

GOVERNMENT  
OF  
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY  
JANUARY 10, 2018

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

ZONING COMMISSION MEMBER[S] PRESENT:

PETER MAY, Board Member  
MICHAEL TURNBULL, Board Member

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

BRANDICE ELLIOTT  
ELISE VITALE

The transcript constitutes the minutes from the Public Hearing held on January 10, 2017.

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

9:43 a.m.

CHAIRPERSON HILL: All right, the hearing will please come to order. Good morning, ladies and gentlemen. We're located in the Jerrily R Kress Memorial Hearing Room, at 441 4th Street, Northwest. This is the January 10, 2018 public hearing of the Board of Zoning Adjustment for the District of Columbia. My name is Fred Hill, Chairperson.

Joining me today is Carlton Hart, Vice Chairperson, Lesyllee White, Board Member, and representing the Zoning Commission is Michael Turnbull, as well as Peter May will be here for a few items, and then Michael Turnbull will resume with us for the rest of the day. Copies of today's hearing agenda are available to you and located on the wall bin next to the door. Please be advised that this proceeding is being recorded by a court reporter, and is also webcast live.

Accordingly, we must ask you to refrain from any disruptive noises or actions in the hearing room. When presenting information to the Board, please turn on and speak into the microphone, first stating your name and home address. When you're finished speaking, please turn your microphone off, so that your microphone is no longer picking up sound or background noise. All persons planning to testify, either in favor or in opposition, must have raised

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1 their hand and been sworn in by the Secretary. Also, each  
2 witness must fill out two witness cards. These cards are  
3 located on the table near the door and on the witness table.  
4 Upon coming forward to speak to the Board, please give both  
5 cards to the reporter sitting to the table to my right. If  
6 you wish to file written testimony or additional supporting  
7 documents today, please submit one original and twelve copies  
8 to the Secretary for distribution.

9           If you do not have the requisite number of copies,  
10 you can reproduce copies on our office printer, in the Office  
11 of Zoning, located across the hall. The order of procedures  
12 for special exceptions and variances are also in -- and  
13 appeals -- are also in the bin, as you walk in to the door.  
14 The record shall be closed at the conclusion of each case,  
15 except for any material specifically requested by the Board.

16           The Board and the staff will specify, at the end  
17 of the hearing, exactly what's expected and the date when the  
18 persons must submit the evidence to the Office of Zoning.  
19 After the record is closed, no other information shall be  
20 accepted by the Board. The District of Columbia  
21 Administrative Procedures Act requires that the public  
22 hearing on each case be held in the open, before the public,  
23 pursuant to Section 405(b) and 406 of that Act. The Board  
24 may, consistent with its rules of procedures and the Act,  
25 enter into a closed meeting on a case, for purposes of

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1 seeking legal counsel on a case, pursuant to D.C. Official  
2 Code, Section 2-575(b)(4), and/or deliberating on a case,  
3 pursuant to D.C. Official Code, Section 2-575(b)(13), but  
4 only after providing the necessary public notice and, in the  
5 case of an emergency closed meeting, after taking a roll call  
6 vote. The decision of the Board in cases must be based  
7 exclusively on the public record.

8 To avoid any appearance to the contrary, the Board  
9 requests that persons present not engage the members of the  
10 Board in conversation. Please turn off all beepers and cell  
11 phones at this time, so as not to disrupt the proceedings.  
12 Preliminary matters are those which relate to whether a case  
13 will or should be heard today, such as a request for a  
14 postponement, continuance, or withdrawal, or whether proper  
15 and adequate notice of the hearing has been given. If you're  
16 not prepared to go forward the case today, or if you believe  
17 that the Board should not proceed, now is the time to raise  
18 such a matter. Mr. Secretary, do we have any preliminary  
19 matters?

20 MR. MOY: Thank you. Good morning, Mr. Chairman,  
21 Members of the Board. Happy 2018. There are no major  
22 preliminary matters, but if there are, staff suggests that  
23 the Board address that when the case is called. Other than  
24 that, while I have the microphone, I'd like to address  
25 today's docket of case applications that have been postponed

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1 or rescheduled. There are three applications that have been  
2 rescheduled to February 14, 2018. The three cases are Nos.  
3 19647, Potomac Electric Power Company, 19648, Potomac  
4 Electric Power Company, and the third is Application No.  
5 19662 of Demetrios Bizbikis, B-I-Z-B-I-K-I-S. Finally,  
6 Application No. 19567 of Aung Myint, M-Y-I-N-T, has been  
7 postponed, rescheduled to February 21, 2018. That's it from  
8 the staff, Mr. Chairman.

9 CHAIRPERSON HILL: Okay, great. Thank you, Mr.  
10 Moy. If there's anybody here that plans to testify, if you  
11 wouldn't mind please standing and taking the oath  
12 administered by the Secretary, to my left.

13 MR. MOY: Good morning.

14 WITNESSES: Good morning.

15 MR. MOY: Are you going to testify?

16 PARTICIPANT: We're presenting.

17 CHAIRPERSON HILL: If you even think you might  
18 testify, go ahead and stand and take the oath. Then we don't  
19 have to do it again, thanks.

20 MR. MOY: Thank you. Good morning. Do you  
21 solemnly swear or affirm that the testimony you're about to  
22 present in this proceeding is the truth, the whole truth, and  
23 nothing but the truth?

24 WITNESSES: I do.

25 MR. MOY: Ladies and gentlemen, you may consider

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1 yourselves under oath.

2 CHAIRPERSON HILL: Okay, thank you. Good morning,  
3 everyone. Happy New Year to everybody on the Board here, and  
4 everyone in the audience. It's a new year. Everyone's happy  
5 this morning, or smiling, at least, at this moment. The way  
6 we're going to follow through with the agenda, there's only  
7 one change that I'm aware of, and that's for the meeting  
8 portion.

9 We're going to hear the expedited review decisions  
10 first, and then we will get to Application 19608, and then  
11 we will move into the hearing docket, which is going to be  
12 as is on the agenda. Mr. Moy, if you'd like, you're welcome  
13 to call our first meeting case.

14 MR. MOY: Thank you, Mr. Chairman. That would be  
15 the first of three expedited review cases for decision  
16 making, Application No. 19652, David Dale, captioned and  
17 advertised for special exception, under Subtitle D, Section  
18 5201. This is from the lot occupancy requirements of  
19 Subtitle D, Section 504.1. This would construct a rear  
20 addition to an existing one-family dwelling, R-9 Zone. This  
21 is at premises 5148 Linnean Terrace, Northwest, Square 2032,  
22 Lot 815.

23 CHAIRPERSON HILL: All right. Is the Board ready  
24 to deliberate?

25 (No audible response.)

1 CHAIRPERSON HILL: Again, this is on the docket  
2 for expedited review. After reading the record, and also the  
3 analysis provided by the Office of Planning, as well as the  
4 information that was provided from ANC 3F, who were in  
5 support 6-0-0, DDOT did have a condition that the Applicant  
6 obtain necessary tree removal permits.

7 I don't have an issue with the application. I  
8 thought that the Office of Planning did a thorough job in  
9 their report. But I would want to put that condition in  
10 there that had come from the Office of Planning -- I'm sorry,  
11 from DDOT -- which was provided the Applicant obtained  
12 necessary tree removal permits. Does the Board have any  
13 other thoughts?

14 MEMBER WHITE: I would agree, too, Mr. Chair. I  
15 did see that the Applicant had a letter, dated January 9th,  
16 to accept the letter as confirmation that the project would  
17 not affect any of the existing trees on the property. I  
18 think they met the criteria for special exception, but I  
19 would like that condition included, as well.

20 CHAIRPERSON HILL: Okay, great, thank you. Anyone  
21 else?

22 (No audible response.)

23 CHAIRPERSON HILL: Okay, then I'll go ahead and  
24 make a motion to approve Application No. 19652, as captioned  
25 and read by the Secretary, including the condition that the

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1 Applicant obtain necessary tree removal permits and ask for  
2 a second.

3 MEMBER WHITE: Second.

4 CHAIRPERSON HILL: The motion is made and  
5 seconded. All those in favor, aye.

6 (Chorus of ayes.)

7 CHAIRPERSON HILL: All those opposed.

8 (No audible response.)

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

10 MR. MOY: Staff would record the vote as 4-0-1.

11 This is on motion of Chairman Hill to approve the  
12 application, with the condition as cited. Seconding the  
13 motion, Ms. White, also support, Mr. Michael Turnbull and  
14 Vice Chair Hart. We have a Board seat vacant, so the final  
15 vote is 4-0-1, motion carries.

16 CHAIRPERSON HILL: Thank you, summary order.

17 MR. MOY: Thank you.

18 CHAIRPERSON HILL: Thank you.

19 MR. MOY: The next expedited review application  
20 for decision making is No. 19658 of Dovecot Development,  
21 caption advertised for special exceptions under Subtitle E,  
22 Section 5201. This is from the rare addition requirements,  
23 Subtitle E, Section 205.4. This would construct a rare  
24 addition to an existing one-family dwelling, RF-1 Zone, at  
25 premises 733 Kentucky Avenue, Southeast, Square 1077, Lot

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1 106.

2 CHAIRPERSON HILL: Thank you, Mr. Moy. Is the  
3 Board ready to deliberate?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay. I can go ahead and  
6 start. Again, this is before us for expedited review for a  
7 special exception. The Office of Planning did provide a  
8 report that I thought was, again, quite detailed in their  
9 analysis, and they were in support. I would agree with their  
10 analysis, as well as the input that we received from ANC 6B,  
11 who were in favor of the special exception 10-0-0. DDOT had  
12 no issues or concerns, so I also did not have any thoughts,  
13 other than the analysis that was provided by the Office of  
14 Planning. Does the Board have anything else they'd like to  
15 add?

16 MEMBER WHITE: My only thought is that -- I'm also  
17 supportive of it. I think that the application is also  
18 supported by the fact that you have two adjacent neighbors  
19 that submitted letters of support -- I think they were  
20 Exhibits 14 and 15 -- as well as having Office of Planning's  
21 recommendation. I thought their analysis was on point, that  
22 they met the criteria for special exception.

23 CHAIRPERSON HILL: Okay, great. Anyone else?

24 MEMBER TURNBULL: Mr. Chair, I only have one  
25 comment. Again, I see no issues with this at all, except in

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1 Exhibit No. 8, which is the architectural drawings and plans,  
2 I see on the proposed site plan, Drawing No. 6, which is the  
3 first page, it does call for a proposed two-story accessory  
4 structure, which is not addressed anywhere, either by OP, or  
5 anywhere else on the drawings, but it does show up on this  
6 site plan, the proposed accessory -- two-story accessory  
7 drawing.

8 I don't know if we need to at least -- maybe OAG  
9 can clarify whether we're not approving an accessory drawing.  
10 We're just approving what they're asking for, and not what's  
11 on the site plan. They're not calling for it, but I just  
12 want to clarify that if this is going to the zoning  
13 administrator, as far as what they're doing, I'm just  
14 uncertain as to how we handle what the site plan says.

15 MS. GLAZER: Mr. Turnbull, you're saying that the  
16 plans differ from the relief that's requested?

17 MEMBER TURNBULL: Only one of the plans, the very  
18 first site plan, the site plan for the whole complex, for the  
19 whole residence, at the rear of the lot, by the alley, calls  
20 out for a proposed two-story accessory structure, which is  
21 not identified in the documents at all. I think we need to  
22 note in our order that we are not approving the accessory  
23 dwelling because OP never referenced it, or went back or  
24 talked about it. The Applicant is not looking for that, but  
25 it's just sort of incongruous that it shows up on a site plan

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1 that it's proposed.

2 MS. GLAZER: Does it show up on the final plans?

3 MEMBER TURNBULL: It's the only plans that we  
4 have, I think, is Exhibit No. 8.

5 MS. GLAZER: I would suggest getting clarification  
6 because, as you know, when the Board approves an application,  
7 it's approving the application as provided in the plans. I  
8 would suggest, if there's some information that's needed,  
9 that the Board continue the matter and get the Applicant to  
10 provide the clarification.

11 CHAIRPERSON HILL: Okay. The Applicant doesn't  
12 happen to be here, are they? Okay, great. Could you come  
13 forward? If you can state your name, and then I don't know  
14 if you filled out witness cards yet or not.

15 MR. WARREN: I haven't, but I will.

16 CHAIRPERSON HILL: Okay.

17 MR. WARREN: Charles Warren, Teass Warren  
18 Architects.

19 CHAIRPERSON HILL: Did you get sworn in?

20 MR. WARREN: I did, sir, yes.

21 CHAIRPERSON HILL: Did you hear what we're talking  
22 about?

23 MR. WARREN: I did. We are not asking -- we're  
24 showing an accessory structure, but it's just a garage with  
25 a loft above it. We weren't looking to make it an accessory

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1 dwelling unit, just a garage, basically. We weren't asking  
2 for relief for that because it's permitted as a matter of  
3 right in the zone.

4 CHAIRPERSON HILL: Okay. Mr. Turnbull, are you  
5 comfortable with that, or what do you think? Ms. Glazer, you  
6 think we still need to have a change for -- it's on one plan,  
7 but they're not asking for any relief for it.

8 MS. GLAZER: If the Applicant is comfortable  
9 getting relief -- the application is self-certified. That  
10 means he takes any risks that --

11 CHAIRPERSON HILL: Okay. I'm fine with it, Mr.  
12 Turnbull, unless --

13 MS. GLAZER: -- not agree, or it might agree with  
14 Mr. Turnbull.

15 MEMBER TURNBULL: You're on the record as saying  
16 it's not an accessory dwelling. You're not asking for an  
17 accessory dwelling.

18 MR. WARREN: Correct. That's the intent of the  
19 submission. We've applied for a building permit with that  
20 in mind.

21 MR. MOY: Mr. Chair --

22 MS. GLAZER: The Board could always put a footnote  
23 in the order, stating that as provided in the plans, note  
24 that the garage depicted is not -- that the structure  
25 depicted is not an accessory structure.

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1 CHAIRPERSON HILL: Okay, I'm comfortable with  
2 that.

3 MS. GLAZER: Something to that effect.

4 PARTICIPANT: I'm comfortable with that.

5 CHAIRPERSON HILL: Okay.

6 VICE CHAIR HART: Should we be noting that it is  
7 -- that the Applicant has noted that -- has testified that  
8 this is not a -- we're not making an assertion ourselves.  
9 It's us hearing from the testimony.

10 MS. GLAZER: The Board wouldn't be making a  
11 finding. We'd be stating that as the Applicant represents,  
12 this structure depicts a garage, and no further relief is  
13 being requested.

14 VICE CHAIR HART: I think it's a good idea to --  
15 Mr. Turnbull, I think it's a good idea to do that. I think  
16 what you end up doing is you kind of say it's not that we  
17 didn't see it; it's that it was determined -- it was  
18 testified to what this thing is. It's not being ignored;  
19 it's just they're not seeking relief for that. Including  
20 that in the order, I think, would be helpful.

21 CHAIRPERSON HILL: Okay, I'm satisfied with that.

22 MR. MOY: Mr. Chair, what we could do, although  
23 it might be duplicative, but what previous boards have done  
24 in the past is they would also mark that sheet, that drawing,  
25 that plan as to what was allowed and what was not. We can

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1 mark that sheet on the drawing, as well, if we're talking  
2 about footnoting, where did we do that before. I think both  
3 would not hurt.

4 CHAIRPERSON HILL: Okay. Who's going to mark that  
5 up? That would be your office, Mr. Moy?

6 MR. MOY: Yes, we've done that in the past, the  
7 staff has done that, or if you'd like, the Applicant -- in  
8 this instance, the architect -- could submit a new sheet with  
9 those markings.

10 MS. GLAZER: I would suggest the latter that Mr.  
11 Moy suggested, have the architect just submit another sheet  
12 that indicates what the structure is.

13 MR. WARREN: We can do that.

14 CHAIRPERSON HILL: Okay, can you do that today?

15 MR. WARREN: I can do that this afternoon, when  
16 I get back to the office.

17 CHAIRPERSON HILL: Okay, great. That being the  
18 case, any other comments from the Board?

19 (No audible response.)

20 CHAIRPERSON HILL: I'll go ahead and make a motion  
21 to approve Application 19658 as captioned and read by the  
22 Secretary, as well as making note that the Applicant is going  
23 to submit a drawing that strikes their -- that clarifies that  
24 it's a garage and not a proposed accessory structure on the  
25 drawings and ask for a second.

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1 MEMBER TURNBULL: Second.

2 CHAIRPERSON HILL: Motion made and seconded. All  
3 those in favor?

4 (Chorus of ayes.)

5 CHAIRPERSON HILL: All those opposed?

6 (No audible response.)

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

8 MR. MOY: Staff would record the vote as 4-0-1,  
9 and this on the motion of Chairman Hill to approve or grant  
10 the application for the relief being requested. Seconding  
11 the motion, Mr. Michael Turnbull. Also support, Ms. White,  
12 Vice Chair Hart. Board seat vacant, the motion carries.

13 CHAIRPERSON HILL: Great. Summary order, Mr. Moy.

14 MR. MOY: Thank you.

15 Next and third case application under the  
16 expedited review case is 19660, Gary Lesinski. This is for  
17 captioned and advertised with special exception under  
18 Subtitle D, Section 5201, from the lot occupancy  
19 requirements, Subtitle D, Section 304.1, to construct a rear  
20 deck addition to an existing one-family dwelling, R-3 Zone.  
21 This is at 5110 Kansas Avenue, Northwest, Square 3256, Lot  
22 80.

23 CHAIRPERSON HILL: Okay, great. Is the Board  
24 ready to deliberate?

25 (No audible response.)

1 CHAIRPERSON HILL: Okay. I can start. Again,  
2 this is for an expedited review of special exception. After  
3 reviewing the record, and in particular, the report provided  
4 by the Office of Planning, I believe that their analysis was  
5 quite thorough, and I would agree with their analysis. In  
6 addition to that, there is feedback from the ANC 4D, who was  
7 in support, as well as no objection from DDOT.

8 Also, there were four letters in support from the  
9 most directly impacted neighbors. However, still taking all  
10 of that into account, I would agree with, again, the analysis  
11 provided by the Office of Planning, in terms of how the  
12 criteria is being met for the special exception. Does the  
13 Board have any additional thoughts?

14 (No audible response.)

15 CHAIRPERSON HILL: Okay, so then with that, I go  
16 ahead and make a motion to approve Application No. 19660, as  
17 captioned and read by the Secretary, and ask for a second.

18 MEMBER WHITE: Second.

19 CHAIRPERSON HILL: Motion made and seconded. All  
20 those in favor?

21 (Chorus of ayes.)

22 CHAIRPERSON HILL: All those opposed?

23 (No audible response.)

24 CHAIRPERSON HILL: Motion passes, Mr. Moy.

25 MR. MOY: Staff would record the vote as 4-0-1.

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1 This on the motion of Chairman Hill to approve the  
2 application for the relief being requested. Seconding the  
3 motion, Ms. White. Also support, Mr. Turnbull, Vice Chair  
4 Hart. Board seat vacant. Motion carries.

5 CHAIRPERSON HILL: Okay, thank you, summary order,  
6 Mr. Moy.

7 MR. MOY: Thank you.

8 CHAIRPERSON HILL: Thank you. Just give us one  
9 minute here, Mr. Moy, while I switch out commissioners.

10 MR. MOY: The next and last case for decision  
11 making in the meeting session is Application No. 19608 of  
12 Jonathan Meyer and Phillip Lawrence, caption advertised for  
13 variances from the minimum court requirements, Subtitle F,  
14 Section 202.1, and from the nonconforming structure  
15 requirements of Subtitle C, Section 202.2. This would  
16 construct a side addition to an existing one-family dwelling  
17 and convert it to a non-unit apartment house, RA-2 Zone, at  
18 premises 1310 Vermont Avenue, Northwest, Square 242, Lots 86  
19 and 59.

20 CHAIRPERSON HILL: Okay, thank you, Mr. Moy. Is  
21 the Board ready to deliberate?

22 (No audible response.)

23 CHAIRPERSON HILL: Okay, I can start. We had a  
24 really full hearing on this, and even had a continued  
25 hearing. I actually was not really clear as to where I was

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1 going to be leaning. I'd like to hear from my colleagues,  
2 as well, as we kind of go through this deliberation and  
3 discussion. There were concerns about -- there was concerns  
4 about posting brought up by some people. There were concerns  
5 about how the developer worked through some issues on other  
6 projects.

7 I think that those were addressed at the previous  
8 hearings that we had. They might not necessarily agree, but  
9 I feel as though those have been addressed. We had gone and  
10 asked the developer to work with the community in trying to  
11 provide more of a concrete structure into how they would be  
12 held accountable for the construction of the project. The  
13 Applicant did supply a construction management agreement.

14 It was not signed, but if we do end up moving  
15 forward on this, I would hope that the developer would honor  
16 that CMA and allow the church to sign the agreement that was  
17 supplied into the record. I mention that, again, because I  
18 didn't see it signed in the record. I would hope that,  
19 again, if this -- I don't know where we are with this, but  
20 if this were to move forward, that the developer would honor  
21 that. If they didn't, we would probably end up finding that  
22 out at another time, if the developer came forward again, so  
23 I would again hope that would be the case. The Office of  
24 Planning was not able to, in their analysis, provide enough  
25 -- they do not think the Applicant had made the test for the

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1 variance. I thought that the Applicant was trying to --  
2 obviously, their testimony was that they did meet the test,  
3 and then they had both -- we had both the hearing and the  
4 continued hearing, and then we also asked for further  
5 information to clarify with the Board as to how the Applicant  
6 was meeting the variance test.

7 I guess, again, I thought that the design was  
8 better, in terms of the use of the project, rather than the  
9 way that the Office of Planning thought that they could  
10 comply. But that even being beyond what we're charged to do  
11 is not necessarily what is -- at least not the first thing  
12 is what is not necessarily the best design, but whether or  
13 not the variance is being met in the three prongs of variance  
14 test.

15 I thought that the Applicant actually did -- were  
16 able to clarify to me how they met that test in their most  
17 recent submission that was -- I'd have to look as to which  
18 exhibit it was, but the most recent letter that came from the  
19 Applicant, in terms of how they're meeting the test with the  
20 side yard being a non-conforming side yard and that they  
21 can't do anything because of the HPRB issues with how those  
22 windows are there on the side of the house. I was a little  
23 surprised -- not surprised -- that the HPRB wouldn't let them  
24 do anything with that. Those windows are right -- they  
25 basically are -- I don't know how far the distance is from

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1 the edge of that window to the side of the next building --  
2 six inches, thank you -- six inches.

3 I got a little confused with that, but I was in  
4 -- now, after again going through the record again and  
5 reading what the Applicant had submitted, as well as the most  
6 recent exhibit that just summarized the variance, because  
7 that was what I was stuck with, I was able to get to how the  
8 practical -- the property was leading to a practical  
9 difficulty. I didn't have any issues with the second or  
10 third prongs of the variance test. At this point, depending  
11 upon how the deliberations go, I would be in support of the  
12 application. Does anyone want to go next?

13 MEMBER MAY: Mr. Chairman, I appreciate your recap  
14 of the saga of this case. I think I may have indicated  
15 earlier that although I certainly appreciate the Office of  
16 Planning trying to take a pretty hard line on granting relief  
17 in circumstances like this, I think this is one circumstance  
18 where the relief is justified, based on the HPRB review and  
19 the fact that it's pretty clear to me that trying to avoid  
20 the variance relief would result in a building that's not  
21 very good and would be a burden on the Applicant. I think  
22 this is a better project for what they are proposing in the  
23 relief. I'm comfortable moving forward with it. I  
24 appreciate the Applicant's efforts to try to put the adjacent  
25 property owners at some ease about the project overall, but

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1 I don't think that's actually critical to the relief. It  
2 certainly doesn't weigh into how we evaluate the variance  
3 test. I'm certainly comfortable moving ahead and approving  
4 this.

5 VICE CHAIR HART: I have also reviewed the record  
6 for the case. I would be also supportive of the project  
7 because I do believe that the Applicant has provided  
8 sufficient information for me to understand how it is meeting  
9 the three prongs of the variance test regarding the  
10 acceptable situation, the practical difficulty, and the no  
11 substantial detriment to the zoning regulations.

12 I think what both you, Mr. Chairman, and  
13 Commissioner May have discussed is where I came down on this,  
14 as well. I think that there are -- the Applicant provided  
15 us with several different options on how it might redesign  
16 the project to address the issues that the Office of Planning  
17 raised, but it seemed like it was kind of shoehorning -- not  
18 shoehorning. It seemed like it would be not just difficult,  
19 but it would also raise some other relief, or necessitate  
20 some other relief if the Applicant were to move forward with  
21 trying to provide the eight-foot court on the southern  
22 portion of this site. I didn't really have a whole lot more  
23 than that. I agree that there was some conversation about  
24 whether or not the Applicant provided sufficient notice. I  
25 think that you handled that correctly. I didn't have any

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1 further information or further discussion about that. It  
2 seems as though the Applicant is moving and has provided the  
3 construction management agreement.

4           Again, I understand that we don't -- that's not  
5 something that we, necessarily, are requiring. That's  
6 something that they would need to move forward with as part  
7 of the construction of the project, as part of the building  
8 code. That's about it. I would be in support of the  
9 project, and that's it.

10           MEMBER WHITE: This is a variance request, so with  
11 variance requests, the tests are a lot more stringent and  
12 harder to overcome. The Applicant is requesting to convert  
13 a one-family dwelling to a nine-unit apartment house in an  
14 RA-2 Zone.

15           After reviewing the record, I looked at the Office  
16 of Planning's record, the Applicant's filings, including the  
17 post-hearing submissions, which included the construction  
18 management agreement, testimony from the contract owner. I  
19 paid particular attention to the testimony from Mt. Olivet  
20 Lutheran Church. Also, I did pay special attention to  
21 testimony from the neighbors that were in opposition, Mr.  
22 Robinson, Mr. Dennis, and also looking at the drawings,  
23 including some of the re-extension options that the Applicant  
24 submitted. I appreciate that the Applicant made positive  
25 steps to reduce the potential for any adverse impacts for the

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1 1308 property owners, which is the church, which would result  
2 from the construction. Because it is a pretty large project,  
3 but I think that the Applicant did take steps to prevent  
4 negative impacts, or at least protecting the church from  
5 having any damage going forward.

6 Like the Chairman mentioned, I would hope that  
7 construction management agreement is executed. Office of  
8 Planning gives us their point of view. I do pay particular  
9 attention to their points. They recommended denial of this  
10 particular area variance because they didn't feel that it met  
11 the test. But during our December 13th hearing, we heard  
12 additional information from the parties and neighbors that  
13 were impacted.

14 The Applicant also submitted added information how  
15 they met the variance test in Exhibit 57, indicating that the  
16 non-conforming side yard -- and also providing feedback from  
17 HPRB design requirements. The Applicant is seeking an area  
18 variance from the requirements to convert the width. I found  
19 that the Office of Planning's report denying the area  
20 variance, their point seemed to be valid, but I thought that  
21 they were a bit stringent, in terms of their analysis  
22 applying the three-pronged variance test. One, the  
23 exceptional situation resulting in practical difficulty, I  
24 don't think the Office of Planning was convinced that they  
25 met that test, but I think I was convinced that the Applicant

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1 did take some steps to try to -- make some steps in order to  
2 meet that first step. They provided a positive design.

3 I think just the configuration of where that  
4 property sits, it made it very difficult for them to move  
5 forward with that particular development without having the  
6 variance relief that they were seeking. What I found, also,  
7 to be most convincing was also the fact that the ANC was very  
8 supportive. The neighbors, there were some neighbors that  
9 were supportive.

10 I think that based upon what I'm seeing now, it  
11 seems as though the church does not have any strong  
12 opposition, assuming that those terms within the construction  
13 management agreement are met. I don't see that there's any  
14 substantial harm to the zoning regulations.

15 Sorry about the long analysis, but it was  
16 something that I was thinking through in my head because the  
17 variance test, you don't want to make it easy for people to  
18 get that type of relief because we don't want to see  
19 substantial changes in neighborhoods that don't fit these  
20 types of unique types of developments. Mr. Chairman, I would  
21 say that based upon my analysis, I do think that they met the  
22 test. I don't think that the development would be contrary  
23 to the intent of the zoning regulations.

24 VICE CHAIR HART: Mr. Chairman, one other thing.  
25 In the plans, the Applicant had the eight parking space

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1 option and the two parking space option. I would be  
2 supportive of the two parking space option. I don't know if  
3 we should be chiming in on this. It just seems that -- their  
4 proposed option has eight spaces in it. It just seems like  
5 we need to at least -- we should be --

6 MEMBER MAY: None of the relief goes to parking,  
7 so I don't think that we need to really say anything about  
8 it. Whatever they submit --

9 VICE CHAIR HART: I understand. It just seems  
10 like it's a lot of parking to put in there.

11 MEMBER MAY: No, I agree with you. I wouldn't  
12 want to see eight parking spaces there, but I don't --

13 VICE CHAIR HART: I understand what you're saying.  
14 I just didn't know if it was something --

15 MEMBER MAY: It doesn't go to any of the --  
16 parking, from my perspective, is not a mitigation for any of  
17 the requested relief. I don't see how it factors into our  
18 decision making at all.

19 VICE CHAIR HART: I understand that. I just was  
20 trying to see if we could -- they are proposing this, if we  
21 could say that we were supportive of one of the other, not  
22 that we were requiring that.

23 MEMBER MAY: I think they understand that we don't  
24 like that paving over the entire yard to make parking spaces.  
25 I also think that the church had indicated they weren't that

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1 supportive of that, either.

2 CHAIRPERSON HILL: But if we were, then we'd have  
3 to have different plans again? Mr. Vice Chair, I understand  
4 what you're bringing up because I do remember from the  
5 testimony -- I guess I would also, if you were comfortable  
6 with it, agree with Mr. May, in terms of moving forward with  
7 what we have here.

8 VICE CHAIR HART: Okay.

9 CHAIRPERSON HILL: Okay. I do want to speak a  
10 little bit more to the notice issue. I guess the hearing,  
11 once again, was originally scheduled for October 25, 2017,  
12 but postponed to November 1, 2017, when the Office of Zoning  
13 staff learned that the initial hearing date was not going to  
14 provide the full 40 days of notice, as required by the  
15 regulations.

16 After rescheduling the case, the Office of Zoning  
17 staff sent out letters with the updated hearing date to  
18 properties within 200 feet, updated the hearing date in the  
19 case record and BZA public calendar, and asked the Applicant  
20 to change the date on the placard posted on the property.  
21 In advance of the hearing, it was brought to the attention  
22 that -- to the record, indicating that the placard on the  
23 property was not updated to reflect the postponed hearing.  
24 It was asked by the Board to postpone the hearing on the  
25 basis of the notice defect. At the November 1st hearing, the

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1 Board considered the notice issues that had been raised by  
2 the member in the community, but determined that because the  
3 Board had provided notice of the November 1st hearing date  
4 in other forums, meaning the updated letters, public  
5 calendar, and case record, sufficient notice had been  
6 provided to continue with the hearing for the application.

7           The Board is permitted to make such a  
8 determination by Subtitle Y, 402.11. When the Board finds  
9 a failure or defect in notice, this section allows the Board  
10 to determine whether to postpone, continue, or hold the  
11 public hearing. In decision making, the Board considered the  
12 nature and extent of the actual notice received by the  
13 parties and the public from all sources, attendance, or a  
14 lack thereof, of the public hearing, and the nature and  
15 extent of the construction proposed.

16           Further, the Board decided to continue the hearing  
17 for this application to December 13th, thus allowing even  
18 more time. The Board asked the Applicant to update the  
19 placard to reflect the continued hearing date, in order to  
20 provide additional notice to neighbors. In advance of the  
21 continued hearing date, concerns were again raised about the  
22 notice, particularly with regard to how the placard displayed  
23 the correct date, but was not located within plain view.  
24 There were some photos that were submitted, in terms of it  
25 being inside a window and it being difficult to see. We did

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1 address those in the previous hearing, wherein we were asking  
2 the Applicant that for future developments they might do, to  
3 make it even more easy to see the placard.

4           However, I believe the Board determined that given  
5 all the other forms of notice that are provided, and that  
6 people were there at the hearing, that notice had been  
7 provided. Again, the Board followed the procedures in  
8 Subtitle Y, 402.11, on how to handle defects in notice. The  
9 Board weighed the factors listed in the regulations and  
10 determined that adequate notice had been given to proceed  
11 with the continued hearing, as scheduled.

12           We then closed the hearing and scheduled for the  
13 decision today. I just wanted to walk through that a little  
14 bit for us and also get that onto the record. That all being  
15 said, is there anything additional anyone would like to add  
16 before I make a motion?

17           (No audible response.)

18           CHAIRPERSON HILL: Okay. Then I'll go ahead and  
19 make a motion to approve Application No. 19608, as captioned  
20 and read by the Secretary, and ask for a second.

21           VICE CHAIR HART: Second.

22           CHAIRPERSON HILL: Motion made and seconded. All  
23 those in favor?

24           (Chorus of ayes.)

25           CHAIRPERSON HILL: All those opposed?

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1 (No audible response.)

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

3 MR. MOY: Staff would record the vote as 4-0-1.

4 This is on the motion of Chairman Hill to approve the  
5 application for the relief being requested. Seconding the  
6 motion, Mr. Peter May. Also supported, Ms. White, Vice Chair  
7 Hart. We have a Board seat vacant. The motion carries, sir.

8 CHAIRPERSON HILL: We'll do a full order, I guess,  
9 Mr. Moy?

10 MR. MOY: Yes, I think it would be appropriate to  
11 have findings of fact and conclusions of law in this order.

12 CHAIRPERSON HILL: Okay, great. We're going to  
13 take a quick, two-minute break. Thank you.

14 (Whereupon, the above-entitled matter went off the  
15 record at 10:26 a.m. and resumed at 10:34 a.m.)

16 CHAIRPERSON HILL: All right, Mr. Moy, let's get  
17 started again and call our first case whenever you get an  
18 opportunity. Thank you.

19 MR. MOY: Thank you, Mr. Chairman. In session.  
20 It's 10:30. Parties are already at the table. This is  
21 Appeal No. 19627 of ANC 7F, captioned and advertised as the  
22 decision made -- this is an appeal from the decision made on  
23 February 2, 2015 by the zoning administrator, Department of  
24 Consumer and Regulatory Affairs, to issue Building Permit No.  
25 B, as in Bravo, 1501924, to construct a 71-unit apartment

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1 house, RA-3 Zone, at premises 4000 Benning Road, Northeast,  
2 Square 5089, Lot 52.

3 CHAIRPERSON HILL: Okay, great. Good morning.  
4 If you could please introduce yourselves, from my right to  
5 left.

6 MR. TONDRO: Maximilian Tondro, on behalf of DCRA  
7 and the zoning administrator.

8 MR. LEGRANT: Good morning, Matthew LeGrant,  
9 zoning administrator, DCRA.

10 MR. FREEMAN: Good morning, Kyrus Freeman, with  
11 the law firm of Holland & Knight, on behalf of the property  
12 owner of 4000 Benning Road.

13 MR. BELT: David Belt --

14 CHAIRPERSON HILL: You need to push the -- there  
15 you go.

16 MR. BELT: David Belt, on behalf of ANC 7F.

17 MS. CARSON CARR: Good morning, Sheila Carson  
18 Carr, ANC commissioner, 7F03 chair, 7F.

19 MS. SETTLES: Happy New Year to all.

20 CHAIRPERSON HILL: Happy New Year.

21 MS. SETTLES: I'm Commissioner Karen Settles of  
22 7F05.

23 CHAIRPERSON HILL: All right, great. Mr. Belt,  
24 I guess -- we were here the last time, and there had been  
25 some motions that were put forward from DCRA to dismiss on

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1 three grounds. One was untimely filing. The other was lack  
2 of jurisdiction over public space. Then the third was  
3 failure to state a claim. We then asked for further  
4 information or clarification on those issues, and you had  
5 supplied those into the record.

6 I don't know what more you'd like to say, but if  
7 you'd like to clarify what -- the issue that I'm having --  
8 I'll just speak first real quickly. The issue that I'm  
9 really struggling with is the timeliness. It really has  
10 been, I think -- it's been two and a half years since the  
11 permit was put forward, and then some of the issues that seem  
12 to be being addressed are issues that might not actually be  
13 before the Board, meaning in terms of what we would be able  
14 to -- may be within our purview.

15 Why don't you go ahead and go over again, with me,  
16 the submissions that you're making, in terms of -- you can  
17 just start with the timeliness issue, if you like. Then if  
18 you want to go to any comments you might have on the lack of  
19 jurisdiction over public space or the failure to state a  
20 claim -- why don't we just start there, if that's good with  
21 you?

22 MR. BELT: Okay. Basically --

23 CHAIRPERSON HILL: You can speak -- Mr. Belt, you  
24 need to go right to the microphone there.

25 MR. BELT: Basically, I'm going to have to ask you

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1 to kind of bear with me because I am in excruciating pain  
2 from a pinched nerve in my back that runs down. My hand is  
3 numb, but I'm here, and I'm going to do the best I can.

4 CHAIRPERSON HILL: Sure. I'm sorry you're not  
5 feeling well.

6 MR. BELT: I take it that you all have read the  
7 information that I sent, all of it? A lot of this really,  
8 I'm noticing -- because as you know, I'm not an attorney.  
9 I do not have access to an attorney. Everything is just my  
10 personal research.

11 CHAIRPERSON HILL: Mr. Belt, can you just hang on  
12 one second? Mr. Moy, can you just start a clock, just so I  
13 know where we are? I have to give the other parties the same  
14 amount of time, Mr. Belt. You can start again.

15 MR. BELT: I'm taking it that you really would  
16 rather not have me read all of this again.

17 CHAIRPERSON HILL: You don't have to read all of  
18 it again, but you can go and hit the highlights if you like.

19 MR. BELT: The basic highlights, I'm finding out  
20 that the motion, from what I could get in speaking to a  
21 representative in the zoning administrative, the motion  
22 should have been a civil infraction appeal. Because this is  
23 mainly -- because there was never an issue -- I'm sure you  
24 guys understand. I'm trying to say it as clearly as I can.  
25 There was never a zoning issue. It was never an appeal on

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1 the zoning. What I'm seeing here is a deliberate collusion  
2 between DCRA and the developer to withhold and manipulate  
3 definitions of the zoning laws.

4           Whereas, when there should be doubt, when there  
5 is doubt, it should be up to you guys. There were a lot of  
6 issues with the decisions that were made by the zoning  
7 administration within DCRA. At the zoning hearing -- the  
8 zoning hearing was something separate. It was specified that  
9 the developer would adhere to the new zoning. They're trying  
10 to make it appear as though it's grandfathered in, as though  
11 they have -- that these zoning issues are grandfathered in,  
12 which they're not.

13           They specified that the building must be modified  
14 and will require modifications, in order to meet the R-5-C  
15 regulations. They agreed to that. All this was agreed upon.  
16 I would have no reason to believe that they would do  
17 otherwise, and if they did, the DCRA, the zoning  
18 administration should be responsible to point out these  
19 issues. These issues were specifically noted at the first  
20 hearing, when they came up for zoning which, like I said, had  
21 nothing to do with the building. I'm sorry. I'm kind of  
22 losing it because I took some medicine before I came up here,  
23 so it's kind of hard for me to --

24           CHAIRPERSON HILL: You're doing all right.

25           MR. BELT: Okay. The issue is they should have

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1 -- they did not build what they were supposed to have built,  
2 and DCRA should have flagged them on specific issues. The  
3 timing, the building permit came about a year and a half  
4 after the zoning change, which was something entirely  
5 different. We didn't have any inkling about the building  
6 being built until they started chopping down trees six months  
7 later.

8 VICE CHAIR HART: When was that? What time frame  
9 was that in?

10 MR. BELT: I believe the trees started getting  
11 chopped down around in May.

12 VICE CHAIR HART: Of what year?

13 MR. BELT: Of '16. Yes, May of '16, they started  
14 cutting down the trees. That's when we first noticed. Six  
15 months before that, the building permit was accepted. We  
16 didn't know anything about that. Even at this particular  
17 time, how would we even know that they're not building in  
18 accordance to the new zoning? We would not even know. There  
19 would be no way for us to know this. If we have two months  
20 in order to know what they're going to do, or what DCRA is  
21 going to do, then the building wasn't even -- they didn't  
22 even start tearing down the trees for six months.

23 VICE CHAIR HART: Can you describe when you were  
24 first aware of the building not being in accordance --

25 MR. BELT: This was as I started looking at

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1 certain -- first, what really tipped me off was from the  
2 zoning hearings, where we had the zoning changes, the  
3 specific things that the Zoning Commission told them that  
4 they would have to modify or change or get BZA approval for.  
5 When I started seeing that those things were exactly the way  
6 -- almost exactly the way they were prior, and they didn't  
7 come to the ANC or the BZA or need any BZA approval --

8 VICE CHAIR HART: You're saying that happened  
9 after the May 2016 --

10 MR. BELT: Yes, this was way after that, as they  
11 were --

12 VICE CHAIR HART: Actually doing the construction.

13 MR. BELT: -- actually doing the construction.  
14 But I would also go to --

15 VICE CHAIR HART: Do you know when the  
16 construction started?

17 MR. BELT: The actual construction --

18 VICE CHAIR HART: It's okay. The owner is here,  
19 so (Simultaneous speaking). I just didn't know if you were  
20 aware. That's okay. You can continue. I'm sorry.

21 CHAIRPERSON HILL: Go ahead, Mr. Belt.

22 MR. BELT: Okay. Those are the issues. There's  
23 no way we could have even known anything, and there was no  
24 way we would even suspect that they were not doing what they  
25 said they were going to do, much less suspect that DCRA,

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1 their zoning, I guess -- what are they -- zoning technicians  
2 would not understand the rules of zoning. Because I went  
3 over it with one of their technicians. I believe his name  
4 is mentioned when the single member district ANC commissioner  
5 and Councilman Gray's representative met with them. That's  
6 for later on, though. I'm starting to really lose my train  
7 --

8 CHAIRPERSON HILL: You're okay. It's all on the  
9 record.

10 MR. BELT: -- from my medication. What was I  
11 saying?

12 CHAIRPERSON HILL: It's okay. When do you think  
13 you became aware that you thought that there was an issue  
14 with the construction?

15 MR. BELT: This was about -- this was after the  
16 building had started going up. When the building actually  
17 started going up and it didn't look like --

18 CHAIRPERSON HILL: Can you give me kind of a rough  
19 idea?

20 MR. BELT: Let's see.

21 MEMBER WHITE: Can you ask the owner when --

22 CHAIRPERSON HILL: Sure, we can. It's all right.

23 MEMBER WHITE: No, I mean to just give him a  
24 reference because he's trying to remember what month.

25 CHAIRPERSON HILL: That's all right. We'll get

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1 to him. We'll ask him.

2 MR. BELT: I think I'm starting to lose --

3 CHAIRPERSON HILL: That's all right. Let me leave  
4 you there, then, Mr. Belt. Let me come back to you. Mr.  
5 Belt, you're okay. Let me come back to you. We see  
6 everything that's in the record there. It's okay. You're  
7 all right. We'll come back to you. Do you need some water?

8 MR. BELT: I really apologize.

9 CHAIRPERSON HILL: You're all right. You want  
10 some water?

11 MR. BELT: I do need some water.

12 CHAIRPERSON HILL: I'm going to go ahead and turn  
13 over. Mr. Belt, we'll come back to you. I'm going to turn  
14 over to DCRA here and ask you to respond or further clarify  
15 your motions. Then the building owner, basically, what I'm  
16 trying to understand, in terms of the timeliness, is when you  
17 started construction, and when they, Mr. Belt and/or the ANC  
18 people, might have been aware of what's going on, in terms  
19 of some of their concerns. Mr. Tondro, can we start with  
20 you?

21 MR. TONDRO: Yes. Good morning; Happy New Year.  
22 I just want to note that the zoning administrator has not  
23 been sworn in. I'm not sure she's going to give testimony,  
24 but just in case.

25 CHAIRPERSON HILL: Okay. Mr. Moy, could you swear

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1 in the zoning administrator, and anyone else who is here, who  
2 didn't get sworn in, if you'd like to stand. If you haven't  
3 been sworn in, please stand and get sworn in. Mr. Moy's  
4 there to your right.

5 MR. MOY: Do you solemnly swear or affirm that the  
6 testimony you're about to present in this proceeding is the  
7 truth, the whole truth, and nothing but the truth?

8 WITNESSES: I do.

9 MR. MOY: Thank you, be seated.

10 CHAIRPERSON HILL: Okay, great, thank you, Mr.  
11 Tondro.

12 MR. TONDRO: I don't want to go over too much all  
13 the motions that I filed, but just to be clear, maybe one way  
14 of dealing with it would be to start with the jurisdictional  
15 issues. I think those might be the easiest to deal with.  
16 I don't think they were addressed by Appellant's most recent  
17 filing. Starting off with the issue of the wall check, which  
18 was performed, but the wall check is administered by -- it's  
19 a creation of the building code, Title 12(a) of the DCMR,  
20 which is administered by DCRA, but it is by a different  
21 division. The zoning administrator is not involved in that,  
22 other than once the wall check is done, then they use that  
23 to confirm that the building, as built, conforms to the  
24 approved plans. All the regulations dealing with the wall  
25 check, themselves, are under the construction codes and,

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1 therefore, the competent jurisdictional body to hear any  
2 appeals would be Office of Administrative Hearings, not the  
3 Board.

4 I think that one, that was the basis for why I  
5 moved to dismiss on that count. The other two issues for  
6 jurisdiction are the issue of the front façade that projects  
7 four feet into the public right of way, and then also the use  
8 of the public alley to the right of the property. Both of  
9 those are under the jurisdiction of the District Department  
10 of Transportation, DDOT. Again, they're administered by --  
11 they come under the regulations in Chapter 24, the public  
12 space regulations issued by DDOT, and I think Chapter 32 of  
13 the construction codes under DCRA, but again, a different  
14 division of DCRA.

15 The zoning administrator does not weigh in or  
16 confirm or have any role in the use of public space. Again,  
17 in this particular case, it's clear that the public space  
18 permits necessary, and approvals, were granted. But again,  
19 any appeal of those permits or of those approvals would be  
20 to -- I believe to the Office of Administrative Hearings, but  
21 certainly not to the Board, in this case. I think those  
22 three issues DCRA believes should not fall under the  
23 jurisdiction of the Board. That, then, leaves --

24 CHAIRPERSON HILL: Mr. Tondro, I'm sorry; you said  
25 the three issues, the wall check and the public space --

1 MR. TONDRO: I'm sorry, the wall check, the public  
2 space, which has two aspects, one of which is the projection  
3 of the front façade four feet into public space, and then  
4 also the use of the alley to provide access to parking.  
5 Those are the three. What remains, then, are challenges to  
6 the retaining wall, to the required rear yard, and to lot  
7 occupancy. I did file a motion for a failure to state a  
8 claim on the lot occupancy. However that, as well as the  
9 retaining wall and the required rear yard, all of those, I  
10 believe, are subject to the timeliness issue, so returning,  
11 therefore, to, I think, what's outstanding is the timeliness  
12 issue.

13 DCRA believes that the timeliness was triggered  
14 if not by the zoning administrator's approval, back in July  
15 of 2015, of the permit, certainly by the issuance of it on  
16 October 2nd of 2015. Wanted to clarify, too, in case there's  
17 any doubt here, that the allegations raised by the Appellant  
18 all seem to relate not to the enforcement of the approved  
19 plans, but to the actual plans that were approved by the  
20 permit. Therefore, that means that the triggering event for  
21 the appeal period is the permit, when those approved plans.  
22 It hasn't been an allegation that the building, as built,  
23 differs from the approved plans. It's all about whether the  
24 approved plans comply with the zoning regulations. The  
25 zoning administrator's approval indicated the permit did

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1 comply and, most importantly, in terms of what the Appellant  
2 just said, they complied with the correct zone, the R-5-C  
3 zone. That establishes that starting period.

4 VICE CHAIR HART: Yes, I do have a question on  
5 that. Part of this issue is that the Appellant is saying  
6 that they just weren't aware of it. In some ways, you kind  
7 of -- they weren't aware, really, until May of 2016, because  
8 that's when the trees started coming down, and hey, maybe  
9 there's something that's going on. I'm not going to say  
10 whether or not --

11 (Simultaneous speaking.)

12 VICE CHAIR HART: I'm just saying that's what we  
13 have right now. Between October 2015, which you've said is  
14 when -- October 2, 2015?

15 MR. TONDRO: That was the permit issuance, yes.

16 VICE CHAIR HART: Okay, so between that date and  
17 May, you're kind of looking at it -- I'm kind of looking at  
18 it like I'm not sure -- I don't know what happened between  
19 that period of time, but the Appellant has described how they  
20 were not aware of this until months later, not the October  
21 2015 date, but the May 2016 date. In the zoning regs, it  
22 does talk about the 60 days -- a zoning appeal must be filed  
23 within 60 days of the date the person appealing an  
24 administrative decision had notice or knowledge of the  
25 decision. I understand that there's a date that you're

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1 looking at that is in 2015, it is likely that they may not  
2 have been aware of that until a later date.

3           Could you speak to -- maybe not you can speak to  
4 it, but that's, I think, what we're trying to get to. I  
5 don't know if there was an email that had been sent to Mr.  
6 Belt about any of the -- when this actually started. Some  
7 of this is hard because we're trying to rebuild it, and we're  
8 trying to look at what that timeline is.

9           MR. FREEMAN: This may be completely out of order,  
10 so I apologize, but I've prepared a chronology, which  
11 basically tracks all of the dates that they had, that we had,  
12 and that Mr. Belt had in his submission. I was going to give  
13 that out during my presentation, but if the Board thinks that  
14 would be helpful to have now, I'm certainly happy to submit  
15 that. But again, it's not my turn, so it's up to you.

16           CHAIRPERSON HILL: That's okay, Mr. Freeman.  
17 Let's go ahead and finish up with Mr. Tondro, but thank you.

18           MR. TONDRO: Thank you, Boardmember Hart for that  
19 -- yes. I think one of the things that I'm wary of is the  
20 goal post being moved. It has been standard procedure for  
21 the Board to view the issuance of a building permit as  
22 sufficient knowledge. It is a public document. It is  
23 provided to -- it is posted on the DCR website. It's  
24 required to be posted at the properties. But it is deemed  
25 to be that it is a triggering event for that notice

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1 requirement.

2           The way one gets around it is if the Appellant  
3 shows that there are extraordinary circumstances that were  
4 outside of their control, that they could not reasonably  
5 anticipate, that would lead them to not be notified by that  
6 public document. But I want to be very -- I think this is  
7 a really important issue for DCRA, that it's the issuance of  
8 the building permit, at the very least, which is deemed to  
9 be the trigger for public notice.

10           In fact, there have been multiple cases where the  
11 Board has affirmed that the actual date for the start of  
12 notice is actually when the zoning administrator has approved  
13 the permit, before the permit's even issued, again, because  
14 that is tracked on a public-facing website. Again, if  
15 there's challenges to it, then the burden of proof, as it  
16 were, shifts to the Appellant to show that they qualify under  
17 the exceptional circumstances rule. I think that these 2015  
18 dates are very, very important for this particular case. I  
19 also want to point out that the Appellant in this particular  
20 case is acting under the aegis of the ANC. The ANC receives  
21 bi-weekly -- every other week, they receive notices of all  
22 permits that have been issued by DCRA. That, again, what  
23 we're talking about is that the, I think, notice requirement  
24 triggers a requirement to do some due diligence and  
25 understand. It's not that everybody in the District is going

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1 to get full, complete plans of any proposed permit.

2           It's just that they're on notice that something's  
3 been approved. You need to go and check this out. I think  
4 that really is the standard we need to look at. I really  
5 want to insist on that 2015 date as being a very important  
6 -- both the July, but certainly the October 2nd --

7           VICE CHAIR HART: I appreciate that. I just  
8 wanted to make sure that we were aware of some of the dates.  
9 I appreciate the information that you just provided. Like  
10 I said, we're trying to deal with how do you know when this  
11 actually has happened? The information you provided is  
12 helpful.

13           MR. TONDRO: Right. I would say that, therefore,  
14 the October -- I'm sorry, Boardmember White?

15           MEMBER WHITE: My question was what is the date  
16 that the ANC was notified, and do you have -- is that in the  
17 record?

18           MR. TONDRO: I think, unfortunately -- again,  
19 because we're dealing with -- it has been almost two and a  
20 half years now, trying to go back and figure out when that  
21 is, I don't know. I know that we, the DCRA, is required and  
22 does -- it's sort of an automatic process that every two  
23 weeks, they send out to the ANC office, and then also to the  
24 ANCs this list of every single permit and raze permit that's  
25 issued by DCRA. It will come out to each ANC. Then it's up

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1 to them to respond.

2           Again, it's only an alarm bell. There's something  
3 going on; keep that in mind. Again, I want to say that in  
4 this particular case, as the Appellant raised, this is not  
5 a situation where somebody is in their house and they don't  
6 know anything's going to happen to the property and, all of  
7 a sudden, boom, it just appears overnight. This was a  
8 subject of a very contentious rezoning that was initiated by  
9 the Appellant, and that was then subsequently changed on the  
10 basis of the permit holder's intervention, at which that  
11 project was very clearly discussed.

12           The final order for that does refer to how much  
13 money had already been invested by the property owner in  
14 their plans. It was a clear project. It wasn't just a pie  
15 in the sky. This was a very clear, articulated project that  
16 everybody was aware would be there.

17           CHAIRPERSON HILL: Just give me one second, Mr.  
18 Tondro. Just so the Board's clear, and I want to understand,  
19 so I'm clear, and if OAG's listening, in terms of the order  
20 that we're going to go through here, this was, Mr. Tondro,  
21 your motions, in terms of dismissal. I started with the  
22 Applicant. I just want to make sure everybody gets the same  
23 amount of time and has an opportunity to cross-examine and  
24 everything.

25           Mr. Belt, just to let you know how we're going to

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1 do this -- and Mr. Moy, the clock, if you can kind of just  
2 start another 15-minute clock, just so I know where we are,  
3 in terms of time -- Mr. Belt had an opportunity to speak to  
4 basically the issues, in terms of the motions that were  
5 before.

6           Mr. Tondro, you then spoke to cross, basically,  
7 what we had provided testimony to. I'm going to let Mr. --  
8 unless OAG has any -- or anyone on the Board -- I'm just  
9 letting everybody know this is how I'm going to work through  
10 this, at this point. Let Mr. Belt cross-examine what you  
11 have to say, and then we'll move on to the building owner and  
12 do the same thing.

13           I just wanted to be clear on that because Mr. Belt  
14 also has some things that he apparently just had some  
15 questions about. I'm just trying to keep time, also, the  
16 same thing, again, we're doing here. It looks like OAG's  
17 going to tell me something. Again, we're here just to hear  
18 the motions. We're not deliberating the case. We're here  
19 just to get through the motions for timeliness, lack of  
20 jurisdiction and failure to state a claim. Then if we get  
21 past that, we'll get to the appeal. That's what I'm just  
22 trying to make sure everybody understands. Ms. Glazer,  
23 certainly.

24           MS. GLAZER: Yes, Mr. Chair, just one point. I  
25 don't know where it said this at the outset, but I believe

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1 this is hearing argument, essentially, from the parties,  
2 argument on the motions. There really wouldn't be  
3 cross-examination unless the Board wants to hear witnesses,  
4 for instance, to hear from Mr. LeGrant. Then the Appellant  
5 could cross-examine Mr. LeGrant. I think that's the decision  
6 the Board needs to make is whether this is an argument  
7 hearing from the parties on the motion, or whether we're  
8 actually having a hearing with witnesses testifying.

9 CHAIRPERSON HILL: Okay, law school would have  
10 been great. Mr. Tondro, again, they're your motions, but I  
11 just want to make sure everybody has a fair shot at this, so  
12 that's what I'm trying to get through. When I use the word  
13 cross-examination, I just want to make sure you have a chance  
14 to ask your questions. We're going to hear everything, and  
15 then we're going to see what happens. That being all said,  
16 I just want to be clear and out in the open, because of the  
17 Public Meetings Act, as to how I think this is working. That  
18 being the case, Mr. Tondro, I don't know how long you've  
19 talked already. Are you kind of wrapping it up there?

20 MR. TONDRO: Yes.

21 CHAIRPERSON HILL: Okay.

22 MR. TONDRO: Actually -- I'm sorry; I'm about to  
23 wrap it up.

24 CHAIRPERSON HILL: Okay, great. I thought you  
25 meant yes, I'm done. Sorry about that. Please go ahead.

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1 MR. TONDRO: Yes, sir. In response to the  
2 Boardmember, I think there's a situation where October of  
3 2015, the department issuance, that really is the key date.  
4 I believe in this particular case, the Appellant and the ANC  
5 had knowledge of the fact that this project was there from  
6 before, as a result of the contentious rezoning hearing  
7 before the Zoning Commission, which started in 2013, was  
8 completed in mid-2014.

9 Again, in response to Appellant's assertion that,  
10 as the basis of that rezoning, the permit holder had to seek  
11 relief from the Board, I don't find any statement like that  
12 in the actual order. That's in Order 1307 of the Zoning  
13 Commission.

14 I believe any property holder has the right to  
15 change their project, in order to bring it into compliance,  
16 to determine whether they want to seek relief from the Board  
17 or, instead, go by right, which is what they did on this  
18 particular case. The Appellant, therefore, had knowledge,  
19 starting in, certainly, about 2014, when the Zoning  
20 Commission order was issued. Then there was this -- the  
21 permit was actually issued in October of 2015. The ANC  
22 should have been notified in October 2015. But even if we  
23 were to ignore all that, the most recent filing by the  
24 Appellant made it very clear that there were three events  
25 that occurred in May of 2016. There were the trees that were

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1 removed.

2           There was the DDOT, the District Department of  
3 Transportation intervention and meeting over the use of the  
4 alley, which is specifically about the particular project.  
5 Then finally, there was this meeting that it refers to ---  
6 all of these are on Page 5 of his most recent filing, where  
7 he talks about his meeting with representatives of the permit  
8 holder, the property owner. It's very clear that at that  
9 time, he should have known that there was something going on,  
10 and that should have, again, triggered, at the very least,  
11 reaching out or a determination of whether there actually was  
12 a permit that was issued.

13           Instead, nothing happened. Nothing happened at  
14 that time. Construction eventually went on. A year later,  
15 in May of 2017, the roof was actually closed in. That still  
16 didn't trigger -- so in other words, we're talking about a  
17 tall building, multiple-story building. The building's  
18 built. The roof is on. That still doesn't trigger the  
19 appeal. Instead, in September, September 7th of this year,  
20 finally, then the Appellant files. That is just -- despite  
21 the most recent filing, there's no demonstration, that DCR  
22 believes, of any exceptional circumstances that were outside  
23 of Appellant's control that would enable him to justify an  
24 extension of that deadline. I will wrap it up right there.  
25 Thank you very much.

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1 CHAIRPERSON HILL: Okay. Mr. Belt, we're going  
2 to come to you last, again. I just want to hear from the  
3 building -- you think you'll forget?

4 MR. BELT: Go on.

5 CHAIRPERSON HILL: No, that's okay. Go ahead.

6 MR. BELT: It started bringing some stuff back,  
7 where I started getting a little clearer.

8 CHAIRPERSON HILL: I'm sorry. You need to push  
9 your microphone button there and speak into that.

10 MR. BELT: I'm sorry. He started bringing things,  
11 where things started getting a little clearer, and the water  
12 helped. I was a half second from being on the floor.

13 CHAIRPERSON HILL: I'm sorry?

14 MR. BELT: I felt like I was a half second from  
15 laying on the floor.

16 CHAIRPERSON HILL: Mr. Belt, if you need a break,  
17 you let us know if you need a break. We don't want anybody  
18 on the floor. Just make notes there of what you plan on  
19 saying, and then we'll go ahead and hear from the building  
20 owner. We'll come back to you at the end, okay? You can  
21 turn off the microphone there. Mr. Freeman.

22 MR. FREEMAN: Good morning, again. I have a quick  
23 question. Mr. Belt actually filed two documents after we  
24 were last here. One, he filed his pleading on the  
25 timeliness. Secondly, we received -- I'm not sure whether

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1 it actually made it into the record, but he filed a motion  
2 to not allow the property owner to participate because under  
3 his view, this is a civil infraction and not an appeal.

4 We would obviously oppose that. We have a written  
5 response to both of those motions. It wasn't clear whether  
6 the Board was taking responses to Mr. Belt's submissions, so  
7 I did not file it, but I do have here and would like to  
8 submit, before the record closes, a response to those  
9 submissions.

10 CHAIRPERSON HILL: Okay. You can submit those  
11 into the record.

12 MR. FREEMAN: Okay, thank you. Secondly, I think  
13 -- before I get too deep into my argument, what we prepared  
14 -- there's a lot of dates floating around here, so I prepared  
15 a chronology of events that I'd like to circulate.

16 CHAIRPERSON HILL: Okay. Do you have a copy for  
17 everybody?

18 MR. FREEMAN: Absolutely. All of this is  
19 completely from the record. None of this new. It's just  
20 compiling information that's already in the record.

21 CHAIRPERSON HILL: Okay. All right, Mr. Freeman,  
22 it's a really, really long chronology.

23 MR. FREEMAN: Right. I'm just going to hit the  
24 highlights. They're in yellow. I've even highlighted them  
25 for you.

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1 CHAIRPERSON HILL: You can highlight and hit some  
2 of the things. I thought that maybe we were going to  
3 deliberate on this today --

4 MR. FREEMAN: I will hit the highlights.

5 CHAIRPERSON HILL: -- we're going to. We'll see  
6 how that goes. Go ahead, Mr. Freeman.

7 MR. FREEMAN: Our position is that the appeal is  
8 clearly late under four standards. One, the zoning  
9 regulations say that an appeal has to be filed no later than  
10 ten days after the building was under roof. There is no  
11 waiver of that. The regulations are 100 percent clear in  
12 that ten-day rule. I call that the ten-day rule.

13 As shown on this outline or chronology, the  
14 building was under roof on May 15, 2017. Thus, the appeal  
15 was required to have been filed by May 25, 2017. He's 115  
16 days after that. Therefore, he's 115 days late and should  
17 be dismissed under that 10-day rule. Again, no waiver of  
18 that. Secondly, the zoning regulations say that an appeal  
19 should have been filed -- even if you decided not to apply  
20 that ten-day rule -- which, again, I think you should and  
21 dismiss the appeal on that basis. Secondly, the zoning  
22 regulations say that an appeal has to be filed 60 days from  
23 the date the Appellant knew, or should have known, of the  
24 issue complained of, unless that's extended because of  
25 exceptional circumstances, and no prejudice to the owner.

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1           In this case, I agree with Mr. Tondro that they  
2 knew, or should have known, by October 2015. Even if you  
3 disagree with that, Mr. Belt's own submissions indicate that  
4 they knew of the issues that they were complaining of back  
5 in April of 2016. If you look at the second highlighted box,  
6 you can see in April -- by the way, we started construction  
7 in May 2016.

8           April 27, 2016, there was a site meeting with Mr.  
9 Belt and the developer at the site, in which he indicated a  
10 number of issues and concerns with respect to the  
11 construction, including the retaining wall, in April of 2016.  
12 If you wanted to push it out, 60 days from that is April,  
13 May, June 2016. He's well past that date. On May 19, 2016,  
14 we went to the ANC. The owner went to the ANC to present to  
15 the ANC the plans and give them an update about what was  
16 happening. Sixty days from that, we're well past that. If  
17 you look at the record -- again, most of these dates come  
18 from Mr. Belt's submissions -- there was some concerns about  
19 parking. We entered into a parking agreement with Mr. Belt.  
20 He's a signatory to that agreement in July of 2016 in the  
21 record. If you look at your Exhibit 3 of the record, Exhibit  
22 3 does not have page numbers on it. This is Mr. Belt's  
23 submission. The one, two, three, four, the fifth page of Mr.  
24 Belt's submission, it looks like he did a table, as well.  
25 It lists all of the times he contacted DCRA to complain about

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1 the project, every single one.

2           You can see that he sent them -- he called DCRA  
3 in March of 2017 to complain about the project. He sent them  
4 a letter in April of 2017 to complain about the project. He  
5 contacted them in April 2017 to complain about the project.  
6 He contacted them again in April 2017 to raise his public  
7 space issue. Again, the building was under roof in May. May  
8 25th was the absolute deadline. He sent the Office of Zoning  
9 an email in June of 2017 to complain about the project.

10           He contacted the councilmember office in August  
11 of 2017 to complain about the project. Even if you don't  
12 want to start from October of 2015, he has known, or should  
13 have known, by his own admission, by his own submission, as  
14 early as March 2017, about the issues he's complaining about.

15           CHAIRPERSON HILL: Okay. Does anybody have any  
16 questions for the property owner?

17           (No audible response.)

18           CHAIRPERSON HILL: Okay, Mr. Belt, do you have any  
19 comments on any of the issues that were brought up?

20           MR. BELT: Yes, the way they --

21           CHAIRPERSON HILL: You need to push the button.  
22 I'm sorry.

23           MR. BELT: Oh, I'm sorry. The way it's presented  
24 here, every ANC and every person knowing about any building  
25 permits being issued should automatically challenge them in

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1 front of the BZA, the way it sounds here. We were not aware  
2 that they were building what they were building. That  
3 building was not in accordance with the proper zoning laws.  
4 We had no problem with the development. We accepted the  
5 development, just like it was said at their hearing.

6 Part of the transcripts from the hearing, this  
7 came from Jennifer Steingasser, "allow the moderate density,  
8 100 percent affordable housing development plan for Lot 52  
9 to proceed, subject to the limitations of the R-5-C  
10 district." That doesn't mean that it's by right.

11 Also in here, there are specific issues -- I  
12 believe they were bringing up certain issues with the rear  
13 yard, where it was determined by the Zoning Commission that  
14 they would definitely need BZA approval for the rear yard on  
15 the building. Also, they started to speak of the retaining  
16 wall at the Zoning Commission. Mind you, this has nothing  
17 to do with their project. Their project came to light during  
18 the zoning hearings, which was merely to bring that square  
19 into alignment with the 2006 comprehensive plan, which I  
20 noticed earlier, which included my house and my neighbors'  
21 houses, were commercial. On there, you have the houses being  
22 taxed at residential, then there was an empty lot that was  
23 commercial, a house, residential, an empty lot, commercial.  
24 It just was no consistency up there, which could have gone  
25 either way.

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1 CHAIRPERSON HILL: Mr. Belt, I'm sorry. I'm just  
2 trying to -- again, we're here for those three issues for the  
3 motions. I think we have --

4 MR. BELT: I'm trying to kind of just mention that  
5 background that this has something to do with that hearing.  
6 These are two different things. That hearing has nothing to  
7 do with this.

8 CHAIRPERSON HILL: I'm going to ask the Board  
9 whether they have any further questions of you. I think we  
10 have all of your information in the record and have read  
11 everything as to how you're responding to the motions that  
12 have been put forward.

13 MR. BELT: The wall check, that was not done when  
14 it was supposed to. That's supposed to be done -- should  
15 have been done very early on. We had no idea that these  
16 infractions were going to be even attempted, or these  
17 infractions would be approved. We had no issue with the  
18 building. We had no issue with the building permit at all.  
19 The wall check was supposed to have been done when those  
20 walls come a foot out of the ground. That was under DCRA's  
21 purview because it was the DCRA zoning administrator, while  
22 I was on the phone with them, noticed wait a minute, they  
23 haven't had a wall check. I'm going to issue a stop work  
24 order for them to get a wall check. Does that not sound like  
25 it's under DCRA?

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1 DCRA issued the wall check, issued a stop order,  
2 and had to approve of the wall check which, during that wall  
3 check, that's where it showed that they were four feet over.  
4 When they're saying I'm calling, complaining, no, I'm merely  
5 asking questions, trying to get answers. I'm not an  
6 attorney. I'm not a zoning expert. I should be able to  
7 reliably accept information from the Zoning Commission, from  
8 DCRA. The information that I get from them, that should be  
9 reliable and trustworthy information.

10 CHAIRPERSON HILL: Okay, I understand you're  
11 point. I think we understand. Mr. Freeman, I don't think  
12 we have any questions from anybody. You have something you  
13 have to say?

14 MR. FREEMAN: I actually wasn't 100 percent  
15 finished. The last point I wanted to make was that revoking  
16 these permits after the building has been 100 percent done,  
17 we've gone completely through the process, would severely  
18 prejudice the owner.

19 CHAIRPERSON HILL: Got it. Okay.

20 MR. BELT: I have one last thing to say, too.

21 CHAIRPERSON HILL: Sure, go ahead, Mr. Belt.

22 MR. BELT: I don't want this to set a precedent  
23 that all they have to do is collude with DCRA, DCRA not  
24 notice certain -- let me not use the word collude. I see  
25 that rubs you the wrong way -- DCRA to not notice or

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1 misinterpret the zoning rules, which are clear. Two and two  
2 is four, not two and two is five, and if they don't catch us  
3 in 30 days, we're scot-free. That's what I don't want to  
4 see.

5 CHAIRPERSON HILL: Mr. Belt, I understand, and I  
6 appreciate you coming down here. I've got to let you know  
7 I don't believe DCRA colludes with anybody.

8 MR. BELT: I would never believe it, either. I  
9 don't want to believe it.

10 CHAIRPERSON HILL: If anything, they do the  
11 opposite.

12 MR. BELT: I want to believe that it's still a  
13 misinterpretation. I just want to believe that it's a  
14 misinterpretation, like when I got into the -- when they were  
15 trying -- DCRA, their zoning technician got into it with me  
16 about the interpretation of the rear yard rule. He saw one  
17 thing, where it said either you use the formula, and the  
18 formula works for height, but if it gets to a certain level,  
19 there's a minimum. His interpretation was they can use  
20 either one, whichever one is best for them. I'm having a  
21 hard time, really, some of it getting out. I just want to  
22 keep these -- since the ideas are in my head --

23 CHAIRPERSON HILL: Sure. If those issues come  
24 over to the Office of Administrative Hearings or not, I'm not  
25 clear on, myself, but I don't know whether they're in our

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1 purview is what I'm also kind of struggling with.

2 MR. BELT: What about the public space is also --  
3 I found another case where the public space came straight  
4 through DCRA.

5 CHAIRPERSON HILL: Mr. Belt, just give me a  
6 second, okay? I'm only one person up here.

7 MR. BELT: I'm sorry; I'm on a roll.

8 CHAIRPERSON HILL: That's okay. I'm only one  
9 person up here. Does the Board Members have any questions  
10 for anybody?

11 MEMBER WHITE: I have one question. Mr. Belt, are  
12 you appealing the issuance of the building permit authorizing  
13 the project or the various decisions that occurred during the  
14 construction process?

15 MR. BELT: It would be the decisions that -- I'm  
16 appealing the decisions that were made. I know that those  
17 decisions that were made have a lot to do with the building  
18 permit, but the permit, per se, we had no problem with that.  
19 We knew the building was going to be built. It just should  
20 have been built in accordance with the proper zoning. But  
21 they built it as a by-right, with the previous plans that  
22 they had for commercial construction. It wasn't the building  
23 that we have a problem with. It's after the fact, when you  
24 start seeing little things that you have no way of knowing  
25 that this is going to happen.

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1 I would have no reason to complain about someone  
2 saying I'm going to do this, but then when they do that, they  
3 say possibly I'm going to build this, but you see they built  
4 it on half of your backyard while you were on vacation or  
5 something, you know that's wrong. You had no problem with  
6 them doing what they were going to do, but then when they  
7 committed these infractions -- because there was no way I was  
8 going to know --

9 CHAIRPERSON HILL: Okay.

10 MEMBER WHITE: Thank you.

11 CHAIRPERSON HILL: Anybody else?

12 (No audible response.)

13 CHAIRPERSON HILL: Okay. Do we need anything?  
14 Are we going to deliberate?

15 MS. GLAZER: Mr. Chair?

16 CHAIRPERSON HILL: Sure.

17 MS. GLAZER: I just want to go back to the  
18 beginning of Mr. Freeman's statement, if he could clarify  
19 something. He stated that there were two filings by the  
20 Appellant, and I only see one filing. That's Exhibit 33.  
21 I'm talking about filings that were requested by the Board  
22 the last time the case was heard. That was basically the  
23 Appellant's opportunity to respond in writing to the motion.  
24 I believe that's Exhibit 33. Perhaps the owner's counsel  
25 could clarify again what he was speaking about.

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1 MR. FREEMAN: Mr. Belt has it in his hand. I  
2 don't want to delay your deliberations, but Mr. Belt -- I  
3 don't know if he actually filed it in --

4 MR. BELT: I sent it to you, also, but I did file  
5 it.

6 MS. GLAZER: I don't believe that is in the record  
7 --

8 CHAIRPERSON HILL: I understand. Everybody just  
9 hold on.

10 MS. GLAZER: -- and I don't believe the Board  
11 should accept it, at this point. It's not really relevant.  
12 It's not what the Board requested. The Board requested a  
13 response to the motions to dismiss. Since that is not  
14 required in the record at this point, the owner's counsel  
15 said he had something in response, that shouldn't be in the  
16 record, either.

17 CHAIRPERSON HILL: Okay, Ms. Glazer. I would  
18 agree with you. Unless the Board has any issues, I would  
19 also agree with -- I would agree with Ms. Glazer, which is  
20 to say, Mr. Belt, you don't need to submit anything else in  
21 the record. We don't have whatever it was that Mr. Freeman  
22 spoke about in the record. So Mr. Freeman, we're not going  
23 to take whatever information you just had responding to what  
24 we don't have in the record, okay? That being the case, I'm  
25 going to close this portion of the hearing. Are we ready to

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1 deliberate on these issues?

2 (No audible response.)

3 CHAIRPERSON HILL: Okay, somebody want to go?

4 MEMBER MAY: Mr. Chairman, I have the benefit, I  
5 guess, of having participated in the original zoning case,  
6 which I have to admit, I wasn't enthusiastic about this  
7 particular project going up in that location, given its  
8 proximity to National Park Service land. Nonetheless, in the  
9 hearing of the case, in the long run, it made sense to  
10 support that rezoning to R-5-C.

11 Again, I wish that there had been action sooner,  
12 that the intention of the comp plan had been realized with  
13 an app amendment that would have brought it back down to a  
14 lower density residential zone, but that didn't happen, so  
15 we have R-5-C. The plans had to have been consistent with  
16 R-5-C, in the view of the zoning administrator, in order for  
17 the permit to be issued. That, we have testimony to the  
18 effect that it was issued, and it was consistent with that  
19 zone. Zoning Administrator's Office and the staff there can  
20 make mistakes. They can also reasonably interpret the  
21 decisions of the zoning commission in a manner that's  
22 inconsistent with my own views. Mr. LeGrant has come here  
23 before, and I've stated that I disagree with his  
24 interpretation on things, but that doesn't really matter.

25 If the Zoning Commission determines that the

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1 zoning administrator is doing something that's inconsistent  
2 with the intent of the regulations, then it's up to the  
3 Zoning Commission to take action to make it clear because Mr.  
4 LeGrant is acting on the zoning regulations as they have been  
5 written. I believe that was the case here. There may have  
6 been aspects of it where there were mistakes. However, the  
7 Board of Zoning Adjustment can't step in at this stage to try  
8 to speak to those.

9 I think that the timeliness issue is the real  
10 hurdle that we face. I understand that requiring the ANCs  
11 to monitor all those building permits that are being issued  
12 and making sure that everything is being done consistent with  
13 zoning, that's a big burden, and it should not have to happen  
14 for every single thing. There should be trust between the  
15 ANCs and the zoning administrator that things are being done  
16 properly. I know that's a source of constant tension across  
17 the city. But nonetheless, we have to believe that system  
18 can work. There are also going to be cases where maybe  
19 things aren't so clear. Maybe something gets by the ANC,  
20 something that they would be very interested in pursuing, but  
21 at the building permit stage, they did not notice it in a  
22 timely fashion and didn't take action to appeal the decision  
23 of the zoning administrator. All that being said, that  
24 decision to issue the permit was more than two years ago, and  
25 the building has essentially been built.

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1           It was under roof back in May. I think that's  
2 really the bottom line. At that point, you knew exactly what  
3 the building was. It's not a question of when they came in  
4 and started clearing the land to build the building. Even  
5 in the most extreme moment of the project, which is the  
6 moment in which it's under roof, there is a time frame tied  
7 to that for appealing some of these decisions.

8           That didn't happen. I appreciate the fact that  
9 this is a struggle, and that Mr. Belt and the ANC, you guys  
10 don't deal with this stuff all the time. Again, this happens  
11 in many circumstances across the city, so I'm totally  
12 sympathetic to the situation and to what you have faced. But  
13 unfortunately, I don't think that we can reasonably take up  
14 this case because I do think that the appeal is not timely.  
15 That's my opinion.

16           CHAIRPERSON HILL: Great, thank you, Commissioner  
17 May.

18           VICE CHAIR HART: Just a minor -- not a minor, but  
19 an addition to what Commissioner May just described. I  
20 actually would be -- I'm of the same mind, in terms of their  
21 were some dates and times that, Mr. Belt, I think you have  
22 been aware of this for some time -- aware of the project for  
23 some time. I was trying to understand, from Mr. Tondro, when  
24 some things had either gone out, or when the building permit  
25 had been issued.

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1           It just is hard to -- there hasn't been enough  
2 information -- there hasn't been information that you  
3 presented that said I was out of the country for a couple of  
4 years or some period of time, so that made it hard for me to  
5 be able to know that this was going on. You have been  
6 involved or have been understanding that this has been going  
7 on for a number of years.

8           You may not have actually seen the building  
9 permit, itself, but you were aware of this project as it has  
10 been going on. It's hard to -- we are given some information  
11 in our zoning regulations -- requirement of the zoning  
12 regulations about when zoning appeals should be filed. That  
13 is, I think -- while it doesn't seem like it's that long of  
14 a period of time, two months is a fairly long period of time.  
15 It seems as though there was an opportunity for you to be  
16 able to know that there was some issue and be able to address  
17 or -- I know you may not agree with it. I'm just saying that  
18 the way that we have to look at it is when was this person  
19 or this group aware of this project? I can't get by that.  
20 There is a time issue that's within that zoning regulations  
21 that tries to deal with this. I just think that timeline has  
22 been -- that time deadline has been exceeded. I don't think  
23 that we can move forward with the appeal because I think that  
24 it's outside of where that deadline was. That's where I am  
25 with it.

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1 CHAIRPERSON HILL: Ms. White?

2 MEMBER WHITE: I have to agree with my colleague.  
3 I like you, Mr. Belt. I wouldn't have given you my water if  
4 I didn't like you.

5 MR. BELT: I'd have been on the floor.

6 MEMBER WHITE: I'm a lawyer, too. Rules and  
7 regulations and timelines for filing cases, it's pretty  
8 strict. There is a little bit of flexibility if you can  
9 clearly communicate an extenuating circumstance that would  
10 allow us to give you a little wiggle room.

11 Regulation 11-Y, D.C. Municipal Regulations 302.2,  
12 that's the 60-day rule for filing appeals. This was two  
13 years after the permit was issued, instead of the required  
14 60 days. Then you've got the ten-day rule, under Regulation  
15 11-Y, DCMR 302.3(a), which basically says there's another way  
16 in, which is the ten-day rule, when the building was under  
17 roof. This was two and a half months after the roof was  
18 actually constructed on the building. I asked you about  
19 whether or not you were appealing the building permit, or  
20 whether or not you were questioning issues concerning the  
21 construction process. You were leaning more on the  
22 construction side.

23 Obviously, I can sympathize with some of the  
24 issues that you're communicating, in terms of something  
25 that's a real community issue, but I don't think we can get

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1 to the merits of it, especially because you didn't meet the  
2 time requirement. I wasn't on the original case, but I've  
3 read the record. I just don't see any extenuating  
4 circumstance that would allow me to give flexibility with  
5 respect to the time requirement.

6 CHAIRPERSON HILL: Okay. I don't have a whole lot  
7 to add. I was trying to understand, really, the time limits  
8 and where this should have been known about. I guess I do  
9 struggle about other issues when this comes up. This had  
10 come up on another case. I can't remember where it was.  
11 When can the community really know what is going on, unless  
12 they go and look at the permit and figure it all out and take  
13 that kind of time? You're really asking community members  
14 to go and research and do a lot of things that maybe they're  
15 not either accustomed to or able to in an efficient manner.  
16 I understand that you don't really see what you're going to  
17 get until you see what you got, if that makes a little sense.  
18 But even that, then again, that's what's the ten-day rule  
19 after it's been under roof. Then you've seen it. I was  
20 having trouble with, again, it was three and a half months  
21 after the building that was under roof. Then you really do  
22 prejudice the property owner. You might prejudice the  
23 property owner even before that, but then you are prejudicing  
24 the property owner after that because the building's  
25 finished.

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1           It's three and a half months after the ten-day  
2 requirement is finished to put an appeal forward. I just  
3 couldn't get past the timeliness thing. It was really just  
4 setting any kind of precedent where somebody, once it's  
5 built, and they come forward six months later -- three and  
6 a half months later is quite a long time after the ten-day  
7 rule. I wasn't able to get past the timeliness.

8           Also, then, in terms of the motion for lack of  
9 jurisdiction over public space, I would also agree with that  
10 motion, although I do think that they did state a claim. I  
11 would be approving the motion to dismiss that was put forward  
12 -- at least that's where I'm standing. I guess that's where  
13 everybody else is, as well. I would go ahead and make a  
14 motion to approve the motion to dismiss, as put forward by  
15 DCRA in Exhibit 28, and ask for a second.

16           VICE CHAIR HART: Second.

17           CHAIRPERSON HILL: Motion is made and seconded.  
18 All those in favor?

19           (Chorus of ayes.)

20           CHAIRPERSON HILL: All those opposed?

21           (No audible response.)

22           CHAIRPERSON HILL: Motion passes, Mr. Moy.

23           MR. MOY: The staff would record the vote as  
24 4-0-1. This is on the motion of Chairman Hill to dismiss the  
25 appeal, based on, I'm assuming, timeliness and lack of

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1 jurisdiction. Correct me if I'm wrong. Seconding the  
2 motion, Vice Chair Hart. Also support on the motion, Mr.  
3 Peter May, Ms. White. We have a Board seat vacant. Motion  
4 carries.

5 CHAIRPERSON HILL: Okay, do you do a summary order  
6 for that?

7 MR. MOY: No.

8 CHAIRPERSON HILL: Maybe I'll get it right after  
9 another three years. Mr. Belt, I hope you feel better.

10 MR. BELT: I'm on my way to the doctor now.

11 MS. CARSON CARR: Mr. Hill, could I speak just one  
12 second? Would that be okay?

13 CHAIRPERSON HILL: Actually, I'm sorry, you can't.  
14 We closed the record. You can talk to the secretary, if you  
15 like, but you can't speak on the record. We closed the  
16 hearing. Ladies and gentlemen, we are going to take a quick,  
17 two-minute break, just so we can change commissioners.  
18 However, what I was going to mention real quick is I know  
19 there are a couple of time issues going on with a few of the  
20 cases here, one of which is 19675, and the other is 19622.  
21 There is a commissioner here that is for 19622. My intent  
22 was to do 19675, and then go to 19622. Unless there is some  
23 issue, I will push as quickly as I can through 19675. We're  
24 going to take a two-minute break.

25 The first question was, again, 19675 was what I

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1 was going to do next, unless there's really some problem with  
2 doing that next. If there's an issue, please see Mr. Moy  
3 over here. If we're going to lose an ANC commissioner,  
4 however, I'd rather go with the previous -- we'll go ahead  
5 and do the ANC commissioner's case first, unless there's an  
6 issue with 19675.

7 In other words, we're going to take a quick  
8 two-minute break. This line over here to the left can get  
9 processed. We're going to go next to 19602, as was  
10 originally planned, and then we'll follow up with 19675.  
11 We'll take a quick, two-minute break. Thank you.

12 (Whereupon, the above-entitled matter went off the  
13 record at 11:38 a.m. and resumed at 11:42 a.m.)

14 CHAIRPERSON HILL: All right, Mr. Moy, whenever  
15 you'd like.

16 MR. MOY: Thank you, Mr. Chairman. This is  
17 Application No. 19675 of Keith Krueger and Joel Lawson?

18 CHAIRPERSON HILL: No.

19 MR. MOY: No, sorry, wrong page. That was a pop  
20 quiz. Application No. 19622 of Mark Rivetti, captioned and  
21 advertised for a special exception ruling -- this is  
22 captioned and advertised for special exceptions under  
23 Subtitle E, Section 5201. This is from the lot occupancy  
24 requirements, Subtitle E, Section 304.1, from the rear yard  
25 requirements, Subtitle E, Section 306.1. This would add a

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1 third floor, construct a four-story rear addition to an  
2 existing one-family dwelling, RF-1 Zone. This is at 1121  
3 Abbey Place, Northeast, Square 773, Lot 184.

4 CHAIRPERSON HILL: This is 19622, correct?

5 MR. MOY: 19622.

6 CHAIRPERSON HILL: If you could please introduce  
7 yourself for the record?

8 MR. RIVETTI: Hi, I'm Mark Rivetti of 1121 Abbey  
9 Place, Northeast.

10 CHAIRPERSON HILL: All right, Mr. Rivetti, I am  
11 going to do this a little bit out of order. We have your  
12 application. There are some questions we're going to have  
13 and let you do a presentation, but I understand the ANC  
14 commissioner is here. If that's okay, I'd like to ask him  
15 to come up first and speak.

16 MR. ECKENWILER: Good morning, Mr. Chairman,  
17 Members of the Board, Mark Eckenwiler, ANC 6C04, here on  
18 behalf of ANC 6C. We put a letter into the record. I should  
19 ask, at the outset, whether or not the Members of the Board  
20 have a copy of that letter? If not, I can hand one up.

21 CHAIRPERSON HILL: I don't know, Mr. Moy, if that  
22 -- was that the one that just got -- the one by Karen Ward?

23 MR. ECKENWILER: Yes, Karen Ward. It's dated  
24 yesterday.

25 CHAIRPERSON HILL: We do have that.

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1 MR. ECKENWILER: You have that?

2 CHAIRPERSON HILL: We do have that.

3 MR. ECKENWILER: Very good. Just to briefly recap  
4 the points made in this letter, we met last month, on  
5 December 14th. The members of the commission who were  
6 present, five of six of us who were present, voted  
7 unanimously to support the application, with conditions.

8 The one concern that we had was under Section  
9 5201.3(c), having to do with basically substantial visual  
10 impact, adverse impact, on character, scale, and pattern of  
11 the building, as viewed along the street frontage. This is  
12 a very consistent row, certainly, near the subject property.  
13 It is not significantly impaired. We worked extensively with  
14 the Applicant over a course of weeks, went through a number  
15 of revisions, and we're grateful for his engaging in that  
16 dialogue with us. We voted unanimously, as I stated, to  
17 support the application, with the proviso that the plans that  
18 we saw, which were case exhibits 44 and 45, that the deck  
19 atop the new third story be constructed of some materials  
20 that would reduce its visibility. We proposed either glass  
21 panels or potentially metal cable. There is precedent for  
22 this. We were here two years ago, as we note in the bottom  
23 paragraph on page 1, in BZA 19159, which is 650 F Street,  
24 Northeast.

25 The applicant in that case proposed glass panels

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1 for the railings and panels surrounding a roof deck. We  
2 agreed to that, and the Board approved that, so there is some  
3 precedent for selecting particular materials to reduce the  
4 visibility of that sort of roof deck. I should add as a  
5 footnote, of course, the Applicant has, since we met on  
6 December 14th, submitted further revised drawings into the  
7 record.

8 I think I can fairly represent, on behalf of the  
9 ANC, that our views would remain the same. We are  
10 supportive, but we still ask for those modifications in the  
11 particular materials selected. That concludes my testimony,  
12 and I'm happy to answer any questions.

13 CHAIRPERSON HILL: Okay, thanks, Commissioner  
14 Eckenwiler. Mr. Rivetti, are you aware of the issues that  
15 the Commissioner is speaking of?

16 MR. RIVETTI: Yes, I am.

17 CHAIRPERSON HILL: You're in agreement with the  
18 materials that they're speaking of?

19 MR. RIVETTI: I am, yes.

20 CHAIRPERSON HILL: Does the Board have any further  
21 questions for Commissioner Eckenwiler?

22 (No audible response.)

23 CHAIRPERSON HILL: Commissioner Eckenwiler, Happy  
24 New Year.

25 MR. ECKENWILER: Thank you, Mr. Chairman. I

1 appreciate your indulgence in keeping this case the first  
2 one.

3 CHAIRPERSON HILL: Sure. Just remember us when  
4 you're here on other cases. Thank you. Mr. Rivetti, you can  
5 go ahead and give a presentation, if you would, a little bit  
6 about what you're proposing to do. I think that the record  
7 is pretty clear, in terms of your application. I guess there  
8 was one question about, in Exhibit 46, there's something  
9 about the Office of Planning was not going to likely support  
10 a roof deck with a staircase, but there was something in the  
11 plans there. Are you aware of all this?

12 MR. RIVETTI: Yes, I am.

13 CHAIRPERSON HILL: You can speak to that during  
14 your presentation. I'm going to give you ten minutes. We'll  
15 put ten minutes on the clock. Other than that, I don't have  
16 a lot of questions. Does anyone have any questions, other  
17 than that, for the Applicant while he's doing a presentation?

18 (No audible response.)

19 CHAIRPERSON HILL: You can start whenever you  
20 like.

21 MR. RIVETTI: I have a thumb drive. Should I --

22 CHAIRPERSON HILL: A thumb drive, sure.

23 MR. RIVETTI: Or should I just try to --

24 CHAIRPERSON HILL: I think you're okay.

25 MR. RIVETTI: -- explain it?

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1 CHAIRPERSON HILL: You're okay. Just go ahead and  
2 explain it for now. If we need the thumb drive, we'll get  
3 to it.

4 MR. RIVETTI: The idea is to add a third story.  
5 I'm not running into any issues with height limit. I'm just  
6 applying for a special exception for rear yard setback and  
7 lot occupancy, which my house is currently over. I'm not  
8 adding to the footprint of the house, if that's clear. We  
9 all have these little additions that are on the back of the  
10 house, that are poorly built. We would remove that and  
11 rebuild it to the same distance off the face of the existing  
12 house, but on all levels, rather than just the first floor,  
13 which it currently is. I don't know if I should try to  
14 discuss the roof deck issue here.

15 CHAIRPERSON HILL: Yes, I don't know what we're  
16 going to do about this because I don't know the plans. Your  
17 plans have the roof deck and the spiral stairs, so we may  
18 need new plans. Let me see if the Board has any other  
19 questions for you right now. Does the Board have any other  
20 questions for the Applicant right now?

21 MEMBER TURNBULL: Did you go over the plans with  
22 the Office of Planning regarding what you're --

23 MR. RIVETTI: I had a planning and zoning hearing  
24 in December. I think that's --

25 MEMBER TURNBULL: Did you talk about the roof deck

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1 and the --

2 MR. RIVETTI: I believe the roof deck was --

3 MEMBER TURNBULL: -- and the setbacks required for  
4 all that?

5 MR. RIVETTI: We did not get into the roof deck  
6 then. I believe it was shown in the 3D renderings that I  
7 provided because they -- Mark Eckenwiler asked that I provide  
8 a sight line study to make sure this wasn't visually  
9 impairing the street. I did provide that. The 3D study  
10 actually did show a roof deck. The plans, it was not  
11 included in that, I believe. We have all the other levels.  
12 I don't believe that was shown in the original plans.

13 MEMBER TURNBULL: We can go over this with the  
14 Office of Planning.

15 CHAIRPERSON HILL: Okay, great, thank you. The  
16 updated architectural plans that I have has the roof deck and  
17 the spiral stair, I think. Does anybody have any further  
18 questions before I turn to the Office of Planning?

19 (No audible response.)

20 CHAIRPERSON HILL: Okay, Office of Planning.

21 MS. VITALE: Good morning, Mr. Chair, Members of  
22 the Board, Elisa Vitale with the Office of Planning. We will  
23 rest, on the record, in support of the Applicant's request  
24 for special exception relief, pursuant to E, 5201, from  
25 Section E, 304, for lot occupancy, and E, 306, for rear yard.

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1 As noted in our report, the Applicant is proposing a roof  
2 deck. We would just want to ensure that any railing be set  
3 back one to one.

4 I believe on the latest set of plans, Exhibit 46,  
5 the Applicant has shown parapet wall, which would be  
6 permitted. If he's using a parapet as the rail, that would  
7 not require the setback. That's being shown on three sides,  
8 against the property line, at the rear of the deck area and  
9 across the back of the roof deck.

10 He's then showing, it appears to be a cable rail  
11 -- the high isn't detailed -- set back as you move towards  
12 the front of the property. We would just note that any  
13 railing would require a one-to-one setback for the roof deck.  
14 That would obviously be reviewed at the time of building  
15 permit by DCRA and would have to comply with any setback  
16 requirements. That concludes my report. I'm happy to answer  
17 any questions. Thank you.

18 CHAIRPERSON HILL: I'm a little confused, then,  
19 about the spiral staircase. The Office of Planning is  
20 against the spiral staircase, correct?

21 MS. VITALE: No, we're not opposed to the spiral  
22 stair. We just noted that the stair and any railing that  
23 would provide access to that roof deck would need to meet the  
24 zoning requirements, as any improvement on the property  
25 would. The Applicant hadn't requested relief related to the

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1 railing for the roof deck in the application. We didn't  
2 evaluate that. Obviously, anything that he's proposing at  
3 the time of building permit would need to comply with the  
4 regulations.

5 CHAIRPERSON HILL: So the Office of Planning is  
6 fine with the revised drawings?

7 MS. VITALE: We've just noted that he would need  
8 to meet the setback requirements, as it relates to the roof  
9 deck, since he did not request relief for that. The initial  
10 drawings submitted with the application, it didn't appear  
11 that the railings met that setback. Exhibit 46, I don't  
12 believe there's enough information for us to make that  
13 determination, particularly not now, on the dais, but that's  
14 something that would be evaluated at the time of building  
15 permit by DCRA.

16 CHAIRPERSON HILL: Okay, I understand. Does the  
17 Board have any questions for the Office of Planning?

18 MEMBER TURNBULL: Yes, Mr. Chair. Ms. Vitale, I  
19 think on A-101, he shows a setback on the side railings from  
20 the adjoining row houses partway, but he doesn't show it all  
21 the way. Is that an issue?

22 MS. VITALE: It's not clear, since we don't -- I  
23 don't believe we have enough information to evaluate that.  
24 I don't believe it's appropriate to do that now. It would  
25 be up to DCRA, when they're reviewing the plans, to determine

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1 if it's compliant.

2 MEMBER TURNBULL: I'm just looking at it now. I  
3 don't think it is compliant.

4 MR. RIVETTI: At the rear, there's a parapet wall,  
5 which allows you to build the --

6 MEMBER TURNBULL: I mean the side, your side from  
7 your adjacent neighbors. You have a railing?

8 MR. RIVETTI: The parapet wall at the back of the  
9 house is acting as the railing, which allows you to build to  
10 the --

11 MEMBER TURNBULL: Are you saying that the wall --

12 MR. RIVETTI: Yes, in the elevations, the site  
13 elevations, you'll see at the back, it steps up, as to not  
14 visually impair the view from the front of the house, so that  
15 won't be noticeable from the street level, which is why I did  
16 it at the back. If it's a big issue, I can do it as a matter  
17 of right and try to do it that way.

18 MEMBER TURNBULL: I guess we'll let the zoning  
19 administrator look at this.

20 CHAIRPERSON HILL: Okay. I think we're done  
21 looking -- we're not asking for anything else from you at  
22 this point it sounds like. Does anyone else have any  
23 questions for the Applicant?

24 (No audible response.)

25 CHAIRPERSON HILL: Is there anyone here wishing

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1 to speak in support of the application?

2 (No audible response.)

3 CHAIRPERSON HILL: Is there anyone here who wishes  
4 to speak in opposition to the application?

5 (No audible response.)

6 CHAIRPERSON HILL: Would the Applicant like to add  
7 anything else?

8 MR. RIVETTI: No, I think just that I'm willing  
9 to work and make adjustments so that this can get approved.  
10 That's all.

11 CHAIRPERSON HILL: All right. I'm going to go  
12 ahead and close the hearing. Hearing's closed. Is the Board  
13 ready to deliberate?

14 (No audible response.)

15 CHAIRPERSON HILL: Actually, one second. Mr.  
16 Turnbull, do you need anything else?

17 MEMBER TURNBULL: I'm just curious. Do you need  
18 to have any downlights on the roof of that thing?

19 MR. RIVETTI: No.

20 MEMBER TURNBULL: It just looks like -- the ANC  
21 commission was concerned about fitting in. It just looks  
22 like it's -- your site study shows these four downlights up  
23 there. It seems like it's --

24 MR. RIVETTI: No, that's not necessary, and they  
25 can be -- that was a rendering, an architect's design choice,

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1 but no fixtures have been selected, and they can be smaller  
2 and fewer.

3 MEMBER TURNBULL: That's my only recommendation  
4 (Simultaneous speaking).

5 CHAIRPERSON HILL: Do you need to see anything  
6 else, though, Mr. Turnbull?

7 MEMBER TURNBULL: No.

8 CHAIRPERSON HILL: Are you comfortable  
9 deliberating?

10 MEMBER TURNBULL: Yes.

11 CHAIRPERSON HILL: All right, so again, I'll close  
12 the hearing. As far as I can begin the deliberation, I was  
13 a little confused by the OP report, but now I understand, in  
14 terms of what they are recommending. I am comfortable with  
15 their analysis, as well as the testimony that was given by  
16 Commissioner Eckenwiler, and the understanding that the  
17 Applicant was willing to make adjustments to the design,  
18 based upon the ANC's recommendations, in terms of the  
19 materials. Then, I guess, the Applicant was also willing to  
20 take into consideration the lighting, as Commissioner  
21 Turnbull had just mentioned. I'm comfortable with the  
22 application. Also, there was four letters in support from  
23 different neighbors. There was a letter in opposition, but  
24 I feel comfortable that the criteria has been met. Does the  
25 Board have any other comments to make?

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1 (No audible response.)

2 CHAIRPERSON HILL: I'm going to go ahead and make  
3 a motion to approve Application 19622, as captioned and read  
4 by the Secretary, and ask for a second.

5 MEMBER WHITE: Second.

6 CHAIRPERSON HILL: Motion has been made and  
7 seconded. All those in favor?

8 MS. GLAZER: Mr. Chair?

9 CHAIRPERSON HILL: Yes.

10 MS. GLAZER: I'm sorry to interrupt, but is there  
11 a condition regarding the materials?

12 CHAIRPERSON HILL: I don't think there's a  
13 condition. I don't know exactly what -- I don't have a  
14 written condition from the ANC. It sounds like there was an  
15 agreement made with the property owner and the ANC, and that  
16 was stated on the record, as to what those materials would  
17 be, so I'd be comfortable with that and not adding it as a  
18 condition because I just don't have anything written in front  
19 of us. That being the case, again -- but I do appreciate,  
20 Ms. Glazer, your mentioning that -- again make a motion to  
21 approve Application No. 19622, as captioned and read by the  
22 Secretary, and ask for a second.

23 MEMBER WHITE: Second.

24 CHAIRPERSON HILL: Motion made and seconded. All  
25 those in favor?

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1 (Chorus of ayes.)

2 CHAIRPERSON HILL: All those opposed?

3 (No audible response.)

4 CHAIRPERSON HILL: Motion passes, Mr. Moy.

5 MR. MOY: The staff would record the vote as  
6 4-0-1. This is on the motion of Chairman Hill to approve the  
7 application for the relief requested. Seconding the motion,  
8 Ms. White. Also in support, Mr. Michael Turnbull, Vice Chair  
9 Hart. We have a Board seat vacant. The motion carries, sir.

10 CHAIRPERSON HILL: Thank you, Mr. Moy, summary  
11 order.

12 MR. MOY: Thank you.

13 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you.

14 MR. RIVETTI: Thank you.

15 MR. MOY: Before I call the next case, Mr. Chair,  
16 I want to make reference to the docket, again, which I  
17 neglected to reference earlier. Although the staff has  
18 revised the docket for today's hearing, I realize that we  
19 have guests who are watching the hearing on our live cam.  
20 Application No. 19602, Max Salas, was withdrawn. I want to  
21 make sure that it was clear.

22 To the table is Application No. 19675, Keith  
23 Krueger and Joel Lawson. This is request for a special  
24 exception under Subtitle U, Section 253.10. This is from the  
25 accessory apartment requirements, Subtitle U, Section

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1 253.7(c), to permit an accessory apartment with an entrance  
2 on the street, facing façade, in an existing one-family  
3 dwelling, R-2 Zone, at 3626 Windom Place, Northwest, Square  
4 1891 E, Lot 11.

5 CHAIRPERSON HILL: Okay, great, if you can please  
6 introduce yourself.

7 MR. KRUEGER: Keith Krueger, at 3629 --

8 CHAIRPERSON HILL: You can kind of lean into the  
9 microphone just a little bit more.

10 MR. KRUEGER: Keith Krueger, resident at 3629  
11 Windom Place, Northwest, D.C.

12 CHAIRPERSON HILL: Mr. Krueger, I guess you're  
13 going to be presenting to us. I don't have a lot of  
14 questions, per se. We'll see if the Board has any additional  
15 ones. The one that I'd like to hear just a little bit is I  
16 don't see an ANC report from 3F, although I guess there has  
17 been some -- either the Office of Planning, I think,  
18 mentioned that the ANC had voted, but if you could speak to  
19 that, that would be great. If you could go ahead and talk  
20 about what you're proposing and how you're meeting the  
21 standards for the special exception for us to approve it.

22 I, again, am going to put ten minutes on the  
23 clock, just so I know where we are, but there are people here  
24 that apparently are trying to move forward as quickly as  
25 possible, so if you can be as expeditious as possible, that

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1 would help all of us today. Thank you.

2 MR. KRUEGER: Sure. We're adding an accessory  
3 apartment by right. It happens, because of the unique  
4 configuration of the property, that the entrance is on Windom  
5 Street, so we need to, because of the way the lot is  
6 configured, get a special exemption for the entrance. We  
7 have no opposition from the neighborhood, and we went to the  
8 ANC. They unanimously approved. I don't know why they  
9 didn't file their report, but they -- we went before them in  
10 December.

11 CHAIRPERSON HILL: I've read through the record,  
12 and the record is, I do believe, complete and full. Does the  
13 Board have any questions for the Applicant?

14 (No audible response.)

15 CHAIRPERSON HILL: I'll turn to the Office of  
16 Planning.

17 MS. VITALE: Good morning, again, Mr. Chair,  
18 Members of the Board, Elisa Vitale. We'll rest on the record  
19 in support of the special exception request. I can answer  
20 any questions. Thank you.

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

23 (No audible response.)

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

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1 (No audible response.)

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

4 (No audible response.)

5 CHAIRPERSON HILL: Is there anyone here from the  
6 ANC?

7 (No audible response.)

8 CHAIRPERSON HILL: Mr. Krueger, is there anything  
9 you'd like to say in closing?

10 MR. KRUEGER: No, thank you.

11 CHAIRPERSON HILL: All right. I'm going to go  
12 ahead and close the record. Is the Board ready to  
13 deliberate?

14 (No audible response.)

15 CHAIRPERSON HILL: Again, I'm trying to be as  
16 expeditious as possible, due to some issues with people in  
17 the audience. I thought that the Office of Planning's report  
18 was -- their analysis was very efficient and thorough. In  
19 addition to hearing testimony, even though there's no report,  
20 so we can't give it great weight, that the ANC had voted  
21 unanimously support, as well as three letters and six emails  
22 in support from neighbors, I do agree that they have met the  
23 standards necessary for us to grant the special exception.  
24 Does the Board have any other comments?

25 MEMBER WHITE: I would concur with you. There's

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1 special exception criteria under Subtitle U, 253, and they're  
2 numerous. Just looking at all of those items, it appears  
3 that you've met those requirements.

4 CHAIRPERSON HILL: Commissioner Turnbull?

5 MEMBER TURNBULL: I would concur with the Vice  
6 Chair.

7 MEMBER WHITE: Not yet.

8 MEMBER TURNBULL: I would have been surprised if  
9 the Office of Planning had not been an approval.

10 CHAIRPERSON HILL: Thank you, Mr. Turnbull. That  
11 being said, then, I will go ahead and make a motion to  
12 approve Application No. 19675, as captioned and read by the  
13 Secretary, and ask for a second.

14 VICE CHAIR HART: Second.

15 CHAIRPERSON HILL: Motion made and seconded. All  
16 those in favor?

17 (Chorus of ayes.)

18 CHAIRPERSON HILL: All those opposed?

19 (No audible response.)

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

21 MR. MOY: Staff would record the vote as 4-0-1.

22 It is on the motion of Chairman Hill to approve the  
23 application for the relief requested. Seconding the motion,  
24 Vice Chair Hart. Also in support, Mr. Michael Turnbull, Ms.  
25 White. We have a Board seat vacant. Motion carries.

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1 CHAIRPERSON HILL: Great. Summary order, Mr. Moy.

2 MR. MOY: Thank you.

3 CHAIRPERSON HILL: Thank you.

4 MR. MOY: The next case application is 19628.

5 This is of Leila Adler, captioned and advertised for special  
6 exception under Subtitle E, Section 5201, rear yard  
7 requirements of Subtitle E, Section 5004.1. This would  
8 permit an existing rear garage, RF-1 Zone, at 1829 L Street,  
9 Northeast, Square 4474, Lot 117.

10 CHAIRPERSON HILL: Okay, great. If you could  
11 please introduce yourselves from my right to left.

12 MS. ADLER: Yes, good morning, Leila Adler,  
13 resident owner of 1829 L.

14 MR. ADLER: I'm Timothy Adler, resident of 1829  
15 L.

16 MS. WILSON: I'm Maria Wilson, resident of 1302  
17 Carroll Road, Severna Park, Maryland. I'm the permit  
18 processor for department coordinator. I did the application  
19 and the paperwork.

20 CHAIRPERSON HILL: The permit processor?

21 MS. WILSON: No, the permit coordinator. I'm an  
22 agent.

23 CHAIRPERSON HILL: Oh, okay. Which one of you is  
24 going to present to us?

25 MS. ADLER: I will.

1           CHAIRPERSON HILL: Okay, Ms. Adler, if you could  
2 just -- let's see. I guess, if you would, to go ahead and  
3 tell us a little bit about the project. I don't really have  
4 a lot of questions concerning your application, unless the  
5 other Board members have anything specifically they'd like  
6 to hear, too. The only thing that was a little bit  
7 different, I guess, is that we don't have an ANC report.

8           We have a letter from the commissioner expressing  
9 support, but it doesn't rise to great weight because it's  
10 just a letter from the commissioner. Maybe you can speak a  
11 little bit to the ANC meeting that you had and how that went.  
12 If you want to go ahead and begin with, again, what you're  
13 trying to do, what you're asking for from us, and how you're  
14 meeting the standards for us to grant that request, and also  
15 speak to the whole issue that I mentioned about the ANC. I'm  
16 going to throw ten minutes on the clock there, just so you  
17 know where we are. Someone just raised their hand. We'll  
18 get to the ANC's support and opposition throughout the  
19 testimony, but you can go ahead, Ms. Adler, and start  
20 whenever you like.

21           MS. ADLER: Thank you. Good morning to all of  
22 you. My husband and I have been residents in our property  
23 for over two years, very happy there, great community. We  
24 love being a part of it. The project, itself, was  
25 constructed soon after we moved in, under the understanding

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1 that the permits that were pulled, which were pulled by the  
2 gentleman who sold us the home -- he was the one that  
3 basically conducted the process -- that they were the correct  
4 permits. We began construction.

5           It's a garage, very simple garage in the back of  
6 our home. There were no complaints. We didn't hear anything  
7 from any of our neighbors or the ANC throughout the process.  
8 It's been fine since then. The reason it was flagged was  
9 that last year, my husband and I considered putting a small  
10 addition on the back of our home, just a one-story living  
11 room, but due to outside circumstances in the new addition,  
12 we decided to forego that. Even though it might show that  
13 our permits had been pulled, we are no longer pursuing that.  
14 That process flagged, I guess, the structure, which is what  
15 started this process. We've been working very diligently,  
16 both with Ms. Wilson and the office, to make sure that we're  
17 providing -- we did provide all materials that you required.  
18 To your point, Mr. Chairman, on the ANC meeting, I'm sorry  
19 you didn't get a report. We were told it was going to be  
20 sent. The letter shows that it was a 4-1 vote in full  
21 support of the structure as the exception for our structure.

22           In addition, in our file, you should see that we  
23 have signatures from a majority of our neighbors, including  
24 our immediate neighbors on both sides, who have always voiced  
25 their willingness to come forward and voice their support in

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1 person, if need be. We have support from the community. As  
2 I said, it doesn't obstruct any views. If anything, it  
3 actually provides a little more security to our immediate  
4 neighbors, as we are enrolled in the D.C. video camera  
5 program, so we have security cameras posted on the structure,  
6 as well, into the back alley, which has been a source of  
7 considerable issues in our neighborhood for security.

8           Finally, we do have pictures - they should be in  
9 the file, again -- showing that the structure, itself, does  
10 not come past anything that's already existing in that  
11 alleyway. In fact, it sits well behind utility poles and  
12 other structures that are currently there. I'm happy to  
13 answer anything further. Thank you.

14           CHAIRPERSON HILL: Does the Board have any  
15 questions for the Applicant?

16           MEMBER TURNBULL: You were flagged when DCRA came  
17 out not necessarily for the structure, per se, but because  
18 of the setback for the structure?

19           MS. ADLER: We never saw anyone from DCRA  
20 physically come to our property. We were just flagged during  
21 the process of, as I mentioned before, that addition we were  
22 going to do. We never got to any of the construction or any  
23 of that. We wanted to address this issue once it was  
24 flagged, and then that was it. We'd never seen anyone from  
25 DCRA.

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1 MEMBER TURNBULL: All right, thank you.

2 MS. GLAZER: Mr. Chair, the Secretary just wanted  
3 me to mention to you that there is something in the file from  
4 the ANC, Exhibit 12. I don't know that it qualifies as a  
5 report. It doesn't meet the criteria in the zoning regs, but  
6 it is a letter in support from the ANC, with signatures from  
7 some commissioners.

8 CHAIRPERSON HILL: Okay, great, thank you.  
9 Anything else for the Applicant?

10 (No audible response.)

11 CHAIRPERSON HILL: Can I turn to the Office of  
12 Planning?

13 MS. ELLIOTT: Good morning, Mr. Chair, Members of  
14 the Board. I'm Brandice Elliott, representing the Office of  
15 Planning. OP is recommending approval of the requested  
16 special exception. We'll go ahead and stand on the record  
17 of the report. I'm happy to answer any questions you may  
18 have.

19 CHAIRPERSON HILL: Great, thank you. Does anybody  
20 have any questions for the Office of Planning?

21 (No audible response.)

22 CHAIRPERSON HILL: Is there anyone here from the  
23 ANC? Would you like to come forward, please? Just state  
24 your name. Did you get sworn in earlier?

25 MS. HENDERSON: I did.

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1 CHAIRPERSON HILL: You need to push the  
2 microphone. I'm sorry. You filled out your witness cards?

3 MS. HENDERSON: I did.

4 CHAIRPERSON HILL: Okay, great. Your name,  
5 please?

6 MS. HENDERSON: Happy New Year to you. My name  
7 is Kathy Henderson. I represent ANC 5B05. I am the  
8 commissioner representing the Applicants.

9 CHAIRPERSON HILL: Okay, great. Commissioner,  
10 thanks for coming down. Thanks for waiting around. We're  
11 actually moving pretty well, believe it or not, today.

12 MS. HENDERSON: Yes, and thank you for the work  
13 that you're doing on behalf of the District of Columbia.

14 CHAIRPERSON HILL: Thank you. Thank you for the  
15 work you're doing on behalf of the District of Columbia. You  
16 don't have this much separation, usually, from people that  
17 are mad. This is always a good thing for us, but thank you  
18 very much. Happy New Year to you. You'd like to give us  
19 some testimony?

20 MS. HENDERSON: Yes, and also my written -- I  
21 would like to submit written testimony following the hearing,  
22 as well. I'm going to be giving verbal testimony today, but  
23 I want to supplement the record with my written comments.

24 CHAIRPERSON HILL: Okay, yes, please. Thank you.

25 MS. HENDERSON: First, it saddens me to be here

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1 in opposition to the project. I'm very protective of my  
2 constituents. I've been fighting a long time to make this  
3 community stronger, safer, livable, and we've made a lot of  
4 strides. It's a much better place to live now than it has  
5 been. We need all of our neighbors to be on the side of the  
6 law. I have always been a proponent of supporting the law.

7           It is my understanding that this matter comes  
8 before this body because the Applicants, my constituents,  
9 applied for a permit for a trailer. They never built a  
10 trailer. They, instead, built a garage. I have been really  
11 pressing the District government to continue to enforce the  
12 law. We have people that don't want to process their trash  
13 properly. They want to do their own things. We have  
14 recovered from a really horrible history of murder, violence,  
15 and just lawlessness. We ask that the District government  
16 engage in a meaningful way to make sure that the law is  
17 upheld. This came to my attention from DCRA, which I think  
18 is doing an excellent job. They've been making a lot of  
19 improvements over the years, and I really appreciate the work  
20 that they're doing. Again, this matter was flagged because  
21 the permit was for a trailer.

22           The garage there is not a trailer. It's a very  
23 large, over-sightly garage. The Applicants, my neighbors  
24 that live on the same side of the street with them, not once  
25 did they ever come to me to talk to me. In fact, they've

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1 been openly antagonistic. Initially, when I met them, I  
2 welcomed them, as I welcome all of my constituents, to the  
3 community. I got their contact information.

4 But after that, the relationship has been very  
5 surly. Ms. Adler allowed her dog to attempt to relieve  
6 itself in a flower ring. When I challenged her about that,  
7 she became openly aggressive. There is an effort in my  
8 community to come to the ANC meetings, to be disruptive, to  
9 put information on listservs that really denounce the  
10 government, myself, the entire processes. It's very, very  
11 disruptive. Unfortunately, the Adlers have been part of that  
12 process. I am here -- I want to see the -- I have not seen  
13 the Office of Planning report approving the exception. The  
14 whole process for the ANC approving the exception was  
15 chaotic. I advised against. We did vote 4 to 1 to -- I  
16 voted against it because I don't think it's the ANC's  
17 position to attempt to correct work that was undertaken  
18 unlawfully in the first place. I think that the ANC should  
19 not have voted in that matter. It's just been very chaotic,  
20 very difficult, because there is an element in the community  
21 -- unfortunately, it appears that the negative element in the  
22 community is led by the Ward 5 representative, who is afraid  
23 that I may run against him again.

24 It's been nothing but chaos, unfortunately. We  
25 welcome all law-abiding citizens to the community. We need

1 every help that we can to continue to move forward. We  
2 continue to work very closely with the police department,  
3 with all the District agencies. The city administrator has  
4 been walking in our community. I understand the mayor will  
5 be coming, as well. We need people to comport themselves  
6 lawfully, and we want to make sure that happens.

7 We don't need people building things outside of  
8 the law. We don't need them applying for permits that are  
9 not appropriate. If this had been an inadvertent mistake by  
10 the Applicants that we could have corrected simply by talking  
11 about the matter and resolving it amicably, certainly, I'd  
12 be for that. But again, it is my understanding that this  
13 matter came to the attention of DCRA because they applied for  
14 a trailer permit, even though they never had any intention  
15 to build a trailer.

16 CHAIRPERSON HILL: All right. Does anyone have  
17 any questions for the Commissioner?

18 (No audible response.)

19 CHAIRPERSON HILL: Thank you, Commissioner, very  
20 much. Is anyone else here wishing to speak in opposition?

21 (No audible response.)

22 CHAIRPERSON HILL: Is anyone here wishing to speak  
23 in support of the application?

24 (No audible response.)

25 CHAIRPERSON HILL: Okay, thank you. Does the

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1 Board have any further questions for the Applicant?

2 (No audible response.)

3 CHAIRPERSON HILL: Do you have any further  
4 questions for us or any statement for -- or any conclusion?

5 MS. ADLER: No, just want to thank you all for  
6 your time and your patience in this process, as we've been  
7 trying to navigate it.

8 CHAIRPERSON HILL: Okay, great. Thank you.  
9 Unless the Board has anything else, I'm going to close the  
10 hearing.

11 (No audible response.)

12 CHAIRPERSON HILL: Going to close the hearing.  
13 Is the Board ready to deliberate?

14 (No audible response.)

15 CHAIRPERSON HILL: I actually went back and looked  
16 at the Office of Planning's report. I thought the Office of  
17 Planning had actually done a good job, in terms of their  
18 analysis for why the special exception would have been met.  
19 I didn't really have a lot of questions for the Office of  
20 Planning. I understand that there's a Commissioner here,  
21 obviously, who is one of the commissioners who was in  
22 opposition to the proposal.

23 The vote was 4-1 from the ANC. However, we do  
24 have a letter, but it's not something that would be -- that  
25 we would actually necessarily be able to give great weight

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1 to. However, it does show what the vote was for the  
2 application. I'm comfortable with the analysis that was  
3 provided from the Office of Planning, in terms of how this  
4 is being met, in terms of how the criteria is being met for  
5 us to grant the special exception. Does anyone else have any  
6 questions from the Board, or comments from the Board, I  
7 should say?

8 MEMBER WHITE: My only comment -- I looked at the  
9 same criteria and honestly, you changed the tone a little  
10 bit, in terms of your testimony.

11 MS. HENDERSON: Sorry.

12 MEMBER WHITE: There's no reason to apologize, but  
13 it caused me to listen to what you're saying. Still, looking  
14 at the criteria for special exception -- I respect your  
15 comments. Obviously, there's some issues that have to be  
16 resolved from a community perspective. Our job is -- we are  
17 given a request for a special exception. We look at a very  
18 detailed report from the Office of Planning. We look at the  
19 special criteria regulations with respect to the relief that  
20 they're seeking for alley center line setback. Based upon  
21 the record, and based upon the information that we have, I  
22 also find that they met the criteria, but I would hope, in  
23 the future, that things will improve within the community.

24 MS. HENDERSON: Thank you.

25 CHAIRPERSON HILL: Okay. Sure, Mr. Turnbull.

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1           MEMBER TURNBULL: Mr. Chairman, notwithstanding  
2 the Commissioner's report, what we have in the record, which  
3 I think is Exhibit No. 6, which is the report from Matt  
4 LeGrant, the zoning administrator. He talks about  
5 construction of an accessory garage structure.

6           He says review of the plans of the subject  
7 property referenced above indicates that the Board --  
8 basically BZA approval is required, as follows, special  
9 exception, pursuant to blah, blah, blah, a detached garage  
10 that does not comply with the 12-foot setback from the center  
11 line of the alley requirement, pursuant to E, Section 5004.1.  
12 What we have in here is a review of a request for a garage,  
13 not for another structure. What we have in here is for a  
14 garage. That's all I think we can base our review upon is  
15 for a garage, which they have looked at and seen drawings  
16 for, and that he's now referring back to us. I think this  
17 is really what we need to base our -- plus OP's report.  
18 Based upon that, I think I'm in support of going ahead and  
19 allowing this.

20           CHAIRPERSON HILL: Okay, thank you, Commissioner.  
21 Anyone else?

22           (No audible response.)

23           CHAIRPERSON HILL: I'm going to make a motion to  
24 approve Application No. 19628, as captioned and read by the  
25 Secretary, and ask for a second.

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1 MEMBER TURNBULL: Second.

2 CHAIRPERSON HILL: Motion made and seconded. All  
3 those in favor?

4 (Chorus of ayes.)

5 CHAIRPERSON HILL: All those opposed?

6 (No audible response.)

7 CHAIRPERSON HILL: Motion passes, Mr. Moy.

8 MR. MOY: Staff would record the vote as 4-0-1.

9 This is on the motion of Chairman Hill to approve the  
10 application for the relief being requested. Seconding the  
11 motion, Mr. Michael Turnbull. Also in support, Ms. White,  
12 Vice Chair Hart. We have a Board seat vacant. Motion  
13 carries.

14 CHAIRPERSON HILL: Thank you. Summary order.

15 MR. MOY: Yes, sir.

16 CHAIRPERSON HILL: Okay, thank you, Mr. Moy.

17 Thank you all.

18 MS. HENDERSON: Thank you.

19 MS. ADLER: Thank you very much.

20 MR. MOY: Next application before the Board is No.  
21 19639 of Kara Chernet, C-H-E-R-N-T, captioned and advertised  
22 for area variances from a non-conforming structure  
23 requirement, Subtitle C, Section 202.2, from the lot  
24 occupancy requirement, Subtitle D, Section 304.1. This would  
25 construct a rear deck addition to an existing one-family

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1 dwelling, R-2 Zone, at premises 2644 10th Street Northeast,  
2 Square 3849, Lot 19.

3 CHAIRPERSON HILL: I'm sorry. If you'd please  
4 introduce yourself.

5 MS. CHERNET: Kara Chernet, resident at 2644 10th  
6 Street, Northeast.

7 CHAIRPERSON HILL: Okay, Ms. Chernet, have you  
8 been sworn in?

9 MS. CHERNET: Yes.

10 CHAIRPERSON HILL: Ms. Chernet, there's a little  
11 bit of -- I'm going to go ahead and let you start. I'm going  
12 to let you go ahead and tell us a little bit about your  
13 application, and also what you're trying to do, as well as  
14 how you're meeting the criteria for us to grant the relief  
15 that you're requesting, okay? I'll go ahead and start with  
16 that. I'm going to go ahead and put ten minutes on the  
17 clock. There is some comments, I guess, that the Office of  
18 Planning has made concerning side yard variance, but I don't  
19 even know -- we'll see how that goes, in terms of what ends  
20 up happening with that. Go ahead and give us your  
21 presentation. Does the Board have anything else they'd like  
22 addressed particularly, other than that?

23 (No audible response.)

24 CHAIRPERSON HILL: Okay, you can go ahead and  
25 begin whenever you like.

1 MS. CHERNET: As supplied in my application, the  
2 burden of proof, I gave a statement. I'm not sure if you  
3 want me to read over that at this point.

4 CHAIRPERSON HILL: You can just summarize it, if  
5 you like.

6 MS. CHERNET: More or less, my home was  
7 constructed prior to 1958 zoning regulations which, based on  
8 my R-2 Zone, limits full use and enjoyment of my rear yard.  
9 Additionally, it places my home, and others alike on my  
10 block, under extreme scrutiny. Thus, the zoning law lacks  
11 fairness and equity.

12 As pointed out by the OP report, the lots within  
13 my block are substandard for an R-2 zone, making it an  
14 exceptional circumstance, resulting in practical difficulty  
15 for myself and many of my neighbors. Moreover, but for the  
16 substandard lot size predating the R-2 zoning law, my  
17 application for a deck would normally be expedited under a  
18 special exception. Furthermore, a deck would not cause a  
19 detriment to the public.

20 This is supported by letters from my neighbors and  
21 a petition that was supported by ANC 5B04. Additionally, the  
22 deck would be in line with the spirit of the law, not further  
23 impacting green space, or the DDOT report, which states that  
24 I have a parking spot in the rear of my home and so forth.

25 As I garnered many of the signatures in support

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1 of -- from my neighbors supporting this effort for me --  
2 which I'm not sure if you've seen any aerial photographs, but  
3 majority of my neighbors have decks and other structure in  
4 their yard. They also expressed concern with the fact that  
5 they thought this process was a bit extreme, based on where  
6 our zone abuts.

7           Many of the neighbors that were written in the  
8 200-foot letters that went out, they were notified of my  
9 deck, but they were not notified of other structures that  
10 have gone up on their own block, which are more concerning  
11 to them which, as I garnered signatures, this was something  
12 that was brought up readily and often. There's properties  
13 on Evarts that have gone back -- in the time that I've  
14 submitted my application, they've been built and constructed  
15 and gone up three additional stories, extended the back more  
16 than 20 feet. That actually obstructs my view, as well,  
17 through the rear of my home. The irony is that the same  
18 reciprocity is not given to myself and my neighbors that I'm  
19 being forced to be held to. I'm not sure if you have any  
20 other questions or comments.

21           CHAIRPERSON HILL: Does the Board have any  
22 questions for the Applicant?

23           (No audible response.)

24           CHAIRPERSON HILL: Okay, one.

25           MEMBER TURNBULL: You have a petition of a lot of

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1 people in support, and you have your neighbors on either side  
2 that are included in that.

3 MS. CHERNET: You're asking are they on the  
4 signature list?

5 MEMBER TURNBULL: Yes.

6 MS. CHERNET: They are not. They were not home.  
7 Both of them were not home at the time, but they do have the  
8 letters.

9 MEMBER TURNBULL: I just wanted to make sure.

10 MS. CHERNET: I'm sure if you reach out to them  
11 directly, or they had time to oppose the letter that was sent  
12 from the Office of Zoning.

13 MEMBER TURNBULL: Okay, thank you.

14 MEMBER WHITE: Any ANC feedback at all?

15 MS. CHERNET: ANC did submit a letter. I'm not  
16 sure if you guys have that as a part of your -- I have it  
17 here, which it is on -- what is it called, DC -- it's on the  
18 record. It should be in your system because that's where I  
19 got it from.

20 MEMBER WHITE: You could tell me what it says.

21 MS. CHERNET: Sure, I can open it up. I have a  
22 copy.

23 CHAIRPERSON HILL: Do you have copies with you  
24 here?

25 MS. CHERNET: I do not, but I have it here. This

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1 is from the website.

2 CHAIRPERSON HILL: That's all right.

3 MS. CHERNET: I can read off of it, if you like.  
4 It's not that long.

5 CHAIRPERSON HILL: Go ahead and read off of it.

6 VICE CHAIR HART: Do you have an exhibit number  
7 for the letter? You said it's off our website, so it should  
8 have an exhibit number on it.

9 MS. CHERNET: It is. Let me should if it's on --

10 VICE CHAIR HART: Look in the bottom right-hand  
11 corner. There should be a --

12 MS. CHERNET: I don't see that on here, but this  
13 is from your website. I'm not sure of anything else about  
14 it regarding --

15 VICE CHAIR HART: Did you pull it up today?

16 MS. CHERNET: I did. I pulled it up today and  
17 yesterday, but this particular copy, I'm not on the Internet  
18 currently, so I can't tell you the exact exhibit number, but  
19 I saved it so I could access it here today. It's a PDF that  
20 I have pulled up. At the top, it's the Government of the  
21 District of Columbia Advisory Neighborhood Commission, Single  
22 Member District 5B-04. Then it lists the address, the phone  
23 number. It's dated January 7, 2018.

24 That might be why you don't have it. I'm not  
25 sure. But it is on the website. Referencing BZA Application

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1 No. 19639. To whom it may concern, this letter is a letter  
2 of support for Ms. Kara Chernet to be granted approval to  
3 build a deck on the rear of her home at 2644 10th Street,  
4 Northeast. Ms. Chernet and I, the single member district  
5 commissioner, have canvassed the neighborhood within 200 feet  
6 of her property and shared her intent to build a deck in the  
7 rear of her home.

8 We collected signatures on a petition from the  
9 majority of the neighbors. This project will be an asset to  
10 the community. As an advisory neighborhood commissioner for  
11 5B-04, I would like to ask that the Board support this  
12 project, sincerely, and it lists Rayseen Woodland, Advisory  
13 Neighborhood Commissioner, ANC 5B04.

14 VICE CHAIR HART: We actually do have that. It's  
15 Exhibit 32. What we were looking for is a letter from the  
16 full ANC. This is from the single member district, which is  
17 fine, but the full ANC letter is something that we are to  
18 give great weight to. This letter is a letter in support  
19 from someone that is on the ANC, but it is not the full  
20 letter that we typically get from the ANC, itself.

21 Usually, that's a vote. They talk about what the  
22 actual project is. They tell us whether or not they support  
23 or oppose the project, and they give what the actual vote  
24 was, X number for or against whatever they submitted to us.  
25 That's what we were looking for. It's a fairly specific type

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1 of letter that we get. It's usually on the ANC letterhead,  
2 but not just the single member district letterhead. That's  
3 what you seem to have here. It's a difference. We were just  
4 looking for something that was from the full ANC. That's  
5 all.

6 CHAIRPERSON HILL: Ms. Chernet, did you go to the  
7 full ANC? Did you present at the full ANC?

8 MS. CHERNET: I've reached out to all ANC members  
9 and offered to present at their last meeting. I was  
10 instructed that it was not necessary. I also have emails  
11 that date back to probably this summer that have gone back  
12 and forth. I'm not sure of the process. I'm not an  
13 attorney, just a resident. I'm trying to build a simple  
14 deck.

15 CHAIRPERSON HILL: Okay. Does anyone have any  
16 other questions of the Applicant?

17 (No audible response.)

18 CHAIRPERSON HILL: I'm going to turn to the Office  
19 of Planning.

20 MS. ELLIOTT: Hello, again, Brandice Elliott,  
21 representing the Office of Planning. The Office of Planning  
22 is recommending approval of the variances that have been  
23 requested for additions to non-conforming structures and for  
24 lot occupancy. I'm happy to answer questions regarding the  
25 report, but our analysis discusses the merits of the variance

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1 test. We believe that those have been met.

2 In terms of the additional relief that we  
3 mentioned at the beginning, typically, when there is an  
4 addition to even a non-conforming structure, that addition  
5 would comply with the development regulations which, in this  
6 case, require a side yard. Side yards aren't being provided  
7 for the deck. That was not relief that was specifically  
8 identified by DCRA. We're sort of throwing it out there as  
9 a precautionary measure, in case -- I would hate for the  
10 Applicant to go back to DCRA and then realize that additional  
11 relief would have been necessary. We're just throwing that  
12 out there as something that -- as relief that we believe is  
13 necessary, but certainly, it's up to the Applicant whether  
14 or not they want to request that. OP would be in support of  
15 it if they did.

16 CHAIRPERSON HILL: So it's a variance from side  
17 yard relief?

18 MS. ELLIOTT: Correct. It would be Subtitle D,  
19 Section 307, where an eight-foot side yard is required in the  
20 R-2 Zone.

21 CHAIRPERSON HILL: Can you say that again,  
22 Subtitle D --

23 MS. ELLIOTT: Subtitle D, Section 307.

24 CHAIRPERSON HILL: Ms. Chernet, what the Office  
25 of Planning is saying is that you could potentially need

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1 relief from the side yard for Subtitle D, Section 307.  
2 They're suggesting that out of an abundance of caution,  
3 perhaps, you would add this to your application.

4           The zoning administrator did not list that in your  
5 memo, so I guess I'm trying to figure out now -- and I'd look  
6 to OAG and Mr. Moy -- as to whether you could add this now,  
7 verbally, to your application, or would that have to be  
8 changed? First of all, would you want to do that? First,  
9 I'm going to turn over here. Can the Applicant add that  
10 verbally to --

11           MS. GLAZER: Add what verbally? I'm not sure I  
12 know --

13           CHAIRPERSON HILL: Relief from Subtitle D, 307,  
14 the side yard relief, the variance.

15           MS. CHERNET: The reason why -- and I'm not sure;  
16 I'm not an attorney. I've gone through all these steps and  
17 all the different offices, but I don't have a side yard. My  
18 rear yard is already fenced in. The deck is within those  
19 fence lines, so I'm not sure -- I'm in a row home, with  
20 people on both sides of me. Would I have a side yard? I  
21 don't know. I'm not --

22           CHAIRPERSON HILL: Ms. Vitale.

23           MS. ELLIOTT: Elliott, thank you.

24           CHAIRPERSON HILL: Sorry.

25           MS. ELLIOTT: I'll have to fill in the zoning

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1 commissioner chair. You finally slipped up. This is a  
2 somewhat unusual circumstance, where we do have an attached  
3 dwelling in what is generally a detached dwelling zone. R-2  
4 is predominantly detached or semi-detached homes. Here, we  
5 have a string of row dwellings.

6 So yes, there is no side yard, but the expectation  
7 is that when there is an addition, it complies with the  
8 development regulations. Even though you currently have no  
9 side yard, you've requested relief for that existing  
10 condition, but the new addition of a deck would be required  
11 to provide those side yards, the eight feet on either side,  
12 which in this case, would leave you with a landing. We think  
13 the relief is necessary. We did not confirm with DCRA, so  
14 it's really up to the Applicant to determine if she wants to  
15 add it. It was not noted by DCRA. I'm not sure what the  
16 consequences would be for -- it would only be if DCRA notes  
17 the additional relief is necessary after reviewing the permit  
18 application again, where this would become an issue.

19 CHAIRPERSON HILL: Right, okay. Ms. Chernet,  
20 everybody's just trying to be helpful right here, by the way.  
21 We're just trying to figure it out for you.

22 MS. CHERNET: I understand. I just feel like  
23 we're improperly zoned where I live.

24 CHAIRPERSON HILL: That's a-whole-other kettle of  
25 fish. You might as well stop that right there. You're the

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1 last one of the day. You really want to go into that right  
2 now. There's nobody in the room.

3 MS. CHERNET: I know.

4 CHAIRPERSON HILL: Mr. Turnbull, I'm sorry.

5 MEMBER TURNBULL: I was asking Ms. Elliott what  
6 is the side yard requirement?

7 MS. ELLIOTT: The side yard requirement is eight  
8 feet.

9 MEMBER TURNBULL: Eight feet from both sides?

10 MS. ELLIOTT: From both sides.

11 MEMBER TURNBULL: Which means she couldn't have  
12 a deck.

13 MS. ELLIOTT: Correct.

14 MEMBER TURNBULL: Because it's only 16 feet wide.

15 MS. ELLIOTT: Correct.

16 MEMBER TURNBULL: That's a little absurd.

17 MS. ELLIOTT: It is an unusual situation. The  
18 R-2, you would find predominantly detached or semi-detached  
19 dwellings. The fact that we have row dwellings, it's  
20 unusual.

21 CHAIRPERSON HILL: Okay, I'm going back to my  
22 original question, which was whether or not this can be added  
23 verbally.

24 MS. GLAZER: I assume you mean the -- the  
25 Applicant can request to amend her application. I don't see

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1 any harm in doing that. The worst that would happen is the  
2 ZA would say this isn't necessary. I don't think there's a  
3 need for additional notice. It doesn't really change the  
4 project. It's just adding a section that would be needed for  
5 relief. I think Mr. Turnbull, whether he knew it or not,  
6 made the case for granting that relief.

7 CHAIRPERSON HILL: Right. Ms. Chernet, are you  
8 following along here a little bit?

9 MS. CHERNET: I'm following. I would like to add  
10 it.

11 VICE CHAIR HART: Just the one question about --  
12 because this is not a self-certified -- this is the ZA  
13 submitting this -- I just want to make sure that she can  
14 change it. That was kind of a question that I had with that.  
15 I'm looking at --

16 CHAIRPERSON HILL: You're looking at our attorney.

17 VICE CHAIR HART: Yes.

18 MS. GLAZER: Usually, the amendments are with  
19 self-certified applications. You're absolutely right. But  
20 she's including everything that the ZA has requested in the  
21 memo and just adding something. I think the consequences of  
22 it being erroneous, according to the ZA, would just be to say  
23 you don't need it.

24 VICE CHAIR HART: That's fine with me. I just  
25 wanted to make sure that was --

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1 MS. GLAZER: The other alternative would be to  
2 continue the matter and get something from the ZA and get a  
3 revised ZA referral.

4 CHAIRPERSON HILL: Okay. It would just be adding,  
5 again, a variance from Subtitle D, Section 307. I just want  
6 to make sure I understand what I'm asking for. Okay, fine.  
7 You're agreeing to add that to your application, correct, Ms.  
8 Chernet? I know you just said that, but could you say it  
9 again for me?

10 MS. CHERNET: Yes, that's correct.

11 CHAIRPERSON HILL: All right. Does the Board have  
12 any further questions of the Applicant?

13 (No audible response.)

14 CHAIRPERSON HILL: Okay, I love this part. Is  
15 there anyone here wishing to speak from the ANC?

16 (No audible response.)

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

19 (No audible response.)

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

22 (No audible response.)

23 CHAIRPERSON HILL: Ms. Chernet, would you like to  
24 add anything else?

25 MS. CHERNET: No.

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1 CHAIRPERSON HILL: Okay, then I'm going to go  
2 ahead and close the hearing. Is the Board ready to  
3 deliberate?

4 (No audible response.)

5 CHAIRPERSON HILL: Okay. I would agree with the  
6 analysis that was provided from the Office of Planning, even  
7 though I actually got somebody's name wrong for the first  
8 time in two years. I thought the analysis was very thorough,  
9 and I would be in agreement with that of the Office of  
10 Planning. There was a letter from the SMD, as well as a  
11 petition of support for the Applicant and what they're trying  
12 to do. We didn't get a letter, in terms of being able to  
13 give great weight. However, I am comfortable that process  
14 -- I'm comfortable that the Applicant has done their due  
15 diligence in reaching out to the community. There is also  
16 letters in support from both adjacent neighbors. Unless  
17 anyone has -- DDOT was also in support. Does anyone have  
18 anything else to add? Otherwise, I'm going to make a motion.

19 (No audible response.)

20 CHAIRPERSON HILL: I make a motion to approve  
21 Application No. 19639 of Kara Chernet, pursuant to 11 DCMR,  
22 Subtitle S, Chapter 10, for area variances from the  
23 non-conforming structure requirements of Subtitle C, Section  
24 202.2, and from the lot occupancy requirements of Subtitle  
25 D, 301.4, as well as variance relief from Subtitle D, Section

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1 307, to construct a rear deck addition to an existing  
2 one-family dwelling in the R-2 Zone, at premises 2644 10th  
3 Street, Northeast, Square 3843, Lot 19, and ask for a second.

4 VICE CHAIR HART: Second.

5 CHAIRPERSON HILL: Motion made and seconded. All  
6 those in favor?

7 (Chorus of ayes.)

8 CHAIRPERSON HILL: All those opposed?

9 (No audible response.)

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

11 MR. MOY: Staff would record the vote as 4-0-1.  
12 This on the motion of Chairman Hill to approve the amended  
13 application, or the application for the amended relief being  
14 requested. Seconding the motion, Vice Chair Hart. Also in  
15 support, Mr. Michael Turnbull, Ms. White. We have a Board  
16 seat vacant. The motion carries, sir.

17 CHAIRPERSON HILL: Thank you, Mr. Moy, summary  
18 order.

19 MR. MOY: Yes, sir.

20 CHAIRPERSON HILL: Thank you, Mr. Moy. Thank you  
21 very much.

22 MS. CHERNET: Thank you all.

23 CHAIRPERSON HILL: Mr. Moy, is there anything left  
24 for the Board today?

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

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1 CHAIRPERSON HILL: Okay, then we stand adjourned.  
2 (Whereupon, the above-entitled matter went off the  
3 record at 12:45 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: DCBZA

Date: 01-10-18

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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Court Reporter

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