

GOVERNMENT
OF
THE DISTRICT OF COLUMBIA

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BOARD OF ZONING ADJUSTMENT

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PUBLIC HEARING

+ + + + +

WEDNESDAY
JANUARY 24, 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 9:40 a.m., Frederick Hill, Chairperson, presiding.

BOARD OF ZONING ADJUSTMENT MEMBERS PRESENT:

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

ZONING COMMISSION MEMBER PRESENT:

PETER SHAPIRO, Commissioner

OFFICE OF ZONING STAFF PRESENT:

CLIFFORD MOY, Secretary

D.C. OFFICE OF THE ATTORNEY GENERAL PRESENT:

SHERRY GLAZER, ESQ.

OFFICE OF PLANNING STAFF PRESENT:

STEPHEN MORDFIN
STEVEN COCHRAN
CRYSTAL MYERS
BRANDICE ELLIOTT
ANNE FOTHERGILL

The transcript constitutes the minutes from the
Public Hearing held on January 24, 2018.

C-O-N-T-E-N-T-S

Case No. 19550, Appeal of ANC 6C	7
Case No. 19667, Application of Laura Peyton and Sarah Hopkins	40
Case No. 19672, Application of Milton Halem	46
Case No. 19676, Application of Coresite 1099 14th Street LLC	120
Case No. 19669, Application of David B. Douglas	125
Adjourn	145

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

(9:40 a.m.)

CHAIR 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, Room 220 South, 441 4th Street, Northwest.

This is the January 24, 2018 public hearing of the Board of Zoning Adjustment of the District of Columbia. My name is Fred Hill, Chairperson. Joining me today is Carlton Hart, Vice Chair, Lesyllee White, Board Member, and representing the Zoning Commission will be Peter Shapiro. Copies of today's hearing agenda are available to you and located in 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 noise or action 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 their hand and be sworn in by the secretary. Also, each witness must fill out two

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1 witness cards. These cards are located out on the table near
2 the door and on the witness tables. Upon coming forward to
3 speak to the Board, please give both cards to the reporter
4 sitting to the table on my right.

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

11 The order and procedures for special exceptions
12 and variances and appeals is also listed on the materials
13 that are in the bin. The record shall be closed at the
14 conclusion of each case, except for any material specifically
15 requested by the Board.

16 The Board and the staff will specify at the end
17 of the hearing exactly what is 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.

21 The District of Columbia's Administrative
22 Procedures Act requires that the public hearing on each case
23 be held in the open before the public, pursuant to 405(b) and
24 406 of that Act. The Board may consistent with its rules of
25 procedures and the Act answering to a closed meeting on a

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1 case for purposes of seeking legal counsel on a case pursuant
2 to the official code Section 2-575(b)4 and/or deliberating
3 on a case pursuant to D.C. official code, Section 2-575(b)13,
4 but only after providing the necessary public notice, and in
5 the case of an emergency closed meeting after taking a roll
6 call vote.

7 The decision over the Board in contested cases or
8 all cases must be based exclusively on the public record.
9 To avoid any appearance to the contrary, the Board request
10 the persons present not engage the members of the Board in
11 conversation.

12 Please turn off all beepers and cell phones at
13 this time to not disrupt the proceedings. Preliminary
14 matters are those which relate to other cases will or should
15 be heard today such as request for postponement, continuous
16 or withdrawal, nor whether proper and adequate notice of the
17 hearing has been given.

18 If you're not prepared to go forward with the case
19 today, or if you believe that the Board should not proceed,
20 now is the time to raise such a matter.

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

22 MR. MOY: Good morning, Mr. Chairman, members of
23 the Board. I do have a very quick announcement relevant to
24 today's docket, and that is that the case originally
25 scheduled for today, Application Number 19666 of Caryn

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1 Shenewerk has been postponed and rescheduled to February 7,
2 2018. Other than that, other preliminary matters, Staff
3 suggests that the Board address those on a case-by-case
4 basis.

5 CHAIR HILL: Okay. Great. Thank you, Mr. Moy.
6 Anyone here who plans to testify or thinks you might testify,
7 if you could please stand and take the oath, which is going
8 to be administrative to the Secretary to my left.

9 MR. MOY: Oh, one other thing. I have an addendum,
10 Mr. Chair. Also, Application Number 19671 of Patrick's Pet
11 Care, postponed and rescheduled to February 7, 2018. That's
12 it. Apologize for that.

13 Good morning. Do you solemnly swear or affirm
14 that the testimony you're about to present at this proceeding
15 is the truth, whole truth, and nothing but the truth?

16 (Witnesses sworn.)

17 MR. MOY: Ladies and gentlemen, you may consider
18 yourselves under oath.

19 CHAIR HILL: All right. Good morning, everybody.
20 We are basically going to go through the agenda the way that
21 you saw it there on the, in the bin as you kind of come in
22 through the door, except there's a couple of things. There
23 is a preliminary matter about, I think, Mr. Moy, an appeal,
24 for Appeal 19550, which we're probably going to go do first.

25 And then after that, we're going to go into our

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1 decision meeting and go through the decisions. And we'll
2 follow the line in order that we're doing that. Then, we are
3 going to, I think, move Application Number 19669 of David
4 Benjamin Douglas until the end of the day, I believe. But
5 other than that, that seems to be the only changes just to
6 the agenda, so everybody knows.

7 MR. MOY: Okay. Am I up?

8 CHAIR HILL: Yeah, do you want to call the, I
9 think you said there was a preliminary matter with the
10 appeal?

11 MR. MOY: Yes, I did, sir. Thank you, Mr. Chair.
12 Chair, thank you. So, I can call parties to the table to
13 appeal number 19550 of ANC 6c. And I like to read into the
14 record as captioned and advertised, this is the appeal from
15 the decision made on March 31, 2017 by the Zoning
16 Administrator, Department of Consumer and Regulatory Affairs
17 to issue Building Permit Number B-17006219 to permit the
18 renovation of a one family dwelling to two separate one
19 family dwelling units in RF-1 Zone, at premise is 1125 7th
20 Street, Northeast, Square 886, Lot 35.

21 Mr. Chair, there are a number of preliminary
22 matters in this appeal. One being submission of a "partial
23 consent motion" to postpone or continue the appeal. I
24 believe that's under Exhibit, well, I'll come back to that.
25 And subsequent to that is an objection by the intervener

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1 status, Kevin Cummins, a filing on the record. And I think
2 yesterday or last night a filing from the property owner, as
3 well. So that's to start.

4 CHAIR HILL: Okay. Great. Thank you, Mr. Moy.
5 If you could please introduce yourselves from my right to
6 left?

7 MR. TONDRO: Maximillian Tondro on behalf of the
8 Zoning Administrator, DCRA.

9 MR. CUMMINS: Kevin Cummins, I'm the next-door
10 neighbor property owner, intervener in this case.

11 MR. ECKLEWILER: Mark Ecklewiler, ANC 6c.

12 MR. BROWN: Patrick Brown from Greenstein, DeLorme
13 & Luchs on behalf of the property owner, Atlas Square, LLC.

14 CHAIR HILL: Okay, great, thanks. Now, I can't,
15 Mr. Tondro is it you who filed the motion for a continuance?

16 MR. TONDRO: Yes, it is.

17 CHAIR HILL: Okay. And I know that Mr. Cummins
18 is in objection to it. And so, we're going to try to kind
19 of just hear from everyone in terms of whether or not to
20 continue this or not. Would you mind just telling us about
21 it, your motion, please?

22 MR. TONDRO: Yes. Good morning, Chairman Hill,
23 members of the Board. The reason for the continuance is as
24 has been the case up until, there's a bifurcate process.
25 There are two appeals that going on that relate to the same

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1 issue. It's two challenges to the same permit.

2 There's one that's pending before OAH, and then
3 there's this one filed by the Appellant, ANC Commissioner.
4 The substance of both, they share, the two appeals share one
5 common claim, which is the issue of the chimney that there
6 is on the intervener's property, which is adjacent to the
7 permit holder's property, that there is a chimney that would
8 be render noncompliant under both the construction codes, and
9 as well as the zoning regulations on the basis that it's
10 within ten feet of the property line, therefore, adding an
11 additional story would render it noncompliant.

12 That issue has been first heard by the Office of
13 Administrative Hearings. The posture in that case was that
14 DCRA initiated upon the request by the intervener, or the
15 statement by the intervener that there was a flue on that
16 adjacent property that was closer than ten feet, that
17 therefore the permit was issued in error.

18 DCRA therefore determined that under the
19 construction codes that was reason to revoke the permit and
20 issued a notice to revoke. The permit holder then appealed
21 that to the Office of Administrative Hearings. And as a, and
22 during that litigation, which I think Mr. Brown could
23 probably speak to more about, there was an attempt to have
24 the intervener allow a DCRA inspection to determine whether
25 the flue was actually connected to an appliance that was

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1 working, and also to determine if the flue itself had been
2 installed with a permit because if they had not, then the
3 vent would not be considered as a chimney and this provision
4 under both construction codes, as well as the zoning
5 regulations would not apply.

6 As I understand, I was not the attorney handling
7 the case before OAH for the Agency, but as I understand, the
8 Agency obtained an administrative search warrant and as a
9 result of that determined that first of all, the flue was
10 attached to an appliance but that appliance was not permitted
11 for residential use. It was for use on boats.

12 CHAIR HILL: Mr. Tondro, I got you. I'm sorry.
13 I'm just --

14 MR. TONDRO: I understand.

15 CHAIR HILL: No, I appreciate it. I'm just kind
16 of cutting you off because I believe we read through the
17 whole record and everything. And if we end up, if we end up
18 do getting into the depths of all this that --

19 MR. TONDRO: Sure.

20 CHAIR HILL: And I appreciate that. Commission
21 Ecklewiler and Mr. Brown, you guys are okay with the
22 continuance, was that correct?

23 MR. ECKLEWILER: Yes, Mr. Chairman. I do want to
24 point out, it's probably obvious to you but also, the Board
25 does not have benefit of any prehearing statement from either

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1 DCRA or the property owner. And as much as I would like to
2 have you decide the case on the current record, that's not
3 really kosher.

4 CHAIR HILL: Okay. Okay. Mr. Brown, do you have
5 anything to add?

6 MR. BROWN: No, but I think one, the continuance,
7 we found a date I think that works for everybody. I'm
8 confident that the OAH matter, which is determining finally
9 the status of Mr. Cummins' chimney can be achieved now that
10 we have the results of the administrative search warrant, can
11 be achieved. A determination from OHA --

12 CHAIR HILL: Okay. And so --

13 MR. BROWN: -- which would make that issue go
14 away, both for purpose of the OAH but also for purposes of
15 the zoning appeal. So, the May 9th we picked gives us time
16 to accomplish that so that issue it not something the Board
17 can worry about any further because it's outside your
18 jurisdiction.

19 CHAIR HILL: Okay. Okay, Mr. Brown.

20 MR. BROWN: And we can move to a hearing.

21 CHAIR HILL: Okay. Okay. So, Mr. Cummins, you're
22 obviously outnumbered here, and we've read your submission.
23 Could you please tell us a little bit more about your
24 opposition to the continuance?

25 MR. CUMMINS: Thank you, Mr. Chairman and thank

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1 you for hearing me out. I appreciate it. This has been
2 delayed twice already and I really see no further need for
3 a postponement. The fact the DCRA and the permit holder had
4 every opportunity to file a prehearing statement and chose
5 not to do so.

6 MR. TONDRO: Meanwhile while a neighbor has
7 already done so and as has the ANC, and as I asked to be
8 interviewed in this case. But briefly that what's being
9 raised in the OAH matter, it's not, it's actually an appeal
10 by the permit holder against the DCRA action to revoke the
11 permit. And the legality or compliance or anything else
12 about my existing chimney is not the relevant matter in that
13 case that'll, to be decided.

14 MR. TONDRO: What will be decided is whether the
15 permit revocation or notice to revoke by DCRA was proper or
16 not. And, you know, regardless, my chimney is still there.
17 It's an existing chimney, and it is correct that OAH has
18 jurisdiction over the building code issues and that, so
19 they'll weigh those factors there. But it's the building
20 code compliance of the permit in question here, not the
21 compliance in my chimney that's the matter in that case.

22 As much as the permit holder would like to, or
23 even DCRA might obfuscate around that. But what's resulted
24 is even a search of my house and the harassment by DCRA, what
25 I believe to be harassment by DCRA and the permit holder's

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1 counsel about my property which has made it very burdensome
2 to go through this process as a neighbor.

3 And what the matter here before the Zoning
4 Commission is a zoning regulations-based complaint that
5 involves a chimney and other factors. And I think, you know,
6 DCRA raised the matter of judicial economy, but in reality,
7 DCRA may recognize itself that there are zoning issues
8 besides the chimney that make the, make the permit very
9 problematic, if noncompliant.

10 And regardless of what the OAH determines in that
11 case, the chimney matter before the Zoning Commission will
12 be the same because it's a zoning regulations-based matter
13 that OAH does not have any authority over. And OAH also
14 doesn't change the building code or anything else. They just
15 rule again on the permit compliance of the chimney.

16 CHAIR HILL: Okay. Okay.

17 MR. CUMMINS: So regardless, what DCRA raised
18 about the legality of the chimney or everything else, it's
19 not actually in the zoning regulations that will be, that
20 this permit was issued under, I believe improperly by DCRA.

21 CHAIR HILL: Okay. All right. Does the Board
22 have any questions for anyone?

23 MEMBER WHITE: My only question is why wasn't DCRA
24 filing a prehearing statement in this particular case? What
25 was your position on that?

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1 MR. TONDRO: Yes. If I can respond. The results
2 of the administrative search warrant were that the DCRA
3 determined, as I said that there was, that the flue was not
4 permitted and that the appliance to which it's attached is
5 not permitted, as a result, which we have issued orders to
6 correct requiring that the intervener remove both of those.

7 If those are removed, then we end up in a
8 situation where this issue is off the table for both building
9 code compliance but also for zoning regulation compliance.
10 That is all wrapped up in that Office of Administrative
11 Hearings appeal, which is the reason why we were holding off
12 and while we filed a request to continue on that basis,
13 because we knew that, that was still out there.

14 We thought it would be best for that to be
15 resolved first, and then, and so that we don't end up in a
16 situation where, I think what an intervener would like, which
17 is that we go towards a hearing on the merits of zoning
18 regulations, make a determination about a chimney that
19 ultimately later on is determined not to exist due to the OAH
20 litigation and surrounding issues.

21 So, it is on that basis that we didn't file a
22 prehearing statement because we believe that this should be
23 continued so that we could resolve this one issue and make
24 it clearer for the Board so that this issue is taken off the
25 table.

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1 MEMBER WHITE: May I respond?

2 CHAIR HILL: Okay. Just one second, I'm sorry.

3 MR. BROWN: Can I also add to --

4 CHAIR HILL: Wait, wait. Just one second. Just
5 give me one second.

6 MR. BROWN: No, no. On the prehearing statement.

7 CHAIR HILL: Okay, Mr. Brown. Just give me one
8 second. I'm just waiting to see whether Ms. White is happy
9 with her answer.

10 MEMBER WHITE: Yes, and a follow up question.

11 CHAIR HILL: Yeah, the other button. You have to
12 push the button. Sorry.

13 MEMBER WHITE: I should know that. Yeah. One
14 other question I have is whether or not there are other
15 zoning issues in the BZA appeal that would be decided before
16 May?

17 MR. TONDRO: Yes, thank you, Board Member White.
18 Yes, the permit holder I believe anticipates filing a permit
19 revision that would clarify some of the drawings and that
20 would, the permit holder believes make the permit compliant
21 with the zoning regulations.

22 That has not yet been submitted to DCRA, although
23 we have, DCRA has reviewed the initial, you know, proposal,
24 and so as a result that's one of the reasons for the 60-day
25 delay, approximately, is to allow for that to happen.

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1 Just to be clear, we fully expect, I had talked
2 in fact to the Appellant, I think last week after, at the BZA
3 hearing, I fully expect that the hearing will go on but I
4 think it would be to the benefit of the Board to determine
5 whether or not the, to hear the arguments as to whether or
6 not the permit holder's changes, proposed changes render it
7 compliant or whether there are still outstanding issues.

8 CHAIR HILL: Okay. Mr. Cummins, you had something
9 to say?

10 MR. CUMMINS: Yeah. It sounds to me like DCRA
11 and, based on Mr. Tondro's statement, DCRA and the permit
12 holder recognize the zoning noncompliance of the permit that
13 was issued. So, in terms of an argument based on judicial
14 economy, the wait, you know, why are we wasting your time,
15 if DCRA already knows that the permit doesn't meet zoning.

16 The amount of burden to go through with ANC and
17 me as a next-door neighbor on this is quite ridiculous. In
18 addition, I mean talk about the search of my house, I mean
19 talk about outrageous --

20 CHAIR HILL: I mean, Mr. Cummins, I'm sorry, I've
21 just got to stop you. I mean, and I appreciate what, anyway
22 --

23 MR. CUMMINS: If I could just add, the one thing
24 on the chimney, there are chimneys all over the city. If it
25 takes, and again, the sort of precedent that DCRA needs to

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1 search inside the house of neighboring properties to
2 determine whether a permit issued next door --

3 CHAIR HILL: No, Mr. Cummins. I appreciate your
4 frustration. I'm just saying, it's nothing we're hearing,
5 we're listening to right now. So, just give us a second.
6 We're just talking about the postponement. Mr. Brown?

7 MR. BROWN: Well, one, the delay that we've
8 encountered to date, being fair, is a result of Mr. Cummins
9 lack of cooperation.

10 CHAIR HILL: Yeah. And that's -- So once again,
11 so you're still, you're --

12 MR. BROWN: We're prepared.

13 CHAIR HILL: Okay.

14 MR. BROWN: We're going to resolve the chimney
15 issue so that this Board will not be burdened with that
16 issue.

17 CHAIR HILL: Okay.

18 MR. BROWN: And as we've all agreed, and with the
19 exception of Mr. Cummins, we agreed to consent to a May 9th
20 date.

21 CHAIR HILL: Okay.

22 MR. BROWN: We'll come prepared to have a hearing
23 then and resolve all the zoning issues that need to be
24 resolved.

25 CHAIR HILL: Okay.

1 MR. BROWN: The other point is, and there's a fair
2 amount of collegiality among the parties, with the exception
3 of Mr. Cummins, and we agreed amongst
4 ourselves --

5 CHAIR HILL: Wait, wait, wait. No, no. Hold on,
6 hold on, hold on. Okay. Like, we're done. We're done
7 talking.

8 MR. BROWN: But, but --

9 CHAIR HILL: Thank you, Mr. Brown. Thank you, Mr.
10 Brown. No, I'm done now. I'm done. So okay, so go --

11 MR. BROWN: But Mr. Chairman, I want to add --

12 CHAIR HILL: Mr. Brown. What is it that we --

13 MR. BROWN: -- that we discussed, we discussed
14 amongst ourselves the question of the --

15 CHAIR HILL: You know, I, okay.

16 MR. BROWN: -- prehearing statement.

17 CHAIR HILL: I don't understand. I'm going to
18 talk with you as well at the same time. So, okay. So, does
19 the Board have any further questions to anyone here. We're
20 just trying to get a continuance?

21 MR. BROWN: Yes.

22 CHAIR HILL: That's why -- by the way, Mr. Moy.
23 This was not so much a preliminary. You know, we could have
24 done this later on. It would have been the same. Okay. So,
25 the Board doesn't have any other thing to add.

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1 So, these are my thoughts, and you guys can let
2 me know what you think. I mean, Mr. Cummins, we have read
3 your filing. I would agree to some of it. But at the same
4 time, I think that for the Board to move forward, it'd be
5 better if we postpone and just see what happens at OAH. And
6 so, unless, you know, does May 9th work for you, as well?

7 MR. CUMMINS: I need to check. I'm not sure that
8 it does. And also, I don't understand if we need to wait
9 that long, quite the reasoning, but --

10 CHAIR HILL: I thought it was just too, to OHA and
11 when, you know, when that might happen. We want to make sure
12 we have all the filings and everybody. I mean, this is
13 currently ANC's appeal. Like, they're the ones that came
14 forward with the appeal. You're the intervener. And so,
15 they're the ones who are actually in agreement, and it's
16 their appeal.

17 And so, they're in agreement to May 9th, so I
18 would just go ahead and move forward to May 9th, unless the
19 Board has any other thoughts? Okay. Then Mr. Moy, we're
20 going to go ahead and move this to May 9th.

21 MR. MOY: Yes. Thank you, Mr. Chair. Is it the
22 Board's desire to tee this appeal up as the first case in the
23 hearing session or not?

24 CHAIR HILL: Okay. So that's Mr. Moy being nice.
25 So, we're going to do this first in the morning. Okay? And

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1 so I wish you all luck.

2 MEMBER WHITE: Mr. Chair?

3 CHAIR HILL: Sure, go ahead, Ms. White.

4 MEMBER WHITE: We just want to make sure that we
5 get the prehearing statements before May 9th.

6 CHAIR HILL: Yeah, that's, that's definitely going
7 to happen. Right? We're not, I guess and Mr. Cummins, for
8 you coming down here again, just to let you know, we now
9 know, you know, there won't be another continuance, okay?
10 We're going to, we're going to move forward with this on May
11 9th, one way or the other, whatever happens. Okay?

12 MR. CUMMINS: Thank you.

13 CHAIR HILL: Okay. Sorry.

14 MR. CUMMINS: Very good. Thank you, I appreciate
15 that, again.

16 CHAIR HILL: Okay. All right. Okay. Okay.
17 Thank you all. Thank you.

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

19 CHAIR HILL: Thanks, Mr. Moy.

20 MS. GLAZER: Mr. Chair? Board Member White raised
21 the issue of the prehearing statement. Would the Board like
22 to set a date?

23 CHAIR HILL: Okay. Mr. Moy?

24 MR. ECKLEWILER: Mr. Chairman. May I just
25 interject, one brief point? The ANC 6c intends to file a

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1 revised, not substantially revised unless facts change in the
2 interim, assuming the facts remain more or less as they are
3 subject to OAH, we will be filing a revised prehearing
4 statement. And the regulations require that to be done 21
5 days in advance of the hearing date. So, just so you know.

6 MR. MOY: Mr. Chair, would you wish to have the
7 remaining prehearing statements due to the record two weeks
8 prior to the hearing? So, which, if that's the case, then,
9 let's see then, it would be April 25th.

10 MS. GLAZER: Mr. Chair, I think the ANC
11 representative's correct about the timelines, but the Board
12 would just be reinforcing that the parties who have not filed
13 yet, should be filing. So, I don't know if the date Mr. Moy
14 just stated is 21 days or not. I don't think it is.

15 MR. TONDRO: I believe, with all due respect, I
16 think that DCRA, and I believe also the permit holder, that
17 the deadline is actually seven days prior in order to allow
18 for the, a response to the Appellant.

19 MR. BROWN: Based on a May 9th date, if I'm
20 correct, the Appellant, Mr. Ecklewiler would be due on April
21 19th, and then ours would be due two weeks later, seven days
22 before the hearing, which would be the 2nd of May. Mr.
23 Cummins, as the intervener, I think would also be due on that
24 date, if I'm correct.

25 MR. ECKLEWILER: And then my reply is due

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1 basically over the weekend, I think officially pushed to
2 Monday under the regs.

3 MR. BROWN: Yeah, that's correct.

4 CHAIR HILL: I'm just waiting for Mr. Moy to nod.
5 So then --

6 MR. MOY: That's true. So, the dates would be
7 April 19th and May 2nd.

8 CHAIR HILL: Mr. Cummins, you following?

9 MR. MOY: May 9th is the hearing.

10 MR. CUMMINS: Is it April 19th or April 18th? The
11 18th is actually three weeks? I'm just asking, is it --

12 CHAIR HILL: Whatever that, whatever's Wednesday.
13 I don't have a calendar.

14 MR. CUMMINS: It's the 18th of April.

15 MR. MOY: Is it Wednesday? If it's Wednesday,
16 then it would be April 18th. I always allow another day, but
17 we'll take the 18th.

18 CHAIR HILL: Okay.

19 MR. CUMMINS: I ask for a clarification on when
20 all party statements are due, please? On what dates?

21 CHAIR HILL: Say it again, I'm sorry.

22 MR. CUMMINS: Just a clarification on the dates
23 Mr. Moy --

24 CHAIR HILL: Mr. Moy, can you clarify on all the
25 dates?

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1 MR. MOY: Okay. In sequence, it would be April
2 18th, May 2nd, and then May 9th. May 9th being the hearing.
3 And am I missing a date?

4 MR. ECKLEWILER: Yeah, there's an opportunity
5 under the regulations for a reply by the appellant and I
6 forget if it's two or three days, I think it maybe three days
7 that since the Board meets on Wednesdays, that falls on a
8 weekend, and under the timing rules it would then be due on
9 the 7th, a Monday, I believe.

10 MR. MOY: Yeah, it would be the 7th, May 7th,
11 Monday.

12 MR. TONDRO: And DCRA agrees, too.

13 MS. GLAZER: Just want to note, the Board can vary
14 the timeframe. The original hearing was set months ago. So,
15 I think the Board needs to look at the dates in terms of what
16 works for the Board.

17 CHAIR HILL: Whatever dates Mr. Moy just said I
18 think are okay with me.

19 MR. MOY: These are the dates.

20 CHAIR HILL: I'm going to get, I keep forgetting
21 to bring up a calendar up here because I find it very
22 difficult. Mr. Cummins, do you understand?

23 MR. CUMMINS: Mr. Chairman, yeah, I understand
24 that --

25 CHAIR HILL: Okay.

1 MR. CUMMINS: Yeah, I understand the dates. Thank
2 you.

3 CHAIR HILL: Okay. All right. Okay. Thank you.
4 Let's just go on.

5 MR. ECKLEWILER: And I'm sorry to dwell on this
6 but if the facts do change and the other parties consent to
7 an extension basically to my filing after those 21 days.
8 Let's say that something has really changed, you know, the
9 ground has moved. Mr. Tondro referred for instance to, you
10 know, some resubmission on a permit revision, if they were
11 agreeable to a filing after the 21 days, that wouldn't, the
12 Board would not have a problem with that, I assume?

13 MR. BROWN: Certainly, as necessary we would
14 consent to something like that. The purpose is to inform all
15 the participants and allow them to respond.

16 CHAIR HILL: Okay. I'm sorry. Let's just see how
17 it goes, okay? I mean, I can't really predict now how things
18 are going to move forward but we will do our best to
19 accommodate all and be fair to everyone. Okay. All right.
20 Thank you.

21 (Whereupon, the above-entitled matter went off the
22 record at 10:06 a.m. and resumed at 10:45 a.m.)

23 CHAIR HILL: All right, Mr. Moy, we can start back
24 up at the top of the order and we welcome Commissioner
25 Shapiro.

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1 MR. MOY: Thank you, Mr. Chair. So if I can have
2 parties to the table, this is to Application No. 19638 of
3 BB&H Joint Venture. Caption advertised for special exception
4 under the use provision of Subtitle U 203.1(j) to permit the
5 continued use of the property as an accessory parking lot in
6 the MU-7 zone. This is at premises 4422 Connecticut Ave NW,
7 Square 1971, Lot 822.

8 Mr. Chair, I would ask the applicant to reiterate
9 the relief that's being requested for the record, for my
10 clarity.

11 CHAIR HILL: Okay, give me one second, Mr. Moy.

12 Okay, good morning. If you could please introduce
13 yourselves from my right to left.

14 MR. JAMES: Good morning, Mark James with Potomac
15 Foods Group, Burger King.

16 MS. SIGAR: Good morning, I'm Karina Sigar with
17 Troutman Sanders LLP and I'm here on behalf of Potomac Foods.

18 MR. CABE: I'm Alex Cabe, I'm also here with
19 Troutman Sanders representing Potomac Foods.

20 MR. SITTIG: William Sittig, I'm the commissioner
21 for AMC-3F in which the applicant's property is located.

22 CHAIR HILL: All right. Mr. commissioner, can you
23 spell your last name for me again?

24 MR. SITTIG: Sittig, S-I-T-T-I-G.

25 CHAIR HILL: Okay, great. Thank you. Who's going

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1 to be presenting to us?

2 MS. SIGAR: I will.

3 CHAIR HILL: Okay, great. So I guess if you could
4 -- well, while we're reading over this and then conferring
5 with the Office of Attorney General, there is one question
6 concerning what you guys are asking for. Can you clarify
7 again what it is that you're asking for?

8 MS. SIGAR: We are requesting for an approval for
9 the special exception for the use of accessory parking lot.
10 And this is accessory parking lot to the principle property
11 which is where the Burger King restaurant is located, and
12 that's located on 4422 Connecticut Avenue.

13 CHAIR HILL: Okay. Okay. All right, I'm going
14 to go ahead and let you walk us through what you're trying
15 to do and then also how you're meeting the standards for us
16 to grant the relief. The one question I have, even for kind
17 of the Office of Planning that seemed to have been brought
18 up by OAG at one point, was that -- and this is where I'm a
19 little confused -- in that you're agreeing to change the term
20 "nine years," right, and of the nine years the first three
21 years -- so the regulation of change now is that 80 percent
22 of the lot has to be pervious pavement. So the first three
23 years you're not going to meet the conditions for the 80
24 percent -- I'm sorry, for the regulations. So what I'm
25 unclear on as to whether or not you need a variance for those

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1 first three years. And if you do, then you have to start
2 again, which I'm sorry you'll have to figure out how to start
3 again. It's a re-application now, and so you're under the
4 new ZR16. And so I'll let you go ahead and present to us,
5 and I'm curious what the Office of Planning has to say and
6 what OAG has to say whether or not we're going to have to
7 come back here again. So we're going to go ahead and let you
8 start. You can just go ahead, please give me your
9 presentation, tell me about what trying to do, and then we'll
10 get over to the Office of Planning to try and work this out.

11 MS. SIGAR: Okay, sure. Thank you so much. First
12 of all, just as background, BB&H Joint Venture is the owner
13 of the property and Potomac Foods which operates the Burger
14 King restaurant as well as the accessory parking lot is the
15 tenant of the property. Potomac Foods, the applicant seeks
16 an approval to the application for a special exception as
17 mentioned earlier and the use of the accessory parking lot.
18 The Burger King restaurant has been -- Potomac Foods has
19 operated Burger King's restaurant for over 30 years now on
20 this property and the use of the accessory parking lot for
21 over 20 years now. The Burger King restaurant has been a
22 long-standing member of the Van Ness Community and has been
23 in operation, as mentioned earlier, for over 30 years. And
24 the accessory parking lot to this principle property is
25 critical to the operations of the restaurant.

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1 At this time we're requesting for the permit, as
2 mentioned earlier by Chairperson Hill, for a longer term of
3 nine years and we have been working closely with the ANC 3F
4 in the process of identifying the concerns and the needs of
5 the residents in the neighborhood and resolving any open
6 issues. The tenant, Potomac Foods, has also committed to
7 renovating the Burger King restaurant as well, and this is
8 actually one of the requests that were submitted by ANC 3F
9 as well as all the residents.

10 If this application is approved, Potomac Foods
11 will immediately begin the initial stages of planning, and
12 we will be working closely with the ANC 3F as well and
13 welcome any of their input as to how to proceed with the
14 renovation. Pursuant to the ANC 3F resolutions that I
15 believe were recently adopted and have been submitted to the
16 board, they are in support of our application. We have also
17 reviewed the report provided by the Office of Planning and
18 we understand that we have also, that they also support this
19 application as well.

20 Now in response to your question regarding the
21 pervious paving, I do understand that this is a new
22 regulation and we have actually been speaking with ANC 3F and
23 we have pretty much laid out the reasons for not having done
24 that. We were previously given, I believe, three years. Now
25 with this new application we are given, I believe, three

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1 years to do that, to basically replace the existing
2 impervious surface with pervious pavement. Just as
3 background for this, they are two adjacent parking lots to
4 this and they're actually all owned by the same property
5 owner, and they have also been given three years -- I believe
6 they've been given three years to replace existing pavement.
7 So the plan is right now, and Mark James can attest to it as
8 well, that they have been in communication with the property
9 owner to then consolidate the three parking lots. The other
10 two are obviously not the subject of this of the hearing
11 today, but the plan is to consolidate the parking lot and
12 replace the pervious paving all at once.

13 CHAIR HILL: Okay. All right. Yes, I remember
14 now. I was trying to figure out, you all had been -- the
15 property owner had been here not that long ago, and so I was
16 trying to remember why they were.

17 So I'm going to quickly turn to the Office of
18 Planning because, again, I'm just confused about this
19 beginning three years as to since -- as I understand it
20 there's a new application, so then those first three years
21 wouldn't they have to have a variance from the 80 percent?
22 But I'll let you please go ahead, Office of Planning.

23 MR. MORDFIN: Well, whether or not you need a
24 variance I think OAG is the agency to respond to that. But
25 we have reviewed it thinking of it as existing pavement, you

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1 know, they're not coming in to pave it today, in which case
2 it would not conform and we thought it would just continue
3 similar to a non-conforming condition on the site. And with
4 the applicant's proposal to re-pave within three years, we
5 thought that would bring it up into conformance. I don't
6 know if that's a correct interpretation or not.

7 CHAIR HILL: Okay. You want to go through the
8 rest of your point then, then I'll turn it over to OAG?

9 MR. MORDFIN: Sure. Okay, the Office of Planning
10 does recommend approval of this application subject to the
11 same conditions that were approved the last go around with
12 two changes, one would be that the last time the application
13 was approved for three years, and then in discussions with
14 the ANC and the applicant, the ANC and the applicant agreed
15 to nine years and so the Office of Planning recommended nine
16 years, also in the report. And the second condition change
17 is that the applicant shall re-pave the existing parking lot
18 with pervious paving within three years of the date of the
19 order, which is what I had just discussed with you.

20 But other than the paving, the application is in
21 conformance with all the requirements for the special
22 exception in that it's been in continuous operation since
23 1994. There are no buildings, it is separated by a minimum
24 of 6 feet from the residential uses to the west, no signs are
25 proposed. It will continue to service an accessory parking

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1 lot to a fast food restaurant and not to a principle parking
2 lot. And let's see -- and no changes to the lot are
3 proposed, it will continue the way it is. When the applicant
4 does re-pave it with impervious paving -- rather pervious
5 paving -- it should benefit the community in that it should
6 positively affect stormwater management. So it's also
7 located within 200 feet of the fast food restaurant it's
8 intended to serve, and DDOT filed a report indicating it
9 would not have any adverse impacts on the transportation
10 network. So therefore, the Office of Planning finds that
11 this application is in conformance with the criteria for the
12 granting of a special exception for accessory parking lots
13 subject to the conditions as recommended at the beginning of
14 the report, including re-paving the lot within three years
15 to pervious paving.

16 Thank you.

17 CHAIR HILL: Okay, before I ask the board whether
18 they have any questions, Ms. Glazer, I'm a little confused
19 again as to -- and again, the board will have an opportunity
20 to speak -- but I understand the Office of Planning, I
21 understand the position of the applicant is in, I'm just
22 trying to figure out if we can move forward with this the way
23 it is?

24 MS. GLAZER: Mr. Chair, OAG has reviewed this and
25 has concluded that a variance would be needed from that one

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1 requirement. It's a very technical issue and it arises only
2 because the special cost that had been in existence for many
3 years lapsed because the application for the new special
4 exception was filed after the whole special exception
5 expired. And so because of that, this application is being
6 considered anew, not just as a -- the use even though it's
7 continuing is one thing, but the application itself is a new
8 application that therefore must comply with the ZR16
9 requirements, one of which is paving. That being said, the
10 only question would be whether the applicant could amend the
11 application to include a request for a variance from that one
12 condition. And then the only issue is whether -- well, there
13 are two issues -- is whether notice is required to the
14 public, that there's also a request for this variance, and
15 second of all, of course the variance test has been met.

16 Certainly, it seems like between OP and the
17 testimony of the applicant, that the case could be made for
18 the variance under the exceptional condition that it's a use
19 that's been in existence for a long time and the practical
20 difficulty of not doing the work immediately, but rather
21 doing it as they've proposed. But that's for the board to
22 consider.

23 CHAIR HILL: Okay, that's fine. I'm following.
24 So how would we get back here as quickly as we can get back
25 here? I'm trying to understand that part, like if -- I mean,

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1 it was noticed -- nothing's changing in terms of what has
2 been proposed.

3 MS. GLAZER: Correct.

4 CHAIR HILL: And so we, again, have to follow what
5 the regulation states so then they have to go back and go
6 through the whole process again as a variance?

7 MS. GLAZER: Well, they'd have to amend their
8 application to include the variance and give notice to the
9 community. The other issue is -- at least I don't have a
10 copy of the ANC report, I don't know if there was one or not
11 -- I understand the ANC is present and supports the proposal.
12 But if the ANC -- one way to make it more efficient, I know
13 you're in favor of that, is to have the ANC amend the report
14 and state that they are in agreement with the variance.

15 CHAIR HILL: So then it would just be posting?

16 MS. GLAZER: That's up to the board. I mean,
17 normally when there's a variance added to an application,
18 there's re-advertisement.

19 CHAIR HILL: And the re-advertisement takes how
20 long?

21 MS. GLAZER: Well, 40 days for the hearing. Yes.

22 CHAIR HILL: Okay. All right, so Ms. Sigar? So
23 you're following along with everything that's going on here?

24 MS. SIGAR: Yes.

25 CHAIR HILL: Okay. So I'm trying to just make

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1 sure we do this correctly. Unfortunately, I don't think
2 there's an issue necessarily with what you're trying to do,
3 and I'm going to let the ANC here speak, but there's now a
4 technicality, right, because this lapsed. And so you would
5 have to -- the ANC could -- I don't even know if you'd have
6 to necessarily go back before the ANC because if the ANC were
7 to amend their report to include the variance, but you would
8 have to repost. And so that posting would take 40 days for
9 you to get back here again.

10 MS. SIGAR: Okay. Does that also entail, as
11 mentioned earlier, an amendment to the application then, we
12 would have to resubmit a new application to include the
13 request for the variance in addition to the reposting? Okay.

14 MS. GLAZER: Yes, the applicant can just file an
15 amendment, a request to amend, and also make its case for the
16 variance in the new filings.

17 MS. SIGAR: Okay, thank you.

18 CHAIR HILL: Okay. So I'm going to let the ANC
19 commissioner speak.

20 COMMISSION SITTIG: Thank you, Mr. Chairman. The
21 ANC has had very productive conversations with the
22 applicant's representatives and we're very pleased to support
23 the application and we're especially concerned they've added
24 the conditions that are of interest to us, including the
25 putting down the pervious pavement, which is very important

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1 for the drainage in that area. And also that they will be
2 renovating within three years, and we will be working with
3 them on that. I just want to emphasize that the nine years
4 is very important to us, also because the other two property
5 owners of this parking lot, their permits, or whatever they
6 are, will all come due about the same time, and we're very
7 concerned that they coordinate to make that area safe. It's
8 a very, right now, kind of an unsafe, unseemly area, so we
9 were very pleased that they agreed to the nine-year
10 extension. And at that time we are going to be, or even
11 before then, working with them to improve that whole area,
12 and they've been very cooperative in agreeing to this.

13 CHAIR HILL: Okay, thank you. Yes, Commissioner
14 Shapiro, you were here, weren't you for the parking lot that
15 was behind -- there was the other property owner that -- it
16 was by the toy store, wasn't it or no?

17 COMMISSIONER SHAPIRO: No, I wasn't here. I know
18 the property quite well, but there was a potential reuse of
19 that site that I think that must have come before.

20 CHAIR HILL: Okay.

21 COMMISSIONER SHAPIRO: I think it was a Chick-fil-
22 A.

23 CHAIR HILL: Right, okay. All right. So thank
24 you, Commissioner. Thank you. Does the Board have any
25 questions for the applicant or the Office of Planning -- is

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1 where I think we're going?

2 So Ms. Sigar, I guess you're going to have to
3 amend your -- I can't figure out how to get around it -- so
4 you're going to have to amend your application. You're going
5 to have to re-post for 40 days, we'll get you back here
6 again. If you want to get to the ANC, and I don't know if
7 the ANC could amend their application -- I mean, I'll let you
8 guys kind of work that out amongst yourselves. Sorry, amend
9 the letter, because we don't have the letter yet. So I don't
10 know if you have to present before them again? That's
11 outside of me.

12 So then, Mr. Moy, when could we get back here
13 again?

14 MR. MOY: If the applicant can amend your
15 application, I would say by tomorrow. The Board could re-
16 visit this at its March 7th hearing, at the earliest, and
17 that's like within a day.

18 CHAIR HILL: And then the posting has to happen,
19 right. So you have to make sure it posts. And then the
20 affidavit will post, everything has to happen tomorrow.

21 MS. SIGAR: Okay, we have no objections to that.

22 CHAIR HILL: Okay. Mr. Commissioner?

23 MR. SITTIG: Are you going to need anything else
24 from the ANC?

25 CHAIR HILL: That I'm not sure.

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1 MS. GLAZER: Well, as of now, there's nothing in
2 the record. I don't know if there was an error uploading it.

3 CHAIR HILL: Right. Well, I guess --

4 MS. GLAZER: But, yes, because the application
5 would change and so the ANC would be advised to submit, or
6 the applicant would be advised to have the ANC submit an
7 amended report that also goes into the variance.

8 CHAIR HILL: I guess what I'm not clear on, Mr.
9 Commissioner, is that, whether or not they have to present
10 again to you. I mean, you haven't submitted a letter yet,
11 so once they amend the application, you can go ahead and
12 amend your letter to include the variance, but that might be
13 a question you can ask the Office of Zoning across the hall.

14 Okay.

15 MR. SITTIG: Thank you.

16 CHAIR HILL: Okay, Mr. Shapiro?

17 COMMISSIONER SHAPIRO: Thank you, Mr. Chairman.
18 Commissioner, this is a question for you, Mr. Sittig, you
19 said in passing towards the end that one of the things that
20 you're pleased about is with the nine-year extension, that
21 it allows the possibility for some kind of coordinated use
22 of the parking lots back there. And I'm just trying to
23 figure out, Mr. Chair -- this may be a question for you or
24 us -- I'm trying to figure out which piece of this is germane
25 to what this case would be -- but I'm familiar with this and

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1 it's not very pedestrian-friendly at all back there, there
2 are multiple uses. It's used for the car wash frequently,
3 there's all sorts of things going on back there. I'm even
4 trying to remember how pedestrian-friendly it is to get from
5 that parking lot to the Burger King, which I believe it's
6 not. And I'm just curious about how the ANC sees the
7 potential -- how this decision might affect any potential
8 reuse of the area back there.

9 MR. SITTIG: I must first say that I recently
10 became a member of the ANC, so I'm not familiar with the
11 previous discussions on this issue. The point I was trying
12 to make is that we would like to -- I don't know exactly what
13 the ANC has in mind in terms of reconfiguring that or making
14 that area safer, but I think the important thing was that we
15 wanted to work in conjunction with the three owners at the
16 same time to have a comprehensive plan for that area.

17 COMMISSIONER SHAPIRO: Thank you. And I would
18 just ask for, I'd be curious about the ANC's position but
19 also with the applicant to be mindful, and I think it would
20 be helpful for me when this comes back if there was some
21 discussion around pedestrian safety issues related to the
22 parking lots.

23 MR. SITTIG: I agree with you.

24 COMMISSIONER SHAPIRO: Thank you, Mr. Chair.

25 CHAIR HILL: So Mr. Moy, that being the case, then

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1 I don't know if Mr. Shapiro will ask him to come here if he's
2 available on March 17th.

3 Oh, he's back that day. This is very interesting,
4 how these things work. I guess Mr. Moy knows what's going
5 on.

6 All right, so Mr. James, my wife's a vegetarian
7 and we love the veggie sandwich, it's the only place we can
8 stop on the road. We only stop at Burger King's.

9 MR. JAMES: Would it be bi-partial to bring you
10 a gift card?

11 CHAIR HILL: No, no. You can't do that. Yes, you
12 can't do that. I'm just letting you know the veggie sandwich
13 saves me a lot of trouble.

14 Okay, so we'll see you back on the 7th? The 7th.
15 Okay, thank you all.

16 MS. SIGAR: Thank you so much.

17 CHAIR HILL: And then, obviously, we'll need a
18 supplemental from the Office of Planning.

19 MR. MOY: All right, thank you, Mr. Chairman. So
20 I believe the next case application before the Board is
21 Application No. 19667. This is of Laura Peyton and Sarah
22 Hopkins, caption advertised for a special exception under
23 Subtitle E, Section 5201, this is from the rear addition
24 requirements, Subtitle U Section 205.4. This would construct
25 a two-story rear addition to an existing one-family dwelling,

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1 RF-1 Zone at 1108 5th Street NE, Square 805, Lot 88.

2 CHAIR HILL: Okay, great. Is the applicant here?

3 Would you like to come forward?

4 Did you get sworn in, sir?

5 Okay, if you'd just state your name.

6 MR. NOEL: My name is James Noel from Noel Design
7 Build.

8 CHAIR HILL: Can you spell your last name for me?

9 MR. NOEL: N-O-E-L.

10 CHAIR HILL: Okay, great. So Mr. Noel, are you
11 going to be presenting for us?

12 MR. NOEL: Sure.

13 CHAIR HILL: Okay.

14 MR. NOEL: I was not sure, that's my first time
15 here and I didn't know the process. I saw sometime before
16 come and sit down, sometime they don't, so I was not sure
17 since --

18 (Simultaneous speaking.)

19 CHAIR HILL: Sure, I understand. That's okay.
20 So unless it's an expedited review or a decision case -- it's
21 a hearing -- and so people have an opportunity to speak, the
22 public will have an opportunity to speak, you'll have an
23 opportunity to present your case. And are you here
24 representing the property owner?

25 MR. NOEL: Yes.

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1 CHAIR HILL: And do you have an affidavit saying
2 so that you can represent the property owner?

3 MR. NOEL: Yes, it's been filed.

4 CHAIR HILL: Okay, great. All right, so I don't
5 particularly have a lot of questions about what you're trying
6 to do.

7 MR. NOEL: That's what I thought.

8 CHAIR HILL: But if you could just go ahead and
9 tell us a little bit about the project, and then also how you
10 believe you're meeting the requirements for us to grant the
11 relief requested, or you can just tell us a little bit more
12 about the project and we can turn to the Office of Planning,
13 because they do have an analysis in their report which states
14 how you're meeting the criteria for us to grant the relief
15 requested.

16 The one question I did have was that, did you go
17 to the ANC meeting and present there?

18 MR. NOEL: Yes, I did.

19 CHAIR HILL: Okay, because it seemed like they had
20 some questions concerning visibility and sight lines. They
21 didn't seem to have any particular opposition to it or any
22 conditions they wanted to add, but you can just speak to that
23 a little bit.

24 MR. NOEL: Yes, I made drawings and we submitted
25 also to the website.

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1 CHAIR HILL: Okay, so if you can just maybe speak
2 to all that while you're going through your presentation.

3 MR. NOEL: Sure.

4 CHAIR HILL: And you can begin at any time.

5 MR. NOEL: Okay. Well, as mentioned earlier, this
6 is a two-story addition in the rear property. Basically
7 we're complying with setbacks, height, but there is a rule
8 205.4 which came up in 2017, in April 2017, that stops us
9 from going 16 foot out, and the requirement now is 10 feet.
10 We were not aware of the change, so we went forward with
11 building an addition which kind of makes sense to my client.
12 So we started the BZA process. As far as I know the ANC
13 recommended approval of our case. I also spoke with the
14 Office of Planning and apparently they're also in approval
15 of our project. I also had a meeting with the Capitol Hill
16 Society which also, I believe, write a recommendation. I was
17 asked at the ANC meeting, that was a drawing that apparently
18 was required that we haven't produced at the time, which was
19 how does that implicate the street view from the neighbors
20 or from across the street. I submitted a drawing and, from
21 our calculation showing elevation, you cannot see the front
22 of the addition that we're proposing because it's 10 feet 10
23 off the front of the property.

24 I think that's pretty much what I have to say,
25 except if you have any questions.

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1 CHAIR HILL: Okay. Does the Board have any
2 questions for the applicant?

3 Okay. All right, I'm going to turn to the Office
4 of Planning.

5 MR. COCHRAN: Thanks, Mr. Chair. Other than
6 noting that since OP filed its report, the Zoning Committee
7 of Capital Hill Restoration Society has voted and did supply
8 the documentation that they voted to recommend approval. And
9 the same thing is for ANC 6A. Other than that we'd be
10 pleased to stand on the record in recommending approval of
11 the application.

12 CHAIR HILL: Okay, great. Thank you. Does the
13 board have any questions for the Office of Planning?

14 MEMBER WHITE: Are you comfortable with the sight
15 line study?

16 MR. COCHRAN: Yes.

17 MEMBER WHITE: Okay.

18 CHAIR HILL: Okay, does the applicant have any
19 questions for the Office of Planning?

20 MR. COCHRAN: No.

21 CHAIR HILL: All right. Is there anyone here
22 wishing to speak in support of the application?

23 Is there anyone here wishing to speak in
24 opposition to the application?

25 Is there anyone here from the ANC?

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1 All right. Mr. Noel, you have anything further
2 to add?

3 MR. NOEL: No.

4 CHAIR HILL: All right. So I'm going to go ahead
5 and close the hearing. Is the Board ready to deliberate?

6 All right. So, again, based upon the analysis
7 provided by the Office of Planning as well as all that's in
8 the record, I don't really have a particular issue with it.
9 I was kind of curious about some of the discussions that the
10 ANC had, but it seems as though that was addressed by the
11 sight line study and the Office of Planning is satisfied with
12 that study. In addition to that, as the Office of Planning
13 notes, the Capitol Hill Restoration Society was in approval,
14 as well as there were four letters in support, ANC 6C was
15 also in support. However, I would base my decision on the
16 analysis that was provided by the Office of Planning in terms
17 of how the standard is being met.

18 Does the Board have anything else they'd like to
19 add?

20 Okay, I'll go ahead and make a motion then to
21 approve Application No. 19667 as captioned and read by the
22 secretary and ask for a second?

23 VICE CHAIR HART: Second.

24 CHAIR HILL: Motion has been made and seconded.
25 All those in favor.

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1 (Chorus of ayes.)

2 CHAIR HILL: All those opposed?

3 The motion passes. Mr. Moy?

4 MS. GLAZER: Mr. Chair, I think the Board can read
5 back the vote or I can read it?

6 CHAIR HILL: Okay. Ms. Glazer, you're welcome to.
7 The motion passes.

8 MS. GLAZER: I believe the vote was 4 to 0 to 1.

9 CHAIR HILL: Yes. Yes, summary order please.

10 Thank you.

11 MR. NOEL: Thank you.

12 CHAIR HILL: We're going to take a three-minute
13 break.

14 (Whereupon, the above-entitled matter went off the
15 record at 11:16 a.m. and resumed at 11:27 a.m.)

16 MR. MOY: All right, I believe, Mr. Chair, it was
17 my understanding that you wanted to move forward with
18 Application No. 19672 of Milton Halem, H-A-L-E-M.

19 CHAIR HILL: Yes, sir.

20 MR. MOY: This is as captioned and advertised for
21 special exception under Subtitle D, Section 5201, distance
22 from the rear yard, or rather rear addition requirement,
23 Subtitle D, Section 1206.4, to construct a third story and
24 a rear addition to an existing one-family dwelling, R-20
25 Zone, at premises 3608 S Street NW, Square 1305, Lot 47.

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1 CHAIR HILL: Would the parties please come to the
2 table?

3 We'll get to that, just go ahead and take a seat
4 for now.

5 Have you all been sworn in? Okay, if you can
6 please introduce yourselves from my right to left.

7 MR. HALEM: Mitchell Halem, property owner.

8 MS. STUART: Elizabeth Stuart, project designer.

9 MR. CROSS: Michael Cross, project architect.

10 MR. SOLOMON: Ed Solomon, ANC2E01.

11 CHAIR HILL: Okay. So let's see, who's going to
12 be presenting to us?

13 MR. CROSS: I will.

14 CHAIR HILL: Okay. All right, Mr. Cross. So
15 Commissioner, we're going to get to you, but you can just sit
16 there if you like. There's a portion that the ANC comes to,
17 but you can just go ahead and sit there.

18 So Mr. Cross, I'm going to go ahead and give you
19 time to present to us. I mean, this one seems to have a
20 little bit more -- we're going to be discussing a few other
21 items it looks like in terms of, as you know, the ANC is not
22 in approval and does not believe you've met the standards.
23 So if you can go ahead and walk us through the project, walk
24 us through how you do think the standards have been met in
25 order for us to grant the relief requested. And then we'll

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1 kind of work our way through this.

2 I'm going to go ahead and put ten minutes on the
3 clock, if Mr. Moy, that clock's working nowadays.

4 Okay, great. And just so I know where I am. And
5 you can start whenever you like.

6 MR. CROSS: Thank you. Again, Michael Cross,
7 architect responsible for 3608 S Street NW. We are seeking
8 relief for a rear addition that is greater than 10 feet in
9 the R-20 Zone. Otherwise, the project proposed is conforming
10 with all elements of zoning, including height, lot occupancy,
11 permeable area, et cetera. The addition proposed would be
12 only 10 feet past the west neighbor, however, it would be 22
13 feet past the neighbor to the east. We have met directly
14 with a small group of concerned citizens --

15 CHAIR HILL: Can you tell me that again? I'm
16 sorry, I missed that first part.

17 MR. CROSS: So as you're aware, the code requires
18 it to not be greater than 10 feet past either adjacent
19 neighbor. It is conforming with the western neighbor,
20 however the eastern neighbor has no addition, which is the
21 original house and almost, I would say, atypical for the
22 block itself, similar to ours.

23 CHAIR HILL: I'm sorry, Mr. Cross, how far back
24 is it going?

25 MR. CROSS: It is 22 feet past the rear wall of

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1 our eastern neighbor.

2 CHAIR HILL: Okay, great. Thank you.

3 MR. CROSS: Therefore, the relief is being sought.
4 We've met with a small group of concerned citizens, as well
5 as the larger ANC itself. Through those meetings and working
6 with the Single Member District Commissioner himself, we
7 believe we understand the neighbors' concerns to largely be
8 related to visual and acoustical privacy, specifically
9 relating to the rear balcony and the additional proposed roof
10 deck. As a gesture to respond to these concerns, our client
11 has voluntarily conceded the following matter of right
12 elements, specifically we have removed the matter of right
13 roof deck from this proposal, we have added privacy screens
14 to this proposal at the third-story balcony, eliminating the
15 visual sight lines into the adjacent neighbors' yards.

16 Additionally, we are proposing increased
17 acoustical insulation in areas of party walls that were of
18 concern, specifically the bathrooms and elevator shaft, and
19 have agreed to not install any hard-wired, exterior speakers.
20 We have received letters of support from both adjacent
21 neighbors and stand by the Office of Planning report, glad
22 to answer any questions that you may have.

23 CHAIR HILL: All right. Does the Board have any
24 questions for the applicant?

25 MEMBER WHITE: Just one question, what was the

1 feedback with the neighbor to the west where they're -- I
2 guess that's where the rear wall goes, what 22 feet? You
3 said they were on board, but I just wondered if you could
4 give me a little bit more substance.

5 MR. CROSS: Yes, just to clarify, it's the
6 neighbor to the east that I believe we're actually passing
7 22 feet. I did not speak to that neighbor directly. I'm not
8 sure if the owner's able to --

9 MR. HALEM: I spoke with them. I've owned the
10 residence for 12 years and known him for a long time. He is
11 actually planning an addition next year. He wrote a letter
12 of support for our addition, so he's on board with it and in
13 support of it.

14 MEMBER WHITE: Okay, thank you.

15 CHAIR HILL: Okay, anybody else? I have a couple
16 questions, but anybody else?

17 Okay, just real quick, Mr. Cross -- I'm looking
18 at your exhibit and also I guess you have it pulled up here
19 -- the photograph that's the rear here, the top-right corner,
20 the gray building to the left, that's the one that you're
21 matching? I'm just trying to understand, that's the building
22 to the west?

23 MR. CROSS: That's correct. The one on the left
24 in the upper right-hand photo is the western building.

25 CHAIR HILL: Right. Yes, okay. I gotcha. But

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1 you originally said that I thought you were matching the
2 neighbor to the west in terms of how far back you're going?
3 You're not matching, you're going to pass that, correct?

4 MR. CROSS: We happen to be 2 feet past that
5 neighbor.

6 CHAIR HILL: Okay, you're 2 feet past that
7 neighbor.

8 MS. STUART: No, I'm sorry. The neighbor to the
9 west there now existing is 12 feet past our rear wall. We're
10 proposing to extend 10 feet past that 12.

11 CHAIR HILL: I gotcha. All right, so I just
12 wanted to clarify. I see. Okay.

13 Okay, I'm going to turn to the Office of Planning.

14 MS. MYERS: Hello, Crystal Myers for the Office
15 of Planning. The Office of Planning is recommending approval
16 of this project and rests on the record of the staff report.

17 CHAIR HILL: Does anyone have any questions of the
18 Office of Planning?

19 VICE CHAIR HART: Can you just step through the
20 particular issue about the 10 feet being the -- the applicant
21 is looking for relief from going more than 10 feet beyond the
22 property to the east. Can you just talk about how that is
23 okay, how you perceive that to be okay?

24 MS. MYERS: Well, since the special exception
25 allows for that if you are meeting the light and air, you're

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1 not impacting light and air of the neighbors. We took a look
2 at the applicant's shadow study and did not feel that it was
3 an undue amount of impact to the neighboring properties. We
4 also note that the rear yard is quite, I believe more than
5 double the requirement or the minimum requirement for rear
6 yard. So there should be more than sufficient air flow.
7 When it comes to privacy, as the applicant noted, screening
8 measures have been taken. And as far as enjoyment of the
9 neighboring properties, we took into account that the
10 applicant had taken consideration of the screening as well
11 as removing the top deck, I think it was a rooftop deck, as
12 well as both neighbors had wrote in support of the project.
13 And when looking at it from the street, as well as from the
14 rear alley, we did not feel like it was enough of a
15 substantial impact to the visual character of the street and
16 alley. And as the applicant noted, the rest of the zoning
17 requirements were conforming, so we were satisfied that this
18 project met the requirements of the special exception.

19 VICE CHAIR HART: Thank you.

20 CHAIR HILL: Commissioner Shapiro, you had a
21 question?

22 COMMISSIONER SHAPIRO: I do, Mr. Chair. This is
23 actually a question for the applicant.

24 That's perfect. Can you go back to the previous
25 picture, that satellite view where you were looking -- that

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1 one right there. So the upper right-hand corner, the grey
2 house is the existing one. You're the light-colored one in
3 the middle. That's going to pop out -- right, that's it.

4 So -- and it may or not be relevant to this case
5 -- but those are at-risk windows, so this comes out and takes
6 out those windows?

7 MR. CROSS: That's correct. And the adjacent
8 property owner is aware of that.

9 COMMISSIONER SHAPIRO: So then if the adjacent
10 property owner comes back to us in two years and they want
11 to kick out another 6 feet, they can take out your windows?

12 MR. CROSS: Yes, we're not proposing any at-risk
13 windows.

14 COMMISSIONER SHAPIRO: None at all on either side?

15 MR. CROSS: No, sir.

16 COMMISSIONER SHAPIRO: Okay. Thank you, Mr.
17 Chair.

18 CHAIR HILL: Okay. All right, so I'm going to
19 move to the ANC. Mr. Commissioner, you'll go ahead as per
20 the regulation, you'll have five minutes to present to us,
21 and I'll let you start whenever you like. And we do have the
22 letter that's in the record. The one question I would have
23 for you just before you start, is that they did remove the
24 roof deck and I wasn't clear as to whether -- during the
25 deliberations, when your ANC met, I guess they had the roof

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1 deck at the time, so I just wonder if that changes anything
2 in terms of you all's deliberation?

3 I just wanted to make a comment on that before you
4 move forward with your presentation.

5 MR. SOLOMON: Mr. Chairman, Zoning Commission.
6 On January 3rd, 2018 ANC 2E held its regularly scheduled
7 public meeting. Our commission reviewed the subject
8 application for special exception and a 6-0 vote recommended
9 the application for special exception be denied. The
10 proposed addition would include a balcony at the rear of the
11 second floor, a deck at the rear of the third floor, a deck
12 on the roof of the new third floor. ANC 2E believes that
13 these three elements would unduly compromise the privacy of
14 use and enjoyment of neighboring property is a violation of
15 5201.3B of the zoning code. We understand the applicant
16 removed the deck on the roof of the new third floor after the
17 ANC meeting, but the second-floor balcony and the deck at the
18 rear of the third floor remain. ANC 2E continues to believe
19 that the addition of these elements would unduly compromise
20 the privacy of use and enjoyment of neighboring properties.
21 Installing privacy screens on the east and west sides of the
22 third-floor deck would not significantly alleviate the
23 potential intrusion on the privacy of the neighboring homes
24 to the east, west and south of the property.

25 ANC 2E does not have the ability to confirm the

1 adequacy of the shadow studies offered by the applicant, and
2 therefore is concerned the proposed addition might unduly
3 affect the light available to neighboring properties, a
4 violation of 5201.3A of the zoning code. ANC 2E is concerned
5 that the addition of a third story to the front side of the
6 house may substantially visually intrude upon the character,
7 scale and pattern of houses on the south side, the 3600 block
8 of S Street NW in violation of 5201.3C of the zoning code.
9 The Office of Planning report deals with this important issue
10 in conclusatory fashion without even describing the existing
11 character, scale and pattern of the houses on the subject
12 block. While there are a few houses where third floors were
13 added before the 2016 code became effective, this case
14 represents the first attempt to gain approval for such a
15 dramatic expansion through the special exception process.

16 Approval of this application will open the door
17 to changing the block which is currently predominately
18 comprised of two-story structures, to a block dominated by
19 much larger houses. Approval of this application would
20 undeniably change the character, scale and pattern of the
21 houses on the block. Advisory Neighbor Commission 2E
22 received letters that were predominately, were almost 2 to
23 1 in opposition to the special exemption. Only one letter
24 of support came from a resident and six came from absentee
25 landlords or developers. Nineteen letters of opposition came

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1 from the residents. At the January 3rd general meeting of
2 ANC 2E not one person raised their hand in support of
3 granting the request of special exemption.

4 ANC 2E's goal is to preserve the character of the
5 neighborhood while providing the flexibility required meeting
6 the needs of the changing lifestyles. The proposed addition
7 is massive and not at all compatible with the adjoining
8 rowhouses lining the block of the 3600 block of S Street NW.
9 With above as background, ANC recommends that the application
10 for a special exemption to promote the construction of third-
11 story addition and the 22-foot addition to the rear of the
12 building, including a second-floor balcony or a third-floor
13 deck and a roof deck be denied.

14 That's the end of my official statement. We just
15 want clarification and additional information. On the block
16 of S Street where this house is, where the applicant's house
17 is located, there are 15 homes along this block. Three prior
18 to the rules being changed have this third-floor addition,
19 this is the first addition that requires a special exception
20 to create this massive structure. If we allow this to happen
21 and this house is added to that block, over 25 percent of the
22 15 houses there will have this third-floor addition, that's
23 the concern to the ANC that's going to change the character
24 of this block.

25 The last item for clarification, in the record of

1 the list of the homes, the residents live within 200 feet of
2 the applicant's property, 3610 resides to the west, 3610 S
3 Street resides to the west. Exhibit 40 has Thomas and Ashley
4 George as owner of this property, however, in Exhibit 6 it
5 does not have their name listed, but they do have a Thomas
6 George listed at 3604 S Street. There's also a property for
7 3604 S Street that's owned by Michael Lewis, this was kind
8 of confusing to the ANC. And also the property to the west,
9 if there's no name there, it looks like this is also an
10 absentee landlord, an absentee owner on both sides of the
11 property, because none of them are listed on the list of
12 houses in 200 feet of the subject property.

13 I hope I made that clear to you. I saw the look
14 on your face.

15 CHAIR HILL: Yes, we'll figure it out. Mr. Cross,
16 the letters that you have in support of the property owners
17 on either side, those are from the property owners on either
18 side, correct?

19 MR. CROSS: Yes, sir.

20 CHAIR HILL: So MR. SOLOMON, you're confused in
21 which way?

22 MR. SOLOMON: We don't know if it's a trustee or
23 if there's -- their name is not listed on the list of the
24 houses within 200 feet. We're not suggesting that they are
25 not the property owners, we just want clarification if it's

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1 a trustee or who owns that property, because they're also
2 adding a property at 3604, and then there's another person
3 that owns 3604 that's listed in that list. So we're not sure
4 who owns properties on that block.

5 CHAIR HILL: Okay. So Mr. Cross, how can you
6 testify that those -- I'm just trying to understand how you
7 came about getting the letter of support from the two
8 property owners on either side of you?

9 MR. CROSS: Yes, I guess I would say, I'll let my
10 client speak to the ownership specifically, but I would say
11 the point of absentee ownership versus resident ownership is
12 irrelevant, that they both have equal property rights.

13 CHAIR HILL: Okay, Mr. Halem?

14 MR. HALEM: Halem.

15 CHAIR HILL: Halem, you can pull that mic over
16 there to your left. That's okay. We don't have a lot of
17 money but we got a little bit.

18 MR. HALEM: Yes.

19 CHAIR HILL: So, again, I'm just trying to
20 understand how you got in touch with the property owners and
21 who the property owners are?

22 MR. HALEM: As I said, I've owned the property for
23 12 years and I know that the Georges own the property at 3610
24 S -- a matter of fact, I double checked that in the tax
25 assessor's file.

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1 CHAIR HILL: Okay, that's fine. So that's one of
2 them.

3 MR. HALEM: Prior, they used to own 3604, which
4 Mr. Solomon's referring to. They sold that several years
5 ago, that was their primary residence.

6 CHAIR HILL: Okay, so you have a letter of support
7 from that owner now?

8 MR. HALEM: I don't, 3604 is a couple doors over.

9 CHAIR HILL: I'm sorry, I just mean the two
10 immediately next to you?

11 MR. HALEM: The two immediately, yes.

12 CHAIR HILL: All right. Okay. All right. Okay.
13 So does anybody have any questions for the ANC?

14 MEMBER WHITE: There was just one question for Mr.
15 Solomon, I noticed that Joe Gibbons is the one that submitted
16 the letter for the ANC.

17 MR. SOLOMON: He's the chair.

18 MEMBER WHITE: He's the chair, dated January 8th.
19 So I guess the question is do you have authorization to speak
20 for the entire ANC?

21 MR. HALEM: Yes, I do.

22 MEMBER WHITE: You do.

23 CHAIR HILL: Okay. So Mr. Solomon, the only
24 comment I kind of have --

25 MEMBER WHITE: Mr. Chair, I'm sorry, generally

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1 there's a written authorization as to who's authorized to
2 speak for the ANC.

3 CHAIR HILL: Was there not a written
4 authorization? That's what I thought MR. SOLOMON was
5 testifying to.

6 MR. SOLOMON: I believe this was Commissioner
7 Murphy with our ANC just advised me --

8 CHAIR HILL: Okay, sure.

9 MR. SOLOMON: -- that it may have been included
10 in the authorization of the resolution, but I'll take a look.

11 CHAIR HILL: That's all right, I have your
12 resolution in front of me.

13 Yes, I don't see that you're listed, but that's --

14 VICE CHAIR HART: We have the ANC letter, the
15 report itself that you submitted, and so that itself is what
16 we give great weight to. And if we don't have the
17 authorization, I just don't know if there's anything else
18 that's been posted by the ANC.

19 CHAIR HILL: Okay, I'm comfortable listening to
20 the commissioner, I'm just trying to understand whether or
21 not there's something I need to dot my i or cross my t or
22 something. Is there something that we need from the record,
23 that's written in the record, that says that MR. SOLOMON --
24 I mean, he's one of the commissioners obviously, he's listed
25 at the bottom of the letter -- do we need something written

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1 that states that he's representing the ANC?

2 MS. GLAZER: It would be a good idea.

3 CHAIR HILL: Okay. Mr. Commissioner, if you could
4 just add something to the record afterwards. I believe you.

5 So I mean -- and there are people here in
6 testimony and this is something we've been continuing to kind
7 of struggle with in terms of the requests and the standards
8 for this type of work. I just did want to mention one thing:
9 you mentioned a lot about the height. I mean, the height's
10 here by right, they're not -- the only reason that they are
11 here for is for the 10 feet beyond the wall. The height it's
12 their right to go this high, it's their right to have the
13 roof deck. The only thing that they're here for is for the
14 special exception to go beyond 10 feet. So just wanted to
15 let you know.

16 MR. SOLOMON: Yes, we understand the height. The
17 way that we look at the project, we look at the project in
18 total as the Office of Planning looked at total when they
19 made their comments as far as the effect on the frontage of
20 S Street. So this is our opportunity to come to express the
21 views of the community as far as the impact on the scale, the
22 character, so forth of S Street.

23 CHAIR HILL: No, I understand. I guess I'm just
24 trying to clarify, is that's not something that's within our
25 purview. I mean, the height's already there by right. We're

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1 not here to discuss the height, we're here to discuss the
2 special exception in terms of the 10 feet going back. And
3 there's been -- I don't know if you were commissioner when
4 this whole thing happened in terms of the changes that were
5 made to get us to this point rather than people going all the
6 way and filling out their lot by right? Were you a
7 commissioner when all that was going through the Zoning
8 Commission?

9 MR. SOLOMON: I believe I was.

10 CHAIR HILL: Okay. So I came a little bit after
11 that but I was here for when this started to happen. I know
12 there was a lot of testimony that was taken from both sides
13 in terms of, it was basically down-zoning for, people now
14 were no longer able to fill out their entire lot, which they
15 were going back 50 feet or however far back they were able
16 to go. And in fact, they were even able -- I can't remember
17 -- they were even able to go up higher, I think they were
18 able to go up 40 feet by right. And then there was a
19 mezzanine -- so I guess what I'm trying to just point out,
20 it was a very long discussion and point to get us to where
21 we are here. And so, but I am well aware of what -- but I
22 don't necessarily have any issues with the community coming
23 forward and speaking to all these things. I think that's
24 within their right and I think that I as a community member
25 would also be down here as well. But that might have been

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1 something that has already passed in terms of the Zoning
2 Commission went through all this to get us to this point.

3 So I just want to clarify, we're here for the 10
4 feet in terms of the special exception, we're not here for
5 the height. So, but I'll just -- anybody else have anything
6 for the commissioner?

7 Okay. But Mr. Commissioner, thank you for coming
8 down. I mean, it really, it's -- fortunately it's a very
9 short day for you, sometimes this goes to like 3:00, 4:00,
10 5:00 and I'm glad that you were at least able to get here by
11 noon. But okay, I'm going to go see, is there anybody here
12 wishing to speak in support? Is there anyone here wishing
13 to speak in support?

14 Is there anyone here wishing to speak in
15 opposition?

16 Okay. Now, I'm going to ask you all to go off,
17 if you wouldn't mind, I'm going to allow all the opposition
18 people to come forward.

19 You can just have a seat wherever you like.

20 Have all you been sworn in?

21 Okay. All right. If anyone who hasn't been sworn
22 in, if you could just stand and take the oath administered
23 by the secretary to my left. He's over here. And also
24 anyone else in the audience that needs to testify, please
25 raise your hand.

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

4 Thank you. You may be seated.

5 CHAIR HILL: Okay, if you could please all
6 introduce yourselves from my right to left.

7 You need to push the button until the light comes
8 on.

9 MS. LEWIS: Yes, Pauline Lewis and I live at 3604
10 S Street, so we are the owners of that property.

11 MR. LEVY: Does this work?

12 CHAIR LEWIS: No, that microphone right there.

13 MR. LEVY: Okay. Ed Levy, I live at 3534 T Street
14 NW.

15 MS. BAUME: Carol Baume, I live at 3602 S Street.

16 MS. CARPER: Ann Carper, 1935 39th Street.

17 MR. PERKINS: Michael Perkins, 3603 R Street.

18 MS. COUGHLIN: Nan Coughlin, 1700 36th Street NW.

19 CHAIR HILL: Okay. All right, well thank you for
20 coming down. Ms. Lewis, you kind of commented. You're not
21 one of the adjacent neighbors, correct?

22 MS. LEWIS: No.

23 CHAIR HILL: You can just push it once.

24 MS. LEWIS: No, I'm not one of the directly
25 adjacent neighbors, but two doors down.

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1 CHAIR HILL: Okay. All right, so you'll each get
2 three minutes to speak. The clock's up there on my left and
3 right. And you can begin whenever you like.

4 MS. LEWIS: Is there anybody that'd like to go
5 first?

6 CHAIR HILL: It doesn't matter. We're just going
7 to go down the line.

8 MR. LEWIS: Okay. Well, as a neighbor just two
9 doors down, I will say that light and privacy are definite
10 issues that we have. We have two young children and with
11 this sort of addition it will no longer be the house that we
12 purchased, for sure. So we definitely have concerns about
13 that. Another concern I have is the permeable space, they
14 say that there's ample space, but we're concerned that, with
15 the water runoff, is there enough so that way we do not have
16 issues with water going into our yard, creating mud and
17 whatnot, which one of our other neighbors is currently
18 experiencing on S Street. And this neighbor I'm talking
19 about lives, I think, four doors down, who is directly next
20 to one of these large three-story structures and is dealing
21 with runoff into her yard. So that's definitely a concern
22 that we have.

23 So that's all I have to say for now, I might jump
24 in later.

25 CHAIR HILL: I'm sorry. You have three minutes

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1 to speak and give your testimony.

2 And so -- no, that's okay -- if we have questions
3 for you, we can come back and we can see how we move forward
4 with this, if there's further information we need from you.
5 I'm just pointing it out it's not a big discussion. So
6 please, sir, go ahead.

7 MR. LEVY: Well, maybe I can take some of her
8 time. I'm Ed Levy and I want to highlight a few key points
9 that I addressed in the letter of opposition that I
10 submitted. First, a special exception can only be granted
11 if it will be in harmony with the general purpose and intent
12 of the zoning regulations. One of the first provisions of
13 the R-Zone regulations states that they are intended to
14 recognize and reinforce neighborhood character. And a stated
15 purpose of the R-20 zone regulations is, and I quote, to
16 limit permitted ground coverage of new and expanded buildings
17 and other construction to encourage a general compatibility
18 between the siting of new or expanded buildings and the
19 existing neighborhood.

20 It's almost as if this was written to apply to
21 this situation that we're dealing with here. Clearly the
22 grant of a special exception here would conflict with the
23 provisions I just described and would not be in harmony with
24 the general purpose and intent of the zoning regulation. The
25 addition here would be far larger and occupy much more of the

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1 available yard, total lot and air space than most of the
2 structures in its immediate vicinity. On this I have to
3 disagree with what Mr. Cross said. As indicated by Mr.
4 Solomon, three quarters of the structures, if not more, do
5 not have any sort of addition even faintly close to what's
6 proposed here. And the addition here would be a big
7 departure from the overwhelming majority of houses in the
8 Burleith neighborhood.

9 I command the panel's attention to Exhibit 56, a
10 statement by Burleith resident Jean Smith that addresses in
11 greater detail the purpose and intent provisions of the
12 zoning rules. Second, the non-resident owners of the two
13 properties abutting 3608 S Street each submitted the same
14 brief, standard form statement supporting the proposed
15 addition. Neither addressed the impact of the proposed
16 addition on their property, or whether the addition would be
17 in harmony with the purpose and intent of the zoning
18 regulations. Therefore, these statements offer no basis for
19 concluding that the proposed addition meets the criteria for
20 granting a special exception.

21 Furthermore, approval by abutting property owners
22 is not grounds for granting a special exception. The
23 criteria for such relief do not mention approval of an
24 addition by nearby owners. For example, the requirement that
25 light and air available to neighboring properties -- and I'm

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1 quoting here -- shall not be unduly affected, doesn't say
2 shall not be unduly affected in the opinion of owners of
3 those properties or as determined by such owners. The
4 determination of whether light and air to neighboring
5 properties is unduly affected does not depend on the opinion,
6 judgment or feelings of the owners of those properties. And
7 that makes sense.

8 Within months -- or maybe some period somewhat
9 less than the 47 years I've owned my house -- the current
10 property owners could cease to own the properties, but any
11 addition that's built would remain. For all practical
12 purposes, the addition would permanently affect the use and
13 enjoyment of the neighboring properties. Hence, the criteria
14 for granting special exceptions are written to address an
15 addition's impact on the neighboring properties, not the
16 impact on the owners of those properties.

17 Third, the regulations state that an addition
18 along with the original building as viewed from the street,
19 alley and other public way shall not visually intrude upon
20 the character, scale and pattern of houses along the
21 subject's street frontage. To interpret this provision as
22 concerning only the view from the street frontage would
23 ignore the language, quote, as viewed from the alley or other
24 public way. Thus, this requirement concerns visual effect
25 of the addition from both the street and the alley. The

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1 Office of Planning report apparently agrees with that. It
2 addresses the visibility of the proposed addition from both,
3 but in contrast to the Office of Planning's conclusion, as
4 viewed from the alley behind 3608 S Street, the proposed
5 addition would substantially visually intrude upon the
6 character, scale and patterns along the same side of S
7 Street. The proposed addition would be larger than any of
8 the existing additions, it would be very different in
9 character from the rear facades of most of these houses, and
10 would be completely out of character with the rear facades
11 of the houses to the east.

12 Finally, in a previous proceeding there was
13 reference to a, quote, matter of right envelope that would
14 allow construction of an addition resulting in lot coverage
15 of 60 percent in the R-20 Zone. However, currently a rear
16 wall -- and this is what we're concerned about here --
17 currently a rear wall of an attached building can be built
18 more than 10 feet beyond the farthest rear wall of any
19 adjoining property only if approved as a special exception.
20 Thus, no matter of right exists beyond the 10 foot limit.
21 Between this limit and the lot coverage limit, construction
22 is allowable but not a matter of right.

23 Thank you for listening.

24 CHAIR HILL: Thank you. Ms. Baume?

25 MS. BAUME: Yes, I've lived in Burleith for 23

1 years and I chose my house because of the light and air
2 around, the fact that I could look out the back. There was
3 space for my garden as well as in front. The zoning laws,
4 I believe, were meant to protect neighborhoods that were
5 built in a certain way. These neighborhoods were built in
6 the 1920s and were noted for the fact that they were set back
7 from the street and had yards and had alleyways that are in
8 appropriate parts of the neighborhood. So the whole
9 character of the neighborhood developed by Arthur Heaton
10 who's a noted architect -- he also designed the National
11 Cathedral -- was to have a cohesive neighborhood with houses
12 generally of the same size, small variations on style and
13 open backs. Now, if this house were to be built -- I live
14 a couple houses from the proposed construction -- I would be
15 looking out into a massive wall.

16 And I know that as a matter of right, they can
17 build three stories up, but when you take into account what
18 they're asking for to be exempted from the zoning rules to
19 go not only back but three stories up, it's the entire mass
20 that affects the view and affects the light. And it also
21 affects the air because I have noticed that in the analyses
22 that were done by the Office of Planning and some of the
23 other comments, I don't think they took into account that a
24 garage from lot line to lot line is also planned and it goes
25 directly to the alley line, it's labeled as parking space but

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1 in one of the drawings it's a garage, and I understand a
2 garage is planned. So I would hope there would be a review
3 of the lot occupancy and the consideration of light and air
4 because of that.

5 I want to say that I'm here also speaking for a
6 number of neighbors who could not take off from their work,
7 and another neighbor who, because of health reasons, couldn't
8 be here. One of the neighbors lives at 3614, a couple doors
9 down from the proposed property and they are very con --

10 CHAIR HILL: Excuse me, Ms. Baume. I'm sorry to
11 interrupt you. Did they submit testimony?

12 MS. BAUME: Yes, they did.

13 CHAIR HILL: Okay. And so if they submitted the
14 testimony -- the only reason why I'm interrupting you is that
15 in order for you to speak on their behalf, they would have
16 had to send something into the record that says that you can
17 speak on their behalf. So if they have submitted something
18 into the record, then we do have that. So you can't speak
19 on their behalf, I'm afraid, unless you have something from
20 them that says that. So I'd rather you just speak on your
21 behalf.

22 MS. BAUME: Okay. I would like the committee to
23 note that, although the plans fulfill the requirements for
24 permeable space, all of the permeable land is in the front.
25 There's only about 160 square feet in the back. And other

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1 neighbors where the permeability in the back is similar, they
2 get all the rainwater and during the summer their property
3 in back is muddy and it's hard to dry also because of the
4 shadows that are cast. I was given a photograph by that
5 neighbor, am I allowed to show it?

6 CHAIR HILL: Yes, you can submit it into the
7 record.

8 MS. BAUME: Okay.

9 CHAIR HILL: And if you wanted to show it, you'd
10 have to stand over by where the camera is. There's a camera
11 over there that Mr. Moy can show you. If you stand up and
12 walk to your right, there's a camera right over there. And
13 then you need the microphone, so this is going to be
14 complicated.

15 You have a -- there's a portable microphone Mr.
16 Moy has, I think.

17 No, I think Mr. Moy has a portable -- well, first
18 of all, you need a -- well, I don't have a portable
19 microphone.

20 MS. BAUME: Okay.

21 CHAIR HILL: I thought we used to have a portable
22 microphone. I'm sorry to -- oh, here we go, portable
23 microphone coming out. So Ms. Baume, just one second, here's
24 a portable microphone, and then they'll put the camera on
25 where you need to stand. And Mr. Moy, I don't know where the

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1 person actually stands to show that onto the record.

2 Just stand back a little bit farther.

3 So stand back over by that corner, the table.

4 MS. BAUME: Oh.

5 CHAIR HILL: Yes, that's great.

6 We just have to make sure everybody can see it.

7 That's why I'm taking this time.

8 Okay, there you go.

9 MS. BAUME: I'm going to take it out of the bag
10 because on the screen, it's got some light reflection.

11 Let me try this again.

12 CHAIR HILL: Oh, okay, no. That'd be great. Why
13 don't you just hold it for her right there, that'd be great.

14 Just hold it.

15 MS. BAUME: If you can hold it to -- yes, then
16 turn it up.

17 CHAIR HILL: Okay, that's perfect.

18 MS. BAUME: Okay, what I'd like to point out from
19 this picture is that there's a similar addition on this side,
20 actually two houses from here and you can see that at 10:30
21 in the morning it casts a shadow over their whole backyard
22 here. So I know the shade studies show one thing, but the
23 actual shade at 10:30 -- this was taken January 1st -- show
24 that there is an impact from these long, high additions,
25 especially because our yards are very long and narrow.

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1 CHAIR HILL: Okay, great.

2 MS. BAUME: Thank you.

3 CHAIR HILL: Ms. Baume, just make sure you submit
4 that into the record.

5 MS. BAUME: Can I just turn it in like this, or
6 how does it get into the record?

7 CHAIR HILL: The secretary will let you know.

8 MR. MOY: If you want to give that to me, we can
9 load this into the record.

10 MS. BAUME: Okay, thank you. And then --

11 CHAIR HILL: You can put -- yes, there you go.
12 You did a good job.

13 MS. BAUME: The last point I would like to make
14 is about the definition of neighbors which the architects and
15 Mr. Halem has referred to as the owners of the properties
16 adjacent as neighbors, both are absentee landlords, I don't
17 know them at all. I know the other people up and down the
18 block. And half of Burleith is investor-owned or is owned
19 by a flipper or a developer, so it's very difficult for long-
20 term residents who really live in the neighborhood to be
21 dealing with these very large buildings that are having an
22 impact on our property.

23 Thank you.

24 CHAIR HILL: Okay, great. Thank you. Ms. Corpus?

25 MS. CARPER: Carper.

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1 CHAIR HILL: Carper. Ms. Carper. Okay, thank
2 you.

3 MS. CARPER: C-A-R-P-E-R.

4 CHAIR HILL: Okay, thank you.

5 MS. CARPER: Okay. With respect to the effect of
6 light available to neighboring houses, I would urge the BZA
7 commissioners to look closely at the solar studies provided
8 for 3608 S. First, I'm concerned about the accuracy of the
9 studies. As a lay person looking at the studies, the matter
10 of right and proposed 20-foot addition solar studies show
11 different shading for the garage for the same time of day and
12 season, specifically the garage casts a longer shadow in both
13 directions in the matter of right the 10-foot scenario than
14 in the 22-foot scenario despite the fact the garage has not
15 changed dimensions or positions in either scenario.

16 For example, if you look at the winter and summer
17 studies at 2:30 and 3:30 p.m. in the matter of right compared
18 to the proposed addition solar study, you'll see that both
19 the garage shadow and the shadows in the garage doors are
20 greater for the matter of right than the proposed addition
21 study. They should be exactly the same because the garage
22 location is unchanged. There may be a logical explanation
23 that I'm missing for the discrepancy, but to me this calls
24 into question the validity of the data input to create the
25 solar studies.

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1 Further, the Office of Planning and the developer
2 believe the solar studies show some impact but that it would
3 not be undue when compared to the existing and by right
4 scenarios. Comparing the existing to the proposed, the house
5 to the east is currently minimally affected by shadows in the
6 winter and somewhat in the summer. Under the proposed
7 addition, it would begin to lose significant sunlight after
8 2:00 p.m. in the winter and in the summer. Blocking sun in
9 the winter reduces solar gain in the house, and in the summer
10 reducing sun by 2:00 p.m. on a long summer day is significant
11 and it affects the types of vegetation including vegetables
12 that can be grown, not to mention one's enjoyment of the yard
13 and deck. Comparing the existing with the proposed, the
14 house to the west is currently not affected by shadows in
15 either winter or summer, but in the proposed plan this house
16 would be significantly shaded until 11:00 a.m. in both winter
17 and summer. This is more, in my opinion, than unduly
18 impacted.

19 Additionally, the studies do not show the rear
20 yards beyond the abutting neighbors that will also be
21 affected. Neighbors further to the west and east are also
22 entitled to the enjoyment and benefits of sunshine to their
23 houses and yards.

24 Thank you.

25 CHAIR HILL: Thank you. Mr. Perkins?

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1 MR. PERKINS: Thank you for the opportunity to
2 speak. One thing I want to do is, again, address the issue
3 of the landlords to the west and east. As absentee landlords
4 who do not live in the community and do not have to deal
5 with, or live with, the results of anything that you would
6 decide here today, they have a vested interest in helping
7 approve for one of their absentee landlords, Mr. Halem.

8 In addition, special exception, because, of
9 course, then they can try to character the entire block being
10 changed to get their own. As Mr. Halem already said earlier
11 today, one of the adjacent properties is already planning to
12 expand.

13 In terms of the problems that I have with the
14 exception, even just walking out my back door this morning,
15 I can see the property that wishes to expand at 3608 S, and
16 it's over there. It's all right. But if this exception is
17 granted, that's going to be almost looming, it'll seem, right
18 over my property.

19 Adding a third story in and allowing that to be
20 pushed out, will make this problem even worse. I would also
21 add that, in terms of the scale and the neighborhood, I
22 recognize that the Office of Planning report stated that they
23 didn't see a big difference between the additions that have
24 been put before the zoning changes went into effect for 2016.

25 I, however, do see a difference, and it's scale.

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1 It's looming over a lot of things. I actually did go out.
2 I took a look at the Google maps and I tried to measure some
3 of the things on there. I also went out and eyeballed it
4 earlier today, before I came down here.

5 This addition is going to extend further back, by
6 several feet, than any other preexisting addition on that
7 block. Further, the deck that's proposed to be attached to
8 the back of it is a deeper deck than the other ones on the
9 block.

10 Put it all together, and this is really just a
11 dominant thing that's going to be -- that is being planned
12 for 3608 S. It will affect my privacy, because it will have
13 people able to look right in to my yard, my backdoor, if I'm
14 out there grilling, they're going to be able to look down,
15 say, how you doing. And I do not think that the BZA should
16 be approving this special exception.

17 I understand ten feet. I understand the third
18 floor. There's a reason that those were put into effect for
19 2016. Allowing that to be then pushed back an additional
20 twelve feet beyond the ten, will simply put this in a
21 position to be affecting my privacy, and absolutely dominate
22 the scale as seen from the back and seen from the alley --
23 public right of way -- over the entire block. Thank you.

24 MR. CROWLEY: All right, thank you, Mr. Perkins.

25 MEMBER WHITE: One question I have. What is your

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1 address, Mr. Perkins?

2 MR. PERKINS: I'm at 3603 R Street.

3 CHAIR HILL: All right, is Ms. Coutland --

4 MS. COUGHLIN: Mrs. Coughlin.

5 CHAIR HILL: Coughlin, Coughlin.

6 MS. COUGHLIN: Yes. And I'm the neighbor of
7 Michael Perkins. I'm at -- my address is 1700 36th Street.
8 The 22 foot addition will be overwhelming and intrusive for
9 all the reasons Mr. Perkins said, and it's totally out of
10 character with the neighborhood of Burleith. That's it.

11 CHAIR HILL: Okay. Does the Board have any
12 questions for any of the witnesses?

13 VICE CHAIR HART: Actually, for all the witnesses,
14 do you -- in your opinion, would you be okay with anything
15 that was -- let's say the applicant wanted to come in with
16 a 12-foot extension beyond the -- beyond their existing
17 building. So, they were kind of meeting the --

18 MR. PERKINS: Meeting the property at 3610.

19 VICE CHAIR HART: Yes, to the west. Would you be
20 in opposition to that?

21 MS. COUGHLIN: Personally, I would just as soon
22 it stay to the ten feet.

23 VICE CHAIR HART: The ten-feet is by right, so
24 they wouldn't have to come in here, they wouldn't have to
25 talk to anybody.

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1 MS. COUGHLIN: That's right.

2 VICE CHAIR HART: They'd just kind of do whatever
3 they want to, and that's done. I'm just asking, to try to
4 understand also where that -- if there is a -- if the
5 opposition is to any addition beyond the ten, or if there is
6 some other -- if there's some other number.

7 I don't know if there are any -- and if any of the
8 other folks that have described or testified if they have --
9 if you have an opinion on that, as well.

10 MR. PERKINS: If it was something that was going
11 to match the house to the west -- to match 3610 exactly --
12 honestly, I would have to see more. I might even try to see
13 if there was a rendering that was available. I'm honestly
14 not sure exactly how much of an opposition I might have to
15 that.

16 Obviously, ten feet is a matter of right. I also
17 do not think that ten feet would be crazily altering the
18 character, or be out of scale, because clearly there are
19 other pop-ups, pop-backs, that have been done on the block,
20 and that about where they would be.

21 As to whether I would, for sure, think 12 feet was
22 okay, I cannot answer that question at this time.

23 VICE CHAIR HART: Thank you. Anyone else?

24 MS. BAUME: I would want people to follow what the
25 city has determined is a reasonable addition. If there were

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1 a special case for someone who lived there -- say you had a
2 disabled child, or needed -- there was a reason for it -- I
3 would definitely consider it, but not just to have someone
4 redo a house to resell.

5 VICE CHAIR HART: The process by which the -- any
6 applicant, any property owner -- is to come to the BZA for
7 a special exception beyond the ten feet. The ten-feet is a
8 way in which to kind of have the property owner engage with
9 their neighbors. And so it's not saying that it is -- you
10 can't do anything -- you can't do it. It's saying that you
11 need to have some further discussion beyond that.

12 So, I understand what you're saying, that you'd
13 be okay with the ten feet, but the process that we're going
14 through now is what was kind of foreseen in the zoning
15 regulations -- to have a discussion to see if this
16 neighborhood, it were okay with the neighbors to go back, you
17 know, 20 feet, if another neighbor said that it was ten feet
18 or 11 feet in another neighborhood, and yet some other number
19 in, you know, somewhere else in the city.

20 It is a process that the zoning regulations are
21 setting up so that there is this discussion that happens.
22 So -- but I appreciate the -- your feedback.

23 MR. LEVY: So, I would approach this by responding
24 to what I viewed as your second question, as to whether or
25 not I would be opposed to any addition beyond ten feet, and

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1 I agree with Michael's approach here. It depends on the
2 proposal.

3 It depends on exactly what's being asked, and then
4 how it fits within the specific criteria that exists for
5 measuring whether or not a special exception should be
6 granted. I, personally, would be in no position to oppose
7 any and all additions beyond ten feet, because I have an
8 addition on my property, build over 35 years ago, that goes
9 out, depending on how you measure 20 or 23 feet.

10 However, it's not three stories high, and at its
11 maximum height, it's not even two stories high, and it starts
12 out at one story. So, that's where I have to agree with
13 Michael's approach. You have to look at what's proposed, and
14 how it fits within the criteria that exists.

15 I think, to me -- frankly, when I first heard of
16 the ten-foot limit, it was presented as a flat, absolute
17 limit, and I was uncomfortable with it. But looking at the
18 rules, I think in some respects, they could be better
19 written, and a little more comprehensive in terms of
20 providing criteria that go to the kinds of things that would
21 disturb the use of adjoining property.

22 But they do represent an effort to provide some
23 flexibility for people to do things that are not going to
24 have an undue interference with neighboring properties. So,
25 that's why I would pretty much adhere to the approach that

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1 Michael stated of, let's look at the proposal, and see what
2 impact it has on adjoining properties.

3 VICE CHAIR HART: I appreciate the response, and
4 I appreciate your candor in, you know, saying that, yes, you
5 have an extension on your building as -- on your property,
6 as well. Again, it doesn't go up the three stories, but I
7 think that that's kind of what we are talking about in terms
8 of, you know, there was a -- there wasn't a standard at all
9 previously.

10 And so this was an attempt by the Zoning
11 Commission to create a standard that would help the process.
12 And I think it has, but it also has, as you see, it brings
13 up community conversations about, you know, what is the
14 community feels inappropriate, and it's helpful to hear this
15 from you all.

16 MR. LEVY: Since getting involved with these
17 issues, I've become a little more sensitive to the impact of
18 my own building. So, I would say, for example, that it has
19 virtually no impact on the second floor lighting of one my
20 neighbors, and not the other either. But the other had an
21 addition, while the other now has a two-story addition.

22 Well, that addition, at 2:00 p.m. in the
23 afternoon, casts a shadow over about half of my property,
24 that's in the winter. So, you know, I'm just imagining what
25 a third story would do next door, in terms of the difference

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1 it would make, you know, on my property.

2 Now, that addition goes not, you know, 20 feet,
3 so, you know, it's beyond the ma- -- what is now a matter of
4 right. So, you know, those are the kinds of things that I
5 think, in looking at any particular proposal, neighbors --
6 and this Board -- has to consider.

7 VICE CHAIR HART: Thank you.

8 CHAIR HILL: Okay, I got a couple of questions,
9 and if anybody has anymore questions. I was just curious.
10 I've seen a few of you here before, and were you -- and I
11 don't even know if I can do this by a show of hands, whether
12 we have to say yes or no into the microphone. I mean, were
13 there other cases such as this, where there were people going
14 beyond the ten-foot that you had testified in opposition to?

15 CHAIR HILL: You could say yes or no. No?

16 MS. BAUME: No.

17 CHAIR HILL: Okay. All right, so no.

18 MR. LEVY: Just the one you're mentioning. I
19 mean, the first one that came up, which was -- or that --

20 MS. BAUME: T Street.

21 MR. LEVY: -- we were aware of, in our community
22 on T Street, that was -- I don't remember --

23 CHAIR HILL: Right, so you came in opposition to
24 another similar case, is what I'm trying to understand.

25 MR. LEVY: Yes.

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1 CHAIR HILL: Okay. And you did, as well. There's
2 three of you here that are nodding yes. I just remember
3 seeing you. And so -- and then, did any of you go to, or
4 were aware of, the hearings that the Zoning Commission were
5 undertaking when these rule changes were actually first going
6 through?

7 MS. LEWIS: No.

8 MS. BAUME: No.

9 CHAIR HILL: No. Okay, nobody wanted to testify
10 to that? Because, I don't know where we are with this, but
11 I'm actually even just speaking to the Commissioners, in
12 terms of how this is now something that has come before us
13 quite a few times as of, you know, the past six months to a
14 year, and the understanding that just to -- whether you all
15 knew this or not I don't know -- I mean, what used to be
16 matter of right was that you could fill out your lot to what
17 the existing lot line was, and you were able to go up 40
18 feet.

19 And so, that's when the Zoning Commission came in
20 and brought it to where it is now, wherein there was -- you
21 know, you can go up matter-of-right up to 35 feet, you can
22 go back ten feet matter of right from the furthest
23 property -- or existing property, and that special exception,
24 which was these particular criteria, you could lobby the
25 Board -- or not lobby the Board -- apply to the Board of

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1 Zoning Adjustment, for this type of relief.

2 So, I guess what I'm just trying to get at is,
3 like, there was -- again, I continue to say, there was a
4 process to get us here, and I was just curious as to whether
5 you guys had been aware of that process, or had been involved
6 in that process before, and what I think -- and I'll let you
7 speak in a second -- but what I think he had said was, no.
8 Please, you wanted to go say something?

9 MS. CARPER: Yes, I was -- and I said this last
10 time when Joel Larson, from the Office of Planning, came to
11 a Burleith Citizens Association meeting -- open meeting in,
12 I think either March or April 2017 -- he brought this up, and
13 that was the first we had heard of it. And also, the first,
14 the ANC -- our ANC -- had heard of it, based on subsequent
15 conversations, because everyone's kind of a gas.

16 Some of us -- some people really upset about it,
17 some of us -- like Carol and I -- thought, oh great, this
18 might control some of the development. So, we were kind of
19 surprised that these exceptions are granted pretty much
20 routinely.

21 But, to answer your question, we weren't aware of
22 this. The first I personally had heard of it -- and I think
23 a lot in our neighborhood heard about it -- was when
24 Mr. Larson spoke to the BZA meeting back in March or April
25 of 2017.

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1 CHAIR HILL: What you had heard about was what,
2 that at one point there could have been much larger
3 developments, or that there was a special exception criteria?

4 MS. CARPER: Well, I guess since I was kind of new
5 to this, I wasn't aware of this at all. But then, when
6 Mr. Larson talked about the special exception ten-foot rule,
7 that was the first I had heard of it.

8 CHAIR HILL: Okay. All right. And I just want --
9 I just want to push a little bit back, that I don't think
10 that they're routinely given.

11 MS. CARPER: Okay.

12 CHAIR HILL: You know, I think that there is a
13 process, and I know that there are some that I voted against.
14 And so -- you know, but so --

15 MS. CARPER: Okay, fair enough.

16 CHAIR HILL: -- yes, sir?

17 MR. LEVY: Yes, if I can add, I was at that same
18 meeting. So, I think it was Joel Lawson.

19 CHAIR HILL: Yes.

20 MR. LEVY: And the it that Ann was referring to
21 is the ten-foot rule. That's the first anybody in the
22 community --

23 CHAIR HILL: You had heard the special
24 exception --

25 MR. LEVY: No, not the special exception, because

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1 the way he presented it, it sounded like the ten-foot rule
2 was an absolute, no exceptions.

3 CHAIR HILL: I see.

4 MR. LEVY: Okay, that's sort of the way it came
5 across. Maybe that's not what -- exactly what he said --

6 CHAIR HILL: Right.

7 MR. LEVY: -- but that's the way many of us heard
8 it.

9 CHAIR HILL: You might have heard it that -- I'm
10 sure he wouldn't have represented it that way, just because
11 he knows that --

12 MR. LEVY: Well, he didn't --

13 CHAIR HILL: -- but

14 MR. LEVY: -- he didn't put it that way --

15 CHAIR HILL: Right.

16 MR. LEVY: -- you know, for sure. But he just
17 said, well, there's now a ten-foot limit, is -- and I
18 don't -- I'm doubtful that he said, but it's subject to
19 exceptions.

20 CHAIR HILL: Okay.

21 MR. LEVY: I think people would have heard that.

22 CHAIR HILL: Okay.

23 MR. LEVY: So --

24 CHAIR HILL: Okay. All right.

25 MR. LEVY: -- I don't think he said that, so

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1 that's what I was referring to in my own statement when I
2 said, I had some misgivings.

3 CHAIR HILL: Okay, so --

4 MR. LEVY: When I first heard about it, is that,
5 because it sounded like an absolute. But --

6 CHAIR HILL: Okay.

7 MR. LEVY: -- I want to come back briefly to the
8 point that you made just a few moments ago, talking about how
9 there's this rule, and it's subject to criteria for getting
10 a special exception. One of the reasons why I press so hard
11 on the point that this rule is not -- this -- it's not a
12 rule, but these rules concerning the ten-foot allowance are
13 now dependent just on the wishes of the adjoining property.

14 CHAIR HILL: Well, Mr. Levy, and this is where --
15 I just want to --

16 MR. LEVY: They're dependent on the criteria --

17 CHAIR HILL: -- I'm letting you speak, and I
18 want -- I hear what you said, and I guess what I would also
19 like to mention to you, is that I understand your opinion.
20 I understand the opinion of the people that are here. We
21 also, then, are tasked with looking at the criteria that
22 we're asked to look at.

23 Your criteria and the way you view the criteria,
24 might be different from someone else. Right? And so, you
25 know --

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1 MR. LEVY: Absolutely.

2 CHAIR HILL: -- I'm just mentioning -- but I
3 see -- we all look at the same regulations, and you think
4 that, again, that this is not in harmony with the general
5 purpose and intent of the zoning regulations and zoning maps.
6 The Office of Planning disagrees with you, but that is
7 your opinion.

8 MR. LEVY: Well, I don't know, they didn't address
9 that.

10 CHAIR HILL: So -- okay, so give me a second, I'll
11 ask them --

12 MR. LEVY: I'm sorry.

13 CHAIR HILL: -- but -- that's all right. But,
14 so -- okay. Does the Board have any other questions for the
15 witnesses?

16 MEMBER SHAPIRO: I do, Mr. Chair. And, question
17 I think for you, Mr. Levy -- because you brought it up in
18 terms of your own house, which is -- you said, depending on
19 how you would measure it, 22 to 24 feet --

20 MR. LEVY: Twenty to 23.

21 MEMBER SHAPIRO: Twenty to 23, I'm sorry. Thank
22 you --

23 MR. LEVY: -- That's okay.

24 MEMBER SHAPIRO: -- for the clarification. And
25 my understanding of why you feel like that is, more in

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1 character, is because it steps down.

2 MR. LEVY: Correct.

3 MEMBER SHAPIRO: Okay. Just want to be clear
4 about that. And the other question I had was this issue
5 around the garage. If there's anymore thoughts or reactions
6 to where you are related to this -- and I'll ask the
7 applicant this too, about this -- your understanding whether
8 there is a garage that is in this or not, in this, and what
9 your feelings are about that.

10 MR. PERKINS: My understanding, as far as the
11 garage, is, at least according to the architect, Mr. Cross,
12 as he expressed after the ANC meeting, is that they are
13 understanding that that is a matter of right, to be able to
14 build a garage.

15 I'm not contending -- disputing that at all right
16 now. What I would say is that certainly, with something --
17 again, if the special exception were to be granted, and the
18 house, at the size it is, be pushed back as far as it's being
19 proposed, then having the garage as close in proximity, there
20 would be, I believe it's 8½ feet -- something like that --
21 before you're already going up the deck and into the house --
22 would almost make it look like just some mammoth, you know,
23 leading up to a castle, almost.

24 And again, going sort of to scale and character,
25 would be potentially contributing to an issue.

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1 MEMBER SHAPIRO: Thank you. Thank you, Mr. Chair.

2 CHAIR HILL: Okay. All right. Thank you all very
3 much. Mr. Levy, you have something you'd like to say?

4 MR. LEVY: Yes, a couple of things.

5 CHAIR HILL: Yes? Okay.

6 MR. LEVY: With regard to my own addition, it's
7 not just the character, but also the impact on my neighbors.
8 That's a factor in my thinking, too. You know, I might have
9 second thoughts about some of that now, but it certainly
10 doesn't have the impact that some of these enormous additions
11 have.

12 The Office of Planning Report -- and I looked at
13 this a couple of times -- does not address the consistency
14 of this application with the zoning regulations. It's just
15 not there.

16 CHAIR HILL: Okay.

17 MR. LEVY: It's not in their report.

18 CHAIR HILL: Mr. Levy, I'll ask --

19 MR. LEVY: And third, that's the criteria.

20 CHAIR HILL: Okay, I'm just letting you know, the
21 Office of Planning does their job very well, but -- and we'll
22 get to them again, but go ahead, what's your third point?

23 MR. LEVY: Okay.

24 CHAIR HILL: Which, by the way, you only get three
25 minutes.

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1 MR. LEVY: I know.

2 CHAIR HILL: And so I just want to be on the
3 record. You're not an applicant, you're not here party
4 status --

5 MR. LEVY: I get it.

6 CHAIR HILL: -- you have no standing --

7 MR. LEVY: Well, we're having a dialogue.

8 CHAIR HILL: -- other than a person -- we're
9 having a dialogue, I agree. So, please --

10 MR. LEVY: I appreciate it.

11 CHAIR HILL: Okay.

12 MR. LEVY: The reason why I emphasize the point
13 that I did about application of the criteria, and adhering
14 to the views of neighboring property owners, is that in the
15 previous proceeding that I was involved in, two of the
16 panelists were quite explicit that the view of the adjacent
17 property owner was the determining factor in their decision.

18 CHAIR HILL: Okay, thank you. All right, thank
19 you all very much.

20 MEMBER SHAPIRO: Thank you.

21 CHAIR HILL: If I could get the applicant to come
22 back forward, please.

23 MR. LEVY: Thank you.

24 CHAIR HILL: You're welcome. Okay, let's see
25 where we're going to go with this, now. The -- so there's

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1 been a variety of discussion. One thing that I actually,
2 now -- I am going to turn to the Office of Planning, just --
3 if you would. Even for me, now, I guess, if you could speak
4 to -- I didn't look through the report and everything, and
5 I see, again, how you have -- and this is always -- or not
6 always -- oftentimes contentious, in terms of light and air,
7 undo impact, and how one goes about providing that analysis.

8 However, there was some discussion, I guess, about
9 X901, with -- in harmony of general purpose and intent of the
10 zoning regulation and zoning maps. Do you have some -- could
11 you please kind of help us think about your thoughts with
12 that?

13 MS. MYERS: Well, when looking at -- this is --
14 that this proposal would ultimately impact or harm the zoning
15 regulations, we do not feel that that was the case with this
16 project.

17 Going through the criteria of 5201, you know, and
18 specifically, 5201.3, talking about light and air, impact of
19 the neighboring properties, privacy and use, and enjoyment
20 of the neighboring properties, and the visibility -- how the
21 addition would appear in relationship to the surrounding
22 properties along S Street, as well as from the rear alley --
23 when determining that, we do not think that that was an undue
24 impact. We are getting at that issue of whether or not there
25 would be harm to the zoning regulations.

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1 The regs -- or the regulations -- considered with
2 a special exception -- that the use itself is permissible,
3 as we all know. But that allowing for this addition, it
4 would not be a, I guess, significant problem in the
5 neighborhood -- impact on the neighborhood -- and kind of
6 going through that -- those steps, and ultimately deciding
7 that they were satisfied, also satisfied that X -- I believe
8 it's like X9 something.

9 So that's kind of the way we look at it. As you
10 know, going through that criteria addresses the ultimate
11 special exception criteria. Another type of special
12 exception, sometimes you don't have a criteria to review, so
13 we just looked at -- straight at the X9 section, which is
14 Harm to the Zoning Regs, as I believe -- as well as, I think,
15 impact on the neighborhood.

16 But when we do have a list of criteria also to
17 consider -- like in this case, the 5201 section -- it
18 addresses both, so our staff report, you know, will
19 ultimately be recommended approval, which is addressing if
20 it's going to harm the zoning regulations, although we're
21 saying, no, we don't believe so.

22 CHAIR HILL: Okay, thank you. Ms. White?

23 MEMBER WHITE: Yes, I wanted to try to get -- I
24 wanted to try to get a couple of questions in.
25 Unfortunately, I have to leave because of a business

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1 obligation. So, one thought was that I would hope to be able
2 to see whether or not there might be some flexibility with
3 respect to -- if it becomes necessary, some flexibility with
4 respect to the plan to see whether or not there might be some
5 give and take on the part of the neighbors.

6 But, obviously, you heard the testimony here, and
7 you've got a lot of strong feelings with respect to the rear
8 addition. And some of the pushbacks seem to be on how it
9 would impact things from the rear. I mean, the regulation
10 talks about, together with the original building as viewed
11 from the street, alley, and other public ways, should not
12 substantially visually intrude upon the character, scale and
13 pattern of the houses along the subject street frontage.

14 But some of the testimony seemed to indicate that,
15 from the rear, it's substantially intrusive. Do you have an
16 opinion with respect to that?

17 MS. MYERS: Judging by the design of it, and the
18 other aspect being that you'll compare it to neighboring
19 properties, there's actually -- and Nicholas talked about it
20 a little earlier -- kind of a mixed neighborhood when it
21 comes to addition or no-addition in that neighborhood. And
22 there's, I believe like two houses down, another house that
23 has a similar design.

24 Now, I'm not saying that this one wouldn't be
25 bigger, but the yards are pretty deep. So, our conclusion

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1 was, weighing that out -- the design of it, the fact that the
2 neighborhood already has a mix of three-story addition houses
3 in the area, and then also looking at the impact from the
4 solar study and the adjacent neighbors' viewpoints --
5 weighing all of that out, we were recommending approval.

6 But it's subjective, and, you know, the BZA always
7 has the opportunity to weigh out more than what we can
8 typically weigh out when you just look at the zoning
9 regulations. So, you know, it would be ultimately up to you
10 all to decide if -- whether or not you agree or not.

11 CHAIR HILL: Okay. All right, so from the
12 applicant, I was kind of curious, if you could just -- well,
13 you have this one thing on the screen here again. So, just
14 go over for -- again for me. There's one property here to
15 the west. It's the gray building, again. I'll -- so you're
16 going out how much farther from that property to the west?

17 MR. CROSS: We will be ten feet past the neighbor
18 to us.

19 CHAIR HILL: Right, and that's already 12 feet
20 past you.

21 MR. CROSS: That's correct.

22 CHAIR HILL: Right? Okay.

23 VICE CHAIR HART: And did you do any -- in the
24 solar study on Exhibits -- what is this, 52? -- you had on
25 pages 16 and 15 -- I'm looking at the -- I guess the top

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1 image on page 15. You have the -- the shadow of that is from
2 the proposed summer solstice at 9:30 a.m.

3 That actually goes to the neighbor, but it also
4 goes to the neighbor beyond that. It's not just the impact
5 on the adjacent neighbor, but two neighbors down. But we
6 don't know what that actually impact is, because there's --
7 it doesn't show up on this. It doesn't show up on your
8 image.

9 Typically, you have, you know, three or -- what
10 we've seen before is a sun study that has, these are the
11 impacts on the -- these are the impacts on the neighbors,
12 regardless on -- on -- if it's next door, or two or three,
13 depending on what the -- how long those shadows are, because
14 they could be longer.

15 It would be helpful for me to see this, to
16 understand what the shadow studies say for the project. And
17 I'll say that I am -- while I understand the height aspect
18 of it -- that you're kind of within the height. You are
19 asking for the relief in the rear, and it is -- and I've kind
20 of looked through the, you know, the floor plans and all
21 that, and I was -- this is still going to be a single-family
22 house?

23 Because, I was realizing there was a basement in
24 the -- there was a bedroom in the basement -- was it a
25 basement that I saw? Is that correct? Okay. You're nodding

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1 yes, so I just want to make sure I saw that.

2 And this is going to be a five-bedroom house? Is
3 that what I'm reading?

4 MR. CROSS: Yes, sir.

5 VICE CHAIR HART: Okay.

6 CHAIR HILL: Can I just interrupt you for one
7 second --

8 VICE CHAIR HART: Sure.

9 CHAIR HILL: -- Mr. Hart? Because Ms. White is
10 about to leave to catch a flight. So, Ms. White, we're
11 probably going to ask for some additional information from
12 the applicant, I believe. Is there anything you'd like to
13 ask of the applicant before you leave?

14 MEMBER WHITE: I think Mr. Hart -- Vice-Chair
15 Hart -- just indicated that he maybe wanted to expand on the
16 shadow studies, to see what the impact would be on some of
17 the other neighboring properties.

18 I don't know if the conversation will evolve to
19 this point, but if the applicant has some alternative
20 suggestions, in terms of a project that would be slightly
21 different than what's been presented -- I know they've made
22 some accommodations already -- but if they decide to submit
23 another option, I'd be interested in seeing that.

24 I'll listen to the rest of the hearing on video,
25 and look at the full record, and then I imagine we'll set a

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1 date to either continue the hearing, and/or set it for
2 decision.

3 CHAIR HILL: Okay, thank you. Well, have a nice
4 flight.

5 MEMBER WHITE: Thank you.

6 CHAIR HILL: Mr. Hart, turning back over to you.

7 VICE CHAIR HART: Sure, thank you. And, if you
8 can also talk a little bit about the need to go back -- I
9 shouldn't say the need, because that's not really our
10 purview, per se -- but I'm just trying to understand the
11 difference between the building on the -- that's west of you,
12 which is back 12 feet, and your proposal for going back
13 22 feet.

14 I mean, is it -- I'm thinking that there may be
15 less of an impact on the shadow if you had a lesser -- a
16 smaller addition on the rear, and I don't know -- I don't
17 know exactly what that number is, but it is -- is there a way
18 to lessen the impact on, you know, the neighbors that are to
19 the -- that are two doors away from your property, so that
20 that would just be impacting the neighbors to the -- that are
21 adjacent to your property?

22 And I don't know if I said that correctly, but
23 it's -- how to minimize that shadow leakage, or impacts, on
24 those two out -- the neighbors that are two doors away from
25 you on either side. And I don't know if you actually looked

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1 at that.

2 (Off-microphone comment.)

3 VICE CHAIR HART: I don't have any other
4 questions. I just didn't know if you had looked at that.
5 Actually, I would like for you to look at that, so we have
6 some way of -- I don't know -- of lessening the impact on the
7 folks that are two doors away on either side. Because I
8 think that there might be an impact, but again, it's hard to
9 tell, because the sunset doesn't actually go out that far.

10 MR. CROSS: Yes, I appreciate the discussion. I
11 think my client has consistently been trying to work hard to
12 accommodate the concerns of the neighbors, as you heard here
13 today. It seems that, unfortunately, a lot of the concerns
14 are specifically against development in general, and
15 therefore, we haven't gotten the sort of compromise
16 discussion going in any of our engagements.

17 And, therefore, we have not proposed a compromise,
18 since no quantitative numbers have been given to us by the
19 neighbors.

20 VICE CHAIR HART: That's fine. I'm not going
21 to --

22 MR. CROSS: My --

23 VICE CHAIR HART: -- I'm not going to engage with
24 how the neighbors -- because I'm not speaking for them.

25 MR. CROSS: Understood.

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1 VICE CHAIR HART: I'm speaking for myself, and
2 understanding kind -- I understand that there is impacts on
3 your adjacent neighbors. I think that there may be impacts
4 on the neighbors to them, as well, and I would prefer there
5 not to be impacts on two houses down from you. And I don't
6 know what that is, because I don't have that, so --

7 MR. CROSS: Understood.

8 VICE CHAIR HART: -- it's hard for me to
9 understand what that is.

10 MR. CROSS: Understood. I guess I just wanted to
11 kind of put in context why we've been possibly apparently
12 stubborn on this proposal. It's not because we're stubborn.
13 My client is willing to make a reduction here today, if you
14 would be willing to consider that. Or, if you want
15 additional materials, we can just come back with additional
16 materials.

17 VICE CHAIR HART: Yes. I mean, I do want
18 additional materials, to understand this, because I don't --
19 I don't -- and I'm not going to speak for the rest of the
20 Board, but I don't know what those impacts -- especially
21 the -- specifically the sun study -- are to the, again, the
22 neighbors.

23 So, I would like to see a revised sun study that
24 shows the impacts to the -- see, I'm now coughing, thank
25 you -- that shows the impacts on the houses that are two

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1 down. But, specifically, I'm trying to minimize the impacts
2 to those -- to the houses that are two down from, you know --
3 away from -- on either side from your property.

4 And that may be that it, you know, if you push
5 it -- if you reduce the expansion on the back, that can help
6 to alleviate some of those -- and I saw the image on page 14,
7 because that actually shows the -- it's an axon that acts on
8 a metric that shows what that rear addition would -- might
9 look like.

10 MR. HALEM: I'm going to comment your concern with
11 the houses two doors over in either direction. The one two
12 doors to the west has a three-story addition that goes back
13 something like, I don't know, 15/16 feet, and the house two
14 doors to the right, I believe the owner is here, and she's
15 got a significant addition that looks to me to be about 15
16 or 16 feet, as well. That's just addressing the two --

17 VICE CHAIR HART: I understand that, but you're
18 asking for something that's ten feet beyond your -- the next
19 door neighbor to the west. So, you're asking for something
20 that's even beyond what they've asked for. And so, I'm
21 asking to understand, you know, having something maybe in
22 line with this would be in keeping with the rest of the --
23 what's happening in the neighborhood, or at least what has
24 been going on so far.

25 And I just -- we don't have that, so I would like

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1 to see some sort of alternative that shows that. And I
2 don't -- again, I'm going to speak for the rest of the --

3 CHAIR HILL: So, Mr. Cross, you understand, right?
4 He wants a shadow -- Vice-Chair Hart would like a shadow
5 study that shows context other than just the two people on
6 either side. Okay?

7 And so, because with a lot of shadow studies that
8 we've done, as well as the ones that I think you've submitted
9 before, you know, you see kind of like the whole row. Or,
10 like, you know, just kind of how -- how the shadows are
11 affecting that row. And so, Commissioner Shapiro, you had
12 a question?

13 MEMBER SHAPIRO: I do. Thank you, Mr. Chair.
14 First of all, I join with Vice-Chair Hart, I'm interested in
15 the shadow study for the same reasons. A couple of quick
16 ones. This may be a very quick one, but you are planning on
17 putting a garage. And does -- how does that get included in
18 any kind of lot occupancy calculation, and, you know, at what
19 point do -- does that --

20 MS. STUART: Yes, the garage is included on the
21 proposal, and is within the 60 percent lot occupancy.

22 MEMBER SHAPIRO: So, it's already included, even
23 with the 22 foot --

24 MS. STUART: Right. We are coming, I believe, at
25 58 percent, including the garage.

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1 MEMBER SHAPIRO: Okay, thank you. And then, the
2 other question is -- and good luck answering this, but I'll
3 ask it. Why 22 feet? Why not 19 feet, why not 27 feet? A
4 piece of it is going to be lot occupancy, I know --

5 MR. HALEM: Mm hmm.

6 MEMBER SHAPIRO: -- but you haven't -- are you
7 just taking it up to the maximum, or as close to the
8 maximum --

9 MR. HALEM: Correct.

10 MEMBER SHAPIRO: -- including the garage?

11 MR. HALEM: We started this before the ten-foot
12 rule was in existence. We started these plans a year-and-a-
13 half ago.

14 MEMBER SHAPIRO: Okay.

15 MR. HALEM: And it was just based on maximizing
16 use of the property.

17 MEMBER SHAPIRO: Okay. All right, so you're just
18 going to go a hair under what you -- what would have been
19 allowed.

20 MR. HALEM: Right.

21 MEMBER SHAPIRO: Okay, thank you. Thank you,
22 Mr. Chair. I think that it's related to the 60 percent lot
23 occupancy, including the garage. And you're coming up at 58,
24 you said?

25 CHAIR HILL: Okay, with the garage.

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1 MEMBER SHAPIRO: Fifty-six? With the garage?

2 CHAIR HILL: Okay. All right, let's see. Okay,
3 so I'll give you my thoughts. I -- so I'd like to see the --
4 what my other colleagues wanted to see, in terms of a shadow
5 study that kind of shows more of the whole block.

6 I guess, if Mr. Cross -- and if you could -- I
7 won't want you to have to spend a lot of your client's money,
8 but if you could kind of show us what the matter-of-right
9 envelope is, I'm a little curious. And I don't know, you
10 know -- and then that would include the roof deck, then,
11 right? So, you would have the roof desk also by matter of
12 right.

13 So, I think you already have it done. Like, I'm
14 just curious to how far back, then, what ten feet would look
15 like, also.

16 The -- and this is more just, well I guess, people
17 that have come to testify, as well as the Commissioners. I
18 mean, as far as, like, the standards with which we review
19 this, they're all in the regulations, and the Office of
20 Planning's report has spoke to each one of those standards.

21 I constantly -- not constantly -- I do have
22 difficulty with sometimes the ambiguity of it all, in that
23 what is unduly affected. What is unduly compromised. And
24 that does turn into a discussion that we are here for.

25 If this could be done in a way that the Board

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1 didn't need to be here, then the Office of Planning would
2 just enter their report, and the ANC would just enter their
3 report, and we wouldn't even be needed.

4 But, the Board is here to help understand -- that
5 there's five members here -- help understand whether or not
6 the criteria to grant the relief based on the different
7 reports we get, is, you know, should be granted or denied.
8 And I'm saying all that, that it's not easy. You know?

9 I mean, it is -- it is -- and you -- and then
10 there's the other side, which is, again, you're taking away
11 the property rights of people. You know, what they want to
12 do. What they could have done. So, it's also -- there's
13 another side.

14 Now, that other side might not be in this room
15 right now, but there is another side, as to whether or not,
16 you know, they think -- and to speak to one of the witnesses,
17 you know, who has a non-conforming building -- now they might
18 be here trying to go up three stories in a little while,
19 and -- not you or whoever -- you know, whoever buys your
20 property after that, might want to go up three stories with
21 their non-conforming space.

22 And so, I'm just saying all that -- is that we do
23 take our job very seriously, and it's -- and there is an
24 element of, you know, is this unduly compromising the light
25 and air? Or, is this in the harmony of the regulations? And

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1 so we do look at those things very carefully, and I think
2 that the shadow study would help us with that.

3 I think that also, looking at what you could have
4 done by the ten-feet, would be interesting to see in terms
5 of just what is the matter of right. I mean, now -- now, you
6 have a roof deck, you know?

7 And so, people are opposed to the roof deck. They
8 don't want the roof deck, but now they don't have, you know,
9 now it's not going out another -- I mean, it's such a -- and
10 we're not here to get into negotiations with the
11 neighborhood, but it is in- -- you know, you lose the roof
12 deck, you go all the way out to what the neighbor is already.
13 Is that better than losing the roof deck, you know? Or is
14 that better than having the roof deck.

15 That's when you're back in negotiation and
16 discussions with the ANC. And that's not what we're here to
17 do. We're here to look at the regulations. We're here to
18 decide whether or not you meet the criteria.

19 So, that's it. The matter of right, I guess if
20 you wanted to, you could see what, you know, Vice-Chair Hart
21 was speaking to, in terms of, you know, the number that
22 you're going back as far -- again, like you're going back
23 farther than the person already, you know, to -- you know,
24 how did you get to the number you got to, is what -- and
25 whether, if there's anything to change that?

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1 I'm not necessarily saying that I'm on the side
2 where I think you need to change that or not. I'm just
3 saying that Commissioner -- I mean Vice-Chair Hart mentioned
4 something about, you know, any other discussion to any other
5 thoughts that you might have had in terms of how far back you
6 actually went. But, I think -- Commissioner Shapiro, you had
7 some comments?

8 MEMBER SHAPIRO: I do. I would ask you for one
9 additional thing. Under the -- in the elevations, page 14,
10 you show the rear from the -- close enough to the west view.
11 If you could do a similar one of that from the east view.
12 And that's all I have, Mr. Does that make sense -- the
13 question -- by the way? Yes?

14 MR. CROSS: Yes, sir. Thank you.

15 CHAIR HILL: Can you do something else? And I'm
16 learning a new word -- axon? Axona Metric. But, is there
17 a way to kind of see the garage in context with the property?
18 I mean, because what you have up right now, you can kind of
19 just see the garage there. That'd be helpful, just the way
20 it is. I'm not -- forget about changing it or anything.
21 Like, this design, I just want to see how it kind of looks
22 with the garage. Anyone else?

23 Okay. When do you think you'd like to be able
24 to -- okay. Okay, now, so I see the ANC Commissioner raising
25 his hand, and since you are here, Mr. Commissioner, you can

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1 go ahead and step forward.

2 MR. SOLOMON: Just a very brief question. On any
3 of the new information that is presented to the Commission,
4 would the ANC have an opportunity to comment on it?

5 CHAIR HILL: Yes. The ANC always has an
6 opportunity to comment on it. We'll set dates right now, as
7 to when we're going to get comments. But thank you.
8 Mr. Moy, when can we get things from people?

9 MR. MOY: Well, depending on how quick the
10 applicant can prepare the requested materials. I'm looking
11 at -- yes. If we come back to the Board on March 7th, would
12 that allow --

13 CHAIR HILL: Let me just see here. So, the reason
14 why March 7th was getting thrown out is because Commissioner
15 Shapiro is back with us on March 7th. Now, is that going to
16 be problematic for any kind of financial issues, or things
17 such as that, with the applicant? You need to speak into the
18 microphone.

19 MR. HALEM: The sooner, the better, financially.
20 I have tenants in the property that are going to be vacating
21 in March or April, so we're looking to start the project as
22 soon as possible.

23 CHAIR HILL: Okay, let me see. Hold it.

24 MR. MOY: This would be a continued hearing, sir?
25 Or, will a decision --

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1 CHAIR HILL: It would be a continuing --

2 MR. MOY: Okay.

3 CHAIR HILL: -- it would be a continued hearing.
4 Yes, okay. So, I'm trying to -- I'm trying to figure out
5 what will be the most efficient here, in terms of, if -- I
6 think we should come back on March 7th. And the reason why
7 I say that, is we'll have an opportunity to get all the
8 information we need from you guys. The ANC will have an
9 opportunity to respond.

10 And then also, Commissioner Shapiro will be back
11 here, and since he sat through all this, it would be best for
12 the hearing if he had an opportunity -- and what we will try
13 and do, is get a decision for you one way or the other, as
14 quickly as possible.

15 I will remember that you had to wait this long for
16 him to come back around, so that you can get -- you know, I
17 mean whether it's yes or no, you'd rather know right away.
18 So, March 7th --

19 MEMBER SHAPIRO: If I -- not to muck with your
20 process, but it may be helpful to know when the next ANC
21 meeting is, if they need to bring this to a meeting.

22 CHAIR HILL: Okay, let me see, first -- so when --
23 I don't think -- I don't know if they're going to be
24 submitting anything new for the ANC. Right? I mean, you're
25 going to -- or you might. You might have something new for

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1 the ANC.

2 If you're going to try to -- if you're going to
3 try -- give me one second. Give me one second. If you're
4 going to try to have -- if you were to present in front of
5 the ANC -- okay, now you have to know. All right, I'm sorry.
6 Please come forward, Mr. Chairman -- or Commissioner. Would
7 you -- the Commissioner wants to come forward.

8 We're just trying to figure out what dates
9 should -- I don't know if they're going to come submit or
10 not. I don't think you've -- have you been sworn in,
11 Commissioner?

12 (Off-microphone comment.)

13 CHAIR HILL: Okay, the other Commissioner, have
14 you been sworn in? Do you know the date of your ANC meeting?
15 If you could just speak into the microphone.

16 MR. SOLOMON: Yes, our next meeting is next
17 Monday.

18 CHAIR HILL: Okay, next Monday. Oh, this coming
19 Monday.

20 MR. SOLOMON: Mm hmm.

21 CHAIR HILL: Okay. So -- and then after that it
22 would be when?

23 MR. SOLOMON: We meet the first Monday before the
24 first Thursday, because of OGB. So, I don't have a calendar,
25 but I'll take a look.

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1 MR. MOY: That's February 5th. That'd be
2 February 5th.

3 MR. SOLOMON: That's correct, February 5th.

4 CHAIR HILL: Okay. So, that's all right. I
5 don't -- I don't necessarily know --

6 MR. SOLOMON: I'm not -- I'm sorry. The next one
7 is a week from today, which is -- which is that date --

8 CHAIR HILL: What's the next one?

9 PARTICIPANT: The next one's going to be on the
10 26th.

11 MR. MOY: But I would suspect --

12 MR. SOLOMON: Yes, February 7th --

13 CHAIR HILL: I think March 7th will still be fine.

14 MR. SOLOMON: Yes, February 26 --

15 CHAIR HILL: Okay.

16 MR. SOLOMON: -- is the next -- is the one after
17 that.

18 CHAIR HILL: Okay. All right, thanks. So,
19 March 7th is when Commissioner Shapiro's back, so let's go
20 ahead and set it for March 7th. And then if that's the case,
21 if you can please back out the dates, Mr. Moy, to let me know
22 when we need to get enough time for the ANC to respond.

23 CHAIR HILL: February 21st. Okay, never mind.
24 So now, Commissioner, he's not going to be here on March 7th.
25 So February 21st?

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1 MR. SOLOMON: Yes, sir.

2 CHAIR HILL: February 21st. I'd rather go where
3 you're going on March 7th, but February 21st -- can I change?
4 So, February 21st -- we're going to try February 21st. So,
5 in order to do February 21st, Mr. Moy, what days do we need
6 to give everyone to get responses, and information to us by?

7 MR. MOY: I'm assuming that prior to the ANC
8 meeting, that the ANC would need the new material. So --

9 CHAIR HILL: I don't know if the A- -- are you
10 guys going back -- I don't -- you're going back to the ANC
11 if you have anything that you think the ANC is going to be
12 interested in. Right? So, if you think that you're going
13 to have something that you think the ANC is going to be
14 interested in, you can handle that all by yourselves. Okay?

15 And you can change our date, and you can submit --
16 if you can get the A- -- if you find something that you think
17 that the community is going to be in favor of, you know, or
18 the ANC's going to be in favor of, or, if you think that
19 going back to the ANC and showing them any of the information
20 that we have in terms of the by-right and the roof deck and
21 all that, that's on you guys. You guys can do what you want
22 to do.

23 I'm just trying to get you back here for when
24 Mr. Shapiro is here. So --

25 MR. MOY: So, I have to ask the applicant the

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1 earliest I can be able to submit the supplemental information
2 that the Board is requesting, for the record.

3 MR. CROSS: We would require no more than one
4 week.

5 MR. MOY: No more than one week?

6 MR. CROSS: We could refile early next week.

7 MR. MOY: Okay, well let's see. Today's the 24th,
8 let's say I give you, instead of next Wednesday, let's say
9 the Friday -- that would be February 1st.

10 MR. CROSS: I believe it's February 2nd, but yes,
11 that's fine.

12 MR. MOY: February 2nd, thank you. So, Friday,
13 February 2nd, the applicant file its supplemental
14 information. And then, responses from the ANC and Office of
15 Planning, by the 14th? Wednesday the 14th? February.

16 MR. SOLOMON: No, we'd have to have a public
17 meeting to respond to that.

18 MR. MOY: And that is when?

19 MR. SOLOMON: At our next meeting is on
20 February 5th for the February meeting, and our March meeting
21 is February 26th.

22 MR. MOY: I see. Well, if the applicant can
23 submit its materials by the second of February, would --
24 would the ANC be able to --

25 PARTICIPANT: We have a meeting on January 29th.

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1 We don't have a meeting on --

2 MR. SOLOMON: I'm sorry. Yes, right, right,
3 right.

4 CHAIR HILL: Commissioner? I'm sorry,
5 Commissioner. Have you been sworn in?

6 Okay, January. It's okay.

7 MR. SOLOMON: Yes, I'm sorry.

8 CHAIR HILL: All right. That's okay, I'm just --
9 sometimes I don't know -- I just want to make sure the rules
10 are all -- and you're like the voice and the ear, and so,
11 like, you know -- okay.

12 MR. SOLOMON: Yes, I can clarify that up. I was
13 looking at the calendar here.

14 CHAIR HILL: Sure. Sure.

15 MR. SOLOMON: We have to postpone --

16 CHAIR HILL: So, I could swear you in, you can
17 introduce yourself. And so that's why I'm just trying to --

18 MR. SOLOMON: Yes. We could -- we have to on WGB.
19 Looking at that, our next meeting is January, which is next
20 Monday. The date would be the 29th.

21 CHAIR HILL: Okay.

22 MR. SOLOMON: That's our February meeting. And
23 the February meeting will be February 5th. No, that's a
24 Monday -- February --

25 CHAIR HILL: So, that's okay. It doesn't matter.

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1 It doesn't -- the only reason why I'm saying it doesn't
2 matter, is that it's really up to the applicant at this
3 point, meaning, you will have -- we're going to create --
4 their -- we're asking for material from the applicant.

5 You will have seven days to submit, after that,
6 in terms of writing something. If the applicant thinks that
7 there's some reason to come present in front of the ANC
8 again, which, if they think they have a shot, I would assume
9 they'll go ahead and ask us for a postponement, and try to
10 get in front of the ANC again.

11 So, that's -- again, I'm just saying that's on
12 them. So -- so, then, given those dates again -- when
13 Mr. Shapiro's coming back -- can you give me the dates --

14 MR. MOY: Yes, yes. Let me start over, then --

15 CHAIR HILL: Sure.

16 MR. MOY: -- Mr. Chair. So --

17 CHAIR HILL: Unless anybody else like to jump in.

18 MR. MOY: Okay, so the applicant would submit
19 its -- would make its filing Friday, February 2nd, and seven
20 days for responses, which would be February the 9th --
21 okay? -- responses from the ANC, and if OP has a supplemental
22 analysis. And then we're back to re- -- continued hearing
23 on February 21st.

24 CHAIR HILL: Commissioner, so you got that? So,
25 the 9th. You'll have seven days after that.

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1 MR. SOLOMON: Unless there's something that they
2 want to bring before the ANC.

3 CHAIR HILL: Yes, exactly. If they think they
4 have -- you know, they can figure this out, then I definitely
5 encourage them to do so.

6 MR. SOLOMON: Right. And as the applicant
7 mentioned, if they want to bring anything to us, as far as
8 new plans, or what have you, we can surely entertain that,
9 as well.

10 CHAIR HILL: So yes, the applicant should always
11 work with the ANC, you know. They should definitely be
12 trying to work with the ANC. Okay, so -- and the Office of
13 Planning, you know, if you have any supplemental you'd like
14 to give, I don't know if there's anything new -- actually,
15 yes, we'll -- like, supplemental. Yes, like a supplemental
16 report. That would be great. Okay, does everybody have the
17 dates?

18 All right. Okay, so this will be for a continued
19 hearing. And so, I think we've -- and this is where I -- at
20 a continued hearing, we don't necessarily take witnesses
21 again. Correct?

22 MR. MOY: Oh, you just did now, Mr. Chair, unless
23 you want to do it again.

24 CHAIR HILL: Right. Okay, so then, Ms. Glazer?

25 MS. GLAZER: Well, it seems like you may have a

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1 revised application, so you would certainly take testimony
2 and hear evidence.

3 CHAIR HILL: Okay. All right. So then, if you
4 can remind me that, you know, we'll see if -- I was trying
5 to see if anybody's going to be here in opposition or
6 support. If you would like to come for opposition or support
7 based upon the new material that is submitted, we will open
8 it up for opposition and support based upon the new material
9 that is submitted.

10 If it -- if it's changing a lot, I'm just -- I
11 don't know -- if you need -- if you're coming just for a
12 repeat testimony, I don't know if that's necessarily
13 beneficial for your time. So, that's why I'm just trying to
14 point out.

15 Okay, that's that, and then we're going to see you
16 guys on whatever date was just decided. And we're going to
17 take a quick three-minute break, if that's all right. Thank
18 you.

19 (Whereupon the above-entitled matter went off the
20 record at 1:10 p.m. and resumed at 1:20 p.m.)

21 CHAIR HILL: All right, Mr. Moy, whenever you
22 like.

23 MR. MOY: Thank you, Mr. Chairman, time is 1:23,
24 back in session.

25 And according to your lineup on the docket, we

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1 have before the Board, Application No. 19676 of Coresite --
2 C-O-R-E-S-I-T-E -- 1099 14th Street LLC.

3 This application is captioned and advertised for
4 special exception under Subtitle C, Section 1504. From the
5 penthouse, setback requirements of Subtitle C,
6 Section 1502.1(b) and (c). This would construct rooftop,
7 mechanical equipment, and screening, on an existing office
8 building -- D-6 Zone, premises 1099 14th Street, NW,
9 Square 248, Lot 75.

10 Mr. Chair, I think, because of some differences
11 in the calculations shown on the applicant's sheets, and the
12 Office of Planning report, in terms of numbers on the
13 setback, I believe, and the side -- side -- is it side-back
14 requirements? I'm going to ask the application to reiterate
15 the request that they're seeking. So --

16 CHAIR HILL: Okay, okay. Could you please
17 introduce yourself, right to left.

18 MR. WESTHAFFER: William Westhafer --

19 CHAIR HILL: You need to push the button. Sorry.

20 MR. WESTHAFFER: William Westhafer, Architect with
21 NORR.

22 MS. PRINCE: And Allison Prince, with Goulston &
23 Storrs, here for the applicant.

24 CHAIR HILL: Okay. Ms. Prince, you just heard
25 a -- could you provide clarification?

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1 MS. PRINCE: Sure. This application requires
2 relief -- penthouse setback relief -- from the rear and side
3 walls, the southeastern -- southern and eastern walls of the
4 office building at the corner of 14th and L, the southeastern
5 corner.

6 The relief that we need is 1502.1(b) and
7 1502.1(c). That's also cited in the zoning administrator's
8 memorandum. I wanted to note that the memorandum was
9 corrected, so there's a corrected memo in the file as of
10 today, correcting the zoning. The original memorandum cited
11 the apartment house, and I have no idea why it's D-6. So,
12 we corrected that for the record.

13 Then, in terms of clarification, the setback
14 requirement, apparently there was something in the record --
15 I'm not exactly sure what -- that suggested that the setbacks
16 are smaller than they actually are. The side yard setback --
17 I'm sorry, the side setback for the penthouse is five feet,
18 seven and one-quarter inches.

19 The rear is five feet, eight and three-quarter
20 inches. And just by way of clarification, we prepared an
21 exhibit that we can put into the record if it would be
22 helpful, that calls out those dimensions very clearly, so
23 there's no confusion.

24 CHAIR HILL: Okay. Yes, if you could put that
25 into the -- submit that into the record, that'd be great.

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1 Other than that, I guess, there was some confusion on our
2 part with that.

3 So, I'm going to go ahead and let you speak a
4 little bit to -- a little bit more, I suppose, if you want
5 to, but a little bit to the relief you're requesting, as well
6 as the standard in which we can grant the relief, and I'll
7 go and put ten minutes on the clock just so I know where we
8 are.

9 And if you want to highlight some of those things
10 you just mentioning, then that's fine, but that's what I was
11 try- -- those are the things that I was kind of curious
12 about. And you can start whenever you like.

13 MS. PRINCE: Sure. As I said, Allison Prince with
14 Goulston & Storrs, here for Coresite. Coresite develops data
15 sharing facilities. We call them EEFs under the zoning
16 regulations. The use is permitted as a matter of right in
17 the zone.

18 In this particular case, the proposed equipment
19 needed for the facility has to be put in the southeastern
20 corner of the roof, the back corner of the roof, away from
21 the street, in order to provide the water and electrical
22 service that the equipment requires.

23 We've put in the place that we put it because
24 that's the only place it can be located, given the need to
25 run the wiring and water lines up through the building,

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1 through existing tenant spaces. So, we've got to work with
2 what we've got. The architect can explain that in greater
3 detail.

4 We definitely believe we meet the standards for
5 the penthouse special exception relief -- the setback relief.
6 There's absolutely no harm to any adjacent property as a
7 result of the lack of a setback.

8 In fact, the photographs that you'll see in the
9 record show that much of the rooftop equipment nearby -- in
10 the nearby buildings -- isn't set back at all, nor is it
11 properly screened, so we have no effect on abutting
12 neighbors. It is as far removed from the street as possible,
13 so there's no issue with street frontage.

14 It's very disruptive and impractical to try to
15 have a compliance setback here. There would be literally no
16 way to accommodate the needed equipment with a compliance
17 setback. I think the Office of Planning report covers that
18 very thoroughly.

19 But I'm going to ask the architect to walk through
20 the plans quickly, and I'd like to qualify him as an expert.
21 He's got 30 years of experience. He's a registered
22 architect. I do have his résumé here, since he's from
23 Philadelphia. He's not someone that you've seen before.

24 CHAIR HILL: Okay. Could you submit that over to
25 the secretary, so we can take a look at it?

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1 Mr. Westhafer, since we're just -- how do you
2 pronounce your name again?

3 MR. WESTHAFER: Westhafer.

4 CHAIR HILL: Westhafer. Mr. Westhafer, our Board
5 member here is an architect, but if you wouldn't mind just --
6 since we're just getting this -- if you could just tell us
7 a little bit about your qualifications.

8 MR. WESTHAFER: Okay. As Allison mentioned, 30
9 or so years of experience, Master's Degree from Princeton
10 University. Been practicing in commercial architecture for
11 that entire time, including many projects similar to this,
12 and I have testified in numerous zoning board and zoning
13 hearings in my career.

14 CHAIR HILL: I don't have any issue --

15 PARTICIPANT: No objection.

16 CHAIR HILL: Okay, thank you, sir. Please begin
17 whenever you like.

18 MR. WESTHAFER: The image on the screen is
19 essentially a location plan. Our building is the rectangular
20 in the center of the screen. As mentioned, bounded on the
21 north by L Street, NW, on the west by 14th Street, NW, on the
22 south by an alley, and on the east by a service court between
23 our building and the adjacent building, which has no access
24 to L Street, so it's separated from L Street.

25 Part of the -- so we are in the least visible

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1 portion of the roof, and part of the reason we have limited
2 area is because there is an existing penthouse, which is in
3 the center of the roof. Our screened units are four feet
4 lower than the top of the penthouse, so we are lower than the
5 existing penthouse.

6 The -- sorry, the -- have to blow that up. The
7 facility we -- it's not an important image. The facilities
8 actually below grade were on the concourse level of this
9 building, so it's below street level. It's three computer
10 rooms.

11 This -- sorry. This image illustrates the
12 point -- the one just recently submitted illustrates it in
13 a little more clear fashion. On the upper right bracketed
14 area, that shows -- I'll just describe it generally, and then
15 we can discuss in more detail the other one.

16 The dashed line -- diagonal line -- is the
17 45 degree line from the outside wall. The two rectangles to
18 the right of it, that's our equipment, so our equipment
19 actually meets the setback requirement.

20 It is only the screen that violates the setback
21 requirement, and the screen is located in order to provide
22 the required airflow for the units, which is really driving
23 the need for this relief.

24 The plan on the lower left shows the roof layout.
25 The hashed area, which includes three air-cooled chillers and

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1 four remote radiators for the generators that are located
2 inside the parking garage, as part of the building. I'll get
3 rid of that.

4 CHAIR HILL: Actually, sir, I think I'm going to
5 just move to the Office of Planning real quick --

6 MR. WESTHAFFER: Okay.

7 CHAIR HILL: -- and come back to you if we have
8 some more questions.

9 MR. WESTHAFFER: All right.

10 CHAIR HILL: Could I turn to the Office of
11 Planning?

12 MS. ELLIOTT: Good afternoon, Mr. Chair, members
13 of the Board. I'm Brandice Elliott, representing the Office
14 of Planning. The intent -- the purpose of the special
15 exception for -- that is required for roof mechanical
16 equipment -- is really just to ensure that it isn't as
17 visible from public right-of-ways.

18 It minimizes the visibility of these structures.
19 And so I believe that the applicant has addressed the
20 criteria for the special exception by using smaller
21 equipment, and then certainly -- I do apologize the setbacks
22 that we noted in the report are incorrect, but based on --
23 it turns out that they're larger than what we were
24 anticipating when we were reviewing the request originally.

25 So, since those setbacks are provided, as well as

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1 the screen wall, and then the screen wall would be painted
2 to be -- to match the exterior of the building, we feel that
3 the criteria of the special exception has been met, and are
4 recommending approval. But happy to answer any questions you
5 may have.

6 VICE CHAIR HART: And, Ms. Elliott, you're just
7 saying that the -- what you were saying was required is
8 actually more conservative than what they actually are --
9 they're giving more than what you said that they were.

10 MS. ELLIOTT: Correct. When we assessed the
11 application, we thought that setbacks of 2½ feet were being
12 provided along the rear and the side, and they're actually
13 5'7"/5'8", yes.

14 VICE CHAIR HART: Thank you.

15 CHAIR HILL: All right, great, thank you. Does
16 anyone have any other questions for the Office of Planning?

17 PARTICIPANT: No, sir.

18 CHAIR HILL: Okay, does the applicant have any
19 questions of the Office of Planning?

20 MS. PRINCE: We do not.

21 CHAIR HILL: All right. Is there anyone here from
22 the ANC wishing to speak? Is there anyone here wishing to
23 speak in support of the application? Is there anyone here
24 wishing to speak in opposition? All right. All right, does
25 the applicant have anything else they'd like to add?

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1 MS. PRINCE: Nothing to add.

2 CHAIR HILL: Okay. I'm going to close the
3 hearing. Is the Board ready to deliberate? Okay, I don't
4 have any concerns. I mean, I thought that the Office of
5 Planning's report, as the Vice-Chair had just noted, was
6 even -- you know, they were providing -- it was just a
7 discrepancy where they are now in line with what the
8 applicant had thought, and so I thought that the Office of
9 Planning's report was very well done in terms of its
10 analysis.

11 Also, in addition to that, the ANC, too, has
12 provided their support for a 6-0-1. DDOT doesn't have any
13 objection to the application. Although those are not -- you
14 know, we don't necessarily follow the ANC or Office of
15 Planning all the time, I thought that the applicant did meet
16 the burden. Does the Board have any other things they'd like
17 to add?

18 VICE CHAIR HART: Sorry. No, I would agree with
19 you, Mr. Chairman, that the -- I believe that they met the --
20 their criteria set forth in the zoning regulation, and
21 understand the Office of Planning's in support of this, as
22 well as the ANC, and did not have any -- I don't -- I would
23 support the application, myself.

24 CHAIR HILL: Would you like to make a motion?

25 VICE CHAIR HART: And I'm making a motion to

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1 approve Application 19676 of -- is it Coresite?
2 Coresite, 1099 14th Street LLC, pursuant to 11 DCMR,
3 Subtitle X, Chapter 9, for a special exception under
4 Subtitle C, 1504, from the penthouse setback requirements of
5 Subtitle C, 1501 -- excuse me, 1502.1 -- and this is (b) and
6 (c), correct? To construct rooftop mechanical equipment and
7 screening on an existing office building in the D-6 Zone, at
8 premises -- well, at the premises 1099 14th Street, NW.

9 CHAIR HILL: Second? Motion made and seconded.
10 All in favor?

11 (Chorus of ayes.)

12 CHAIR HILL: All those opposed? The motion
13 passes, Mr. Moy.

14 MR. MOY: Staff would record the vote as 3-0-2.
15 This is on the motion of Vice-Chair Hart to approve the
16 application for the relief being requested. Seconding the
17 motion, Chairman Hill. Also support, Mr. Peter Shapiro. We
18 have a Board member not participating, not present. We have
19 a Board seat vacant. The motion carries.

20 CHAIR HILL: Summary order, Mr. Moy?

21 MR. MOY: Yes, sir.

22 CHAIR HILL: Thank you. Thank you.

23 MR. MOY: The next case application before the
24 Board for hearing is Application No. 19669, of David Benjamin
25 Douglas. Caption, Advertised for Special Exceptions under

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1 Subtitle D, Section 5201, from the lot occupancy
2 requirements, Subtitle D, Section 304.1, rear yard
3 requirements, Subtitle D, Section 306.2, Subtitle C,
4 Section 703.2, from the minimum parking requirements of
5 Subtitle C, Section 701.5, to construct a two-story rear
6 addition to an existing one-family dwelling, R-3 Zone,
7 2339 Third Street, NE, Square 3558, Lot 51.

8 CHAIR HILL: Okay, thank you. Good afternoon.
9 If you can please introduce yourselves.

10 MR. DOUGLAS: Good afternoon, Chair and Board.
11 My name is David Douglas, homeowner and current resident of
12 the address in question.

13 CHAIR HILL: You need to push the button there.

14 MR. DOUGLAS, SR.: Oh, excuse me. I'm David
15 Douglas, too, the applicant's father.

16 CHAIR HILL: Okay, great.

17 VICE CHAIR HART: Just for moral support, or --

18 MR. DOUGLAS, SR.: You know, it's more.

19 CHAIR HILL: All right, well, Mr. Douglas --
20 whichever Mr. Douglas is going to be presenting to us -- I
21 didn't have a lot of questions about your application, other
22 than, I guess, kind of what happened with the ANC 5E. And
23 when you went there -- and I didn't see a report the last
24 time, although it might be in there now.

25 MR. DOUGLAS: They added it late yesterday

1 afternoon.

2 CHAIR HILL: Okay. You need to push the button,
3 I'm sorry.

4 MR. DOUGLAS: We have a copy --

5 CHAIR HILL: You still need to push the button.
6 There you go.

7 MR. DOUGLAS: We have a copy we can give you, if
8 you wish.

9 CHAIR HILL: Okay. I think it's in the record,
10 and I'm going to take a look at it now. But, if you want to
11 go ahead and give your presentation as to what it is you're
12 requesting for the project, in terms of the relief you're
13 requesting, as well as the standard with which for us to
14 grant the relief.

15 And I'm going to put ten minutes on the clock,
16 just so I know what I am. And please go ahead and walk us
17 through the proposal. Thank you.

18 MR. DOUGLAS: This simply -- we're looking for a
19 special exemption of Subtitle D, 5201, and then subtitle of
20 that, which is 304.1 for lot occupancy. Sixty percent is
21 allowed. We're looking for 70 percent. And then,
22 Subtitle 306.2 of your yard has a 20 foot setback from the
23 alley.

24 We're proposing a 16 foot setback. And the very
25 third thing is parking space size. We're looking for a

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1 special exemption. And as much as a parking space is
2 generally 20 feet long, and we're looking for a parking space
3 which I believe would be 17 feet long.

4 MR. DOUGLAS, SR.: Compact.

5 MR. DOUGLAS: A compact space, actually.

6 MR. DOUGLAS, SR.: Just to give you also a brief
7 background, this is my son's principal residence. There are
8 neighbor support letters -- several of them -- in the files.
9 Also, my son's work with the ANC, from beginning to end, and
10 when he presented it in front of the ANC, they voted 9-0 to
11 support the application.

12 The only other comments I'd like to make are two
13 comments, one about DOT's write-up. I was the person that
14 spoke to an Aaron Zimmerman at DOT, and what he actual- --
15 what they actually wrote is close, but not exactly what we
16 discussed.

17 We agreed that we don't have a problem in
18 extending a fence over the sidewalk entry, and that the
19 property strictly off the alley. DOT, in their
20 recommendation, says they want us to go directly from the
21 alley to the back of the house, and that actually is
22 impossible to do, because there's a pole right there that's
23 part of your application.

24 It's Document 30. And so, what I proposed to DOT
25 was that we would do one of two things. Either we would get

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1 a public space parking permit through them, or a driveway --
2 residential driveway and curb cut permit -- through them.

3 MEMBER SHAPIRO: So, in other words, you'd come --
4 I'm looking at a color photograph of the pole -- Exhibit 30.
5 So you'd just come off --

6 MR. DOUGLAS: Basically, we would come off the
7 alley a little earlier. The DOT doesn't want us to come off
8 the sidewalk or the street. They want us to come off the
9 alley, which we have no problem coming off the alley. We
10 would just come off the alley and cross some of the DOT land
11 itself, and therefore, we'll either do a driveway permit with
12 them, or a parking permit with them.

13 MEMBER SHAPIRO: Okay.

14 MR. DOUGLAS: Just because I think it'd be great
15 difficulty, from a time perspective, to get that pole
16 removed.

17 MEMBER SHAPIRO: I hear what you're saying,
18 Mr. Chair. I'm just wondering, then, what we would -- what
19 we're approving. It's not so much on the substance of what
20 you're suggesting. It's -- I'm just not so sure what's
21 before us, then.

22 MR. DOUGLAS: Okay, well, I'm just commenting
23 about their report.

24 MEMBER SHAPIRO: Mm-hmm. So then, you're --

25 MR. DOUGLAS: So, I guess what I'm requesting of

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1 the Board is flexibility, in terms of working out with DOT
2 the access to the parking behind the house.

3 CHAIR HILL: Okay, I'm going to try to work this
4 out, I guess, with the Office of Planning just a little bit.
5 Before I get there, again, what I understood, again, isn't
6 right, because in 703.4 we need a TDM plan, and what I
7 understood is that DDOT condition, what -- maybe having the
8 applicant submit a document describing the DDOT condition --
9 a re-approval of its TDM plan -- well, anyway, so I'm going
10 to turn to the Office of Planning Committee to help me, and
11 also with this pole issue.

12 MS. FOTHERGILL: Good afternoon. I'm Anne
13 Fothergill with the Office of Planning, and I did discuss
14 with DDOT this issue about access to the parking area, and
15 also the paving of public space. And we did discuss in
16 detail what's in the report, and what the applicant
17 reflected.

18 And I think that exactly what the applicant said
19 would be sufficient that they be required to get a public
20 space permit, and that all of that would be wrapped up into
21 that. I mean, DDOT said they're aware of the pole. They're
22 willing to work around the pole, but they definitely want
23 that pavement removed that's on the public space.

24 So, there has to be some sort of review and a
25 discussion of that, related to granting the parking relief.

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1 So, I think if it's conditional on them getting that public
2 space permit, that would probably be sufficient. Would you
3 like me to go over the other --

4 CHAIR HILL: Please, yes. Go ahead.

5 MS. FOTHERGILL: So, the Office of Planning has
6 recommended approval of the relief for lot occupancy and rear
7 yard, and -- as well as the parking relief, again, with this
8 discussion with DDOT about the public space concerns.

9 They are proposing two non-conforming spaces. One
10 full-size space is required. And it's possible that within
11 the public space permit discussion, that they end up with one
12 space to solve the issue of access. But that would be for
13 DDOT and the applicant to figure out when they review the
14 public space permit.

15 But we rest on the record in support of the
16 special exception relief. I'm happy to take any questions.

17 CHAIR HILL: Okay, does anybody have questions for
18 the Office of Planning? Okay, does the applicant have any
19 questions for the Office of Planning?

20 MR. DOUGLAS: No, sir, but I'd like to just --
21 I've mentioned one -- I have two points. I would mention one
22 point. At some point, I'd like to mention my second point.

23 CHAIR HILL: Certainly. You can go ahead now.

24 MR. DOUGLAS: Okay. The second thing is, I'm just
25 looking for flexibility, in terms of whether we'd build a

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1 two- or three-story addition. On the original applicant we
2 requested this to build a two-story rear addition. I just
3 want some flexibility that it's possible, then, to build a
4 three-story addition.

5 And I'd like to just say that we are under the
6 height -- with a three-story addition, we're underneath the
7 height limit. We're also on the north side of the block, so
8 we don't affect the light or air.

9 CHAIR HILL: Mr. Douglas, I can just stop you
10 right now. Like, we wouldn't give that kind of a
11 flexibility.

12 MR. DOUGLAS: Okay.

13 CHAIR HILL: And so, you know, you'd have to come
14 back here if that was something you'd be interested in. I
15 mean, we're approving what's before us right now. But no
16 harm in asking.

17 VICE CHAIR HART: That is, if DCRA thinks that you
18 need to come back to us.

19 CHAIR HILL: Right.

20 VICE CHAIR HART: So, it may be that DCRA may not
21 believe that that needs to become -- but it is possible.
22 We -- as the Chairman said, we are approving the plans that
23 are before us. We can't approve things that are not actually
24 in front of us.

25 MS. FOTHERGILL: Okay.

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1 VICE CHAIR HART: The driveway thing is a little
2 bit kind of a concern, as our other Board member raised, how
3 are you accessing it because of the pole that's there. And
4 I'm not sure if we actually need to have -- I kind of would
5 like to have something that shows where that access is, just
6 so that we have that in our record.

7 And I don't know, Commissioner Shapiro, if there
8 is a -- if that's what you're looking for, you know, like how
9 are you accessing this, and -- because right now we really
10 don't know how that access is going to be.

11 MEMBER SHAPIRO: No, we really don't know. But
12 I'm wondering if our process allows us to, hypothetically,
13 to approve something like this contingent upon them working
14 out what they need to work out with public space committee.
15 Is that something that we typically do?

16 MS. GLAZER: Yes, I'm glad you brought that point
17 up. Sorry to interrupt, but as you know, Section 704
18 requires a TDM plan whenever -- in this type of a case, and
19 one -- a TDM plan has not been submitted. I think, from OP's
20 report, it appeared that OP was willing to treat compliance
21 with the DDOT condition as approval of the TDM. However, it
22 sounds like there may be some variation from what is
23 suggested in the DDOT report.

24 So, at this point, it might be appropriate to have
25 the applicant submit what he is proposing to do, and then

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1 take that to DDOT and make sure that they -- and label it a
2 TDM -- proposed TDM plan, and seek DDOT's approval.

3 CHAIR HILL: And in that, Ms. Glazer, that would
4 have the condition on the public space permit for the
5 parking?

6 MS. GLAZER: Or whatever the applicant can work
7 out with DDOT.

8 CHAIR HILL: So, I don't know -- and so what you
9 would need to do is go back to -- so, under the regulations,
10 you're supposed to submit a transportation demand management
11 plan, and that is something that you don't have in the record
12 for us right now.

13 So, if you did go to DDOT, they could help you do
14 that. Then you could submit that into the record, and then
15 we will be able to go ahead and deliberate as to whether or
16 not we think that this should be approved.

17 MR. DOUGLAS: Sure.

18 MEMBER SHAPIRO: And I'm wondering if that does
19 not -- I think we want to be clear with this issue around how
20 you're going to access this, that may or may not -- I
21 wouldn't want you to come back to us with some kind of TDM
22 that doesn't include the access issue. Because then, you
23 might have to come back to us a second time.

24 In other words, we need to see a resolved version
25 of this in some way, shape or form, before we can take

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1 action.

2 MR. DOUGLAS: What I suggest is that, why don't
3 we just address as submitted, and that we do have access.
4 The poles there is not ideal, but we'll work it out on our
5 own with DOT, because we need to move forward on this. I
6 don't really wish to come back again and work on this.

7 So, if I may, can we just take it the way that
8 it's presented, and can you guys address it, then?

9 CHAIR HILL: And I'll just turn back, then, to
10 Ms. Glazer, I suppose. So then, back to the original, which
11 is that, if the applicant submitted something to the record
12 that their TDM plan is based on condition of getting public
13 space permit for the parking, would that be adequate?

14 MS. GLAZER: The regulations require the applicant
15 to submit a TDM plan that is approved by DDOT. So, if it's
16 consistent with DDOT's recommendation in its report, the
17 Board possibly could consider that. But, again,
18 technically -- and I don't want to be hyper-technical, but
19 this is a small project, and TDM plans are normally for much
20 larger projects.

21 But I don't know that it can be resolved today.
22 The Board needs to approve a TDM plan and impose it as a
23 condition.

24 CHAIR HILL: Okay.

25 MR. DOUGLAS: I don't know -- if I look at DOT's

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1 recommendation here, it says, DDOT has no objection to the
2 approval of the requested special exemptions, on the
3 condition that the applicant remove the existing paving in
4 the public space, and ensure that parking access is done from
5 that alley only.

6 So they are actually endorsing things the way that
7 they are now. And I just request that we get approval now,
8 if it's at all possible.

9 MEMBER SHAPIRO: Mr. Chair? I mean, it does feel
10 to me that one way to consider is this, is that that
11 condition is the TDM plan. And if that's what the applicant
12 is willing to agree to in writing, that is essentially what
13 DDOT has already agreed to.

14 MS. GLAZER: As a practical matter, in the past
15 the Board has accepted a one-page filing from an applicant
16 saying, TDM plan, and in it has written into it the
17 conditions that were suggested by DDOT, and has interpreted
18 that as a TDM plan approved by DDOT.

19 But that document has to be implemented, and it's
20 imposed as a condition.

21 MEMBER SHAPIRO: So, we'd need that in writing
22 before we take action.

23 CHAIR HILL: Okay. So, Mr. Douglas, we're getting
24 there for you.

25 MR. DOUGLAS: Okay.

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1 CHAIR HILL: So, again, the TDM plan -- so you
2 know the recommendation from DDOT. Correct?

3 MR. DOUGLAS: Yes, sir.

4 CHAIR HILL: You just read it. Right?

5 MR. DOUGLAS: Yes, sir.

6 CHAIR HILL: So, if you can submit something into
7 the record that your TDM plan is -- and rewrite this
8 condition into the record -- again, TDM plans are usually for
9 much larger projects.

10 And so, if you can submit that into the record,
11 then we can take a look at this, and then put this on
12 decision for next week? Okay.

13 All right, so -- do you understand what you're
14 asking? What we're asking of you?

15 MR. DOUGLAS: Okay, you want a one-page TDM given
16 to you, so that it becomes on the record.

17 CHAIR HILL: Yes.

18 MR. DOUGLAS: And so, what should the TDM say,
19 exactly?

20 MEMBER SHAPIRO: The condition that is in the DDOT
21 report -- DDOT's recommendation for their condition.

22 VICE CHAIR HART: Yes, and basically, what you're
23 saying, is that you, the applicant, are going to do this
24 condition that they have laid out. Because they're saying
25 that they'll approve you contingent upon you actually doing

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1 this. And we just need something that says that this is what
2 you all are planning on doing.

3 MEMBER SHAPIRO: I don't want to work too far
4 around the regulations, but we -- I believe what we're asking
5 the Douglasses to do is to put in writing that they agree to
6 remove the existing paving of public space, and ensure that
7 parking access is done from the alley only.

8 CHAIR HILL: Yes, as their TDM plan.

9 MEMBER SHAPIRO: I think that it is.

10 CHAIR HILL: Yes.

11 MEMBER SHAPIRO: And I don't want to overwork
12 this, but -- I mean we could take a five-minute break, they
13 could put that in writing, they could submit it. I mean,
14 it's literally a sentence.

15 MR. DOUGLAS: I would like to do that, if I may.

16 CHAIR HILL: Okay. I mean, that's all right.
17 Ms. Glazer, would that be something that we, as a Board,
18 could do?

19 MS. GLAZER: I don't have a problem with doing
20 that. It's -- there's no opposition to it, and --

21 CHAIR HILL: Okay, well let me work through this
22 here with the rest of the -- the rest of the hearing here.
23 Is there anyone from the ANC here? Is there anyone here
24 wishing to speak in support? Is there anyone here wishing
25 to speak in opposition? Okay.

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1 All right, we're going to go ahead and take a
2 break. And then, Mr. Douglas, you can speak with the
3 secretary, if you need further clarification about what it
4 is we're trying to get into the record, and we'll come back
5 after a five-minute break. Thank you.

6 MR. DOUGLAS: Thank you.

7 (Whereupon the above-entitled matter went off the
8 record at 1:52 p.m. and resumed at 2:01 p.m.)

9 CHAIR HILL: All right, Mr. Moy, I guess, let's
10 come back together. We now have an exhibit as a TDM plan.
11 Do you have an exhibit number for that? Or do you know where
12 it's going to be?

13 MR. MOY: It would be -- just one second, sir.
14 Just one second. Okay, this should be 39. This would be
15 Exhibit 39, Mr. Chair.

16 CHAIR HILL: Okay, thank you. Does the Board have
17 any questions for the applicant?

18 PARTICIPANT: No, sir.

19 CHAIR HILL: Okay. All right, so we've -- we see
20 your latest submission here. So, do you have anything else
21 you'd like to add?

22 MR. DOUGLAS: No, sir.

23 CHAIR HILL: Okay. So, I'm going to go ahead and
24 close the hearing. Is the Board ready to deliberate? All
25 right. Again, based upon the discussions that we've had, as

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1 well as the analysis from the Office of Planning, I do see
2 that ANC 5E has submitted their report, and they are in
3 support.

4 And then with the condition that the TDM plan,
5 which is now going to be an Exhibit 39, is taken into account
6 as part of a condition, I don't have any issues with this
7 application. Does anyone else have anything they'd like to
8 add?

9 Okay, then I'll go ahead and make a motion to
10 approve Application No. 19669, as captioned and read by the
11 secretary, including the condition of the TDM plan in
12 Exhibit 39, and ask for a second.

13 MEMBER SHAPIRO: Second.

14 CHAIR HILL: Motion has been made and seconded.
15 All those in favor?

16 (Chorus of ayes.)

17 CHAIR HILL: All those opposed? The motion
18 passes, Mr. Moy.

19 MR. MOY: Staff would record the vote as 3-0-2.
20 This is on the motion of Chairman Hill to approve the
21 application with the relief being requested. Seconding the
22 motion, Mr. Peter Shapiro. Also in support, Vice-Chair Hart.
23 We have a Board member not present, not voting, a Board seat
24 vacant, the motion carries.

25 CHAIR HILL: Summary order, Mr. Moy?

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1 MR. MOY: Yes, sir.

2 CHAIR HILL: Thank you. Thank you gentlemen.

3 MR. DOUGLAS: Thank you, too. Thank you for being
4 flexible.

5 CHAIR HILL: Mr. Moy, does the Board have anything
6 else for today?

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

8 CHAIR HILL: All right, then we stand adjourned.
9 Thank you.

10 (Whereupon, the above-entitled matter went off the
11 record at 2:04 p.m.)

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C E R T I F I C A T E

This is to certify that the foregoing transcript

In the matter of: Public Hearing

Before: BZA

Date: 01-24-18

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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