okay.

18 CHAIRPERSON HILL: And if you could just then
19 again for my ease, just put again what the shadow study looks
20 like with that ten feet and include the fence, okay if you
21 wouldn't mind. Right, okay?

22 MS. WU: That's already in the record. We did
23 shadow studies.

24 CHAIRPERSON HILL: No, I understand, but if you
25 could just stick it in there again, so I don't have to --

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1 MS. WU: Sure.

2 CHAIRPERSON HILL: -- hunt around for it, you
3 know. And then again a thought was again, if you wanted to
4 submit drawings, you know, plans that change to whatever you
5 had thought of with the neighbor in terms of also, you know,
6 pulling back the green roof or not, that's up to you, but if
7 you did submit it, then that would be what you're now asking
8 for. Do you understand?

9 MS. WU: I do, thanks.

10 CHAIRPERSON HILL: Okay. All right. Okay. Is
11 that it?

12 MR. MOY: So this would be a decision meeting.

13 CHAIRPERSON HILL: Yes. A decision meeting.

14 MR. MOY: Okay. Good enough.

15 CHAIRPERSON HILL: So you will get an answer on
16 Wednesday, on the 15th. Right? The 15th, okay? All right.
17 Okay, take a break? Okay. Take a break, five minutes.

18 (Whereupon, the above-entitled matter went off
19 the record at 1:48 p.m. and resumed at 2:06 p.m.)

20 CHAIRPERSON HILL: All right, Mr. Moy. Whenever
21 you get a chance.

22 MR. MOY: Thank you, Mr. Chairman. The next case
23 application for a hearing is application number 19576 of
24 William Skelton, capture and advertised for special exception
25 under Subtitle E Section 5201.

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1 This is from the rear yard requirements of 205.4.
2 This would construct a two-story rear addition to an existing
3 one-family dwelling in an RF-1 zone at premises 1745 Harvard
4 Street NW, square 2588, lot 163.

5 As you know, Mr. Chair, there's two requests for
6 party status in the record under Exhibit 41 and 47.

7 CHAIRPERSON HILL: Okay, great. Let's hear the
8 party status, please, first. Could the two people who are
9 asking for party status come forward? Okay, let's see.
10 Could you please introduce yourselves for the record?

11 MR. ROBERTS: My name is Steve Roberts.

12 MR. KADDEN: Jeremy Kadden, 1743 Harvard.

13 CHAIRPERSON HILL: Okay. Mr. Roberts, I'm going
14 to go -- well, actually yes, let's go first with you Mr.
15 Roberts. So if you could again tell me what your address is
16 and where you are in relationship to the property and how you
17 are uniquely affected?

18 MR. ROBERTS: All right. I live at 731. I'm
19 seven houses away. And I think we established at the last
20 meeting that I'm not uniquely affected being that far way,
21 but at the time that I applied for party status, this
22 particular case was not even open for public hearings.

23 Because of the power of the impact statement, with
24 only two or three neighbors knowing about the project's
25 existence, they had passed historic and OP. The people

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1 working for the owner of the property had shepherded this all
2 the way to the BZA hearing with no public comment.

3 And as I read the rules, it seemed like the only
4 thing that would open it up for public hearing was having
5 somebody apply for party status, or that was one of the ways.
6 So that's why I applied.

7 CHAIRPERSON HILL: Okay, thank you. I'm just
8 trying to again -- and I appreciate you, Mr. Roberts. I
9 remember you coming down for the last time with, I mean, the
10 standards for which we approve or don't approve party
11 statuses are pretty clear in terms of like whatever the
12 actual property is.

13 So I don't think that you are necessarily going
14 to qualify for party status, because as you've seen now
15 you've been here, it's pretty involved. And so unless the
16 board has any other thoughts, I'm going to deny your request
17 for party status. However, you will have an opportunity to
18 speak to us as well during the public testimony portion of
19 the hearing.

20 MR. ROBERTS: Thank you.

21 CHAIRPERSON HILL: Okay. Does the board have any
22 other thoughts? Okay. All right. So Mr. Kadden, if you
23 could also do the same for me.

24 MR. KADDEN: Yes. I live right next door to 1745
25 Harvard Street and so it is our property that will be most

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1 immediately impacted by the addition.

2 CHAIRPERSON HILL: Okay. So again, this isn't
3 always the case but again, I did read your application, and
4 yours being the adjacent property owner, I do feel unless the
5 board has other thoughts that you are uniquely affected to
6 the application. And so I would be in favor of granting
7 party status to you. Does the board have anything they'd
8 like to add or thoughts?

9 MEMBER WHITE: I agree.

10 CHAIRPERSON HILL: Okay. Then we're going to go
11 ahead and grant you party status, Mr. Kadden. And so I think
12 you saw the previous hearing how that kind of works.

13 So we're going to go ahead and bring up the
14 applicant next and they'll have a chance to present. You
15 will also have a chance to present, cross-examine, that whole
16 thing, and we'll kind of work through this in the same
17 capacity.

18 MR. KADDEN: Okay.

19 CHAIRPERSON HILL: All right, with that then,
20 could the applicant please come forward?

21 MR. KADDEN: They're going to present first, so.

22 MS. KADDEN: I know. Hold on. I'm supposed to
23 wave at you, because of the time.

24 MR. KADDEN: Unfortunately, my wife is going to
25 need to leave in ten minutes.

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1 CHAIRPERSON HILL: Okay. What's happening? I
2 don't understand.

3 MR. MOY: Yes, Mr. Chairman, the party status, Mr.
4 Kadden, apparently his wife has to leave by 2:30 I believe.

5 MR. KADDEN: 2:20 actually.

6 MR. MOY: 2:20?

7 MS. KADDEN: Or I can bring two more children back
8 with me.

9 CHAIRPERSON HILL: Okay, wait a minute. That's
10 okay. You have to speak in the microphone. But I don't
11 understand, what are you trying to ask?

12 MR. KADDEN: So she won't be able to provide her
13 part of the testimony.

14 CHAIRPERSON HILL: Okay. You'd like to provide
15 your part of the testimony?

16 MS. KADDEN: Can I do that and then take the baby
17 away?

18 CHAIRPERSON HILL: Okay. Yes, let me just think
19 a second how this is going to work.

20 MS. KADDEN: Sure.

21 CHAIRPERSON HILL: Okay. So you can go, well.
22 So you just --

23 MS. KADDEN: I know it's complicated.

24 CHAIRPERSON HILL: That's all right. So you just
25 want to provide testimony. Okay? But Mr. Kadden is also

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1 going to then be providing your presentation. Correct?

2 MS. KADDEN: Yes.

3 CHAIRPERSON HILL: So I guess then what the
4 applicant will need to be able to do then is have an
5 opportunity to cross-examine your testimony. So just, I'll
6 go ahead and take your testimony and then we'll let the
7 applicant ask any questions they might have of you. And so
8 you can go ahead and sit down.

9 Have a seat and please introduce yourself into the
10 microphone.

11 MS. KADDEN: Surely. Hello, my name is Jana
12 Kadden.

13 CHAIRPERSON HILL: Okay. And Ms. Kadden, I'm
14 going to just put three minutes on the clock just so I know
15 where we are.

16 MS. KADDEN: Okay.

17 CHAIRPERSON HILL: Okay.

18 MS. KADDEN: I thought because of the party status
19 we had more, so I'm going to talk as fast as I can.

20 CHAIRPERSON HILL: You don't have to talk fast.
21 The way the process would have worked is that the applicant
22 gets to present and the same amount of time that they have
23 is the same amount of time that you would have. So I don't
24 know how much time you're going to take up from the rest of
25 the testimony that Mr. Kadden might present.

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1 MS. KADDEN: Got it.

2 CHAIRPERSON HILL: So I'm just kind of throwing
3 time on there so I kind of understand, but you can take as
4 much time as you like. It just eats into his time when he
5 has an opportunity to present. So go right ahead.

6 MS. KADDEN: Okay. I want to thank you all for --

7 CHAIRPERSON HILL: And I'd want to interrupt just
8 for 30 seconds. Now, we're jumping all around here in order
9 to do our best, so if you could please introduce yourselves
10 as well for us.

11 MR. GURNEY: My name is Robert Gurney. I am the
12 architect representing the owner. The owner is actually in
13 Saigon on his honeymoon right now. So that is why he is not
14 here.

15 CHAIRPERSON HILL: Okay, great. TMI. All right.

16 MR. STEPHENS: And my name is Matt Stephens. I'm
17 from the office of Robert Gurney, representing the homeowner.

18 CHAIRPERSON HILL: Okay. I'm sorry. I'm glad
19 they're on their honeymoon.

20 MS. KADDEN: I feel bad for them.

21 CHAIRPERSON HILL: So I'm glad they didn't stay
22 here to avoid their honeymoon. Let's see. I just wanted to
23 let you know, you understand the process that's going on?
24 You're okay with what I'm doing here? Okay. All right. All
25 right, Ms. Kadden, go ahead whenever you like.

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1 MS. KADDEN: Okay, thank you. And thank you all
2 for your flexibility. I appreciate it. I'd also just like
3 to take a brief second to thank Stuart Karaffa and the other
4 members of the ANC, as well as Fay Armstrong from Historic
5 Mount Pleasant for the tremendous and thought they've put
6 into these projects thus far.

7 I certainly stand by all that my husband, Jeremy,
8 will testify to and would like to speak specifically to the
9 issue of raising families in this home, which seems to be
10 coming up a lot as a stay-at-home mother, who is in fact
11 doing just that.

12 Shortly before our first child was born in 2010,
13 we decided it was time to leave our Dupont apartment. We
14 found a condo in Columbia Heights. It was beautiful and new,
15 except that there wasn't really a lot of sunlight, and there
16 was no outdoor space and every window had a view of a brick
17 wall. It was hard to find the sky, let alone a bit of green.

18 Our agent then showed us a house on the Harvard
19 Hill. It was the serenity of the upper sidewalk and glorious
20 gardens that first caught our eyes. Once inside the house,
21 sunlight poured in through the southern exposures, and there
22 was a warm, ambient glow in the northern-facing rear rooms.

23 The floor-to-ceiling windows showing off the fall
24 foliage felt like we'd entered a treehouse. We went upstairs
25 and looked out to see the branches of a 75-year-old pine

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1 framed in the window as if it were a painting.

2 And then there was the surprisingly large urban
3 backyards. There was space to sit and relax and a separate
4 level for kids to play. We fell in love with the house and
5 moved in when our son was three weeks old.

6 Since that fall in 2010, we've brought two more
7 children home to Harvard Street, and we've made wonderful
8 friendships with our neighbors. We've welcomed newcomers
9 with homemade baked goods and brought them meals when they
10 brought home their new babies.

11 We've also seen families struggle with the size
12 of the houses and have seen many ultimately opt to move north
13 or south for more space as their children grew and collected
14 more things. As has been said time and time again, these
15 homes are by no means large.

16 And yet, I remind myself often, perhaps even
17 daily, that plenty of people have lived in far smaller spaces
18 for far longer. Staying here has been a conscious choice for
19 our family. Like most things in life, there are trade-offs.
20 Living in these homes is no different. The indoor space is
21 limited, but being able to send the kids out to the back to
22 play without concern makes it doable.

23 The sunny, breezy backyard has allowed us to host
24 large parties with ease. Having a shade garden out front and
25 a full-sun garden in the back is the best of both worlds.

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1 Spending time in the alley and our backyards with neighbors
2 as all of our children play together at the end of the day
3 makes it idyllic.

4 Living with five people in a three-story 1,200
5 square foot home has helped clarify many things for us.
6 Among them, that we are seriously committed to remaining
7 downtown, committed to enjoying the diversity Mount Pleasant
8 has to offer and committed to teaching our kids about
9 prioritizing what's important, because you don't always get
10 everything you want in life.

11 The ability to garden with my kids, play baseball
12 in the alley, then snuggle up to read books and watch
13 woodpeckers eat from the bird feeder and still be a 12-minute
14 walk to the metro make these homes incredibly unique.

15 Yes, the space is small, but the city is large and
16 so very accessible. And so each time we discuss the idea of
17 wanting more space, we are reminded of why we stay. I
18 understand not wanting to leave the row, and I'm sure that
19 the proposed renovations will be lovely for their residence,
20 but I fear what they will do to the rest of us and the homes
21 we so love.

22 I fear that they will turn our house into the
23 condo we chose not to purchase seven years ago. I feel it
24 will adversely affect our ability to enjoy our space, that
25 we will no longer be able to stay. I fear where that means

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1 we will end up as a one-income household and dread the idea
2 -- I lost my place -- of leaving the city.

3 Our home is the largest investment we have. I
4 worry about being priced out of it by imposing brick walls
5 of people who want more space, people who understandably want
6 to do what is best for their families but also want these
7 homes to be something that, by definition, they are not and
8 have never been.

9 We chose this home so our children could see sky
10 and trees from their sunny city bedroom, not to stare at a
11 13-foot brick wall. We moved here so they could build
12 snowmen in the sunny backyard in winter, not to be rushed
13 inside to avoid slipping on the ice left from the permanent
14 shadows.

15 And we moved here to garden in the ample sunshine
16 that fills both the front and back of the house regardless
17 of what shadow studies may show on paper. Most of all, we
18 moved here to raise a family. We chose this neighborhood and
19 community to raise our family, and yes, we chose this house
20 in spite of its size to raise our family.

21 The argument that it's necessary to expand these
22 homes in order for that to be a possibility is an opinion,
23 not a fact. It should be treated as such. And the reality
24 is that more than two-thirds of the 31 homes on the row feel
25 similarly.

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1 More than two-thirds have said they don't want to
2 live next door to such imposing structures, nor do they want
3 to create such structures for themselves or their neighbors.
4 We chose to write a group letter of objection to make it
5 clear that this is in no way personal.

6 We like our neighbors and consider many to be
7 friends. But this is not a decision that should be made
8 based on friendships, personal relationships or mob rule, as
9 some have suggested. This is the majority of a community
10 voicing their concerns and trying to protect that which is
11 dear to them.

12 Together we're asking the BZA, hear the voice of
13 an overwhelming majority. We ask you to respect what
14 residents are saying they do and don't want in our
15 neighborhoods, in our backyards and in our community.

16 Today, I am asking that the BZA follow the
17 unanimous recommendation of the ANC to deny these special
18 requests, and I ask that you respect the resolution that the
19 BZA itself passed this past March, which denies exceptions
20 to such projects as these that will have substantially
21 adverse effect on our use or enjoyment of the yards and homes
22 so many of us love. Thank you for your time and for the
23 extra consideration now.

24 CHAIRPERSON HILL: Okay, great. Thank you very
25 much. Does the board have any questions for the witness?

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1 Okay. I do have a couple of questions.

2 MS. KADDEN: Sure.

3 CHAIRPERSON HILL: Because this is, I mean, I know
4 everybody's been here before for the previous one. So what
5 we have been tasked to do again is the expansion that one is
6 allowed to do is ten feet by right and so we are looking at
7 the special exception in terms of what is available beyond
8 the ten feet.

9 MS. KADDEN: Right.

10 CHAIRPERSON HILL: And what we look at -- so
11 basically, it's something that's within the regulations if
12 approved by special exception. It's not a variance. So the
13 criteria primarily tends to deal with light and air. And so
14 I just am kind of being clear that you understand that it's
15 the additional three feet that they're asking for that is
16 kind of the light and air issue that we are tasked as a board
17 with defining.

18 MS. KADDEN: Correct.

19 CHAIRPERSON HILL: Okay.

20 MS. KADDEN: I think to that effect that I mean
21 there's many ways to look at it. Right? Like ten feet
22 versus 13 feet is 30 percent more. Right? And that from our
23 perspective it's certainly their right. They should enjoy
24 their homes and whether I like it or not is irrelevant, at
25 the ten feet, it's their right.

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1 Anything more than that is more and while they
2 feel it makes a huge difference to make the house a
3 possibility for them to stay long term because of those extra
4 three feet, I similarly feel that those extra three feet are
5 enormously, it's three more feet of brick.

6 CHAIRPERSON HILL: Sure. No, no, I understand,
7 yes.

8 MS. KADDEN: I mean, I just think that that
9 argument goes both ways.

10 CHAIRPERSON HILL: Sure.

11 MS. KADDEN: So I do understand.

12 CHAIRPERSON HILL: And that's why we're here.

13 MS. KADDEN: Right. Great.

14 CHAIRPERSON HILL: I mean, so that's why we're
15 here.

16 MS. KADDEN: Sure.

17 CHAIRPERSON HILL: Okay. All right. Does the
18 applicant have any questions for the witness.

19 MR. GURNEY: No questions.

20 CHAIRPERSON HILL: Okay, great. All right. Well,
21 thank you very much.

22 MS. KADDEN: All right. Sorry for --

23 CHAIRPERSON HILL: No, thank you so much for
24 coming down. Thanks for being so patient.

25 MS. KADDEN: I'll be off and running. Okay.

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1 CHAIRPERSON HILL: All right. Okay. So now we're
2 going to turn to the applicant and is Mr. Roberts, is that
3 -- now, you've lost me. Could you introduce yourselves again
4 for me.

5 MR. GURNEY: Robert Gurney. I'm the architect.

6 CHAIRPERSON HILL: Gurney?

7 MR. GURNEY: Yes.

8 MR. STEPHENS: I'm Matt Stephens. I work for
9 Robert Gurney, architect.

10 CHAIRPERSON HILL: Thanks. So who's going to be
11 presenting?

12 MR. GURNEY: I can present, thank you.

13 CHAIRPERSON HILL: So Mr. Gurney again what I'd
14 be interested in again is the project, what you're trying to
15 do and how again you're meeting the criteria that we should
16 grant the special exception. And so you can begin at any
17 time. I'm going to put ten minutes on the clock just so I
18 know where we are.

19 MR. GURNEY: Yes. We started out designing this
20 project prior to the ten-foot rule coming into effect. In
21 fact, we started meeting with Mount Pleasant Historic Review
22 Committee back in February. We met with Fay Armstrong and
23 her group back in February.

24 We had a much more expansive design that we sort
25 of pared down based on her comments and then comments from

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1 Tim Dennee at HPRB. So after our initial meeting with Fay
2 and with her comments and Tim Dennee's comments, we pared the
3 design down to something that at the time was a 15-foot
4 addition still within what we were able to do by right when
5 we were sort of designing this.

6 And so we did go through the whole process of
7 working with Tim Dennee, meeting with HPRB to sort of come
8 to a design resolution that, you know, we thought was in
9 character with --

10 CHAIRPERSON HILL: Mr. Gurney?

11 MR. GURNEY: Yes?

12 CHAIRPERSON HILL: I'm sorry, I just realized.
13 If you could just kind of repeat the little beginning of it
14 there, because Mr. Kadden was --

15 MR. KADDEN: I'd appreciate that. It's okay.

16 CHAIRPERSON HILL: No, that's okay. That's all
17 right. Because you were talking about how you originally
18 started to design this before the criteria came in for the
19 ten feet.

20 MR. GURNEY: Correct. We started designing this
21 actually last November. And then February 9th, I'm sorry,
22 February 27th, we actually engaged with Fay at Mount Pleasant
23 Historic District Review to sort of solicit some feedback,
24 and we also were engaged with Tim Dennee, at which time both
25 expressed their sort of feeling that the design was sort of

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1 incompatible with the row and a little bit too large.

2 So we worked for several --

3 CHAIRPERSON HILL: How far back did it go at that
4 time?

5 MR. STEPHENS: It was 15 feet and then the second
6 story I think was 16 foot.

7 CHAIRPERSON HILL: Okay.

8 MR. GURNEY: And then it was a different massing,
9 and it was a taller structure and so through our work with
10 Tim Dennee and Fay Armstrong, we actually sort of pared the
11 design down so that it again was more I think compatible with
12 the existing building in their opinion and sort of worked
13 better as a piece of architecture with their building. Tim
14 Dennee expressed that he felt it was in scale with the row.
15 And so we had their support at 15 feet, but then we actually
16 pared it down to 13 feet.

17 I think one thing to sort of note as a difference
18 between our project and the one you heard before us is that
19 currently there's an existing 13-foot one-story addition on
20 the house. So the relief we're actually asking for is only
21 for three foot beyond the ten foot on the second story.

22 But at any rate, so we worked with Tim Dennee
23 basically to come up with a design scheme that was compatible
24 with the architecture and that included materials. We did
25 engage the neighbors. We actually met at Jeremy's home with

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1 Fay and her sort of design people.

2 To the best of my understanding, Will Skelton has
3 been very much willing to sort of reach out to the neighbors,
4 and Jeremy can expound on that. So we had approval from HPRB
5 actually on the 15-foot scheme. We have subsequently pared
6 that down to 13 feet so that we don't extend beyond the
7 existing one-story addition.

8 In terms of why we need the space, obviously we're
9 only asking for the three-foot additional space on the second
10 floor. Like many of the neighbors, these clients hope to
11 live in this house for a long time with children, and it was
12 our design goal to sort of get a second bedroom on the second
13 floor, a second bathroom on the second floor along with the
14 second bedroom. And that was one of the things --

15 CHAIRPERSON HILL: Can you show us the design?
16 Are you pulling up anything? I wasn't sure whether you were
17 --

18 MR. GURNEY: I'm happy to. Sure.

19 CHAIRPERSON HILL: Sorry. As you're kind of
20 walking through this. I see the first story you're talking
21 about.

22 MR. GURNEY: Right, so basically, you can see on
23 AS1 basically our proposed addition. On AS2, we basically
24 have an elevation section through the alley basically showing
25 in red the amount of space the additional three feet that

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1 we're asking for above the existing one-story, 13-foot
2 addition.

3 A2.1 is the existing. If I go to -- again A3.1
4 is the first-floor plan and again that's our floor plan,
5 which extends out to the existing and aligns with the
6 existing 13-foot addition. On the second floor again, our
7 goal was to try to get two, a children's bedroom, a master
8 bedroom, and then two bathrooms on that floor, which
9 necessitated the extra space.

10 We are showing a projecting bay that is elevated
11 above the height of the main mass and that was with the
12 intention and the goal of getting southern light into the
13 space on the second floor.

14 In terms of the materials, we're proposing to
15 extend the existing brick party walls at the same height and
16 in the same material and then our projecting bay, we're
17 proposing that to be mahogany.

18 And then the small section of walls between the
19 projecting bay and the brick walls is a black fiber cement
20 board. And again, the intention of that is that the black
21 fiber cement boards will recede as opposed to something
22 that's light and that will be sort of more pronounced
23 visibly.

24 We did do sun shadow studies on this thing. For
25 the existing house with the one-story addition, we did shadow

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1 studies with what a ten-foot addition by right would look
2 like and then one with our 13-foot addition. And, you know,
3 in my opinion, certainly looking at the shadow studies,
4 there's like minimal difference between the ten foot and the
5 13 foot shadow studies.

6 Matt, do you want to add anything?

7 MR. STEPHENS: Yes. Just in terms of the neighbor
8 outreach, I just want to clarify a couple of things. We've
9 had three ANC meetings for this project. The first one was
10 during the period for the Historic Preservation review. That
11 was passed unanimously by the ANC. We did have --

12 CHAIRPERSON HILL: Wait. Before you -- I want to
13 add -- one sec. The party status in opposition, which one
14 are they again? Do you know which number they are in your
15 little shadow study here?

16 MR. KADDEN: We're 1743.

17 CHAIRPERSON HILL: 1743? Okay. I just wanted to
18 get reminded. Okay, thank you and please go back and tell
19 me about the ANC again, I'm sorry.

20 MR. STEPHENS: Yes, just wanted to clarify with
21 the neighbor outreach. There's been three ANC meetings for
22 this project. The first one dealt with the Historic
23 Preservation review and our application for that. It was
24 passed unanimously by the ANC, and we did have neighbor
25 comments. Jeremy, I believe, was there.

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1 And we had prior to that meeting, we had the
2 meeting at Jeremy's house that Bob mentioned. And then the
3 subsequent two ANC meetings were dealing with this BZA
4 application.

5 CHAIRPERSON HILL: Okay.

6 MR. GURNEY: Yes, that's all I have.

7 CHAIRPERSON HILL: Oh, okay, great. All right,
8 so let's see. Mr. Kadden, do you want to take a minute or
9 are you good? You're going to have an opportunity, so again
10 --

11 MR. KADDEN: Yes, I'm ready.

12 CHAIRPERSON HILL: Okay. So go ahead. Do you
13 have any questions for the applicant from cross-examination
14 on what they presented?

15 MR. KADDEN: I don't know if it's questions so
16 much as just a response to one thing that he just said,
17 because it's not really in the form of a question.

18 CHAIRPERSON HILL: Doesn't matter. We'll see what
19 happens. Go ahead.

20 MR. KADDEN: I'm going to address neighbor
21 outreach a little bit more fully in my own testimony, but --

22 CHAIRPERSON HILL: Do you have a question for him
23 then?

24 MR. KADDEN: Well, the thing that I object to is
25 just that the historic preservation question is completely

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1 different than this one. The historic preservation board was
2 very clear with us that they had no say over the size of the
3 bump back.

4 CHAIRPERSON HILL: Okay.

5 MR. KADDEN: So our non-objection in the historic
6 preservation was simply we didn't object to the historic
7 preservation aspect of it.

8 CHAIRPERSON HILL: I understand. So your
9 question, I'm just trying to figure out how to make it a
10 question.

11 MR. KADDEN: Sorry. As I said, I don't have a
12 question.

13 CHAIRPERSON HILL: Okay, on that issue.

14 MR. KADDEN: It's just I just wanted to push back
15 on the idea that we were okay with the project.

16 CHAIRPERSON HILL: Okay, okay.

17 MR. KADDEN: We weren't. We were just okay with
18 the historic nature of it, that it wasn't out of touch with
19 the historic nature of the district.

20 CHAIRPERSON HILL: Okay, okay.

21 MR. KADDEN: That's all.

22 CHAIRPERSON HILL: You don't have any other
23 questions?

24 MR. KADDEN: I have no other questions.

25 CHAIRPERSON HILL: Okay, all right. All right.

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1 So, Mr. Kadden, go ahead and, you know, I'll put ten minutes
2 up on the clock again of which Ms. Kadden took three, so
3 we'll go ahead and whatever the difference is.

4 MR. KADDEN: It's late.

5 CHAIRPERSON HILL: Seven minutes. It's only the
6 afternoon. Okay.

7 MR. KADDEN: Okay. So as we've said, I'm the
8 owner of 1743 Harvard Street along with my wife, Jana, who
9 was here and our three kids, Siggy, Manny and Cecilia.
10 Cecilia you met today.

11 Our property is immediately next door and as such
12 we and our neighbor, Eric Picard, who was here earlier, sit
13 in between the two proposed bump backs, which we believe
14 would have a substantially adverse effect on the use and
15 enjoyment of our homes and yards.

16 As has been discussed so much already, the homes
17 on Harvard Hill are indeed unique, and the ANC 1B recognized
18 this in the unanimous resolution last week saying that the
19 immediate adjacent rear yards function as outdoor living
20 space in both design and fact.

21 The spaces include patios, green space, trees and
22 sky. The fact that these yards are so shallow and narrow
23 means that any rear addition on an adjacent property could
24 have a particularly pronounced adverse effect.

25 As the ANC put it so well, the bump backs proposed

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1 by these two applicants would change our row forever and set
2 a terrible precedent for others who may seek to do the same
3 in the future. As Nicole Melcher points out in her letter
4 to the BZA dated October 19th, Exhibit 61, the impact on her
5 yard from the bump out at 1725 Harvard has been
6 "devastating."

7 She writes, "The imposing wall placed next to my
8 windows drastically reduces the amount of direct sunlight and
9 ambient light and warmth that I once enjoyed all year. Snow
10 and ice take longer to melt in the winter, and there is a
11 dampness that the lack of light sustains. No matter where
12 I look, my view is boxed in and contaminated by a looming
13 brick wall rather than the pristine light and airy feel that
14 previously existed."

15 Unlike most other residents on our row, Ms.
16 Melcher is uniquely able to share her experience of living
17 next to one of these bump outs both before and after, so she
18 truly has a basis for comparison. To give a sense of that
19 before and after, I refer you to the photographs that we
20 uploaded to the BZA website.

21 And I actually have them for case number 19560 in
22 my remarks here, and they're Exhibit 74 and 75 in that one.
23 I think they're like 67 and 68 in this case, but I can't
24 remember exactly the numbers.

25 But there's one that's shot from our back of the

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1 house overlooking a nonexistent bump out or at least not a
2 second floor bump out. And then there's one that shows Ms.
3 Melcher's view from the same perspective. And of course, the
4 difference is quite stark.

5 And this is why more than 25 Harvard and Hobart
6 Street residents signed onto our letter opposing the bump
7 outs. And why the two applications received almost no
8 support from the neighborhood, because the neighbors feared
9 that if these two projects are approved then the same could
10 happen to them. They don't want these bump outs to forever
11 change our row and its special character.

12 This is also why the ANC voted unanimously last
13 week to recommend the BZA reject these two applications.
14 They agreed with us that "the extensions will have
15 substantially adverse effects on our properties." The ANC
16 also rightly dismissed the idea that these bump outs are
17 somehow necessary for attracting young, growing families to
18 the neighborhood.

19 I would submit my family as Exhibit A. We have
20 three kids in a house with no bump out, and there are no
21 fewer than six other families living on our row with young
22 kids. So it is specious to argue that a bump out is somehow
23 necessary for raising a family.

24 Finally, I would like to raise a few concerns
25 about the burden of proof statement submitted to the BZA

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1 regarding 1745 Harvard Street. The burden of proof statement
2 claims that we were offered \$1,000 toward replacing our
3 existing living wall on the bump out facing our home.

4 First, and as I mentioned there is that one-story
5 bump out so far. First of all, we did discuss general
6 landscaping ideas with Mr. Skelton. An explicit \$1,000 offer
7 was never made to us. Second, \$1,000 would cover just a
8 small fraction of such a project as our research shows that
9 watering a two-story living wall would likely require built-
10 in irrigation, so such an offer would be insufficient for
11 allaying our concerns.

12 The burden of proof statement also claims that
13 there was sufficient outreach to residents on the row. My
14 wife and I are unaware of such outreach. While we had
15 discussed the general project idea with Mr. Skelton in
16 passing over the summer of 2016, we were only made aware of
17 the details of Mr. Skelton's project when Fay Armstrong from
18 Historic Mount Pleasant reached out to us about it.

19 Mr. Skelton had not done so himself, and in fact
20 it was Ms. Armstrong who suggested that the time for a
21 conversation among neighbors was long overdue. And while we
22 did host a meeting in our backyard to discuss the project
23 with Mr. Skelton and his team, and while my wife and I
24 invited a few of our neighbors to join us, I'm not aware of
25 any outreach conducted by him or his team.

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1 Additionally, never in that meeting did any member
2 of the team mention that the project would require a special
3 exemption, which is why we did not raise an objection to the
4 project at that time and as I said, we did not have an
5 objection on the historic nature of it.

6 We were under the impression that we had no choice
7 in the matter because they were within their rights to build
8 the entire bump out. We now know these rulings are new and
9 perhaps Mr. Skelton and his team did not understand their
10 full implications at that time, granted. But our initial
11 acquiescence should not be interpreted as an endorsement of
12 the special exemption.

13 There are also a number of small errors in the
14 burden of proof statement, including confusion between our
15 property and 1747 Harvard, which I can get into in more
16 detail if you want.

17 But it also claims that there were several
18 attempts to reach out to the owner of 1747, incorrectly
19 referred to as 1743, but the tenants have told us that there
20 was no attempt made to reach out to them, which should have
21 been a way to reach the owner if they felt it necessary.

22 So we really feel that the inaccuracies in the
23 burden of proof statement, many of which showed up in the OP
24 report should call into question the accuracy of the
25 statement as a whole, and I believe undermines the ability

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1 of the OP to fully analyze this fully.

2 So in closing, I'd like to thank the BZA for their
3 attention and urge you to reject this application. Thank
4 you.

5 CHAIRPERSON HILL: Okay, thank you. Does the
6 board have any questions of Mr. Kadden?

7 MEMBER WHITE: One question. Just so I'm clear,
8 what is the adverse impact that this addition could
9 potentially have on your property? I'm looking at the sun
10 studies, I'm looking at the by right versus, you know, what
11 it would look like if the special exception was granted. So
12 I'm just trying to wrap my head around how it's directly
13 impacting you.

14 MR. KADDEN: Yes, I mean look, I think that you're
15 right that the by right would directly impact us as well and
16 any inch, foot beyond that directly impacts us more. And so
17 you know, we have gardens. My wife is a very big gardener.
18 And we feel that it would be a great reduction in light for
19 the gardens.

20 We also spend a tremendous amount of time in our
21 backyard. You know, the kids are out there all the time.
22 We grill back there. And it just would feel like we're
23 closed in and hemmed in, and I think that it is -- you know,
24 when you look at the size of these yards, it's very different
25 than in a lot of other places even in Mount Pleasant where

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1 the size of the property is wider.

2 Here we're talking about very narrow properties.
3 This is right up in our face in a way that is not the case
4 I think in a lot of the other bump backs that have been
5 proposed.

6 MEMBER WHITE: Because this property, it already
7 has an extension on the first level.

8 MR. KADDEN: Yes.

9 MEMBER WHITE: So they're looking to --

10 MR. KADDEN: Right. So the extension on the first
11 level is much less intrusive. It does not block our view of
12 the sky nearly as much. It also is a bit of a blight, and
13 Mr. Skelton has said that he wants to get rid of that anyway,
14 but you know, it's just not as big of an impact as two
15 stories. You know, there are a number of other one-story
16 bump backs that are just much less intrusive.

17 VICE CHAIRPERSON HART: Mr. Kadden, I'm sorry.
18 Do you have any view of the bay window that they're also
19 proposing for this?

20 MR. KADDEN: Any view meaning any position on it?

21 VICE CHAIRPERSON HART: Yes. Do you have an issue
22 with it or it's all part and parcel with the same project?

23 MR. KADDEN: Yes, the latter. I don't have a
24 particular view on that.

25 VICE CHAIRPERSON HART: Thank you.

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1 CHAIRPERSON HILL: Okay. Does anyone have any
2 other questions for Mr. Kadden? Okay. I'm being clear,
3 right? The one story is there. Right? And there's already
4 green wall on it. Is that correct?

5 MR. KADDEN: So my wife has, with Mr. Skelton's
6 permission, placed buckets on the wall that I think actually,
7 oh no probably not in the photograph that you have. I can
8 show you a photograph of it. But it's just our own doing
9 that, you know, she placed buckets on the wall with little
10 planters and, you know, we water it by hand.

11 But what Mr. Skelton is talking about is, you
12 know, potentially a two-foot green wall to allay some of our
13 concerns.

14 CHAIRPERSON HILL: Got it.

15 MR. KADDEN: Which, you know, it's like \$150 per
16 square foot or something based on our research.

17 CHAIRPERSON HILL: Got it. Okay. Thank you. If
18 you could leave this one up, that would be great, thank you.
19 All right. Does the applicant have any questions for the
20 party in opposition?

21 MR. GURNEY: I just had a comment. In terms of
22 when we met initially with Fay, and us like, I think Jeremy
23 kind of inferred that we misrepresented what we could do.
24 At the time, we were allowed to go back considerably more
25 than we are.

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1 Like, when we started designing this thing, we
2 presented this initially both to Jeremy and to HPRB, it was
3 before this ten-foot new rule was in play, so I mean we
4 weren't designing for a rule that wasn't even in place.

5 CHAIRPERSON HILL: Right, okay.

6 MR. GURNEY: I think it's important to note that.

7 CHAIRPERSON HILL: Okay. All right, so --

8 MR. GURNEY: Like, there was no misrepresentation.

9 CHAIRPERSON HILL: I understand. I understand.
10 Okay.

11 MR. KADDEN: I apologize if that was the
12 implication.

13 CHAIRPERSON HILL: That's all right. Okay. All
14 right. Okay? Okay. Go ahead and turn to the Office of
15 Planning, please.

16 MS. MYERS: Good afternoon, Crystal Myers for the
17 Office of Planning. The Office of Planning recommended
18 approval of this project and submitted the report back on
19 September 29th. But since that time, additional information
20 has been submitted, including additional shadow studies.

21 We took a look at them all. We reviewed it and
22 continue to recommend approval of the proposal. But I do
23 want to note there is a staff report correction that I want
24 to make note on the record. It was pointed out to us that
25 the report has an error.

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1 We said in our report that three trees would be
2 retained on the site. This is an error. There will be trees
3 retained on the site, but they'll actually be three trees
4 added to the site as well. So I just wanted to clear that
5 up. Otherwise, the Office of Planning continues to support
6 the project and stand on the record of the staff report.

7 CHAIRPERSON HILL: Okay, great. Thank you. Does
8 the board have any questions of the Office of Planning?

9 VICE CHAIRPERSON HART: Just a point of
10 clarification. Now, I just want to make sure, the party in
11 opposition noted that there were some other discrepancies
12 with the OP report, and I just didn't know if that was the
13 only change or if there were some other changes that we were
14 just unaware of. I'll let you answer.

15 MS. MYERS: Well, the Office of Planning goes with
16 the burden of proof that's submitted by the applicant, and
17 so we use the information that's provided to us. I believe
18 the party in dispute is disputing some of the information in
19 it.

20 But we looked at both properties, and we looked
21 at the impact of the addition on both properties even if some
22 of the information may have been slightly in error. We have
23 extensive shadow studies, and we looked at the full impact
24 of the size. I mean, this is actually -- the existing
25 addition and the proposal are about the same extension. This

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1 will be two stories, whereas the existing is one.

2 But we weighed all of that and continue to
3 recommend support of the project, even though we acknowledge,
4 at least according to what the party in opposition saying,
5 it sounds like there are some questions in the burden of
6 proof. However, none of those issues that he has pointed out
7 are ones that would have changed our recommendation because
8 of everything else we looked at in the file.

9 VICE CHAIRPERSON HART: Thank you.

10 CHAIRPERSON HILL: I've got a quick question. So
11 there's an existing first story that's going back 13 feet?

12 MS. MYERS: Correct.

13 CHAIRPERSON HILL: And they, the applicant, and
14 this is where I sometimes get confused, they couldn't tear
15 that down necessarily. I mean, they would have to keep that
16 existing 13 feet first story, and they could build ten feet
17 on the second story by right.

18 MS. MYERS: I actually would not say either way
19 on that. I just wouldn't feel comfortable saying either way.
20 I think it's a DCRA determination question. I'm just not a
21 hundred percent on it.

22 CHAIRPERSON HILL: Okay. Rather it being existing
23 nonconformity perhaps on the first story. But anyway, so the
24 first story is there --

25 COMMISSIONER MAY: Can I just add, I think that

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1 actually in the zoning regulations, we acknowledge that
2 existing additions in the back that were more than ten feet
3 would not be considered nonconforming, because we didn't want
4 to have to trigger people to come in for relief because they
5 already had an existing addition that went more than ten feet
6 back.

7 CHAIRPERSON HILL: Okay.

8 COMMISSIONER MAY: So it wouldn't have been an
9 existing nonconformity. So if all they wanted to do was put
10 up a ten foot addition on top of the existing 13-foot
11 addition, I think they would not have needed any relief.

12 CHAIRPERSON HILL: Okay. Okay. All right, okay.

13 COMMISSIONER MAY: Relatively sure about that.

14 CHAIRPERSON HILL: Sure. Sure.

15 MR. KADDEN: Would I be permitted to ask a
16 question on that?

17 CHAIRPERSON HILL: Yes, hold on. You'll get your
18 chance, just give me one second. Okay, yes, the 13 feet, all
19 right, so ten feet. Okay. Mr. Kadden, you're right on cue,
20 so do you have any questions for the Office of Planning?

21 MR. KADDEN: Yes. And it sounds like you're
22 probably not going to be able to answer it based on your
23 previous answer, but I'm just curious because there's a
24 difference between taking the 13-foot structure that
25 currently exists and building on top of that versus tearing

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1 down the 13-foot structure that currently exists, building
2 another 13-foot structure, because as I said, the one
3 currently existing there is really not something he wants to
4 have, and we agree.

5 So tearing that 13-foot structure down, building
6 a new 13-foot structure and then building ten foot on top of
7 that, is there a difference in how the city views those two
8 actions? So there's one where you keep the 13-foot structure
9 and build on top and then there's one you tear down the 13
10 and start with a new 13 and build on top of that. That's my
11 question. Does that make sense?

12 MS. MYERS: It does, I mean, I think the only
13 thing I could really say on this is that you can do a ten-
14 foot extension by right, I think as we all know. The 13 feet
15 if they were to leave it as it is today for that one story
16 as an existing condition would be fine.

17 As for what you would be able to do on the second
18 story, if it would be ten feet or 13 feet by right, I just
19 wouldn't be able to answer that right now.

20 MR. KADDEN: Okay, thank you.

21 CHAIRPERSON HILL: Okay. All right. Let's see.
22 Do you have any more questions for the Office of Planning?

23 MR. KADDEN: I'm all set. Thank you.

24 CHAIRPERSON HILL: Okay. Does the applicant have
25 any questions for the Office of Planning?

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1 MR. GURNEY: No questions.

2 CHAIRPERSON HILL: Okay. Before we go out to the
3 audience, I guess so you guys again, you did look at just
4 what you could do by -- I mean, we've been here now for four
5 hours, right, about these two cases. And so again, you're
6 talking about one foot, two foot, I mean you know, four foot,
7 and we have looked at things that again are people that come
8 in and they ask for special exceptions at 18 feet and all
9 these things.

10 I mean, so you did look hard at just doing this
11 by right at ten feet, and you came up with the additional
12 three feet how?

13 MR. GURNEY: We were at 15, you know, when we
14 started this whole project.

15 CHAIRPERSON HILL: Before the regulations changed?

16 MR. GURNEY: Yes, so we tightened everything up
17 to get down to 13 feet.

18 CHAIRPERSON HILL: Right.

19 MR. GURNEY: And so that was our process and how
20 we landed where we are today.

21 CHAIRPERSON HILL: Well, I would also argue maybe
22 you also were at 13 feet with the first floor and so it just
23 made sense to go up 13 feet on the second floor.

24 MR. GURNEY: Right. And just in response to Mr.
25 Kadden's question, I think if by right we could retain the

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1 13-foot addition and add the ten foot second floor, we would
2 do that as opposed to sort of knocking it down and then
3 asking for a special exception to rebuild the 13-foot.

4 CHAIRPERSON HILL: Actually, I forget how the
5 regulations work, like how much you have to retain of the
6 existing, you know, wall. That's beyond me. I don't know
7 in that right.

8 MR. GURNEY: Almost nothing.

9 CHAIRPERSON HILL: So again, beyond my pay grade.
10 Okay. Does anybody have anything before I turn out to the
11 public? Okay. Is anyone from the ANC here? All right. Is
12 anyone here wishing to speak in support? Please come
13 forward. Okay, if you could please again state your name for
14 the record and then we'll go ahead and put three minutes on
15 the clock for you.

16 MR. MCREYNOLDS: Joe McReynolds and just to ask
17 a clarifying question before I begin in terms of the way you
18 all process these cases. Is it better if I focus on things
19 that I didn't have time to address in the previous case or
20 should I be reiterating the points I was making from 1739
21 that are, you know, largely relevant to this very similar
22 case?

23 CHAIRPERSON HILL: Sure. So Mr. McReynolds,
24 again, each case is individual, and this completely stands
25 alone on its own, so whatever you'd like to say on the record

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1 for this case with your three minutes even if it's completely
2 repetitive, you may go ahead and do so.

3 MR. MCREYNOLDS: All right. Well, in the interest
4 of not boring you, I will aim for only partially repetitive.
5 The repetitive part first. I live on the road next to the
6 largest pop back on the row, and I have no pop back myself.
7 I looked at exactly how much it is in the break between these
8 two sessions, and theirs is a 15-foot pop back, but their
9 house is shifted relative to mine, so from my perspective,
10 it's more like an 18-foot pop back.

11 And I have experienced virtually no disruption to
12 my sunlight. Shadow issues are fine. We spend tons of time
13 in our backyard, my wife and I. And realistically, I just
14 don't see any way that this could be considered undue by a
15 government body. I understand that, you know, everyone has
16 their own personal opinion, but this is just so far at the
17 mild end of these cases.

18 In terms of new stuff relevant to this, I would
19 say that since Jeremy, compared to the previous case, Jeremy
20 is emphasizing that he believes there's a very strong
21 consensus on the row against this project, and I would say
22 that that's unfortunately simply not true.

23 It's true that he's gotten a substantial portion
24 of the row against it, him and Steve, who's kind of de facto
25 mayor of the row in a way. But there's also a substantial

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1 portion of the row in support of it and not all of them have
2 signed letters. Some of them have, some of them haven't.

3 But, frankly, I've heard from, you know, a number
4 of my neighbors who again, I don't have any personal stake
5 in this project, you know, I never met Will before any of
6 this, who tell me like, well, yes realistically, I think
7 their project's fine, but like I don't want to cross, you
8 know, Steve, and like there's a whole gang of neighbors on
9 this. It's intimidating. They're good people.

10 CHAIRPERSON HILL: Mr. McReynolds? Yes, that's
11 okay.

12 MR. MCREYNOLDS: It's just intimidating.

13 CHAIRPERSON HILL: No, no, no. What I'm just
14 trying to kind of keep you away from is kind of like, you
15 know, I don't want to say it's like hearsay, but I mean I
16 can't or we can't necessarily weigh testimony from something
17 you might have heard from somebody.

18 MR. MCREYNOLDS: Yes.

19 CHAIRPERSON HILL: I mean, we can only really read
20 what's in the record.

21 MR. MCREYNOLDS: Yes.

22 CHAIRPERSON HILL: And your particular testimony.

23 MR. MCREYNOLDS: Okay.

24 CHAIRPERSON HILL: So it just makes it difficult.

25 But just kind of stick if you could to, you know, what you've

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1 experienced, what you have to say about this case.

2 MR. MCREYNOLDS: All right. What I've experienced
3 is that this is one more factor suggesting that these cases
4 should be decided primarily by quantitative metrics in a
5 fairly consistent process. And I think that the Office of
6 Planning's testimony speaks to the quantitative factors in
7 this case.

8 And that it's just generally good for communities
9 in DC for this to stay as far away from sort of making it an
10 interpersonal dispute between neighbors where who you have
11 is the luck of your draw of who you're living next to
12 determines what you can do with your own property, veering
13 as far away from that as possible.

14 Just in terms of the facts of the matter of
15 whether or not they reached out, I will say that, you know,
16 Will reached out to me and I'm five houses down. I had no
17 particular stake in this and, you know, Will, you know,
18 stopped by, knocked and explained his plans. So I have
19 personally experienced that he did make a substantial effort
20 to reach out to his neighbors on the row about this project.
21 And I think that's my time.

22 CHAIRPERSON HILL: Okay. Does anybody have any
23 questions for the witness?

24 MEMBER WHITE: What was the address of the house
25 that had the 15-foot extension in the back?

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1 MR. MCREYNOLDS: That's 1757 and I'm at 1755. And
2 if you look at it on like Google Maps, you can see the
3 relative lengths of the extensions. You can just see it
4 right there in the bird's eye in Google Maps. And so you can
5 see that theirs is also shifted relative to mine, so for me
6 practically it's more like an 18-foot wall in the back.

7 And yes, I'm in my backyard all the time in the
8 summer when the weather's decent for the stretch of DC that's
9 decent and I've had no problems and my wife's had no
10 problems.

11 MEMBER WHITE: Okay. Thank you.

12 CHAIRPERSON HILL: Anyone else? Yes. Mr.
13 McReynolds again like, I guess, do I have a question? I
14 mean, I appreciate your comments and again, and I mentioned
15 this actually at the end of the last case, but you can see
16 the standards and you can see the way that they're written.

17 And, you know, there terms such as unduly, which
18 gets brought up all the time and, you know, what your
19 enjoyment may be with your backyard or what your thoughts
20 are, that may differ from the next person. So I guess just
21 kind of to your point, this is actually the closest thing to
22 a metric that I have seen thus far.

23 But I do agree it would be great if there was just
24 like an x or y here, but the special exception was put in
25 place for this process. But I do appreciate your testimony.

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1 Does Mr. Kadden have any questions for the witness?

2 MR. KADDEN: Yes. I have heard Mr. McReynolds say
3 on a number of occasions that there is strong support on the
4 row for this, and I have yet to see it materialize. And I
5 know you pointed out that you can't rely on hearsay, so I
6 would just, you know, for one last time like to ask Mr.
7 McReynolds what support he's referring to. I just have not
8 seen it.

9 MR. MCREYNOLDS: Neighbors that I have talked to
10 about this project. Given that they were hesitant to get
11 involved in a fight between their neighbors for obvious
12 reasons, because who really wants to be in that extremely
13 awkward position, except I'm a masochist I guess, so that's
14 why I'm here.

15 I think it's on them if they want to have that
16 discussion with you directly. I don't --

17 CHAIRPERSON HILL: That's all right. You've
18 answered the question I think, so that's -- you're testifying
19 to it, I guess. But, I don't have a lot in the record other
20 than his testimony and as I mentioned before we base things
21 that are on the record that is, but we are listening to his
22 testimony in terms of what he's experienced with his property
23 and his thoughts on this case. Do you have any further
24 questions?

25 MR. KADDEN: No. Thank you.

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1 CHAIRPERSON HILL: Okay. Does the applicant have
2 any questions for the witness?

3 MR. STEPHENS: Yes. Since you have a unique
4 condition here where you're actually next to one of these pop
5 backs, I have a couple of questions based on the use and
6 enjoyment of your property that have been raised here. Do
7 you have issues with ice in the winter in your backyard?

8 MR. MCREYNOLDS: None whatsoever. I can actually
9 compare, I guess, the two sides of my backyard since there's,
10 you know, one where there's the giant wall and the other side
11 where there's no pop back at all on 1753 on my other side.

12 So presumably if there was a major issue arising,
13 there would be some sort of asymmetry, and I really haven't
14 seen any in several winters at the property.

15 CHAIRPERSON HILL: Okay.

16 MR. STEPHENS: And then another issue has been
17 brought up about enjoyment and use of the property. Have you
18 experienced issues with moss or mold or had a maintenance
19 issue with those created from this pop up addition, two-story
20 addition next to you?

21 MR. MCREYNOLDS: No. Nothing I've seen anyway.

22 CHAIRPERSON HILL: Okay. Anything else?

23 MR. STEPHENS: That's all, thanks.

24 CHAIRPERSON HILL: Okay. Is there anyone here who
25 wishes to speak in opposition, if you could please come

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1 forward? If you could again just speak into the microphone
2 and introduce yourselves for the record?

3 MS. ROBERTS: Hi, I'm Annie Roberts, and I live
4 at 1731 Harvard.

5 MR. ROBERTS: I'm Steve Roberts, 1731 Harvard.

6 CHAIRPERSON HILL: Okay. Ms. Roberts, I'll start
7 with you and we'll give you three minutes and do the same for
8 Mr. Roberts.

9 MS. ROBERTS: Okay. Thank you for the
10 opportunity. I wanted to speak specifically to the shadow
11 study. I am friends with the owner of 1723, which is next
12 to the pop back, Nicole Melcher. She submitted the letter
13 to you all regarding her before and after experience.

14 And I've been in her yard before and after as well
15 and, you know, standing in her backyard and looking at the
16 shadows in the afternoon. When I saw shadow studies, I was
17 surprised at what they showed, because it looked like there
18 was minimal impact.

19 But when I went and stood in her yard after
20 standing in my yard, she's three doors down from me, you
21 know, the impact is huge. And I just don't understand how
22 decisions can be made by looking at a piece of paper with,
23 you know, gray shadows on it.

24 Because if you're not actually standing back there
25 and experiencing it, then you have no idea what you're

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1 looking at. And you know, I have seen the mold in her back.
2 I've seen moss growing. And I don't have that in my
3 backyard. I don't live next to any bump out at all. She is
4 next to one that's 14 feet back.

5 So you know, the use and enjoyment, she is, she's
6 devastated. I mean, it really is -- the ambient light is not
7 mentioned enough. I mean, there's shadow studies and then
8 there's the ambient light. You don't get any of the ambient
9 light when there's a brick wall that's blocking everything.
10 You just don't get it.

11 And, you know, in our yard when we put the Post-It
12 notes at ten feet back and at 14 feet back and to imagine
13 having, you know, an addition on either side of us like that,
14 it would be like living in an alley cut-through, you know.
15 It's just these walls next to you where right now there's
16 sky, there's trees.

17 And we have a tree in our backyard, so we do have
18 some shade, but it's not like a brick wall shade. You know,
19 this is sort of a dappled shade that we get, you know, when
20 the tree is leafed out in the winter, obviously it drops its
21 leaves.

22 But, you know, the use and enjoyment would be
23 greatly impacted. When I'm in Nicole's backyard, it just
24 feels really closed up and kind of damp. I was surprised at
25 that feeling when I was sitting over there with her one day

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1 and talking to her about, you know, what was going on.

2 So you know, I don't think anybody from the Office
3 of Planning did a site visit and actually experienced what's
4 it's like to be in a house with no pop back and in a place
5 where there's a 14-foot pop back.

6 And as far as the one-story additions that people
7 have in the back. They just rise slightly above a privacy
8 fence, so you really aren't impacted greatly by the one-story
9 additions, because you still see the trees and you see the
10 sky and you get more of the natural light that comes through.

11 And the air, I mean, I can't explain mold and moss
12 growing. I mean, I'm guessing that's from damp, because you
13 don't get the air. You don't get the heat from the sun.
14 But, all these studies say that it's not impacted, it's not
15 impacted. But, I think, in reality if you're experiencing
16 it in the space then you would understand better. So that's
17 all I have. Thank you.

18 CHAIRPERSON HILL: Okay, great. Thank you. We'll
19 go ahead and hear from Mr. Roberts as well and then I'll take
20 questions from the board if that's all right. Mr. Roberts,
21 you can go ahead and put three minutes on the clock for you
22 as well.

23 MR. ROBERTS: Yes, I'm still Steve Roberts, and
24 I appreciate you listening to us today. And I wanted to
25 reiterate again that, you know, as Joe McReynolds said we

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1 moved into the neighborhood in 1993. There weren't a lot of
2 neighbors that actually knew each other in our row of 31
3 houses, and I was instrumental in scheduling community
4 cleanups and sort of generating what for years has been a
5 congenial and warm neighborhood situation in the 31 houses.

6 As I said previously, you know, they're small by
7 design. They live big because they're glass front and back.
8 And I don't think it's simply opinion that large structures
9 off the back of adjacent houses have an adverse effect on the
10 neighbors. I think that that's the truth.

11 And, you know, I don't sit on the zoning board.
12 I don't envy you your positions, and I don't really know what
13 you follow to make decisions about size, but I know that
14 we've been spoiled for 25 years having nothing out of our
15 backyard other than our beautiful patio with no walls from
16 neighbor's additions either side.

17 And that's been the case, and this is a different
18 time in DC and growing houses instead of moving is the trend.
19 And I just do think that based on what we know from the, you
20 know, obviously not all the pop backs, but the pop backs that
21 we're aware of, the yards that we're aware of, there's
22 adverse conditions brought on by them. So less is more in
23 my opinion. Thanks.

24 MS. ROBERTS: Can I say one more thing?

25 CHAIRPERSON HILL: Sure.

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1 MS. ROBERTS: I understand that we're talking
2 about the special exception, so that's the two or three or
3 four feet, you know, that the by right is ten feet and, you
4 know, that's painful enough. I mean one inch beyond that is
5 exponentially more painful.

6 I mean it really gets to the point where, yes, you
7 know, let people build what they want for ten feet, you know.
8 But any further than that, it's that much more encroaching
9 on our enjoyment of our home.

10 CHAIRPERSON HILL: Okay. All right, does the
11 party in opposition have any question for the witnesses?

12 MR. KADDEN: No. Thank you.

13 CHAIRPERSON HILL: Okay. Does the applicant have
14 any questions for the witnesses?

15 MR. GURNEY: No questions.

16 FINAL GENERAL QUESTION AND ANSWER SESSION

17 CHAIRPERSON HILL: Okay. Does the board have any
18 questions for the witnesses? Wow, you guys don't have any
19 questions. I guess, I, do I have any questions? More just
20 again, as one who has the, I guess I don't know, opportunity
21 to lead these discussions, I mean I really feel for all of
22 the people that are doing this.

23 I mean, I can, and since I have the mike, I just
24 want to share, and you've been sitting here all day, that you
25 know, the changes that take place we've seen them now over

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1 at least my tenure here for a couple of years, and being one
2 that has been here in the city for as long as I have, I have
3 also seen the changes that have taken place.

4 So I do appreciate someone who's been in that
5 neighborhood since '93 and what it was like in '93 and all
6 of the work that you had done. And now I suppose the
7 unfortunate part of the city changing as it has are these
8 different dynamics in terms of growth and things that take
9 place.

10 And again, I don't know where this is going to go,
11 but the board has been set up to handle these special
12 exceptions beyond what has been set up in the regulations in
13 terms of the ten feet that you can do by right.

14 And the criteria that we do, I think even though
15 it's a little bit fungible in terms of the unduly, I think
16 it is pretty clear in terms of the criteria that we go
17 through to determine whether or not something is or not
18 unduly affecting the other properties. And you'll get an
19 opportunity to see how the board deliberates as we move
20 through that.

21 I guess in my last moment here, I just wanted to
22 let you know and the others know that I empathize with just
23 how change regardless even the ten feet, how that really can
24 be problematic when somebody who's been there since '93 when
25 the area was not probably the way it is now. So -- sure, go

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1 ahead.

2 MEMBER WHITE: I had one question because there
3 was a statement that kind of questioned the voracity of the
4 sun studies and so I'm looking at the sun study, Exhibit 60,
5 and I wondered if someone could, you know, just briefly just
6 explain why this is something we can rely on, and why there
7 could be some discrepancy between what's in the study and
8 what Ms. Roberts sees on a daily basis.

9 MR. STEPHENS: Well, I can't explain why they
10 would think that the direct sunlight differs. The direct
11 sunlight -- this is on the north side of the property, so
12 it's already in the shade side of the existing structure.
13 So do you want me to review how we did our shadow study and
14 why we chose --

15 MEMBER WHITE: Well, just briefly. I don't want
16 to take up too much time, because we've been here all day,
17 but just enough to kind of give me some comfort in looking
18 at it as something that I can rely on.

19 MR. STEPHENS: Sure. So we used a sun-modeling
20 program that tracks the sun and, to the best of my knowledge,
21 accurately reflects the shadows that would be present. We
22 geolocated this model to specifically be where it is in real
23 life. This is not a generic situation with the sun. It's
24 very specific to this site.

25 And we picked the dates that are three months

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1 apart to show the times, you know, the different times of the
2 year. We picked -- the December study, we added that to the
3 most recent shadow study because there was a lot of debate
4 on, you know, adding shadows in the winter and making icy
5 conditions. But as you can see that's already in shade in
6 the winter.

7 And I can't speak to why there would be a
8 disagreement. I can speak to, this is December and we're in
9 October now, so those are different conditions. I don't have
10 October shown here. I have the end of September. So that
11 could be a reason as to why there are differing opinions onto
12 the existing shadow conditions versus what's shown in the
13 study.

14 MEMBER WHITE: Thank you.

15 CHAIRPERSON HILL: Okay. Does anybody have
16 anything else for -- I have a couple of things for the
17 applicant. Does anybody have anything else for the
18 applicant?

19 Okay. Maybe something will come up as I say this,
20 but what I'd like to see again -- you were here for the last
21 case, and I think we're going to take a little time to look
22 at -- what I'd like to see again is just kind of what the
23 design is with the ten feet.

24 Well, actually I'm kind of curious as to what the
25 by right thing might look for you guys, because what I'm

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1 going to be comparing is kind of the by right with what the
2 additional three feet is.

3 And so, you know, you can either do it, you know,
4 by right by ten feet on both stories or you can do it
5 whatever you think you can do keeping what you got there at
6 the 13 feet and throw up another ten feet.

7 I'd like to hear about, I guess, any kind of
8 thought, and you can tell me right now any kind of thoughts
9 you might have in terms of this existing green wall, in terms
10 of like, you know, again it's not really our board's purview
11 to, not purview, that's the wrong word.

12 It's not up to the board to kind of negotiate
13 things with neighbors, but I am kind of curious as to like
14 the green wall and, you know, initially if you have any
15 comments or thoughts as to how that -- because you threw up
16 something there that makes it look like this glorious green
17 wall that's actually going to be there.

18 And, you know, the mechanics of that doesn't seem
19 very feasible unless it is some kind of an expensive green
20 wall. I'm just curious if you have any comments on that,
21 because you threw it up there for us to take a look at.

22 MR. GURNEY: Yes, I wasn't a party to the
23 discussions that Will had with -- I heard the number \$1,000
24 thrown out for the green wall. So I think those are -- Will
25 Skelton is our client, and I think he's the one who had the

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1 discussions with or raised the issue about the green wall.
2 He did not raise them with me, so I don't have a whole lot
3 of insight into that. Do you --

4 MR. STEPHENS: The same.

5 CHAIRPERSON HILL: Okay. If you could just
6 provide by the next time some clarification onto what that
7 means. I'm just, you know, what the green wall means, like
8 how would that work? You know, if you could find some
9 clarification into the record for that by the time we come
10 back. Yes, please?

11 MR. STEPHENS: I mean, Will did speak with me a
12 little bit about the green wall proposal, and it was more
13 meant to just show compromise. And he's trying to come up
14 with ideas to acquiesce concerns a little bit from
15 specifically the Kadden's and just offering options of
16 compromise.

17 And it was just meant to be a suggestion, and we
18 can certainly look into more specifics about the green wall
19 and what it would cost and the actual species that it would
20 take to use.

21 CHAIRPERSON HILL: Okay. If you could provide
22 some clarification for us, that would be great. Ten feet?
23 Does the board have any other thoughts? Okay. So then we're
24 going to do the same timetable, because Mr. May is going to
25 be here again. Mr. Moy? So that means next Tuesday you can

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1 submit drawings and you can get in touch with -- where are
2 they, they're in Thailand?

3 MR. GURNEY: Vietnam.

4 CHAIRPERSON HILL: Saigon or Vietnam? Okay,
5 great. So maybe you can find out some clarification on the
6 green wall and get back to us by next Tuesday. Then the
7 opposition would have one week with which to reply to that.

8 So that would put you back in Tuesday after that
9 and then we can put this up for decision on Wednesday. Mr.
10 Kadden, you got that too?

11 MR. KADDEN: Yes, thank you.

12 CHAIRPERSON HILL: Okay. Sorry, go ahead.

13 MR. GURNEY: Yes. I had a quick question. Are
14 you looking for two schemes then from us, one with ten foot
15 on the first floor and ten foot and the second floor and one
16 with 13 foot on the first floor and ten foot on the second
17 floor?

18 CHAIRPERSON HILL: I'm interested in what you
19 think your by right option is.

20 MR. GURNEY: Okay.

21 CHAIRPERSON HILL: And so if you think your by
22 right option is 13 on the first floor and ten on the second,
23 then that's what I'm interested in. If you think your by
24 right option is the ten and ten, then you know, whatever you
25 think your by right option is.

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1 MR. GURNEY: It's just one thing I would sort of
2 add to that, it will affect like immensely the design, like
3 if by right we have to leave the existing structure, it's a
4 wood frame structure.

5 And then we'd, I'm guessing that my client would
6 prefer to have the 13 foot on the lower level, but it's going
7 to be a very, very different structure architecturally
8 because again, we were proposing an extension of the existing
9 party walls. And now we're probably looking at again
10 retaining the existing wood frame 13-foot structure --

11 CHAIRPERSON HILL: No, I got you. I understand.
12 I got to throw this back on you unless somebody else wants
13 to offer some help from the board. I mean, you have to
14 figure that out on your own, whatever you think the by right
15 is.

16 And so I just want to see what the by right is so
17 that if you didn't have to be here, this is what you, you
18 know, you wouldn't be before us at all, this is what you
19 could do by right.

20 Because really again what we've been continuing
21 to be tasked with and what we continue to be tasked with is
22 like the difference between the effect of the by right and
23 what the additional, you know, one inch, one foot, whatever
24 that is to the other properties and determining whether that
25 is meeting the standard for the special exception.

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1 I mean, it's not a mystery as to how we come to
2 it to be quite honest I think. But, I do understand that
3 from a preference standpoint, I wouldn't want necessarily one
4 more foot either. You know, it depends on I guess who you
5 are.

6 We've heard testimony that the other guy doesn't
7 care how many, you know, it could be a train next to his
8 house, I don't know. So okay, is there anything else, any
9 questions?

10 MR. KADDEN: Can I ask a question about what
11 you're proposing?

12 CHAIRPERSON HILL: Do you ask a question? Sure.

13 MR. KADDEN: Okay. I asked before about retaining
14 that 13-foot structure, and is that what you're proposing,
15 because I don't know if the current 13-foot structure would
16 hold up a ten foot --

17 CHAIRPERSON HILL: Yes, Mr. Kadden. This is what
18 I'm throwing out, you know, that's on them. Like, whatever
19 they think, you know, they have to do their own research.
20 They have to figure it out. It's not my job. So, you know,
21 whatever they turn up as the by right then we're going to
22 evaluate that. So you'll see it on Tuesday. Okay? Okay.
23 Sure?

24 MR. STEPHENS: Just one quick question, sorry,
25 just on how the BZA proceeds with this. I think the debate

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1 here is about the second story and that being limited to ten
2 feet, and I don't think there's much of a resistance to the
3 13-foot existing one-story addition, so could the BZA
4 potentially make a ruling to, even though it would
5 technically be a special exception on the first floor to be
6 13 and the second to be ten?

7 Is that a stipulation you could make into a
8 decision if we were to still go for 13 feet on both stories?

9 CHAIRPERSON HILL: Wow, you lost me. Do that
10 again.

11 MR. STEPHENS: Okay. Okay.

12 MR. GURNEY: Maybe I can try. Yes, I think what
13 he was asking is if we present basically a 13-foot structure
14 on both the first floor and second floor, when you make your
15 ruling, could you rule that we approve like 13 foot on the
16 first floor but not the second floor? Is that what you were
17 asking? Not negotiating.

18 COMMISSIONER MAY: We don't try to redesign your
19 project.

20 CHAIRPERSON HILL: It doesn't get parsed out that
21 way.

22 COMMISSIONER MAY: But if you want to present
23 something that's 13 on the first floor and ten on the second
24 thinking that that might be something that would be more
25 amenable to the neighbors, you're welcome to do that.

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1 MR. GURNEY: Yes, I think for us, it's going to
2 be a clarification with DCRA whether we can do that. In
3 other words by right --

4 CHAIRPERSON HILL: If you do by right the 13 on
5 the first floor and the ten on the second floor and you're
6 happy --

7 MR. GURNEY: We don't have to come back here,
8 right?

9 CHAIRPERSON HILL: -- then you don't have to come
10 back. Okay? Right. All right. Okay. So you have to talk
11 to DCRA. Okay?

12 MR. GURNEY: Okay.

13 CHAIRPERSON HILL: All right. So Tuesday, we'll
14 have new drawings. Okay? And then whatever that turns out
15 to be. And then, you know, yes. I mean you just kind of --
16 I don't want to cause too much work for you. When I say,
17 like new drawings, I just want to see what it looks like on
18 the outside, you know, because I'm just curious as to what
19 it's going to do to affect the people next door, right, which
20 what we are tasked to do.

21 I don't care about the inside necessarily. Right?
22 So that's next Tuesday. Then a week after that, the
23 opposition would have an opportunity to respond and then we
24 would set for decision on Wednesday the 15th when Mr. May is
25 back here. Now, I'm looking at Mr. Moy. Yes?

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1 MR. MOY: If I could just get the dates for the
2 transcript for clarity. So the applicant to file by Tuesday,
3 November 7th. The parties can respond by Tuesday, November
4 14th. And the board will make its decision on Wednesday,
5 December 15th, I mean --

6 CHAIRPERSON HILL: November.

7 MR. MOY: -- November 15th.

8 MR. KADDEN: A couple of questions on the
9 timeline?

10 CHAIRPERSON HILL: Give me one second. Okay, you
11 were going to say something?

12 MR. STEPHENS: When you say November 7th, can we
13 just upload that to our case file, upload the new drawings?
14 Okay, thank you.

15 CHAIRPERSON HILL: Okay, Mr. Kadden?

16 MR. KADDEN: And how will I be notified about the
17 new drawings?

18 MR. MOY: The applicants are required to serve for
19 the parties.

20 MR. KADDEN: Okay.

21 MR. MOY: So they have to serve you --

22 MR. KADDEN: Okay.

23 MR. MOY: -- their submission.

24 MR. KADDEN: Okay. And then, will there be
25 additional testimony on the 15th or simply the board

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1 conversation?

2 CHAIRPERSON HILL: You're going to have an
3 opportunity to submit any testimony to the record by the
4 following Tuesday, which is seven days after they submit
5 their information.

6 MR. KADDEN: The 14th, yes.

7 CHAIRPERSON HILL: The 14th, and then we as a
8 board will review all that and then deliberate on that
9 Wednesday.

10 MR. KADDEN: Okay. But there will not be --

11 CHAIRPERSON HILL: There will not be --

12 MR. KADDEN: -- outside testimony.

13 CHAIRPERSON HILL: --outside testimony.

14 MR. KADDEN: Thank you.

15 COMMISSIONER MAY: Right. And I think that
16 applies to you as a party in opposition and not everyone.
17 Right?

18 MR. KADDEN: Okay.

19 COMMISSIONER MAY: I mean the ANC could also add
20 testimony if they wanted to, because they're automatically
21 a party.

22 CHAIRPERSON HILL: Yes, the ANC. Yes. Thank you
23 for the clarification.

24 MR. KADDEN: I'm sorry. Were you saying that our
25 neighbors such as the Roberts are not welcome to offer

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1 opposition to the new drawings?

2 COMMISSIONER MAY: The record is not open for
3 general comments. It is open for the party in opposition and
4 the ANC.

5 MR. KADDEN: Okay. Thank you.

6 CHAIRPERSON HILL: Okay. All right.

7 COMMISSIONER MAY: Is that right?

8 CHAIRPERSON HILL: Yes, yes, yes, that's right.
9 That's right.

10 COMMISSIONER MAY: Okay.

11 CHAIRPERSON HILL: I just, sometimes party status
12 I get a little bit confused. So all right. You had another
13 question?

14 MR. GURNEY: No, I just, we're relying on DCRA to
15 be available to sort of answer our questions almost
16 immediately and sometimes it's hard to get a hold of them in
17 terms of, you know, being able to do what we do like
18 retaining the existing 13-foot structure and adding 10 foot
19 on top. We've had issues like sometimes it takes days to get
20 --

21 COMMISSIONER MAY: You know, I think you're just
22 going to have to make your best possible judgement. It's
23 largely about what you think can still be a successful
24 project. Right?

25 MR. GURNEY: Okay.

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1 COMMISSIONER MAY: I mean, if you determine that
2 you can't shrink it that small, then you just have to show
3 us why that doesn't work, you know.

4 MR. GURNEY: Okay.

5 COMMISSIONER MAY: And if you can't get the
6 answers that you need from DCRA --

7 MR. GURNEY: The only thing in response to
8 Commissioner Hill, again, our projects are always designed
9 from the inside out. You realized that.

10 CHAIRPERSON HILL: Yes, actually, no. Even though
11 I just stated that, that is incorrect. You will need to show
12 us the inside in terms of whether or not it works or not, you
13 know, because otherwise you wouldn't know. Right? So I made
14 a false statement. I apologize. So you have more work.

15 Yes, so then you can do ten feet on the bottom and
16 ten feet on the top and just show us what that looks like and
17 why that wouldn't work or would. Okay. All right, are we
18 good? You understand what we're doing okay? All right?
19 Okay. All right. All right, so then that's the end of this
20 one and we'll see you guys next on the 15th.

21 MR. GURNEY: Thank you for all your time.

22 CHAIRPERSON HILL: Sure.

23 MR. KADDEN: Thank you.

24 CHAIRPERSON HILL: Sure, thank you. And actually
25 it's just a decision so you don't even have to be here.

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1 MR. GURNEY: Yes, we're not going to be here.

2 CHAIRPERSON HILL: Okay.

3 MR. GURNEY: Thank you.

4 CHAIRPERSON HILL: All right. So I'd like to make
5 a motion to have a closed emergency meeting. As Chairperson
6 of the Board of Zoning Adjustment in accordance with Section
7 407 of the District of Columbia Administrative Procedures
8 Act, I move and will ask for a second that the board hold a
9 closed emergency meeting on November 1, 2017 for the purpose
10 of reviewing BZA rules and procedures as to closed meetings.
11 Can I ask for a second?

12 COMMISSIONER MAY: Seconded.

13 CHAIRPERSON HILL: The motion has been made and
14 seconded. Will the secretary please take a roll call vote?

15 MR. MOY: When I call the member's name, if you
16 would reply with a yes or no. Mr. Peter May?

17 COMMISSIONER MAY: Yes.

18 MR. MOY: Ms. White?

19 MEMBER WHITE: Yes.

20 MR. MOY: Chairman Hill?

21 CHAIRPERSON HILL: Yes.

22 MR. MOY: Vice-Chair Hart?

23 VICE CHAIRPERSON HART: Yes.

24 MR. MOY: We have a board seat vacant, but the
25 motion carries, Mr. Chairman.

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1 CHAIRPERSON HILL: Okay, great. So just to be
2 clear, we haven't adjourned this. We just had a motion to
3 hold a closed meeting, an emergency closed meeting.

4 (Whereupon, the above-entitled matter went off the
5 record at 3:20 p.m. and resumed at 4:01 p.m.)

6 CHAIRPERSON HILL: All right. For the record, we
7 had voted to have an emergency closed meeting. That
8 emergency closed meeting is now closed. Mr. Secretary, is
9 there any further items on the agenda for the board today?

10 MR. MOY: No, sir. Nothing else from the staff.

11 CHAIRPERSON HILL: Okay. Then we stand adjourned.

12 (Whereupon, the above-entitled matter went off the
13 record at 4:01 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: 11-01-17

Place: Washington, DC

was duly recorded and accurately transcribed under my direction; further, that said transcript is a true and accurate record of the proceedings.



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